



NSW Legislative Council Hansard

Passenger Transport Amendment (Maintenance of Bus Services) Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 23 June 2005.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [3.05 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

Twelve months ago, this house considered and passed legislation to clear the way for major reforms on bus service delivery in New South Wales.

At that time, just twelve months ago, every single commercial operator in this state held a virtually perpetual contract and had exclusive rights to operate services in its particular territory. Each of these operators was paid in an obscure lump sum through the School Student Transport Scheme and planned its services under the constraints of a rigid mathematical formula.

Not surprisingly, these arrangements saw patronage plummet by 18 per cent and triggered a financial viability crisis among metropolitan operators, which saw investment in new buses wound back and made industry workers concerned for their job security.

The NSW Government acted on this. The Government is shifting operators onto new contestable, performance-based contracts with transparent funding and improved service planning arrangements. It has set a framework for involving the community in regular service reviews and is requiring neighbouring operators to work together to form a real bus network. As a first step, the patchwork of 87 contract areas across Sydney has been consolidated in 15 regions, developing viable businesses that can provide quality services.

The 2005/06 budget shows that the Carr Government is doing its bit, effectively tripling the bus priority program. With new funding of \$90 million over 3 years, the focus will be on improving reliability and travel times on the identified strategic bus corridors across Sydney.

Passengers are benefiting from these reforms already. The Pensioner Excursion Ticket is now available right across Sydney, whether passengers are travelling on government operated or privately operated public transport services. Additionally, fares have been equalised so that passengers pay the same fare for the same distance, whether they're travelling on State Transit or private buses.

The focus of the Ministry of Transport has been to work with operators and the industry association to achieve a smooth transition into these new arrangements.

In Sydney, significant progress has been made, with 7 of 11 private operator regions now operating under new contracts. These regions include multi-nationals, large local businesses and medium and small family companies, and represent approximately 50 per cent of Sydney's private bus industry. This demonstrates that the contractual arrangements, funding model and negotiation parameters are acceptable to a range of commercial bus operators.

However, rolling out the new contracts across the state will not happen overnight. The Passenger Transport Act recognises this by providing a transition period for these new arrangements. In the meanwhile, the old style contracts will remain the basis for maintaining bus services on passenger routes and for schools.

The Government's ability to influence operator behaviour and to secure continuity of service under these old contracts services is limited. Enforcement of the contracts is hampered by minimal performance requirements and the lack of a graduated penalty regime. Applying the ultimate sanction of contract termination is extremely difficult in the absence of assets to maintain continuity of services.

Experience gained from this industry reform process over the last twelve months has highlighted concerns about the old style contracts and the ability to maintain services. This approach has worked to date but does not provide the certainty that people should be able to expect of essential transport services.

In moving to the new Sydney regions, some degree of operator consolidation was expected. It happened that

four private operators (representing about 5 per cent of the market) have left the industry.

In three cases, a seamless transfer of services has been made possible under the ministry's "lead entity" arrangements with bus operators.

In the case of Harris Park Transport, State Transit was required to "step in" as an operator of last resort in January 2005 when Westbus was unable to meet both school and route service requirements.

This exposes a reliance on having operators who are willing to, and capable of, absorbing additional services in a short time period and within the bounds of commercial terms.

In another example, over the last 6 weeks the community at Lismore has expressed concerns about its local operator, Kirklands. On 28 April 2005, Kirklands made substantial changes to its school network services, affecting about 8,000 students. Kirklands were able to plan and implement these changes without adequate community consultation or Ministry approval because of the inadequacies of the existing contracts.

Despite its own acknowledgement of inadequate management of the process, Kirklands failed to satisfactorily address the problems for 6 weeks. With the support of the local member, Thomas George, the Ministry of Transport demanded that Kirkland's re-introduce the old timetable and conduct a proper process of community consultation on proposed changes.

Kirklands eventually relented, but not without six weeks of community disruption and six weeks of drivers having to bear the brunt of these changes.

This action came from one of the largest regional operators in NSW. Kirklands is part of the Buslines Group, which also serves Dubbo, Tamworth, Orange and the Southern Highlands.

In light of the Kirklands matter, the industry association is proposing interim planning guidelines to apply until all the new contracts are negotiated.

While this is a good first step, it doesn't address the fact that control of assets is the key to maintaining these services. It needs to be remembered that these assets have been largely funded by taxpayers through school student travel payments and contracts that gave these operators exclusive rights to operate bus services.

Under the old contracts, incumbent operators control depots, fleet and drivers and have the ability to walk from the existing bus contracts on only 60 days notice, taking these assets with them.

Rural and regional NSW is more exposed than metropolitan areas to the actions of individual operators in a reform environment. This is because the rollout of new contracts across the state has been staggered and it is more challenging to make alternative fleet arrangements. In this environment, changes are needed to provide certainty for bus services in rural and regional areas.

It should also be noted that the agreed transition arrangements with the industry provide existing operators with the first right to negotiate new contracts. If commercial terms are not agreed, a tender process will follow. This Bill will provide the security that services will continue during a potential tender process and until the holder of the new contract is ready to operate.

The Passenger Transport Amendment (Maintenance of Bus Services) Bill proposes significant powers, but they are powers in proportion to the core role of buses in the State's public transport system. Stronger powers—the ability to terminate the old-style contracts—have already been provided to the Director-General of Transport. However, they do not provide a way of maintaining bus services.

The Ministry of Transport now has a track record in responsibly using the powers Parliament gave it last year and engaging operators in bus reform through the negotiation process.

The proposed step-in powers would also be used responsibly—they would only be exercised as a last resort to maintain passenger services.

The provisions of the Bill have been consciously placed in the savings and transitional provisions of the Passenger Transport Act. This means that they are temporary and are clearly aimed at ensuring service continuity during the transition to new arrangements.

As a result, the Bill does not apply to operators who have entered into the new contracts as part of the bus reform process. Nor does it apply to services delivered under the State's 1,800 non-commercial contracts, which are typically held by smaller bus operators. As a further safeguard, the step-in cannot be continued for a period longer than 12 months.

The key change introduced by the Bill is the creation of a provision authorising the Director-General or the Director-General's nominee to step-in and operate the bus services. This provision is modelled on the "step-in" clause in the new metropolitan bus contract, which has already been signed by a range of operators in Sydney.

Under the Bill, when an existing old-style commercial bus service contract—or an interim contract that replaces a commercial contract—expires or is terminated, the step-in party may use the former service provider's buses, depots and other assets in order to maintain delivery of the bus services.

The step-in may be triggered by a notice published in the Gazette and this notice will spell out the arrangements that will apply under the step-in.

Under the Bill, compensation will be paid to the former service provider for the use of assets as set out in the step-in notice. The Bill provides that, in determining appropriate compensation, the Director-General must consider the terms and conditions of the existing contract and the commercial arrangements that the former service provider had entered into to deliver those services.

Under these arrangements, the step-in party may also make use of the services of the former service provider's employees and arrange for those employees to be paid for their services. The Bill makes it clear that the entitlements of those workers are not adversely affected by the operation of the step-in. This is about protecting services and the jobs tied to those services.

The step-in arrangements also allow for payments to be made to suppliers of goods and services used in connection with the delivery of the services under the step-in arrangement, including lessors and landlords.

To ensure the step-in power is enforceable, the Bill makes it an offence to fail to comply with an obligation under a step-in arrangement without a reasonable excuse, or to do anything that intentionally frustrates the operation of the step-in. It also creates some legal protections for the operation of the step-in arrangements.

The Bill also extends the legal protections of the Passenger Transport Act to cover the implementation and operation of the step-in power. The "privative" clause which already covers the contract termination powers is proposed to be extended to these powers which maintain services. This is to ensure Parliament's intention is clear and avoid arguments over legal technicalities.

The Bill also makes it clear that claims for loss or damages (if any) arising out of the operation of the step-in are not payable by the Crown.

This Bill is about maintaining an essential community service. It is targeted, its scope is limited and it has a built-in expiry. Once all of the old-style bus contracts have been replaced, this power will no longer apply.

These provisions are essential to provide certainty for people who rely on bus services until we are at a point where the bus industry is operating under performance-based contracts.

I commend the Bill to the house.