

**TRANSPORT CO-ORDINATION AMENDMENT BILL 1998**

*Committee*

Resumed from 18 October. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon M.J. Criddle (Minister for Transport) in charge of the Bill.

**Clause 13: Section 60 amended -**

Progress was reported after Hon Norm Kelly had moved the following amendment -

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.

Hon NORM KELLY: I wish to comment on some of the remarks made by Hon Mark Nevill before the conclusion of the debate last night. Hon Mark Nevill seemed to be under the misapprehension that this amendment will apply only to metropolitan buses. This amendment will apply to buses in the entire State. One of the objects in section 3 of the Transport Co-ordination Act is "to provide for the co-ordination of the resources used for the provision of transport services for the people of this State". That makes clear the scope of the Act and of this amendment.

Hon Mark Nevill made the point also that we already have a regulation-making power and we should be content with that. Section 60 of the Act, which deals with the power to make regulations, is similar to sections in other statutes. Section 60(1) states that the Governor may make regulations for any purpose for which regulations are contemplated or required by this Act; and subsection (2) states that without limiting the generality of subsection (1), the Governor may make regulations with respect to certain matters. The reason for that section is to provide guidance and to say that in certain areas there is a reasonable expectation that regulations will be made or will need to be made at a future date. That is exactly what this amendment will do. This amendment will give the minister the power, which he can exercise at his discretion, to make regulations for the safety of buses in this State. Hon Kim Chance referred last night to his fear of a major crash in the country. Not only metropolitan members but also the country members of this House would be very concerned if the minister did not have the power to make regulations for the safety of buses in country areas.

Hon Mark Nevill: Will that affect interstate buses?

Hon NORM KELLY: It will be up to the minister to decide how the regulations will operate and the scope of such regulations. I am concerned that if this amendment is not passed, the minister will not have the power of discretion to make such regulations. I am concerned that because this amendment was previously in the Bill in the other place but is not in this Bill, it would be reasonable for this minister or a future minister to argue that he does not have the power to make regulations for safety standards for buses. This amendment is identical to the amendment that the Government proposed originally before it was got at by its backbench revolt. There is a saying that imitation is the sincerest form of flattery. I urge government members to feel flattered and to support this amendment.

Hon M.J. CRIDDLE: I advise the Chamber that any regulations made pursuant to this amendment will apply throughout Western Australia and will not be restricted to the metropolitan area. Much of the debate about this amendment has focused on bus safety, an issue to which the Government is firmly committed. As Hon Mark Nevill noted in his contribution -

Hon Mark Nevill: I have not finished my contribution.

Hon M.J. CRIDDLE: - so far, section 60 of the Transport Co-ordination Act gives the Government wide powers to make regulations contemplated necessary or convenient to give full effect to the provisions of the administration of the Transport Co-ordination Act. Section 28 of the Act creates an obligation for vehicles to be maintained in a fit and serviceable condition. Section 29 gives the minister the power to impose any conditions on the licence that are in the public interest. This is in addition to the provision of the Road Traffic Act which

requires vehicles to be inspected annually to ensure they are safe, the Road Traffic Omnibus Regulations, which set load capacity and seating requirements, and the requirements of the Occupational Safety and Health Act in respect of safe workplaces. That is just for the vehicle. We then turn to the driver. The Road Traffic Act requires the driver to pass a driving test, and to undergo a medical and character test at regular intervals. The Occupational Safety and Health Act puts in place a code of conduct in respect of driving hours, and places an obligation on employers to ensure that their drivers are adequately trained.

Therefore, to say that the rejection of this amendment would in some way compromise bus safety is a furphy. As I said in the second reading speech, many of the aspects of the omnibus operators' scheme are laudable, and Transport is working actively with the industry to ensure high standards are maintained throughout the industry. However, our view is that the industry should be given the opportunity to achieve the standards in a cooperative way, and it needs flexibility to do that. Therefore, we will not support the amendment.

Hon MARK NEVILL: When we adjourned last night I had just started to make my comments, so, for the record, I will probably start again.

Hon Kim Chance: Do you reckon you'll get it right this time?

Hon MARK NEVILL: What did I get wrong last time?

Hon Kim Chance: You said I was incorrect when I said that buses on the Great Eastern Highway in Merredin would not come within the scope of the Act.

Hon MARK NEVILL: I thought I asked the question. Did I not ask the question? There is a bit of a difference.

Hon Kim Chance: It seemed to me that you were telling me I was wrong.

Hon MARK NEVILL: Perhaps that is Hon Kim Chance's thin skin.

Hon Kim Chance: Perhaps now you will apologise.

Hon N.F. Moore: If you guys apologised every time you got something wrong, you would spend all of your lives apologising.

Hon Kim Chance: That is very ungenerous.

Hon MARK NEVILL: I asked the minister whether those buses were covered under that section, and he said quite clearly that it covers all buses, so I accept that; that is fine. Dealing with any transport operator who gets a licence, any extra requirements that are not in the Act can be a condition of the licence. Another point is that there is a general duty of care of any operator to have safe equipment and safe working conditions for the drivers. The third point about the regulation-making power is that I am not convinced that we need all these heads of items under which regulations can be made. They appear in a lot of Acts; they do not appear in others - there is just a general regulation-making power. We have a Joint Standing Committee on Delegated Legislation, which can determine whether a regulation is outside the scope of the Act. That is another protection against a misuse of the regulation-making power to do things that do not properly relate to the Act. We should get away from trying to put a second test in every piece of legislation to ensure that requirements are complied with and that safety issues are covered. The minister has drawn attention to section 28, which refers to maintenance of omnibuses and other requirements.

Although this amendment looks reasonable, I do not think it adds anything to the Bill that is not adequately covered under the existing requirements. It does not require the Governor to make regulations; it gives him the power to do so if the Government deems it necessary. I will not support the amendment on the basis that I am convinced that all those matters are currently covered by this and other pieces of legislation. I expect that school buses throughout the State will be covered. They are already covered. Maybe the minister can tell me under what regulations the school buses are covered.

Hon M.J. Criddle: We have a strict arrangement about school buses.

Hon MARK NEVILL: Under what piece of legislation are they covered?

Hon M.J. Criddle: It is under the Road Traffic Act.

Hon MARK NEVILL: Various pieces of legislation have extremely stringent conditions, particularly for school buses. From my experience when I was a member in the Esperance area, the issue of school buses always came up. Hon Kim Chance will probably remember an incident at Merredin, when the petrol tank of a school bus exploded and killed a lot of people.

Hon Kim Chance: Everyone on board.

Hon MARK NEVILL: There was a big revamp of the regulations at the time, and that was very thorough. I think the amendment is well-intentioned, but I am not convinced that it is necessary. It is basically covered by this and other legislation. I will not support it.

Hon KIM CHANCE: I am grateful for the minister's explanation on that matter and for the clarification. I had to admit that when Hon Mark Nevill raised that point about the issues I had raised concerning interstate buses, he might well have been right. However, the minister's explanation is, I think, that even interstate buses will be governed by these regulations in their operation within Western Australia. Perhaps I will wait for the minister to clarify that aspect.

Hon M.J. CRIDDLE: They would be subject to the vehicle standards regulations, but only buses registered in Western Australia are covered by this.

Hon KIM CHANCE: I appreciate having that clarified. I turn now to the section 60 issues. I think we should tease these out a little further. The minister, quite reasonably, has pointed to the existence of the regulation-making power in section 60 of the parent Act as a power to make regulations which is sufficiently broad as to render the regulation-making power in proposed clause 13, and in the original clause 10 of the Bill in the other place, unnecessary. I am not sure that I have been convinced by the argument submitted so far. The section 60 provisions are fairly typical of the general regulation-making powers in a number of Acts. It is my understanding that the general regulation-making power is confined to those matters that are defined to be within the scope of the Act. Indeed, Hon Mark Nevill referred to that just a moment ago.

The specific regulation-making power which would be enabled by and the issues enumerated in Hon Norm Kelly's amendment - this is what I referred to when I talked about teasing out the issues a little - are specific matters which it is at least debateable are not within the general scope of the Act. If that is the case - that is really the crux of my question - matters within Hon Norm Kelly's amendment enable regulations to be made in respect of those areas which could not otherwise be made under the regulation-making powers that already exist in section 60 of the Act.

Perhaps issues such as the competence of the operators, the providers of the service and the drivers come within the scope of the Transport Co-ordination Act as so far amended, but I do not think so. I do not think that is the case in every respect. Hon Norm Kelly's amendment refers to the competence of operators and providers of the service. That means that people must have an ability to meet certain standards. Indeed, a little earlier Hon Norm Kelly's amendment refers to the safety and comfort of the service. That might be within the scope of the Act and therefore might be within the ambit of the regulation-making power already contained in section 60, but I do not think so. If it is, and if the minister's argument is valid, he should be able to tell me where in the Transport Co-ordination Act I can find it. It might already be within the scope of the Act, but, as I said, I do not think so.

If we go on a little further, Hon Norm Kelly's amendment specifically includes regulation-making powers in reference to the training and education of those persons. The minister has offered the view that other Acts make this regulation-making power, in a specific sense, unnecessary. The obvious one to look to is the Road Traffic Act, which can make specific regulations concerning driver confidence. Does Hon Norm Kelly's amendment relate to that?

Hon Mark Nevill: What about the Occupational Safety and Health Act?

Hon KIM CHANCE: Indeed; that covers drivers with bus loads of employees, for example. That is a possibility. Remember, we are not talking about something from the Opposition, or any of its elements, as this was originally the Government's legislation. The draftsman had in mind a range of training and educational qualities that are not included in any other Act. They are certainly not included in the Transport Co-ordination Act; therefore, they could not possibly fall within the scope of its section 60 regulation-making powers.

We are glossing over it quickly. If members read the elements of Hon Norm Kelly's amendments in seriatim and together, they can form a picture of the Government's original intention with clause 10 of the original amending Bill; I refer to the current amendment to clause 13. The Government originally set out to develop a structure for improvements to the industry and to standards within the industry. The minister just referred to that aspect. He suggests now that the industry will reach the standards on a cooperative and non-compulsory basis. If that is the argument - it may well be cogent - it should stand on its own. The minister should make that argument separate from whether the section 60 regulation-making powers can do the things enumerated in the amendment. I could be convinced otherwise, but I do not believe it is correct to say we could do everything within section 60 that could be done through this amendment.

Hon M.J. CRIDDLE: I take the member through the relevant Acts concerning the amendments: The Road Traffic Act covers safety, and the Transport Co-ordination Act applies to maintenance and preservation through section 26. Management also relates to the Transport Co-ordination Act.

Hon Kim Chance: How about “comfort, maintenance and presentation of vehicles”?

Hon M.J. CRIDDLE: They relate to sections 28 and 29 of the Transport Co-ordination Act. I mentioned them in my initial statement. The Road Traffic Act applies to safety and to the competence of drivers. Education and training is carried out regularly, as the member knows, and the competence of the providers relates to section 26(d) of the Transport Co-ordination Act.

Hon MARK NEVILL: The more I look at the principal Act, the less I like its drafting. A number of heads of power are specifically listed under which regulations can be made, and they would be covered under the general regulation-making power. They are re-stated in the regulations. That is completely unnecessary. The wording changes between the two. Therefore, the Government is probably more exposed to a failed prosecution than if a general regulation-making power were applied, as is found in some other Acts. Paragraphs (h) to (l) of section 60(2) are covered, at least, by sections 28, 29 and 31. It is better to have a general regulation-making power. This is an area which overlaps with other legislation.

Any operator has a duty of care to ensure that a driver is properly trained and competent, and the person providing those services, even under the Occupational Safety and Health Act, must be a competent service provider. Otherwise, that person would be liable in court for any negligence. Including specific heads in the Act clutters up the legislation and makes it less intelligible; that is, it has regulation-making heads that cover the same ground as sections of the Act, but they are worded differently in this legislation.

Hon J.A. SCOTT: I am inclined to agree with Hon Mark Nevill’s argument, except that during earlier debate the minister mentioned that he was considering more flexible ways to encourage these qualities, such as safety. He did not flesh that out. I wonder what he meant and how he will achieve that, if not through the heads of power to regulate the area. What alternatives are being looked at? I note that clause 7, titled section 18C amended, reads -

It is a function of the Minister to do any, or a combination, of the following -

- (a) to provide reliable, efficient and economic passenger services by omnibus, ferry and train in the metropolitan area;

“Safety” does not arise anywhere in the provision. I am concerned that the minister is more worried about efficiency than safety. I would like to know whether these intentions can be achieved other than by regulation.

Hon M.J. CRIDDLE: That provision relates to metropolitan transport under the previous arrangement discussed. We have gone a few steps beyond that. It is always better to get the industry on side operating in a reasonable and cooperative manner.

Hon J.A. Scott: How do you do that?

Hon M.J. CRIDDLE: We are doing that in relation to fatigue. We are putting management plans in place in consultation with the industry so that it abides by the rules.

Hon NORM KELLY: We have just about fully debated this issue. I first considered whether the provisions in the Act adequately cover my proposed amendment. Section 3(d) outlines an objective of the Act as follows -

- to provide for the reduction or elimination of controls imposed under this Act wherever practicable to ensure transport services provided are reliable, efficient and economic for the people of this State;

Again, “safety” is not included. That object of the Act could be used as an argument against introducing regulations under the Act. Those regulations could be introduced under my amendment. My amendment will strengthen the legislation and provide that scope for the minister. One of the reasons I am persisting with this amendment is that I have a degree of suspicion about the Government’s intentions. The original Bill introduced in the other place contained this provision, and it went through the usual parliamentary drafting processes. Obviously the Government was advised that if it wanted to continue its policy of introducing an omnibus operators’ standards scheme, it would need to include this regulation-making power. I do not know of any subsequent advice that the provision is not now required and that it can be removed from the Bill. Most members are aware that this proposal was not withdrawn from the Bill in the other place as a result of amended drafting advice. It was removed purely because a certain sector of the bus lobby had sufficient influence in the Government’s party room to have it removed. For that reason I am very suspicious of the Government’s motives.

If the Government is unwilling to introduce an omnibus operators’ standards scheme, I would like sufficient powers in the Transport Co-ordination Act to allow a future minister to act immediately to implement such a scheme. I urge members to support this amendment.

**Extract from *Hansard***  
[COUNCIL - Thursday, 19 October 2000]  
p2373c-2377a

Hon Norm Kelly; Hon Murray Criddle; Hon Mark Nevill; Hon Kim Chance; Hon Jim Scott

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Amendment put and a division taken with the following result -

Ayes (12)

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

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Dexter Davies	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson
	( <i>Teller</i> )		
Hon Max Evans	Hon Mark Nevill	Hon W.N. Stretch	
Hon Ray Halligan	Hon M.D. Nixon		

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Pairs

Hon Tom Helm	Hon B.M. Scott
Hon Christine Sharp	Hon Peter Foss
Hon Ljiljana Ravlich	Hon B.K. Donaldson
Hon N.D. Griffiths	Hon Murray Montgomery

**Amendment thus negatived.**

**Clause put and passed.**

**Clause 14 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by Hon M.J. Criddle (Minister for Transport), and passed.