



New South Wales

# 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 non-commercial service contracts. A commercial contract enables an operator to charge passengers of the operator's regular passenger service a fare while a non-commercial 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),

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- (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 non-commercial 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 non-commercial 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.





New South Wales

# Passenger Transport Amendment (Bus Reform) Bill 2004

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New South Wales

# Passenger Transport Amendment (Bus Reform) Bill 2004

No. , 2004

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## A Bill for

An Act to amend the *Passenger Transport Act 1990* to reform arrangements for the planning, contracting and funding of bus services; to make related amendments to other Acts and Regulations; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Passenger Transport Amendment (Bus Reform) Act 2004*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3    Amendment of Passenger Transport Act 1990 No 39**

The *Passenger Transport Act 1990* is amended as set out in Schedule 1.

**4    Amendment of other Acts and Regulations**

The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.

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## Schedule 1 Amendment of Passenger Transport Act 1990

(Section 3)

### [1] Section 3 Definitions

Omit the definition of *transitway route*. Insert in alphabetical order:

*bus service contract region* means a region declared (and as varied from time to time) by the Director-General under section 28EA.

*regular bus service* means any regular passenger service conducted by bus (including any transitway service).

*strategic transport corridor* means a transport corridor declared (and as varied from time to time) by the Director-General under section 28EB.

*transitway route* means a route determined (and as varied from time to time) under Subdivision 3 of Division 3 of Part 3, other than an emergency route.

### [2] Section 7 Accreditation

Insert after section 7 (3):

(3A) Different standards for the purposes of subsection (2) (b) may be prescribed or determined under subsection (3) for different classes of public passenger services and different classes of operators of public passenger services.

### [3] Section 9A Issue and renewal of accreditation

Omit “the fee prescribed by the regulations” from section 9A (1).

Insert instead “the fee (if any) fixed under section 15 for the renewal”.

### [4] Section 11A Issue and renewal of authorities

Omit “the fee prescribed by the regulations” from section 11A (1).

Insert instead “the fee (if any) fixed under section 15 for the renewal”.

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**[5]    Section 15**

Omit the section. Insert instead:

**15    Fees for applications for, and renewals of, accreditations and authorities**

- (1)    The Director-General may, by order published in the Gazette, fix fees for all or any of the following:
  - (a)    applications for an accreditation or authority,
  - (b)    the renewal of an accreditation or authority.
- (2)    Without limiting subsection (1):
  - (a)    different fees may be fixed for different categories of accreditations or authorities, and
  - (b)    different fees may be fixed for different categories of applications or renewals.
- (3)    An applicant for an accreditation or authority under this Part must pay any fee fixed under this section for the application.

**Note.** Section 9A (1) requires the fee fixed under this section for the renewal of an accreditation to be paid on any such renewal. Section 11A (1) requires the fee fixed under this section for the renewal of an authority to be paid on any such renewal.
- (4)    Sections 39, 40 and 41 of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to statutory rules within the meaning of that Act.

**[6]    Section 16 Service contracts**

Omit “transitway service” from section 16 (3) (b).

Insert instead “regular bus service”.

**[7]    Section 16 (3A)**

Insert after section 16 (3):

- (3A)    Nothing in this section requires a person who carries on a regular bus service within or on a region, corridor, route or other area to enter into a service contract with the Director-General in respect of the service if:
  - (a)    the person is an accredited service provider, and
  - (b)    the service is being provided under a subcontract or other arrangement with the holder of a service contract

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	in respect of provision of the service within or on the region, corridor, route or area (the <i>primary service contract</i> ), and	1 2 3
	(c) the subcontract or other arrangement is authorised or otherwise permitted under the primary service contract.	4 5
<b>[8]</b>	<b>Part 3, Division 2, heading</b>	6
	Omit the heading. Insert instead:	7
	<b>Division 2      Ferry services</b>	8
<b>[9]</b>	<b>Section 16A</b>	9
	Omit the section. Insert instead:	10
	<b>16A    Application of Division</b>	11
	This Division applies to service contracts for ferry services.	12
<b>[10]</b>	<b>Section 17 Service contracts for services other than ferry services</b>	13
	Omit the section.	14
<b>[11]</b>	<b>Section 21 Exclusive rights</b>	15
	Omit section 21 (2). Insert instead:	16
	(2)    A route may proceed across water and a region may consist of a navigational area.	17 18
<b>[12]</b>	<b>Section 22 New services</b>	19
	Omit “(not being transitway services)” from section 22 (1) (a).	20
<b>[13]</b>	<b>Part 3, Division 3</b>	21
	Omit the Division. Insert instead:	22
	<b>Division 3      Regular bus services</b>	23
	<b>Subdivision 1      General</b>	24
	<b>28A    Application of Division</b>	25
	(1)    This Division applies to service contracts for regular bus services.	26 27

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- (2) The State Transit Authority is authorised to bid for a service contract for a regular bus service.

**Subdivision 2      Service contracts for regular bus services**

**28B      Service contracts for regular bus services**

- (1) A service contract for a regular bus service is to be for a term not exceeding 8 years.
- (2) A service contract for a regular bus service may specify a region or route of operation for the contract 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).
- (3) The Director-General must, if the regulations so provide, 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.

**28C      Performance standards**

- (1) A service contract for a regular bus service is to provide for performance standards to be observed by the operator of the service.
- (2) Performance standards are to be enforced by civil penalty provision or in such other manner as the contract may provide.
- (3) In subsection (2), ***civil penalty provision*** means a provision of a service contract that is expressed to be a civil penalty provision for the purposes of this section.
- (4) Despite anything to the contrary in any Act or other law, a person who breaches a civil penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the service contract as the penalty for the breach of that provision.



<b>28D</b>	<b>Renewal of contract</b>	1
(1)	A service contract for a regular bus service may be renewed from time to time in accordance with any provision in the contract concerning renewal.	2 3 4
(2)	Nothing in this section or in any other provision of this Division is to be construed as affording a right or expectation of renewal of a service contract for a regular bus service.	5 6 7
<b>[14]</b>	<b>Part 3, Division 4, heading</b>	8
	Omit the heading. Insert instead:	9
	<b>Subdivision 3</b>	10
	<b>Contract regions, strategic transport corridors, transitway routes and emergency routes</b>	11 12
<b>[15]</b>	<b>Section 28E Definitions</b>	13
	Omit "this Division" wherever occurring.	14
	Insert instead "this Subdivision".	15
<b>[16]</b>	<b>Section 28E</b>	16
	Insert before the definition of <i>road</i> :	17
	<i>region or route</i> of operation, in relation to a service contract, includes any bus service contract region, strategic transport corridor, transitway route, emergency route or any other area or route to which the contract relates.	18 19 20 21
<b>[17]</b>	<b>Sections 28EA and 28EB</b>	22
	Insert after section 28E:	23
<b>28EA</b>	<b>Bus service contract regions</b>	24
(1)	The Director-General may from time to time, by order published in the Gazette, declare an area of the State specified in the order to be a bus service contract region for the purposes of this Division with effect from the date specified in the order.	25 26 27 28 29
(2)	The Director-General may at any time, by order published in the Gazette, vary or abolish any bus service contract region with effect from the date specified in the order.	30 31 32

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- (3) A bus service contract region may be declared (or a declaration of a contract region varied):
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    - (a) by naming, or illustrating by means of a map or plan, the area or routes (or both) that constitute the region or that are affected by the variation (as the case may be), or
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    - (b) in such other manner as is sufficient to specify the region or variation.
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  - (4) A bus service contract region may be declared in respect of an area even if that area contains transitway routes, emergency routes or strategic transport corridors.
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  - (5) The declaration, variation or abolition of a bus service contract region under this section does not affect the continued operation of a service contract for a regular passenger service entered into on or after the commencement of this section unless the service contract so provides.
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**Note.** Part 7 of Schedule 3 provides for a declaration or variation of a bus service contract region to vary certain service contracts for regular bus services that were in existence before the commencement of this section.

#### 28EB      Strategic transport corridors 20

- (1) The Director-General may from time to time, by order published in the Gazette, declare a transport corridor to be a strategic transport corridor for the purposes of this Division with effect from the date specified in the order.
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- (2) The Director-General may at any time, by order published in the Gazette, vary or abolish a strategic transport corridor with effect from the date specified in the order.
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- (3) In deciding whether to declare a transport corridor to be a strategic transport corridor or to vary an existing strategic transport corridor, the Director-General may take into account:
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  - (a) the potential for the corridor:
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    - (i) to link regional centres and provide access to hospitals, educational institutions, shopping centres and other facilities or locations that generate major passenger transportation demands, and
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    - (ii) to integrate bus services with other key modes of transport along the corridor, and
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	(iii)	to provide fast, frequent and direct transportation for passengers, and	1
	(iv)	to provide a blueprint for the implementation of appropriate bus priority measures, and	2
	(b)	such other matters as the Director-General considers relevant.	3
			4
(4)	A strategic transport corridor may be declared (or a declaration of a corridor varied):		5
	(a)	by naming, or illustrating by means of a map or plan, the area or routes (or both) that constitute the corridor or that are affected by the variation (as the case may be), or	6
	(b)	in such other manner as is sufficient to specify the corridor or variation.	7
			8
(5)	A strategic transport corridor may be varied:		9
	(a)	temporarily—that is, between dates specified in the order effecting the variation, or	10
	(b)	until further order (if any).	11
			12
(6)	Without affecting the generality of subsection (5), a strategic transport corridor may be varied temporarily to permit construction or maintenance of a road or road portion along which the route proceeds.		13
			14
(7)	The declaration, variation or abolition of a strategic transport corridor under this section does not affect the continued operation of a service contract for a regular passenger service entered into on or after the commencement of this section unless the service contract so provides.		15
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[18]	<b>Section 28I Effect of creation of transitway routes or emergency routes</b>		32
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	Omit “this Division” from section 28I (1) and (2) wherever occurring.		34
	Insert instead “this Subdivision”.		35

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<b>[19] Section 28I (1) and (2)</b>	1
Omit “service contract to which Division 2 applies” wherever occurring.	2
Insert instead “service contract for a regular passenger service”.	3
<b>[20] Section 28I (2)</b>	4
Omit “the right”. Insert instead “any exclusive right”.	5
<b>[21] Part 3, Division 3, Subdivision 4</b>	6
Insert after section 28I:	7
<b>Subdivision 4      Fare determinations</b>	8
<b>28J Determination of maximum fare pricing policy for regular bus services</b>	9 10
(1) This section applies to any service contract for a regular bus service that authorises or otherwise permits the holder (or a person providing the service for the holder under a subcontract or other arrangement) to charge passengers of the service a fare for the use of the service.	11 12 13 14 15
(2) The Independent Pricing and Regulatory Tribunal (the <i>Tribunal</i> ) is to conduct investigations and make reports to the Minister on the following matters:	16 17 18
(a) the determination of appropriate maximum fares for regular bus services supplied under service contracts to which this section applies,	19 20 21
(b) a periodic review of fare pricing policies in respect of such services.	22 23
(3) In respect of an investigation or report under this section, the Minister may require the Tribunal to consider specified matters when making its investigations.	24 25 26
(4) Division 7 of Part 3 of the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> is taken to apply to an investigation under this section in the same way as it applies to an investigation under Part 3 of that Act.	27 28 29 30
(5) In making a determination under this section, the Tribunal is to consider the following matters:	31 32
(a) the cost of providing the services concerned,	33

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| (b) | the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,   | 1<br>2<br>3                                  |
| (c) | the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,  | 4<br>5<br>6                                  |
| (d) | the need to maintain ecologically sustainable development (within the meaning of section 6 of the <i>Protection of the Environment Administration Act 1991</i> ) by appropriate pricing policies that take account of all of the feasible options to protect the environment,  | 7<br>8<br>9<br>10<br>11                      |
| (e) | the social impact of the determination,  | 12   |
| (f) | standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise) and any suggested or actual changes to those standards,  | 13<br>14<br>15<br>16                         |
| (g) | contractual arrangements prevailing in the industry,   | 17   |
| (h) | such other matters as the Tribunal considers relevant.   | 18   |
| (6) | A service contract to which this section applies is taken to include a term to the effect that:  | 19<br>20                                     |
| (a) | the holder of the contract must not charge a passenger of the service a fare that exceeds the maximum fare determined under this section from time to time for the provision of such a service to a passenger of that kind, and  | 21<br>22<br>23<br>24<br>25                   |
| (b) | if the regular bus service is to be provided for the holder by another person—the holder must ensure (whether by contract or other means) that the person providing the service for the holder is not permitted to charge a passenger of the service a fare that exceeds the maximum fare determined under this section from time to time for the provision of such a service to a passenger of that kind. | 26<br>27<br>28<br>29<br>30<br>31<br>32<br>33 |
| (7) | Any contravention of the term implied in a service contract by subsection (6) may be remedied at law or in equity as though the term were an essential term to which the parties had by contract agreed.   | 34<br>35<br>36<br>37                         |
| (8) | A service contract to which this section applies may make provision for maximum fares for the provision of the regular   | 38<br>39                                     |
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	bus service concerned to passengers pending the first determination of maximum fares under this section.	1 2
(9)	Any provision of the kind referred to in subsection (8) ceases to have effect as part of the service contract on and from the first determination of maximum fares under this section that applies to the provision of the kind of regular bus services to which the contract relates.	3 4 5 6 7
[22]	<b>Section 65 Prevention of proceedings concerning transitways</b>	8
	Omit “Division 4” from section 65 (1) (b) and (c) wherever occurring.	9
	Insert instead “Subdivision 3 of Division 3”.	10
[23]	<b>Section 65 (5)</b>	11
	Omit “Department” from the definition of <i>the Crown</i> .	12
	Insert instead “Ministry”.	13
[24]	<b>Schedule 3 Savings and transitional provisions</b>	14
	Insert at the end of clause 2 (1):	15
	<i>Passenger Transport Amendment (Bus Reform) Act 2004</i> (but only to the extent that it amends this Act)	16 17
[25]	<b>Schedule 3, Part 7</b>	18
	Insert after Part 6:	19
<b>Part 7</b>	<b>Provisions consequent on enactment of Passenger Transport Amendment (Bus Reform) Act 2004</b>	20 21 22
<b>27</b>	<b>Definitions</b>	23
	In this Part:	24
	<i>commencement day</i> means the day on which Schedule 1 [13] to the amending Act commences.	25 26
	<i>exercise</i> a function includes perform a duty.	27

***existing commercial bus service contract*** means:

- (a) an existing regular passenger service contract for a regular bus service that was a commercial contract for the purposes of section 18 immediately before the commencement day, or
- (b) an existing regular passenger service contract for a transitway service.

***existing non-commercial bus service contract*** means an existing regular passenger service contract for a regular bus service that was a non-commercial contract for the purposes of section 18 immediately before the commencement day.

***existing regular passenger service contract*** means a service contract for a regular passenger service in force immediately before the commencement day and that is still in force.

***function*** includes a power, authority or duty.

***the amending Act*** means the *Passenger Transport Amendment (Bus Reform) Act 2004*.

***transitional period expiry day*** means the day that is the third anniversary of the commencement day.

## **28 Effect of amendments to Part 3 by amending Act**

Except as provided by this Part, Part 3 of this Act and any regulations made for the purposes of that Part (as in force immediately before the commencement day) continue to apply to any existing regular passenger service contract as if that Part had not been amended by the amending Act.

## **29 Termination of existing commercial bus service contracts**

- (1) On or after the commencement day, the Director-General may, by written notice served on or given to the holder of an existing commercial bus service contract, terminate the contract on and from the date specified in the notice.
- (2) An existing commercial bus service contract is, by operation of this clause, terminated on the date specified in a notice served or given under subclause (1).

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**30      Effect of creation of bus service contract regions on existing commercial bus service contracts**

- (1)    If a bus service contract region (or any part of a bus service contract region) resulting from a declaration or variation under section 28EA lies within or on a region or route of operation specified in an existing commercial bus service contract, the order making the declaration or variation may also specify how much (if any) of the bus service contract region (or part of the bus service contract region) should be excluded from that region or route of operation for the purposes of this clause.
- (2)    To the extent that a bus service contract region (or any part of a bus service contract region) resulting from a declaration or variation under section 28EA lies within or on a region or route of operation specified in an existing commercial bus service contract:
  - (a)    the region or route so specified is by this clause varied by excluding from it so much (if any) of the bus service contract region (or part of the bus service contract region) as may be specified for exclusion in the order making the declaration or variation, and
  - (b)    the right of the service operator under the contract to operate a regular bus service within or on that region or route is extinguished in respect of so much of the bus service contract region (or part of the bus service contract region) as is so excluded.
- (3)    A contract affected by the operation of this clause continues to have effect, with any necessary modifications, as if the rights concerned had been altered by consent of the parties to the contract.
- (4)    Any subsequent abolition or variation of the bus service contract region concerned does not operate to revive a right extinguished by this clause.

**31      Effect of creation of strategic transport corridors on existing commercial bus service contracts**

- (1)    If a strategic transport corridor (or any part of a strategic transport corridor) resulting from a declaration or variation under section 28EB lies within or on a region or route of operation specified in an existing commercial bus service



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| contract, the order making the declaration or variation may            | 1  |
| also specify how much (if any) of the strategic transport              | 2  |
| corridor (or part of the corridor) should cease to be affected         | 3  |
| by any exclusive right to operate a regular bus service within         | 4  |
| or on that route or region of operation for the purposes of this       | 5  |
| clause.  | 6  |
| (2) To the extent that a strategic transport corridor (or any part of  | 7  |
| a strategic transport corridor) resulting from a declaration or        | 8  |
| variation under section 28EB lies within or on a region or             | 9  |
| route of operation specified in an existing commercial bus             | 10 |
| service contract, any exclusive right of the service operator          | 11 |
| under the contract to operate a regular bus service within or          | 12 |
| on that region or route of operation ceases to be an exclusive         | 13 |
| right in respect of so much (if any) of the strategic transport        | 14 |
| corridor (or part of the corridor) as may be specified for the         | 15 |
| cessation of exclusive rights in the order making the                  | 16 |
| declaration or variation.  | 17 |
| (3) A contract affected by the operation of this clause continues      | 18 |
| to have effect, with any necessary modifications, as if the            | 19 |
| rights concerned had been altered by consent of the parties to         | 20 |
| the contract.  | 21 |
| (4) Any subsequent abolition or variation of the strategic             | 22 |
| transport corridor concerned does not operate to revive a right        | 23 |
| extinguished by this clause.   | 24 |
| <b>32 Effect of creation of transitway routes and emergency routes</b> | 25 |
| <b>on existing regular passenger service contracts</b>                 | 26 |
| (1) Section 28I (as amended by the amending Act) extends to any        | 27 |
| existing regular passenger service contract in respect of any          | 28 |
| determination or variation of a transitway route or emergency          | 29 |
| route on or after the commencement day.                                | 30 |
| (2) Section 65 (as amended by the amending Act) extends to             | 31 |
| service contracts for transitway services entered into before          | 32 |
| its amendment in respect of any determination or variation of          | 33 |
| a transitway route or emergency route on or after the                  | 34 |
| commencement day.  | 35 |
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**33 Renewal of existing bus service contracts**

- (1) Despite clause 28, section 23 (7) and (8) and section 24 (as in force immediately before the commencement day) cease to apply to any existing commercial bus service contract on and from the commencement day.
- (2) Despite clause 28 or any other law, the holder of an existing non-commercial bus service contract has no right or expectation of renewal of the contract on its expiry.

**34 Temporary bus services can be arranged following termination or variation**

Nothing in this Act prevents the Director-General from making such arrangements as the Director-General thinks fit for the provision, by an accredited service operator, of temporary services in place of any regular bus service that is discontinued because of the expiry of the term, or the termination or variation, of an existing commercial bus service contract or existing non-commercial bus service contract by operation of this Part or otherwise.

**35 Protection for exercise of functions by Director-General in connection with this Part**

- (1) This clause applies to any function of the Director-General under a protected provision concerning:
  - (a) the termination of an existing commercial bus service contract, or
  - (b) the declaration or variation of a bus service contract region or strategic transport corridor before the transitional period expiry day.
- (2) The exercise by the Director-General of any function to which this clause applies may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (3) Without limiting subclause (2), the protected provision and the rules of natural justice (procedural fairness), so far as they apply to the exercise of any function to which this clause

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|           | applies, do not place on the Director-General any obligation enforceable in a court of law or administrative review body.   | 1<br>2                |
| (4)       | Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the Director-General, with those provisions or with those rules so far as they apply to the exercise of any function to which this clause applies. | 3<br>4<br>5<br>6<br>7 |
| (5)       | This clause does not affect the generality of clause 36.  | 8                     |
| (6)       | This clause has effect despite any provision of this or any other Act or any other law.   | 9<br>10               |
| (7)       | In this clause:   | 11                    |
|           | <i>exercise</i> of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.   | 12<br>13<br>14        |
|           | <i>proceedings</i> includes proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief.   | 15<br>16<br>17        |
|           | <i>protected provision</i> means any of the following provisions:   | 18                    |
|           | (a) section 28EA,   | 19                    |
|           | (b) section 28EB,   | 20                    |
|           | (c) a provision of this Part.   | 21                    |
| <b>36</b> | <b>Compensation for operation of this Part and the amending Act</b>   | 22                    |
| (1)       | No compensation is payable to any person by or on behalf of the Crown for loss or damage arising directly or indirectly from:   | 23<br>24<br>25        |
|           | (a) the entry of parties, under and in accordance with Part 3 of this Act, into a service contract for a regular bus service on or after the commencement day, or   | 26<br>27<br>28        |
|           | (b) the declaration or variation, under and in accordance with this Part and Division 3 of Part 3 of this Act, of a bus service contract region or strategic transport corridor on or after the commencement day, or  | 29<br>30<br>31<br>32  |
|           | (c) the termination of an existing commercial bus service contract by operation of this Part, or  | 33<br>34              |
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- (d) the variation of a region or route, or the extinguishment or compromise of a right or expectation, by the operation of this Part, 1  
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3
- and no proceedings for damages or other relief, whether grounded on the provisions of any contract or otherwise arising at law or in equity, for the purpose of restraining any action referred to in paragraphs (a)–(d), or of obtaining compensation in respect of any such loss or damage, may be instituted or maintained. 4  
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- (2) Without limiting the generality of subclause (1), no compensation is payable by or on behalf of the Crown for the introduction of new regular bus services. 10  
11  
12
- (3) For the purposes of subclause (2), compensation in respect of the introduction of new regular bus services includes: 13  
14
- (a) compensation because of the enactment or operation of the amendments made to this Act by the amending Act, or for any consequence of that enactment or operation, and 15  
16  
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18
- (b) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or to any aspect of regular bus services. 19  
20  
21
- (4) This clause applies to or in respect of any act, statement or conduct whether occurring before or after the commencement of this clause. 22  
23  
24
- (5) The protection against the liability to pay compensation afforded by this clause extends to any person exercising a function or engaging in conduct to which this clause applies at the request or direction of the Crown (whether under contract or otherwise), but does not extend to any of the following: 25  
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27  
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30
- (a) the holder or former holder of a service contract (whether entered into before or after the commencement of this clause), and 31  
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33
- (b) any person providing, or who provided, public passenger services to which such a service contract relates or related on behalf of, or instead of, the holder or former holder (whether under a subcontract or by other arrangement). 34  
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- (6) In this clause: 1
- compensation* includes damages or any other form of 2  
compensation (whether or not monetary). 3
- conduct* includes: 4
- (a) a representation of any kind: 5
- (i) whether made verbally or in writing, and 6
- (ii) whether negligent, false, misleading or 7  
otherwise, and 8
- (b) an omission of any kind. 9
- the Crown* means the Crown within the meaning of the *Crown* 10  
*Proceedings Act 1988* and includes: 11
- (a) the Director-General, and 12
- (b) any member of staff of a government Department. 13
- (7) This clause has effect despite any provision of this or any 14  
other Act or any other law. 15
- 37 Existing fees under sections 11A and 15** 16
- (1) Until an order is made by the Director-General under section 17  
15 (as substituted by the amending Act) fixing a fee for such 18  
an application or renewal: 19
- (a) the fee payable under section 11A (1) (as amended by 20  
the amending Act) for the renewal of an authority to 21  
drive a bus continues to be the fee prescribed by clause 22  
57 (2) of the *Passenger Transport (Bus Services)* 23  
*Regulation 2000* (as in force immediately before its 24  
repeal by the amending Act), and 25
- (b) the fee payable under section 11A (1) (as amended by 26  
the amending Act) for the renewal of an authority to 27  
drive a tourist service vehicle continues to be the fee 28  
prescribed by clause 10 (2) of the *Passenger Transport* 29  
*(General) Regulation 2000* (as in force immediately 30  
before its repeal by the amending Act), and 31
- (c) the fee payable under section 15 (3) (as substituted by 32  
the amending Act) for an application for accreditation 33  
as a bus operator or for an authority to drive a bus 34  
continues to be the fee prescribed by clause 57 (1) of the 35  
*Passenger Transport (Bus Services) Regulation 2000* 36
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Passenger Transport Amendment (Bus Reform) Bill 2004

Schedule 1      Amendment of Passenger Transport Act 1990

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(as in force immediately before its repeal by the amending Act), and

- (d) the fee payable under section 15 (3) (as substituted by the amending Act) for an application for accreditation as an operator of a tourist service or for an authority to drive a tourist service vehicle continues to be the fee prescribed by clause 10 (1) of the *Passenger Transport (General) Regulation 2000* (as in force immediately before its repeal by the amending Act).

- (2) In this clause:

***bus operator*** has the same meaning as in clause 57 of the *Passenger Transport (Bus Services) Regulation 2000* (as in force immediately before its repeal by the amending Act).

***tourist service vehicle*** has the same meaning as in the *Passenger Transport (General) Regulation 2000* (as in force immediately before the repeal of clause 10 by the amending Act).

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**Schedule 2 Amendment of other Acts and Regulations**  
(Section 4)

**2.1 Independent Pricing and Regulatory Tribunal Act 1992 No 39**

**[1] Section 11 Investigations and reports by Tribunal—standing reference**

Insert after section 11 (1):

(1A) Subsection (1) does not extend to such services of a government agency specified in Schedule 1 as may be excluded in that Schedule for the agency.

**[2] Schedule 1 Government agencies for which Tribunal has standing reference**

Insert “(but excluding any bus services provided by the Authority under a service contract to which section 28J of the *Passenger Transport Act 1990* applies)” after “State Transit Authority”.

**[3] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Passenger Transport Amendment (Bus Reform) Act 2004* (but only in relation to the amendments made to this Act)

**2.2 Passenger Transport (Bus Services) Regulation 2000**

**[1] Clause 9 School bus services**

Omit the clause.

**[2] Clause 57 Fees**

Omit the clause.

**2.3 Passenger Transport (General) Regulation 2000**

**[1] Clause 10 Fees**

Omit the clause.

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**[2]    Clause 14 Exemptions**

Insert after clause 14 (2):

- (2A)    Without limiting subclause (1), the Director-General may, by instrument in writing, exempt the holder of an authority under the Act to drive a particular kind of public passenger vehicle from any separate requirement under any provision of the Act to be authorised to drive another kind of public passenger vehicle if the Director-General is satisfied that the holder of the authority is of good repute and otherwise fit and proper to hold an authority to drive the other kind of vehicle.
- (2B)    Without limiting subclause (1), the Director-General may, by instrument in writing, exempt the holder of an accreditation under the Act to carry on a particular kind of public passenger service from any requirement under any provision of the Act to be separately accredited to carry on another kind of public passenger service if the Director-General is satisfied that the holder of the accreditation is of good repute and otherwise fit and proper to hold an accreditation to carry on the other kind of service.

**2.4    Transport Administration Act 1988 No 109**

**[1]    Section 39 Functions relating to administration of Government subsidised travel**

Omit “concessions” from section 39 (1).

**[2]    Schedule 7 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Passenger Transport Amendment (Bus Reform) Act 2004* (but only in relation to the amendments made to this Act)