Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.36 p.m.]: I move:

That this bill be now read a second time.

The main purpose of the bill is to amend road transport and fine enforcement legislation to provide for efficiencies in the process of the penalty notice life cycle. Other measures in the bill are directed at corporations that do not do the right thing and attempt to shield their drivers from the allocation of demerit points and possible licence suspension. The bill has been a joint proposal by the Roads and Maritime Services and the State Debt Recovery Office in developing the measures. Officers of the Department of Attorney General and Justice and the Ministry for Police and Emergency Services were consulted. I thank those agencies for their contribution.

By way of background, section 179 of the Road Transport (General) Act 2005 provides that when a camera-recorded public transport lane, traffic light or speeding offence is committed, the responsible person for the vehicle is taken to have committed the offence. The responsible person includes the registered operator of the vehicle. The provision is necessary because the actual offender is not spoken to or identified at the time these camera offences are committed. In the first instance, the penalty notice or court attendance notice for the offence is sent to the registered operator. If the registered operator was not the driver, the law requires the registered operator to nominate the person who was. If a nomination is made, the responsibility for the offence is transferred to the person nominated. This not only provides protection for the registered operator who was not the driver but ensures the driver at the time of the offence is held accountable. By the same token, if the registered operator fails to nominate a person when they should have or falsely nominates a person as being in charge of the vehicle it is an offence.

Where the registered operator who is a real person, such as, in the case of privately registered vehicles, does not nominate another person as the offender, there is generally no problem in assigning responsibility for the offence, including demerit points, to the registered operator. However, where the registered operator is a company, responsibility for the offence cannot be assigned to a real person unless the company actually nominates. This provides some scope for the company to shield the offender. The incentive to do this is to avoid the allocation of demerit points and the possible loss of licence.

Much work has been done in introducing measures to encourage a company to nominate the offending driver. Those measures that previously have been agreed to by this place include increasing the maximum court fine for a company that falsely nominates or fails to nominate an offender to 100 penalty units or $11,000, extending the period of time in which a person may be prosecuted for falsely nominating a driver from 6 months to 12 months, and allowing drivers to be nominated by means other than by way of statutory declaration. Whilst those measures have been successful in encouraging greater compliance, there still remain a number of companies that are prepared to shield drivers at the expense of incurring these additional fines in the company name. The proposals in the bill complement and strengthen

those earlier measures. They provide for efficiencies in the process of the penalty notice life cycle and they also ensure that the nomination process keeps pace with the new technologies around camera enforcement. The measures also further target companies that fail to nominate.

I will now explain in more detail those measures. The current provisions require a responsible person, when nominating the offender, to give the name and address of the offender. Often, insufficient information is given to the State Debt Recovery Office to enable it to issue a new penalty notice or court attendance notice to the nominated person. The bill amends section 179 to provide that a person who nominates another person as the offending driver in a relevant nomination document, if directed, is to appear before an authorised person or prosecutor for the purposes of interview or to provide additional information that it is in the person's power to give that may lead to the identification of the driver.

This includes providing a statement in writing. A similar requirement already exists in the Act with respect to the supply of additional information under the chain-of-responsibility provisions. The requirement to provide this additional information is not seen as onerous. Clause 90 of the Road Transport (Safety and Traffic Management) Regulation 1999 currently provides that the responsible person for or the person in charge of a motor vehicle must, before permitting any other person to drive the vehicle, cause the driver licence issued to the person to be produced to the responsible person or person in charge and inspect the licence.

Further, it is not seen as an impost on a company to maintain a log of its vehicle's use. It is expected that a company would maintain the full identity and address details of its drivers and their licence information, which represent a person's authority and legitimacy to drive company vehicles. Similar requirements to maintain and keep records already exist within the heavy vehicle fatigue management provisions and the motor vehicle dismantler provisions. The benefit of such a provision is that in the circumstance where an offender was correctly nominated but the offender subsequently falsely nominates another person, a stronger prosecution case can be made with the use of the additional information. Additionally, those who may think about falsely nominating another person may reconsider doing so in the knowledge that they may be required to attend and give additional information over and above the name and address information that is asked for in the statutory declaration.

The bill proposes to reduce the time in which a penalty notice is deemed to be served when served by post from 21 days to seven days. Most penalty notices and penalty reminder notices for operator onus offences are served by post. To establish time frames for action by the responsible person—and by the authorised officer for the penalty notice—the legislation contains provisions that presume service to have occurred at a specified time after the notice was posted. Currently, a penalty reminder notice is presumed served after seven days, but for the original penalty notice the period is 21 days.

This creates an unnecessary delay in dealing with penalty notices and can reduce the number of subsequent penalty notices that can be sent where subsequent nominations are received before prosecution of the offence becomes statute barred. Evidence has shown that the 21-day period can assist unscrupulous persons to defeat prosecution of the real offender because the statutory time limit expires. It is proposed to reduce the period for presumed service of a penalty notice from 21 days to seven days. The penalty notice recipient would still be entitled to establish that service did not occur within that seven-day period and would still have 21 days from the presumed service date in which to nominate or otherwise deal with the notice.

New technologies have enabled cameras to be used to detect multiple driving offences from a

single camera incident. For example, cameras at intersections with traffic lights are capable of detecting in the one camera image evidence of the driver committing a traffic light offence, a speeding offence, an unregistered vehicle offence and an uninsured vehicle offence. The current operator onus provisions limit one statutory declaration being provided for a single offence. However, the provisions are impractical for cameras that are capable of detecting multiple offences with the one image.

By way of illustration, the current provisions would require a registered operator to provide a statutory declaration for each offence in order to nominate the same offending driver. This is onerous on the responsible operator who is trying to do the right thing. It also presents an illogical situation where different persons could be nominated for each offence in a single camera incident. The current provisions also expose the registered operator to prosecution for failing to nominate where only one statutory declaration is received for multiple offences. The bill proposes to expand the current provisions to enable a single statutory declaration to be provided for all offences detected in a single camera incident.

As I mentioned earlier, a penalty notice for a camera offence will be sent in the first instance to the registered operator, which can also be a company. Some companies have adopted the practice of simply paying the fine for the camera offence and not nominating the offender. To encourage companies to nominate offending drivers, the bill increases the monetary penalties applying to a camera-detected offence where the offence remains in the company name. An increased fine for companies is in practice in some other Australian jurisdictions. Currently, a single maximum court fine exists irrespective of whether the offender is an individual or a corporation. For the majority of camera-recorded offences the maximum court fine is 20 penalty units or $2,200.

In the case of heavy vehicles speeding more than 45 kilometres an hour over the limit, the maximum court fine is 30 penalty units or $3,300. The fines for individuals will remain at current levels. However, the bill proposes that corporations face maximum court fines of five times these amounts. That is, in the case of heavy vehicles speeding more than 45 kilometres an hour over the limit, the maximum court fine applicable to a corporation will be 150 penalty units or $16,500. For any other camera-detected offence, the maximum court fine will be 100 penalty units or $11,000. The prospect of facing the increased maximum court fine will be a further deterrent for those remaining corporations that are prepared to incur the current fine levels but continue to fail to nominate the offending driver.

It is proposed to make a corresponding increase in the penalty notice fines for offences that are not prosecuted through the courts. The great majority of offences are dealt with by way of penalty notice. Consistent with introducing an increased maximum court fine for a corporation, the bill also proposes to introduce increased penalty notice fines for a corporation for camera-recorded offences, which also will be set five times higher than those that apply to an individual. For example, an individual or corporation reported for a camera-recorded offence of speeding more than 20 kilometres an hour in a light motor vehicle currently faces a penalty notice fine of $371. Under the proposed changes where a penalty notice is issued in the name of a corporation the fine will increase to $1,855.

Increasing both the penalty notice fine and the maximum court fine will deter some registered operators from routinely court-electing the penalty notice in the hope of avoiding the higher penalty notice fine because they, in turn, run the risk of the increased court fine on conviction. The increased monetary penalty for corporations introduces a substantial incentive to a corporation to nominate the offending driver. I point out that if the company does the right thing and nominates the offending person, as required, it does not have to pay

any of the fines. Instead, a new penalty notice is sent to the person nominated, and it will attract the current lower values.

Parking offences are excluded because of the difficulties for enforcement officers at the roadside to determine whether a vehicle is registered in the name of a corporation and, therefore, which fine value to apply. The measures in the bill that I have just mentioned will provide for efficiencies in the management of penalty notices and ensure that the nomination process keeps pace with new technologies in camera enforcement. The increased monetary penalties in this bill will not apply to any individual or corporation that does the right thing and nominates the driver in a camera-recorded offence. However, the increased fines will send a clear message to a corporation that not nominating a driver will come at a substantial cost.

The opportunity is being taken with this bill to correct oversights from previous reforms. Section 41 of the Road Transport (Safety and Traffic Management) Act 1999 deals with burnout offences. Section 41 (1) provides for the offence of burnout and section 41 (2) provides for the more serious offence of aggravated burnout. The street racing provisions were amended in 2008 as part of a range of reforms. Prior to the 2008 amendments, police were able to seize vehicles used in either form of burnout offence. It was the intention of the 2008 amendments that police could seize only vehicles involved in the more serious aggravated burnout offence. Amendments were made and the continued reference to the burnout offence is an oversight. The bill proposes to rectify the oversight by amending section 218 (1) (a) of the Road Transport (General) Act 2008 to remove the incorrect reference to the burnout offence.

Sections 8 and 14 of the Road Transport (Safety and Traffic Management) Act 1999 deal with drink- and drug-driving offences and the prescribed concentration of alcohol for different categories of drivers. The provisions impose lower blood alcohol limits on novice drivers and unlicensed drivers. Novice drivers, that is, those with learner and provisional licences, must have a blood alcohol limit of zero. Drivers who are unlicensed are classified as special category drivers and can have a blood alcohol limit of 0.02. The legislation was amended in December 2009 to ensure that a novice driver who was disqualified or whose licence was expired was not subject to a blood alcohol limit of 0.02 but to a blood alcohol limit of zero, just the same as a novice driver with a current licence. By oversight, the 2009 amendment was not replicated in the definition of "special category driver". This means that a novice driver with an expired licence cannot be charged with a special range alcohol offence—up to 0.05—even though novice drivers with current licences can. The bill rectifies the oversight by including in the definition of a "special category driver" persons with expired licences.

By oversight, section 14 (1) (a1) also was not amended. As a result, expired novice drivers who fail a roadside breath test cannot be arrested, undergo secondary testing or be charged if their roadside test indicates they have a blood alcohol reading in the novice range—up to 0.02—even though novice drivers with current licences can. The bill rectifies the oversight by amending section 14 (1) (a1) to replace the reference to "the holder of a learner or provisional licence" with a reference to a "novice driver". The definition of a "novice driver" currently includes a novice driver with either a current or expired licence.

This is important legislation because it puts companies on notice that if they do the wrong thing and fail to nominate a driver they will face increased fines. If companies do the right thing and nominate the offending driver, they will avoid facing these additional measures. These measures are directed at those companies that do not do the right thing, and we know

who they are. These tough new penalties will make those who think they are above the law think twice. There is no reason why a company cannot put in place measures to identify who was driving a company vehicle at any time. Companies can avoid these penalties by simply maintaining a record of vehicle use, which enables them to nominate the actual offender. The former Labor Government promised to introduce these laws but, as in so many instances, failed to deliver. I trust all members will lend their unreserved support to these sensible Government proposals. I commend the bill to the House.

Debate adjourned on motion by the Hon. Lynda Voltz and set down as an order of the day for a future day.