



Speech By
Hon. Mark Bailey

MEMBER FOR MILLER


Record of Proceedings, 3 September 2019

PERSONALISED TRANSPORT OMBUDSMAN BILL

Second Reading

Resumed from 22 August (see p. 2537), on motion of Mr Bailey—

That the bill be now read a second time.

 **Hon. MC BAILEY** (Miller—ALP) (Minister for Transport and Main Roads) (11.41 am), continuing: I will resume from the last session of parliament. The legislative framework outlined in this bill aims to deliver a cost-effective model, accessible to the industry and customers at no charge.

What does this mean in practice? Firstly, the ombudsman is not intended to be the only way that customers, drivers or service providers can resolve their concerns about personalised transport services. For example, if a passenger loses a personal item while riding in a taxi they should still contact the taxi company. If a driver has issues with their employment arrangement with a service provider they can and should still raise this directly with the service provider and seek to address their concerns in this way. It is anticipated that the ombudsman will be particularly beneficial to the public and industry where a person does not know where to start to resolve their personalised transport problem or where they are unable to resolve an issue through the existing channels.

The scope of issues and complaints that can be made to the ombudsman is intentionally broad. However, there will also be some matters that the ombudsman will not be involved in. The ombudsman will not have a role in investigating offences under the legislation as that will continue to be a matter for the department or the police. Similarly, complaints about legislation or government policy will remain a matter for the department or government to investigate and consider. The ombudsman will also not be able to investigate matters that are within the responsibilities of other agencies.

Further, at clause 36 of the bill, the ombudsman has discretion not to investigate some matters, including where it reasonably believes the complainant does not have sufficient interest in a matter raised in complaint. Clause 36 is relevant to committee recommendation 4 regarding whether industry representative bodies will have access to the Personalised Transport Ombudsman services on behalf of their members. Firstly, as an independent body, it will ultimately be a matter for the Personalised Transport Ombudsman as to whether it investigates or refuses to investigate complaints under clause 36, but clause 36 is intended to be applied flexibly and could be used by the ombudsman to refuse to investigate a matter raised by a representative body.

To put this in context, underpinning the ombudsman's role is a pragmatic aim to help resolve complaints on a case-by-case basis. It is not intended that the ombudsman become a place for complaints in principle or for broadbrush issues to be raised under a claim of group representation. For the Personalised Transport Ombudsman to be able to assist, the complainant needs to be in a position where they can directly participate in any investigation or mediation processes. This ensures the ombudsman can target its services to the needs of an individual. In an evolving industry, the membership of representative bodies may be unclear. Even within a membership group, the individual

circumstances of members within the group may, in fact, vary. These factors make it difficult for the ombudsman to provide advice specific to the interests of individuals. However, there is nothing in this bill stopping representative bodies from assisting and supporting their members; for example, by assisting them in preparing written material.

To allow the ombudsman to assess whether it can proceed with investigating a complaint, upon receiving a query or complaint the ombudsman will have the ability to make preliminary inquiries about the complaint to decide how best to deal with the matter. One outcome from this process may be for the ombudsman to provide advice about options available to the complainant to resolve a complaint.

It is not intended for the ombudsman to duplicate functions or services already provided elsewhere and to that end advice provided by the ombudsman may include information about another agency or organisation that is best placed to assist the person. For example, if a complaint relates to workplace health and safety issues, the ombudsman may decide not to investigate, but may instead advise a complainant how to contact Workplace Health and Safety Queensland. Where the ombudsman decides to deal with a complaint, the matter can be investigated and, depending on the nature of the complaint, the ombudsman may also provide mediation between the parties and make non-binding recommendations to guide the parties towards a positive resolution.

For industry to get maximum benefits from the ombudsman's role, it is important that each party participate in any investigation or mediation in good faith. The bill is also careful to make sure there are protections in place for complainants. Fear of reprisals is a significant issue that has been raised by industry participants. The protections in this bill include offences against those who take detrimental action, as well as provisions to support a claim for damages. This bill also includes the powers necessary to support investigation and enforcement of an offence related to reprisals.

The ombudsman has potential to be more than just a place for complaints. When operational, the ombudsman will be in a prime position to monitor complaints and notice trends and systematic issues that may require consideration by the department or possibly even by the government. The ombudsman will be able to report these types of matters to the minister and that information will become a valuable tool in allowing the department and the government to develop evidence based responses to lead to better outcomes for industry and the community.

In addition to responding to matters raised by the public or industry, the ombudsman will also be responsible for reviewing matters referred to it by the minister. On this point I note that there was some discussion during the committee process querying whether the minister could use this power to refer a matter back to the ombudsman after the ombudsman refused to investigate the matter or had already completed its investigation on the matter. I propose to move an amendment during consideration in detail to clarify that this is not the intention. I cannot reiterate strongly enough that this bill is about establishing a properly independent Personalised Transport Ombudsman, but I would also highlight that, while the legislation ensures the ombudsman must investigate new matters referred to it by the minister, importantly the ombudsman will have the freedom and independence to determine the approach to considering the issues raised by the minister.

The role of the Personalised Transport Ombudsman has been designed to help industry and customers resolve complaints through advice and information and possibly mediation so that mutually agreeable outcomes are achieved. It is about assisting industry to help itself, particularly through this period of significant change. I note that during the committee process some concerns from industry were highlighted regarding the ability of the Personalised Transport Ombudsman to make binding decisions. This was referred to in committee recommendation 3. It was never the intent of this bill to establish another decision-making body. There are already enough courts and tribunals and other regulators.

When developing this model it was clear the actions an ombudsman can take relate directly to the role it is intended to play. For example, the Queensland Ombudsman has functions relating to investigating administrative actions and procedures of agencies and providing advice, but it cannot make binding decisions. The Training Ombudsman has functions similar to the Personalised Transport Ombudsman, including receiving complaints, referring complaints, advising complainants and reporting to the minister about matters. The Training Ombudsman cannot make binding decisions. By comparison, in the Health Ombudsman's role, it may identify a serious safety risk to persons. As a result, the Health Ombudsman can make decisions about a person's registration or issue prohibition orders against health practitioners.

The Personalised Transport Ombudsman will not deal directly with serious safety matters. The department already has a rigorous legislative and enforcement scheme to address unsafe or inappropriate driver or operator behaviour and to ensure vehicles are of a safe standard. For example, all personalised transport drivers must hold a driver authorisation. The authorisation process requires

criminal history checking and the authorisation can be immediately suspended if the person is charged with a disqualifying offence. The ombudsman can urgently advise the department if it becomes aware of any safety risk. Giving the ombudsman powers to make binding decisions would fundamentally alter the way the ombudsman is intended to operate, the costs involved and the way it interacts with established bodies like courts and tribunals.

The ombudsman is designed to assist parties to resolve complaints, not to add another layer of legal process or to duplicate the work of existing bodies. While the ability to make binding decisions is not considered necessary for the Personalised Transport Ombudsman, enshrining the impartiality and the independence of the role is necessary.

Regarding impartiality, this bill disqualifies certain people from being the ombudsman, including someone who has a criminal conviction, is insolvent or is a member of parliament. In addition, the bill disqualifies a person who has held a personalised transport licence within the previous five years or is a member of an advocacy group, peak body or trade union that is involved in personalised transport services. I note that committee recommendation No. 2 suggested reconsideration of the exclusion period to exclude only current industry members.

The ombudsman will have the ability to provide advice, mediate between parties and make recommendations to parties, as well as investigate matters on behalf of the minister and make reports about systematic issues to the government. Therefore, it is important that the person who undertakes those activities is able to approach the issues without bias. Personalised transport industry stakeholders include different industry groups with largely differing views on issues affecting their industry. It is imperative to ensure, as far as is reasonably practicable, that all complainants feel comfortable making complaints and are reassured that their issues will be considered in an objective manner, with no preconceived positions or loyalties. Therefore, it is intended that we retain a disqualification period. However, after hearing the submissions and considering the committee recommendation on this point, I acknowledge that the five-year exclusion for industry members is possibly overly cautious. As a result, during consideration in detail I propose moving an amendment to reduce the period from five years to three years.

Through this bill, my government is providing for a cost-effective personalised transport ombudsman that is accessible to industry and customers at no charge. It will be able to provide advice to help in the resolution of complaints about personalised transport services. I note that committee recommendation No. 6 suggested reconsidering proposed funding arrangements for the ombudsman. This recommendation is supported in principle. However, we cannot predict the number and types of complaints that may be the business of the ombudsman. As such, clause 29 of the bill allows a flexible arrangement to be applied to resourcing. Importantly, the bill also requires the ombudsman to be reviewed within three years to ensure it continues to be a relevant, efficient and effective body.

During consideration in detail I will also be proposing an amendment to support committee recommendation No. 5 and require the Personalised Transport Ombudsman to publicly report on systematic issues and complaints statistics annually. This information and the review will be critical to enable evidence based decisions for the future funding, regulation and operation of the ombudsman. Further, I will also propose an amendment to allow the personalised transport ombudsman provisions of the bill to commence by proclamation instead of on assent. The department will work to progress the appointment of the Personalised Transport Ombudsman as soon as possible, following passage of the bill.

Finally, committee recommendation No. 8 sought clarification during the second reading about clause 87 of the bill. This clause allows a regulation to be made about matters that a court may or must take into account when considering a claim for compensation arising from the exercise of authorised officer powers. As the committee acknowledged, this type of provision is quite common in Queensland legislation. Allowing these matters to be dealt with by regulation complements the provisions in the legislation and ensures that government can respond quickly and flexibly to issues that may arise in complex matters. In relation to protecting the institution of the courts, any matter included in a regulation would guide a court when considering a claim for compensation that would not stipulate the weight a court applies to a particular matter. To protect the institution of parliament, as with any regulation, a regulation made under this provision would be tabled and subjected to scrutiny by the committee and the House.

In addition to the personalised transport amendments, this bill includes amendments to support the transition to new smart ticketing solutions for Queensland Transport. Briefly, through this bill we are making amendments to ensure that the legislation is more flexible and responsive to the introduction of new payment methods, such as contactless debit and credit cards, smartphones and even wearable devices. Importantly, the amendments will ensure fare evasion continues to be enforceable when new

payment options become available. The bill contains necessary consequential amendments, as well as amendments to clarify the operation and enforceability of existing provisions. This bill is a practical, forward-thinking bill that is committed to continuous improvement by industry and for customers.

Before I commend the bill to the House, Mr Deputy Speaker, with your indulgence, I acknowledge the contribution to public life of Janice Mayes, whose funeral is today. She is a well-known person to Townsville and Queensland. It is regrettable that, due to the timing of parliament, I and a few other members cannot attend her funeral. It would be remiss of me to stand in this place in Townsville and not acknowledge such a great Townsville woman. I commend the bill to the House.