

**TRAFFIC (PHOTOGRAPHIC EVIDENCE) AMENDMENT
ACT 1990 No. 53**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Traffic Act 1909 No. 5
4. Consequential amendment of Crimes Act 1900 No. 40

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF CRIMES ACT 1900

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**TRAFFIC (PHOTOGRAPHIC EVIDENCE) AMENDMENT
ACT 1990 No. 53**

NEW SOUTH WALES



Act No. 53, 1990

An Act to amend the Traffic Act 1909 to provide for acceptance by the courts of photographic evidence of speeding offences detected by automatic means and for other purposes. [Assented to 21 September 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Traffic (Photographic Evidence) Amendment Act 1990.

Commencement

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

Amendment of Traffic Act 1909 No. 5

3. The Traffic Act 1909 is amended as set out in Schedule 1.

Consequential amendment of Crimes Act 1900 No. 40

4. The Crimes Act 1900 is amended as set out in Schedule 2.

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909

(Sec. 3)

(1) Section 2 (Definitions):

Omit the definition of "Approved radar speed measuring device" from section 2 (1), insert instead:

"Approved camera recording device" means a device of a type approved by the Commissioner of Police by order published in the Gazette as being designed for attachment to an approved speed measuring device for the purpose of taking photographs of vehicles being driven in excess of speed limits and for recording on any such photograph:

- (a) the speed at which any such vehicle is travelling (as measured by the approved speed measuring device); and
- (b) the date on which the photograph is taken; and
- (c) the time and location at which the photograph is taken; and
- (d) the speed limit which, according to section 4A (2), is applicable to the length of public street at which the photograph is taken; and

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- (e) the direction in which the vehicle is travelling
(that is, towards or away from the device).

"Approved speed measuring device" means a device of a type approved by the Governor by order published in the Gazette as being designed to measure the speed at which a vehicle is travelling.

(2) Section 4AB (**Approved speed measuring devices**):

- (a) Omit "radar speed measuring device" wherever occurring, insert instead "speed measuring device".
- (b) From section 4AB (1), omit "the officer in charge of the Police Radar Engineering Unit", insert instead "a member of the police force".
- (c) From section 4AB (1) (b), omit "an officer of the Police Radar Engineering Unit", insert instead "a member of the police force".
- (d) After section 4AB (2), insert:

(3) The Minister is not to recommend the making of an order by the Governor for the purposes of the definition of "Approved speed measuring device" in section 2 (1) except with the concurrence of the Attorney General.

(4) A device which, immediately before the commencement of Schedule 1 (1) to the Traffic (Photographic Evidence) Amendment Act 1990, was an approved radar speed measuring device is to be taken to be an approved speed measuring device for the purposes of this Act.

(3) Section 4AC:

After section 4AB, insert:

Photographic evidence of speeding offence

4AC. (1) In proceedings for an offence of driving at a speed in excess of a speed limit imposed by or under this Act or the regulations, evidence may be given of a measurement of speed obtained by the use of an approved

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

speed measuring device and recorded by an approved camera recording device.

(2) In proceedings where such evidence is given:

(a) the provisions of section 4AB relating to the accuracy or reliability of the speed measuring device apply; and

(b) subsections (3) and (4) apply in relation to the approved camera recording device.

(3) A photograph tendered in evidence as a photograph taken by an approved camera recording device on a specified day at a specified location:

(a) is to be accepted as having been so taken, unless evidence is adduced to the contrary; and

(b) is prima facie evidence of the matters shown or recorded on the photograph.

(4) When the photograph is tendered in evidence, a certificate purporting to be signed by a member of the police force and certifying the following particulars is also to be tendered in evidence and is prima facie evidence of those particulars:

(a) that the member is authorised by the Commissioner of Police to install and inspect approved camera recording devices;

(b) that on the day recorded on the photograph as the day on which the photograph was taken, the member carried out the inspection specified in the certificate on the approved camera recording device that took the photograph;

(c) that on that inspection the approved camera recording device was found to be operating correctly.

(4) Section 18A (**Liability of motor vehicle owner for designated offences**):

(a) In section 18A (3A) (a), (3B) (b), (3E) and (4) (b), after "traffic light offence" wherever occurring, insert "or camera-recorded speeding offence".

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- (b) After the definition of "Camera-detected traffic light offence" in section 18A (5), insert:
 - "Camera-recorded speeding offence"** means a speeding offence in respect of which:
 - (a) the notice under section 18B; or
 - (b) the summons,indicates that the offence was detected by an approved speed measuring device and recorded by an approved camera recording device.
- (c) In the definition of "designated offence" in section 18A (5), after "traffic light offence", insert ", a camera-recorded speeding offence".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF CRIMES
ACT 1900

(Sec. 4)

Section 414A (Certificates to be evidence):

After section 414A (1B), insert:

(1C) A certificate which would, by virtue of section 4AC of the Traffic Act 1909, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence is prima facie evidence of those particulars at any inquest or where a person is charged before a Magistrate or before any court with an indictable offence.

(1D) At an inquest or where a person is charged before a Magistrate or before any court with an indictable offence:

- (a) a photograph tendered in evidence as a photograph taken by means of an approved camera recording device (within the meaning of the Traffic Act 1909) on a specified day at a specified location is to be accepted as having been so taken unless evidence is adduced to the contrary; and
- (b) a photograph so taken is prima facie evidence of the matters shown or recorded on the photograph; and

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF
CRIMES ACT 1900 - *continued*

- (c) evidence of the condition of the approved camera recording device is not required unless evidence that the device was not in proper condition has been adduced.

(1E) If a photograph is tendered in evidence in proceedings referred to in subsection (1D), a certificate purporting to be signed by a member of the police force and certifying that:

- (a) the member is authorised by the Commissioner of Police to install and inspect approved camera recording devices (within the meaning of the Traffic Act 1909); and
- (b) on the day recorded on the photograph as the day on which the photograph was taken, the member carried out the inspection specified in the certificate on the approved camera recording device that took the photograph; and
- (c) on that inspection the approved camera recording device was found to be operating correctly,

is to be tendered in evidence in those proceedings and is prima facie evidence of the particulars certified in and by the certificate.

[*Minister's second reading speech made in -
Legislative Council on 24 May 1990
Legislative Assembly on 5 September 1990*]

FIRST PRINT

**TRAFFIC (PHOTOGRAPHIC EVIDENCE) AMENDMENT
BILL 1990**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Traffic Act 1909 to provide for acceptance by the courts of photographic evidence of speeding offences.

The Crimes Act 1900 is also to be amended to insert evidentiary provisions relating to the admissibility of photographic evidence of speeding offences in inquests or proceedings for indictable offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Traffic Act 1909.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909

Schedule 1 (1) inserts definitions of "approved camera recording device" and "approved speed measuring device".

An approved speed measuring device is a device for measuring the speed of vehicles. Before any new device can be used by police, it has to be approved by order of the Governor-in-Council.

An approved camera recording device is a device for attachment to an approved speed measuring device. It is designed to enable photographs to be taken of vehicles being driven in excess of the applicable speed limit. The camera recording device will record and show on the photograph such details as its date, location and time, the

Traffic (Photographic Evidence) Amendment 1990

speed limit applicable to the location and the speed and direction of the vehicle photographed.

Schedule 1 (2) amends section 4AB so that the evidentiary provisions that currently apply to radar speed measuring devices apply to all approved speed measuring devices. The amendments also provide that any radar speed measuring device currently approved for use by police is an approved speed measuring device for the purposes of the Principal Act but that, in future, when recommending that an order be made to legitimise the use by police of a new speed measuring device, the Minister for Transport must have the concurrence of the Attorney General.

Schedule 1 (3) provides for photographs taken by approved camera recording devices to be tendered in evidence in proceedings for offences of driving at a speed in excess of any speed limit or maximum speed fixed by or under the Principal Act. Such a photograph is prima facie evidence of the matters shown or recorded on it. A certificate from a member of the police force (which is to accompany each photograph when it is tendered in evidence) is prima facie evidence that the device was operating correctly at the time and date specified in the certificate.

Schedule 1 (4) provides that the owner of the motor vehicle identified in a photograph taken by a camera recording device is liable in respect of the speeding offence concerned unless the vehicle was stolen or the owner supplies, in a statutory declaration, the name and address of the person in charge of the vehicle at the relevant time.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF CRIMES ACT 1900

Schedule 2 inserts equivalent evidentiary provisions concerning camera recording devices into the Crimes Act 1900. The provisions are to apply at an inquest or where a person is charged before a Magistrate or any court with an indictable offence.

FIRST PRINT

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BILL 1990**

NEW SOUTH WALES



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SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF CRIMES ACT 1900

**TRAFFIC (PHOTOGRAPHIC EVIDENCE) AMENDMENT
BILL 1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

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Traffic (Photographic Evidence) Amendment 1990

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SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

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(3) The Minister is not to recommend the making of an order by the Governor for the purposes of the definition of "Approved speed measuring device" in section 2 (1) except with the concurrence of the Attorney General.

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(3) Section 4AC:

After section 4AB, insert:

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SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

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- (b) that on the day recorded on the photograph as the day on which the photograph was taken, the member carried out the inspection specified in the certificate on the approved camera recording device that took the photograph;
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Traffic (Photographic Evidence) Amendment 1990

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

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SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF CRIMES
ACT 1900

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SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF
CRIMES ACT 1900 - *continued*

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