**Second Reading**

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.59 p.m.]: I move:

That this bill be now read a second time.

The main purpose of the Road Transport Legislation Amendment (Miscellaneous Provisions) Bill 2009 is to amend road transport and fine enforcement legislation to improve the way the law operates for camera-recorded offences, to increase penalties for false nomination or failure to nominate offences, extend the time limit for commencing proceedings, reduce red tape by allowing corporations to nominate by means other than statutory declaration, confirm the operation of driver licence disqualification periods for major traffic offences, confirm driver blood alcohol limits for unlicensed, novice, and supervising drivers, and prevent unlicensed drivers from evading appropriate penalties. Under New South Wales road transport law, the registered operator of the vehicle is the person responsible for its management and use. This includes the requirement to nominate the person in charge of the vehicle in camera-recorded offences under what are called "operator onus" provisions.

The person responsible for the vehicle is deemed liable for certain offences, mainly camera-recorded offences, unless he or she can nominate the person who was in charge of the vehicle at the time. If the person served with the penalty notice by the State Debt Recovery Office [SDRO] for the offence is not the driver of the vehicle, he or she must nominate by statutory declaration the person who was responsible. The State Debt Recovery Office, through the Fines Act 1996, then issues a fresh penalty notice to the person nominated. The publicity surrounding the conviction of former judge Marcus Einfeld in March 2007 for perjury and perverting the course of justice for falsely nominating persons for traffic offences highlighted the potential for abuses of the system.

Other abuses include the failure to nominate the driver responsible—even though the fine is paid—which means that demerit points cannot be allocated. Some unscrupulous operators sometimes use this ploy to shield their drivers from licence sanctions. The purpose of the amendments to the Road Transport (General) Act 2005 is to increase the penalty for making a false or misleading nomination for a camera-recorded or parking offence from five penalty units, or $550, for an individual to 50 penalty units, or $5,500, and 100 penalty units for a corporation. This brings the penalty closer to those in other jurisdictions. For example, in Victoria, the penalty for a false statement for an operator onus offence is $6,800. Members are reminded that under the Crimes Act the penalty for giving false or misleading information where the information is provided to a person exercising a duty or function under a law in this State is a fine of 200 penalty units, imprisonment for two years, or both.

The bill also increases the penalty for failure to nominate to 50 penalty units for an individual and 100 penalty units for a corporation. The new penalties should act as a deterrent to those who seek deliberately to mislead or evade responsibility for traffic offences. Consistent with these measures is the proposal to extend the time limit from six months to 12 months in which proceedings can commence for false or misleading nomination offences. Collecting evidence to prove a false nomination, as was discovered in the Einfeld matter, takes time especially if the responsible operator uses time-wasting tactics or is uncooperative. The extension of the time limit to 12 months will provide law enforcement agencies, like the State Debt Recovery Office, with time to investigate whether the nomination is false and, if so, to gather evidence. Successful prosecutions will act as a further deterrent to committing the offence.

Not everyone does the wrong thing. Being mindful of this, and of the administrative burden on businesses, it is proposed to amend both the Road Transport (General) Act 2005 and the Fines Act 1996 to make it easier for corporations to nominate a driver by means other than a statutory declaration. This will provide a substantial benefit to car rental companies and fleet operators who, at present, must submit a separate statutory declaration nominating the responsible person for each traffic offence. It is likely that nominations will be transferred electronically and the proposal is consistent with the Government's intentions to cut red tape. It will also promote further business efficiencies within the State Debt Recovery Office. Only in cases where a nominee elects to have the matter dealt with by a court would the corporation be required to provide a statutory declaration.

When the Road Transport (General) Act was re-enacted in 2005 to include nationally agreed compliance and enforcement provisions for heavy vehicles, new definitions were introduced. Definitions such as "registered operator" were added to existing definitions relating to the responsible person for a vehicle to extend liability to parties in the chain of responsibility in the transport industry. The bill aims to clarify the scope and operation of these definitions as they apply to New South Wales and interstate vehicles, and to confirm that the amended definitions had effect from the time of the assent to the Road Transport (General) Act 2005.

Turning to the matter of disqualification periods, members would be aware that if a person has been convicted of three major traffic offences within five years he or she can be declared an "habitual traffic offender" and, in addition, be disqualified from driving for an additional five years. A court does have the power at a later time to quash the declaration. Some magistrates have taken the view that, in quashing a declaration, the disqualification period is void from the start—that is, it is deemed never to have existed. In cases where the disqualification

period has not commenced, this is clearly correct. However, the same cannot be said where the declaration is quashed after the period of disqualification has commenced. If the disqualification is considered to be quashed from the start, this may have consequences for a person who, despite being disqualified, is caught driving in that disqualification period. A person subject to an habitual offender declaration may apply at any time for such a declaration to be quashed, including after being caught and charged with driving while disqualified.

Where the declaration is quashed in such a case, an interpretation that deems the disqualification period never to have existed means that the entire period of disqualification is removed and the charge of driving while disqualified cannot proceed. The bill seeks to address this by amending road transport law to clarify that where a court quashes an habitual traffic offender declaration, if the period of disqualification has started, it ends on the date the court orders the quashing. This makes it clear that any period of disqualification that has been served is to remain and therefore is valid. This amendment will support police in prosecuting an offence of driving while disqualified in these cases, and effectively removes the opportunity for a person to avoid penalties for unauthorised driving.

Turning to the related matter of penalties for serious traffic offences, I point out that in 1998 the Government responded to community concern about irresponsible and dangerous driving, and amended the former Traffic Act 1909 to increase fines, disqualification periods and terms of imprisonment. An escalation of penalties through a second or subsequent offence penalty regime was also introduced. This applied to a person who previously committed the same type of offence, or any one of the other major offences in a five-year period, and included an automatic disqualification period of two years.

Major offences included furious or reckless driving, driving under the influence of alcohol or other drugs and negligent driving causing death or grievous bodily harm. In the following year, the Act was amended to insert section 25A that provided, among other things, a second or subsequent penalty regime for offences such as driving while disqualified, suspended, cancelled or refused. Earlier this year, a Court of Criminal Appeal ruling found that second or subsequent penalty provisions of section 25A do not increase disqualification periods if the first offence was a major offence. The effect of the ruling is that, while fines and periods of imprisonment are increased, disqualification periods will be increased under section 25A only if the earlier convictions are for driving while disqualified, suspended, cancelled or refused, and not for major offences. This was never the policy intent.

It is proposed to amend section 25A of the Road Transport (Driver Licensing) Act 1998 to ensure that a person is subject to the second offence disqualification period of two years, if convicted of driving during a period of disqualification, cancellation, refusal or suspension, or any other major offence. In addition, it is intended to confirm that the section had effect from the time it was originally enacted. I should point out that the changes to section 25A that I have just outlined will not be extended to include the offence of driving during a period of suspension imposed for non-payment of fines.

In September 2008 a new section 25A (3A) was created to make a distinction in the law between driving during a period of suspension imposed for road safety reasons, such as excessive speeding or demerit points, and driving during a suspension period imposed because a person failed to pay an outstanding fine amount to the State Debt Recovery Office. These amendments are consistent with and further support the recommendations of the New South Wales Sentencing Council.

Turning to the matter of unlicensed driving, I point out that severe penalties apply under the Road Transport (Driver Licensing) Act 1998 to persons driving without ever having been licensed. A first offence attracts a fine of 20 penalty units, or $2,200, while a second or subsequent offence attracts 30 penalty units, or $3,300, or imprisonment for 18 months or both. Never having been licensed is defined as not holding a driver licence in Australia for at least five years before being convicted of the offence. Police report that, when charged with a second offence, some accused are taking out a learner licence before the matter goes to court. In doing so, they avoid the higher penalty. Accordingly, the proposed amendment will remove that opportunity by changing reliance on the five-year period before the person is convicted of the offence to the five-year period before the offence was committed.

In 2004 a zero blood alcohol content limit was introduced for learner and provisional drivers. Previously these drivers were special category drivers, and were subject to a legal blood alcohol content of 0.02. Currently, special category drivers include drivers of public passenger vehicles, coach or heavy vehicle drivers, drivers of vehicles transporting radioactive or other dangerous goods, or drivers who have had their licence cancelled, refused or suspended, or who have been disqualified from driving or who have never obtained a licence. However, doubt has been raised as to whether the zero alcohol blood alcohol content would continue to apply if the learner or provisional licence was suspended or cancelled, and the person was deemed to no longer be the holder of such a licence. In those circumstances, the person would default to a legal blood alcohol content of 0.02. This appears to have been an unintended consequence of the drafting of the zero blood alcohol content laws in 2004.

It is proposed to amend the Road Transport (Safety and Traffic Management) Act 1999 to ensure that the legal blood alcohol content limit of zero, which applies to the holder of a learner or provisional licence, continues to

apply if that licence is subsequently cancelled or suspended, or when the licence expires or the holder is disqualified from driving. Consistent with this proposal, the zero blood alcohol content limit will be extended to apply to a person who has never obtained a licence. These persons currently fall into the special range category with a blood alcohol content limit of 0.02.

Lastly, as we have seen, the Road Transport (Safety and Traffic Management) Act 1999 specifies not only the legal blood alcohol content levels and the alcohol offences for drivers, but also the supervisors of learner drivers. The supervising driver offences rely on the person who is learning to drive actually holding a learner licence. In the case of heavy vehicles, the person learning to drive is not issued a learner licence. The person learning to drive is required only to hold a valid driver licence and be eligible to progress to the licence class of the vehicle that the person is learning to drive. As a consequence, the existing provisions do not place a legal blood alcohol content limit on supervisors of persons learning to drive heavy vehicles. This anomaly can be corrected by replacing the words "a holder of a learner licence" in the provision with "a person learning to drive". This will introduce the intended legal blood alcohol content limit of 0.02 on the supervising driver of a heavy vehicle.

These measures before the House aim to improve safety on our roads by improving the accountability of those responsible for camera-recorded traffic offences. In addition, it seeks to make amendments to other aspects of road transport law to ensure that the unlicensed drivers cannot evade penalties, that habitual traffic offenders who drive while disqualified can be penalised and that drink-driving laws are applied consistently and effectively to learner and provisional drivers and to supervisors of heavy vehicle learners. I trust all members will lend their unreserved support to the Government's proposals. I commend the bill to the House.