

House of Assembly—No 104

As laid on the table and read a first time, 7 April 2011

South Australia

**Road Traffic (Traffic Speed Analysers)
Amendment Bill 2011**

A BILL FOR

An Act to amend the *Road Traffic Act 1961*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Road Traffic (Traffic Speed Analysers) Amendment Act 2011*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Road Traffic Act 1961*

3—Insertion of sections 54 to 58

- 10 After section 53B insert:

54—Operation of traffic speed analysers

- (1) For the purposes of this or any other Act, a traffic speed analyser must be operated in accordance with the following provisions:

- 15 (a) the traffic speed analyser must, at the relevant time, be operated in accordance with the prescribed standards;
- (b) the traffic speed analyser must not be operated in relation to vehicles that are, at the relevant time, more than—
 - 20 (i) if the traffic speed analyser is being operated in relation to a road with a speed limit of not more than 80 km/h—300 metres away from the traffic speed analyser; or

- (ii) if the traffic speed analyser is being operated in relation to a road with a speed limit of more than 80 km/h—800 metres away from the traffic speed analyser;
- 5 (c) the traffic speed analyser must not be operated in contravention of section 56;
- (d) the operation of the traffic speed analyser must comply with any other requirements set out in the regulations relating to the operation of traffic speed analysers.
- 10 (2) For the purposes of this section, if there is an inconsistency between the provisions of 2 or more prescribed standards—
- (a) if the inconsistency is between regulations made under subsection (3)(d) and any other prescribed standard—the regulations will prevail to the extent of the inconsistency;
- 15 (b) if the inconsistency is between an Australian Standard and an order referred to in subsection (3)(c)—the Australian Standard will prevail to the extent of the inconsistency;
- (c) if the inconsistency is between a recommendation referred to in subsection (3)(b) and an order referred to in subsection (3)(c)—the recommendation will prevail to the extent of the inconsistency.
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- (3) In this section—
- prescribed standards***—each of the following is a prescribed standard:
- 25 (a) any Australian Standard applicable to a traffic speed analyser of the relevant kind;
- (b) any recommendation (whether contained in a users manual or otherwise) of the manufacturer of the traffic speed analyser regarding the use of traffic speed analysers of the relevant kind;
- 30 (c) any general or specific order related to the use of traffic speed analysers made by the Commissioner of Police under the *Police Act 1998* or any other Act or law;
- (d) any other standard (however described) prescribed by the regulations for the purposes of this definition.
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55—Admissibility of evidence obtained by traffic speed analyser

- (1) Despite a provision of this or any other Act, no evidence obtained or purportedly obtained by the use of a traffic speed analyser can be adduced (whether by certificate or otherwise) in proceedings for an offence against this or any other Act unless—
- 40 (a) the traffic speed analyser was, at the relevant time, being operated in accordance with section 54; and

5 (b) the traffic speed analyser had, within such period preceding the relevant time as may be recommended by the manufacturer of the analyser or 12 months (whichever is the shorter), been calibrated in accordance with the following provisions:

(i) the calibration was carried out in accordance with—

10 (A) if an Australian Standard sets out requirements in respect of the testing and calibration of a traffic speed analyser of the relevant kind—that Australian Standard; or

(B) in any other case—any requirements set out in the regulations;

15 (ii) the person or body carrying out the calibration must hold a current National Association of Testing Authorities accreditation appropriate to the carrying out of such calibration;

20 (iii) any instrument or device used to calibrate the traffic speed analyser is the subject of a certificate issued under regulation 13 of the *National Measurement Regulations 1999* of the Commonwealth;

25 (iv) if the traffic speed analyser is calibrated or tested by being operated in respect of a particular distance—that distance has been certified by a person (other than a member of SA Police) who is appropriately qualified to certify as to the accuracy of such measurements;

(v) the calibration was carried out in accordance with any other requirement set out in the regulations; and

30 (c) a certificate purporting to be signed by a police officer of or above the rank of inspector and certifying that the relevant traffic speed analyser had been tested and calibrated in accordance with this section on a specified day and was shown by the testing and calibration to be accurate to the extent indicated in the document (a ***compliance certificate***) is tendered to the court.

(2) The regulations may make further provisions in respect of the preparation and contents of a compliance certificate.

40 (3) To avoid doubt, the onus is on the person seeking to adduce the evidence obtained or purportedly obtained by the use of a traffic speed analyser to prove the matters required under subsection (1)(a) and (b).

(4) In proceedings for an offence against this Act, a compliance certificate constitutes, in the absence of proof to the contrary, proof of the facts certified and that the traffic speed analyser was accurate to that extent on the day on which it was so tested and, for the purpose of measuring the speed of any motor vehicle—

(a) in the case of a traffic speed analyser that was, at the time of measurement, mounted in a fixed housing—during the period of 27 days immediately following that day; or

(b) in any other case—on the day following that day,

whether or not the speed measured differed from the speed in relation to which the analyser was tested or the circumstances of the measurement differed in any other respect from the circumstances of the test.

(5) For the purposes of subsection (4), a traffic speed analyser will be taken to have been mounted in a fixed housing at the time of measuring the speed of a motor vehicle if it was, at that time, mounted in or on a structure that was affixed to the ground.

56—Withdrawal of inaccurate traffic speed analysers from service

(1) Despite a provision of this or any other Act, the Commissioner of Police must withdraw from service a traffic speed analyser that is, during a calibration of any kind, found to be inaccurate by more than the margin specified by the regulations for the purposes of this subsection.

(2) A traffic speed analyser may not be returned to service until it has been recalibrated in accordance with this Act and found to be accurate.

57—Withdrawal of expiation notices

(1) This section applies to an expiation notice given for, or in relation to, an offence against this or any other Act detected by a traffic speed analyser—

(a) if the traffic speed analyser was not, at the time the offence was detected, being operated in accordance with section 54; or

(b) if the traffic speed analyser was, during the first calibration following the day on which the offence was detected, found to be inaccurate by more than the margin specified by the regulations for the purposes of section 56(1); or

(c) in any other circumstances prescribed by the regulations.

(2) Despite a provision of this Act or the *Expiation of Offences Act 1996*, the Commissioner of Police must withdraw an expiation notice to which this section applies.

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- (3) An expiation notice may be withdrawn under this section despite payment of an expiation fee or an instalment, but in that event the amount paid must be refunded.
- (4) The withdrawal of an expiation notice under this section is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.
- (5) If an expiation notice is withdrawn under this section—
- 10 (a) the Commissioner of Police must, if a certificate has been sent to the Court under the *Expiation of Offences Act 1996* for enforcement of the notice, inform the Court of the withdrawal of the notice; and
- (b) any enforcement order made under the *Expiation of Offences Act 1996* in respect of the notice and all subsequent orders made under Division 3 of Part 9 of the *Criminal Law (Sentencing) Act 1988* will be taken to have been revoked.
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58—Records relating to traffic speed analysers

- 20 (1) Despite a provision of this or any other Act or law, the Commissioner of Police must cause a copy of the following documents to be kept in relation to each kind of traffic speed analyser used by SA Police:
- (a) each prescribed standard (within the meaning of section 54);
- (b) any user's guide and manual of technical data (however described) published by the manufacturer of the traffic speed analyser.
- 25 (2) Despite a provision of this or any other Act or law, the Commissioner of Police must cause a record of each calibration of a traffic speed analyser to be kept that—
- (a) identifies the traffic speed analyser; and
- (b) identifies the person who calibrated the analyser; and
- 30 (c) identifies the location where the calibration was performed; and
- (d) sets out the date and time of the calibration; and
- (e) sets out the date and time of the preceding calibration (if any); and
- 35 (f) sets out the results of the calibration (including any errors or inaccuracy detected in the calibration); and
- (g) identifies—
- (i) any instrument or device used in the calibration; and
- 40 (ii) the results of the most recent calibration of that instrument or device prior to such use; and

(iii) if the traffic speed analyser is calibrated or tested by being operated in respect of a particular distance—when, and by whom, the accuracy of that distance was last certified (other than by a member of SA Police) prior to the calibration; and

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(h) sets out any other information required by the regulations.

(3) A document or record required to be kept under this section—

(a) must be kept available for inspection by any person during ordinary office hours at a place or places determined by the Commissioner of Police; and

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(b) may be published and made available to the public on a website determined by the Commissioner of Police.

(4) A person may, on payment of the prescribed fee, obtain a copy of any document or record required to be kept under this section.

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4—Amendment of section 175—Evidence

(1) Section 175(3)(ba)—delete paragraph (ba)

(2) Section 175(4)—delete subsection (4)