

Passed by both Houses



New South Wales

Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005

Act No , 2005

An Act to amend the *Passenger Transport Act 1990* with respect to the provision of step-in arrangements to maintain regular bus services on termination or expiry of certain existing bus service contracts; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Passenger Transport Amendment (Maintenance of Bus Services) Act 2005*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Passenger Transport Act 1990 No 39

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

Schedule 1 Amendments

(Section 3)

[1] Schedule 3 Savings and transitional provisions

Insert at the end of clause 2 (1):

*Passenger Transport Amendment (Maintenance of Bus Services)
Act 2005*

[2] Schedule 3, clause 27

Insert in alphabetical order:

existing bus service contract means an existing commercial bus service contract or an interim contract for the provision of regular bus services.

existing service provider means the holder of an existing bus service contract.

interim contract for the provision of regular bus services means a bus service contract for the provision of temporary services in place of a regular bus service discontinued because of the expiry of the term, or the termination or variation, of an existing commercial bus service contract or an interim contract replacing any such contract.

step-in arrangements means arrangements under clause 39B.

[3] Schedule 3, clause 33

Insert after clause 33 (2):

- (3) Despite clause 28 or the provisions of any existing commercial bus service contract, the holder of any such contract has no right or expectation of renewal of the contract on its expiry.
- (4) To avoid doubt, the continuing provision of bus services by the former holder of an existing non-commercial or commercial bus service contract on or after expiry of the contract is not a renewal of the contract and does not confer any right or expectation of renewal of the contract.

[4] Schedule 3, clause 34

Insert “or an interim contract for the provision of regular bus services” after “non-commercial bus service contract” wherever occurring.

[5] Schedule 3, clause 34 (2) (c)

Omit “30 or 31”. Insert instead “30, 31, 39A or 39B”.

[6] Schedule 3, clause 34 (3)

Insert at the end of clause 34:

- (3) In this clause, *interim contract for the provision of regular bus services* includes a bus service contract for the provision of temporary services in place of a regular bus service discontinued because of the expiry of the term, or the termination or variation, of an existing non-commercial bus service contract or an interim contract replacing any such contract.

[7] Schedule 3, clause 36

Insert “Minister or” before “Director-General” wherever occurring.

[8] Schedule 3, clause 36 (1) (a)

Insert “or an interim contract for the provision of regular bus services” after “contract”.

[9] Schedule 3, clause 36 (1) (c)

Insert at the end of clause 36 (1) (b):

, or

- (c) a service breach notice or the implementation of step-in arrangements.

[10] Schedule 3, clause 37 (1) (e)

Insert at the end of clause 37 (1) (d):

or

- (e) the giving of a service breach notice or the implementation of step-in arrangements, and any thing done or omitted to be done under or in connection with a service breach notice or step-in arrangements,

[11] Schedule 3, clause 37 (1)

Omit “paragraphs (a)–(d)”. Insert instead “paragraphs (a)–(e)”.

[12] Schedule 3, clause 37 (3) (a)

Insert “or the *Passenger Transport Amendment (Maintenance of Bus Services) Act 2005*” after “the amending Act”.

[13] Schedule 3, clause 39

Insert “or an interim contract” after “non-commercial bus service contract” in the definition of *existing service provider* in clause 39 (1).

[14] Schedule 3, clause 39

Insert in alphabetical order in clause 39 (1):

interim contract means a bus service contract for the provision of temporary services in place of a regular bus service discontinued because of the expiry of the term or termination or variation of an existing commercial bus service contract or an existing non-commercial bus service contract.

[15] Schedule 3, clause 39 (7) and (8)

Insert after clause 39 (6):

- (7) An application may be made under this clause if the contract held by the existing service provider is terminated or expires, but may not be made later than 60 days after the termination or expiration of the contract.
- (8) An application may be made under this clause even if step-in arrangements are implemented under this Part in relation to the regular bus services provided by the existing service provider.

[16] Schedule 3, clauses 39A–39G

Insert after clause 39:

39A Service breaches

- (1) The Director-General may, by notice in writing given to an existing service provider (in this Part called a *service breach notice*), require the existing service provider to take the action specified in the notice within the period specified in the notice.
- (2) The Director-General may give a service breach notice if:
 - (a) the Director-General is of the opinion that a regular bus service contract of the existing service provider is, or is likely to be, for a period longer than 24 hours:
 - (i) interrupted, disrupted or not delivered, or
 - (ii) not provided to a reasonable standard to meet community needs, or
 - (b) in such other circumstances as may be provided by the regulations.
- (3) The notice may require the action to be taken immediately if the Director-General is of the opinion that it is necessary to do so having regard to the urgency of the circumstances.

- (4) If the existing service provider fails to comply with a service breach notice within the period specified in the notice, the Director-General may apply to the Minister for approval to take one or both of the following actions:
 - (a) terminate the existing bus service contract on the ground of failure to comply with the notice,
 - (b) implement step-in arrangements under clause 39B (3).
- (5) The Minister may approve or refuse the application.
- (6) If the Minister approves the application, the Director-General may take the action approved by the Minister. Termination of a contract is to be by notice in writing given to the existing service provider.
- (7) The Director-General may give more than one service breach notice under this clause in relation to the same contract.
- (8) Nothing in this clause limits any other action that may be taken by the Director-General or any other person in relation to an existing bus service contract, including any other power to terminate the contract concerned or to exercise any function under clause 39B (2) on the expiry or termination of the contract.

39B Step-in arrangements for existing bus service contracts

- (1) The Director-General may, by notice published in the Gazette, implement the step-in arrangements specified in the notice if of the opinion that it is necessary to do so to maintain regular bus services provided under an existing bus service contract.
- (2) The Director-General may take action under subclause (1):
 - (a) on or before the expiry of an existing bus service contract, or
 - (b) on or before termination of an existing bus service contract by the Director-General (other than under this Part), or
 - (c) not later than 60 days after notice of termination, or termination without notice, of an existing bus service contract by an existing service provider, or
 - (d) in such other circumstances as may be prescribed by the regulations.
- (3) The Director-General may, with the approval of the Minister under clause 39A, also take action under subclause (1) if an existing service provider fails to comply with a service breach notice, whether or not the existing bus service contract concerned has been terminated or has expired.

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- (4) The step-in arrangements take effect on the day the notice is published in the Gazette, or on such later day as may be specified in the notice.
- (5) Step-in arrangements implemented under subclause (2) may not take effect before the expiry or termination of the contract concerned.
- (6) The step-in arrangements may do any one or more of the following:
- (a) provide for the appointment of the Director-General, or a person nominated by the Director-General, (the ***step-in party***) to exercise functions of the existing service provider that are or were conferred under the existing bus service contract,
 - (b) authorise the step-in party to take possession of, and use, buses or premises or other assets used or required by the existing service provider to provide the regular bus services concerned,
 - (c) require the existing service provider or any other person to take such steps as are necessary in the opinion of the Director-General to make buses, premises or other assets referred to in paragraph (b) available to the step-in party,
 - (d) authorise or require the step-in party or any other person to carry out functions under the contract as if the contract were in force,
 - (e) specify the terms and conditions on which the step-in arrangements are to be implemented,
 - (f) without limiting paragraph (e), specify terms and conditions relating to the following matters:
 - (i) payments to the existing service provider of a kind payable under the contract after deduction of the costs of the step-in party and other specified costs from amounts payable to the existing service provider,
 - (ii) the use of staff employed by the existing service provider in connection with the provision of the regular bus services and arrangements for payment for the use of services of those staff,
 - (iii) payments to third parties (such as suppliers, lessors and providers of assets and services) in connection with the provision of the regular bus services under the step-in arrangements,

- (g) specify the period (being a period not exceeding 12 months) for which the step-in arrangements are in force,
 - (h) specify any other circumstances in which the step-in arrangements cease to be in force,
 - (i) contain any other necessary consequential or ancillary provisions.
- (7) In determining the step-in arrangements, and any terms and conditions on which they are to be implemented, the Director-General is to consider the terms and conditions of the existing bus service contract concerned and any relevant commercial arrangements or security transactions of the existing service provider or other persons, being arrangements or transactions entered into at arms-length, relating to assets affected by the proposed step-in arrangements or the provision of the regular bus services.
- (8) A step-in party may provide bus services in accordance with step-in arrangements in force under this clause despite any other provision of this Act or the regulations or any other law.
- (9) A notice under this clause may be revoked or varied by the Director-General by notice published in the Gazette.
- (10) Nothing in this clause prevents the Director-General from making arrangements of a kind referred to in clause 35 or taking action under any other law to maintain a regular bus service that may be the subject of arrangements under this clause.
- Note.** This clause is a transitional clause and does not apply to contracts entered into under Division 3 of Part 3 (as substituted by the *Passenger Transport Amendment (Bus Reform) Act 2004*) and so will only affect commercial bus service contracts in force before that Division was inserted and certain interim contracts entered into pending new contracts coming into force. When these existing and interim contracts cease to be in force, this clause will cease to have operation.

39BA Additional provisions relating to step-in arrangements after service breach notices

- (1) This clause applies to step-in arrangements implemented under clause 39B (3) after a failure to comply with a service breach notice, and so applies in addition to clause 39B.
- (2) The terms and conditions of the step-in arrangement may, if the existing bus service contract is in force, make provision for or with respect to the operation of the contract, including obligations, rights and liabilities under the contract, and exclusion from liability under the contract, during the period that the step-in arrangements are in force.

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- (3) A provision of a step-in arrangement of a kind specified in subclause (2) has effect in relation to the bus service contract during the period that the step-in arrangements are in force despite any provision of the contract or any other law.
 - (4) A step-in arrangement that affects an existing bus service contract that is in force does not affect the term of the contract.
 - (5) A step-in arrangement that results from a failure to comply with a service breach notice has effect for the period specified in the notice under clause 39B or until the Director-General revokes the notice, by notice published in the Gazette, on the ground that the service breach notice has been complied with or on for any other reason, whichever occurs first.
 - (6) The Director-General may take action under this clause to revoke a notice on the Director-General's own initiative or on the application of an existing service provider.

39C Offence relating to step-in arrangements

- (1) A person must not, without reasonable excuse, fail to comply with a requirement imposed on the person under step-in arrangements in force under clause 39B.
Maximum penalty: 100 penalty units.
- (2) A person must not enter into an agreement, arrangement or other transaction or take action with the intention of, or with intentions that include, preventing the use of staff or a bus, premises or other assets in accordance with step-in arrangements under clause 39B.
Maximum penalty: 100 penalty units.

39D Liability of step-in parties, existing service providers and other parties under step-in arrangements

- (1) In determining step-in arrangements, the Director-General must specify terms and conditions relating to the liability or protection from liability (including indemnities or releases to be given) of the existing service provider and the step-in party in connection with acts or omissions done or omitted for the purposes of implementing step-in arrangements.
- (2) Any such terms and conditions are to be determined having regard to the following principles (subject to any necessary exceptions determined in a particular case by the Minister):
 - (a) the step-in party should be protected from liability to the existing service provider or any other person for acts done or omitted in good faith for the purposes of implementing step-in arrangements,

- (b) the step-in party should be protected from liability for acts or omissions of the existing service provider done or omitted before the implementation of the step-in arrangements,
 - (c) the existing service provider should be protected from liability for acts done or omitted by the step-in party or any other person for the purposes of implementing step-in arrangements,
 - (d) a person dealing with the step-in party in the course of implementing step-in arrangements should be protected from liability for acts or omissions done in good faith at the lawful request or requirement of the step-in party.
- (3) Without limiting subclause (1), the step-in arrangements may, for the purposes of this clause, specify terms and conditions containing one or more of the following requirements:
 - (a) a requirement that indemnities or releases be given to or by or on behalf of the step-in party or the existing service provider in connection with the step-in arrangements,
 - (b) a requirement that indemnities or releases be given to or by or on behalf of the step-in party or the existing service provider in connection with obligations, rights and liabilities under the workers compensation Acts and other legislation or laws relating to employer or occupier liability or liability in relation to environmental obligations,
 - (c) a requirement that warranties or agreements be given or entered into by or on behalf of the step-in party or the existing service provider in relation to specified obligations, rights and liabilities.
- (4) A term or condition of a step-in arrangement of a kind referred to in this clause, and any thing done in accordance with any such term or condition, has effect despite any other provision of this Act or the regulations or any other law.
- (5) Nothing in this clause permits a term or condition of a step-in arrangement that has the effect of:
 - (a) removing from an existing service provider the obligation to have and maintain in force an insurance policy, or to be a self-insurer, under the workers compensation Acts in respect of any of its staff whose services are made use of under step-in arrangements, or

- (b) removing any liability of an existing service provider in respect of injury to any such staff under those Acts or that exists independently of those Acts.
- (6) The Director-General may prepare model terms and conditions for the purposes of this clause and is to consult with industry representatives of bus service providers in relation to any such model terms and conditions.
- (7) In this clause:
workers compensation Acts means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and any instruments made under those Acts.

39E New contractual arrangements to end step-in arrangements

- (1) The Director-General must, after implementing step-in arrangements on the expiry or termination of an existing bus service contract, use his or her best endeavours to enter into a new service contract with a person under the provisions of Division 3 of Part 3 to provide a regular bus service for the region or route or operation (or part of the region or route) for which the existing service provider was providing a regular bus service under the existing bus service contract.
- (2) The Director-General must revoke the notice under clause 39B on or before the new service contract takes effect.

39F Operation of step-in arrangements

- (1) The operation of clause 39A or 39B or a service breach notice or any step-in arrangements is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the provision of bus services, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, or
 - (d) as an event of default under any contract or other instrument.
- (2) The operation of clause 39A or 39B or a service breach notice or any step-in arrangements do not adversely affect any entitlements arising out of employment of any staff whose services are made use of under step-in arrangements.

- (3) Subclause (1) and clauses 36 and 37 do not prevent a step-in party from bringing proceedings in respect of a contract between the Director-General and the step-in party for provision of services for the purposes of step-in arrangements.

39G Public consultation during operation of step-in arrangements

- (1) As soon as reasonably practicable after implementing step-in arrangements, the Director-General is to establish a community reference group.
- (2) The community reference group is to comprise persons nominated by the Director-General, being persons who the Director-General considers:
- (a) have a knowledge of, or interest in, the bus services to which the step-in arrangements relate, or
 - (b) live in the area serviced by those bus services, or
 - (c) have some expertise in the provision of bus services generally.
- (3) The community reference group is to conduct public consultation and is to:
- (a) assess the frequency, reliability and relevance of the bus services to which the step-in arrangements relate, and
 - (b) assess the long term viability of those bus services, and
 - (c) consider alternative bus service arrangements, and
- is to report to the Director-General on these matters.
- (4) In determining the terms of a new bus service contract that relates to a region or route (or part of a region or route) for which bus services are being provided under step-in arrangements, the Director-General is to take account of any relevant report provided under subclause (3).