



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CrimEErg:1787561

18 October 2019

Mr Robert Borsak, MLC
Committee Chair
Portfolio Committee No. 5 – Legal Affairs
Parliament House
Macquarie Street
Sydney NSW 2000

By email: portfoliocommittee5@parliament.nsw.gov.au

Dear Mr Borsak,

Inquiry into the Road Transport Amendment (Mobile Phone Detection) Bill 2019

The Law Society makes the following comments on the Road Transport Amendment (Mobile Phone Detection) Bill 2019 (the Bill) for the committee's consideration.

The Bill seeks to amend the *Road Transport Act 2013* to provide that an object being held by a driver, and shown in a photograph from a device approved for mobile phone use offences, is deemed to be a mobile phone unless the accused driver can establish on the balance of probabilities that it was not.

The Law Society does not support the reversal of the onus of proof and legislative deeming of this kind.

The Law Society appreciates concerns around safety and the risks of using a mobile phone while driving. The Government has responded to these risks by making a significant investment in new camera technology. In the Second Reading Speech the Minister spoke of the quality and reliability of the technology as tested during the pilot period:

The high-resolution images captured by the camera clearly depict drivers holding objects that have the form of a mobile phone and are being held in a manner consistent with using the functions of a mobile phone, such as talking, texting or touching a screen. The technology uses artificial intelligence to automatically analyse images and identify those that are likely to show a driver using a mobile phone. These images are referred for further review and verification by appropriately trained personnel.

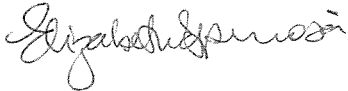
Given the high quality of the images the camera technology produces, and the process of review and verification, we query the need for a deeming provision.

The provision as proposed abrogates the prosecution's responsibility to prove an offence and instead places an unnecessary and unfair evidentiary burden on an individual to prove that they are innocent.

In addition, we are concerned that this amendment may, in practice, lead to additional disputes in court, resulting in an increase in work and costs for the Local Court. Members of the public will bear the cost of attending court in terms of lost work and engaging legal representation.

For the reasons detailed above, the Law Society does not support the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Espinosa". The signature is fluid and cursive, with the first name "Elizabeth" written in a larger, more prominent script than the last name "Espinosa".

Elizabeth Espinosa
President