

TRANSPORT CO-ORDINATION AMENDMENT BILL 1998

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon M.J. Criddle (Minister for Transport) in charge of the Bill.

Clause 1: Short title -

Hon M.J. CRIDDLE: It was agreed that I should comment on the committee report. It might save later debate if I comment now. The Legislative Council referred the Transport Co-ordination Amendment Bill 1998 to the Standing Committee on Estimates and Financial Operations on 14 March and asked it to examine the proposed financial arrangements to ensure that there was no repeat of the financial losses that were associated with the Government's contracts for the leasing of the light vehicle fleet. The committee was asked to report back to the House within three weeks. The committee tabled its report on 29 July 2000, the final day of the autumn sittings. The report contained some inaccuracies. For example, in paragraph 2.1 it is asserted that a number of Transperth services continue to be provided by the government-owned MetroBus. Generally, however, the report reflected the current position on the provision of Transperth services and the financing arrangements for the new bus fleet.

The committee identified specific concerns about clauses 5, 6, 7 and 9 of the Bill. These recommendations and Transport's policy response in respect to these recommendations are as follows -

- (1) The committee recommends that the Government ensure that all private individuals and corporate bodies that it intends to contract are fully informed that commercial confidentiality clauses do not act to prevent the scrutiny of such contracts by Parliament.

Although Transport would have no difficulty with this recommendation, this is a whole-of-government issue and needs to be addressed at that level. Committees can get those documents through that process, so there is an avenue to get the documents required. The committee's second recommended reads -

... that the bill should be amended to provide for direct parliamentary scrutiny at the earliest possible opportunity for all financial arrangements entered into by the Minister under Division 4 of Part II of the Act.

When initially introduced into the Legislative Assembly, the Bill provided no specific provisions relating to parliamentary scrutiny of financial arrangements entered by the minister under section 18. Those provisions were inserted by the Opposition through the member for Armadale and accepted by the Government. Those amendments require the minister to table in both Houses a cost-benefit statement of any arrangement that would result in the acquisition or disposal of all or a substantial part of the Transperth fleet.

At paragraph 4.5, the committee argued that this provision is insufficient to allow Parliament to effectively monitor all the risks to government involved in complex financial arrangements which, as was pointed out by the Auditor General in the case of the light-vehicle fleet contracts, may be heavily reliant on various assumptions about the continuation of specific taxation arrangements and market demand. There is no doubt that this type of financial arrangement is extremely complex; therefore, proposed subsection (4)(b) was inserted to provide an independent review of the arrangements by placing a statutory responsibility on the Under Treasurer to certify that the savings identified in the cost-benefit statement are reasonably attainable.

Notwithstanding the committee's position on the need for commercial confidentiality, there is no doubt that the commercial sector sees this as an important issue when entering into new financial structures. Although the committee has raised concerns about the proposed provision, it makes no specific recommendations on what safeguards it considers should be included in the Bill. Clearly there needs to be a balance between accountability of the Executive to the Parliament and the practicability and cost of administrative arrangements that would need to be put in place, and the provision as drafted achieves this balance. In recommendation 3 the committee said -

... that the minister provide the following further information to the Parliament:

- (a) a clarification of the powers of appointment of an agent or attorney to execute deeds and other instruments on the Minister's behalf under clause 5, eg, who does the Minister intend to appoint for this purpose? What types of documents will this person be executing on the Minister's behalf?

This provision is inserted at the suggestion of the then State Crown Conveyancer to cover those situations in which the minister may be temporarily out of the State or in the country when documents of an urgent nature need to be executed. It is intended that the only persons who would be appointed would be members of the

minister's staff or departmental officers, and then only with the express approval of the minister. Recommendation 3 continues -

- (b) a clarification as to the circumstances in which a stamp or other facsimile will be used to execute documents instead of the Minister's signature or seal?

Again this provision was inserted at the suggestion of the State Crown Conveyancer and again would only apply in similar circumstances as those set out in the response to paragraph (a).

The committee recommended that I clarify how clause 6 would operate; and how soon, if ever, after an automatic appropriation is made from the consolidated fund to meet a commitment under a state guarantee in respect of an arrangement entered into by the minister under the Act, Parliament would be advised of the nature and extent of the appropriation. The response is that if clause 6 were to be applied, a creditor seeking payment under the guarantee would need to serve notice on the Treasurer in order to trigger the guarantee. Any payment under the guarantee would be an automatic appropriation against the consolidated fund. The reporting of such expenditure would be dependent on the timing of the payment. The payment would be included in the figures to be found in the publication titled "Monthly Report on General Government Finances"; this is a new publication which commenced in July 2000 and which presents information based on government financial statistics. Similarly, the payment would also be included in the data reported in the quarterly financial statements and the "Government Financial Results Report". In addition, if the payment occurred prior to the finalisation of the following year's budget, it would be reported in the budget papers and in the agency's estimated actual expenditure for the year under the heading "Authorised by other statutes". If payment occurred subsequent to the budget being finalised, it would be reported in the Treasurer's annual statements. However, in practice, because of the potential adverse affect on the State's credit rating, the State would seldom, if ever, allow one of its agencies to default on a transaction that would trigger a guarantee. That addresses the issues that were raised by members.

Hon NORM KELLY: I appreciate the minister's comments on the Government's response to the committee's report. However, I am not too sure that many members could take in all of what the minister just said. It is strange, with a report that has been tabled for quite some time, that it is only when we commence the committee stage of the Bill that we get the Government's response to that report. I have some amendments on the Supplementary Notice Paper, and I will address the concerns of the Australian Democrats when we reach the stage of dealing with them.

In the minister's response to the committee report he clarified matters relating to clauses 5 and 6. I want to consider his response by reading through it and taking it all in. The Australian Democrats have not proposed amendments to clauses 5 and 6, so we would be happy to see those clauses progressed tonight. However, we definitely want to have a better look at what the minister has just said before we pass this Bill through all stages. I appreciate the minister's comments, but it would have been preferable for the minister to have tabled his response in this place prior to this debate.

Hon J.A. SCOTT: I totally agree with Hon Norm Kelly. The minister outlined his response to the committee's report, but it is extremely difficult to take in a speech that is read so quickly, and to think about its impact. I do not know about other members, but I find it particularly difficult, since the Bill has been around for such a long time, to dredge out memories of the issues surrounding the committee's report.

The committee report looked at a number of issues but did not make recommendations on them.

Hon M.J. Criddle: That is why no amendments were recommended.

Hon J.A. SCOTT: No, but some issues arise because this Bill refers to a variety of scenarios under which the bus fleet will be managed. For instance, on page 3 of its report the committee stated -

The Request for Tender 350/97 documentation further describes the proposal as follows:

"The proposed outsourcing of the ownership and management of the existing fleet and the proposed Bus Procurement Strategy and Bus Procurement Programme can be divided into three principal categories, as follows:

- (a) Fleet ownership: both the existing fleet and the replacements and incremental additions to the fleet . . . ;*
- (b) Fleet management: this includes maintenance and fleet deployment . . . ; and*
- (c) Bus Procurement Strategy: this includes the initial acquisition of a minimum of 133 replacement buses and the on-going replacement and incremental additions to the fleet, and the disposal of old buses . . .*

This approach to categorisation should not be regarded by Tenderers as a definitive definition of the Scope of Services or as a restraint on Tenderers considering or raising alternatives in their Tender. Tenderers are encouraged to consider and address additional matters and issues in their Tenders."

It is therefore a flexible tendering arrangement, given the changes that have occurred in the value of the dollar recently, whatever those arrangements may be. I note the report also points out that the bus purchases from Germany will be paid in deutschmarks.

Hon Mark Nevill: Do you know whether they will be purchased in deutschmarks or in European currency units?

Hon J.A. SCOTT: The report said it would be deutschmarks. Depending on the variation in the contract and the variation in the value of the currency, the contracts could have quite different values either to the tenderer or the Government. I acknowledge that it is a good thing to have a level of flexibility in the contract. However, making judgments about the Bill becomes a fairly floating feast. We could consider a number of arrangements that might apply if and when the Bill is passed. I needed to make that point because it is always difficult to deal with Bills containing provisions that are not determined when we, as members, make decisions in this Chamber which enable the minister to make decisions which may or may not be the best decisions for the future. It is worth making these points at this juncture. I am not saying we should throw out the Bill on that basis; I am saying it is something we should consider.

Another matter raised in the report was the taxation risk that arose in the Matrix Finance Group Ltd vehicle fleet arrangement. That is described in paragraph 2.9 on page 4 of the report. The minister may have explained that issue in his opening remarks. Unfortunately, I find it difficult to take in so much information in such a short time, and I am not sure how the minister responded to the issue of whether the financing arrangements will have some tax liability that has not been foreseen, and whether the Government is confident that it will not be lumbered with these tax responsibilities.

Hon M.J. CRIDDLE: We are purchasing the buses through Treasury Corporation, so that deal is separate from this arrangement. This arrangement was put in place some time ago when we were talking about a Matrix deal. We did not go ahead with that deal, and one of the reasons was the taxation implications and the fact that the ruling that we required was not forthcoming. If we were to go ahead with it, a cost-benefit analysis would be done, it would come before the Parliament, and it would need to be certified by the Under Treasurer.

With regard to the operation of the bus fleet, as the member would be aware, the private operators operate the bus fleets and are paid through Transperth, but their routes and timetables are run by government.

The member referred to deutschmarks. There are four payment areas; three will be in Australian dollars and one will be in deutschmarks, depending upon the content of the payment.

Hon J.A. SCOTT: Is there still a capacity for the purchase of the buses to be made by the operator rather than Transperth, or is that now out of the question?

Hon M.J. CRIDDLE: I do not know whether it is out of the question, but we certainly have no intention of doing that. The idea behind this arrangement is that the Government will own the bus fleet. The Government's policy is to do that. If we are to buy the buses, we will need an arrangement by which to do it, and this is why the funding arrangements will be required. The arrangement we have in place at present is that we buy the buses through Treasury.

Clause put and passed.

Clauses 2 to 6 put and passed.

Clause 7: Section 18C amended -

Hon NORM KELLY: Subsection (4), at the bottom of page 4 states -

Where under subsection (3)(b) the Minister enters into an agreement, arrangement or transaction to acquire or dispose of all or any substantial part of the Transperth omnibus fleet (however described)
...

What is the legal definition of "any substantial part of the Transperth omnibus fleet"? That would give us an indication of the scope of what we are talking about.

Hon M.J. CRIDDLE: The explanation is really quite simple. It was put there so that we do not need a cost-benefit analysis every time we sell one or two buses; it was for maybe 20 or 30 per cent of the bus fleet.

Hon NORM KELLY: I believe that is also important. I move -

Page 5, after line 2 - To insert the following new paragraph -

- (a) the full text of any document that constitutes any agreement, arrangement or transaction, or any variation or amendment of an agreement, arrangement or transaction;

This requirement is not only for the cost-benefit statement but also for the tabling of documents, agreements, contracts and the like. The Australian Democrats would not like to see that requirement fulfilled if it is simply for selling a handful of buses. We appreciate that this relates to “all or any substantial part” of the fleet. I have been through the argument a number of times about whether such contracts or agreements should be tabled. The minister has said that this should be more of a whole-of-government policy approach. Until we get the opportunity to have that whole-of-government policy debate about whether these requirements for the tabling of contracts should be instituted, it is necessary for the Australian Democrats to move these amendments on each Bill as required. We appreciate the work done by the Australian Labor Party in the other place to strengthen this Bill to require a cost-benefit statement to be tabled and a certificate to be issued by the Under Treasurer verifying that savings are reasonably attainable. However, we would like this to go one step further and have the contracts or agreements tabled.

I refer members to the report of the Standing Committee on Estimates and Financial Operations. I do not wish to bore members by reading all of the committee’s report, but section 6 on page 22 entitled “Inappropriateness of commercial confidentiality clauses in government contracts with the private sector” sums up the position of the Australian Democrats. Firstly, on page 24 there is a quotation from Justice Mason’s judgment in relation to the *Commonwealth v John Fairfax and Sons* case, which states -

It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action.

Accordingly, the court will determine the government’s claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.

The committee report goes on to refer to section 58C of the Financial Administration and Audit Act. I have previously done work with the select committee on procedure and privileges involving the Department of Resources Development where section 58C of the Financial Administration and Audit Act was closely looked at. That section highlights a degree of potential openness of government contracts. It states -

The Minister and the accountable officer of every department, and the Minister and the accountable authority of every statutory authority, shall ensure that -

- (a) no action is taken or omitted to be taken; and
- (b) no contractual or other obligation is entered into,

by or on behalf of the Minister, department or statutory authority that would prevent or inhibit the provision by the Minister to the Parliament of information concerning any conduct or operation of the department or statutory authority in such a manner and to such an extent as the Minister thinks reasonable and appropriate.

The Australian Democrats have a problem with the final part of section 58C which states “to such an extent as the Minister thinks reasonable and appropriate.” That gives the minister enormous power to push -

Hon Kim Chance: Button B.

Hon NORM KELLY: It is. It is an enormous power to clamp down on what -

Hon M.J. Criddle: You are using the same quote to satisfy yourself, but you do not agree with half of it.

Hon NORM KELLY: Even this legislation is not perfect, because it provides that out for the minister to be able to close down what on first reading might look like a good accountability mechanism.

Hon Mark Nevill: Refusing to table documents causes more damage in 95 per cent of cases than tabling them.

Hon NORM KELLY: I agree that it certainly makes people suspicious about what is in those documents and makes them want to inquire further to find out about the details of the documents. The committee’s report refers to evidence given by the Under Treasurer. On page 26 it states -

... the parties are keen to protect this intellectual capital, which it is claimed is worth a considerable amount of money in the marketplace. Given the difficulties confronted by the Government in

maintaining confidentiality of such agreements in the face of parliamentary and community scrutiny of Government expenditure, the Under Treasurer advised the Committee that it will be very difficult in future for the Government to find the type of innovative financing arrangements which will provide the Government with a significant benefit.

As we have seen in the Government's arrangements for purchasing the bus and light vehicle fleets -

Hon M.J. Criddle: Not the bus fleet.

Hon NORM KELLY: Okay. It is not so much a taxation dodge, but the taxation laws are being pushed to the limit to get a benefit for the State Government at the expense of the Federal Government.

I have previously referred in this place to the New South Wales Auditor-General and the tabling of contracts. There is a need to shift the thinking of the private sector. If it wants to do business with government, it should be willing to have these transparency and openness provisions in contracts. It is a substantial advantage to the private sector to be able to enter into contracts with the Government, and those provisions should be in those contracts.

Hon M.J. Criddle: Why is there a substantial advantage in contracting with government?

Hon NORM KELLY: When it comes to security of contract, payment and the like, there are benefits. Often the size of the contracts cannot be matched in many other areas. It would be very difficult for DaimlerChrysler Australia/Pacific Pty Ltd to sell 800 buses to anybody else in Western Australia. Of course the contracts offered by government can be far more substantial and significant for individual companies than those that can be obtained in the private sector. That is not the situation across the board, but in many instances that is the case. The report further says -

... the Committee notes the submission of the Gippsland Water Authority to the Victorian Public Accounts and Estimates Committee's inquiry into commercial in confidence material:

"In the case of large contracts, the provisions are known by hundreds of lawyers, advisers, financial consultants and it is arguable whether such information has much commercial value."

I conclude with point 6.11 of the report, which states -

The Committee notes that the Victorian Public Accounts and Estimates Committee has recently recommended that rather than confidentiality clauses, contracts between government and private sector enterprises should instead contain specific terms stating that their contents are *prima facie* public.

The report earlier referred to parties being keen to protect their intellectual capital because of the value to the companies of having that protection. It is more important that the public be protected from possibly inflated prices that can be caused by commercial-in-confidence provisions in contracts.

Hon Murray Criddle: What are you talking about?

Hon NORM KELLY: It has been put to me that this has happened with port authority and other transport legislation, and that companies will want to protect that intellectual capital, because if they win the contract, they do not want that information to go out to competitors who will compete against them when the contract is up for renewal.

Hon M.J. Criddle: What happens if they go for a contract somewhere else and they are competing against the same companies?

Hon NORM KELLY: I acknowledge that that is an issue in other States and countries, but not having that openness gives that company protection. If openness means that another company has some sort of advantage, that leads to a more competitive tendering process the next time around and the beneficiaries are the State and the people of Western Australia rather than one individual company. I urge members to support the amendment.

Hon KIM CHANCE: The Labor Party supports this amendment. As Hon Norm Kelly has indicated, Labor Party amendments to this clause were accepted in the other place. While those amendments are not perfect for delivering the degree of protection that we on this side of the Chamber would like to see, they nonetheless vastly improve the prospect of protection for the public in the acquisition and disposal of contracts that may be entered into by the Government.

The amendments that were moved in the other place provide that within three sitting days of the Government's entering into one of these financing and leasing arrangements, it would be required to table in Parliament a cost-benefit analysis of the proposed transaction or arrangement. It would also be required to provide a certificate issued by the Under Treasurer verifying that the savings are reasonably attainable. That in itself is a check of a fairly high magnitude. We can take some comfort from the adoption of those amendments in the other place. An analysis of that kind would be a public declaration of precisely how the Government proposes that savings

will be made. The certificate from the Under Treasurer would verify that there is some credibility to the claim. As I have said, it is not a perfect system because it is not as fully open and accountable as opposition members would prefer. Our understanding is that it goes against the recommendations of the Commission on Government.

For that reason the Labor Party will support the amendment moved by the Democrats. However, we do not consider that the issue is worth putting the legislation to the sword over if we cannot be successful and in the event that the amendment does not get support. Labor recognises, however, that its amendments passed in the Assembly are, while not perfect, a sufficient step in the right direction for it to support the third reading of the Bill.

Hon MARK NEVILL: I am in two minds whether to support this amendment. A number of options are available to people: If a person wants the documents associated with a particular contract, that person can ask the minister to provide them or to table them. He may not provide those documents. They are available to committees. I do not think committees have been denied access to any documents. The document my committee was denied access to by a minister never saw the light of day.

Hon J.A. Scott: Ministers can deny it though.

Hon MARK NEVILL: No, they cannot when the committee subpoenas it.

Hon J.A. Scott interjected.

Hon MARK NEVILL: No; that is only under the Financial Administration and Audit Act when the minister has discretion.

Hon Norm Kelly: If the minister directs it, but the minister can deny it.

Hon MARK NEVILL: That is a different situation. A committee is not working through the FAAA; it is a subpoena of a particular document. I do not think many of these documents should remain confidential. Some matters, such as the interest rate, would be of great interest to competitors. However, making that information public immediately may depend on whether more contracts are in the pipeline.

The Matrix Finance Group contract was very thick, and most of the material in it was just the standard legalese found in those sorts of contracts. The critical aspects were probably a very small percentage of the whole document. I am starting to get a little testy about having to table everything that is available. The Matrix contract probably should have been tabled. I do not think there was anything particularly confidential in that document. The argument that some intellectual property was involved is dubious. I would have tabled that document, and I think the Government got itself into a helluva lot of bother by not tabling it. From my examination of the Matrix contract, I thought the Government had a very defensible position. The reason the costs “blew out” was the collapse in second-hand car prices, the general increase in leasing costs and the repair of vehicles before they were sold. However, it got a lower interest rate through that financing arrangement. If the Government had not bought the vehicles through Matrix, it would have come out with a fairly similar result. Through the Matrix deal, the Government got a very accurate picture of how many vehicles it has. Departments were forced to buy vehicles with all the attachments; tow hitches and all the special alterations had to be made in the first place.

Under the previous system, the Department of Conservation and Land Management, for example, might have shown the purchase of six vehicles at a cost of \$100 000; however, the \$100 000 worth of alterations and modifications subsequently made to those vehicles would not have been apparent. The Matrix contract included all those things that were not in the contracts previously. That is another reason the cost blew out. The Government made a shoddy job of defending it, and by not tabling the documents, it exacerbated the problem. Basically, it was a reasonably good deal. People may want to go back to the old system, but I do not think there will be much difference at the end of the day.

Hon Kim Chance: Should the minimum stock-holding levels be one of the issues that are addressed in a future contract?

Hon MARK NEVILL: I believe the contract includes a public benefit clause that allows the Government to trigger renegotiation in certain circumstances, including a reduction in the number of cars. As a result of the Matrix contract, government departments seem to need fewer cars as the fleet is better managed. The Standing Committee on Estimates and Financial Operations heard evidence from a Health Department accountant. He seemed to know more about the Matrix contract than some people in Treasury and the Department of Transport. He provided a good account of how the contract had impacted on the Health Department. In politics, we on this side usually take the simplistic view that something must be bad because it is a contracting-out arrangement. The contracting out of some operations is good, but in other areas, it is not so good. Each contract must be judged on its merits. The documents were made available to the committee. The days of the Government not

making such documents public are over; therefore, requirements do not need to be written into the Bill. We should not require document after document to be automatically tabled, although the information members want should be made available. We must come to an understanding about how it can be done, instead of writing unnecessary provisions into legislation. I hope that in future the minister will table in the Parliament any contracts he enters into. I do not support the amendment, but with no great conviction.

Hon M.J. CRIDDLE: The Labor Party amended this section in the other House and seemed quite happy with it there; I am therefore surprised it is going down this path. Proposed subsections (4)(a) and (b) provide sufficient coverage to overcome any problem that may arise.

Hon J.A. SCOTT: I enthusiastically support the amendment.

Hon N.F. Moore: Now we definitely know we are right.

Hon Mark Nevill: Hon Greg Smith suggested that if I lose the next election, the Government could make me chairman of the Environmental Protection Authority. I said that would be no good because the Greens (WA) would campaign for my re-election. It would absolutely destroy me.

Hon J.A. SCOTT: Having listened to such a nice character reference, I will talk to the amendment. I wonder about the issue of commercial confidentiality. I think the Government has gotten carried away. The minister is asking for substantial flexibility to “enter into any agreement, arrangement or transaction, financial or otherwise, that the Minister thinks is expedient”. Provisions do not get much wider than that. Hon Norm Kelly is asking that the minister, who acts as an agent for the taxpayer of Western Australia and who will be given huge flexibility under this clause -

Hon M.J. Criddle: The member should read on, and he will see that proposed new subsection (4) provides that, under subsection (3)(b), the minister may enter into an agreement, arrangement or transaction as long as he goes through all the other processes within three days of the Parliament’s next sitting.

Hon J.A. SCOTT: I intend to speak about those processes, because I have received some of Main Roads’ cost-benefit analyses of building certain roads.

They were the greatest load of codswallop I have seen in my life. They were not cost-benefit analyses, but were benefit analyses. They did not put the detrimental side into the equation at all. A cost-benefit analysis is an interesting document and can follow two forms. First, it can be a top-down cost-benefit analysis, in which people take a universal view and make predictions about what will happen with many factors taken into the equation. Second, it can be a bottom-up analysis, in which certain important aspects are taken into account from which extrapolations are made. Each of the two produces different results.

The cost-benefit analyses I saw from Main Roads, for instance, outlined the benefits, but none of the costs. When I sat down with the person giving me the briefing of the analyses, he said, “We did not put any of them in. We do not count the costs, but only the benefits as it sounds better.” A cost-benefit analysis was done by the Australian Bureau of Agricultural and Resource Economics on greenhouse emissions in the same way: It included all the costs of tackling greenhouse.

Hon M.J. Criddle: Read the next section.

Hon J.A. SCOTT: It reads that a certificate is to be issued by the Under Treasurer verifying the savings are reasonably attainable. These calculations depend upon the data put into the calculation. When a cost-benefit analysis is done through Main Roads - I have looked at these - with only the benefits data and not the costs data, one produces a different outcome from an analysis that includes all the data. That is the problem. Cost-benefit analyses are variable documents.

The Commission on Government pointed out a major problem we have had in this State with corruption.

Hon M.J. Criddle: Come on!

Hon J.A. SCOTT: The commission was very concerned at the overuse of commercial-in-confidence, or whatever one wants to call it. It referred to it in a generic sense. The minister represents the taxpayers and all others in the State.

Hon M.J. Criddle: I represent every taxpayer in the State in my job.

Hon J.A. SCOTT: He deals with their money.

Hon M.J. Criddle: Absolutely. That is why I have this provision.

Hon J.A. SCOTT: Why are taxpayers ultimately not allowed to know the deal the minister makes on their behalf?

Hon Mark Nevill: Has there been a cost-benefit analysis of the Commission on Government? Its report makes a good doorstop.

Hon J.A. SCOTT: The problem was not with the commission's report but with the Government's response to it. Not enough was done, including the references to the overuse of commercial-in-confidence provisions, with the report.

Hon Kim Chance: I think many of your comments arise from the Burt Commission on Accountability as much as from the Commission on Government. I refer to the FAAA amendments.

Hon J.A. SCOTT: I refer to the principles espoused. I spoke at length with Ted Mack, the former federal member for North Sydney, who highlighted the business of commercial-in-confidence when Mayor of the North Sydney Council. He told me when he made the council totally accountable and open in contractual arrangements, he was told the council would never get any contracts as people would not do business with it. Nothing was further from the truth. People were happy to take on contracts as they knew no dodgy side deals would be done and everything would be straight down the line. The same thing applies here. If the Government is concerned about releasing the information, in case someone sees it -

Hon Mark Nevill: Making it public does not stop dodgy deals on the side.

Hon J.A. SCOTT: It does not do that, but it does, at least, instil some confidence that the Government will act in the best interests of the people it represents. That is the important point.

Who benefits from this business of commercial in confidence? It does not benefit the people who want to tender because those people want to know they are getting a straight deal - at least, the honest ones do. Hon Norm Kelly is correct. I agree with Hon Mark Nevill on one aspect. It should not be done Bill by Bill.

Hon M.J. Criddle: That is what I said at the start.

Hon J.A. SCOTT: It should be a matter of course. There should be overriding legislation to ensure this information is available for all to see. This behind closed doors business is absolute nonsense. It allows either slackness or corruption. I agree with Hon Norm Kelly that things should not be done behind closed doors. Certain things must be done behind closed doors, but not those areas that involve taxpayers' money. That should be out in the open for everybody to see.

Hon W.N. Stretch: You are so naïve that you are dangerous.

The CHAIRMAN: Order! The member was concluding his comments.

Hon J.A. SCOTT: Thank you, Mr Chairman. I am so naïve that the Commission on Government, and people who are trying to get some accountability in government, agree with me. It may be naïve to expect the coalition to be open and accountable; however, I do try, and that is one of the reasons people like me are meant to be here.

Hon NORM KELLY: I will respond to some of those remarks by going back to my opening remarks on this amendment. I said the Opposition would prefer not to go into each Bill that required amendment. However, there needs to be a generic shift in thinking, by all Governments, that all contracts should be freely and openly available, unless there is a specific reason not to make them public. That should be the thinking, rather than the way it is at the moment. Contracts are automatically withheld from public scrutiny unless there is an overwhelming push, committee inquiry, or some other expensive mechanism to bring a contract out into the open. I agree there may be valid reasons to keep either a contract or certain details of a contract private - Hon Mark Nevill mentioned interest rates and the like -

Hon W.N. Stretch: Thank goodness you recognise that.

Hon NORM KELLY: That is what I am saying. I recognise that on occasions there are valid reasons for it. However, this House should have a 180-degree shift in thinking, and make contracts publicly and openly available as a matter of course, unless it can be argued there is a reason not to do that. It is important for Governments of all persuasions to take that on board. The thinking should be turned around so that, rather than arguing that something should be made public, the Parliament should argue something should not be made public. In the absence of that thinking, I believe this amendment is worthwhile and beneficial, rather than detrimental, to the State.

Hon J.A. SCOTT: It is interesting that people believe such things in principle, but do not want to include them in Bills. I know the Labor Party supports this in principle, because it will support the amendment. However, the Labor Party will not go to the point where it will stand up and make sure it goes through. It has signalled it will not fight so hard.

It has already signalled it will not go to the wall on a principle, and the Government knows it will not go too hard on this.

Hon W.N. Stretch: Having been in Government, it knows how the world works.

Hon J.A. SCOTT: Hon Bill Stretch would also have a good idea. Although all these members agree in principle and call for overriding legislation to ensure that, except where there are proven disadvantages for that information to be known, in all cases these contracts are made available, I wonder whether the minister would fight for it in the Cabinet room, or whether the Labor Party would bring in such legislation. Hon Mark Nevill may tell us whether, as an Independent, he would support legislation to create a more open and accountable tendering system in this State.

Hon Mark Nevill: If a mechanism to provide genuine exclusion can be worked out, I would support such legislation.

Hon J.A. SCOTT: We have an assurance from Hon Mark Nevill, but it appears other members agree in principle but not in practice.

Hon Kim Chance: What you have to do is read Hon Ljiljanna Ravlich's speeches.

Point of Order

Hon M.J. CRIDDLE: Mr Chairman, I do not know where this is going.

The CHAIRMAN: I am not sure that is a point of order.

Debate Resumed

Hon J.A. SCOTT: What I am saying relates exactly to what Hon Norm Kelly is saying. The minister said by interjection that the provision should be in generic legislation.

This is an important issue of openness and accountability. We do not want piles of red tape in every Bill. That would make it difficult. But when there is no indication of support from either Government or Opposition, even from an Opposition looking to a future in which it will be in Government and can change the situation, it is important to raise the matter in this place. The public is concerned about it, and I am concerned about it.

Amendment put and a division taken with the following result -

Ayes (12)

Hon Kim Chance	Hon G.T. Giffard	Hon Norm Kelly	Hon Ken Travers
Hon J.A. Cowdell	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Bob Thomas (<i>Teller</i>)

Noes (13)

Hon M.J. Criddle (<i>Teller</i>)	Hon Ray Halligan	Hon Mark Nevill	Hon Muriel Patterson
Hon Dexter Davies	Hon Barry House	Hon M.D. Nixon	
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	
Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch	

Pairs

Hon N.D. Griffiths	Hon B.M. Scott
Hon E.R.J. Dermer	Hon Derrick Tomlinson
Hon Christine Sharp	Hon Simon O'Brien
Hon Tom Stephens	Hon Max Evans

Amendment put and negatived.

Hon NORM KELLY: I notice that a certificate will be issued by the Under Treasurer verifying the savings are reasonably attainable. That is a good mechanism, because it means the Under Treasurer puts his credibility on the line when he provides such a certificate. One would therefore expect his assessment of that cost benefit statement would have a lot of standing. I have been given a copy of the minister's briefing note, which is what I alluded to when I said we had not been able to assess the minister's comments on clause 1. A suggestion is that rather than the Under Treasurer providing that certificate, it would be seen as a degree more independent if the Auditor General provided such a certificate. Could the minister comment on whether the certificate should come from the Under Treasurer or the Auditor General?

Hon M.J. CRIDDLE: I would support that change. I see plenty of justification in the Under Treasurer providing that certification.

Clause put and passed.

Clauses 8 to 12 put and passed.

Clause 13: Section 60 amended -

Hon NORM KELLY: I move -

Page 11, after line 23 - To insert the following new subclause -

- (2b) Without limiting subsection (1), the Governor may make regulations prescribing standards to be observed in the provision of passenger services by omnibuses including standards in respect of -
 - (a) safety, comfort, maintenance and presentation of vehicles;
 - (b) management of those services;
 - (c) education and training;
 - (d) the competence of drivers; and
 - (e) the competence of the providers of those services.

This is a very old Bill and was first introduced into Parliament in 1998. For a substantial time the Government made it clear that it intended to make regulations to provide for an omnibus operator's standards scheme. New standards would be implemented for the operation of buses in this State, particularly in respect of the safety, comfort and maintenance of those buses; their management; the education, training and competence of drivers; and the competence of the providers of those services.

The Australian Democrats believe it important for the minister to be able to make regulations for road safety standards in this State. This amendment provides that regulation-making power to the minister. As much as the Australian Democrats would like to see the minister make use of such a power, the passing of the amendment would not require the minister to introduce such regulations; it simply provides him with the power to do so. A powerful backbench lobby in the government ranks appears to prefer to rule out such road safety provisions. We would like to see the road safety lobby in the Government come to the fore again and support this amendment.

Hon KIM CHANCE: When one looks at this poor, inoffensive little clause, one can see that it did not originate from Hon Norm Kelly although it stands in his name.

Hon Mark Nevill: It is certainly not mine.

Hon KIM CHANCE: It did not originate from the Australian Labor Party and we are assured by Hon Mark Nevill that it has nothing to do with him. The secret behind this strange but inoffensive little clause is that it started its life as clause 10 in the original amendment Bill. This is the Government's wording; this is the Government's clause.

I believe this Bill got to a stage in the other place - which I am not allowed to talk about - where the Government voted against its own clause and the Labor Party supported it. Strange! Then, when the Bill reached this place the Democrats moved it as a further amendment. Labor will be supporting the Democrats' amendment.

Hon M.J. Criddle: So, do you know what you are doing?

Hon KIM CHANCE: I do. Hon Norm Kelly described this inoffensive little clause perfectly. It is not a clause that requires anybody to do anything. It is a clause which allows a regulation-making power. It is entirely within the control of government whether regulations shall be made. It is difficult to know why this inoffensive little clause caused so much heartburn in the Government ranks. After six years of work on this Bill and after it sat on the Notice Paper in the other place for 12 months, a decision was made during a dinner break to reverse the Government's support for then clause 10 of its own Bill. That was a remarkable situation. The clause was supported so strongly by the Government that the Minister for Transport of the day in part of a media statement of 17 July 1998 said -

... the concept had been developed in partnership with all sectors of the bus and coach industry and had the full support of all major industry bodies.

He was dead right.

Hon J.A. Scott: He was very reckless!

Hon KIM CHANCE: No. Far be it from me to suggest that the Minister for Transport of the day would misrepresent the truth. He was dead right. The Government, in a long period of consultation with the industry, had reached a position of general support for this inoffensive little clause. However, over the dinner break one

fateful night, it decided to withdraw that support, which left it to the Labor Party, and later the Australian Democrats, to promote the clause.

This amendment is worthy of our support. I may have made light of the situation earlier; nonetheless, passenger bus safety cannot be taken lightly. The potential for vehicle accidents to result from the failure, either mechanical or human, of the operation of particularly the high-speed interstate and intrastate buses is quite horrifying. One of my worst nightmares - I say this most sincerely, being a lifetime resident of the section of Great Eastern Highway along which the interstate buses travel - is a head-on collision between a bus and a road train.

Hon Mark Nevill: That sounds like one of my speeches!

Hon KIM CHANCE: It may well be, but it is certainly one of my nightmares, because the scale of trauma that would result from an accident of that nature is one for which our health system could never cater. The logistics of handling an issue that large are enormous. From time to time our emergency services practice procedures to determine how they could manage a situation like that, and we have had one or two accidents of that nature in the Merredin area, although thankfully not as serious as they might have been. However, that is one of my nightmares, and I hope it never happens.

Hon Mark Nevill: How does this relate to the amendment?

Hon KIM CHANCE: I thank the member for bringing me back to the amendment. We cannot compromise on bus safety, neither in respect of the machinery which is used in bus transport, nor in the degree of driver training and competency. The Democrats' amendment allows for a regulation-making power to address both of those issues. It should be a matter for government to determine the extent to which that regulation-making power is used; and that is a reasonable argument to which I would be happy to listen. This amendment does not seek to impose upon government the requirement to do anything. It seeks only to provide a power to make regulations according to the standards adopted by the policy of the Government of the day. That is why I have described it as an inoffensive amendment. I cannot believe the Government could have been panicked by the shonky end of the bus industry, but that is exactly what happened. The shonky end of the bus industry got to certain of the Government's backbenchers and convinced them to withdraw the support that they had already given to the mainstream bus operators in this State.

Hon J.A. Scott: Do you have some reason for saying that?

Hon KIM CHANCE: Yes. I was told that only recently. I wholeheartedly support this amendment; inoffensive as it is, it will determine whether the Australian Labor Party will vote for the Bill at the third reading stage. If this regulation-making power is not carried as an amendment, the Labor Party will vote against the Bill as a whole.

Hon MARK NEVILL: This is a particularly offensive amendment. The regulation-making power provides that the Governor may make regulations for any purpose for which regulations are contemplated or required by this Act. That is really all we need. It then lists about 40 or 50 points at which it can make regulations. Any regulation must be for the purpose of an Act. It cannot be for some other purpose. It is absolutely superfluous to put all this unnecessary material in the Bill. This is the classic case of an amendment that is unnecessary. If the Government wanted to make regulations, it should be able to do that under a general regulation-making power for something which was pertinent to the Act. I did ask Hon Kim Chance what a collision between a bus and a truck on Great Eastern Highway at Merredin had to do with this Bill. My understanding is that we are debating division 2, which relates to metropolitan buses. Am I correct?

Hon Murray Criddle: I will check.

Hon MARK NEVILL: It does not relate to any buses, except arrangements for the provision of omnibus, ferry and rail services in the metropolitan area. Conditions can be put on the licence to ensure that vehicles are kept in good order.

Progress reported and leave granted to sit again, pursuant to standing orders.