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2 November 2023

Waka Kotahi (via sptf@nzta.govt.nz)

Tēnā koe e hoa

Bus and Coach Association Feedback: SPTF Sustainable Workforce Discussion Document

Thank you for the work that has gone into this discussion document and your willingness to consult publicly. I note you have requested feedback via email by or before 3 November 2023.

The Bus and Coach Association (BCA) New Zealand has been the authoritative voice of New Zealand's bus and coach industry since 1931. We represent the vast majority of New Zealand's bus and coach companies, as well as vehicle manufacturers and industry suppliers.

Our members' vehicle fleet of more than 6,400 buses provides over 150 million road passenger trips annually. Our members employ over 13,000 staff and contribute more than \$1.8 billion annually to New Zealand's GDP. All public transport bus services in Aotearoa are delivered by BCA members.

We make some strong points in our feedback. We recognise this document was developed under guidance from a previous Minister and that an election has taken place since you released this document. We think you may have produced a different discussion document if release had been delayed until after you received direction from the incoming Minister of Transport.

Our members that provide public transport services and the BCA welcome further discussion on the future of the SPTF and the operational policy that is required to support SPTF objectives. I'm contactable on 027 705 0720 or at delaney.myers@busandcoach.co.nz should you wish to discuss aspects of the attached submission.

Kind regards

A handwritten signature in black ink, appearing to read "Delaney Myers".

Delaney Myers
Chief Executive
Bus and Coach Association

Appendix:

1. BCA submission on proposed operational policy: sustainable workforce

BCA Submission on proposed operational policy: sustainable workforce**BCA FEEDBACK: SUSTAINABLE WORKFORCE CONSULTATION**

1. The Bus and Coach Association acknowledges the challenge that Waka Kotahi has had in developing operational policy to implement the workforce provisions to support the Sustainable Public Transport Framework (SPTF), and our industry members involved have been complimentary about the level of engagement in producing these proposed operational policies.
2. While the feedback provided here is specific to the operational policies you are proposing, we would like to engage further with Waka Kotahi, (as well as unions and public transport authorities), on options to develop a sustainable workforce to support the delivery of effective and efficient public transport services. We believe there are multiple options to achieve our collective objectives and that we will be more successful working collaboratively.
3. For ease of reading our feedback has been set out to align with the sections in the discussion document and your engagement questions.

Understanding the Background

4. The driver workforce is the absolute backbone of the public transport bus sector. Bus operators are highly motivated to look after their workforce and are often frustrated when policy interventions are thrust upon them that have undesirable consequences, such as occurred with the introduction of the Public Transport Operating Model (PTOM).
5. The fundamental issue with driver terms and conditions under the PTOM contracts was the strong weighting for tenders on price. Operators were forced to compete on wages or lose contracts. The concern with drivers taking up employment with lesser terms and conditions was specific to the PTOM transition.
6. When PTOM was developed and introduced, the impact of forcing tenderers to compete on wages was highlighted as a significant risk by the industry. Simple solutions to avoid competing on driver wages (while still competing on all other contract aspects), were offered by the industry, but not taken up.
7. As predicted, driver wages dropped for some as they changed employers and stagnated for others. At the same time the Minimum Wage increased rapidly, closing the gap between New Zealand's lowest paid workers and skilled bus drivers. This led to industrial action, driver shortages, and eventually, (albeit exacerbated by COVID-19), crippling service failures and cuts.
8. It was well understood by all that the primary solution was to pay drivers more. But due to the tight contract pricing, the slow movement in the Labour Cost component of Indexation and external economic factors impacting on all businesses nationally; operators' hands were largely tied.
9. This was a highly visible failing of the public transport network that impacted tens of thousands of Kiwis every day. It has had an unquantifiable impact on New Zealanders' confidence in public transport and wider productivity impacts.

BCA Submission on proposed operational policy: sustainable workforce**Current situation**

10. Practices and capability within the industry have improved in recent years. As a result, the uncertainty for drivers during a tender period can be better managed.
11. When contracts change, which is currently only every nine years, incoming operators always seek to employ the incumbent staff. It is nearly always preferable to employ an experienced driver over recruiting and training new staff. Most drivers are now paid over \$30 an hour, and rates of pay between companies in each region are largely aligned. These actions have 'righted the wrongs' associated with the PTOM wage impacts and inequities. The most significant issues for drivers now are about non-remunerative factors, such as shift structure and health and safety.
12. Our members are gutted that they failed to deliver services to an acceptable level and were unable to remunerate their staff at the levels they deserved. As an industry, we are fully committed to ensuring that we never again find ourselves in that situation.
13. We acknowledge the critical role played by government to assist with improvements to driver remuneration and immigration settings that enabled operators to attract and retain drivers and resume delivery of reliable services. Our view is that while this intervention helped us to stabilise the workforce, we need to make ongoing improvements to driver terms and conditions. To do this, the industry wants to collaborate with councils and central government over policy and procurement settings that will achieve a truly sustainable public transport offering.
14. We are heartened that this commitment is shared by central government, local government and unions. We appreciate the collaborative work in the last two years to stabilise the workforce and look forward to being active participants in the newly formed National Public Transport Workforce Steering Group.

FRAMEWORK FOR IMPROVING TERMS AND CONDITIONS**Section 1: A National Public Transport Workforce Steering Group**

15. We support the proposal to establish an oversight body and the membership proposed.

Section 2: PTA and Operator Collaboration

16. We support the high-level intent, however, specific to 2 b. we note the direct relationship with the indexation review. Operators can only keep pace with wage movements where indexation works as intended.
17. We also suggest including a section on managing unforeseen changes to the external operating environment. For example, the unforeseen increase in safety risk to drivers through societal factors.

BCA Submission on proposed operational policy: sustainable workforce**Section 3: Workforce Key Results Areas**

18. We are comfortable with non-financial KRAs on workforce establishment versus attrition and on workforce safety.
19. We accept that a consistent employee engagement survey could be useful to employers, and are comfortable with the detail of the development/design of that survey. However, we consider it totally inappropriate that results would be published in any format or made available beyond the employer.

Section 4: Tendering and Contracting

20. We are opposed to the requirement of section 4a. Please see our feedback under the workforce transfers heading later in this document.
21. We do not expect an agreement under the Fair Pay Agreement Act 2022 to result given the incoming Government's commitment to repeal this legislation in their 100-day agenda. We strongly support 4b. with the specification of minimum wage rates in future contracts and tender processes.
22. We appreciate the intent of section 4c, however, there are some practical challenges. Operator performance and employee satisfaction will naturally vary contract by contract, depending on the undertakings made for that contract, the location of that contract, local infrastructure, the roster and aspects negotiated with the PTA. There is also no comparable measure for a non-incumbent operator's past performance be judged. We suggest that it is better to set expectations and commitments in the new contract and then manage contracts to ensure delivery on those commitments.
23. Section 4d. is supported.
24. Section 4e. is supported in principle. However, we would need to see more detail of what this means in practice. This could be managed through the steering group.
25. Section 4f. is strongly supported. The inconsistency between PTAs is particularly challenging for operators. We would like to see Waka Kotahi take a much stronger role in setting expectations, procurement processes and contract terms and conditions.

Section 5: Indexation and Independent Reviews

26. We strongly support the need to review Indexation. The current settings mean indexation doesn't do what it sets out to do, that is, fairly compensate the operator for actual changes in input costs over the duration of the contract.
27. We also request that Waka Kotahi provide much stronger guidance to PTAs on the application of indexation, as some councils are not applying it as intended, i.e. by delaying when they apply it, or not applying it to certain components of the contract. This improper application unfairly impacts operators.

BCA Submission on proposed operational policy: sustainable workforce**WORKFORCE TRANSFERS**

28. We agree with the legislated objectives of SPTF, including “employment and engagement of the public transport workforce is fair and equitable, providing for a sustainable labour market and sustainable provision of public transport services.”
29. The proposed operational policy for Workforce Transfers is derived from the Letter of Expectation from Minister Wood to the Waka Kotahi Board; and we don’t consider the previous Minister’s instructions will assist in delivering on the SPTF objectives as set out in the Land Transport Management Act 2003.
30. Given the change in government, we recommend all policy on Workforce Transfers is paused until the incoming Minister can consider the direction they would like to take. We have had discussions with National Party representatives on this matter and will be offering advice to the incoming Minister once the Government is formed.
31. It is difficult to see the rationale for such complex operational policy, beyond that it was developed under the instruction of a previous Minister. We do not consider the proposals will increase the ongoing sustainability of public transport. Further, we consider some of these provisions to be practically, (and possibly legally), unworkable. We also note that no mention has been made of who the adjudicating party and/or process will be for differences in opinion around application.
32. We recognise the role of the Crown to provide a balanced playing field on which employers and employees can engage. Part 6A of the Employment Relations Act 2000 (ERA) covers continuity of employment if the employees’ work is affected by restructure, setting out protections for vulnerable workers. On request of the then Minister of Transport and Minister of Workplace Relations, MBIE investigated and then recommended against the inclusion of urban bus drivers in Schedule 1A (occupations to which Part 6A applied to) because they did not meet the test under Section 69A(2)(b) for vulnerable workers. We strongly disagree with a secondary approach of embedding it into operational policy.
33. We encourage you to consider why the test for vulnerable workers under the ERA was not met; and given that test was not met, consider why this sector needs a different approach than that already covered by legislative processes.
34. Implementing the draft policy set out, as well as being of no clear value, will add cost to public transport due to the hefty compliance costs, while potentially detracting from developing meaningful programmes to enhance driver terms and conditions.
35. To avoid the often touted “race to the bottom” for driver terms in PTOM contracts, simple procurement changes that specify minimum terms for drivers, or ringfence driver wages from the tender pricing assessment would provide a much more elegant solution. We would like to work with you to explore such approaches.
36. We consider the proposed workforce transfer policies unnecessary and will strongly advocate against them becoming part of Government policy.