

BusNSW Comments on the Passenger Transport Bill 2014

Drafting Issues

Clause	Issues and Comment
Section 4: Definition of “Driver”	There appears to be a typo (blending of definitions of “driver” and “drive”)?
24 No decision is assumed to be a decision	This states that RMS must give an applicant for accreditation (or renewal of accreditation) written notice of the Government’s decision. However, if no decision (written or otherwise) is forthcoming within 90 days, the application is taken to have been refused. Although you explained this as deliberate wording to trigger action the wording seems to be contrary to administrative law principles and may fail the due process test.
35 Changes to directors and partners	This section states that accreditation may be cancelled because a director resigns or dies, for example. However, section 38(1) (b) allows the cancellation of accreditation to take place “before or after” the death or cessation. This appears to be a gap in logic – how can a cancellation e.g. because of death, take place <i>before</i> the death occurs?
36 Contracts and Accreditation	<p>Section 15 states that a person must not operate a “public passenger service” without accreditation. Section 4 defines “accredited” as “accredited under this Act...” Section 36(1) permits TfNSW to enter into a contract for a “public passenger service” with an operator “who is not required to be accredited under this Act.”</p> <p>It is difficult to reconcile these sections. While section 5 removes certain services from the definition of a “public passenger service”, anything which is a “public passenger service” would seem to require operator accreditation under section 15 which seems to contradict section 36.</p>
63 Review of decision	This section states that RMS may refuse to consider an application for driver authorisation if the applicant has been refused authorisation within the preceding 12 months, and that this decision not to consider

	<p>the application is not reviewable by the NSW Civil and Administrative Tribunal (NCAT). Section 169 states that a decision to refuse an application for a driver is a reviewable decision.</p> <p>Section 63 which permits the Government to refuse to consider a new application on its merits may run contrary to administrative law principles. Also, does a refusal to consider an application amount to a refusal of the application and so be reviewable under s.169? We understand the intention but not sure the wording covers it.</p>
--	---

Policy Issues

Clause	Issues and Comment
Changes in circumstance of Sole Traders	<p>Section 35 provides an opportunity for operators which are partnerships or corporations to continue to trade following the death of a partner or director, provided notice is given to TfNSW within 21 days. However, it is unclear what happens in the event of the death of a sole trader. Presumably the accreditation would cease at the point of death.</p> <p>There have been divergent approaches by TfNSW in the past in response to a situation of this kind, with the estates of some deceased operators provided an opportunity to transfer ownership and continue trading, while for others, accreditation and the business has effectively been cancelled, resulting in significant loss of “goodwill”. Businesses run by accredited operators who are sole traders can be valuable assets and the legislation (or guidelines under the legislation) would benefit from a clear position on this issue. I think you indicated that this may be dealt with under bus contracts, however BusNSW requests clarification of TfNSW intent regarding the death of a sole trader who holds a bus accreditation and a service contract</p>
Community Transport Organisations	<p>Clarity is sought on the position of Community Transport (CT) operators. From our reading of the Bill:</p> <ul style="list-style-type: none"> • A CT organisation with an agreement with TfNSW (s.6) is a public passenger service (section 5(2)). • A CT organisation as defined requires operator accreditation (s.15) • A CT operator running buses also requires driver authorisation (s.55(a))

	<ul style="list-style-type: none"> • A CT operator may operate as a taxi or hire car service however other types of bus operators (either charter, tourist, long distance or contracted) are precluded (s.8 (3) and 9). <p>s.39(1) makes it an offence for an operator undertaking public passenger services to operate along regular routes and timetables without a TfNSW contract. However, s.39 (2) states that this offence does not apply to a CT service. Does this mean that a CT operator:</p> <p>(a) May only transport the classes of passenger outlined in their agreement with TfNSW under section 6, and is precluded from transporting other types (e.g. regular fare paying) of passenger?</p> <p>(b) May transport other classes of passengers (e.g. regular public) but would then require a contract?</p> <p>If (b) is correct, does this mean that a CT operator may operate as both a regular bus service (under a TfNSW contract) and as a CT service under a TfNSW agreement? Your clarification on these issues would be greatly appreciated.</p> <p>The requirement for some CT operators to be accredited will most likely provide such operators with the incentive to operate tourist and charter services that are available to the public. Some CT operators currently operate such services based on the passengers being qualified HACC clients and therefore it not being a public passenger service. How will TfNSW prevent CT operators from using TfNSW funding to cross subsidise tour and charter services? Tour and charter operators should be able to compete with CT operators on a level playing field.</p>
<p>Issuing contracts for regular timetabled services – 39-40</p>	<p>With the removal of exclusivity and the power to be conveyed to enter contracts with or without accreditation - What procedures/process will be followed before issuing a licence or agreement for services that could impact on existing contract holders? Will TfNSW only assess applications for services that can operate commercially, without TfNSW funding? How will TfNSW assess applications for new services? There is a risk that new services will be assessed on a subjective basis without proper consideration of commercial and operational impacts on existing contracted service providers.</p>