

First print



New South Wales

Passenger Transport Amendment (Transitways) Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the operation of public passenger services offering bus transportation along routes to be known as transitway routes. Some transitways will be constructed by the Government, others created from upgraded existing roads. Transitway services will be provided by contracted operators.

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 giving effect to the amendments to the *Passenger Transport Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Definitions

Schedule 1 [2] inserts definitions of *emergency route*, *transitway route* and *transitway service* into section 3 of the Act. **Schedule 1 [1]** makes a consequential amendment to the definition of *public passenger service*.

Division of the provisions of Part 3 of the Act

Schedule 1 [3], [5] and [10] divide the existing provisions of Part 3 of the Act into Divisions, as follows:

Division 1 consists of section 16 of the Act, which requires persons operating regular passenger services to be the holders of service contracts entered into with the Director-General, Department of Transport.

Division 2, consisting of proposed new section 16A and existing sections 17–28, will apply to service contracts for regular passenger services in general, but with the exception of transitway services.

Division 3, consisting of proposed sections 28A–28D, will apply exclusively to service contracts for transitway services.

Division 4, consisting of proposed sections 28E–28I, will provide for the creation and variation of transitway routes, the creation of emergency routes and ancillary matters.

Schedule 1 [4] and [6]–[9] make consequential amendments.

Service contracts for transitway services

Proposed Division 3 of Part 3, inserted by **Schedule 1 [10]**, contains the following provisions:

Proposed section 28A states that the Division applies exclusively to service contracts for transitway services.

Proposed section 28B provides that service contracts for transitway services may be entered into for terms not exceeding 10 years.

Proposed section 28C requires service contracts for transitway services to provide for performance standards to be observed by the operator.

Proposed section 28D provides that a service contract for a transitway service may, if the contract so provides, be renewed.

Transitway descriptions and routes

Proposed Division 4 of Part 3, inserted by **Schedule 1 [10]**, contains the following provisions:

Proposed section 28E defines *transitway description* and other terms used in the Division. A transitway description is a general designation (listed in Schedule 4 to the Act, inserted by **Schedule 1 [16]**) of the destinations that may be linked by a transitway route (for example, "Liverpool to Parramatta"). A transitway route or routes may be determined anywhere between those destinations.

Proposed section 28F provides for amendment by regulation of the transitway descriptions for the time being listed in Schedule 4 to the Act.

Proposed section 28G provides for the determination, variation and abolition of transitway routes by order of the Director-General, Department of Transport.

Proposed section 28H provides for the determination of emergency routes by order of the Director-General. These are short-term alternative routes available for transitway services while the transitway route is closed owing to some pressing necessity such as urgent road maintenance.

Proposed section 28I describes the effect of the creation of a transitway route or emergency route on the regions or routes of existing operators of regular bus services. When a transitway route is created (by initial determination or by variation of an existing transitway route), it is excluded from the region or route of operation of any existing regular bus service contract within which it lies. Any existing right of the contractor to operate a service along a route that has become the transitway route is extinguished for as long as the transitway route exists. While an emergency route exists, any existing right of a contractor to use the same route, which is currently (under section 21 of the Act) an exclusive right, ceases to be exclusive.

The status quo ante as to rights is, however, restored if the transitway is abolished or moved or, in the case of rights affected by an emergency route, when the route's designation expires.

Regulations

Schedule 1 [11] and **[12]** amend section 63 of the Act (the general regulation-making power) to allow regulations to be made concerning ticketing on regular passenger services, and in particular the issue of tickets enabling travel on services provided by different operators, and to allow the operation of regulations to be extended to transitways.

No right to compensation arising from introduction of transitway services

Schedule 1 [13] inserts a new section 65 into the Act, which provides that compensation is not payable as a result of the introduction of transitway services and bars legal proceedings that would seek to prevent things from being done, or to obtain compensation arising from things done, under or in connection with the amendments proposed by the Bill in relation to transitway services.

Transitional provisions

Schedule 1 [14] and **[15]** provide for the transitional operation of amendments made by the proposed Act and allow further provision of that kind to be made by regulation.



New South Wales

Passenger Transport Amendment (Transitways) Bill 2001

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New South Wales

Passenger Transport Amendment (Transitways) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Passenger Transport Act 1990* to provide for the operation of public passenger services along transitway routes; and for other purposes.

The Legislature of New South Wales enacts: 1

1 Name of Act 2

 This Act is the *Passenger Transport Amendment (Transitways) Act 2001*. 3
4

2 Commencement 5

 This Act commences on a day or days to be appointed by proclamation. 6
7

3 Amendment of Passenger Transport Act 1990 No 39 8

 The *Passenger Transport Act 1990* is amended as set out in Schedule 1. 9
10

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert “, or along the whole or part of a transitway route” after “area” in paragraph (a) of the definition of <i>public passenger service</i> .	4 5
[2]	Section 3	6
	Insert in alphabetical order:	7
	<i>emergency route</i> means a route determined under section 28H.	8
	<i>transitway route</i> means a route determined (and as varied from time to time) under Division 4 of Part 3, other than an emergency route.	9 10 11
	<i>transitway service</i> means a regular passenger service conducted by bus by means of a transitway route or emergency route, or one or more parts of any such route.	12 13 14
[3]	Part 3, Division 1	15
	Insert before section 16:	16
	Division 1 Services to be supplied under contract	17
[4]	Section 16 Service contracts	18
	Omit section 16 (3). Insert instead:	19
	(3) A person who:	20
	(a) carries on a regular passenger service (other than a transitway service) otherwise than under the authority of a service contract, or	21 22 23
	(b) carries on a public passenger service along any part of a transitway route otherwise than under the authority of a service contract for a transitway service,	24 25 26
	is guilty of an offence.	27
	Maximum penalty: 1,000 penalty units.	28

[5] Part 3, Division 2	1
Insert before section 17:	2
Division 2 Services other than transitway services	3
16A Application of Division	4
(1) This Division applies to service contracts for regular passenger services other than transitway services.	5 6
(2) Nothing in this Division applies to or in respect of a transitway service.	7 8
[6] Section 17 Nature of contracts	9
Omit “drawn up under this Part” from section 17 (4).	10
[7] Section 21 Exclusive rights	11
Insert “to which this Division applies” after “contract” in section 21 (4).	12
[8] Section 22 New services	13
Insert “(not being transitway services)” after “services” in section 22 (1) (a).	14
[9] Section 28 Provisions of this Division form part of contract	15
Omit “entered into for the purposes of this Part is to be taken to include all the provisions of this Part (section 16 excepted)” from section 28 (1).	16 17
Insert instead “to which this Division applies is taken to include all the provisions of this Division”.	18 19
[10] Part 3, Divisions 3 and 4	20
Insert after section 28:	21
Division 3 Transitway services	22
28A Application of Division	23
This Division applies to service contracts for transitway services.	24 25

28B	Term of contract	1
	A service contract is to be for a term not exceeding 10 years.	2
28C	Performance standards	3
(1)	A service contract is to provide for performance standards to be observed by the operator of the service.	4 5
(2)	Performance standards are to be enforceable by civil penalty provision or in such other manner as the service contract may provide.	6 7 8
(3)	In subsection (2), <i>civil penalty provision</i> means a provision of a service contract that is expressed to be a civil penalty provision for the purposes of this section.	9 10 11
(4)	Despite anything to the contrary in any Act or 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 breach of that provision.	12 13 14 15
28D	Renewal of contract	16
(1)	A service contract may be renewed from time to time in accordance with any provision in that behalf made by the contract.	17 18 19
(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.	20 21 22
Division 4	Transitway descriptions and routes	23
28E	Definitions	24
	In this Division:	25
	<i>road</i> means:	26
(a)	any thoroughfare (whether or not consisting, wholly or in part, of a road or road related area as defined in section 3) that, in the opinion of the Director-General, is capable of supporting vehicular traffic (including buses), or	27 28 29 30 31
(b)	the site of any such thoroughfare that is being, or is to be, constructed.	32 33

<i>road portion</i>	1
means one or more lanes of a road that is divided into lanes.	2
<i>transitway description</i>	3
means a description, for the time being listed in Schedule 4, of linked destinations by reference to which transitway routes may be determined under this Division.	4 5 6
28F Variation of transitway descriptions	7
The regulations may amend Schedule 4 so as to omit, add to or vary the transitway descriptions listed in it.	8 9
28G Determination and variation of transitway routes	10
(1) The Director-General may from time to time, by order published in the Gazette, determine, vary or abolish a transitway route, with effect from a date determined by the order.	11 12 13 14
(2) A transitway route, as determined or varied under this section, must enable travel between the destinations mentioned in a transitway description (or between places that lie near, or between any two of, those destinations).	15 16 17 18
(3) Transitway routes may intersect with one another and may have portions in common.	19 20
(4) A transitway route may be determined or varied:	21
(a) by naming, or illustrating by means of a map or plan, the roads or road portions along which the route proceeds or that are affected by the variation (as the case requires), or	22 23 24 25
(b) in such other manner as may be sufficient to specify the route or variation.	26 27
(5) A transitway route may be varied:	28
(a) temporarily—that is, between dates specified in the order effecting the variation, or	29 30
(b) until further order (if any).	31
(6) Without affecting the generality of subsection (4), a transitway route may be varied temporarily to permit construction or maintenance of a road or road portion along which the route proceeds.	32 33 34 35

28H	Emergency routes	1
(1)	If, in the opinion of the Director-General, it is expedient in the circumstances of an emergency, or for the purpose of urgent maintenance of any road or road portion, or from other pressing necessity, to suspend the operation of transitway services along the whole or part of a transitway route, the Director-General may by order in writing:	2 3 4 5 6 7
(a)	prohibit, for a period of time (not exceeding 14 days) specified in the order, the operation of such services along so much of the route as may be described in the order, and	8 9 10 11
(b)	authorise the operation, during the period so specified, of such services on an alternative route determined (in a manner referred to in section 28G (4)) by the order,	12 13 14
	and such an order has effect according to its terms.	15
(2)	The period specified by the order may be a period commencing before execution of the order, but not commencing earlier than the beginning of the business day last preceding its execution.	16 17 18
(3)	As soon as practicable after its execution:	19
(a)	a copy of the order is to be served, personally or by post, on the holder of any service contract whose region or route of operation is affected by it, and	20 21 22
(b)	the terms of the order are to be published in one or more newspapers circulating in an area that includes the affected transitway route.	23 24 25
28I	Effect of creation of transitway routes or emergency routes	26
(1)	To the extent that a transitway route, or any part of a transitway route, resulting from a determination or variation under this Division lies within or on a region or route of operation specified in a service contract to which Division 2 applies:	27 28 29 30
(a)	the region or route so specified is by this section varied by excluding from it the transitway route or part, and	31 32

(b)	the right of the service operator under the contract to operate a public passenger service within that region or route is extinguished in respect of the excluded transitway route or part.	1 2 3 4
(2)	To the extent that an emergency route, or any part of an emergency route, resulting from a determination under this Division lies within or on a region or route of operation specified in a service contract to which Division 2 applies, the right of the service operator under the contract to operate a public passenger service within that region or route ceases to be an exclusive right in respect of the emergency route or part.	5 6 7 8 9 10 11
(3)	While rights under a service contract are affected by the operation of this section, the contract continues to have effect, with any necessary modifications, as if the rights concerned had been altered by consent of the parties to the contract.	12 13 14 15
(4)	The operation of subsection (1) in respect of a region or route ceases, and a right extinguished by that subsection is revived, on abolition or variation of the transitway route concerned.	16 17 18
(5)	Nothing in subsection (4) affects the operation of subsection (1) in relation to any transitway route resulting from a variation.	19 20
(6)	A right affected by subsection (2) is restored as an exclusive right on expiry of the order that determined the emergency route concerned.	21 22 23
[11]	Section 63 Regulations	24
	Insert after section 63 (2) (q):	25
(q1)	the issue of tickets or passes to passengers on regular passenger services, including:	26 27
(i)	tickets or passes allowing travel by services or routes of different kinds or descriptions, and	28 29
(ii)	tickets or passes allowing travel on a service provided by another service operator, and the apportionment of fares or other receipts derived from such travel, and	30 31 32 33

[12] Section 63 (6)	1
Insert after section 63 (5):	2
(6) To the extent that this section enables provision to be made by regulation for or with respect to any matter in relation to a road or road related area, the regulations may also make provision for or with respect to that matter in relation to a transitway route that proceeds along thoroughfares that do not, or do not entirely, consist of roads or road related areas.	3 4 5 6 7 8
[13] Section 65	9
Insert after section 64:	10
65 Prevention of proceedings concerning transitways	11
(1) No compensation is payable to or by any person for loss or damage arising directly or indirectly from:	12 13
(a) the entry of parties, under and in accordance with Part 3, into a service contract for a transitway service, or	14 15
(b) the determination or variation, under and in accordance with Division 4 of Part 3, of a transitway route, or	16 17
(c) the determination, under and in accordance with Division 4 of Part 3, of an emergency route, or	18 19
(d) the use, by a person authorised under section 28H to do so, of an emergency route for the operation of a transitway service, or	20 21 22
(e) the variation of a region or route, or the extinguishment or compromise of a right, by the operation of section 28I, or	23 24 25
(f) the exercise, under and in accordance with this Act or the <i>Transport Administration Act 1988</i> , of any function of the Director-General concerning transitway routes, emergency routes or transitway services,	26 27 28 29
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 (f), or of obtaining compensation in respect of any such loss or damage, may be instituted or maintained.	30 31 32 33 34 35

(2) Without limiting the generality of subsection (1), no compensation is payable by or on behalf of the Crown for the introduction of transitway services.	1 2 3
(3) For the purposes of subsection (2), compensation for the introduction of transitway services includes:	4 5
(a) compensation because of the enactment or operation of the amendments made to this Act by the <i>Passenger Transport Amendment (Transitways) Act 2001</i> , or for any consequence of that enactment or operation, and	6 7 8 9
(b) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or to any aspect of transitway services.	10 11 12
(4) This section applies to or in respect of any act, statement or conduct whether occurring before or after the commencement of this section.	13 14 15
(5) In this section:	16
<i>compensation</i> includes damages or any other form of monetary compensation.	17 18
<i>conduct</i> includes a representation of any kind:	19
(a) whether made verbally or in writing, and	20
(b) whether negligent, false, misleading or otherwise.	21
<i>the Crown</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and includes the Director-General and any officer of the Department of Transport.	22 23 24
(6) Nothing in this section affects a right conferred by a service contract for a transitway service.	25 26
(7) This section has effect despite any provision of this or any other Act.	27 28
[14] Schedule 3 Savings and transitional provisions	29
Insert at the end of clause 2 (1):	30
<i>Passenger Transport Amendment (Transitways) Act 2001</i>	31

[15] Schedule 3, Part	1
Insert in appropriate order and with appropriate Part and clause numbers:	2
Part Provision consequent on enactment of Passenger Transport Amendment (Transitways) Act 2001	3 4 5
Effect of transitway and emergency route on existing regions and routes	6 7
Section 28I applies in respect of service contracts entered into before or after the commencement of that section.	8 9
[16] Schedule 4	10
Insert after Schedule 3:	11
Schedule 4 Transitways	12
(Sections 28E and 28F)	13
Liverpool to Parramatta	14
Parramatta to Strathfield	15
St Marys to Penrith	16
Parramatta to Blacktown	17
Blacktown to Castle Hill	18
Blacktown to Wetherill Park	19
Parramatta to Mungerie Park	20