

TRANSPORT (ROAD PASSENGER SERVICES) BILL 2018

Committee

Resumed from 16 October. The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 6: Regular passenger transport service —

Progress was reported after the clause had been partly considered.

Hon STEPHEN DAWSON: In answer to Hon Simon O'Brien's question yesterday about whether boat-based passenger transport services will need a similar regime in future, as noted, this is for the regulation of road passenger services. Regulation of the safety of commercial vessels is largely covered by the commonwealth. Regulation of commercial passenger services provided in vessels such as ferries is provided for under the WA Transport Co-ordination Act 1966. However, as the honourable member acknowledged yesterday, that is obviously outside the scope of this Transport (Road Passenger Services) Bill.

Hon SIMON O'BRIEN: I thank the minister. It is an interesting point, so we will not dwell on it, obviously, being outside the scope of the bill except to contemplate should it be within the scope of the bill in some shape or form. There is always the prospect that someone seeking to provide on-demand transport services or regular passenger services on the water could be something that arises. Indeed, from time to time, we hear the wish expressed by people "Wouldn't it be nice to catch a fast ferry to work, as they do in Brisbane?" Of course, there are a range of reasons that has not been made to work in recent times, even though it has been tried. One might think that perhaps it should be captured by this bill. In any case, it is not, so we will move on. Who knows what the future might bring. Maybe one day it will be revisited but it is not what we are talking about today.

The DEPUTY CHAIR: I was thinking maybe when we get flying cars as well. We might have them as well.

Hon SIMON O'BRIEN: That is possibly something the minister might like to contemplate. Perhaps it could be included in this bill in the future because, just recently, if certain reports are to be believed, we have seen the advent of a viable form of possible commuter transport, in effect a flying car, that is, a vehicle—I do not know whether "hybrid" is the right word—that can travel not only on the road, but can also take off. That raises the question that if such a form of transport were to become available as a passenger transport option in Western Australia in the future, would it be covered by this bill?

Although aviation is not the key aspect of this bill, it has a road transport element, so I might refer that to the minister to see whether that possibility could be incorporated under this bill.

Hon STEPHEN DAWSON: I am advised that to the extent that that service would be a road-based service, then perhaps. But certainly, as I alluded to yesterday, the passenger transport industry is innovative and rapidly evolving, and with this comes a need for the government, and, indeed, future governments, to be able to respond quickly and effectively to changes in the industry, and the regulation-making powers in this clause will assist in this regard. However, as I said yesterday, at this stage it is not proposed to make any regulations pursuant to clause 6.

Hon SIMON O'BRIEN: Fair enough. At this time, it might be more convenient if, under the guise of clause 6, we observe that there are similar regulation-making powers under clause 7, "Tourism passenger transport service". I imagine that is the same provision. Therefore, I will not be seeking to query clause 7 when it comes up for debate.

Hon Stephen Dawson: If I can be helpful by way of interjection, you are indeed correct, member.

Hon SIMON O'BRIEN: What a helpful interjection! Thank you.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Community transport service —

Hon SIMON O'BRIEN: This clause does a number of things, including defining most explicitly a "community transport service". Subclause 2(a)(i) states that a community transport service includes —

a service or other thing that the regulations provide is a community transport service; and

Subclause (3) states —

The CEO may declare by notice published in the *Gazette* that a specified service is a community transport service.

In the first instance, we have an explicit and pretty broad definition of what would be a community transport service. That definition is important, because references are made to such a beast in a number of other provisions in the bill. A community transport service is exempted from the buyback levy, for example, and that is important in the short term, as well as for the ongoing structure of the overall system. That is set out in the words in front of us. That is clear. I do not have any queries about that.

We then have a provision for some other type of service that it might be convenient in the future to identify as a community transport service. The bill provides the capacity for that to be done by way of regulation. That is, again, with the same intent and for the same purpose as we have discussed in a number of previous clauses. The minister is nodding his assent to that. So, I think this is pretty straightforward. Time will tell whether such regulations are required and whether they will need to be constructed in that way. The bill provides for a regulation-making power. Regulations can be made in certain ways, and they are a disallowable instrument and so on.

My query is about why subclause (3) is necessary. I can contemplate several hypotheticals. Can the minister indicate why it might be necessary to provide a capacity for a CEO to specify certain things by notice in the *Government Gazette* when the bill already provides the capacity for certain things to be specified by way of regulation in order to identify a service?

Hon STEPHEN DAWSON: I again put on the record that at this stage it is not proposed to make any regulations pursuant to clause 8. This is about futureproofing the bill.

In relation to the specific question, the CEO will only be able to declare that a service is a community transport service, meaning it is not regulated as an on-demand regular or tourism passenger transport service. This will enable small-scale community-based operators to seek confirmation of their status under the bill. For example, a sporting club that wanted confirmation of the status of the service it provides could request the CEO to make a declaration. I am advised there is a similar provision in clause 9(2).

Clause put and passed.

Clauses 9 to 55 put and passed.

Clause 56: Provider of regular passenger transport service must be authorised —

Hon SIMON O'BRIEN: Clause 56 marks the start of part 4 of the bill, “Regular passenger transport services”. With your indulgence, Mr Deputy Chair, it might be convenient for the committee if I address my questions to this part, starting with clause 56. It is a fairly simple question. I understand that a regular passenger transport service would, most notably, include the operations of the Public Transport Authority. As I have said, my question canvasses not only clause 56 but the whole of part 4. Does part 4 contain any significant departures from current policy and practice?

Hon STEPHEN DAWSON: I am advised that it is designed to maintain the status quo.

Hon SIMON O'BRIEN: The opposition is happy with that brief explanation. That takes us through all of that part to, and including, clause 88.

Clause put and passed.

Clauses 57 to 88 put and passed.

Clause 89: Term used: disqualification offence —

Hon SIMON O'BRIEN: With clause 89, we have now arrived at part 5 of the Transport (Road Passenger Services) Bill 2018. Part 5 is headed “Passenger transport drivers”. I want to draw the committee’s attention to the provisions contained therein, starting with clause 89, which basically provides a definition of the term “disqualification offence”. Even a very casual observer of the progress of this bill would understand that this is a definition of very considerable importance and impact because it relates to a criterion that, when established, will have a big effect on anyone carrying on their work as a passenger transport driver—that is, it will disqualify them. As we have seen many times over the years, possibly as a result of some incident that is given prominence in the media or somehow becomes a matter for hot public debate or contemplation, the question arises as to what should then happen. It is, of course, necessary for the regulating authority to have the capacity to disqualify someone who is otherwise qualified and licensed to perform as a passenger transport driver. Indeed, we have all heard the calls from time to time for a particular driver to be taken off the road for the safety of other road users or for the safety of the passengers they are meant to serve. This is a very important provision, and there is no suggestion in my questioning it that it should not be here. The other thing we have to recognise is that a disqualification will obviously impact mightily upon the driver in question and, by extension, others—if, for example, the driver is working for a company. Using clause 89 as the hook, I will ask a similar question to the one I asked about the last part; that is: does the regime contained in part 5 depart significantly from current provisions or, conversely, bring in new initiatives that the chamber needs to be aware of?

Hon STEPHEN DAWSON: I am told that the disqualification provisions in part 5 are based on those in the Taxi Drivers Licensing Act 2014. Further to that, I am told that the Department of Transport currently monitors the offences and convictions of commercial drivers authorised for hire and reward.

Hon SIMON O'BRIEN: I hope the chamber and the minister appreciate that I am seeking to do this as something of a job lot for the reason that I do not think it would help if we were to do this clause by individual clause, because there is one main theme here. May I ask: under the current arrangements, how many drivers do we see being subject to this sort of disciplinary measure over time? Perhaps the minister could give us a general feel of the number of drivers, possibly even by category, who have been suspended or disqualified in the course of a year or, indeed, even in recent years.

Hon STEPHEN DAWSON: I am advised that in 2017–18 there were 96 for the F extension—that is, charter—and 54 for the T extension, which is taxis.

Hon Simon O'Brien: That's disqualifications?

Hon STEPHEN DAWSON: That is cancellations, suspensions and refusals.

Hon SIMON O'BRIEN: Thank you very much. Although there are differences between disqualifications, cancellations and refusals, I am a little concerned by those numbers; they are a little higher than I imagined they might have been. I guess that shows that our regulating officers at the Department of Transport are quite active in this space, which is good. It is also a bit concerning that there are so many drivers out there who need to be disciplined in this way because that, *prima facie*, poses an ongoing threat to the safety of passengers. If the minister is able and has had time to receive advice, perhaps he might indicate the severity of those sorts of breaches. Are we talking about people who are assaulting their passengers or are we talking about more procedural breaches that have incurred suspensions?

Hon STEPHEN DAWSON: It is a range of things. It includes sexual assault, use of drugs, assault generally and count of traffic offences.

Hon SIMON O'BRIEN: I am sorry that now I have to refer precisely to clause 89. It provides that in addition to the offences set out in this bill, other offences are prescribed as a disqualification offence under a law of commonwealth or a law of another state or territory. I would imagine that right up-front we would be talking about offences such as murder, kidnapping or something like that. They would presumably be the sort of offences that will be prescribed. It strikes me that that is possibly a difficult way of going about it, but presumably the government, in drafting the bill, wants to have flexibility. Is there, however, some catch-all available to the CEO in the future when a driver comes to notice and clearly the reaction of any responsible authority would be, "Right; we have to get this guy"—non-gender specific—"off the road straightaway"? Is some catch-all capacity available to the CEO to respond to that, if that particular set of circumstances is not immediately available via regulation?

Hon STEPHEN DAWSON: As I get some further advice I can say that disqualification offences for drivers will include offences of a serious nature under the bill—for example, a breach of the category 1 safety duty offence, when a person knowingly engages in conduct that exposes an individual to a risk of death, serious injury or illness. Offences under other state legislation that point to the serious criminality, violent tendency or dishonesty of an individual are also proposed to be prescribed as disqualifying offences, such as serious road traffic offences, drugs, weapons and Criminal Code offences. Clause 97(1) refers to refusal of authorisation. It states —

... the CEO may refuse to grant a passenger transport driver authorisation if —

- (a) the applicant is charged with a disqualification offence; or
- (b) the CEO is satisfied that the applicant is not a fit and proper person to be authorised to drive a vehicle for the purpose of transporting passengers for hire or reward.

I am told that there are also provisions in the bill to suspend or cancel on those grounds as well.

Hon SIMON O'BRIEN: I thank the minister for that. He has anticipated my next question. Clause 97 relates to the refusal of authorisation. Is that the actual provision that provides for a withdrawal of authorisation or a cancellation, or is it somewhere else?

Hon STEPHEN DAWSON: I ask the member to ask that question again, if he does not mind.

Hon SIMON O'BRIEN: A refusal of authorisation is quite clear under clause 97. I am contemplating the situation in which some matter arises after an authorisation has been given. How do we withdraw that?

Hon STEPHEN DAWSON: Thank you. I apologise for making the member repeat that. Clause 106(1)(d) states —

- (1) The CEO may make an order suspending or cancelling a passenger transport driver authorisation if —

...

- (d) the CEO is no longer satisfied that the driver is a fit and proper person to hold the authorisation.

Committee interrupted, pursuant to standing orders.

[Continued on page 7141.]

Sitting suspended from 4.15 to 4.30 pm