

House of Assembly—No 50

As laid on the table and read a first time, 2 May 2012

South Australia

**Road Traffic (Average Speed) Amendment
Bill 2012**

A BILL FOR

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Road Traffic Act 1961*

- 4 Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices
 - 5 Insertion of section 175A
175A Average speed evidence
 - 6 Amendment of section 176—Regulations and rules
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Road Traffic (Average Speed) Amendment Act 2012*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—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*

10 4—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices

- (1) Section 79B(1)—before the definition of *owner* insert:

average speed camera location has the same meaning as in section 175A;

- (2) Section 79B(6)—delete subsection (6) and substitute:

- 15 (6) Where a prescribed offence is alleged and the allegation is based on photographic evidence obtained through the operation of a photographic detection device, an expiation notice, an expiation reminder notice or a summons in respect of the offence must be accompanied by a notice in the prescribed form containing—

- 20 (a) a statement that a copy of the photographic evidence on which the allegation is based—

- 5
- (i) will, on written application to the Commissioner of Police by the person to whom the expiation notice, reminder notice or summons is issued, be sent by post to the address nominated in that application or (in the absence of such a nomination) to the last known address of the applicant; and
 - (ii) may be viewed on application to the Commissioner of Police; and
- (b) such other information or instructions as is prescribed.
- 10 (3) Section 79B—after subsection (10) insert:
- (11) Where evidence referred to in subsection (2) is evidence of the average speed of the vehicle between 2 average speed camera locations calculated in accordance with section 175A—
- 15
- (a) the time of commission of the offence will be taken to be the period during which the vehicle travelled between the 2 locations; and
 - (b) subsection (2)(b) applies as if the reference to "the name and address of some person other than the owner who was driving the vehicle at the time" were a reference to—
- 20
- (i) the name and address of each person other than the owner who drove the vehicle during the time of commission of the offence; or
 - (ii) the name and address of each such driver whose name and address is known to the owner and, in relation to every other driver of the vehicle during the time of commission of the offence, the reasons why the identity of the driver is not known to the owner and the inquiries (if any) made by the owner to identify the driver; and
- 25
- 30 (c) if the owner is not a body corporate, a statutory declaration furnished to the Commissioner of Police under subsection (2)(b) must also state whether or not the owner was also a driver of the vehicle during the time of commission of the offence; and
- 35 (d) subsection (2)(c) applies as if—
- (i) the reference in subparagraph (ii) to "the person who was driving the vehicle at the time" were a reference to any person who was driving the vehicle at the time; and

(ii) the reference in subparagraph (iii) to "the reasons why the identity of the driver is not known to the owner and the inquiries (if any) made by the owner to identify the driver" were a reference to the reasons why the owner does not know the identity of any driver and the inquiries (if any) made by the owner to identify a driver; and

(e) subsection (7) only applies to the person who is found guilty of, or expiates, the prescribed offence and subsection (8) only applies to the person who is found guilty of, or expiates, the offence against this section.

5—Insertion of section 175A

After section 175 insert:

175A—Average speed evidence

- (1) This section applies to proceedings for a prescribed road law speeding offence.
- (2) Evidence of the average speed of a vehicle between 2 average speed camera locations is, in accordance with this section, evidence of the actual speed of the vehicle.
- (3) The Minister may, by notice in the Gazette, specify—
 - (a) 2 average speed camera locations; and
 - (b) the fastest practicable route between those 2 locations; and
 - (c) the shortest distance that a vehicle could travel along that route between the 2 locations.
- (4) For the purposes of proceedings to which this section applies—
 - (a) where a fastest practicable route between 2 average speed camera locations and a shortest distance along that route are specified by notice under subsection (3), the route and distance specified in the notice will be conclusively presumed to be the fastest practicable route, and the shortest distance along that route, between the 2 locations; and
 - (b) where a vehicle appears from average speed camera evidence to have travelled between 2 such average speed camera locations—
 - (i) the vehicle will be conclusively presumed to have been driven between the 2 locations by that shortest distance along that fastest practicable route (regardless of the actual route taken); and
 - (ii) the average speed of the vehicle between the 2 locations, calculated by reference to—
 - (A) that shortest distance along that fastest practicable route; and

(B) the time taken for the vehicle to travel
between the locations,

expressed as a speed in kilometres per hour rounded
down to the nearest whole number, will, subject to
this section, be conclusively presumed to be the
actual speed of the vehicle along the whole of the
specified route between the 2 locations; and

(iii) subject to this section, each driver of the vehicle
between the 2 locations will be conclusively
presumed to have driven the vehicle at that actual
speed.

(5) Where there is evidence of the average speed of a vehicle between
2 average speed camera locations, proceedings for a prescribed road
law speeding offence may, if there was more than 1 driver of the
vehicle between the 2 locations, be brought against 1 driver or
against some or all of the drivers jointly as co-defendants and the
defendant, or each of the defendants, is liable to be convicted or
found guilty of the offence.

(6) If, in proceedings to which this section applies where there is
evidence of the average speed of a vehicle between 2 average speed
camera locations, the defendant satisfies the court that—

(a) more than 1 person drove the vehicle between the
2 locations; and

(b) the defendant has previously furnished to the Commissioner
of Police, in accordance with the regulations, a statutory
declaration stating either—

(i) the name and address of each person other than the
defendant who drove the vehicle between the
2 locations; or

(ii) the name and address of each such driver whose
name and address is known to the defendant and, in
relation to every other driver of the vehicle between
the 2 locations, the reasons why the identity of the
driver is not known to the defendant and the
inquiries (if any) made to identify the driver; and

(c) in a case where the defendant has furnished a statutory
declaration referred to in paragraph (b)(ii)—the defendant
does not know and could not by the exercise of reasonable
diligence have ascertained the identity of any driver whose
name and address is not so stated; and

(d) that defendant did not, at any time whilst driving the vehicle
between the 2 locations, drive at a speed that exceeded the
speed limit applicable to the defendant,

the court may determine that subsection (4)(b)(ii) and (iii) do not
apply in relation to the proceedings against that defendant.

(7) Evidence referred to in subsection (6)(c) and (d) must be given orally on oath.

(8) A person—

5 (a) may not be convicted or found guilty of a prescribed road law speeding offence on the basis of evidence of the average speed of the vehicle between 2 average speed camera locations calculated in accordance with this section if—

10 (i) the person has been convicted or found guilty of such an offence on the basis of evidence of the actual speed of the vehicle at a particular point on its journey between the 2 locations; or

(ii) the person has expiated such an offence and the allegation relating to the offence was based on such evidence of actual speed; and

15 (b) may not be convicted or found guilty of a prescribed road law speeding offence on the basis of evidence of the actual speed of the vehicle at a particular point on its journey between 2 average speed camera locations if—

20 (i) the person has been convicted or found guilty of such an offence on the basis of evidence of the average speed of the vehicle between the 2 locations calculated in accordance with this section; or

25 (ii) the person has expiated such an offence and the allegation relating to the offence was based on such evidence of average speed.

(9) The Governor may, by regulation—

30 (a) make provision for or in relation to the identification of an average speed camera location in a notice under subsection (3) or on a road or otherwise; and

(b) regulate the manner in which distances between 2 average speed camera locations may be determined; and

35 (c) regulate the manner in which the time taken for a vehicle to travel between 2 average speed camera locations may be determined (and may, for example, identify the point at which a vehicle will be taken to have commenced or ended a journey between 2 such locations for that purpose).

(10) In this section—

40 ***average speed camera*** means a photographic detection device of a kind prescribed by regulation as an average speed camera and

average speed camera evidence means evidence obtained through the operation of such a device;

average speed camera location means a location, specified in a notice under subsection (3), at which vehicles may be photographed by an average speed camera in accordance with any requirements prescribed by regulation;

5 *fastest practicable route* means a route by road specified in a notice under subsection (3) as the fastest practicable route that runs between 2 average speed camera locations specified in the notice;

prescribed road law speeding offence means a road law offence defined by the regulations as a road law speeding offence;

10 *shortest distance*, between 2 average speed camera locations, means the distance specified in a notice under subsection (3) as the shortest distance that a vehicle could travel along the route specified in the notice as the fastest practicable route between the 2 locations.

6—Amendment of section 176—Regulations and rules

15 Section 176(5b)—delete "this Act" and substitute:
 the Act or the regulations or rules