

CLAUSE NOTES

VEHICLE AND TRAFFIC AMENDMENT (DRIVER DISTRACTION AND SPEED ENFORCEMENT) BILL 2022

Part 1	Preliminary
Clause 1	Short title This clause provides the Short Title of the Bill.
Clause 2	Commencement This clause provides that the Act commences on the day of proclamation.
Part 2	<i>Vehicle and Traffic Act 1999</i> amended
Clause 3	Principle Act This clause provides that, in this Part, the Principal Act is the <i>Vehicle and Traffic Act 1999</i> .
Clause 4	Section 3 amended (Interpretation) This clause inserts definitions for new terminology introduced by this Bill, including 'portable device', 'portable device offence', 'seatbelt offence', and 'registration offence'. The definition of 'portable device' specifically includes mobile phones, but also allows for other types of devices to be included as part of the definition as prescribed by the regulations. This allows for additional devices to be defined as 'portable devices' for the purposes of the Act, should new rules be introduced prohibiting the use of other technologies whilst driving. The term 'portable device' has been chosen for consistency with upcoming amendments to the Australian Road Rules, which are expected to introduce technology-neutral driver distraction rules and updated terminology. These changes are expected to be made subsequently to the <i>Road Rules 2019</i> . The definition of 'portable device offence' encompasses a range of driver behaviours involving the use of a portable device. This definition has been drafted for compatibility with rule 300 of the <i>Road Rules 2019</i> , which broadly prohibits the use of a mobile phone by a driver, as well as the expected technology-neutral driver distraction rules. This clause also amends the existing definitions of 'red light offence'

and 'speeding offence' to clarify that they relate to offences committed by a rider, as well as a driver.

Clause 5 Section 21 amended (Award of demerit points on conviction)

This clause amends section 21(4) so that existing provisions regarding the awarding of demerit points on conviction for successive offences detected by photographic detection devices also apply to successive portable device, seatbelt, or registration offences.

This clause implements consistent provisions for the additional detectable offence types introduced by this Bill.

Clause 6 Section 22 amended (Award of demerit points on traffic infringement notices)

This clause amends section 22(3) so that existing provisions regarding the awarding of demerit points by notice for successive offences detected by photographic detection devices also apply to successive portable device, seatbelt, or registration offences.

This clause implements consistent provisions for the additional detectable offence types introduced by this Bill.

Clause 7 Section 42A amended (Offence detection devices)

This clause amends section 42A(1)(a) to clarify that photographic detection devices may be used to detect portable device, seatbelt, and registration offences.

Section 42A(1)(a) currently provides a non-exhaustive list of the types of offences that may be detected by photographic detection devices, including red light and speeding offences, but not excluding other offences.

Clause 8 Section 56DA inserted

This clause clarifies that two photographic detection devices may be used together to determine the average speed of a vehicle between two detection points.

This clause ensures that the distance used in any average speed calculation is the shortest practicable distance that the driver could have travelled whilst staying on the road and complying with the law, regardless of the actual distance travelled by the driver. This is to ensure that the average speed calculated is as low as possible, which is to the benefit of the driver.

This clause also provides for the use of an average speed limit between detection points. For example, if two devices were set up at either end of a 2 km length of road, and the speed limit applying to the road was 100 km/h for the first kilometre and 80 km/h for the second kilometre, then an average speed limit of 90 km/h could

be used to determine whether an offence had occurred.

Clause 9

Section 56E amended (Facilitation of proof)

This clause amends the definition of 'photograph' to encompass a visual recording or a still derived from a visual recording to be used as evidence of an offence.

This clause also sets out that a photograph taken by a photographic detection device is evidence of in relation to a portable device, seatbelt, registration, or a speeding offence where the average speed of a vehicle is at issue.

Clause 10

Section 56EA inserted

This clause provides that a driver may be found guilty of another seatbelt or portable device offence if evidence is produced showing that the initial offence does not apply due to the age of a passenger or licence type of the driver.

This clause is designed to prevent a driver from avoiding penalty for an offence on the basis that they held a licence of a different type or that the passenger's age was different to the offence for which they were initially charged. In such cases, a court may find the driver guilty of another offence relevant to the actual licence type or passenger age.

Clause 11

Section 56F amended (Authorisation of persons to install and operate photographic detection devices)

This clause empowers the Transport Commission to authorise a police officer or person to install and/or operate a photographic detection device.

This clause also clarifies that such authorisation is to be given in writing.

Clause 12

Section 67 amended (Evidentiary certificates)

This clause provides that a certificate signed by the Transport Commission or a senior police officer may be used as evidence in legal proceedings that a person was authorised at a specified time to install and/or operate photographic detection devices.

Part 3

***Traffic Act 1925* amended**

Clause 13

Principal Act

This clause provides that, in this Part, the Principal Act is the *Traffic Act 1925*.

Clause 14

Section 3 amended (Interpretation)

This clause provides a definition of the term 'issuing authority', which encompasses the Police Service as an entity, as well as a police

officer and an authorised officer.

Clause 15 Section 43G amended (Notice of demand)

This clause amends section 43G(1) to enable an issuing authority, which includes the Police Service as an entity, to serve a notice of demand on the registered operator of a vehicle involved in an offence.

This clause also amends 43G(2)(c) to specify that the registered operator is to provide a statutory declaration to the issuing authority specified on the notice.

Clause 16 Section 43GB amended (Withdrawal of notice of demand)

This clause amends section 43GB(2)(a) to enable an issuing authority, which includes the Police Service as an entity, to withdraw a notice of demand.

Clause 17 Section 43H amended (Traffic infringement notices)

This clause amends section 43H(1) to enable an issuing authority, which includes the Police Service as an entity, to serve traffic infringement notices.

Clause 18 Section 43HA(1) (Notification of driver by statutory declaration)

This clause amends section 43HA(1) to clarify that a statutory declaration is to be provided to the issuing authority specified on the notice.

Clause 19 Section 43L amended (Service of notices)

This clause amends section 43L(1AA) so that requirements regarding the serving of a traffic infringement notice detected by a photographic detection device also apply to a notice relating to a portable device, seatbelt, or registration offence.

Part 4 Miscellaneous

Clause 20 Repeal of Act

This automatically repeals the amending legislation after the first anniversary of this Act commencing. The provisions that the amending legislation inserts into the Principal Act still remain in force after the repeal of the Amending Act.