



New South Wales

Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Passenger Transport Act 1990* (the ***Principal Act***) to enable the implementation of “step-in arrangements” to maintain regular bus services before or after termination or on or before expiry of commercial bus service contracts (in force before the reform of bus contracts in 2004), and temporary contracts replacing those contracts, (***existing bus service contracts***).

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

The *Passenger Transport Amendment (Bus Reform) Act 2004* established a new system for the regulation of regular bus services, including the introduction of

performance-based contracts and opportunities for contestability. Under transitional provisions inserted by that Act, existing contracts were kept on foot but are able to be terminated by the Director-General before the contract term expires. Subsequent contracts are governed by the new contract arrangements. The proposed Act enables the Director-General to implement step-in arrangements to maintain the provision of bus services where an existing bus service contract expires or is terminated before a new contract is operative.

Schedule 1 [10] inserts proposed clauses 39A–39C into Schedule 3 (Savings and transitional provisions) to the Principal Act.

Proposed clause 39A enables the Director-General, by notice published in the Gazette, to implement step-in arrangements to authorise the Director-General or a person nominated by the Director-General to step in to provide bus services formerly provided under an existing bus service contract before or after termination or on or before expiry of the contract. Such provisions would enable the person to act in the place of the bus service provider for up to 12 months, as if the contract were in force, and to take possession of and use the assets necessary to provide the bus services. The proposed clause sets out the matters that may be covered by step-in arrangements (including the use of staff) and provides for the variation or revocation of step-in arrangements by further notice published in the Gazette.

Proposed clause 39B makes it an offence to fail to comply (without reasonable excuse) with an obligation imposed under step-in arrangements or to enter into an agreement, transaction or other arrangement or take other action with the intention of preventing the use of staff or a bus, premises or other assets under a step-in arrangement.

Proposed clause 39C provides legal protections relating to the operation of proposed clause 39A and step-in arrangements.

Schedule 1 [1] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [2] inserts definitions of expressions used in the provisions inserted by the proposed Act.

Schedule 1 [3] extends the effect of clause 33 of Schedule 3 to the Principal Act (which defeats statutory rights of renewal for existing bus service contracts) to rights of renewal contained in existing bus service contracts.

Schedule 1 [4] and [5] amend clause 34 of Schedule 3 to the Principal Act to provide that the review provisions of the Principal Act do not apply to a decision to implement step-in arrangements under proposed clause 39A.

Schedule 1 [6] amends clause 36 of Schedule 3 to the Principal Act to extend protections from legal challenge given by that clause in respect of the exercise of functions of the Director-General to functions relating to the implementation of step-in arrangements.

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Schedule 1 [7]–[9] amend clause 37 of Schedule 3 to the Principal Act to extend the prohibition on compensation by the Crown under that clause to loss or damage arising from step-in arrangements or things done or omitted to be done under or in connection with step-in arrangements.

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No. , 2005

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Passenger Transport Amendment (Maintenance of Bus Services) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Passenger Transport Act 1990 No 39	7
The <i>Passenger Transport Act 1990</i> is amended as set out in Schedule 1.	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Schedule 3 Savings and transitional provisions	3
	Insert at the end of clause 2 (1):	4
	<i>Passenger Transport Amendment (Maintenance of Bus Services) Act 2005</i>	5
		6
[2]	Schedule 3, clause 27	7
	Insert in alphabetical order:	8
	<i>existing bus service contract</i> means an existing commercial bus service contract or an interim contract for the provision of regular bus services.	9
		10
		11
	<i>existing service provider</i> means the holder of an existing bus service contract.	12
		13
	<i>interim contract for the provision of regular bus services</i> 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.	14
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	<i>step-in arrangements</i> means arrangements under clause 39A.	20
[3]	Schedule 3, clause 33	21
	Insert after clause 33 (2):	22
	(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.	23
		24
		25
[4]	Schedule 3, clause 34	26
	Insert “or an interim contract for the provision of regular bus services” after “non-commercial bus service contract” wherever occurring.	27
		28
[5]	Schedule 3, clause 34 (2) (c)	29
	Omit “30 or 31”. Insert instead “30, 31 or 39A”.	30
[6]	Schedule 3, clause 36 (1) (c)	31
	Insert at the end of clause 36 (1) (b):	32
	, or	33
	(c) the implementation of step-in arrangements.	34

[7] Schedule 3, clause 37 (1) (e)	1
Insert at the end of clause 37 (1) (d):	2
or	3
(e) the implementation of step-in arrangements, and any thing done or omitted to be done under or in connection with step-in arrangements,	4 5 6
[8] Schedule 3, clause 37 (1)	7
Omit “paragraphs (a)–(d)”. Insert instead “paragraphs (a)–(e)”.	8
[9] Schedule 3, clause 37 (3) (a)	9
Insert “or the <i>Passenger Transport Amendment (Maintenance of Bus Services) Act 2005</i> ” after “the amending Act”.	10 11
[10] Schedule 3, clauses 39A–39C	12
Insert after clause 39:	13
39A Step-in arrangements for existing bus service contracts	14
(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.	15 16 17 18
(2) The Director-General may implement step-in arrangements in accordance with this clause:	19 20
(a) on or before the expiry of an existing bus service contract, or	21 22
(b) on or before termination of an existing bus service contract by the Director-General, or	23 24
(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.	25 26 27
(3) 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.	28 29 30

- (4) 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,
 - (iv) liability of the step-in party, the existing service provider and other persons,
 - (v) protection of third parties,
 - (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.	1 2
(5)	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 of the existing service provider in connection with the provision of the regular bus services.	3 4 5 6 7 8
(6)	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 10 11
(7)	A notice under this clause may be revoked or varied by the Director-General by notice published in the Gazette.	12 13
(8)	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.	14 15 16 17
39B	Offence relating to step-in arrangements	18
(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 39A. Maximum penalty: 100 penalty units.	19 20 21 22
(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 in force under clause 39A. Maximum penalty: 100 penalty units.	23 24 25 26 27 28
39C	Operation of step-in arrangements	29
(1)	The operation of clause 39A or any step-in arrangements is not to be regarded:	30 31
(a)	as a breach of contract or confidence or otherwise as a civil wrong, or	32 33
(b)	as a breach of any contractual provision prohibiting, restricting or regulating the provision of bus services, or	34 35
(c)	as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, or	36 37 38

(d)	as an event of default under any contract or other instrument.	1 2
(2)	The operation of clause 39A 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 4 5 6
(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.	7 8 9 10