



New South Wales

Road Transport Amendment (Mobile Phone Detection) Bill 2019

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Road Transport Act 2013* to establish a presumption that an object held by, or resting on, the driver of a vehicle in a photograph taken by an approved traffic enforcement device that is approved for mobile phone use offences is a mobile phone for the purposes of a mobile phone use offence, unless the driver satisfies the court that the object was not a mobile phone,
- (b) to amend the *Road Rules 2014* to provide that, for a mobile phone use offence, the driver of a vehicle is not committing the offence if the driver is complying with a requirement made by a police officer or other authorised officer to hand the phone to the officer.

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 on the date of assent to the proposed Act.

Schedule 1 Amendments relating to mobile phone use offences

Schedule 1.1 gives effect to the object set out in paragraph (a) of the Overview above.

Schedule 1.2 gives effect to the object set out in paragraph (b) of the Overview above.



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New South Wales

Road Transport Amendment (Mobile Phone Detection) Bill 2019

No. , 2019

A Bill for

An Act to amend the *Road Transport Act 2013*, and the *Road Rules 2014*, with respect to mobile phone use offences.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Road Transport Amendment (Mobile Phone Detection) Act 2019*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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| Schedule 1 | Amendments relating to mobile phone use offences | 1 |
| | | 2 |
| 1.1 | Road Transport Act 2013 No 18 | 3 |
| | Section 139B | 4 |
| | Insert after section 139A— | 5 |
| 139B | Photographic evidence of mobile phone use (device approved for mobile phone use offences) | 6 |
| | | 7 |
| (1) | This section applies to a photograph taken by an approved traffic enforcement device that is approved for mobile phone use offences. | 8 |
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| (2) | If a photograph to which this section applies shows an object held by the driver of a motor vehicle, the object is presumed to be a mobile phone held by the driver for the purposes of a mobile phone use offence. | 10 |
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| (3) | In proceedings for a mobile phone use offence in which a photograph to which this section applies is admitted into evidence, the presumption in subsection (2) may be rebutted by the defendant establishing, on the balance of probabilities, that the object was not a mobile phone. | 13 |
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| (4) | In this section— | 17 |
| | <i>held</i> includes held by, or resting on, any part of the driver’s body, but does not include held in a pocket of the driver’s clothing or in a pouch worn by the driver. | 18 |
| | | 19 |
| | | 20 |
| 1.2 | Road Rules 2014 | 21 |
| [1] | Rule 300 Use of mobile phone offences | 22 |
| | Insert after rule 300(1)(c)— | 23 |
| (c1) | the driver is complying with a requirement made by a police officer or other authorised officer to hand the phone to the officer, or | 24 |
| | | 25 |
| | Note. This subrule is an additional NSW subrule. There is no corresponding subrule in rule 300 of the <i>Australian Road Rules</i> . | 26 |
| | | 27 |
| [2] | Rule 300(2–1) | 28 |
| | Insert after rule 300(2)— | 29 |
| (2–1) | To avoid any doubt, a police officer or other authorised officer may not, under subrule (1)(c1), require a driver to hand the mobile phone to the officer unless the officer is authorised to make the requirement under the Act or another law. | 30 |
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| | Note. This subrule is an additional NSW subrule. There is no corresponding subrule in rule 300 of the <i>Australian Road Rules</i> . | 33 |
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|--|---|
| [3] Rule 300–1 NSW rule: use of mobile phones by drivers who are holders of learner and provisional P1 or P2 licences | 1 |
| | 2 |
| Insert after rule 300–1(1)— | 3 |
| (1A) Subrule (1) does not apply to a driver if the driver is complying with a requirement made by a police officer or other authorised officer to hand the mobile phone to the officer. | 4 |
| | 5 |
| | 6 |
| (1B) To avoid any doubt, a police officer or other authorised officer may not, under subrule (1A), require a driver to hand the mobile phone to the officer unless the officer is authorised to make the requirement under the Act or another law. | 7 |
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| | 9 |