



New South Wales

Road Transport Legislation Amendment (Evidence) Act 2006 No 110

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New South Wales

Road Transport Legislation Amendment (Evidence) Act 2006 No 110

Act No 110, 2006

An Act to amend the Road Transport (General) Act 2005, the Road Transport (Safety and Traffic Management) Act 1999 and the Roads Act 1993 with respect to evidentiary matters; and for other purposes. [Assented to 4 December 2006]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Road Transport Legislation Amendment (Evidence) Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 2 [3] commences on the commencement of Schedule 1 [11] to the *Road Transport Legislation Amendment (Drug Testing) Act 2006* or on the date of assent to this Act, whichever is the later.

3 Amendment of Road Transport (General) Act 2005 No 11

The *Road Transport (General) Act 2005* is amended as set out in Schedule 1.

4 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20

The *Road Transport (Safety and Traffic Management) Act 1999* is amended as set out in Schedule 2.

5 Amendment of Roads Act 1993 No 33

The *Roads Act 1993* is amended as set out in Schedule 3.

6 Amendment of other legislation

The *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* and the *Roads (General) Regulation 2000* are amended as set out in Schedule 4.

7 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 **Amendment of Road Transport (General) Act 2005**

(Section 3)

[1] Section 179 Liability of responsible person for vehicle for designated offences

Omit “is evidence (unless contrary evidence is adduced)” wherever occurring in section 179 (9) (including the heading to the subsection).

Insert instead “is admissible and is prima facie evidence”.

[2] Section 179 (12), definition of “camera recorded offence”

Insert at the end of paragraph (c) of the definition:

, or

- (d) a speeding offence in respect of which:
- (i) the penalty notice or the court attendance notice indicates that the offence was detected by an approved speed measuring device within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, and
 - (ii) the number plate of the vehicle concerned was recorded by a police officer using photographic or video equipment approved by the Commissioner of Police for the purposes of this paragraph.

[3] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Evidence) Act 2006

[4] Schedule 1

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Road Transport Legislation Amendment (Evidence) Act 2006

Definition

In this Part, *amending Act* means the *Road Transport Legislation Amendment (Evidence) Act 2006*.

Amendments not to apply to proceedings instituted before commencement of amendments

- (1) An amendment made to this Act by the amending Act does not apply to proceedings for an offence that were instituted before the commencement of the amendment.
- (2) An amendment made to this Act by the amending Act applies to proceedings for an offence that are instituted on or after the commencement of the amendment even if the proceedings involve an offence that was committed before that commencement.

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

(Section 4)

[1] Sections 33 (1), (2) and (4)–(7), 35 (1)–(3) and 76 (8) and clause 5 (2) (f) of Schedule 1

Omit “is evidence (unless evidence to the contrary is adduced)” wherever occurring.

Insert instead “is admissible and is prima facie evidence”.

[2] Section 33 Certificate evidence about breath or blood analysis in proceedings for offences under section 9

Omit section 33 (3). Insert instead:

- (3) In proceedings for an offence under section 9 or Division 3, evidence of the condition of a breath analysing 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.

[3] Sections 33B and 33D (as inserted by Schedule 1 [11] to the Road Transport Legislation Amendment (Drug Testing) Act 2006)

Omit “is evidence (unless evidence to the contrary is adduced)” wherever occurring.

Insert instead “is admissible and is prima facie evidence”.

[4] Section 46 Certificates concerning use of approved speed measuring devices

Omit section 46 (1) and (2). Insert instead:

- (1) In proceedings for any offence against this Act in which evidence is given of a measurement of speed obtained by the use of an approved speed measuring device, a certificate purporting to be signed by an appropriate officer certifying that:
- (a) the device is an approved speed measuring device within the meaning of this Act, and
 - (b) on a day specified in the certificate (being within the time prescribed by the regulations before the alleged time of the offence) the device was tested in accordance with the regulations and sealed by an appropriate officer, and

(c) on that day the device was accurate and operating properly, is admissible and is prima facie evidence of the particulars certified in and by the certificate.

(2) If any such certificate is tendered in proceedings for an offence, evidence:

(a) of the accuracy or reliability of the approved speed measuring device, or

(b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

[5] Section 46, note

Insert at the end of the section:

Note. See also section 73A.

[6] Section 47 Photographic evidence of speeding offences

Omit section 47 (2)–(6). Insert instead:

(2) In proceedings in which such evidence is given:

(a) the provisions of section 46 relating to the accuracy or reliability of the approved speed measuring device apply, and

(b) subsections (3)–(7) apply in relation to the approved camera recording device, and

(c) evidence that a photograph taken by an approved digital camera recording device bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken.

(3) A photograph tendered in evidence as a photograph taken by an approved camera recording device on a day and at a location specified on the photograph, and as bearing a security indicator of a kind prescribed by the regulations, is admissible and:

(a) is to be presumed to have been so taken unless evidence sufficient to raise doubt that it was so taken is adduced, and

(b) is to be presumed to bear such a security indicator unless evidence that is sufficient to raise doubt that it does so is adduced, and

- (c) is prima facie evidence of the matters shown or recorded on the photograph.
- (4) When the photograph taken by an approved camera recording device (other than an approved digital camera recording device) is tendered in evidence, a certificate purporting to be signed by a police officer and certifying the following particulars is also to be tendered in evidence and the certificate is admissible and is prima facie evidence of those particulars:
 - (a) that the officer is authorised by the Commissioner of Police to install and inspect approved camera recording devices,
 - (b) that within 168 hours before the time and day recorded on the photograph as the time at which and the day on which the photograph was taken, the officer 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.
- (5) When the photograph tendered in evidence is taken by an approved digital camera recording device, a certificate purporting to be signed by an authorised person and certifying the following particulars is also to be tendered in evidence and the certificate is admissible and is prima facie evidence of those particulars:
 - (a) that the person is an authorised person,
 - (b) that within 30 days (or such other period as may be prescribed by the regulations) before the time and day recorded on the photograph as the time at which and the day on which the photograph was taken, the person carried out the inspection specified in the certificate on the approved digital camera recording device that took the photograph,
 - (c) that on that inspection the approved digital camera recording device was found to be operating correctly.
- (6) If a certificate under subsection (4) or (5) is tendered in proceedings for an offence, evidence:
 - (a) of the accuracy or reliability of the camera recording device concerned, or

- (b) as to whether or not the device operated correctly or operates correctly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating correctly is adduced.

- (7) In this section, *authorised person* means a person (or person belonging to a class of persons) authorised by the Authority to install and inspect approved digital camera recording devices.

Note. See also section 73A.

[7] Section 54 Cost of removal of prescribed traffic control device

Omit “is evidence (unless evidence to the contrary is adduced)” from section 54 (2).

Insert instead “is admissible in any such proceedings and is prima facie evidence”.

[8] Section 57 Photographic evidence of traffic light offences

Omit section 57 (2). Insert instead:

- (2) In proceedings for a traffic light offence:
- (a) a photograph tendered in evidence as a photograph taken by means of the operation, on a day specified on the photograph, of an approved camera detection device installed at a location specified on the photograph is admissible and is to be presumed to have been so taken unless evidence sufficient to raise doubt that it was so taken is adduced, and
- (b) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.

[9] Section 57 (3)

Omit “and is evidence (unless evidence to the contrary is adduced)”.

Insert instead “, is admissible and is prima facie evidence”.

[10] Section 57 (4)

Insert after section 57 (3):

- (4) If a certificate under subsection (3) is tendered in proceedings for an offence, evidence:
- (a) of the accuracy or reliability of the approved camera detection device, or

- (b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

Note. See also section 73A.

[11] Section 57B Photographic evidence of public transport lane offences

Omit section 57B (2). Insert instead:

- (2) In proceedings for a public transport lane offence:
 - (a) one or more photographs tendered in evidence as photographs taken by means of the operation, on a day specified on the photographs, of an approved traffic lane camera device or devices installed at a location or locations specified on the photographs, and as each bearing a security indicator of a kind prescribed by the regulations, are admissible and are to be presumed:
 - (i) to have been so taken unless evidence sufficient to raise doubt that they were so taken is adduced, and
 - (ii) to bear such a security indicator unless evidence that is sufficient to raise doubt that they do so is adduced, and
 - (b) evidence that a photograph tendered in evidence taken by an approved traffic lane camera device bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken, and
 - (c) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.

[12] Section 57B (3)

Omit “and is evidence (unless evidence to the contrary is adduced)”.

Insert instead “, is admissible and is prima facie evidence”.

[13] Section 57B (5)

Insert after section 57B (4):

- (5) If a certificate under subsection (3) is tendered in proceedings for an offence, evidence:
 - (a) of the accuracy or reliability of the approved traffic lane camera device, or

(b) as to whether or not the device operated properly or operates properly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating properly is adduced.

Note. See also section 73A.

[14] Section 69C Vehicles to be speed limited

Omit “is evidence (unless contrary evidence as to that speed is adduced)” from section 69C (2).

Insert instead “is admissible and is prima facie evidence”.

[15] Section 69D Certificate evidence of speed limiter compliance

Omit “is evidence (unless contrary evidence is adduced)” from section 69D (1).

Insert instead “is admissible and is prima facie evidence”.

[16] Section 69E Photographic evidence of speed of vehicle

Omit “Section 47 (2)–(6)” from section 69E (2).

Insert instead “Section 47 (2)–(7)”.

[17] Section 69E, note

Insert at the end of the section:

Note. See also section 73A.

[18] Section 71 Regulations

Omit “as evidence concerning that matter in proceedings before a court or tribunal unless evidence to the contrary is adduced” from section 71 (10).

Insert instead “and prima facie evidence of that matter in proceedings before a court or tribunal”.

[19] Section 73A

Insert after section 73:

73A Rebuttal of evidence of matters of specialised knowledge

- (1) This section applies to the determination of whether evidence is sufficient to rebut prima facie evidence or a presumption, or to raise doubt about a matter, as referred to in section 46, 47, 57, 57B or 69E and for the purposes of proceedings to which those sections apply.

- (2) 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 this 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).
- (3) In this section, *approved device* means:
- (a) an approved camera detection device, or
 - (b) an approved camera recording device, or
 - (c) an approved speed measuring device, or
 - (d) an approved traffic lane camera device.

[20] Section 75 Removal of dangers and obstructions to traffic

Omit "is evidence (unless evidence to the contrary is adduced)" from section 75 (3).

Insert instead "is admissible in any such proceedings and is prima facie evidence".

[21] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Evidence) Act 2006

[22] Schedule 2

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Road Transport Legislation Amendment
(Evidence) Act 2006**

Definition

In this Part, *amending Act* means the *Road Transport Legislation Amendment (Evidence) Act 2006*.

Amendments not to apply to proceedings instituted before commencement of amendments

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- (2) An amendment made to this Act by the amending Act applies to proceedings for an offence that are instituted on or after the commencement of the amendment even if the proceedings involve an offence that was committed before that commencement.

Schedule 3 Amendment of Roads Act 1993

(Section 5)

[1] Section 250A Approved camera recording devices—toll offences

Omit section 250A (2). Insert instead:

- (2) In proceedings for a toll offence:
 - (a) a photograph tendered in evidence as a photograph taken by means of the operation, on a day specified on the photograph, of an approved toll camera installed at a location specified on the photograph, and as bearing a security indicator of a kind prescribed by the regulations, is admissible and is to be presumed:
 - (i) to have been so taken unless evidence sufficient to raise doubt that it was so taken is adduced, and
 - (ii) to bear such a security indicator unless evidence sufficient to raise doubt that it does so is adduced, and
 - (b) evidence that a photograph tendered in evidence bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken, and
 - (c) any such photograph is prima facie evidence of the matters shown or recorded on the photograph.

[2] Section 250A (3)

Omit “is evidence (unless evidence to the contrary is adduced)”.

Insert instead “is admissible and is prima facie evidence”.

[3] Section 250A (6) and (7)

Insert after section 250A (5):

- (6) If a certificate under subsection (3) is tendered in proceedings for an offence, evidence:
 - (a) of the accuracy or reliability of the approved toll camera, or
 - (b) as to whether or not the camera operated correctly or operates correctly (generally or at a particular time or date or during a particular period),is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the camera was accurate, reliable and operating correctly is adduced.

- (7) For the purposes of this section, 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).

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Evidence) Act 2006

[5] Schedule 2

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Road Transport Legislation Amendment (Evidence) Act 2006

Definition

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Schedule 4 Amendment of other legislation

(Section 6)

4.1 Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999

[1] Clause 138 Schemes to assist children to cross roads

Omit “is evidence (unless evidence to the contrary is adduced)” from clause 138 (7).

Insert instead “is admissible and is prima facie evidence”.

[2] Clause 156A Security indicators: section 47 of Act

Omit “section 47 (2) (c)” from clause 156A (1). Insert instead “section 47”.

[3] Clause 156B Security indicators: section 57B of Act

Omit “section 57B (2) (b)” from clause 156B (1). Insert instead “section 57B”.

4.2 Roads (General) Regulation 2000

Clause 23D Security indicators: section 250A of Act

Omit “section 250A (2) (b)” from clause 23D (1).

Insert instead “section 250A”.

[Second reading speech made in—

Legislative Assembly on 15 November 2006am

Legislative Council on 21 November 2006]

BY AUTHORITY