



Passenger Transport Amendment (Bus Reform) Bill.

Second Reading

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [8.31 p.m.]: I move:

That this bill be now read a second time.

The Government, the community and the bus industry itself recognises that the way that bus services are delivered in New South Wales needs reform. In metropolitan areas there is no real bus network. Services are planned as a series of individual operations and cannot operate freely outside exclusive contract areas. Bus service contracts have few measurable service requirements and are effectively granted in perpetuity. The funding model rewards operators for cost control rather than service provision. The minimum service level requirements force operators to plan indirect, slow and unattractive services. Not surprisingly, patronage levels on private bus services have fallen consistently since 1991. The Government and the industry share concerns over the financial viability of some operators under the current system.

Across rural and regional New South Wales, community funding is tied up in an under-utilised fleet. In some cases services are duplicated, while in too many cases an appropriate service is unavailable. Rather than taking a unified regional approach to service delivery, the State currently manages more than 1,800 separate contracts for bus services in country New South Wales. The solutions to these problems have come from passenger, community, industry and government submissions to the Unsworth review. Former Premier and transport Minister, Barrie Unsworth investigated the planning, funding, contracting and statutory reforms required to achieve change. In March the Government gave in-principle support to these reforms. Many of the ideas are simple—such as having routes that go where people want to go—but are difficult to deliver as things stand now.

The Unsworth review crystallised approximately 3,000 submissions into a series of 48 recommendations aimed to introduce a network of strategic bus corridors, supported by an expanded bus priority program in metropolitan areas; common standards, with service levels tailored to each community; the pensioner excursion ticket to all buses across the metropolitan area and to large country towns where appropriate; performance standards, community consultation and staff training as key requirements of the new contracts; better co-ordination of bus with rail and ferry services; and the ability to direct public transport subsidies where they are required. For country New South Wales, the review recommended phasing in new contracting arrangements for bus services that maximise the efficient use of available resources, and opportunities to contract for services that meet the needs of the broader community, not just school students.

In January 2004 the Bus Reform Task Force, comprising representatives from the industry and the Ministry of Transport, was established to develop options for transitioning to the proposed new arrangements. This forum made significant progress over the past five months, as it reached agreement on an expressions of interest process to transition to new contracts, completed a discussion draft of the service planning guidelines to replace the minimum service levels policy, and undertook a significant risk analysis exercise to feed into a new funding model for metropolitan contracts. Legislative change is now required to effect these reforms.

The Passenger Transport Amendment (Bus Reform) Bill introduces a more contestable regime of performance-based contracts to replace the current virtually perpetual contracts that have few measurable performance standards; gives parties the flexibility to determine the terms and conditions of service by shifting the detail from the legislation to the contracts; allows for changes to be negotiated on the expiry of a contract term, so that services meet changing needs; facilitates the introduction of more transparent and accountable funding arrangements, including the payment of School Student Transport Scheme [SSTS] subsidies on the basis of actual travel undertaken; provides an independent process for setting the maximum fares that private or government-owned bus operators may charge; and allows for existing commercial service contracts to be varied or terminated, if that becomes necessary in order to move to the new system.

The bill creates a new division 3 of the Act, which deals solely with regular bus services, including transitway services. Contracts for regular bus services will no longer be fettered by legislative provisions which; confer exclusive rights to operate services in the contract area; give operators a right of contract renewal, virtually in perpetuity, on the same terms and conditions; and shackle service planning to rigid minimum service levels. Instead, the bill provides for passenger-focused, performance-based service contracts, supported by more flexible service planning guidelines. The new division empowers the Director-General of the Ministry of Transport to enter into contracts for regular bus services for a maximum term of eight years. The intention is for new service contracts to be for a seven-year term, while giving the director-general the ability to extend the contract for up to 12 months.

The bill makes it clear that there is no right or expectation of renewal for a regular bus service contract, except as may be set out in the contract. However, it is proposed that the contract will allow the director-general to enter into a further contract with the contract holder, if the performance standards set out in the contract have been met and the parties can agree on any new terms. This will allow the director-general to negotiate changes to contract area boundaries, service levels and performance standards, and subsidy payments, as needs change. The contract will detail how the contract holder is to be remunerated, including payment of SSTs on actuals and the right incentives to promote value for money and patronage growth.

There will no longer be a distinction between commercial and non-commercial service contracts. The new division also allows for regulations to limit the number of contracts a person can hold to ensure a competitive market for services and contracts. Proposed amendments to section 16 in division 1 of part 3 will allow a contract holder to enter into arrangements with other accredited operators, such as subcontracting arrangements, to provide services covered by the contract.

New division 3 also permits the director-general to declare, vary or abolish bus contract regions and strategic corridors from time to time. This does not mean that unilateral changes can be made to service contracts, entered into under the new arrangements, while those contracts are on foot. In other words, the declaration, variation or abolition of a new contract region or strategic corridor will have no impact on the operation of a new contract. The bill preserves the power to determine transitway routes. Given the significant public investment in transitway infrastructure, this ensures that the Government is in a position to negotiate the best possible return for taxpayers. It also ensures that the Government can achieve appropriate levels of service integration where a new transitway route will cross contract region boundaries or an existing route is extended.

Currently, the Independent Pricing and Regulatory Tribunal [IPART] determines the maximum fares that the State Transit Authority may charge, as a government monopoly service provider, for regular bus services. The new division 3 gives IPART the power to make binding determinations for the maximum fares that may be charged, no matter whether the contract is held by a private operator or the State Transit Authority. Compliance with IPART's determination will be an essential term of the contract. In other words, the contract may be terminated if the holder charges more than the maximum fare set by IPART.

I can also announce tonight that the Government will undertake a review of concessions policy to ensure that this policy is fair and reflects social welfare priorities. The review will aim to achieve consistency, equity and adequacy across transport providers, whether public or privately operated. This review will commence immediately and will be completed in time to ensure that its results can be incorporated into the new metropolitan bus service contracts to be in force from 1 January 2005. The bill also contains amendments to the accreditation regime for operators and drivers—other than taxicab and private hire vehicles—making it clear that different accreditation standards may be prescribed for different kinds of services. This provision aims to maximise flexibility and improve service delivery, particularly in rural and regional areas.

As well as the provisions for contracting bus services, the bill contains savings and transitional provisions which preserve bus service contracts that are in force immediately prior to the commencement of the amendments, and provide the director-general with powers necessary for the transition to the new arrangements. The bill gives the Director-General of the Ministry of Transport power to vary and/or terminate existing commercial contracts—defined in the bill to include existing commercial contracts and existing transitway contracts. I wish to make it clear that the Government does not want to have to resort to legislation in order to extinguish existing contracts, and the Bus Reform Task Force has established a process aimed at achieving negotiated outcomes. However, the Government is committed to bus industry reform, and the power to end existing commercial contracts is necessary to give effect to that commitment if negotiated agreements cannot be reached.

In responding to the introduction of the bill in the other place, Opposition members have followed a script written by the private bus industry. In speech after speech they spoke of "unfettered powers" being given to the Director-General of Transport without acknowledging that this position is subject to ministerial direction and control in the exercise of functions that are clearly defined in the Transport Administration Act 1988; expressed concern that a public sector executive should have the power to determine contract regions or strategic transport corridors, the terms of service contracts or service to be provided to the community; and claimed that it managed to introduce its 1990 legislation with industry support—and no wonder, when that legislation gave operators perpetual contracts and exclusive rights over most of Sydney.

This bill includes the powers needed to overcome the culture that has developed in an industry that operates under virtually perpetual contracts, exclusive rights and a view that asset ownership makes the Government a toothless tiger. So strong is the rights culture in the private bus sector that they have lost sight of the fact that the Government's responsibility is to deliver appropriate services to the community and provide value for taxpayers' dollars.

The Hon. Melinda Pavey: Like State Rail!

The Hon. MICHAEL COSTA: I think the Opposition has lost sight of this too, given that interjection. As the Parliamentary Secretary for Transport Services pointed out in his speech in reply, the Opposition is so focused on keeping the faith with the bus industry that it has forgotten that reform is about improving bus services. Look at the debate. Twelve Liberal and National members of Parliament spoke on the bill. Those twelve spoke of industry rights,

operator security and private interest. But take out the quotes they made from Bus and Coach Association notes, and only two of them uttered the word "passengers".

The bill therefore contains a privative clause protecting decisions to vary or terminate existing commercial contracts from judicial review and a clause which make it clear that the Crown will not be liable to pay compensation for damages, if any, arising from these reforms. The compensation provisions are based on section 65 of the current Act. The Opposition has made a lot of noise, arguing that such provisions should be used only sparingly and must be set out clearly and unambiguously. The privative provision has been carefully drafted so as to use those powers sparingly. This bill does not seek powers other than those that are absolutely necessary to implement the reforms. They will make clear Parliament's intention to implement bus reform, and will provide certainty for the community and the industry in going forward. This is vital to operators signing new contracts, and making investments in fleet and staff, who need to know that bus reform will not be held up by challenges on technical grounds.

The powers to vary and terminate are one-off powers. I emphasise that. They apply only to existing commercial contracts, not to non-commercial contracts or contracts entered into under the new regime. I emphasise that point because it has been misrepresented in a number of briefings that have been given round the place. I repeat, the powers to vary and terminate are one-off powers. They apply only to existing commercial contracts, not to non-commercial contracts or contracts entered into under the new regime. Those peddling claims that the privative clause is unconstitutional should consider engaging new legal advisers. As far back as 1901 this House passed industrial relations legislation with such a clause. In 1945 the High Court of Australia supported a privative clause in the Hickman case. And as recently as 1997, in the Darling Casino case, two justices of the High Court noted that:

... provided the intention is clear, a privative clause in a valid State enactment may preclude review for errors of any kind.

The clause protecting the Crown from claims of compensation recognises that existing commercial contracts were not awarded through any kind of open competitive tender process. It recognises that the viability of these businesses hinges on a large injection of taxpayer funds through SSTS payments and concession reimbursements—more than \$260 million in 2002-03. Further, it recognises that the Government is giving existing operators every opportunity to remain in the industry, under new performance-based contracts. Again, this power only applies to the exercise of functions in the transition to new arrangements. Once the new regime is in place, it will no longer have effect. Finally, some complementary or consequential amendments are also made to other Acts and regulations. This bill will enable the Government to deliver on the initiatives outlined in the Unsworth report and will allow operators to provide more passenger-focused and viable bus services. I commend the bill to the House.

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