

Passenger Transport Amendment (Bus Reform) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Passenger Transport Act 1990*:
 - (i) to enact new provisions dealing with service contracts for regular bus services (including transitway services), and
 - (ii) to enable the Director-General of the Ministry of Transport (the **Director-General**) to declare bus service contract regions and strategic transport corridors, and
 - (iii) to enable the Director-General to fix fees for applications for certain accreditations and authorities under the Act and for the renewal of such accreditations and authorities, and
 - (iv) to limit the provisions of Division 2 of Part 3 (which currently apply to service contracts for regular passenger services other than transitway services) to service contracts for ferry services, and
 - (v) to enable the Independent Pricing and Regulatory Tribunal to determine maximum fares for certain regular bus services (whether provided by public or private bus operators), and
 - (vi) to facilitate the making of accreditation standards that take into account different kinds of public passenger services and operators, and
 - (vii) to enact certain transitional provisions to enable the variation or termination of certain existing bus service contracts in order to facilitate the introduction of the new provisions relating to regular bus services,
- (b) to amend the *Independent Pricing and Regulatory Tribunal Act 1992* to exclude certain bus services provided by the State Transit Authority under the *Passenger Transport Act 1990* (as amended) from the standing reference of the Tribunal to determine pricing policy for the Authority,
- (c) to amend the *Transport Administration Act 1988* to make it clear that Government subsidised travel need not be limited to the provision of concessions,
- (d) to amend the *Passenger Transport (General) Regulation 2000* to enable the Director-General in certain circumstances:
 - (i) to exempt the holder of an authority under the *Passenger Transport Act 1990* to drive a particular kind of public passenger vehicle from any separate requirement under any provision of the Act to hold an authority to drive another kind of vehicle, and
 - (ii) to exempt the holder of an accreditation under the *Passenger Transport Act 1990* to carry on a particular kind of public passenger service from any separate requirement under any provision of the Act to be accredited to carry on another kind of public passenger service,
- (e) to make consequential amendments to the *Passenger Transport (Bus Services) Regulation 2000* and the *Passenger Transport (General) Regulation 2000*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days

to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Passenger Transport Act 1990* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts and Regulations set out in Schedule 2.

Schedule 1 Amendment of Passenger Transport Act 1990

Definitions

Schedule 1 [1] amends section 3 of the *Passenger Transport Act 1990* to insert several definitions for new terms used in provisions to be inserted in the Act.

In particular, a **regular bus service** is defined to mean any regular passenger service conducted by bus (including any transitway service).

Accreditation standards

Schedule 1 [2] amends section 7 of the Act to make it clear that special standards may be prescribed or determined under the section for the accreditation of operators of public passenger services for different kinds of services and operators.

Fees for accreditations and authorities under Part 2

Currently, fees for applications for accreditations and authorities under Part 2 of the Act and for the renewal of such accreditations and authorities are required to be prescribed by the regulations.

Schedule 1 [5] substitutes section 15 of the Act to enable the Director-General to fix these fees by order published in the Gazette. An order made under the substituted section will have to be tabled before Parliament and will be subject to disallowance in the same way as a statutory rule.

Schedule 1 [3] and [4] make consequential amendments to sections 9A and 11A respectively.

Service contracts for regular bus services

The Act defines a **regular passenger service** to be a public passenger service conducted according to regular routes and timetables, but excludes tourist services and long distance services. A **transitway service** is defined to mean a regular passenger service conducted by bus by means of a transitway route or emergency route, as determined by the Director-General under Division 4 of Part 3.

Section 16 of the Act currently requires a regular passenger service (other than a transitway service) to be carried out under the authority of a service contract entered into as provided by Division 2 of Part 3. It also requires a public passenger service along a transitway route to be carried out under a service contract for a transitway service entered into as provided by Division 3 of Part 3.

A **service contract** is a contract entered into under Part 3 between the Director-General and an operator of a regular passenger service and which contains the terms and conditions on which the service concerned is to be carried on.

Currently, Division 2 of Part 3 distinguishes between commercial and noncommercial service contracts. A commercial contract enables an operator to charge passengers of the operator's regular passenger service a fare while a noncommercial contract provides for the operator to be remunerated by the Crown

for the provision of the regular passenger service. A commercial contract is to be for a period of 5 years, although the operator may be entitled to a renewal for a further period of 5 years if the operator meets certain performance standards.

A non-commercial contract may (subject to the regulations in relation to school bus services) be for any term specified by the contract.

Division 2 confers on the holder of a service contract an exclusive right to operate the service concerned in a specified region or route of operation. It also precludes a variation of the region or route concerned without the consent of the

parties. Any requirement of the Director-General for new services to be provided in a region or route of operation of a commercial contract must first be offered to the holder of the contract. If the holder declines, the new services may be offered to another operator.

Division 3 makes special provision for service contracts for transitway services. It leaves the terms of such contracts to be negotiated by the parties, subject to some exceptions. It provides for contracts for a period not exceeding 10 years. It also provides that there is no automatic right to a renewal of the contract unless the contract itself provides for it.

Schedule 1 [8]–[12] make amendments to Division 2 of Part 3 so as to confine the operation of that Division to service contracts for ferry services. Service contracts for regular passenger services other than regular bus services or ferry services will be left entirely to negotiation between the Director-General and the operator concerned.

Schedule 1 [13] replaces Division 3 of Part 3 with a new Division relating to service contracts for regular bus services. The principal features of the new Division are as follows:

- (a) the new Division will apply to any regular bus service (including a transitway service),
- (b) the new Division will permit service contracts for regular bus services to be framed by reference to any bus service contract region, strategic transport corridor, transitway route, emergency route or other geographical area or route of travel (or by reference to any combination of these),
- (c) the new Division will not draw a distinction between commercial and noncommercial service contracts,
- (d) the new Division will provide for greater flexibility in the negotiation of the terms of the service contract,
- (e) the new Division will require the Director-General, if the regulations so provide, to refuse to enter into a service contract for a regular bus service if the proposed holder is already the holder of such number and kind of other service contracts for regular bus services as may be prescribed by the regulations,
- (f) the new Division will not permit a service contract to be entered into for a period exceeding 8 years and will also require the contract to provide for service standards to be observed by the operator,
- (g) the new Division will not confer an automatic right of renewal of a service contract for a regular bus service, but will leave the matter to be negotiated between the parties.

Schedule 1 [6] makes an amendment to section 16 that is consequential on the amendments made by Schedule 1 [13].

Schedule 1 [7] amends section 16 to make it clear that a subcontractor or other person providing bus services for the holder of a service contract for a regular bus service (the **primary service contract**) is not required to enter into a separate service contract with the Director-General if the primary service contract authorises or permits that person to provide the service for the holder.

Schedule 1 [21] inserts a Subdivision in the new Division 3 to enable the Independent Pricing and Regulatory Tribunal to determine maximum fares for any regular bus service (whether provided by public or private bus operators) that is provided under a service contract that permits the operator to charge passengers of the service a fare for the use of the service. The Subdivision makes it a term of the contract that the service provider cannot charge more than the relevant maximum fare determined by the Tribunal from time to time. This implied term will be an essential term of the contract and will therefore permit

the Director-General to terminate the contract for a breach of the term.

Creation and variation of bus service contract regions, strategic transport corridors and transitway and emergency routes

Currently, Division 4 of Part 3 makes provision for the determination and variation of transitway routes and emergency routes. Section 28I, in particular, varies the terms of service contracts under Division 2 to accommodate the creation or variation of such routes. The section automatically excises transitway routes from such contracts and also extinguishes exclusive operator rights on the determination of emergency routes.

Schedule 1 [14] converts Division 4 of Part 3 into a Subdivision of the new Division 3 inserted by Schedule 1 [13]. **Schedule 1 [15] and [22]** make amendments to sections 28E and 65 respectively that are consequential on this conversion.

Schedule 1 [16] inserts a definition of *region or route* of operation for a service contract for the purposes of the converted Division. The definition recognises the kinds of areas by reference to which a service contract for a regular bus service may be framed.

Schedule 1 [17] inserts provisions in the converted Division 4 that enable the Director-General, by order published in the Gazette, to declare, vary and abolish bus service contract regions and strategic transport corridors. Such regions or corridors may (but need not) form the basis for the area of operation for a service contract for a regular bus service. The declaration, variation or abolition of such regions or corridors will not affect the continued operation of any service contract (including one that defines its area of operation by reference to a varied or abolished region or corridor) entered into after the commencement of the provisions to be inserted unless the contract so provides.

Schedule 1 [18]–[20] make amendments to section 28I that are consequential on the enactment of the new Division 3.

Compensation for determination or variation of transitway routes

Schedule 1 [23] amends the definition of *the Crown* in section 65 to update a reference to the former Department of Transport to a reference to the current Ministry of Transport.

Savings and transitional provisions

Schedule 1 [24] amends Schedule 3 to the Act to enable the Governor to make regulations for matters of a savings or transitional nature consequent on the amendment of the Act.

Schedule 1 [25] inserts a new Part in Schedule 3 to the Act that contains savings and transitional provisions consequent on the amendment of the Act by the proposed Act.

In particular, the new Part:

- (a) provides that (subject to certain exceptions specified in the Part) the existing provisions of Part 3 of the Act continue to apply to service contracts for regular passenger services entered into before the commencement of the new regular bus service provisions (**existing service contracts**), and
- (b) provides for the variation or termination of certain existing service contracts for regular bus services to facilitate the introduction of the new provisions relating to such services, and
- (c) protects from challenge in legal proceedings certain decisions of the Director-General concerning the variation or termination of existing service contracts for regular bus services, and
- (d) precludes the recovery of compensation from the Crown in respect of the variation or termination of existing service contracts for regular bus services, and

(e) saves existing fees in respect of the consideration of applications for accreditation or authorities under Part 2 of the Act (or the renewal of such accreditations or authorities).

Schedule 2 Amendment of other Acts and Regulations

Independent Pricing and Regulatory Tribunal Act 1992 No 39

Schedule 2.1 [1] amends section 11 of the *Independent Pricing and Regulatory Tribunal Act 1992* to provide that the standing reference of the Tribunal to determine pricing for a government monopoly service supplied by a government agency specified in Schedule 1 to the Act does not extend to such services of the agency as are excluded for the agency in that Schedule.

Schedule 2.1 [2] amends Schedule 1 to the Act to exclude from the Tribunal's standing reference to determine pricing for services provided by the State Transit Authority any bus services provided by the Authority under the *Passenger Transport Act 1990* (as amended) for which the Tribunal may set maximum fares under that Act.

Schedule 2.1 [3] amends Schedule 4 to the Act to enable the Governor to make regulations for matters of a savings or transitional nature consequent on the amendment of the Act.

Passenger Transport (Bus Services) Regulation 2000

Schedule 2.2 [1] repeals clause 9 of the *Passenger Transport (Bus Services) Regulation 2000*. Clause 9 provides that the holder of a non-commercial contract for school bus services is entitled to a service contract for a 5 year period if the Director-General is satisfied of certain matters. The provision will become redundant with the enactment by the proposed Act of the new provisions relating to regular bus services because the distinction between commercial and noncommercial service contracts will not apply to such services.

Schedule 2.2 [2] repeals clause 57 of the Regulation, which prescribes fees for the purposes of sections 11A and 15 of the *Passenger Transport Act 1990*. The proposed Act amends those sections to enable the Director-General to fix the fees concerned.

Passenger Transport (General) Regulation 2000

Schedule 2.3 [1] repeals clause 10 of the *Passenger Transport (General) Regulation 2000*, which prescribes fees for the purposes of sections 11A and 15 of the *Passenger Transport Act 1990* in relation to operators of tourist services and tourist service vehicles. The proposed Act amends those sections to enable the Director-General to fix the fees concerned.

Schedule 2.3 [2] amends clause 14 of the Regulation to enable the Director-General in certain circumstances:

(a) to exempt the holder of an authority under the *Passenger Transport Act 1990* to drive a particular kind of public passenger vehicle from any separate requirement under any provision of the Act to hold an authority to drive another kind of vehicle, and

(b) to exempt the holder of an accreditation under the *Passenger Transport Act 1990* to carry on a particular kind of public passenger service from any separate requirement under any provision of the Act to be accredited to carry on another kind of public passenger service.

Transport Administration Act 1988 No 109

Schedule 2.4 [1] amends section 39 of the *Transport Administration Act 1988* to make it clear that Government subsidised travel need not be limited to the provision of concessions.

Schedule 2.4 [2] amends Schedule 7 to the Act to enable the Governor to make regulations for matters of a savings or transitional nature consequent on the amendment of the Act.