

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Road Transport (General) Act 2005, the Road Transport (Safety and Traffic Management) Act 1999, the Roads Act 1993, and regulations made under the latter two Acts, with respect to evidentiary matters, including:

(a) the evidentiary value of certain certificates, photographs, statutory declarations, and the like, that can be tendered as evidence in proceedings for various offences, and

(b) the type of evidence that is capable of being sufficient, for the purposes of certain provisions, to rebut prima facie evidence or a presumption, or to raise doubt about a matter, in connection with approved speed measuring devices, various approved camera devices, and information (including photographs) derived from such devices.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act, other than Schedule 2 [3], on the date of assent to the proposed Act. Schedule 2 [3] is to commence on the commencement of Schedule 1 [11] to the Road Transport Legislation Amendment (Drug Testing) Act 2006 or on the date of assent to the proposed Act, whichever is the later.

Clause 3 is a formal provision that gives effect to the amendments to the Road Transport (General) Act 2005 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Road Transport (Safety and Traffic Management) Act 1999 set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the Roads Act 1993 set out in Schedule 3.

Clause 6 is a formal provision that gives effect to the amendments to the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999 and the Roads (General) Regulation 2000 set out in Schedule 4.

Clause 7 provides for the repeal of the proposed Act after all amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of the amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Road Transport (General) Act 2005

Schedule 1 [1] amends the Road Transport (General) Act 2005 to clarify the evidentiary effect of a statutory declaration referred to in section 179 (9) of that Act. As proposed to be amended, section 179 (9) provides that such a declaration is prima facie evidence of matters referred to in that subsection.

Schedule 1 [2] and [3] make provision for matters of a saving and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Road Transport (Safety and Traffic Management) Act 1999

Schedule 2 [1], [3], [7], [9], [12], [14], [15], [18] and [20] amend a number of provisions of the Road Transport (Safety and Traffic Management) Act 1999 (the Traffic Management Act) to clarify the evidentiary effect of the various certificates, photographs, statutory declarations and other forms of evidence to which the provisions refer. The amended provisions state that they are prima facie evidence of the various matters specified in those provisions. The provisions proposed to be amended are sections 33 (1), (2) and (4)–(7), 33B, 33D, 35 (1)–(3), 54 (2), 57 (3), 57B (3), 69C (2), 69D (1), 71 (10), 75 (3) and 76 (8) and clause 5 (2) (f) of Schedule 1.

Schedule 2 [2] substitutes section 33 (3) of the Traffic Management Act, which

concerns evidence of matters relating to breath analysing instruments in certain proceedings. Under substituted section 33 (3), evidence of the condition of such an instrument or of the manner in which it was operated is not required unless evidence sufficient to raise doubt that the instrument was in proper condition and properly operated has been adduced. (Currently, section 33 does not indicate the weight that evidence that the instrument was not in proper condition or was not properly operated must have before evidence of the condition of the instrument or the manner in which it was operated is required.)

Schedule 2 [4] substitutes section 46 (1) and (2) of the Traffic Management Act, which concern certification of matters relating to an approved speed measuring device. Substituted section 46 (1) clarifies that the certificate concerned is prima facie evidence of those matters. Under substituted section 46 (2), if a certificate under section 46 (1) is tendered in proceedings, evidence of the accuracy or reliability of the device, or as to whether or not it operates or operated properly, is not required unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced. (Currently, section 46 does not indicate the weight that evidence that the device was not accurate or not reliable must have before evidence of the accuracy or reliability of the device is required.)

Schedule 2 [6] substitutes section 47 (2)–(6) of the Traffic Management Act, which concern approved camera recording devices, photographs taken by them, prescribed security indicators on the photographs, and associated certificates. Substituted section 47 clarifies that such a photograph, security indicator or certificate is prima facie evidence of various matters or raises certain rebuttable presumptions.

Substituted section 47 (3) also introduces a presumption that a photograph tendered as bearing a security indicator of a kind prescribed by the regulations bears such an indicator unless evidence sufficient to raise doubt that it does so is adduced. Under substituted section 47 (6), if a certificate under section 47 (4) or (5) is tendered in proceedings, evidence of the accuracy or reliability of the camera recording device concerned, or as to whether or not it operates or operated properly, is not required unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

Schedule 2 [8], [10], [11] and [13] amend sections 57 and 57B of the Traffic Management Act in a manner consistent with the proposed amendments to sections 46 and 47 of that Act (see Schedule 2 [4] and [6]).

Schedule 2 [16] amends section 69E as a consequence of the proposed amendments to section 47 of the Traffic Management Act (see Schedule 2 [6]).

Schedule 2 [19] inserts section 73A in the Traffic Management Act. The proposed section applies to the determination of whether evidence is sufficient to rebut prima facie evidence or a presumption, or to raise doubt, for the purposes of section 46, 47, 57, 57B or 69E (all as proposed to be amended). Under proposed section 73A, an assertion that contradicts or challenges:

(a) the accuracy or reliability, or the correct or proper operation, of an approved device, or

(b) the accuracy or reliability of information (including a photograph) derived from such a device,

is capable of being sufficient, in proceedings to which the proposed section applies, to rebut such evidence or such a presumption, or to raise such doubt, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience). An approved device is an approved camera detection device, approved camera recording device, approved speed measuring device or approved traffic lane camera device, as defined by the Traffic Management Act. Schedule 2 [5] and [17] insert in relevant provisions a note about proposed section 73A.

Schedule 2 [21] and [22] make provision for matters of a saving or transitional nature consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Roads Act 1993

Schedule 3 [1]–[3] amend section 250A of the Roads Act 1993 in a manner consistent with the proposed amendments to sections 46, 47, 57 and 57B of the Traffic Management Act (see Schedule 2 [4], [6], [8], [10], [11] and [13]). The amendments to section 250A include the introduction of a presumption that a photograph tendered as bearing a security indicator of a kind prescribed by the regulations bears such an indicator unless evidence sufficient to raise doubt that it does so is adduced. For the purposes of section 250A (as proposed to be amended), an assertion that contradicts or challenges:

(a) the accuracy or reliability, or the correct or proper operation, of an approved toll camera, or

(b) the accuracy or reliability of information (including a photograph) derived from such a camera,

is capable of being sufficient to rebut prima facie evidence or a presumption, or to raise doubt about a matter, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience).

Schedule 3 [4] and [5] make provision for matters of a saving or transitional nature consequent on the enactment of the proposed Act.

Schedule 4 Amendment of other legislation

Schedule 4 makes amendments to the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999 and the Roads (General) Regulation 2000 that are consequential on amendments to the Traffic Management Act and the Roads Act 1993 made by Schedules 2 and 3.