



New South Wales

# Passenger Transport Amendment (Bus Reform) Act 2004 No 54

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New South Wales

## **Passenger Transport Amendment (Bus Reform) Act 2004 No 54**

Act No 54, 2004

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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. [Assented to 6 July 2004]

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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”.

**[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 *primary service contract*), and

- (c) the subcontract or other arrangement is authorised or otherwise permitted under the primary service contract.

**[8] Part 3, Division 2, heading**

Omit the heading. Insert instead:

**Division 2 Ferry services**

**[9] Section 16A**

Omit the section. Insert instead:

**16A Application of Division**

This Division applies to service contracts for ferry services.

**[10] Section 17 Service contracts for services other than ferry services**

Omit the section.

**[11] Section 18 Commercial and non-commercial contracts**

Omit “(subject, in the case of school bus services, to the regulations)” from section 18 (5).

**[12] Section 21 Exclusive rights**

Omit section 21 (2). Insert instead:

- (2) A route may proceed across water and a region may consist of a navigational area.

**[13] Section 22 New services**

Omit “(not being transitway services)” from section 22 (1) (a).

**[14] Part 3, Division 3**

Omit the Division. Insert instead:

**Division 3 Regular bus services**

**Subdivision 1 General**

**28A Application of Division**

- (1) This Division applies to service contracts for regular bus services.
- (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.
- (4) A service contract for a regular bus service is taken to include a term to the effect that the holder of the contract must comply with the holder's obligations under any industrial instrument applicable to the holder concerning the conditions of employment of bus drivers or conductors (or both) as in force from time to time during the term of the contract.

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- (5) Any contravention of the term implied in a service contract by subsection (4) may be remedied at law or in equity as though the term were an essential term to which the parties had by contract agreed.
  - (6) In this section, *industrial instrument* means:
    - (a) an industrial instrument within the meaning of the *Industrial Relations Act 1996*, or
    - (b) an award or agreement made or entered into in accordance with the provisions of the *Workplace Relations Act 1996* of the Commonwealth.

**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) Without limiting subsection (1), the performance standards may include any model performance standards for regular bus services that the Director-General may, by order published in the Gazette, approve from time to time.
- (3) Before the Director-General makes an order under subsection (2) approving a model performance standard, the Director-General must consult with each of the following about the standard:
  - (a) the Transport Advisory Group constituted under the *Transport Administration Act 1988*,
  - (b) the Bus and Coach Association of New South Wales,
  - (c) such other persons or bodies as the Minister may direct.
- (4) The performance standards are to include standards concerning greenhouse emissions by buses that have been developed by the Director-General following consultation with the NSW Greenhouse Office in the Cabinet Office.
- (5) Performance standards are to be enforced by civil penalty provision or in such other manner as the contract may provide.
- (6) In subsection (5), *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.



- (7) 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.

**28D Renewal of contract**

- (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) 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.

**[15] Part 3, Division 4, heading**

Omit the heading. Insert instead:

**Subdivision 3 Contract regions, strategic transport corridors, transitway routes and emergency routes**

**[16] Section 28E Definitions**

Omit “this Division” wherever occurring.

Insert instead “this Subdivision”.

**[17] Section 28E**

Insert before the definition of *road*:

*region or route* 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] Sections 28EA and 28EB**

Insert after section 28E:

**28EA Bus service contract regions**

- (1) The Director-General may from time to time, by order published in the Gazette, declare an area of the State specified

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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.

- (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.
- (3) A bus service contract region may be declared (or a declaration of a contract region varied):
  - (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
  - (b) in such other manner as is sufficient to specify the region or variation.
- (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.
- (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.

**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**

- (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.
- (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.
- (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:
  - (a) the potential for the corridor:

- (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
  - (ii) to integrate bus services with other key modes of transport along the corridor, and
  - (iii) to provide fast, frequent and direct transportation for passengers, and
  - (iv) to provide a blueprint for the implementation of appropriate bus priority measures, and
- (b) such other matters as the Director-General considers relevant.
- (4) A strategic transport corridor may be declared (or a declaration of a corridor varied):
  - (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
  - (b) in such other manner as is sufficient to specify the corridor or variation.
- (5) A strategic transport corridor may be varied:
  - (a) temporarily—that is, between dates specified in the order effecting the variation, or
  - (b) until further order (if any).
- (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.
- (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.

**Note.** Part 7 of Schedule 3 provides for a declaration or variation of a strategic transport corridor to vary certain service contracts for regular bus services that were in existence before the commencement of this section.

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**[19] Section 28I Effect of creation of transitway routes or emergency routes**

Omit “this Division” from section 28I (1) and (2) wherever occurring.

Insert instead “this Subdivision”.

**[20] Section 28I (1) and (2)**

Omit “service contract to which Division 2 applies” wherever occurring.

Insert instead “service contract for a regular passenger service”.

**[21] Section 28I (2)**

Omit “the right”. Insert instead “any exclusive right”.

**[22] Part 3, Division 3, Subdivision 4**

Insert after section 28I:

**Subdivision 4 Fare determinations**

**28J Determination of maximum fare pricing policy for regular bus services**

- (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.
- (2) The Independent Pricing and Regulatory Tribunal (the *Tribunal*) is to conduct investigations and make reports to the Minister on the following matters:
  - (a) the determination of appropriate maximum fares for regular bus services supplied under service contracts to which this section applies,
  - (b) a periodic review of fare pricing policies in respect of such services.
- (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.
- (4) Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* 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.

- (5) In making a determination under this section, the Tribunal is to consider the following matters:
- (a) the cost of providing the services concerned,
  - (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,
  - (c) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
  - (d) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all of the feasible options to protect the environment,
  - (e) the social impact of the determination,
  - (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,
  - (g) contractual arrangements prevailing in the industry,
  - (h) such other matters as the Tribunal considers relevant.
- (6) A service contract to which this section applies is taken to include a term to the effect that:
- (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
  - (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.

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- (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.
  - (8) A service contract to which this section applies may make provision for maximum fares for the provision of the regular bus service concerned to passengers pending the first determination of maximum fares under this section.
  - (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.

**[23] Section 48 Review of decisions concerning service contracts**

Insert at the end of section 48:

- (2) This section does not apply to a decision of the Director-General with respect to a service contract for a regular bus service.

**[24] Section 65 Prevention of proceedings concerning transitways**

Omit "Division 4" from section 65 (1) (b) and (c) wherever occurring.

Insert instead "Subdivision 3 of Division 3".

**[25] Section 65 (5)**

Omit "Department" from the definition of *the Crown*.

Insert instead "Ministry".

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

Insert at the end of clause 2 (1):

*Passenger Transport Amendment (Bus Reform) Act 2004* (but only to the extent that it amends this Act)

[27] **Schedule 3, Part 7**

Insert after Part 6:

**Part 7 Provisions consequent on enactment of Passenger Transport Amendment (Bus Reform) Act 2004**

**27 Definitions**

In this Part:

*commencement day* means the day on which Schedule 1 [14] to the amending Act commences.

*exercise* a function includes perform a duty.

*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

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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).

**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 contract, the order making the declaration or variation may also specify how much (if any) of the strategic transport corridor (or part of the corridor) should cease to be affected by any exclusive right to operate a regular bus service within or on that route or region of operation for the purposes of this clause.
- (2) To the extent that 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 contract, any exclusive right of the service operator under the contract to operate a regular bus service within or on that region or route of operation ceases to be an exclusive right in respect of so much (if any) of the strategic transport corridor (or part of the corridor) as may be specified for the cessation of exclusive rights in the order making the declaration or variation.
- (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 strategic transport corridor concerned does not operate to revive a right extinguished by this clause.

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**32 Effect of creation of transitway routes and emergency routes on existing regular passenger service contracts**

- (1) Section 28I (as amended by the amending Act) extends to any existing regular passenger service contract in respect of any determination or variation of a transitway route or emergency route on or after the commencement day.
- (2) Section 65 (as amended by the amending Act) extends to service contracts for transitway services entered into before its amendment in respect of any determination or variation of a transitway route or emergency route on or after the commencement day.

**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 Review of decisions under Part 5**

- (1) Section 48 (2) (as inserted by the amending Act) does not apply to any decision of the Director-General made in respect of an existing commercial bus service contract or existing non-commercial bus service contract.
- (2) However, Part 5 of the Act does not apply to any of the following decisions of the Director-General made on or after the commencement day in respect of an existing commercial bus service contract or existing non-commercial bus service contract:
  - (a) a decision to enter into a service contract for a regular bus service with another person under Division 3 of Part 3 of the Act (as amended by the amending Act),
  - (b) a decision to terminate the contract under clause 29,
  - (c) any other decision made under this Part (including a decision made under clause 30 or 31).

**35 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.

**36 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 applies, do not place on the Director-General any obligation enforceable in a court of law or administrative review body.
- (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.
- (5) This clause does not affect the generality of clause 37.

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(6) This clause has effect despite any provision of this or any other Act or any other law.

(7) In this clause:

*exercise* of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.

*proceedings* includes proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief.

*protected provision* means any of the following provisions:

- (a) section 28EA,
- (b) section 28EB,
- (c) a provision of this Part.

### **37 Compensation for operation of this Part and the amending Act**

(1) No compensation is payable to any person by or on behalf of the Crown for loss or damage arising directly or indirectly from:

- (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
- (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
- (c) the termination of an existing commercial bus service contract by operation of this Part, or
- (d) the variation of a region or route, or the extinguishment or compromise of a right or expectation, by the operation of this Part,

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.

- (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.
- (3) For the purposes of subclause (2), compensation in respect of the introduction of new regular bus services includes:
  - (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
  - (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.
- (4) This clause applies to or in respect of any act, statement or conduct whether occurring before or after the commencement of this clause.
- (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:
  - (a) the holder or former holder of a service contract (whether entered into before or after the commencement of this clause), and
  - (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).
- (6) In this clause:

**compensation** includes damages or any other form of compensation (whether or not monetary).

**conduct** includes:

  - (a) a representation of any kind:
    - (i) whether made verbally or in writing, and
    - (ii) whether negligent, false, misleading or otherwise, and
  - (b) an omission of any kind.

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*the Crown* means the Crown within the meaning of the *Crown Proceedings Act 1988* and includes:

- (a) the Director-General, and
  - (b) any member of staff of a government Department.
- (7) This clause has effect despite any provision of this or any other Act or any other law.

**38 Existing fees under sections 11A and 15**

- (1) Until an order is made by the Director-General under section 15 (as substituted by the amending Act) fixing a fee for such an application or renewal:
  - (a) the fee payable under section 11A (1) (as amended by the amending Act) for the renewal of an authority to drive a bus continues to be the fee prescribed by clause 57 (2) of the *Passenger Transport (Bus Services) Regulation 2000* (as in force immediately before its repeal by the amending Act), and
  - (b) the fee payable under section 11A (1) (as amended by the amending Act) for the renewal of an authority to drive a tourist service vehicle continues to be the fee prescribed by clause 10 (2) of the *Passenger Transport (General) Regulation 2000* (as in force immediately before its repeal by the amending Act), and
  - (c) the fee payable under section 15 (3) (as substituted by the amending Act) for an application for accreditation as a bus operator or for an authority to drive a bus continues to be the fee prescribed by clause 57 (1) of the *Passenger Transport (Bus Services) Regulation 2000* (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).

### 39 Valuation and acquisition of certain bus service assets

- (1) In this clause:

*bus service asset* of an existing service provider means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description used in connection with the provision of a regular bus service in the existing service area, but does not include any goodwill.

*existing service area* of an existing service provider means the region or route of operation (or part of the region or route) for which the provider is to cease to provide a regular bus service.

*existing service provider* means the holder of an existing commercial bus service contract or existing non-commercial bus service contract who is not to be awarded a new service contract under the provisions of Division 3 of Part 3 (as inserted by the amending Act) to provide a regular bus service for the region or route of operation (or part of the region or route) for which the holder is currently providing a regular bus service under the existing contract.

*modification* includes addition, exception, omission or substitution.

*proposed new service provider* means a person to whom the Director-General proposes to award a new service contract under the provisions of Division 3 of Part 3 (as inserted by the amending Act) to provide a regular bus service in the existing service area of an existing service provider.

- (2) An existing service provider who wishes to sell or otherwise dispose of any bus service asset to a proposed new service provider who has refused to acquire it (whether at a particular

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price or at any price) may apply to the Director-General for the Director-General to make it a condition of the service contract of the proposed new service provider that the provider acquire the asset.

- (3) On any such application, the Director-General may:
  - (a) reject the application, or
  - (b) refer the question of the valuation of the bus service assets in question to arbitration under this clause.
- (4) The *Commercial Arbitration Act 1984* applies to any such arbitration subject to this clause and with such modifications as may be prescribed by the regulations.
- (5) Without limiting subclause (4), the regulations may make provision for or with respect to any of the following matters:
  - (a) the persons who are qualified to be appointed as arbitrators and the nomination of such arbitrators,
  - (b) the matters that may be considered, or not considered, in making a valuation of bus service assets in an arbitration under this clause.
- (6) Following any such arbitration, the Director-General may (but need not) require the proposed new service provider to acquire any bus service asset that was the subject of the arbitration at the value determined in the arbitration as a condition of any service contract entered into to provide a regular bus service in the existing service area.



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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)

[Second reading speech made in—

Legislative Assembly on 12 May 2004

Legislative Council on 2 June 2004]

BY AUTHORITY