



8 June 2022

OC220364

Hon Michael Wood
Minister of Transport

Action required by:
Friday, 17 June 2022

ESTABLISHING THE SUSTAINABLE PUBLIC TRANSPORT FRAMEWORK

Purpose

To provide you with:

- further advice on enabling in-house provision of public transport services
- further advice on increasing transparency of operating costs and financial performance
- a draft Cabinet paper seeking policy decisions to establish the Sustainable Public Transport Framework.

Key points

- You indicated you would like to enable public provision of services without a service contract (OC220015 refers). To achieve this, the requirement in the Land Transport Management Act 2003 (LTMA) that public transport services must be contracted should be modified, such that it only applies where services are outsourced.
- The requirement that services are contracted is also linked to a requirement that services are bundled into 'units'. This requirement should be retained, to enable mixed delivery models within regions and to support benchmarking between units.
- With flexibility to deliver services without procurement or a contract, service delivery will need to be organised such that Public Transport Authorities (PTAs) and Waka Kotahi NZ Transport Agency (Waka Kotahi) can assess the value for money from different operating models. To achieve this, the LTMA should be amended to require all public transport services to be procured, contracted and/or delivered in such a way that ensures transparency of operating costs, service performance, and financial performance of operators.
- To clarify what is expected of PTAs and Waka Kotahi, key terms for the transparency requirement should be defined. Otherwise, the requirement should remain broad and not specify the information required or when it should be provided, since this will depend on how services are procured, contracted, and/or delivered.

- The requirement should apply to future contracts or service delivery models, enabling PTAs and operators to establish business processes that achieve the transparency requirement.
- The LTMA should be amended to ensure Waka Kotahi can require information from PTAs in relation to the new transparency requirement. This will support benchmarking of service delivery models and ongoing investment decisions.
- s 9(2)(g)(i) 
- We have considered two possible timelines for Cabinet policy decisions - one seeking Cabinet policy decisions in late-June 2022 and the other seeking Cabinet policy decisions in late-July 2022. Cabinet consideration in June is ambitious, but gives the best opportunity to introduce a Bill this year.

Recommendations

We recommend you:

- | | | |
|---|--|----------|
| 1 | agree to modify the current requirement in the Land Transport Management Act 2003 (LTMA) that services must be contracted, such that it only applies where services are outsourced | Yes / No |
| 2 | agree to retain the requirement in the LTMA that public transport services are bundled into units | Yes / No |
| 3 | agree to establish a requirement in the LTMA that all public transport services must be procured, contracted and delivered in such a way that ensures transparency of operating costs, service performance, and financial performance of operators | Yes / No |
| 4 | agree to clarify the new transparency requirement by defining key terms to incorporate the following concepts: <ul style="list-style-type: none"> • operating costs – the cost of operating public transport services, including input costs such as labour costs and vehicle/vessel operating and maintenance costs • service performance – performance against defined metrics, which are usually identified in contracts as key performance indicators, such as reliability and punctuality • financial performance – the financial standing of public transport operators, including but not limited to factors such as equity, assets, liabilities, and profitability | Yes / No |
| 5 | agree that the transparency requirement should apply to future outsourced contracts and in-house service delivery models | Yes / No |

6 **agree** to amend the LTMA to ensure Waka Kotahi NZ Transport Agency can require information from Public Transport Authorities on operating costs, service performance, and financial performance of operators.

Yes / No



Matt Skinner
Acting Manager, Mobility and Safety
 08 / 06 / 2022

Hon Michael Wood
Minister of Transport
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- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

PROACTIVELY RELEASED BY
 TE MANATŪ WAKA
 MINISTRY OF TRANSPORT

Contacts

Name	Telephone	First contact
Matt Skinner, Acting Manager, Mobility and Safety	s 9(2)(a)	✓
Jacob McElwee, Principal Adviser, Mobility and Safety	s 9(2)(a)	

ESTABLISHING THE SUSTAINABLE PUBLIC TRANSPORT FRAMEWORK

We provided advice on outstanding policy issues for the Public Transport Operating Model (PTOM) review

- 1 In April 2022, we provided you with advice on outstanding policy issues for the PTOM review (OC220015 refers). You have agreed to reforms that will:
 - 1.1 enable public provision of public transport services
 - 1.2 better enable decarbonisation of public transport
 - 1.3 improve roles and relationships in the public transport sector
 - 1.4 reform the framework for exempt services
 - 1.5 include on-demand services in the Sustainable Public Transport Framework (SPTF).
- 2 You indicated your preference to enable a flexible approach to public provision of public transport services, and specifically to enable services to be delivered by PTAs directly without the need to contract a council-controlled trading organisation. You also sought advice on a more direct mechanism than operational policy to increase transparency of operating costs and financial performance. This paper provides advice on these matters, and also provides a draft paper, reflecting your previous decisions and feedback, seeking Cabinet policy decisions on the SPTF.

A more flexible approach to in-house provision of public transport services will require further reforms

- 3 We previously provided advice on enabling in-house provision of public transport services, including necessary legislative changes (OC210884 and OC220015 refer). Based on your decisions on OC220015, we have identified further changes to the Land Transport Management Act 2003 (LTMA).

We recommend modifying the current requirement that services must be contracted

- 4 The LTMA requires all public transport services to be contracted, unless exempt. We consider contracts remain the appropriate form of oversight where services are outsourced. To enable greater flexibility for in-house provision of services we recommend modifying the requirement in the LTMA such that the contracting requirement only applies where services are outsourced.

We recommend retaining the requirement that public transport services are grouped into units

- 5 The requirement in the LTMA that public transport services are contracted also requires that these services are part of a unit. Units are individual services or groups of services identified in regional public transport plans that are delivered by a single supplier on an exclusive basis. We recommend services continue to be bundled into

units for the purposes of planning, procurement, contracting and/or delivery regardless of whether services are outsourced or provided in-house. This will enable an individual PTA to outsource or in-source different parts of its network. It will also support benchmarking of different service delivery models, which is discussed further below.

Greater transparency around the delivery of public transport services will support both outsourcing and in-sourcing of activities

- 6 The LTMA currently includes some provisions to support transparency – for example PTAs have the power to require certain information from operators and Waka Kotahi has the power to require certain information for PTAs. The Waka Kotahi Procurement Manual also includes provisions that further support transparency.
- 7 As set out in OC220015, greater transparency of operating costs and operator financial performance might be desirable where PTAs:
 - 7.1 procure services through negotiation with incumbent operators
 - 7.2 negotiate significant contract variations, for example to deploy zero-emission buses or to improve bus driver terms and conditions.
- 8 You have agreed that Waka Kotahi develops operational policy to support increased transparency of operating costs and financial performance of public transport operators (OC220015 refers).

We recommend establishing a requirement in the LTMA to support transparency around the delivery of public transport services

- 9 As noted above, you have indicated you would like PTAs to have flexibility around how they might deliver services in-house – including with or without contractual oversight. Currently procurement and contracts are the key mechanisms to:
 - 9.1 gain assurance around value for money
 - 9.2 establish performance metrics, and requirements for reporting on performance
 - 9.3 establish the cost of delivering public transport services.
- 10 With flexibility to deliver services without procurement or a contract it will be critical that service delivery is still organised in such a way that the outcomes in paragraph 9 can be achieved. This will ensure PTAs and Waka Kotahi are able to assess the value for money of different arrangements and delivery models.
- 11 To achieve this, we recommend amending the LTMA to require all public transport services to be procured, contracted and/or delivered in such a way that ensures transparency of operating costs, service performance, and financial performance of operators. This requirement would apply whether services are contracted to a private or publicly owned operator or provided in-house without a contract.
- 12 Where a PTA wishes to deliver services in-house without a contract, it would need to consider how service delivery would be structured to give effect to this legislative requirement.

We recommend defining key terms for the legislative requirement, but that the requirement otherwise remain broad

- 13 We recommend defining some key terms for this requirement, to help clarify what is expected of PTAs and what should be incorporated in operational policy. We propose the definitions incorporate the following concepts:
- 13.1 operating costs – the direct cost of operating public transport services, including input costs such as labour costs and vehicle/vessel operating and maintenance costs
 - 13.2 service performance – performance against defined metrics, which are usually identified in contracts as key performance indicators, such as reliability and punctuality
 - 13.3 financial performance – the financial standing of public transport operators, including but not limited to factors such as equity, assets, liabilities, and profitability.
- 14 Aside from defining terms, we recommend that this requirement be broad and not specify the type of information, when it should be provided or the arrangements necessary to achieve the transparency outcomes. As set out in OC220015, consideration of the specific information that is required, and what arrangements are necessary to achieve transparency, should be identified as part of procurement and contracting and/or as part of investment decisions.
- 15 For example, if services are procured through competitive tender PTAs and Waka Kotahi can generally be more confident that pricing is efficient. As a result, the information required through procurement might be more focused on ensuring the pricing is sustainable rather than efficient. The operational policy developed by Waka Kotahi will need to establish more detailed guidance around what information is required in different circumstances. The legislative requirement would strengthen the operational policy and make implementation mandatory.

We recommend the legislative requirement around transparency applies to future contracts and service delivery

- 16 We recommend that the requirement applies to new contracts or service delivery models, but not retrospectively. This requirement, and the associated operational policy, would be best implemented at the time services are procured and/or as PTAs develop new service delivery models. This is because PTAs and operators would have the opportunity to establish business processes that give effect to the requirement and operational policy, which are built into contracts and the pricing of services. By comparison, we expect negotiation during the term of a contract would be complex and operators would likely be resistant.

We recommend amending the LTMA to ensure Waka Kotahi can require information to support benchmarking and investment decisions

- 17 We also recommend amending the LTMA to ensure Waka Kotahi can require information from PTAs on operating costs, service performance, and financial performance of operators. In OC220015 we noted a more flexible framework will be more challenging for Waka Kotahi to administer. Waka Kotahi will need the ability to request this information to support benchmarking and value for money assessments

of different service delivery models – which will be critical for ongoing investment decisions.

s 9(2)(g)(i)

18 As noted in OC220015, we have not consulted formally on enabling in-house provision of services or on specific measures to increase transparency around the operation of public transport services. However, through targeted engagement we understand:

18.1 PTAs strongly support measures to increase the transparency of public transport operating costs and financial performance of operators

18.2 unions support enabling in-house provision s 9(2)(g)(i)

19 Based on previous work with the sector we expect bus operators will oppose reforms that enable in-house provision s 9(2)(g)(i)

20 As noted in OC220015, we suggest greater transparency would support a more mature relationship between operators and PTAs, helping address the concerns of operators in relation to partnering.

We have prepared a paper seeking Cabinet policy decisions to establish the Sustainable Public Transport Framework

21 We have prepared a paper for you to take to Cabinet based on your policy decisions to date and reflecting the recommendations in this paper (see attachment 1).

We have considered two timelines for Cabinet consideration of this paper

22 Table One below shows two possible timelines for Cabinet decisions – one seeking Cabinet policy decisions in late-June 2022 and the other seeking Cabinet policy decisions in late-July 2022. The difference is driven by the Parliamentary recess during July 2022. The implications for drafting and introducing a Bill are outlined below.

23 The timeline to allow Cabinet policy decisions in June involves truncated and parallel departmental consultation and ministerial consultation. There could be a risk that departments and/or your Cabinet colleagues raise concerns that cannot be addressed within the timeframes.

24 By comparison, targeting Cabinet consideration in July would provide more time for you to provide feedback on the draft paper, and would enable ministerial consultation to follow departmental consultation.

Table One: Indicative timelines for Cabinet policy decisions and legislative processes

Process Step	Cabinet in June 2022	Cabinet in July 2022
Feedback on draft Cabinet paper	13/14 June 2022	Week ending 17 June 2022
Departmental consultation	15 June – 21 June 2022	20 June – 29 June 2022
Ministerial consultation	15 June – 21 June 2022	4 July – 15 July 2022
Lodged for DEV/ENV	23 June 2022	21 July 2022
Considered by DEV/ENV	29 June 2022	27 July 2022
Bill development	July – November 2022	August – January 2023
Bill considered by LEG	December 2022	February 2023
Bill introduced	December 2022	February 2023

Cabinet consideration in June is ambitious, but gives the best opportunity to introduce a Bill this year

- 25 In relation to the delayed introduction, PCO has indicated that a one-month delay would compress the drafting and risk significantly compromising the quality of the legislation. Their view (which is reflected in the timeline) is that it would be appropriate, if Cabinet consideration did not occur until July 2022, to delay Bill introduction to 2023.
- 26 We have also explored with PCO whether it would be possible to seek the Attorney-General's permission for PCO to start work ahead of policy approval (ie for the Ministry to send instructions in June). PCO have noted that the process to obtain the Attorney-General's consent to drafting in advance is for use only in "exceptional circumstances" and that it is designed to be rarely used and only when truly needed and appropriate. In this case our view is that this would depend on the Government's urgency for the need for the Bill to be introduced this year. The Bill is a priority four in the legislative programme. The proposed timeline for the Bill was introduction in December 2022.

We have built some flexibility for Bill development into the Cabinet paper

- 27 We have proposed that Cabinet, in addition to authorising you to instruct PCO to develop the Bill, also authorise you to:
- 27.1 determine matters of minor or consequential policy detail that may arise in the course of preparing the Bill
- 27.2 make decisions that are consistent with the overall policy, provided that these decisions are confirmed when the Bill is considered for introduction.

We will continue to develop operational policy alongside Cabinet and legislative processes

- 28 We have held the first two meetings of the SPTF Operational Working Group. We have now agreed the Terms of Reference and begun development of a work programme. We will continue to work with Waka Kotahi and the Working Group to progress operational policy to support the reforms in parallel with Cabinet policy decisions and the legislative process.