

**INQUIRY INTO ROAD TRANSPORT AMENDMENT
(MOBILE PHONE DETECTION) BILL 2019**

Organisation: Transport for NSW

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Legal Affairs

*Inquiry into the provisions of the Road Transport
Amendment (Mobile Phone Detection) Bill 2019*

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Introduction

Purpose of this submission

This submission responds to an invitation from the Legislative Council's Portfolio Committee No. 5 - Legal Affairs to provide input into the inquiry into the provisions of the Road Transport Amendment (Mobile Phone Detection) Bill 2019 (the Bill). The committee is to report on Tuesday 12 November 2019.

This submission:

- Outlines the strategic context and background to the Bill including the increasing road safety risk that illegal mobile phone use by drivers represents
- Responds to key issues raised in debate in the Legislative Assembly on the provisions of the Bill as provided for in the Committee's terms of reference in particular around the 'deeming provision' relating to images depicting illegal use of mobile phones
- Responds to other matters raised in debate which are not provisions of the Bill such as privacy issues
- Provides additional information about the Government's position on other matters in debate.

The Bill

The Road Safety Plan 2021 was launched by the Government in February 2018 and features targeted and proven initiatives to address key trends, trauma risks and the types of crashes occurring on NSW roads. These included further initiatives to reduce the risks associated with the distraction caused by illegal mobile phone use.

Under the Road Rules 2014, unrestricted licence holders are permitted to use a mobile phone for audio calls and music functions provided the phone is secured in a cradle or can be operated without touching the phone (by using Bluetooth or other technology). When secured in a cradle, mobile phones can also be used as a driving aid for purposes such as for navigation. However, learner and provisional drivers are not permitted to use a mobile phone at all while driving except to pass a phone to a passenger. These core rules relating to permissible and illegal mobile phone use do not change.

While driving or riding, a mobile phone cannot be used for other common purposes including texting or audio texting, emailing, using social media, taking photos or video messaging. The phone cannot be held in any way (in hand, on a lap or between shoulder and ear).

Full details of the current rules and penalties are provided in Appendix A.

Currently illegal mobile phone use is enforced by Police. In 2018 NSW Police issued around 37,500 penalty notices for mobile phone use offences. Police however can only penalise drivers that they witness using a mobile phone illegally and direct them to pull over. In such circumstances the Police are able to inspect the object being used by the driver and determine if the device is a mobile phone.

Despite Police enforcement and education campaigns to deter the illegal use of mobile phones, between 2012 and 2018 there were at least 158 casualty crashes involving a driver

or a rider using a hand held mobile phone. This resulted in 12 deaths and 212 injuries. The actual number is anticipated to be much higher as the contribution of mobile phone use in crashes is underreported due to difficulties obtaining conclusive evidence at crash scenes.

In May 2018 Parliament passed the Road Transport Legislation Amendment (Road Safety) Bill 2018 to enable the use of camera-based technology to detect mobile phone use offences. Automated, camera-based detection, coupled with on-road police enforcement, has played a critical role in deterring speeding and red light running and reducing fatalities associated with these high risk behaviours. The global market was scoped for potential solutions. Subsequently, camera-based enforcement technology developed in Australia was piloted during the first half of 2019 at two fixed sites and at a number of other locations using a transportable (trailer mounted) version of the same camera system. NSW is leading the world with this technology.

The pilot of the camera technology (the Pilot) found the technology to be effective in detecting illegal mobile phone use by drivers on NSW roads in all light and weather conditions. Analysis of the Pilot identified the need to strengthen current legislative provisions to ensure camera detected mobile phone use offences can be prosecuted, and to make the road rules clearer.

The main provision of the Bill is an amendment to the *Road Transport Act 2013* (Road Transport Act) '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'.¹

Context

Illegal mobile phone use on NSW roads

Hand held mobile phone use (which includes making a voice call or checking a message) is associated with an estimated four-fold increase in the risk of having a crash². Texting, browsing the internet and accessing social media for example can take a driver's attention away from the task of driving for longer periods and increase the risk further. Mobile phone use whilst driving is widespread: The NRMA's 2017 report *Can't Talk Driving* found almost one-fifth of drivers read texts while driving. Furthermore, a national survey found that, despite knowing the risk, 64% of people used a mobile phone while driving or riding. This includes four in ten (40%) who make calls while driving (both legally and illegally) and over one in five (21%) who use their mobile phone for other (illegal) activities such as browsing

¹ Explanatory note, Road Transport Amendment (Mobile Phone Detection) Bill 2019.

² See Dingus, T. A., Guo, F., Lee, S., Antin, J. F., Perez, M., Buchanan-King, M., & Hankey, J. (2016). Driver crash risk factors and prevalence evaluation using naturalistic driving data. *PNAS*, 113(10), 2636-2641; Guo, F., Klauer, S. G., Hankey, J. M., & Dingus, T. A. (2010). Near crashes as crash surrogate for naturalistic driving studies. *Transportation Research Record*, 2147(66-74); Kidd, D. G., & McCartt, A. T. (2015). *The relevance of crash type and severity when estimating crash risk using the SHRP2 naturalistic driving data*. Paper presented at the 4th International Driver Distraction and Inattention Conference, Sydney, NSW.

the internet and taking photos etc³. During the Pilot, over 8.5 million NSW vehicles were checked and over 100,000 drivers were detected using their phones illegally - representing a non-compliance rate of ~1.2%. While no penalty notices were issued during the Pilot, there is a clear need to address this significant road safety risk. An NRMA survey of almost 1,500 members found almost three-quarters (72%) ranked illegal phone use behind the wheel as their biggest road safety fear.

Regulating illegal mobile phone use

Since the 1990s, road transport legislation across Australian states and territories has been harmonised in the interests of road safety and transport efficiency. Model and template legislation was developed by the National Transport Commission and adopted by jurisdictions with some amendments to recognise different circumstances. All jurisdictions have adopted Rule 300 covering mobile phone use.

The current approach to the regulation of mobile phone use was developed in 1999 when mobile phones were used primarily for calls. Since then the technology has changed and widely available 'smart' phones allow texting, access to internet and social media, cameras and a host of other functions.

Deterring illegal mobile phone use

The fine for illegal mobile phone use is \$344, or \$457 if detected in a school zone. A road safety campaign 'Stop It or Cop It' was launched in December 2017. In September 2018, the number of demerit points accompanying a fine increased from 4 to 5 demerit points, or 8 to 10 during double demerit periods.

The proposed Mobile Phone Detection Camera Program is an important component of the overall strategy to realise the Government's target of reducing road fatalities and serious injuries by 30% by 2021 and zero trauma by 2056. Independent modelling has shown that the mobile phone detection cameras could prevent over 100 fatal and serious injury crashes over five years, and save the community over \$120 million.

Community support

There is strong community support for using cameras to enforce illegal mobile phone use by drivers. A community survey commissioned by Roads and Maritime Services was completed in early April 2018 which found 74 per cent of those surveyed supported the use of cameras to enforce mobile phone offences. Following the announcement and commencement of the Pilot a further survey was undertaken in May 2019 and found the level of support had increased to 80 per cent. Equally, there has been much positive media across the duration of the pilot and interest in the outcome of the Pilot and potential roll out across NSW.

The Mobile Phone Detection Camera Program (MPDC Program)

How the technology works

³ The Australian Government Survey 'Community Attitudes to Road Safety – 2017 Survey Report'

The system incorporates a number of cameras and an infra-red flash to detect different illegal mobile phone use behaviours including::

- An image of the vehicle in the carriageway to enable vehicle identification
- An image at a shallow angle to capture phone-to-ear use
- An image at a steep angle to capture use below shoulder height indicating texting etc.

The images produced show clearly when an object with the form of a mobile phone is being used illegally by a driver. (See Appendix A)

Artificial intelligence software is used initially to analyse and identify images depicting a likely offence. Images of complying road users (that the system deems unlikely to contain an offence) are automatically and irretrievably deleted without human review, usually within an hour of capture.

Images selected for adjudication are then reviewed by the MPDC camera provider personnel. These personnel are required to have a criminal history check and specialist training as well as follow RMS approved business rules. This is the same model as the mobile speed camera program in NSW. They access a cropped and 'zoomed in' image focusing on driver behaviour. This image does not include the details required to identify the vehicle or when and where the image was captured. Passengers are not visible in this cropped image. In cases where there is limited clear evidence of illegal mobile phone use, no offence is confirmed. The information is irretrievably deleted typically within 48 hours of collection. This process facilitates continual improvement of the artificial intelligence software and increases security/privacy measures in place.

When a likely offence is confirmed, files are securely transmitted to Roads and Maritime Services for further verification and prosecution purposes.

Prosecution of offences

A final review of an image is undertaken by an officer from Revenue NSW who will undertake an independent verification of illegal mobile phone use. He or she will also have access to an image to facilitate vehicle identification where passenger images will be pixilated to prevent possible identification.

Revenue NSW will issue a penalty notice for the offence to the registered operator of the vehicle within which the driver has been detected using a mobile phone illegally. In common with established procedures for other camera recorded traffic offences, and in accordance with provisions of Part 7.3 the Road Transport Act, the registered operator is considered the responsible person for the offence unless he or she supplies the name and address of the person who was in charge of the vehicle at the time the offence occurred. (This is in effect a deeming provision. See discussion below)

The registered operator of a vehicle who receives a penalty notice relating to a mobile phone use offence will be able to access a cropped copy of the offence image through the online portal of Revenue NSW (at no cost) or obtain a hard copy of the photograph on payment of a fee.

A registered operator or nominated driver will have the opportunity, at no cost, to request Revenue NSW to review their infringement if they believe an error has been made, for

example, that he or she is not holding a mobile phone. Revenue NSW will review the evidence again and determine if the penalty notice is to stand or be withdrawn. The review is cost free and efficient.

The deeming provision of the Bill amends the Road Transport Act to provide that an object, being held by a driver and shown in a photograph from a device approved for mobile phone use offences, is deemed to be a mobile phone unless the driver can establish on the balance of probabilities that it was not. Accordingly, should Revenue NSW decide that the penalty notice should stand the driver can then elect to have the matter determined by a court and is free to make their case rebutting the photographic evidence.

Matters in the Bill: the deeming provision

Results of the Pilot

An Interagency Steering Group was established to review the outcomes of the Pilot and contribute to the detailed program design and cost estimates. The Steering Group included representatives from NSW Justice, NSW Police, Revenue NSW and Roads and Maritime services, which together have a considerable experience in prosecuting illegal road user behaviour through on road policing and through camera detected offences.

The Pilot during the first half of 2019 was technologically successful. It did, however, highlight a gap in the legislative framework which could undermine successful prosecution of this unsafe behaviour on our roads and reduce the efficacy of the deterrent effect of the cameras.

The best available camera technology has been identified for the MPDC program and provides good quality images which clearly depict drivers holding objects that have the form of a mobile phone and are being held in a manner consistent with using the functions of mobile phone - such as talking, texting or touching a screen. The use of additional technology to further establish the nature of the object (such as the ability to monitor a mobile phone signal from the vehicle or driver's hand) is not currently a viable option.

Nevertheless, there is a risk, despite the photographic evidence available from these cameras, that offenders may challenge the offence in court claiming that the prosecution has not conclusively established that the actual object they were using while driving was a mobile phone (despite use which was consistent with that of using a mobile phone). The onus would currently rest on the prosecution to prove that the object captured in the image is, conclusively, a mobile phone.

Accordingly, and in context of the MPDC program design and image review process as outlined, the amendment to the Road Transport Act is proposed to provide that an object, being held by a driver and shown in a photograph from a device approved for mobile phone use offences, is deemed to be a mobile phone unless the driver can establish on the balance of probabilities that it was not.

Need for the provision

Provisions casting a burden on the defendant in relation to matters of proof of offences are not new in Australia. They are generally used in circumstances where they are reasonable,

necessary and proportionate in pursuit of a legitimate objective. They are also justified where safeguards remain, including the opportunity given to the defendant to rebut the presumption, flexibility in application of the presumption, retention by the court of a power to assess the evidence, and where it could otherwise be difficult for a prosecutor to prove an offence. These circumstances and safeguards exist in the case of the Bill.

The Bill does not wholly shift the burden of proof. The prosecution will still be required to prove several key elements of the offence, including that the mobile phone was being held and used by a person driving a vehicle that is either moving or not parked. The prosecution will have to produce a photograph which indicates that an object which appears to be a mobile phone is being held by the driver. The onus placed on the defendant to rebut the presumption that the object is a mobile phone is appropriate, given that knowledge of the alternative nature of a mobile phone like object will lie particularly with the defendant.

While Police can affirm the presence of a phone when issuing a penalty notice for a mobile phone offence in person, a camera recording of the same offence must, by its nature, rely on photographs as evidence of the offence. However, safeguards apply before that evidence can be deemed to indicate the presence of a mobile phone. As indicated, the adjudication and verification process provide practical checks and balances on the operation of the provision.

In addition, magistrates will be able to determine the strength of the case on review of the photographic evidence. The legal burden on the defendant under the deeming provision is *on the balance of probabilities* whereas the burden on the prosecution without it, is *beyond reasonable doubt*. It is worth pointing out that camera detected speeding offences can be rebutted, under the terms of the Act, 'only if...evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience)' is provided.⁴ As such challenging camera detected speeding offences is arguably a more significant burden.

In addition, the benefit of reverse onus provisions is generally accepted where they relate to a regulation where the primary purpose is the efficient operation of matters within the public sphere, such as transport and traffic management. These provisions safeguard the public interest. The offence itself – using a mobile phone illegally while driving – carries the potential for extensive and severe harm, such as a fatality or serious injury, but the penalty for the offence is relatively minor (that is, a fine and demerit points).

Other deeming provisions in NSW legislation

There are other deeming provisions already in the Road Transport Act: these are the so-called 'designated offences' for camera recorded offences and parking offences. As mentioned previously, under section 184 of the Road Transport Act (in Part 7.3) the 'responsible person' for the motor vehicle (the vehicle's registered operator), is taken to be guilty of a designated offence. There are defences: a person may be able to satisfy an authorised officer or the prosecution that their vehicle had been stolen at the time of the

⁴ Road Transport Act 2013 s. 141 Rebuttal of evidence concerning operation of approved traffic enforcement devices

offence (or illegally taken and used), for example. Under section 186 of the Act, if the responsible person is served a penalty notice or court attendance notice for a designated offence, he or she has 21 days to nominate the person who was driving the vehicle at the time the offence occurred.

The reason for the responsible person to be deemed guilty of a camera-detected or parking offence is that, as opposed to the circumstances in which a police officer can pull over a driver and issue a penalty notice on the spot, the camera or parking officer cannot do so. Therefore, the registered operator is deemed guilty (as the penalty notice is sent to the person connected with the vehicle's registration information), unless he or she can nominate the driver at the time of the offence or has another defence available to them. This can be done by a statutory declaration which is included with the penalty notice.

Other Australian States use deeming provisions in their legislation related to camera recorded offences. For example, the Victoria *Road Safety Act 1986* provides operator onus provisions, as does the Queensland *Transport Operations (Road Use Management) Act 1995*.

NSW legislation has 'deeming provisions' other than in road transport law. The *Drug Misuse and Trafficking Act 1985*, for example, has several deeming provisions: under section 29 a person is deemed to be 'drug trafficking' (possession with the intent to supply) if he or she is found in possession of a 'trafficable quantity' of a drug – even if he or she did not intend to supply the drug and the drug was intended for personal use – unless the person proves that they had the drug in their possession for a purpose other than supply, or the person proves that they obtained possession of particular types of drugs with a prescription. The deeming provision can only be challenged through the court process.

Under section 22 of the *Employment Protection Act 1982*, where a corporation contravenes any provision of that Act or its regulations, each director of that corporation and each person concerned in the management of the corporation is deemed to have contravened the same provision unless they can satisfy the court of certain facts.

Deeming provisions are also common in Commonwealth legislation, for example in the *Work Health and Safety Act 2011* (Cth), the *Copyright Act 1968* (Cth), the *Taxation Administration Act 1953* (Cth) and the Australian Consumer Law.

Summary

In terms of the proposed deeming provision in the Bill, the risk in terms of loss of procedural fairness is low and there is reasonable opportunity for a driver to rebut the evidence. As with other camera enforcement programs in NSW, only upon payment of a penalty or a conviction being recorded in court, the process is concluded. Until that time there is the opportunity of review and withdrawal of a penalty by Revenue NSW or RMS if they deem such action appropriate. The community has accepted deeming provisions for camera recorded offences with minimal disquiet. The safety issue presented by mobile phone use in cars is high and the proposed provision to reverse the onus in relation to illegal mobile phone use is appropriate. At no cost a driver can request a review by Revenue NSW, and if subsequently they are found guilty of an offence the court may allocate costs to the driver. For speeding related matters the courts award professional costs (in most cases) of between

\$180 - \$300 per matter where the driver is convicted, though this can be higher for complicated matters or for those requiring an expert witness.

Other matters raised in debate

Privacy – custodianship, obligations and access

In the course of the debate a number of privacy issues were raised:

- Whether the photos would be revealing (bodily exposure) for some drivers;
- How the images will be accessed and used, and
- How the images will be stored, protected and disposed of.

Matters relating to personal and private information have been the subject of extensive consultation with the Information and Privacy Commission NSW (IPC) and robust privacy protection measures, outlined below, have been put in place.

While not diminishing the importance of this issue, it is important to understand that the cameras will only capture what can be seen by drivers and passengers in other vehicles (including the elevated view of drivers and passengers in buses and trucks or on bridges).

NSW legislation governing the protection of private information

The *Privacy and Personal Information Protection Act 1998* (PPIP Act) sets out information protection principles which govern the collection, retention and use of personal information by NSW government agencies. In the Act:

...personal information means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.⁵

In the context of the MPDC Program, the images collected of the drivers and passengers constitute 'personal information' for the purposes of the PPIP Act because the identities of the drivers and passengers could be determined from the images.

The Information Protection Principles (IPPs) detailed in the PPIP Act are legal obligations which NSW public sector agencies – such as TfNSW, RMS and Revenue NSW - statutory bodies, universities and local councils must abide by when they collect, store, use or disclose personal information. They can be summarised as follows:

- Collection: must be lawful, direct, open and relevant
- Storage: retention and disposal of information must be secure
- Access and accuracy: collection of information must be transparent, accessible and correct
- Use: information must be accurate and limited
- Disclosure: must be restricted and safeguarded

As noted, one issue raised in debate was how long images will be stored and how they will be protected. IPP 5 (Section 12 of the PPIP Act) provides that NSW agencies must ensure that:

...information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information...

⁵ *Privacy and Personal Information Protection Act 1998* (PPIP Act), section 4, Definition of personal information.

Requirements for retention and disposal include those mandated by the State Records Authority under the *State Records Act 1998*. A **state record**:

means any record made and kept, or received and kept, by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office...

The State Records Authority gives approval for the legal destruction of State records through retention and disposal authorities. The relevant disposal authority for photographic images distinguishes between images **not** needed for enforcement purposes or court proceedings and those that are. Different actions are accorded to each.

Compliance with privacy legislation

Transport for New South Wales, Roads and Maritime Services the custodian of the data collected by the MPDC program and Revenue NSW, which undertakes final adjudication of images and issues penalty notices, as NSW Government agencies are aware of their legal obligations with regard to the protection of privacy. Further, stringent contract conditions placed on the technology provider ensure that privacy protection measures are built into the design of the operational program are adhered to.

Other issues raised in the debate include how revealing the images will be, and who will be able to access them. The personal information to be collected in connection with the MPDC Program includes:

- Images or partial images of drivers
- Images of number plates
- Images or partial images of passengers.

These photographic images will be collected in relation to the detection of illegal mobile phone use on NSW roads in accordance with road transport legislation. The images are necessary to determine that a person has held or used a phone illegally and in doing so has committed an offence.

It is important to note that while this Program will apply new technology, the secure and appropriate management of information collected from traffic cameras is not new. In common with all NSW traffic camera enforcement systems, strict data security measures are included in the scope of requirements for the Program. Image files are digitally encrypted and transferred via secure networks. Background criminal history police checks and specialised training are contracted requirements and undertaken for all contractor resources. System access requires username and password, and access to images is traceable. The decision making in respect of determining if there is evidence of an offence or if the images should be deleted during the review process is also traceable and auditable.

Moreover, the Program has been designed to ensure that only the minimum amount of data required to detect and enforce offences will be retained. Images captured by cameras which do not contain evidence of an offence will be erased: the contract with the technology provider requires that artificial intelligence software must automatically analyse images and identify those that are likely to show a driver using a mobile phone within 60 minutes. Images that the system deems unlikely to contain an offence are to be automatically and irretrievably deleted. Protections also include encryption of data, controls over physical access to the camera sites, and rigorous security around cameras and data storage..

Consultation with the Information and Privacy Commission (IPC)

Transport for NSW has consulted with the IPC and undertook a Privacy Impact Assessment to inform the operation of the Pilot which ran from January to June 2019. Transport for NSW, RMS and Revenue NSW have and will continue to work together, and consult with the IPC to ensure that the personal information of NSW road users is protected in accordance with statutory obligations prior to the Program being rolled out.

Summary

In the context of the parliamentary debate, it is important to point out that enforcement cameras will only capture what is seen by drivers and passengers in other vehicles (including the elevated view of drivers and passengers in buses and trucks or on bridges). They will not be intrusive in any other sense. Moreover, images of the offence will only be available to the registered operator of the vehicle on request.

Lastly, as indicated previously, the likelihood of images relating to matters unrelated to mobile phone use being captured and retained beyond the artificial intelligence process is low, as compliant images - where a driver is not detected using a mobile phone forms the bulk of images captured - are quickly and permanently destroyed without human review. Images identified for adjudication include minimised personal information, including the cropping of images and pixilation of passengers) and only when a mobile phone use offence is affirmed is a link made to the registered operator's details for the purpose of issuing a penalty notice.

Warning/Advisory signs

Debate in the Legislative Assembly referred to comments by the NRMA concerning its opinion that location warning signs should accompany the mobile phone detection cameras similar to those for speed cameras.

Camera enforcement in NSW

Type	Main purpose	Introduced
Fixed	Location specific (To address black spot/high risk)	1997
Red-light speed (safety)	Location specific (To address high risk intersections)	2009
Mobile	General network deterrence	First introduced in 1991. Ceased operation in December 2008 and re-introduced in 2010
Point-to-Point	Route enforcement (For heavy vehicles only)	2010

There are four types of speed camera used in NSW, which all have a different purpose and signage requirements. Signage is installed as a matter of policy and is not a legislative requirement.

Warning signage practice varies across Australian jurisdictions. NSW currently provides the most extensive signposting of speed cameras. To compare, in the ACT, one sign is provided on top of a mobile speed camera enforcement vehicle, Queensland provides limited markings on enforcement vehicles and no advance warning signage and mobile speed enforcement in Victoria is completely unmarked. In contrast, NSW provides two signs deployed before the mobile speed camera vehicle and one sign after the vehicle. In addition, NSW mobile speed camera vehicles include high visibility markings. These measures have been in place in NSW since 2012. In October the Auditor General's Performance Audit Report on Mobile Speed Cameras found that notification of the location of traffic enforcement devices can undermine their effectiveness. Recent preliminary analysis by the Monash University Accident Research Centre (MUARC) has also found that optimisation of mobile speed camera policy settings, to align with scale and approach in Victoria, could potentially save up to 75 deaths per annum (noting that further refinement of this preliminary estimate is required to adjust to the NSW road trauma profile).

It is certainly not true that warning signs act as effective deterrents when seeking to deter behaviour across the road network. There is considerable evidence to suggest that warning signs are counterproductive. Importantly, warning signs provide only a narrow area of deterrence: experience with speed cameras suggests a 'halo effect' where many drivers observe the speed limit only while believing they are under scrutiny. In addition, Monash University Accident Research Centre (MUARC) recently undertook analysis of the benefits of the proposed MPDC Program. Overt signage revealing the location of the cameras would reduce its benefits by around 80%. This translates to a program that has no overt signage achieving safety benefits in one year that could only be achieved in five years (with all other things being equal) if overt signage was applied.

In light of the strong community support for mobile phone camera enforcement, and supported by MUARC analysis and the Auditor General's finding, warning signs at camera sites were not used during the Pilot. This was clearly communicated to the community from the outset of the Pilot.

Instead of local warning signs, there will be a three-month warning letter period at the commencement of the program during which drivers will not be penalised. General signage, indicating that mobile phone detection cameras are being used across NSW, will also be installed on key routes to ensure that drivers are alerted to the risks of using a mobile phone illegally whilst driving and the presence of camera based enforcement. A strong community awareness campaign as outlined below will enhance these initiatives to sufficiently educate and warn the community of the risks of illegal mobile phone usage.

Education approach

Transport for NSW (TfNSW) has been communicating the risks of mobile phone distraction since late 2013. A series of communication campaigns, sponsorships and other activities, complemented by enforcement operations, have helped ensure public awareness of mobile phone risks, road rules and associated penalties. Mobile phone distraction is perceived by the community to be a primary contributor to road trauma. This has led to considerable engagement around the topic of mobile phone road rules – the mobile phone 'Know the Rules' webpage is one of the most popular pages on the Centre for Road Safety website, receiving more than 186,000 visits over the last 12 months (to October 2019).

The 'Get Your Hand Off It' campaign launched in December 2013 to highlight the risks and social unacceptability of illegal mobile phone use while driving. TfNSW became a premier partner of the Sydney Swans with the 'Get Your Hand Off It' campaign to further raise awareness of the risks of unsafe, illegal mobile phone use and provide practical examples of how to avoid mobile phone distraction. The Sydney Swans partnership provides access to more than 1.4 million fans through TV, digital/social and on-ground channels and has continued through to the current 2019 season.

The 'Stop It or Cop It' campaign was launched in December 2017, highlighting the enforcement of, and penalties associated with, illegal mobile phone use and other unsafe and illegal behaviours (for example, speeding and drink driving). This includes communication about increased penalties which apply during double demerit periods: in the case of mobile phone offences, 10 demerit points applies. The campaign has 64 per cent recognition among NSW motorists, with 70 per cent understanding of the penalties and consequences of being caught for offences such as illegal mobile phone use.

Education and information campaigns to advise road users of the new mobile phone detection technology will commence ahead of the start of the Program. Communication will continue to clarify mobile phone use rules so that drivers understand and comply with the law.

The campaign will include advertising and information on social media, online video, radio and variable message signs. Information on TfNSW websites will be published including:

- frequently asked questions
- a video to explain the technology and enforcement and
- measures to safeguard road user privacy including the type of information collected and held, how the information will be used and to whom the information is disclosed and how that information may be accessed in certain circumstances.

NSW road users will be made fully aware of the road rules around mobile phone use, the implementation of the new technology, the heightened risk of getting caught and the fines and demerit points attached to offences.

Appendix A

Regulations regarding mobile phone use in NSW

Road Rules 2014 (statutory rule made under the Road Transport Act)

300 Use of mobile phones

(1) The driver of a vehicle must not use a mobile phone while the vehicle is moving, or is stationary but not parked, unless—

(a) the phone is being used to make or receive an audio phone call or to perform an audio playing function and the body of the phone—

(i) is secured in a mounting affixed to the vehicle while being so used, or

(ii) is not secured in a mounting affixed to the vehicle and is not being held by the driver, and the use of the phone does not require the driver, at any time while using it, to press any thing on the body of the phone or to otherwise manipulate any part of the body of the phone, or

(b) the phone is functioning as a visual display unit that is being used as a driver's aid and the phone is secured in a mounting affixed to the vehicle, or

(c) the vehicle is an emergency vehicle or a police vehicle, or

(d) the driver is exempt from this rule under another law of this jurisdiction.

Maximum penalty—20 penalty units.

Examples of driver's aids.

1 Closed-circuit television security cameras.

2 Dispatch systems.

3 Navigational or intelligent highway and vehicle system equipment.

4 Rearview screens.

5 Ticket-issuing machines.

6 Vehicle monitoring devices.

Note 1.

Emergency vehicle, park and police vehicle are defined in the Dictionary.

Note 2.

Subrule (1) is not uniform with the corresponding subrule in rule 300 of the *Australian Road Rules*. Different rules may apply in other Australian jurisdictions.

(2) For the purposes of this rule, a mobile phone is secured in a mounting affixed to the vehicle only if—

- (a) the mounting is commercially designed and manufactured for that purpose, and
- (b) the mobile phone is secured in the mounting, and the mounting is affixed to the vehicle, in the manner intended by the manufacturer.

(3) For the purposes of this rule, a driver does not use a phone to receive a text message, video message, email or similar communication if—

- (a) the communication is received automatically by the phone, and
- (b) on and after receipt, the communication itself (rather than any indication that the communication has been received) does not become automatically visible on the screen of the phone.

(3–1) This rule does not apply to the driver of a vehicle who is the holder of a learner licence or a provisional P1 or P2 licence.

Note 1.

Provisional P1 licence and **provisional P2 licence** are defined in the Dictionary and **learner licence** is defined in the Act.

Note 2.

Rule 300–1 provides for the use of mobile phones by drivers who are holders of learner licences or provisional P1 or P2 licences.

Note 3.

This subrule is an additional NSW subrule. There is no corresponding subrule in rule 300 of the *Australian Road Rules*.

(4) In this rule—

affixed to, in relation to a vehicle, includes forming part of the vehicle.

audio phone call does not include an email, text message, video call, video message or other similar communication.

body, in relation to a mobile phone, means the part of the phone that contains the majority of the phone's mechanisms.

held 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.

mobile phone does not include a CB radio or any other two-way radio.

use, in relation to a mobile phone, includes any of the following actions by a driver—

- (a) holding the body of the phone in her or his hand (whether or not engaged in a phone call), except while in the process of giving the body of the phone to a passenger in the vehicle,

- (b) entering or placing, other than by the use of voice, anything into the phone, or sending or looking at anything that is in the phone,
- (c) turning the phone on or off,
- (d) operating any other function of the phone.

300–1 NSW rule: use of mobile phones by drivers who are holders of learner and provisional P1 or P2 licences

(1) The driver of a vehicle (except an emergency vehicle or police vehicle) who is the holder of a learner licence or a provisional P1 or P2 licence must not use a mobile phone, whether or not held by the driver, while the vehicle is moving or is stationary but not parked.

Maximum penalty—20 penalty units.

Note.

Emergency vehicle, park, police vehicle, provisional P1 licence and ***provisional P2 licence*** are defined in the Dictionary, and ***learner licence*** is defined in the Act.

(2) In this rule, ***mobile phone*** and ***use*** have the same meanings as in rule 300.

Note.

This rule is an additional NSW road rule. There is no corresponding rule in the *Australian Road Rules*.

Penalty for illegal mobile phone use

The fine for illegal mobile phone use is \$344, or \$457 if detected in a school zone.

The penalty includes 5 demerit points or 10 during double demerit periods.

Appendix B

Images from mobile phone detection cameras.



