



New South Wales

Road Transport Legislation Amendment (Traffic Offence Detection) Act 2009 No 50

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New South Wales

Road Transport Legislation Amendment (Traffic Offence Detection) Act 2009 No 50

Act No 50, 2009

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999* and certain other legislation to make further provision with respect to the detection of speeding offences by heavy vehicles and the detection of certain other traffic offences. [Assented to 26 June 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport Legislation Amendment (Traffic Offence Detection) Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20

[1] Section 43A

Insert before section 44:

43A Average speed of heavy vehicle is evidence of actual speed in certain circumstances

(1) When section may be relied on

A person who brings proceedings for a speeding offence involving a heavy vehicle may, in accordance with this section, rely on evidence of the average speed of the vehicle between detection points as evidence of the actual speed of the vehicle in order to establish the offence.

(2) Evidence and other matters that may be relied on

The following provisions apply in relation to proceedings for a speeding offence involving a heavy vehicle in which the person bringing the proceedings seeks to rely on evidence of the average speed of the vehicle:

- (a) the average speed of the heavy vehicle calculated in accordance with this section is admissible and is prima facie evidence of the actual speed at which a driver of the vehicle drove the vehicle on a road between the detection points, and
- (b) if there was more than one driver of the heavy vehicle between the detection points—each driver is taken to have driven the heavy vehicle at the average speed of the vehicle calculated in accordance with this section, except as provided by subsection (3), and
- (c) if more than one speed limit applied to a driver of the heavy vehicle between the detection points and the speeding offence is not a speed limiter offence:
 - (i) the average speed limit for the driver on a road between the points calculated in accordance with this section is taken (subject to subsection (8)) to be the speed limit that applied to the driver at all times on the road between those points, and
 - (ii) a driver of (and any responsible person for) the vehicle may be dealt with under the road transport legislation accordingly, and

- (d) the heavy vehicle and any of its drivers are, for the purposes of calculating the vehicle's average speed and any average speed limit, taken to have travelled between the detection points by means of the shortest practicable distance between those points regardless of the actual route taken by any of the drivers between the points.
- (3) Subsection (2) (b) does not apply in relation to any driver of a heavy vehicle if the driver establishes any ground of exculpation prescribed by the regulations. The regulations may also provide for the kinds of evidence that may be used in connection with establishing any such ground of exculpation (for example, the provision of a statutory declaration).

(4) **How average speed is to be calculated**

The *average speed* of a heavy vehicle between detection points is to be calculated in accordance with the following formula (and expressed in kilometres per hour rounded down to the next whole number):

$$\frac{D_T \times 3600}{T}$$

where:

D_T is the total shortest practicable distance (expressed in kilometres and rounded down to 2 decimal places) that could have been travelled by the vehicle on a road between the detection points.

T is the journey time (expressed in seconds) of the vehicle between the detection points.

(5) **How average speed limit is to be calculated**

The *average speed limit* for a driver of a heavy vehicle on a road between detection points in circumstances where more than one speed limit applied to the driver between those points is to be calculated in accordance with the following formula (and expressed in kilometres per hour rounded up to the next whole number):

$$\frac{D_T}{\frac{D_1}{S_1} + \frac{D_2}{S_2} + \dots + \frac{D_n}{S_n}}$$

where:

D_T is the total shortest practicable distance (expressed in kilometres and rounded down to 2 decimal places) that could be travelled by the vehicle on a road between the detection points.

$S_1, S_2 \dots S_n$ are each of the speed limits (expressed in kilometres per hour) that would have applied to a driver of the vehicle if the vehicle were travelling along the shortest practicable distance D_T on a road between the detection points.

$D_1, D_2 \dots D_n$ are each part of the total shortest practicable distance D_T between the detection points (expressed in kilometres and rounded down to 2 decimal places) for the different speed limits $S_1, S_2 \dots S_n$ that would have applied to a driver of the vehicle between the detection points.

(6) Certificate evidence concerning average speed calculations

Any certificates purportedly signed by an approved person for the matters concerned that certify any one or more of the following matters may be tendered in proceedings for a speeding offence involving a heavy vehicle in which the person bringing the proceedings seeks to rely on the vehicle's average speed and are admissible in the proceedings and are prima facie evidence of any of the matters that are certified:

- (a) the shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a road between the detection points,
- (b) if more than one speed limit applied to a driver of a vehicle between the detection points (measured along that shortest practicable distance):
 - (i) each distance for which each speed limit applied to the driver, expressed in kilometres and rounded down to 2 decimal places, and
 - (ii) the average speed limit calculated in accordance with this section that applied to the driver between the points (including an average speed limit calculated in accordance with this section using computer programs or electronic equipment),
- (c) the average speed calculated in accordance with this section at which a vehicle travelled between the points (including an average speed calculated in accordance with this section using computer programs or electronic equipment).

(7) **Section does not exclude other modes of proof of speeding offences**

This section is in addition to, and does not derogate from, any other mode of proof of the speed of a heavy vehicle.

(8) Without limiting subsection (7), a court in proceedings for a speeding offence in which the person bringing the proceedings is seeking to rely on evidence of the average speed of the vehicle may convict a person of the offence relying on evidence of the actual speed of the vehicle at a particular point of its journey between detection points (instead of evidence of an average speed or average speed limit) if the court is satisfied that:

- (a) evidence in the proceedings (other than evidence establishing the average speed) establishes the actual speed at which the driver was driving, and the actual speed limit that applied to the driver, at that point, and
- (b) the use of the actual speed and actual speed limit rather than the average speed (and, where relevant, the average speed limit) demonstrates that the driver exceeded the speed limit by a greater speed than that indicated by the use of the average speed or average speed limit.

Note. Assume, for example, that the average speed of a heavy vehicle calculated in accordance with this section between detection points is 120 kilometres per hour along a length of road for which the speed limit is 90 kilometres per hour. The use of the average speed of the vehicle indicates that the speed limit was exceeded by 30 kilometres per hour.

Assume, as well, that a police officer also measured the speed of the vehicle at some point during the same journey at 130 kilometres per hour using an approved speed measuring device. Using the police officer's measurement, the driver was exceeding the speed limit by 40 kilometres per hour at that point.

A court in proceedings to which this section applies may rely on evidence obtained by the police officer rather than the average speed to convict a person of the speeding offence.

(9) **Reliance on average speed does not affect validity of driver licence suspension notices**

For the avoidance of doubt, the validity of a suspension notice given to a person under section 205 or 206 of the *Road Transport (General) Act 2005* for a speeding offence may not be challenged or called into question in any proceedings only because the average speed that is relied on in proceedings or a penalty notice for the offence is less than a speed for which a notice may be issued under section 205 or 206.

(10) **Definitions**

In this section:

approved person means:

- (a) in relation to certifying distances for the purposes of this section—a registered land surveyor within the meaning of the *Surveying Act 2002*, and
- (b) in relation to certifying any other matter for the purposes of this section—a person (or a person belonging to a class of persons) authorised by the Authority to issue certificates for the purposes of this section.

detection points means the different points on a road by reference to which the average speed of a heavy vehicle is proposed to be calculated for the purposes of this section.

heavy vehicle has the same meaning as in the *Road Transport (General) Act 2005*.

journey time, in relation to a heavy vehicle between detection points, means the total time that elapsed between the heavy vehicle passing the first and last detection points.

road transport legislation has the same meaning as in the *Road Transport (General) Act 2005*.

shortest practicable distance between detection points on a road means the shortest distance between those points that a driver of a heavy vehicle could have used to travel between the points without contravening any road rules applicable to the driver under this Act.

speed limiter offence means a speed limiter offence within the meaning of Division 2A of Part 5.

speeding offence means:

- (a) an offence against this Act or the regulations of failing to obey a speed limit, or
- (b) a speed limiter offence.

[2] **Sections 47A and 47B**

Insert after section 47:

47A Approved average speed detection devices

In this Act, an **approved average speed detection device** means a device approved by the Authority by order published in the Gazette as being designed to photograph a vehicle at a point

during its journey between different points on a road for use in calculating the vehicle's average speed between those points and to record on any photograph that is taken:

- (a) the date on which the photograph is taken, and
- (b) the time and location at which the photograph is taken, and
- (c) the direction in which the vehicle activating the device is travelling, and
- (d) such other information as may be prescribed by the regulations.

47B Photographic evidence for use in proceedings involving average speed

- (1) In proceedings in which evidence of the average speed of a vehicle calculated in accordance with section 43A is relied on:
 - (a) photographs tendered in evidence as photographs taken by means of the operation, on a day or days specified on the photographs, of approved average speed detection devices installed at the locations specified on the photographs, and as each bearing a security indicator of a kind prescribed by the regulations, are admissible and are to be presumed:
 - (i) to have been so taken unless evidence sufficient to raise doubt that they were so taken is adduced, and
 - (ii) to bear such a security indicator unless evidence that is sufficient to raise doubt that they do so is adduced, and
 - (b) evidence that a photograph tendered in evidence taken by an approved average speed detection device bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken, and
 - (c) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.
- (2) When photographs are tendered in evidence in such proceedings as being taken by approved average speed detection devices, a certificate purporting to be signed by an authorised person and certifying the following particulars is also to be tendered in evidence, and is admissible and is prima facie evidence of those particulars:
 - (a) that the person is an authorised person,
 - (b) that, within 30 days (or such other period as may be prescribed by the regulations) before the time and day

recorded on the earliest of the photographs as the time at which and the day on which that photograph was taken, the person carried out the inspection specified in the certificate on the approved average speed detection devices that took the photographs,

(c) that on that inspection the approved average speed detection devices were found to be operating correctly.

(3) If a certificate under subsection (2) is tendered in proceedings for an offence, evidence:

(a) of the accuracy or reliability of the approved average speed detection devices, or

(b) as to whether or not the devices operated properly or operate properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the devices were accurate, reliable and operating properly is adduced.

Note. See also section 73A.

(4) In this section:

authorised person means a person (or a person belonging to a class of persons) authorised by the Authority to install and inspect approved average speed detection devices.

[3] Section 57 Photographic evidence of traffic light offences

Omit “168 hours” from section 57 (3) (b).

Insert instead “the period prescribed by the regulations, whether for a specified kind of device or generally,”.

[4] Part 4, Division 4

Insert after Division 3 of Part 4:

Division 4 Approval of devices to detect several kinds of traffic offences

57C Approval of devices for multiple detection functions

(1) The appropriate approval authority may, by order published in the Gazette, approve the same device for use as an approved device for the purposes of 2 or more device approval provisions if the device is designed to perform the detection functions referred to in each of those provisions.

- (2) The **appropriate approval authority** for the purposes of subsection (1) is:
- (a) if the approval authority for each of the device approval provisions concerned is the same person—that person, or
 - (b) if the approval authority for each of the device approval provisions concerned is a different person—the Governor.
- (3) An order under subsection (1) may extend to devices that have previously been approved under a device approval provision for a particular detection function.
- (4) A device approved under subsection (1) is taken for the purposes of this Act:
- (a) to have been duly approved for the purposes of each of the device approval provisions specified in the order, and
 - (b) to be an approved device of the kind referred to in each of those provisions.
- (5) Evidence concerning, or obtained from, a device approved under subsection (1) that is used for a particular detection function is subject to the same provisions of this Act and the regulations that would have applied to the device if it had been approved only for that purpose under the relevant device approval provision.
- (6) Section 44 (2) extends to the making of an order under subsection (1) that would operate to approve a device for the detection function referred to in section 44.
- (7) Nothing in this section prevents a device from being approved under a device approval provision rather than under this section.
- (8) In this section:
- approval authority**, in relation to a device approval provision, means the person who has the function of approving a device for the detection function referred to in that provision.
- detection function** means the detection function for which a device may be approved under any of the device approval provisions.
- device approval provision** means each of the following provisions:
- (a) section 44 (Approved speed measuring devices),
 - (b) section 45 (Approved camera recording devices) in its application to the approval of devices by the Governor,

- (c) section 45 (Approved camera recording devices) in its application to the approval of devices by the Commissioner of Police,
- (d) section 47A (Approved average speed detection devices),
- (e) section 56 (Approved camera detection device),
- (f) section 57A (Approved traffic lane camera devices).

[5] Section 69E Photographic evidence of speed of vehicle

Insert “(or of an average speed calculated from information obtained from approved average speed detection devices)” after “approved camera recording device” in section 69E (1).

[6] Section 69E (2)

Insert “(or, in the case of evidence of an average speed, section 47B)” after “Section 47 (2)–(7)”.

[7] Section 69F Liability of offender for speed offence and giving of evidence of speed unaffected

Insert “(or of an average speed calculated from information obtained from approved average speed detection devices)” after “approved camera recording device” in section 69F (b).

[8] Section 73A Rebuttal of evidence of matters of specialised knowledge

Insert “47B,” after “47,” in section 73A (1).

[9] Section 73A (3), definition of “approved device”

Insert at the end of paragraph (d) of the definition:

, or

- (e) an approved average speed detection device.

[10] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Road Transport Legislation Amendment (Traffic Offence
Detection) Act 2009*

Road Transport Legislation Amendment (Traffic Offence Detection) Act
2009 No 50

Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999
No 20

[11] Schedule 2

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Road Transport Legislation Amendment
(Traffic Offence Detection) Act 2009**

Definition

In this Part:

amending Act means the *Road Transport Legislation Amendment (Traffic Offence Detection) Act 2009*.

Certificate evidence preserved

Any certificate issued under section 57 before the amendment of that section by the amending Act continues to be as effectual as it was before the commencement of that amendment (including for the purposes of any evidence in any proceedings).

Approval of approved detection devices for multiple uses

Section 57C (as inserted by the amending Act) extends to a device that was an approved device for the purposes of a device approval provision (within the meaning of that section) immediately before the commencement of that section.

[12] Dictionary

Insert in alphabetical order:

approved average speed detection device—see section 47A.

Schedule 2 Consequential amendment of other Acts and statutory rules

2.1 Criminal Procedure Act 1986 No 209

[1] Section 283 Law enforcement devices

Insert “47B,” after “47,” in section 283 (1) (a).

[2] Section 283 (3)

Insert “approved average speed detection device,” before “approved traffic lane camera device” wherever occurring.

[3] Section 283 (4)

Insert “47B,” after “47,”.

[4] Section 283 (5)

Insert “*approved average speed detection device*,” before “*approved camera detection device*”.

2.2 Fines Act 1996 No 99

Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty

Insert “approved average speed detection device,” before “approved camera detection device” in paragraph (b) of the definition of *vehicle or vessel offence* in section 38 (4).

2.3 Road Rules 2008

Rule 20 Obeying the speed limit

Insert after note 4:

Note 5. Section 43A of the Act provides that a person bringing proceedings or issuing a penalty notice in which it is alleged that the driver of a heavy vehicle committed a speeding offence may rely on the average speed at which the vehicle travelled between different points on a road as evidence of the offence.

If there is more than one speed limit applicable to the driver between the different points, section 43A of the Act provides that for the purposes of such proceedings the speed limit that applied to the driver between those points is taken to be the average speed limit calculated in accordance with that section.

2.4 Road Transport (Driver Licensing) Regulation 2008

[1] Clause 4 Definitions

Insert in alphabetical order in clause 4 (1):

average speed detection zone means a length of road to which an average speed detection zone sign applies, being a length of road beginning at an average speed detection zone sign and ending 300 metres along the length of road in the direction driven by a driver on the road who faces the sign before passing it.

average speed detection zone sign means a traffic sign bearing the words “AVERAGE SPEED”.

[2] Schedule 2 Additional demerit point offences

Insert “or average speed detection zone” after “Safe-T-Cam zone” wherever occurring.

2.5 Road Transport (General) Act 2005 No 11

[1] Section 179 Liability of responsible person for vehicle for designated offences

Omit “summons” from section 179 (3) (b) (i) and the definition of *camera recorded offence* in section 179 (12) wherever occurring.

Insert instead “court attendance notice”.

[2] Section 179 (10A)

Insert after section 179 (10):

(10A) Average speed detected offences

The following provisions apply in relation to a penalty notice or court attendance notice for an average speed detected offence involving a heavy vehicle travelling between detection points:

- (a) a reference in any other provision of this section to the time of the occurrence of an offence is taken to be a reference to the period during which the heavy vehicle travelled between the detection points,
- (b) the actual offender for the purposes of this section is taken to be each driver of the heavy vehicle between the detection points,
- (c) any obligation under this section of the responsible person for the heavy vehicle to supply the name and address of the person who was in charge of the vehicle at the time the

offence occurred is taken to be an obligation to provide the names and addresses of each of the persons who were in charge of the heavy vehicle between the detection points,

- (d) subsection (2) does not operate to prevent a penalty being imposed on or recovered from each of the drivers of the heavy vehicle between the detection points.

Note. Section 43A of the *Road Transport (Safety and Traffic Management) Act 1999* allows the average speed of a heavy vehicle calculated from the time taken to travel between different detection points to be used as evidence of the actual speed at which the vehicle travelled. Section 43A (2) (b) of that Act (when read with section 43A (3)) provides that if there is more than one driver of the vehicle between the detection points, each driver is taken to have driven the heavy vehicle at the average speed of the vehicle except for any particular driver who can establish any exculpatory ground prescribed by the regulations.

[3] Section 179 (12)

Insert in alphabetical order:

average speed detected offence means a speeding offence involving a heavy vehicle in respect of which the penalty notice or the court attendance notice indicates that the average speed of the vehicle was calculated from information recorded by approved average speed detection devices (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*).

court attendance notice means:

- (a) in relation to proceedings for an offence commenced in the Local Court—a court attendance notice within the meaning of the *Criminal Procedure Act 1986* issued in respect of the person alleged to have committed the offence, and
- (b) in relation to proceedings for an offence commenced in the Supreme Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

detection points, in relation to an average speed detected offence, has the same meaning as ***detection points*** has in section 43A of the *Road Transport (Safety and Traffic Management) Act 1999*.

[4] Section 179 (12), definition of “camera recorded offence”

Insert at the end of paragraph (d) (ii) of the definition of ***camera recorded offence***:

, or

- (e) an average speed detected offence.

2.6 Road Transport (General) Regulation 2005

[1] Clause 168 Definitions

Insert in alphabetical order in clause 168 (1):

average speed detection zone means a length of road to which an average speed detection zone sign applies, being a length of road beginning at an average speed detection zone sign and ending 300 metres along the length of road in the direction driven by a driver on the road who faces the sign before passing it.

average speed detection zone sign means a traffic sign bearing the words “AVERAGE SPEED”.

[2] Schedule 3 Penalty notice offences

Insert “or average speed detection zone” after “Safe-T-Cam zone” wherever occurring.

2.7 Road Transport (Safety and Traffic Management) Regulation 1999

[1] Clause 156B Security indicators: sections 47B and 57B of Act

Omit “section 57B” from clause 156B (1).

Insert instead “sections 47B and 57B”.

[2] Clause 156D

Insert after clause 156C:

156D Inspection of approved camera detection devices: section 57 (3) (b) of the Act

- (1) For the purposes of section 57 (3) (b) of the Act, the prescribed period is:
 - (a) in the case of an approved digital camera detection device—30 days, or
 - (b) in the case of any other kind of approved camera detection device—168 hours.
- (2) In this clause:

approved digital camera detection device means an approved camera detection device that is capable of recording images in the form of digitalised, electronic or computer-generated images.

[3] Clause 160A

Insert after clause 160:

160A Prescribed ground of exculpation: section 43A (3) of Act

- (1) It is a prescribed ground of exculpation for the purposes of section 43A (3) of the Act in relation to a driver of a heavy vehicle (*the driver concerned*) involved in a speeding offence if:
 - (a) any other driver of the heavy vehicle:
 - (i) has been convicted, or found guilty, of the speeding offence, or
 - (ii) has paid the whole or any part of the penalty specified in a penalty notice issued to the other driver in respect of the speeding offence, or
 - (iii) has not paid the penalty specified in a penalty notice issued to the other driver in respect of the speeding offence, has not elected to have the matter dealt with by a court and the time for the other driver to have the matter so dealt with has lapsed, and
 - (b) the driver concerned gives the State Debt Recovery Office a statutory declaration made by the driver that states that the driver obeyed all of the speed limits that applied to the driver while he or she was the driver of the vehicle.
- (2) A reference to speed limits in subclause (1) (b) does not include an average speed limit calculated in accordance with section 43A of the Act.

[Agreement in principle speech made in Legislative Assembly on 17 June 2009
Second reading speech made in Legislative Council on 24 June 2009]

BY AUTHORITY