



Industrial Relations Amendment (Public Vehicles and Carriers) Bill.

Second Reading

Mr BRYCE GAUDRY (Newcastle—Parliamentary Secretary) [10.59 a.m.], on behalf of Ms Reba Meagher: I move:

That this bill be now read a second time.

The Industrial Relations Amendment (Public Vehicles and Carriers) Bill proposes two important amendments to the Industrial Relations Act 1996. To give the House some background, chapter 6 of the Industrial Relations Act provides for a modified industrial relations system for drivers of public vehicles and carriers of goods who are engaged under contracts that are not contracts of employment. Chapter 6 recognises that whilst these drivers are not employees in the true sense, nevertheless they share many of the characteristics of employees, and deserve protection from exploitation.

Taxidriviers, van drivers, motorcycle and bicycle couriers and truck drivers share one characteristic in particular: they lack the bargaining power to achieve reasonable rates of pay and conditions of employment. Our industrial relations system recognises the right of employees to join together and bargain collectively to achieve reasonable outcomes in pay and conditions. But people who work under arrangements that are not employment contracts are generally excluded from the industrial relations system. They are left to bargain individually.

In New South Wales, chapter 6 provides a way of regularising outcomes for drivers and principal contractors. Under chapter 6 the Industrial Relations Commission can make contract determinations, such as awards, to determine the rates of pay and conditions under which these drivers are to be engaged. The commission can also approve contract agreements, such as enterprise agreements, between parties in relation to such contracts. However, chapter 6 of the Act is not without its challenges. Sections 45 and 45A of the Federal Trade Practices Act 1976 prohibit anti-competitive conduct. Section 51 (2) of the Federal Act exempts from this prohibition conduct engaged in pursuant to employment agreements and arrangements. Essentially the whole area of industrial relations is exempt.

But section 51, as it is generally understood, does not exempt conduct engaged in with relation to independent contractor agreements and arrangements. It would seem, therefore, that much of chapter 6 contravenes the Trade Practices Act. However, the Trade Practices Act does contain another means for exempting such conduct. Section 51 (1) (b) of the Trade Practices Act provides that the prohibition against anti-competitive conduct does not apply to anything that is done in a State, if the thing is specified in and authorised by legislation of that State or by regulation under such legislation. Thus, chapter 6 is currently protected from the prohibition in the Trade Practices Act by section 310A of the Industrial Relations Act by virtue of a sunset clause which is due to expire on 14 December 2003. The appropriateness of continuing this exemption has now been given full consideration by the Government.

The centrepiece of this process was to subject the exemption to a rigorous public benefit assessment. This particular task was done by Professor Mark Bray and his colleagues from the Employment Studies Centre of the University of Newcastle, who reported in late 2002. Their conclusion was that chapter 6 has not had a substantial impact on the degree of competition in the road transport industry and that the public benefits of the legislation outweigh the public costs. In particular, it was concluded that there was market failure in road transport when contract carrier rates were unregulated because the price mechanism did not effectively regulate the supply and demand of contract carriers. Further, this market failure had significant and adverse consequences for industrial relations, occupational health and safety, road safety and quality of service. Their principal recommendation is that chapter 6 should receive permanent protection against the anti-competitive provisions of the Trade Practices Act and the Competition Code of New South Wales.

The second amendment which this bill seeks to carry forward goes to the coverage of the chapter 6 provisions. Chapter 6 of the Act, among other things, regulates the taxicab and private hire vehicle bailment industry. As it stands, the Act does this in terms of transport districts established under the Transport Administration Act 1988. Currently, these districts cover only the Sydney, Newcastle and Wollongong areas. At present, there is only one contract determination in the taxi industry and that applies only in the Sydney area. Although Newcastle and Wollongong taxidriviers have long enjoyed access to the chapter 6 scheme, it would appear that there has been no need to seek recourse to the industrial relations system in these areas. However, these bailment arrangements now typically operate in major non-metropolitan areas of New South Wales, such as Nelson Bay, the Blue Mountains, Coffs Harbour and Wagga Wagga.

The Government's view is that there is no good reason for taxidriviers and private hire vehicle operators in regional areas to be denied access to the chapter 6 provisions, which already protect their colleagues in Sydney, Newcastle and Wollongong. The Government was therefore happy to promise, prior to the last election, that this anomaly would be removed. This bill puts that promise into effect by amending section 307 of the Act to remove references to the

transport districts created by the Transport Administration Act 1988. This would ensure equal access to the chapter 6 regulation for all taxicab bailment arrangements throughout New South Wales and correct the anachronistic and unnecessary exclusion of regional taxidriviers and private hire vehicle operators from the benefits of chapter 6. I would emphasise that the amendment does no more than open up access to the chapter 6 jurisdiction. Any future determinations applying to taxidriviers and private hire vehicle operators are to be crafted by the Industrial Relations Commission to suit the circumstances and requirements of the particular area or set of bailment arrangements that they are intended to cover. I commend the bill to the House.

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