

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

MOTOR OMNIBUS SERVICES (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

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The *Motor Omnibus Services Act 1955* (the Principal Act) provides for the establishment of motor omnibus services within the Territory and regulates the way in which the services will be run. In particular, the Principal Act provides for the determination of charges for travel on an omnibus and provides for fare evasion offences. The Australian Capital Territory Internal Omnibus Network (ACTION) is the omnibus service established, maintained and conducted under the Principal Act.

The Motor Omnibus Services (Amendment) Bill 1994 amends the Principal Act to facilitate the introduction of an automated ticketing system. The main features of the automated ticketing system are:

- the use of magnetically encoded tickets which have either a pre-determined number of journey credits, or which are valid for a particular period of time;
- a requirement that a person travelling on an omnibus "validate" their ticket for the journey by inserting the ticket in an electronic ticket reader (a "validator") which will check the ticket and encode it magnetically with relevant details of the journey being undertaken; and
- a requirement that where a person does not have a pre-paid ticket then they must pay the cash fare and will receive a cash fare receipt/ticket printed with details of the journey.

The Bill also includes complementary provisions for the use of an infringement notice scheme in respect of fare evasion and other offences against the Principal Act and regulations. Infringement notices may be issued as an alternative to immediately prosecuting a person for an offence. Where the prescribed penalty is not paid in accordance with the infringement notice a second notice, called a final infringement notice, may be issued. The final infringement notice creates a liability to pay an administrative charge in addition to the original prescribed penalty. Where the person does not pay the prescribed penalty and administrative charge under a final infringement notice then proceedings may be instituted to

prosecute the person for the offence in respect of which the original infringement notice was issued. The infringement notice scheme is exhausted at this point. Where a person pays an infringement before the relevant time periods under the infringement notice scheme run out, then all liability ceases in respect of the offence and no further proceedings may be entered into in respect of the offence.

The Bill makes a number of minor amendments to the Principal Act so as to modify a number of sexist expressions in accordance with the current practice of expressing legislation in gender neutral language.

Financial implications

There will be no increased revenue arising from the Bill as the existing fare structure will remain. However, there will be resource benefits flowing from the new arrangements and a reduction in fraud because of the new ticket validation system.

Details of the Bill are as follows.

Clauses 1, 2 and 3 are formal clauses to provide for the citation of the Bill once enacted, the commencement of the Act, and identification of the Principal Act. The delayed commencement provision in clause 2 is necessary to allow the installation of relevant equipment on motor omnibuses and to allow operational procedures to be finalised.

Clause 4 amends the interpretation section of the Principal Act. In particular, clause 4 inserts definitions of "ticket validator" and "to validate". These definitions are the basis for the requirement in new section 4C to validate a ticket for a journey on an omnibus. Two other important definitions are "infringement notice" and "final infringement notice". The infringement notice may be issued under section 12 if a person commits an offence. The final infringement notice is issued under section 13 if the infringement notice under section 12 is not discharged. The interpretation section is also amended to reflect the change in clause 6 of the Bill from "Section" signs to "Zone" signs.

Clause 5 makes formal amendments to section 3 of the Principal Act. Section 3 provides that the Minister may establish, maintain and conduct motor omnibus services in the Territory. It is under this section that ACTION operates as the Territory's motor omnibus service.

Clause 6 amends section 4A of the Principal Act to provide for the use of "Zone" signs rather than "Section" sign. Clause 6 also makes a number of formal amendments to section 4A and omits subsection 4A(4) so that the distances between Zone signs will be as authorised by the Minister.

Clause 7 repeals section 4C of the Principal Act and substitutes four new sections providing for the use of concession cards and tickets on omnibuses.

Concession cards

New section 4BA provides for concession cards that may be used in connection with a motor omnibus service. There will be two types of concession cards. One will be concession cards that are issued under the Act which will be purpose specific for concession travel on ACTION buses. Secondly, the Minister may approve other cards or documents as concession cards for the purposes of the Act. The Minister could approve under this second category, for example, a Senior's Card. Section 4BA also provides for the Minister to determine the nature of the concession benefit to which the holder of the concession card will be entitled.

Suspension of concession cards

New section 4BB gives the Chief Executive the power to suspend a concession card where a person does not pay the prescribed penalty and administrative charge under a final infringement notice. Only those concession cards that are issued under this Act may be suspended.

Cancellation of suspension

New section 4BC provides that the suspension of a concession card will be cancelled by the Chief Executive on payment of all amounts due in respect of a final infringement notice or where proceedings to prosecute for the offence are instituted.

Validation of tickets

New section 4C is similar in effect to existing section 4C of the Principal Act in that it regulates the use of tickets and establishes offences relating to fare evasion. New section 4C establishes the requirement that a person validate their ticket upon boarding an omnibus for a journey. If the person does not have a ticket they must purchase one from the driver of the omnibus. The section also provides that it is an offence to use a ticket or use a concession card fraudulently for the purposes of avoiding payment of a fare. This would cover, for example, attempting to use a period ticket when the period in respect of which it is expressed to be applicable has expired. New section 4C provides that the a driver or an inspector may confiscate a ticket or concession card where they have reasonable grounds for believing that the ticket or concession card has been used contrary to the section. Where a ticket or concessional card has been confiscated the inspector or driver must give a receipt to the person from whom it was confiscated. This is particularly important with fare evasion offences as the ticket is the fact upon which a fare evasion offence occurs. It is necessary to confiscate tickets and concessions cards to prevent any further offences and as evidence of the offence should the person be prosecuted.

Clause 8 amends section 4D of the Principal Act to change the references from "Section" signs to "Zone" signs consistently with the amendments made by clause 6 to section 4A of the Principal Act. Section 4D is an evidentiary provision establishing that zone signs and bus stop signs are deemed to have been erected with the authority of the Minister.

Clause 9 amends section 4E of the Principal Act to facilitate the transition from existing bus tickets to the new magnetically encoded tickets. Section 4E as amended will establish the entitlement of a person to a refund from the Territory where they have a period ticket or a book of tickets and that class of tickets ceases to be issued.

Clause 10 repeals existing section 5 of the Principal Act and substitutes new sections 5 through to 23.

Inspectors and authorised officers

New section 5 facilitates the appointment of inspectors and authorised officers for the purposes of the Act. This new section is an expanded version of existing section 5 of the Principal Act which provides for the appointment of inspectors only.

Identity cards

New section 6 is a standard provision for the issue of identity cards to inspectors and display of identity cards by inspectors when exercising powers or performing duties under the Act or regulations. These provisions are designed to ensure that any person in respect of whom an inspector is exercising powers under the Act knows that the inspector is a properly authorised person and, should they have a complaint in respect of the manner in which the inspector has exercised her or his powers, may identify the inspector for the purposes of making a complaint.

Inspection of tickets

New section 7 provides that the driver or an inspector may require a person travelling on an omnibus to produce their ticket or concession card for inspection. The section also creates an offence for failing to produce a ticket or concession card when so requested.

Removal of certain offenders

New section 8 provides for the removal of a person from an omnibus where there are reasonable grounds for believing that the person has committed an offence against the Act or regulations. Where a person is removed from an omnibus under this section they are not entitled to a refund of the fare. This provision is in substantially the same terms as regulation 34 of the Motor Omnibus Services Regulations.

The regulations will be consequentially amended upon the changes made by this Bill to the Principal Act.

Demand for name and address

New section 9 gives a power to demand name and address where there are reasonable grounds for believing that a person has committed an offence against the Act or regulations. This power complements the infringement notice provisions as it is necessary to know a person's name and address in order for the infringement notice scheme to be effective. Failure to comply with such a request is an offence which may be dealt with under new section 10.

Power to apprehend and to detain

New section 10 is a power to apprehend or detain a person who fails to comply with section 8 or 9 for the purposes of delivering that person into the custody of a police officer. A person may not be detained for more than one hour for the purposes of this section. This provision is similar to existing subregulation 35(3) of the regulations. An additional requirement has been added so that where the person apprehended and detained is a child, then there must be a driver, inspector or authorised officer present, in addition to the driver, inspector or authorised officer who is detaining the child.

Obstruction of drivers, inspectors or authorised officers

New section 11 provides that it is an offence to obstruct or hinder an inspector, authorised officer or a driver of an omnibus who is exercising a power or performing a duty under the Act or regulations.

Infringement notices

New section 12 provides for the issue of an infringement notice where there are reasonable grounds for believing that a person has committed a prescribed offence. The regulations will specify the offences for which an infringement notice may be issued and the associated penalties. The infringement notice issued under section 12 will be as approved by the Chief Executive however, the form must contain the

information specified in subsection 12(2) and (3) as a minimum. The requirements of subsection 12(2) ensure that the elements of the alleged offence and the alleged offender are properly identified. The information statement specified in subsection 12(3) is designed to ensure that a person on whom the infringement notice is served is informed of the nature of the infringement notice and of their rights and obligations in respect of the infringement notice.

Final infringement notices

New section 13 provides for the issuing of a final infringement notice where a person fails to pay the prescribed penalty in accordance with the infringement notice issued under section 12. A person on whom a final infringement notice is issued becomes liable to pay the prescribed penalty and an additional administrative charge. The notification requirements of subsection 13(2) are similar to those in section 12 in requiring notification to the person on whom the final notice is served of the nature of the final infringement notice and of their rights and obligations in respect of the final infringement notice.

Service of notices

New section 14 provides for the method of service of notices. These methods are slightly more prescriptive than the general provisions for service that are provided in the *Interpretation Act 1967* and provide for the service of a copy of a notice on a parent where the alleged offender is a child.

Discharge of liability

New section 15 provides that all liability arising out of an infringement notice or a final infringement notice is discharged upon payment of the prescribed penalty (and the administrative charge in the case of a final infringement notice) in accordance with the notice. Withdrawal of the notice in accordance with section 17 will also extinguish all liability in respect of the notice. The section specifically provides that where a person makes the payment they are not regarded as having been convicted of an offence. Where payment is made by cheque the

payment is not regarded to have been made unless and until the cheque is honoured on presentation.

Disputing liability under infringement notice or final infringement notice

New section 16 sets out the manner in which a person may dispute liability under an infringement notice or a final infringement notice and have the notice withdrawn. The grounds on which the person may dispute liability are basically the same grounds as would be open to the person as a defence against prosecution for the alleged offence.

Withdrawal of infringement notices

New section 17 sets out the process for dealing with an application under section 16 to have a notice withdrawn. The Chief Executive may withdraw or refuse to withdraw a notice. In either case the Chief Executive must give notice to the person concerned of her or his decision. Where a notice is withdrawn, section 15 provides that all liability in respect of the notice is discharged. Where the Chief Executive refuses to withdraw the notice then a further period is allowed for payment of the prescribed penalty and, where applicable, the administrative charge. Subsection 17(5) provides that if the Chief Executive does not give a person notice of withdrawal or a refusal to withdraw within 60 days of receipt of the application made under section 16 then the infringement notice or final notice is deemed to be withdrawn. This provision is intended to ensure that a person is not left with an indefinite threat of further action due to the lack of a decision.

Extension of time

New section 18 provides for the extension of the time to pay an amount that is payable under an infringement notice or final infringement notice where the alleged offender is the holder of a pensioner concession card. The period of time for payment may be extended by the Chief Executive for up to 90 days.

Institution of proceedings

New section 19 sets out the relationship between the infringement notice scheme and prosecution for an offence under the Act. Subsection 19(1) specifically provides that nothing in section 12 or 13 requires an infringement notice to be issued in respect of an offence. The police officer or inspector may decide, having regard to the circumstances in which the offence was committed, that issuing an infringement notice is not appropriate and the person should be prosecuted. If an infringement notice is issued however, subsection 19(2) provides that no proceedings may be instituted to prosecute the person for the alleged offence unless and until the relevant period of time for payment of the prescribed penalty and administrative charge under the final infringement notice have run out. Subsection 19(3) prohibits the Court from having regard to any infringement notices that have been discharged in determining the fine that will be imposed for an offence.

Refund of payments

New section 20 provides for refund of any amounts paid under an infringement notice or final infringement notice where the notice is subsequently withdrawn under section 17.

Evidence

New section 21 is an evidentiary provision to simplify proceedings in the Court where it is necessary to establish certain factual matters. The provision allows evidence of the serving of infringement notices, granting of extensions of time, etc to be given by way of certificate.

Defences

New section 22 provides that it is a defence to a prosecution for an offence that the offence was the result of an accident or could not have been avoided by reasonable efforts on the part of the defendant.

Determined amount

New section 23 allows the Minister to determine the administrative charge for the purposes of section 13.

Clause 11 amends the regulation making power in section 7 of the Principal Act by removing the reference to "conductors" and raising the limit of the maximum penalty that may be imposed under the regulations for breach of the regulations from \$100 to \$1000. The regulation making power in respect of conductors is no longer relevant as conductors are no longer employed on motor omnibus services under this Act.

Clause 12 provides for the renumbering of section 7 of the Principal Act as section 24. This minor renumbering is made as a result of the large number of new sections inserted by clause 10.

Clause 13 is a transitional provision preserving the effect of subsection 4A(3) of the Principal Act in respect of "Bus Stop" and "Signal Bus" signs that were painted or marked on a omnibus route before section 4A was originally inserted in the Act by the *Commonwealth Motor Omnibus Services Ordinance 1970*. The transitional provision is more appropriately located at the end of the Act.