

SECOND READING SPEECH

(The Hon Nick McKim MP)

PASSENGER TRANSPORT SERVICES BILL 2011

Mr McKim (Minister for Sustainable Transport) – I
move:

That this Bill be now read a second time.

MR SPEAKER / MADAM PRESIDENT

I am pleased to present to the House today the *Passenger Transport Services Bill 2011*. This Bill is the first of a set of Bills representing a suite of legislation

designed to modernise our approach to the regulation of passenger transport in Tasmania.

This package of legislation implements the policy proposals resulting from both a Review of the *Passenger Transport Act 1997* (Passenger Transport Act) and the Safe Community Transport Review.

These reviews initially arose out of advice received from the Solicitor-General in 2007, when the term ‘for reward’, a key determinant in identifying who should and who shouldn’t be regulated under the Passenger Transport Act, was interpreted by the Solicitor-General to mean “any consideration”. This was a critical piece of advice, as it meant that many fare or fee charging methods generally applied in the community transport sector would capture most of these transport services within the scope of the mandatory requirements of the Passenger Transport Act and the *Vehicle and Traffic Act 1999*. These

requirements were primarily designed for the commercial transport industries and the prospect of their blanket application to community transport was highly problematic.

Recognising this untenable situation, the Government applied a temporary legal exemption for community transport services using small vehicles, while the Safe Community Transport Review was undertaken to consider a long term regulatory solution. This exemption period will expire on 1 July 2012.

In addition, the pending expiration of the *Passenger Transport Regulations 2000* and the *Passenger Transport (Review of Decisions) Regulations 2000*, necessitated the undertaking of a more comprehensive review of the Passenger Transport Act. This exercise, the 'Passenger Transport Act Review', commenced in late 2008. The aim of this Review was to develop and implement a

contemporary legislative framework to support the safe, sustainable and affordable delivery of passenger transport services.

The Review identified that the current Passenger Transport Act is unclear in its intent and overly complex, thereby creating considerable difficulties in its administration. Given the extent of the issues, it was determined that the most effective course of action was to replace the Passenger Transport Act with a new Act.

It should be noted that the wider passenger transport industry has been supportive of both the Safe Community Transport Review and Passenger Transport Act Review processes, and many representations have been made to both the Reviews.

I will now outline the essential features of this new Bill.

Some important fundamental principles have been used to guide the design of the regulatory approach applied in this Bill, and associated consequential amendments. These principles are all linked to a judgement regarding the inherent risk of different transport activities.

Firstly, the specific regulation of passenger transport should generally apply to commercial, rather than non-commercial operations because of the higher risks associated with profit-maximising behaviour.

Second, this regulation should focus on services available to the wider public, rather than transport involving private arrangements because of a reduced ability of customers to judge safety risk based on personal knowledge of the transport provider.

Third, there is a greater justification for regulating transport delivered using large passenger vehicles,

than with small vehicles because of the greater potential consequences of a large vehicle crash.

Further, a vital consideration in assessing whether there is a case for additional special regulatory measures is that all road users have generic legal obligations to respect the safety of their passengers and other road users, such as registering their vehicle and being properly licensed to drive.

As a result, this Bill makes it clear that it does not apply to personal private use of motor vehicles, or to private passenger services. Private passenger services are those services operated only by and for persons with a common affiliation using a small passenger vehicle. This encompasses members of a charitable, cultural, religious, recreational, social or sporting association with their own means of collective transport. The Bill also makes it clear that it

does not apply to incidental passenger services either, including private car-pooling arrangements.

This Bill continues the long-established practice of using seating capacity to delineate small and large passenger vehicles, and hence the scope of the application of the legislation. However, it is considered that the current seating capacity definitions for large and small vehicles in Tasmania warrant revision. In particular, there is a strong case for lowering the seating capacity definition for a large passenger vehicle from 13 seats or greater to 10 seats or greater, including the driver. This change will better align the passenger transport legislation with:

- the majority of relevant road safety provisions (the Vehicle and Traffic Act and Regulations define a “bus” at this seating level);
- the Australian Design Rules definition of a “passenger omnibus”; and

- Commonwealth legislation, and with the majority of passenger transport legislation in other jurisdictions.

It is a common practice for organisations requiring mini bus-type vehicles to have these vehicles modified to reduce the number of available passenger seats below the large passenger vehicle threshold. These modifications, which may be offered automatically by vehicle retailers, typically involve a reduction from 14 to 12 seats. Such a reduction significantly reduces the additional regulation, and costs, applicable to the vehicle and its operation.

While it is a legitimate practice to modify seating arrangements (especially as this is necessary in order to provide space for wheelchairs), the current legal framework creates a situation where two otherwise identical vehicles are treated entirely differently on the basis of an arbitrary rule. Despite the altered

number of seats, both vehicles are capable of carrying the same combined weight of passengers and cargo. This situation is considered unacceptable as the additional demands on the driver to operate a vehicle of such a size is not diminished simply by removing several seats.

The Bill also defines the seating capacity of passenger vehicles “as built”. This means that if a vehicle is originally manufactured with 10 or more seats, including the driver, subsequent modifications (including reducing the number of seats) will not alter its status under this Bill. This is important to ensure consistency and that safety regulation cannot be avoided simply by making alterations to the vehicle.

Mandatory operator accreditation has been retained as the primary mechanism by which the Government ensures that the operator of a passenger transport service responsibly implements safe and secure

systems to manage that service. Accreditation is the means by which an operator is held accountable for any failures in the safety performance of their business.

The Bill makes it clear that any person or organisation providing a passenger transport service, or a hire and drive passenger service, is required to be accredited. A person is considered to be providing a passenger transport service if they:

- use a large passenger vehicle for other than private family purposes; or
- use a small passenger vehicle where any of the passengers pay a fare, the service is available to any member of the public and the service is a transport concern.

A passenger service is considered to be a 'transport concern' if it is operated by a business or an undertaking as its sole or main activity, or is

an integral and indispensable component of its activities.

The Bill defines a hire and drive passenger service, where the primary purpose of hiring a vehicle is for the carriage of passengers, rather than the carriage of goods or for some other purpose. The Bill also makes it clear that motor vehicles used as 'campervans' are also captured under the hire and drive passenger service provisions.

The primary purpose of operator accreditation is to ensure safety. It is not concerned with the regulation of 'quality' or 'service standards' in relation to transport providers.

While some Australian jurisdictions include matters other than safety as part of their accreditation schemes, the decision to preserve the safety focus of operator accreditation in Tasmania has met with broad support from transport industry bodies.

Quality and service standards are best managed through the operation of commercial forces, including the Government's own procurement process, rather than by direct regulation.

This Bill retains the requirement for an operator to be a 'fit and proper' person to operate a passenger service and provides a range of criteria, including a list of serious offences, that the Transport Commission may take into account in determining whether someone is 'fit and proper'. The Commission will provide a set of guidelines to assist operators in understanding how the Commission will determine who is 'fit and proper' and what arrangements will be made to ensure operators maintain their suitability and fitness to be accredited.

One of the major developments in passenger transport since the development of the previous Act in the mid-1990s is the growing importance of the

community transport sector in Tasmania. As confirmed by the Solicitor-General's advice regarding 'for reward' in 2007, it has become apparent that the existing regulatory model does not accommodate community transport very well and lacks clarity as to how the sector should be regulated, if at all, by the Transport Commission.

This Bill implicitly recognises that community transport services lie in the middle of a spectrum between commercial and entirely private passenger transport services. Additional regulation of community transport services by the Government's transport authority must preserve safety for people using those services, without applying excessive regulation and cost that may threaten service continuity. Reconciling these competing objectives was the one of the most challenging tasks in the design of these reforms.

This Bill establishes that, unless using a vehicle with 10 or more seats, community organisations that provide passenger transport to their clients do not require operator accreditation. However, it should be appreciated that where the service provided entails the payment of a fare, is available to any member of the public and is a transport concern, then the community organisation providing the service will need to be accredited, like any other organisation meeting this test under the Bill.

Community transport providers utilising vehicles with 10 to 12 seats will be subject to a modified and less onerous operator accreditation scheme than the commercial sector. Further, a significant number of community transport providers are already subject to operator accreditation under the current seating capacity definitions and will be unaffected by the changes introduced under this Bill.

The Bill makes it clear that there will be no requirement for community transport services to obtain operator accreditation, if the service is using small passenger vehicles. This will help to ensure that those organisations can continue to deliver their services, especially in regional communities.

Similarly, the decision to not require community transport drivers to hold ancillary certificates should assist the sustainability of these services. This change is given effect by consequential amendments being made to the Vehicle and Traffic Act. It acknowledges that community transport could not function without volunteer drivers, and that any reforms that create new barriers or disincentives for volunteers could undermine the capacity of community organisations to maintain their important transport functions.

Additionally, no compelling evidence was presented to indicate that there are any systemic safety problems with drivers participating in this sector.

In determining the preferred approach to regulating community transport, a key factor was the presence of Government oversight arrangements other than those by the Transport Commission. Many community transport organisations have funding agreements with State agencies, in particular Health and Human Services. These agreements provide a mechanism through which the Government can mandate safe transport practices, particularly in regard to the suitability of drivers.

The judgement has been made that additional regulation of drivers in the community transport sector by the Transport Commission, in addition to the already existing suite of regulation related to driver licensing and the general obligations required

of these organisations under Workplace Health and Safety, cannot be justified at this time. This requires that those areas of Government having a funding and oversight relationship with community organisations continue to require safe transport practices.

During consultation with industry, concerns were raised about interstate vehicles providing passenger transport services in Tasmania without holding Tasmanian accreditation. The Bill provides that, provided an interstate bus operator holds accreditation in another State, they should be able to undertake limited passenger transport services in Tasmania.

This decision has been taken based on the identified primary purpose of accreditation, which is to ensure safety. It is recognised that accreditation requirements are different across the States of Australia but, in relation to safety, all have a common

set of core elements. Accreditation should not be used as a barrier to competition.

Further, to require Tasmanian accreditation could negatively impact on the number of tour buses travelling to the State. The consequences for the tourism industry and accommodation providers in particular would be detrimental. A single tour bus may represent more than 20 hotel room bookings over several days.

The Transport Commission has been provided with the power to require interstate operators to hold Tasmanian accreditation if their operations are frequent and/or become regular, if they move their base of operations to Tasmania or conduct operations from Tasmania.

In addition to mandatory accreditation, this Bill also introduces a revised framework for the authorisation

of regular passenger services, and the procurement of regular passenger services.

Regular passenger services include rural school bus services, long distance and urban fringe bus services linking our population centres and the urban services provided in the major metropolitan centres.

Following consultation with industry, the Bill separates the contracting and regulation powers, which have historically both been vested in the Transport Commission. While the Transport Commission retains responsibility for the authorisation of regular passenger services, power to enter into contracts on behalf of the Crown is vested in the Secretary of the Department of Infrastructure, Energy and Resources. This change addresses industry concerns over perceived conflicts of interest where the same person could be both the regulatory and the contracting party.

The Bill retains the concept of authorisations as the foundation for managing the delivery of regular passenger services.

The Bill defines in some detail what is, and is not, considered to be a regular passenger service. This is an important distinction, as the primary purpose of the authorisation process is to ensure that the investment by the Government in passenger services is not undermined by the operation of private bus services which may seek to maximise the return to the operator, rather than being concerned with maintaining or improving service levels for the community.

The Bill makes clear that the Government is not concerned with unnecessary regulation of services targeted at markets distinct from those provided under contract, such as tourist-oriented services. The Bill provides the necessary discretion to the Transport

Commission to assess applications for authorisations, with reference to such matters as the impact on existing contracted bus services, and, importantly, any planned future services previously identified by existing bus operators.

The Bill provides encouragement for operators who seek genuine opportunities for new and innovative services. It therefore provides a necessary balance between minimising regulatory interference and avoiding unfettered competition in marginal passenger markets, where service levels can only be guaranteed through the provision of public subsidies.

The Bill recognises that there are different circumstances in which Government intervention may be necessary to support a regular bus service. These decisions have been made historically based on different methodologies, dating back to public vehicle

licensing and the development of District Schools that first created a demand for school bus services.

The Passenger Transport Act established, for the first time, a common platform for the procurement of all regular passenger services, by means a contractual framework. The concept of a contracting framework is retained in the Bill, and has been refined based on operational experience over the past decade. This has included the completion of the very successful Core Passenger Services Review, which established the existing New Service Contracts through which subsidised regular passenger services are supported.

The Bill confirms that, where necessary, regular passenger services will continue to be procured by contract.

The Bill provides guidance to the Secretary in procuring services in particular situations such as emergencies and trials, where the provision of a

service at short notice, or on a short-term basis, may be necessary.

The Bill also provides guidance to the Secretary in managing situations where necessary changes to services may be achieved by variations to more than one contracted passenger service, or to a service currently operated without subsidy.

The Bill fixes the maximum contract term at 10 years, although contracts for the shorter period of 2 years are mandated for contracts awarded to address short-term service issues.

The Bill provides for the development of Service Eligibility Guidelines to assist the Secretary in exercising the contracting powers. It is intended that the guidelines will describe the circumstances in which, and the purposes for which, subsidising regular passenger services may be appropriate. The Bill provides for the Secretary to liaise with industry

bodies and other interested parties in the development of the guidelines.

Provisions relating to the review of decisions have been added to this Bill, which were previously housed in the *Passenger Transport (Review of Decisions) Regulations 2000*. It was considered that important rights that may have an impact on the decisions operators may make would be better placed in primary legislation, rather than in subordinate legislation. The new clauses make it clear that a person aggrieved by a decision may proceed immediately to seek an external review without the necessity of making application for an internal review first.

The net effect of these and other changes in this Bill is to provide greater certainty to the passenger transport industry as to who is, and who isn't, to be accredited. It ensures the focus of accreditation is on

safety rather than on other miscellaneous matters that, quite rightly, are the responsibility of industry itself. The Bill also provides for greater flexibility in how operator accreditation can be tailored to suit the passenger transport service being provided. In addition it gives the Commission the power to exempt persons, motor vehicles or services from the operation of a relevant provision of this Bill when circumstances dictate that requiring compliance is unnecessary, impracticable or unreasonable.

This suite of Bills marks the end of long period of public consultation with the Tasmanian community and all sectors of the passenger transport industry. All stakeholders, especially the Bus, Community Transport and Taxi sectors, have had continuous, open and unfettered access to the project officers involved in this project as well as being kept informed about the project's progress and the outcome on the various policy issues as they arose. Industry has been

involved and provided input into the finalisation of this legislative package. It will continue to have a say in the development of associated Regulations in the first half of next year.

The Passenger Transport Act Review and the Safe Community Transport Review have been criticised for some delays. However, compromise on our commitment to hearing and understanding the views of our stakeholders and their issues was not an acceptable alternative. The Tasmanian Bus Association is supportive of this Bill, with the only area of slight disagreement being in relation to external accreditation. While the TBA supports what we have done, they would have liked us to have been stricter in requiring interstate operators to be accredited. We considered this, but were unable to acquiesce for the reasons mentioned earlier.

Of course there have been policy compromises with our stakeholders and it is acknowledged that the Taxi industry do not support our proposal not to require community transport passenger services provided with a small passenger vehicle to be accredited, or for the drivers of these vehicles to hold ancillary certificates. These matters were considered at length, but for the reasons outlined earlier it was decided that, on balance, regulation of the sector's small passenger vehicles was inappropriate.

A more viable and safer passenger transport system is critical to the Government's achievement of its economic, social and environmental goals. Tasmania's passenger transport industry, in particular, is expected to have an increasing role in supporting sustainable growth by undertaking a greater proportion of the transport task in Tasmania. Tasmanians have begun to move from our car centric

approach to an approach accommodating a wider range of transport options.

I would like to emphasise that extensive consultation with key stakeholders was an important part in the development of this legislation. All sectors of the industry including the Tasmanian Bus Association, the Taxi Industry, Luxury Hire Car operators, Limited Passenger Services operators and Community Transport providers, to name but a few, have each commented on the draft Bill and are generally supportive of the Bill.

There are two further bills in this legislative package the *Passenger Transport and Related Legislation (Consequential Amendments) Bill 2011* and the *Taxi and Luxury Hire Car Industries Amendment Bill 2011*.

I will address the details of each of these in due course, as part of my second reading speeches for those bills.

There will be a package of regulations developed to support the new *Passenger Transport Services Bill 2011* and the amended *Taxi and Luxury Hire Car Industries Act 2008*. As I indicated earlier, there will be appropriate industry consultation in their finalisation.

I commend this Bill to the House.