



## NSW Legislative Council Hansard

### Road Transport Legislation Amendment (Evidence) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 21 November 2006.

#### Second Reading

**The Hon. ERIC ROOZENDAAL** (Minister for Roads, and Minister Assisting the Minister for Transport) [5.53 p.m.]: I move:

That this bill be now read a second time.

I advise the House that this bill was amended in the other place at the instigation of the Government. This amendment was made in response to the recent tragic death of Senior Constable Wilson on the F3. Senior Constable Wilson was conducting roadside speed enforcement operations at the time. The amendment bill will amend section 179 (12) (c) of the Road Transport (General) Act 2005 to permit small hand-held digital cameras to be used in conjunction with the light detection ranging based sensor, known as Lidar, and other speed-measuring devices. This will enable the police to use vehicle-mounted cameras to issue infringement notices when it is unsafe to stop traffic. This will help to protect the safety of police when they are working to protect the lives of motorists. As the remainder of the second reading speech that was given in the other place is unchanged I seek leave to incorporate it in *Hansard*.

#### Leave granted.

The Bill before the House primarily amends road transport legislation as defined in section 5 of the Road Transport (General) Act 2005, and the Roads Act 1993 in two major ways.

The first is by replacing the existing expression "is admissible and is evidence to the contrary" by one or other of the expressions "evidence sufficient to raise doubt" or "prima facie evidence".

The second is to require defendants who wish to challenge prosecution-presented evidentiary certificates or photographs, which contain information derived from a device like a speed camera or speed measuring device, to adduce expert evidence in certain situations.

The primary reason for these amendments is to protect and maintain the road safety benefit of speed cameras and other enforcement cameras, such as red light cameras.

Speed remains the largest single contributing factor in fatal crashes on our roads. I am advised speeding is a factor in 40 per cent of fatal crashes each year, and remains one of the leading causes of road trauma.

It is clear many drivers still refuse to slow down, despite extensive Government education campaigns, Police enforcement operations and widespread knowledge of the often tragic results of high-speed crashes.

Speed cameras are a highly effective and targeted means of deterring speeding on our roads.

I am advised statistics provided by the Roads and Traffic Authority (RTA) show fatal crashes can be reduced by 90 per cent where speed cameras are introduced. Injury crashes can be reduced by 20 per cent.

This demonstrated safety benefit shows the importance of making sure the legislation governing speed cameras is working in the public interest.

In prosecutions for speeding offences detected by speed measuring devices, it is usual for the basic elements constituting the offence to be tendered in evidence by way of a signed certificate.

This certificate allows verification that the measurement of speed was recorded by the use of an approved speed measuring device which was tested on a specified date, and that the device was found to be accurate and operating properly.

Photographs from approved camera recording devices are also tendered in evidence, accompanied by a certificate verifying that the device was inspected by an authorised person before the photograph was taken and the device was operating correctly.

Unfortunately, a series of recent judicial decisions have caused much confusion in the community regarding the evidentiary requirements in speed camera cases before the courts.

This is because in some cases the phrase "evidence to the contrary" has been interpreted so broadly as to allow any evidence whatsoever, including a mere denial, to rebut photographic and certificate evidence.

By way of illustration, the New South Wales Supreme Court case of *Roads and Traffic Authority of New South Wales v Michell* dealt with the phrase "evidence to the contrary" in the context of speed camera enforcement. There it was held that "even slight or unconvincing evidence" was sufficient to overrule both photographic and certificate evidence.

This has resulted in some judges and magistrates holding that a motorist's mere assertion they were not speeding is sufficient to rebut camera and certificate evidence.

In other words, when a defendant's contrary evidence questions the operational accuracy of a device like a speed camera, however unscientific, subjective, slight or unconvincing that contrary evidence may be, the prosecution can no longer rely on the relevant photograph or evidentiary certificate as earlier tendered in evidence to the court.

The prosecution has the onus of proving beyond a reasonable doubt that the offence was committed. The defendant does not have to establish anything. A defendant's evidence can simply be accepted by the Court and the prosecution will fail because once the photographic and certificate evidence is displaced, then there is no evidence of a speeding incident, for example.

The cases effectively hold that any evidence at all tendered by a defendant would defeat the certificate evidence of accuracy and reliability of the approved speed measuring devices and the approved camera recording devices.

The practical effect of the interpretation adopted in *Michell* would be to undermine prosecutions for speed camera detected offences and so significantly compromise the road safety objectives of the speed camera scheme.

Potentially, all types of prosecutions that involve the production of documentary evidence in relation to proceedings concerning allegations of road traffic offences recorded by speed measuring devices, speed cameras, public bus lane cameras, traffic light cameras or toll cameras may be affected if the present expression were not amended.

The Bill proposes replacement statutory expressions which will provide clearer guidance to the courts in determining when evidence is sufficient to raise doubt about the accuracy, reliability and proper operation of the enforcement device.

The defendant's expert contrary evidence or contention must be credible and must establish that there is a reasonable possibility that the device did not operate properly at the time of the alleged offence.

I now turn more specifically, to the expression "prima facie evidence" as provided for in the Bill in the context of road transport related criminal proceedings. I would like to point out that by adopting the expression "prima facie evidence" in road transport legislation in lieu of words "evidence to the contrary is adduced", the Bill will see the return of the expression "prima facie evidence" as it was contained in earlier road transport law.

I will provide briefly some historical background to the expression "prima facie evidence". Under the provisions of the repealed Traffic Act 1909 which was replaced by the current road transport legislation in December 1999, certificate evidence establishing that an approved speed measuring device was accurate and operating properly at the time of an alleged excess speed offence was admissible in a court of law.

By virtue of the former section 4AB of the repealed Traffic Act 1909, particulars in such a certificate were accepted as "prima facie evidence". This type of certificate obviated the need for the prosecution to always call an expert to testify that the relevant approved speed measuring device was operating accurately and reliably or properly at the time of the particular offence.

Only in cases where a defendant had presented evidence to the effect that such a device had not been accurate or reliable would it be necessary for the prosecution to call its own expert with the intention of refuting the evidence from the defendant's expert.

Similar to the role of an evidentiary certificate being used as prima facie evidence of the integrity of an approved speed measuring device, the former section 4AC of the replaced Traffic Act 1909 allowed a photograph taken by a speed camera (called an approved camera recording device in the old Act and in the current legislation) could be accepted as prima facie evidence of the matters shown or recorded on the photograph.

In addition, under that former section 4AC the contents of an evidentiary certificate could be presented to a court of law as prima facie evidence that a speed camera was found to be operating correctly at the time of an excess

speed offence.

Again, similar evidentiary certificate and photographic based prima facie evidence was used in proceedings dealing with (red) traffic light offences where the offence was captured by what former section 4DA of the repealed Traffic Act 1909 called an approved camera detection device.

With the advent of the current road transport legislation, the same device names, that is, an approved speed measuring device, an approved camera recording device and an approved camera detection device were carried over into the Road Transport (Safety and Traffic Management) Act 1999.

However, the expression "prima facie evidence" was not carried over. The current expression "evidence (unless evidence to the contrary is adduced)" was instead incorporated in road transport legislation.

There was no intention to change the substance or legal effect of the legislation. This approach was similar to that adopted in other States at the time. The approach now adopted in the Bill is consistent with the national model legislation which was reflected in the Road Transport (General) Amendment (Intelligent Access Program) Act 2006 which was recently passed by the Parliament.

Where the matter in dispute between defendant and prosecutor in respect to determining whether the evidence is sufficient to raise doubt about a matter, or to rebut prima facie evidence or a presumption in the context of the provisions specified in the Bill, the defendant must call an expert.

The Bill provides that only an expert's assertion that contradicts or challenges the accuracy or reliability, or the correct or proper operation, of any of the devices to which I have referred, can be capable of being sufficient to raise doubt or to rebut such evidence or presumption upon which a prosecution initially relies.

An expert can be a person who qualifies for this status by virtue of his or her specialised knowledge based upon training, study or experience.

This Bill reinforces the safety benefits of speed cameras and similar devices. It provides guidance to the courts in consistently applying the relevant legislative provisions. And it provides for defendants with legitimate expert evidence, which raises a reasonable doubt as to the reliability of a relevant device, to put their defence.

I commend the Bill to the House.