



Australian Capital Territory

Road Transport (Safety and Traffic Management) Amendment Act 2011

A2011-38

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Australian Capital Territory

Road Transport (Safety and Traffic Management) Amendment Act 2011

A2011-38

An Act to amend the *Road Transport (Safety and Traffic Management) Act 1999*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Road Transport (Safety and Traffic Management) Amendment Act 2011*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Road Transport (Safety and Traffic Management) Act 1999*.

Note This Act also amends the *Road Transport (General) Act 1999* (see sch 1).

4 New division 6.1 heading and section 22AA

insert

Division 6.1 Definitions—pt 6

22AA Definitions—pt 6

In this part:

average speed—see section 22B.

average speed detection system—see section 23A.

average speed limit, for a driver of a vehicle on a road between 2 detection points if more than 1 speed limit applies between the points, means the average speed limit prescribed by regulation for the road between the points.

detection point means a point prescribed by regulation on a road by reference to which a vehicle's average speed can be worked out.

relevant information—see section 22A.

shortest practicable distance, between 2 detection points, means the distance prescribed by regulation as the shortest distance between the points that a vehicle's driver could use to travel on a road between the points without contravening this Act.

shortest practicable route—see section 23B (a).

speeding offence means an offence—

- (a) against a provision of the road transport legislation of failing to obey a speed limit; or
- (b) prescribed by regulation.

5 Section 22A

omit everything before paragraph (a), substitute

22A Meaning of *relevant information*—pt 6

- (1) For this part, ***relevant information***, for an image of a vehicle taken by a camera detection device, is—

6 Section 22A (c)

omit

a regulation

substitute

a provision of the road transport legislation

7 Section 22A (c)

omit

the regulation

substitute

the provision

8 Section 22A (d)

omit

a regulation

substitute

the road transport legislation

9 New section 22A (2)

insert

- (2) For this part, ***relevant information***, for an image of a vehicle, or a numberplate or anything else on a vehicle, taken by an average speed detection system, is—
- (a) the date and time when, and place where, the image was taken; and
 - (b) any information prescribed by regulation; and
 - (c) any other information the road transport authority considers appropriate.

10 New section 22B

insert

22B Meaning of *average speed*—pt 6

- (1) For this part, the ***average speed*** of a vehicle between 2 detection points is the speed worked out in accordance with the following formula and expressed in kilometres per hour rounded down to the next whole number:

$$\frac{SPD \times 3600}{T}$$

- (2) In this section:

SPD means the shortest practicable distance between the detection points.

T means the time, expressed in seconds, that elapsed between the vehicle passing the first and second detection points.

11 New division 6.2 heading

before section 23, insert

**Division 6.2 Traffic offence detection devices—
general**

**12 Use of camera detection devices
Section 23 (1) (a)**

omit

a regulation

substitute

a provision of the road transport legislation

13 Section 23 (1) (b)

omit

a regulation

substitute

the road transport legislation

14 New section 23A

insert

23A Use of average speed detection systems

- (1) An *average speed detection system* is a system designed to take complying images of vehicles at detection points and work out the average speed of vehicles between 2 detection points.
- (2) A photographic or electronic image of a vehicle, or a numberplate or anything else on a vehicle, taken by an approved average speed detection system is a complying image if—

-
- (a) the image shows the vehicle, numberplate or other thing; and
 - (b) the relevant information for the image is indicated on the image; and
 - (c) for an electronic image—
 - (i) the system creates an electronic file that contains the image and the relevant information for the image; and
 - (ii) the file is recorded in accordance with a regulation; and
 - (iii) if a regulation requires the accuracy of the file to be verified—the file is verified in accordance with the regulation.
- (3) This section does not—
- (a) limit the matters that may be indicated on or shown by an image taken by an approved average speed detection system; or
 - (b) limit the information included in an electronic file created by an approved average speed detection system; or
 - (c) require an approved average speed detection system to be operated by a person.

15 New sections 23B and 23C

insert

23B Average speed detection systems—shortest practicable route and minimum travel time

A regulation that prescribes the shortest practicable distance between 2 detection points must also prescribe—

- (a) the route used to work out the shortest practicable distance between the points (the *shortest practicable route*); and

- (b) the minimum time, expressed in seconds, that a vehicle's driver could take to drive the vehicle on the route between the points without contravening a provision of the road transport legislation about obeying the speed limit.

23C Average speed detection systems—signs

- (1) This section applies in relation to an average speed detection system.
- (2) The road transport authority must display a sign—
 - (a) not more than 100m before each detection point; and
 - (b) approximately halfway along the shortest practicable route between detection points.
- (3) Failure to comply with this section does not affect an infringement notice or a proceeding for an offence.

16 Section 24 (2)

substitute

- (2) A regulation may also make provision about—
 - (a) the meaning of codes and other information indicated on images taken by approved camera detection devices or approved average speed detection systems; and
 - (b) any other matter relating to average speed detection systems, including the images taken by them.

17 New section 24 (3)

insert

- (3) However, a regulation must not provide for a system to be an approved average speed detection system unless the system ensures that each image of a vehicle taken at a detection point is deleted from the camera that took the image not later than 14 days after the image is taken.

18 New sections 24A and 24B

insert

24A Average speed of vehicle is evidence of actual speed in certain circumstances

- (1) This section applies to a proceeding against a person for a speeding offence.
- (2) The prosecution may rely on evidence of the average speed of the vehicle between 2 detection points as evidence of the actual speed of the vehicle between the detection points for the purpose of proving the offence.
- (3) The following provisions apply in relation to the proceeding:
 - (a) the vehicle's average speed is admissible and is evidence of the actual speed at which the driver drove the vehicle on a road between the detection points;
 - (b) if more than 1 speed limit applied to the driver between the detection points, the average speed limit for the driver on a road between the points is taken to be the speed limit that applied to the driver at all times on the road between the points;

- (c) for the purpose of working out the vehicle's average speed, the vehicle is taken to have travelled between the detection points by means of the shortest practicable distance regardless of the actual route taken.
- (4) An offence evidenced by the average speed of a vehicle between 2 detection points is taken to have been committed when the vehicle passed the 2nd detection point.

24B Other forms of proof of speeding offences not excluded by s 24A

- (1) Section 24A is in addition to, and does not limit, any other form of proof of a vehicle's speed.
- (2) Without limiting subsection (1), a court in a proceeding against a person for a speeding offence in which the prosecution is relying on evidence of the average speed of the vehicle may convict a person, or find a person guilty, of the offence by relying on evidence of the actual speed of the vehicle at a particular point of its journey between 2 detection points if the court is satisfied that—
 - (a) evidence in the proceeding (other than evidence establishing the average speed) establishes the actual speed at which the driver was driving, and the actual speed limit that applied to the driver at that point; and
 - (b) the use of the actual speed and actual speed limit rather than the average speed (and, if relevant, the average speed limit) demonstrates that the driver exceeded the speed limit by a greater speed than that indicated by the use of the average speed (and average speed limit).

Example

The average speed of a vehicle between 2 detection points is 120km/h along a length of road for which the speed limit is 90km/h. A police officer measured the speed of the vehicle at a point during that journey at 130km/h using an approved speed measuring device. The court may rely on the evidence obtained by the

police officer rather than the average speed to convict a person of the speeding offence.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 New section 24C

insert

24C Use of camera detection devices and average speed detection systems

- (1) This section applies to a camera detection device or average speed detection system that is used to take an image of a vehicle.
- (2) The device or system may only be used to take an image of the vehicle from the rear.
- (3) However, the device or system may be used to take an image of the vehicle from the front if—
 - (a) using the device or system to take an image of the vehicle from the rear would be dangerous or impracticable; and

Examples

- 1 the topography of the place where the camera is located
- 2 the width of the road where the camera is located

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) as far as practicable, an image of the vehicle's driver is not taken.
- (4) Failure to comply with this section does not affect the admissibility of an image in a proceeding for an offence.

**20 Evidentiary certificates etc
Section 25 (2) (c)**

substitute

- (c) the recording or verification of an electronic file created by an approved camera detection device or an approved average speed detection system;
- (d) the vehicle's average speed between stated detection points.

21 Section 25 (3) (a)

substitute

- (a) that the traffic offence detection device is—
 - (i) an approved camera detection device; or
 - (ii) an approved speed measuring device; or
 - (iii) an approved average speed detection system;

22 New section 25 (3) (da)

insert

- (da) if the device is an approved average speed detection system—
 - (i) that a stated image is an accurate copy of an image taken by the system at a stated date, time and place or is an accurate copy of 1 of a set of images taken by the system at stated places at a stated time or during a stated period; or
 - (ii) that stated images are accurate copies of a set of images taken by the system at stated places at a stated time or during a stated period.

23 Section 25 (4)

after

approved camera detection device

insert

or an approved average speed detection system

24 New section 25 (5) (ca)

insert

- (ca) if the information indicates the average speed of the vehicle between 2 detection points—that the driver was driving the vehicle at that speed between the points;

25 Section 25 (5) (e)

omit

a regulation

substitute

a provision of the road transport legislation

26 Section 25 (6)

substitute

- (6) If an image mentioned in subsection (4) is a copy of 1 of a series or set of images taken by an approved camera detection device or an approved average speed detection system at a time or during a period, subsections (4) and (5) apply to the image considered by itself and to the image considered with other images in the series or set.

27 Section 27 heading

substitute

27 Inspection and purchase of images taken by traffic offence detection devices

**28 Notice of intention to challenge certain issues
Section 28 (1)**

substitute

- (1) This section applies if a defendant in a proceeding for an offence against this Act intends to challenge the following:
- (a) the maintenance, testing, sealing, use, accuracy or operating condition of a traffic offence detection device;
 - (b) a vehicle's average speed between 2 detection points.

29 Section 28 (3) (c)

substitute

- (c) outline the grounds on which the defendant intends to make the challenge.

30 New sections 29 to 29C

in part 6, insert

29 Use of images by road transport authority

(1) The road transport authority may use an image taken by a traffic offence detection device only—

(a) in connection with the enforcement of the road transport legislation; or

Examples

- 1 for deciding whether to issue infringement notices
- 2 for preparing prosecutions
- 3 for training staff
- 4 for testing and maintenance of traffic offence detection devices

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) if the use of the information is reasonably necessary for the enforcement of the criminal law or a law imposing a monetary penalty; or

(c) if the use of the information is required or authorised by—

- (i) a law of the Territory; or
- (ii) a law of the Commonwealth; or
- (iii) an order of a court of competent jurisdiction.

(2) In this section:

law of the Territory means, for a law made after the commencement of this section, a law that expressly requires or authorises the use of the information.

29A Disclosure of images by road transport authority

- (1) The road transport authority must ensure that an image taken by a traffic offence detection device is not disclosed by the authority to another person except—

- (a) in connection with the enforcement of the road transport legislation; or

Examples

- 1 to a police officer for deciding whether to issue an infringement notice
- 2 to a prosecutor for preparing a prosecution
- 3 to a contractor engaged to service a traffic offence detection device

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) if the disclosure of the information is reasonably necessary for the enforcement of the criminal law or a law imposing a monetary penalty; or

- (c) if the disclosure of the information is required or authorised by—

- (i) a law of the Territory; or

Example

to a person who can ask for a copy of the image under s 27

- (ii) a law of the Commonwealth; or

- (iii) an order of a court of competent jurisdiction.

- (2) In this section:

law of the Territory means, for a law made after the commencement of this section, a law that expressly requires or authorises the disclosure of the information.

29B Use, retention and disclosure of images by other people

A person to whom an image taken by a traffic offence detection device is disclosed under section 29A—

- (a) may use the image only for the purpose for which it was disclosed and in accordance with any applicable laws; and
- (b) must not retain the image for longer than required by or for that purpose, or as required by law; and
- (c) must not disclose the image to someone else unless the disclosure is required or authorised by—
 - (i) a law of the Territory; or
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court of competent jurisdiction.

29C Protection of images against loss etc

The road transport authority, and any person to whom an image taken by a traffic offence detection device is disclosed under section 29A, must ensure that the image is protected by the security safeguards that it is reasonable in the circumstances to take against—

- (a) loss; and
- (b) unauthorised access, use, modification or disclosure; and
- (c) other misuse.

31 Dictionary, new definitions

insert

approved average speed detection system means an average speed detection system approved under a regulation.

average speed, of a vehicle between 2 detection points, for part 6 (Traffic offence detection devices)—see section 22B.

average speed detection system, for part 6 (Traffic offence detection devices)—see section 23A.

average speed limit, for a driver of a vehicle on a road between 2 detection points if more than 1 speed limit applies between the points, for part 6 (Traffic offence detection devices)—see section 22AA.

detection point, for part 6 (Traffic offence detection devices)—see section 22AA.

32 Dictionary, definition of *indicated on*

after

approved camera detection device

insert

or an approved average speed detection system

33 Dictionary, definition of *relevant information*

substitute

relevant information, for part 6 (Traffic offence detection devices)—

- (a) for an image of a vehicle taken by a camera detection device—see section 22A (1); and
- (b) for an image of a vehicle, or a numberplate or anything else on a vehicle, taken by an average speed detection system—see section 22A (2).

34 Dictionary, new definitions

insert

shortest practicable distance, between 2 detection points, for part 6 (Traffic offence detection devices)—see section 22AA.

speeding offence, for part 6 (Traffic offence detection devices)—see section 22AA.

35 Dictionary, definition of *traffic offence detection device*

substitute

traffic offence detection device means—

- (a) an approved camera detection device; or
- (b) an approved speed measuring device; or
- (c) an approved average speed detection system;

Schedule 1 Road Transport (General) Act 1999—Consequential amendments

(see s 3)

[1.1] Section 26 (2) (e) (i)

substitute

- (i) how to inspect and obtain a copy of an image taken by the approved camera detection device or approved average speed detection system; and

[1.2] Section 35 (2) (e)

substitute

- (e) if the offence is a camera-detected offence—state that the offence is a camera-detected offence, and tell the person how to inspect and obtain a copy of an image taken by the approved camera detection device or approved average speed detection system.

[1.3] Dictionary, new definition of *approved average speed detection system*

insert

approved average speed detection system—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

[1.4] Dictionary, definition of *camera-detected offence*

after

approved camera detection device

insert

or an approved average speed detection system

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 June 2011.

2 Notification

Notified under the Legislation Act on 28 September 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Road Transport (Safety and Traffic Management) Amendment Bill 2011, which was passed by the Legislative Assembly on 22 September 2011.

Acting Clerk of the Legislative Assembly

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