TRANSPORT OPERATIONS (PASSENGER TRANSPORT) AMENDMENT BILL 1996

EXPLANATORY NOTES

Preamble

The Transport Operations (Passenger Transport) Amendment Bill 1996 has been drafted consistent with current legislative drafting practice and in modern language. As a consequence, particular sections, clauses and subclauses require little or no specific further explanation and in these Explanatory Notes those sections, clauses and subclauses may be repeated or summarised in general terms.

Object of Bill

Taxi fares are the only public transport fares in Queensland specified in subordinate legislation. As a result, any increase in taxi fares requires the approval of the Governor in Council. This increases the cost and the time needed to increase taxi fares in line with increased costs faced by industry.

The first object of the Bill is for the chief executive to set the maximum fares for taxis by gazette notice. The Bill also provides for the chief executive to exclude certain types of taxi from the maximum fares where the hirer requests that type of taxi when booking the taxi and the fare is agreed. Such arrangements are already currently in place under *Transport Operations (Passenger Transport) Regulation 1994* for luxury taxis and high occupancy taxis.

The second object of the Bill is to extend the transitional provisions preserving those parts of the former *State Transport Act 1960* which continue licences and permits of certain operators of scheduled bus services, including arrangements for school transport operators, who have not entered into a new service contract. The transitional financial arrangements applying to certain operators of scheduled bus services are also amended.

What will the Bill Achieve

By removing the maximum taxi fares from the Regulation and giving the chief executive the power to set the maximum fares, the process for changing taxi fares is simplified. More importantly, it allows an agreed basis for taxi fares to be developed and implemented over the medium to long term. This is not possible under the current system which requires Executive Council approval for each taxi fare increase.

The chief executive will be able to respond more quickly to proposals for exclusions of specific types of taxis from the maximum fare or for changes to the structure of fares. Receiving quicker responses will allow taxi operators to better plan their businesses and undertake innovative approaches with greater certainty about future revenue streams.

The *Transport Operations (Passenger Transport) Act 1994* provides for a system of service contracts specifying minimum service levels and funding arrangements for operators of certain scheduled bus services. Chapter 13 of the Act, in part, provides transitional arrangements to ensure existing service licences and permits under the *State Transport Act 1960* continue in force until new service contracts can be entered into.

These transitional arrangements expire on 8 November 1996. Due to the size and complexity of the task, new service contracts with all eligible bus operators will not be entered into by that date.

As a consequence, it is necessary to extend the transitional provisions relating to scheduled bus services, including school bus services for a further three years. Such an extension will ensure urban and school bus operators remain regulated and can continue to operate within established parameters under the provisions of the *State Transport Act 1960* until new service contracts under the *Transport Operations (Passenger Transport) Act 1994* are entered into.

In addition to extending the provisions of the *State Transport Act 1960*, it is also proposed that the transitional financial provisions outlined in section 172 of the Act be amended to reflect the original intent of the *Transport Operations (Passenger Transport) Act 1994*. It should be noted that the proposed amendment of the transitional financial arrangements applies only to urban bus operators and not to operators that only run school services.

The existing section 172 of the *Transport Operations (Passenger Transport) Act 1994* provides for financial assistance to be paid to existing operators during the transition to new service contracts. Under the new contract arrangements, reducing financial assistance to urban bus operators over the first five years of any new service contract is provided to partly compensate the difference between the level of financial assistance previously provided under the *Urban Passenger Proprietors Assistance Act 1975* and the level of assistance provided for under the *Transport Operations (Passenger Transport) Act 1994* Act. Reduced subsidy levels under the *Transport Operations (Passenger Transport) Act 1994* are possible as bus operators under contract typically operate over a significantly larger area that non-contract bus operators thereby providing more opportunity for higher revenue streams and economies of scale.

As identified by the recent Public Transport Review, the way the section is currently drafted provides a disincentive to existing operators to enter into a new service contract until as late as possible. The disincentive occurs because the subsidy received by bus operators that have entered into a contract reduces over time while the subsidy for bus operators that have not entered into a contract continues at traditional levels until a contract is agreed.

The proposed amendment removes this disincentive and provides for greater equity between all urban bus operators by providing for urban bus operators that have not entered a new service contract before 1 December 1996 to receive financial assistance as if they had entered into a service contract on that date. Financial assistance for privately owned urban bus services will be reduced over a five year period as provided for in the 14 contracts covering approximately 60 percent of urban bus services throughout the State that have already been agreed with some bus operators.

While financial assistance will be reduced over the medium term, the amendments will have no immediate impact on private urban bus operators that have not entered into contracts as funding levels from 1 December 1996 to 30 November 1997 will be unchanged from funding provided between 1 December 1995 and 30 November 1996.

Estimated Cost for Government Implementation

By replacing the previous time consuming process for amending taxi fares, the Bill will provide administrative savings.

No costs are incurred by the State for changes to those transitional arrangements in Chapter 13 of the *Transport Operations (Passenger Transport) Act 1994.*

Compliance with Fundamental Legislative Principles

The provisions of the Bill observe the requirements of section 4 of the *Legislative Standards Act 1992.*

Consultation

Industry and a wide range of community groups were consulted on the proposal to remove the maximum fare schedule from the Regulation and for the chief executive to set maximum taxi fares.

In general, community groups and the Tourism Council of Australia noted that the new process would reduce administrative costs associated setting with taxi fares while the Taxi Council of Queensland noted that the process would reduce the current uncertainty surrounding fare increases and de-politicise taxi fare setting.

Individual bus operators and bus industry associations have been consulted and did not oppose the changes concerning the extension and changes to transitional provisions.

NOTES ON PROVISIONS

Clause 1 states the short title of the Act.

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Clause 3 states that this Act is created to amend the *Transport Operations (Passenger Transport) Act 1994.*

Clause 4 removes the head of power to set maximum taxis fares by regulation and provides for them to be published in a gazette under section 74A (*clause 5).*

Clause 5 provides for the chief executive to decide maximum taxi fares by publishing them in a gazette notice. The chief executive may also decide the maximum fares do not apply to certain types of taxis, where procedures exist for a person to request a specific type of taxi, for example a luxury taxis, and the fare will be agreed between the operator and the hirer when the booking for the taxi is made.

Clause 6 extends the operation of section 156 by three years.

Section 156 states that section 29(2) and (3) of the *Judicial Review Act 1991* does not apply to the decisions of the chief executive. Section 29(2) and (3) of the *Judicial Review Act 1991* allows a court or a Judge to place a stay of operation or proceedings on decisions made.

This exclusion has been made to ensure that the implementation of the reforms to public passenger transport in Queensland, enshrined in the *Transport Operations (Passenger Transport) Act 1994*, are not unduly delayed. This exclusion does not limit a persons right to challenge decisions taken by the chief executive.

Decisions of the chief executive relate to decisions made under the Chapter 13 of the *Transport Operations (Passenger Transport) Act 1994*, or, decisions to cancel, suspend, grant or refuse to renew a licence, permit, contract or another authority, under provisions of the *State Transport Act 1960* or the *Urban Public Passenger Transport Act 1984* which continue to have effect under Chapter 13; or, a decision that a service contract is required for an area or route; or, a decision to refuse to grant a service contract under Chapter 6 of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 7 provides for the extension of section 157 for three more years.

Section 157 ensures no compensation will be recoverable for a decision made under section 156 or because of application of the Part 1 of Chapter 13 of the *Transport Operations (Passenger Transport) Act 1994* to a licence, permit, contract subsidy or other payment.

Clause 8 extends the operation of section 158 for a further three years.

Section 158 provides that section 77 of the *State Transport Act 1960* continues to have effect for decisions of the chief executive mentioned in section 156. Section 77 of the *State Transport Act 1960* indemnifies the chief executive.

Clause 9 extends for three years the provisions of section 159.

Section 159 applies to a scheduled passenger service by road that was being provided immediately before the commencement of the *Transport Operations (Passenger Transport) Act 1994*, under Part 4 or Part 5 of the *State Transport Act 1960*, which complies with the definition for a scheduled passenger service under the *Transport Operations (Passenger Transport) Act 1994*.

Following the amendment, it will allow these operators to continue operations for a period no longer than five years after commencement of the *Transport Operations (Passenger Transport) Act 1994* or until a service contract under Chapter 6 of the *Transport Operations (Passenger Transport) Act 1994* for the area or route is entered into, whichever occurs first. (The *Transport Operations (Passenger Transport) Act 1994* commenced on 7 November 1994).

This section does not prevent the termination of a licence or permit under Part 4 or Part 5 of the *State Transport Act 1960.*

Clause 10 provides for the provisions section 160 to extended by a further three years.

Section 160 applies to a scheduled urban bus services that were being provided immediately before the commencement of the *Transport Operations (Passenger Transport) Act 1994* and were the subject of a contract between the corporation sole established under section 10 of the *Urban Public Passenger Transport Act 1984* and an operator.

Following the amendment, the operations under an existing contract will be allowed to continue for a period no longer than five years after commencement of the *Transport Operations (Passenger Transport) Act 1994* or until a service contract under Chapter 6 for the area or route is entered into, whichever is the earlier.

This clause also provides for a temporary service contract to be entered into on substantially the same conditions, if an existing contract expires before a service contract under Chapter 6 for the area or route is entered into.

Clause 11 extends the provisions of Section 161 or a further three years.

Section 161 applies to a school transport service that was being provided immediately before the commencement of the *Transport Operations (Passenger Transport) Act 1994* by an operator under an arrangement under Part 9A of the *State Transport Act 1960* between the State and the operator that was entered into for a fixed term.

The operators are also taken to have entered into a service contract under *Chapter 6* of the *Transport Operations (Passenger Transport) Act 1994*, on the same terms as the existing arrangements between the State and the operators for those services.

Furthermore, the clause removes a previous provision where these arrangements could have been terminated two years after the commencement of the *Transport Operations (Passenger Transport) Act 1994*. The arrangements will now continue until the end of their existing term.

Clause 12 extends the provisions of section 162 for a further three years.

Section 162 applies to a school transport service that was being provided immediately before the commencement of the *Transport Operations (Passenger Transport) Act 1994* by an operator under an arrangement under Part 9A of the *State Transport Act 1960* between a local conveyance committee and the operator, that was entered into for a non-fixed term.

The operator is also taken to have entered into a service contract under Chapter 6 of the *Transport Operations (Passenger Transport) Act 1994* with the chief executive, in the same terms as the existing arrangement between the local conveyance committee and the operator.

The arrangements covered under this section will now continue for a period no longer than five years following the commencement of the *Transport Operations (Passenger Transport) Act 1994*; or, an earlier date if prescribed by regulation; or, if a new service contract is entered into for the whole or part of an area or route directly affecting these existing arrangements.

Clause 13 replaces section 172 with seven distinct sections which clearly delineate the seven components of financial assistance.

New section 172 restates the existing provision that an interest rate subsidy approved the under the *Urban Passenger Service Proprietors Assistance Act 1975*, may continue while the operator holds a licence or permit to which section 159 applies or holds a service contract under Chapter 6 to operate the services or similar services.

Furthermore, the section allows for an operator who holds a licence or permit under section 159 or a service contract under Chapter 6 to be granted a similar interest subsidy up to 7 November 1999. An interest subsidy may apply for a maximum of ten years.

Section 172A restates that an operator of an urban bus service to which section 159 applies may continue to receive a subsidy calculated on the basis of gross fare revenue under the *Urban Passenger Service Proprietors Assistance Act 1975* and reimbursement of revenue foregone for providing concessions to senior card holders.

The section confirms that the percentage of gross fare revenue the operator receives as a subsidy is the percentage the operator was receiving for the year commencing 1 July 1994.

However, the subsidy under this section ends, when section 159 ceases to apply or 30 November 1996, whichever is the earlier. Previously, the subsidy terminated on 8 November 1996 unless a service contract had been entered into.

Section 172B restates that an operator of an urban bus service to which section 160 applies, may continue to receive payment under the contract entered into under the *Urban Public Passenger Transport Act 1984.*

However, the payments under this section end when section 160 ceases to appy or 30 November 1996, whichever is the earlier. Previously payments terminated on 8 November 1996 unless a service contract had been entered into.

Section 172C provides new transitional financial assistance to an operator who has not entered into a service contract before 2 December 1996.

From 1 December 1996, the operator is to receive financial assistance as if a service contract to provide the services were entered into on that day. This includes the transitional funding which will be phased out over 5 years.

The payments under this section cease when the operator enters into a service contract or when sections 159 or 160 cease to apply, whichever is the earlier.

However, the Minister may reduce the transitional funding if the Minister is satisfied the operator is not maintaining the services at least at the level of service that existed at 30 November 1996.

Section 172D provides for an operator who enters into a service contract between the commencement of this Amendment Act and 1 December 1996. (Section 172 to be replaced provides similar financial assistance to service contract holders who entered in service contract prior to commencement of the Amendment Act.)

In addition to the financial assistance the operator is entitled to receive under section 52(2)(b) for providing government specified fare concessions for pensioners and senior card holders, the Minister is to pay transitional funding.

In the first year of the service contract, the sum of the payment under section 52(2)(b) and the transitional funding is to be equal to what the operator received under section 172A or 172B for the year prior to entering into the service contract.

For the subsequent four years, the transitional funding for each year cannot be more than that paid in the first year and is to reduce to zero over the period.

Section 172E applies to an operator who enters into a service contract after 1 December 1996.

In addition to the financial assistance the operator is entitled to receive under section 52(2)(b) for providing government specified fare concessions for pensioners and senior card holders, the Minister is to pay the remainder of transitional funding the operator would have received under section 172C had the service contract not been entered into.

Section 172F restates that an operator of a bus service to which section 159 applies may continue to receive payment of a subsidy for local pensioner fares under the *Urban Passenger Service Proprietors Assistance Act 1975.*

However, the payments cease when section 159 ceases to apply or 7 November 1999, whichever is the earlier. This extends the subsidy by up to three years.

Clause 14 extends the provisions of section 179 for a further three years.

Section 179 states when section 178 expires. Section 178 permits regulations to be made to assist the operation from an Act repealed or amended by the *Transport Operations (Passenger Transport) Act 1994* to the operation of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 15 adds a decision by the Minister to reduce payment of transitional funding under section 172C(5) to the list of decisions which are subject to review and merits appeal and the court in which the matter is to be heard.