

2nd Floor, Inspire House
125 Featherston Street
Wellington 6011

P +64 27 877 3362
E info@busandcoach.co.nz



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NZTA (via sptf@nzta.govt.nz)

Tēnā koe e hoa

Bus and Coach Association Feedback: SPTF Partnering and Delivery Model 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 19 January 2024.

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 most of New Zealand's bus and coach companies, vehicle manufacturers and industry suppliers, including all the public transport operators.

This submission reinforces conversations we have had over the consultation process. We want to thank you for the process you have run to ensure both the BCA, and our members most likely to be impacted by the proposed policy, were fully involved. That does not mean we agree with what has resulted. We acknowledge the constraints you faced based on the Ministerial direction you were provided with and that you sought to achieve the best outcome within those constraints.

Given we have reason to believe a different direction is now likely with the change in Government, our feedback is largely contextual.

We support the principles of SPTF and think there would be huge opportunity in a first principles review of operational policy to support them. We have suggestions for improving the economic, environmental and social sustainability of public transport that we would like to share and work on with you. Ideally this should follow the receipt of guidance from Minister Brown.

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 am 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 blue ink, appearing to be "Delaney Myers".

Delaney Myers
Chief Executive
Bus and Coach Association

BCA FEEDBACK: PARTNERING AND DELIVERY MODELS

1. The Bus and Coach Association acknowledges the effort NZTA has made in ensuring broad-based and comprehensive consultation on this proposed operational policy. However, we signaled before the release of this discussion document our concerns regarding timing.
2. While we considered there was little opportunity to change the former Minister of Transport's mind and therefore the constraints NZTA had to work within, the situation has now changed. The current Minister's views on the Land Transport Management (Regulation of Public Transport) Amendment Bill as it progressed is available to all on Parliament TV on Demand¹.
3. We anticipate a different set of government priorities for the procurement and delivery of public transport than the engagement document was developed to support. Consequently, our response is set at a contextual rather than granular level.
4. It is our view that any final operational policy in this area should:
 - a. Ideally be intent based rather than prescriptive,
 - b. Be minimalist, on existing to clarify or give effect to SPTF objectives that might otherwise be widely interpreted,
 - c. Exist to provide consistency only to the extent required to support SPTF objectives.
5. We agree that there is significant room for improvement in partnership between PTAs and operators, including increased transparency. There are obvious avenues for better value for money, and we would like to explore procurement methods that would support that. However, we have seen no evidence that different infrastructure/asset control models will garner any benefit.
6. We therefore consider a first principles review is required following applicable policy announcements from the new Government, proposed legislative impacts and any guidance from the Minister of Transport.

Legislative change

7. We support the principles in section 115 of the Land Transport Management Act and the need for NZTA to approve procurement processes that flow from section 25.
8. We do not support section 27 of the Act and our desire is for this to be repealed along with section 25(7) and section 116. We consider direct in-house delivery works against the interests of value for money and often obscures transparency for both ratepayers and taxpayers. While we acknowledge the transparency requirements in section 116 of the Act, you can find numerous examples of legislative intent of this nature not being met. The Official Information Act is but one example.
9. The cost of challenging a poor in-sourcing decision is too high for most operators. We believe the costs of overturning such a decision would create strong incentives for a PTA to be less than

¹ <https://ondemand.parliament.nz> id 231728, 235964, 326302, 236305, 236318

transparent if an insourcing decision were challenged. Without market testing, it would be very difficult to make the case that in-sourcing represents value for money. If an in-sourced bid were competing against external bids, we would have concerns about PTAs being able to run such a procurement and bid into it without the necessary firewalls being compromised.

10. There is no evidence base that a PTA could more efficiently deliver public transport services and no market failing that recent legislation could be seen as addressing. There is however evidence both nationally and internationally on Council failings around provision of public transport service and infrastructure with ratepayers left covering the cost of these misadventures.
11. Competition drives efficiency and innovation. Insourcing service provision, depot infrastructure or control of bus assets will remove that competitive tension; along with any means of benchmarking or measuring the actual subsequent loss in efficiency.
12. It is our contention that the LTMA changes to enable councils to control public transport assets reduces the ongoing sustainability of public transport by decreasing private sector confidence and investment, and potentially creating inefficient regional monopolies, while increasing the overall cost and complexity of delivery. We note that the Regulatory Impact Statement for the Bill made similar observations and that the Ministry of Transport's advice was not preferred by the then Minister of Transport in developing this legislation.
13. We also note the Transport and Infrastructure Committee commentary for the Bill which contained clear statements from both the National and ACT parties that they did not support the Bill².

Problems, Objectives and drivers of change

14. *Problem one* is stated as, "Rapid decarbonisation is leading to long term asset and infrastructure investment risks being loaded into shorter term operating contracts resulting in reduced value for money"
15. We agree. We believe the problem is the short-term and inflexible nature of the operating contracts, along with sub-optimal procurement practices. There are significant opportunities for changes to NZTA procurement and investment policies; as well as PTA planning, procurement and contract management that would improve value for money. We believe the problem should be addressed by a shift to evidence led, outcomes-based, value for money procurement and policies; not reallocating roles from an agile, skilled and well-resourced private sector market to local government.
16. *Problem two* is stated as, "Current operating contracts and delivery models limit innovation and constrain the ability of the public transport system to accommodate significant and rapid patronage growth"

² Land Transport Management (Regulation of Public Transport) Amendment Bill – 237-2 - Commentary

17. We agree that the current operating contracts are constraining and limit innovation, which is frustrating to all parties. We disagree that the delivery model is a constraint. The private sector market is well positioned to invest and grow to meet the significant and rapid patronage growth forecast; and to innovate with the benefit of practical operational knowledge and international expertise. We consider the problem should be addressed by improved procurement and partnering.
18. *Problem three* is stated as, “Control of strategic assets can adversely impact the ability to enable fair competition amongst suppliers and sustain competitive and efficient markets and contracts.”
19. We don’t agree this problem exists. We have a healthy market in New Zealand, with strong competition. None of the operators of public transport services consider this a problem, consistently having demonstrated their abilities to investigate options in advance of tendering and stand-up depots upon winning contracts. This has been demonstrated repeatedly during PTOM tenders, all of which have been contested. Conversely, due to the recent actions of Waikato Regional Council, we know that a council requiring operation out of their own facility can reduce competition in the market, with potential tenderers opting out.
20. An appropriate business case for PTA asset control would require costing of options, and options can’t be costed without market testing of an “apples with apples” pricing scenario, with the pricing by the PTA also considering the opportunity cost of the investment to ratepayer and NZTA. We believe any pricing on the cost of obtaining, setting up, operating and maintaining an operational bus depot by PTAs would be speculative and invariably undertaken with an optimism bias. This represents a long-term shift of financial risk to the rate payer and NZTA.
21. Is there any evidence base to support this problem statement or has it simply been created to prop up *objective c*³ which has been enabled in recent legislative changes? Even if we assume it is a problem, does the alternative create even greater challenges that would undermine any perceived value-for-money changes?
22. Putting this in a practical context, have concepts like a PTA owned depot utilised by multiple operators really been evaluated? Is just the public transport (PT) lens sufficient when most operators run school and charter services out of the same depots they use for PT services? Have the health and safety implications of multiple operators working from a single depot been properly assessed?
23. These are the sort of things that can make operational policy difficult to execute; or in trying to achieve value for money (VfM) in one area, reduce it in another like government-funded School Transport services. VfM needs to be considered at a national economic level, not just for one part of the system. We consider PTA controlled depot facilities to be unnecessary and undesirable, but beyond that, our members consider multiple operators sharing a PTA controlled depot facility unacceptable.

³ Access to strategic assets and infrastructure are not a barrier to entry for suppliers and support long-term planning and value for money

24. New Zealand public transport bus operators are basically infrastructure companies. Their business model is to make large capital investments in infrastructure, (depots and buses), and draw a long-term return through expert procurement, management and operation of those assets.
25. There is no appetite from New Zealand's current public transport operators to function as a labour hire and logistics provider.
26. We question whether any organisation considering control of bus assets has fully grasped the commercial incentives associated with having one party own assets with a separate entity operating them; and the costs and expertise required to monitor such an arrangement effectively.
27. A first principles review of problems and opportunities is required. We anticipate this would result in a different investment logic map. We would like to see this facilitated by an accredited ILM facilitator. We do appreciate a partial ILM process was conducted on this topic, however, given there was already a pre-determined outcome, we don't consider it holds currency.

The "enabling legislation" argument

28. We note that the changes to the LTMA that remove the barriers for PTA asset control are enabling rather than directive, and the assurances from NZTA that a strong business case would be required to vary from the current open market model.
29. However, we observe some PTAs have already taken active steps to insource without an NZTA approved procurement strategy to do so. Members were surprised that NZTA allowed Waikato Regional Council to have an interest in PT assets and require services to be operated out of their controlled depot, despite it not being in line with legislation at the time or NZTA procurement rules.
30. Greater Wellington Regional Council (GWRC) has obtained control of a site that it seeks to develop as a depot and require services to be delivered from. This action was taken prior to the passing of the SPTF legislation, and we assume wasn't supported by a NZTA approved procurement strategy, as no operational policy has been deployed for the SPTF.
31. These are two examples of why members don't have confidence that operational policy would ensure that insourcing/asset control could only occur where there is a strong business case that demonstrates value for money. To be blunt, (and we can also provide non-depot related examples), we see that some PTAs selectively follow NZTA procurement rules, so we have no reason to believe new operational policy will be followed either.
32. These examples reduce the confidence of operators to invest, by casting doubt on the likelihood of depot and vehicle assets delivering consistent long-term returns.
33. This is not a theoretical argument: One operator advises that GWRC's move to develop its own depot has been in conjunction with impeding that operator from developing its own future depot site; which the BCA assumes is to strengthen GWRC's business case for a council-controlled facility. Planning statements from GWRC to another operator around additional planned GWRC

controlled depots resulted in that operator halting depot improvement works, because those investments don't make sense for a short-term holding. Both situations were for significant private investment in depot infrastructure, at no cost to the ratepayer or taxpayer, to support ongoing delivery of public transport in Wellington using zero emission buses.

34. Accordingly, we do not agree that the 'enabling legislation' is benign or can be appropriately moderated by operational policy. Instead, we consider it reduces the ongoing sustainability of public transport by decreasing private sector confidence and investment, and potentially creating inefficient regional monopolies. This goes entirely against the principles of SPTF as set out in Section 115 of the LTMA.