

NOTICE TO DISPUTE

I hereby notify that I intend to challenge or dispute the following:

(1) The accuracy of a photographic detection device

My grounds for this challenge or dispute are:

1.

The photographic detection device used and the certificate of accuracy issued by the QLD Police Service under the Transport Operations (Road Use Management) Act 1995 (TORUM) QLD, does not comply with the accuracy and certification requirements of the National Measurement ACT 1960 Sections 10, 19a, 19aab and 20, and the National Measurement Regulations 1999 Regulation 16, 19, 37, 39, 41, 42, 46, 48, 58, 60, 63, 71, 73,74, 76, 90, and Schedules 1, 4, 7, 12, and therefore the alleged speed reading is inadmissible for any legal purpose as it has not been correctly certified.

1.a)

The State of Queensland must comply with the legislation and regulations of the National Measurement Act and National Measurement Regulations.

Commonwealth Constitution of 1901, Section 51(XV) gave the power to make laws in respect of weights and measures to the Commonwealth.

Section 109 of the Commonwealth Constitution provides that 'When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.'

The evolution of High Court doctrine in s. 109 cases has led to three broad approaches to determine when there is inconsistency:

- is it impossible to obey both laws? (the "simultaneous obedience" test)
- does one law confer a right which the other purports to take away? (the "conferred rights" test)
- does the federal law cover the field in question? (the "cover the field" test)

Clearly the National Measurement ACT (NMA 1960) and the National Measurement Regulations (NMR 1999) "cover the field" of legal units and measures. The NMA and the NMR give rights, that measurements for trade or any legal purpose must be made in accordance with those acts and regulations.

Section 4 of the NMA 1960, states,

Objects and application of Act

- (1) *The objects of this Act are:*
- (a) to establish a national system of units and standards of measurement of physical quantities; and*
 - (b) to provide for the uniform use of those uniform units and standards of measurement throughout Australia; and*
 - (c) to co-ordinate the operation of the national system of measurement; and*
 - (d) to bring about the use of the metric system of measurement in Australia as the sole system of measurement of physical quantities; and*
 - (e) to provide for a national system of trade measurement;*

and this Act shall be construed accordingly.

(1A) Subsection (2) does not apply in respect of the application of this Act and regulations to utility meters used for trade.

Note: Section 4A deals with the application of the Act in respect of utility meters used for trade

(2) This Act and the regulations do not apply to the exclusion of any law of a State or Territory except in so far as that law is inconsistent with an express provision of this Act or of the regulations.

Section 5 of the NMA 1960, states,

Act to bind the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island and any authority constituted by or under a law of the Commonwealth or of a State or Territory.

Section 20 of the NMA 1960 states in part,

Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular:

The Regulations referred to in the NMA 1960 are the National Measurement Regulations 1999.

Therefore, the National Measurement Act 1960 and the National Measurement Regulations 1999 apply to each State and Territory in the Commonwealth of Australia.

1.b)

Speed is a calculation of distance over time, and those two units of measure are listed as Australian legal units of measurement in Schedule 1 of the NMR 1999, expressed as meters and seconds respectively.

For a photographic detection device to make a legal measurement of distance over time, it must comply with Section 10 of the National Measurement Act 1960, which states,

NATIONAL MEASUREMENT ACT 1960 - SECT 10

Measurements to be ascertained in accordance with appropriate standards of measurement, Australian certified reference materials or certified measuring instruments

When, for any legal purpose, it is necessary to ascertain whether a measurement of a physical quantity for which there are Australian legal units of measurement has been made or is being made in terms of those units, that fact shall be ascertained by means of, by reference to, by comparison with or by derivation from:

- (a) an appropriate Australian primary standard of measurement;*
- (b) an appropriate Australian secondary standard of measurement;*
- (c) an appropriate State primary standard of measurement;*
- (d) an appropriate recognized-value standard of measurement;*
- (e) an appropriate reference standard of measurement;*

(f) 2 or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e);

- (g) an Australian certified reference material;
- (h) a certified measuring instrument;
- (i) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e) and an Australian certified reference material;
- (j) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e) and a certified measuring instrument; or
- (k) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e), an Australian certified reference material and a certified measuring instrument;

For a photographic detection device to make a legal measurement it must comply with the above section. No proof has been submitted in the prosecution brief to show the photographic detection device used an Australian Certified reference material mentioned at Part (g) , furthermore, the photographic detection device is NOT a Certified measuring instrument mention at part (h) and as defined at Section 3 of the NMA 1960;

"certified measuring instrument" means a measuring instrument that has been certified in accordance with the regulations and for which the certification is in effect.

The regulations for which the certification is in effect is found at Regulation 37 of the Nation Measurement Regulations 1999,

NATIONAL MEASUREMENT REGULATIONS 1999 - REG 37

Certification of measuring instruments

- (1) *On application under regulation 36, the certifying authority:*
 - (a) *may examine the measuring instrument; and*
 - (b) *may certify the measuring instrument; and*
 - (c) *if the instrument is certified--must issue a certificate for the instrument to the applicant; and*
 - (d) *may issue a copy of the certificate to anyone else whom the authority considers should be given a copy.*
- (2) *The certifying authority may refuse to examine a measuring instrument if the examination would create a significant risk of personal injury or death, or damage to property.*
- (3) *A certifying authority may certify a measuring instrument other than on application.*
- (4) *If the measuring instrument is certified under the supervision of a certifying authority, the authority may certify the instrument.*
- (5) *For a measuring instrument to be certified, it must:*
 - (a) *have an approved pattern; and*
 - (b) *bear a mark that identifies the particular instrument.*
- (6) *The certifying authority must mark a certified measuring instrument with the date of certification.*

Part (5) clearly shows that for a measuring instrument to be certified it MUST have an approved pattern. The photographic detection device does NOT have a pattern approval. Interestingly, the Breath Analyser Device used by Police DOES have a pattern approval.

Section 19A of the NMA 1960 states,

Patterns of instruments

- (1) *The regulations may make provision for or in relation to:*
 - (a) *the examination of patterns of measuring instruments;*
 - (b) *the approval and verification of patterns of measuring instruments as patterns of measuring instruments suitable for:*
 - (i) *use for trade; and*
 - (ii) *any other legal purpose;*
 - (c) *the issuing of certificates in respect of the approval and verification of patterns of measuring instruments; and*
 - (d) *the reception in evidence of a document purporting to be such a certificate and the admission as prima facie evidence of the matters stated in the document.*
- (2) *The regulations made under subsection (1) may provide that:*
 - (a) *examinations may be carried out;*
 - (b) *approvals may be given; and*
 - (c) *certificates may be issued;**by the Chief Metrologist, a delegate of the Chief Metrologist or another person on behalf of the Chief Metrologist.*
- (4) *Without limiting the matters that may be provided for in regulations made for the purposes of subsection (1), the regulations may provide that the granting of approval of a pattern of a measuring instrument as a pattern suitable for use for trade may be made subject to the retention of the measuring instrument or a part of the measuring instrument by the Chief Metrologist.*
- (7) *Before the Governor-General makes a regulation for the purposes of subsection (1), the Minister must also either:*
 - (a) *be satisfied that the regulation is not inconsistent with a specification published by the International Organisation of Legal Metrology regarding the examination and approval of patterns of measuring instrument; or*
 - (b) *if the regulation is inconsistent with a specification--be satisfied that:*
 - (i) *the inconsistency is in the national interest; or*
 - (ii) *it is not practicable to comply with the specification because of particular circumstances applying in Australia.*
- (8) *The Chief Metrologist may charge the prescribed fee for:*
 - (a) *the examination of patterns of measuring instruments under this section; and*
 - (b) *the approval and verification of patterns of measuring instruments as patterns of measuring instruments under this section; and*
 - (c) *the issuing of certificates in respect of the approval and verification of patterns of measuring instruments under this section.*

This section of the NMA 1960 gives the NMR 1999 the ability to make provisions for or in relation to pattern approval of measuring instruments for (i) use for trade; and (ii) ANY OTHER LEGAL PURPOSE. The photographic detection device must meet Regulation 37 of the NMR 1999, and therefore have Pattern Approval to be used for legal measuring purposes.

1.c)
Section 19a also gives the Regulations the provisions for the issuing of certificates for the verification of the pattern. No certificates that comply with this regulation have been provided by the Prosecution in the brief of evidence.

1.d)

The "Certificate of Accuracy" issued by the Police, under the TORUM Act 1995 does not comply with the certificate requirements of the NMR 1999 at Section 42.

1.e)

The photographic detection device does not bear a mark that complies with NMR 1999 Regulation 37 and 41, which gives the requirements for marking of instruments.

1.f)

All testing and certification of the photographic detection device must have legal traceability of testing as specified in the NMR and NMA and include certificates for all instruments and reference material.