



12 April 2022

OC220015

Hon Michael Wood

Minister of Transport

PUBLIC TRANSPORT OPERATING MODEL REVIEW – OUTSTANDING POLICY ISSUES

Purpose

To seek agreement on reforms to:

- enable public provision of public transport services
- better enable decarbonisation of the public transport bus fleet
- improve roles and relationships between key players in the public transport sector
- the framework for exempt services
- the treatment of on-demand public transport services under the new framework.

Key points

- Following your decisions on OC210884, we have further refined policy proposals for the remaining issues within scope of the Public Transport Operating Model (PTOM) review. The proposals set out in this paper will be achieved through a mix of changes to the Land Transport Management Act 2003 (LTMA) and through the development of operational policy.
- Waka Kotahi NZ Transport Agency (Waka Kotahi) is developing operational policy to achieve your agreed labour market outcomes and will engage with the Bus Driver Conditions Steering Group.
- We are seeking confirmation that you wish to enable public provision of public transport services. Should you wish to, we propose this is achieved through a contracted model to ensure consistent accountability and performance expectations between publicly and privately owned operators. We envisage public transport authorities (PTAs) would transition to this delivery model through direct appointment of a publicly owned operator.
- The proposed key changes to better enable decarbonisation are providing greater flexibility around how PTAs hold public transport assets and developing operational policy to support different asset ownership and service delivery pathways. We do not recommend establishing new powers to allow PTAs to gain control of strategic assets.

- There are opportunities to improve the roles and relationships in the public transport sector. We propose to further encourage PTAs and territorial authorities (TAs) to collaborate when planning public transport networks and supporting infrastructure. We also propose Waka Kotahi develops operational policy to improve partnering between PTAs and operators.
- We anticipate the Sustainable Public Transport Framework (SPTF) could see a greater ability and more interest from PTAs to procure public transport services through negotiation with incumbent operators. To support continued value for money from procurement, we propose operational policy is developed to increase the transparency of operating costs and financial performance of public transport operators.
- We propose changes to the framework for exempt services:
 - to clarify who can initiate the Order in Council process required to create or remove an exemption
 - to amend the criteria to assess whether an exemption should be added or removed to better reflect the SPTF objectives.
- We propose Waka Kotahi develops guidance to improve consistency of processes to register and vary exempt services, and develops guidance on how exempt services should be transitioned to the SPTF if an exemption is removed by Order in Council
- We propose to include all contracted or integral on-demand public transport services within the SPTF. Meanwhile we propose to include in the exempt services framework a subset of commercially operated on demand services that are more likely to impact contracted services. These commercial services will need to be registered with PTAs.
- The proposed direction of reforms will likely increase the complexity of operational policy and investment decisions. However, we anticipate more substantive changes to delivery models (such as public provision of services) will happen more gradually, providing sufficient time to develop operational policy and investment frameworks.
- We will prepare a paper for Cabinet reflecting your decisions on this paper, and previous decisions. We are targeting Cabinet policy decisions in June 2022.

Recommendations

We recommend you:

Enable public provision of public transport services

- | | | |
|---|---|----------|
| 1 | <p>confirm you intend to enable public provision by creating an exception for public transport services from the requirement in the Land Transport Management Act 2003 (LTMA) to outsource activities to receive funding from the National Land Transport Fund</p> | Yes / No |
| 2 | <p>agree to enable public provision of services through a contracted model, with publicly owned operators owned through council-controlled trading organisations (CCTO)</p> | Yes / No |

- 3 **agree** to create an exception for public transport services from the requirement in the LTMA that Waka Kotahi NZ Transport Agency (Waka Kotahi) considers the desirability of enabling competition and encouraging competitive and efficient markets when approving a procurement procedure Yes / No

Better enable decarbonisation of public transport

- 4 **agree** to amend the requirement in the LTMA that assets are held by a CCTO to enable direct PTA ownership of public transport assets, but that any PTA owned operator must be owned by a CCTO to give effect to **recommendation 2** Yes / No
- 5 **agree** that Waka Kotahi develops operational policy to support different asset ownership arrangements Yes / No

Improve roles and relationships in the public transport sector

- 6 **agree** to establish a requirement in the LTMA that PTAs prepare regional public transport plans (RPTPs) in collaboration with territorial authorities and, in doing so, identify in RPTPs the infrastructure necessary to support public transport service delivery Yes / No
- 7 **agree** to establish a requirement in the LTMA that PTAs must consider publicly consulted local transport strategies when preparing RPTPs Yes / No
- 8 **agree** that Waka Kotahi develops guidance on how to improve partnering between PTAs and operators through procurement and contracting Yes / No
- 9 **agree** that Waka Kotahi develops operational policy to support increased transparency of operating costs and financial performance of public transport operators Yes / No

Reform the framework for exempt services

- 10 **agree** that Waka Kotahi develops guidance on processes relating to the registration and variation of exempt services Yes / No
- 11 **agree** to increase the minimum notice period in the LTMA for withdrawing an exempt service that has been identified as integral in an RPTP from 15 working days to 60 working days Yes / No
- 12 **agree** to establish two alternative triggers in the LTMA for commencing the Order in Council process to remove or add an exempt service, that: Yes / No
- a) a PTA requests that Waka Kotahi commences the process; or
 - b) the responsible Minister requests that Waka Kotahi commences the process

- 13 **agree** to amend the criteria in the LTMA to assess whether an exemption should be added or removed to: Yes / No
- a) whether the service is an integral part of region's public transport network; and either
 - b) whether the service needs its fares to be regulated; or
 - c) whether contracting/exempting the service will have a positive overall impact on achieving mode-shift, a sustainable labour market, health and environmental outcomes, and value for money

- 14 **agree** that Waka Kotahi develops guidance on how exempt services should be transitioned into the SPTF if an exemption is removed by Order in Council Yes / No

Include on-demand services in the Sustainable Public Transport Framework

- 15 **agree** to expand the definition of public transport in the LTMA such that all services contracted and/or identified as integral to a public transport network in a RPTP that are available to the public generally will be considered public transport; except Yes / No
- a) services contracted or funded by the Ministry of Education
 - b) event transport that is not available to the public generally
 - c) tourism services

- 16 **agree** that commercial on demand public transport services, excluding shuttle services, be included in the LTMA framework for exempt services if they are: Yes / No
- a) provided in shared vehicles
 - b) available to the public generally; and
 - c) provided exclusively in buses (vehicles with 9 or more seats); or
 - d) provided by 10 or more vehicles

- 17 **agree** to amend the definition of a 'unit' in the LTMA to clarify that PTAs can procure and contract on-demand services separately to timetabled services Yes / No

- 18 **agree** that Waka Kotahi should review operational policy in relation to establishing units to ensure PTAs have the ability to procure and contract on-demand services separate to, or bundled with, timetabled services. Yes / No



Siân Roguski
Acting Manager, Mobility and Safety
 12 / 4 / 2022

Hon Michael Wood
Minister of Transport
 / /

- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

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

PROACTIVELY RELEASED BY
 TE MANATU WAKA SPORT
 MINISTRY OF TR

PUBLIC TRANSPORT OPERATING MODEL REVIEW – OUTSTANDING POLICY ISSUES

We provided advice on new objectives, labour market interventions and enabling in-house provision of public transport services

- 1 In December 2021, we provided you with advice on setting new objectives for the planning, procurement, and delivery of public transport services. We also provided advice on progressing labour market interventions, enabling in-house provision of public transport services, and options for a name for the new framework (OC210884 refers).
- 2 You agreed to replace PTOM with a new framework with new objectives, and signalled it would be called the Sustainable Public Transport Framework (SPTF). You also agreed to progress labour market outcomes through operational policy and signalled your intent to enable public provision of public transport services. You have also signalled a desire to drive greater transparency from public transport operators.
- 3 Following your decisions on OC210884 we have updated key stakeholders on the direction of reforms and discussed the proposals in this paper.
- 4 This paper provides further advice on achieving labour market outcomes and enabling in-house provision. It also provides advice on the remaining policy issues for designing the new framework and advice on increasing the transparency of operator costs and financial performance.

Your agreed labour market outcomes are being progressed through operational policy

- 5 In February 2022 you wrote to the Waka Kotahi Board and invited Waka Kotahi to develop operational policy to achieve your agreed labour market outcomes. Waka Kotahi is considering what changes to operational policy will be necessary to support these outcomes and will engage with the Bus Driver Conditions Steering Group in developing this policy.
- 6 As you know, the sector is also developing nationally consistent terms and conditions for bus drivers, which will help protect and improve terms and conditions. You have a bid for Budget 2022 to provide funding support for this initiative. As noted in OC210884, we recommend that amendments to the LTMA in relation to labour market outcomes should be limited to embedding the SPTF objectives.

Should you wish to enable public provision of public transport services, we recommend doing so in a contracted framework

- 7 In OC210884 we provided advice on the cost efficiency benefits of competitive procurement. We also signalled the potential precedent setting impact of enabling public provision of public transport services – given the LTMA requires all services funded from the NLTF to be outsourced. You have indicated you would like to establish an exception from this requirement for public transport services and that you would discuss enabling public provision of public transport services with your Cabinet

colleagues. We are seeking confirmation from you that you wish to proceed with this change.

- 8 To support this, we have considered two different pathways to enable public provision of services – which are set out in Table 1 alongside the status quo. In both scenarios privately owned operators would still provide services under contracts.

Table One: Pathways to enable public provision of services

Model of Provision	Ownership Structure	Type of Oversight	Procurement	Pros	Cons
Status Quo – Outsourced and contracted	Interests must be held by a CCTO.	Must be provided under contract.	A contract could only be awarded to a publicly owned operator through a competitive tender.	All operators participate in the market on the same basis, regardless of ownership.	Only allows public provision in narrow circumstances and a transition to public provision would be difficult.
Remove outsourcing requirement, but retain contracting requirement (recommended option)	Operator must be owned by a CCTO.	Must be provided under contract.	A contract would most likely be awarded through direct appointment/negotiation with a CCTO. Procurement would not need to support competitive or efficient markets.	Contract provides accountability and ensures comparable performance standards. CCTO ownership ensures contractual obligations are meaningful.	Requires a CCTO to be established. Requires procurement and a contract, which imposes costs. Could enable private and public monopolies, reducing value for money over-time.
Remove outsourcing and remove contracting requirement	Any ownership structure (e.g. CCTO, council-controlled organisation, or direct council ownership).	Can be provided with contractual or administrative oversight.	Procurement is optional – depending on the model of oversight.	Greatest flexibility for, and least administrative burden on, PTAs to transition to public provision.	Requires a separate framework for public provision, for example to establish reporting and/or auditing requirements. There is a risk administrative oversight results in worsening service performance.

- 9 Should you wish to enable public provision, we recommend retaining a contracted framework - where all public transport services that a PTA wishes to provide through a public or privately owned operator must be provided under contract, unless they are exempt. This would ensure consistent accountability, performance expectations and penalties and incentives whether services are provided by publicly or privately owned operators. To support this, publicly owned operators would need to be CCTOs to make incentives and penalties meaningful¹.
- 10 Retaining a contracted model would require PTAs to go through a procurement process, even if they decide to provide services through a publicly owned operator. However, this procurement process would most likely be through direct appointment and negotiation with a CCTO.
- 11 To enable this, we recommend establishing an exception for public transport services from the requirement in the LTMA that Waka Kotahi considers the desirability of enabling competition and encouraging competitive and efficient markets when approving a procurement procedure. This will enable the direct appointment of both publicly and privately owned operators. s 9(2)(g)(i)
- 12 Based on consultation and engagement on broader asset ownership issues, we anticipate opposition from public transport operators to this change, primarily because it would mean a loss of potential future business. We also anticipate some stakeholders would suggest public provision of services will be less economically efficient than outsourcing. However, as set out in OC210884, we anticipate there could be wider public value considerations that make public provision of services desirable.

The legislative reforms required to enable decarbonisation of the public transport bus fleet are limited

- 13 Consultation on the PTOM review Discussion Paper, and our subsequent engagement with key stakeholders, has confirmed the LTMA is largely enabling of most decarbonisation pathways. The key issue of interest to most stakeholders relates to asset ownership arrangements. Some PTAs have signalled a desire to own or control assets – including depots, vehicles, and charging infrastructure – in order to facilitate decarbonisation, service continuity and long-term contestability. We consider the key enabler of changes to asset ownership relate to operational policy and investment decisions.

¹ Section 6 of the Local Government Act 2002 defines a council-controlled trading organisation (CCTO) as a council-controlled organisation that operates a trading undertaking for the purpose of making a profit.

We recommend Waka Kotahi develops operational policy to support different asset ownership arrangements

- 14 Under the SPTF we envisage each PTA will consider the best asset ownership arrangements for its network. In doing so, we anticipate PTAs will need to consider a range of factors, such as:
- 14.1 the strategic importance of assets, such as depots, to the delivery of public transport services in the relevant region
 - 14.2 the expected impact of asset ownership arrangements on market access/competition for contracts (if a PTA intends to outsource and/or tender services)
 - 14.3 their capability and capacity to procure and manage assets
 - 14.4 their ability to meet the capital cost of assets.
- 15 Should PTAs wish to own assets, they will likely need to seek co-funding from Waka Kotahi to meet either the upfront capital costs or the costs of borrowing, which could be accommodated through operating costs². To do so, PTAs would need to demonstrate how changes to asset ownership will provide value for money and contribute to the public transport objectives/outcomes they are targeting through their regional public transport plan. As a result, changes to asset ownership are likely to happen on a case-by-case basis.
- 16 The current settings for public transport bus service procurement assume that the operator provides the public transport assets. The length of contracts, end of term arrangements, asset maintenance obligations, and structure of contracts would need to be adjusted should PTAs wish to own or control certain assets.
- 17 We recommend Waka Kotahi is tasked with developing guidance for:
- 17.1 PTA decision-making in relation to asset ownership arrangements; and
 - 17.2 procurement and contracting under different asset ownership arrangements.

We recommend amending the requirement that public transport interests must be held by a council-controlled trading organisation

- 18 Based on consultation the key legislative barrier to changing asset ownership arrangements is the current requirement in the LTMA that interests in public transport must be held by a council-controlled trading organisation (CCTO). While this does not prevent PTAs from changing asset ownership arrangements, PTAs are seeking greater flexibility around how assets could be held.

² If a PTA chose to purchase assets through borrowing, the financing costs could be recouped through operating contracts, which would be co-funded from the NLTF.

- 19 We recommend that this requirement is amended to enable direct council ownership of public transport assets, such as vehicles and depots, but to maintain the requirement that any council owned operator is a CCTO³. Based on consultation and engagement we anticipate opposition from some public transport operators to this change. This is because it would signal a greater ability for PTAs to take more direct ownership of assets. Some operators consider that asset ownership by PTAs would remove a key part of their business. It would also remove potential for a return on capital, likely meaning lower margins for private operators. However, we also note some operators are open to alternative asset ownership arrangements and would potentially benefit from reduced barriers to entering a public transport market.
- 20 Operators have identified some other potential downsides to PTA ownership of assets, including:
- 20.1 PTAs would need to develop new capabilities and take on additional administrative burden to manage assets
 - 20.2 a reduced ability for operators to get efficiencies from delivering multiple service types from one operator-owned depot location
 - 20.3 less certainty about opportunities to redeploy vehicles that exit the public transport bus fleet – resulting in higher costs for other services (e.g. Ministry of Education contracted school bus services).
- 21 We consider these issues will need to be considered on a case-by-case basis when PTAs assess the value for money of different asset ownership arrangements for their network and through investment decisions. These issues should be addressed through the development of operational policy that supports this decision making (see para 17).

We do not recommend establishing the 2025 zero-emission bus mandate (the Mandate) in the LTMA

- 22 Amendments to the Requirements for Urban Buses (RUB) in February 2022 gave effect to the 2025 zero-emission bus mandate. The amendments mean from 1 July 2025 for PTAs to receive funding from the NLTF for public transport bus services, buses entering the public transport fleet will need to be zero-emission.
- 23 As signalled in our advice on the design of the 2025 zero-emission mandate (OC210795 refers), the Waka Kotahi decision to incorporate the mandate in the RUB does not preclude the Mandate being legislated or reflected in the Government Policy Statement on land transport.
- 24 The main benefit of establishing the Mandate in the LTMA would be providing a more enduring Mandate than what may be achieved through the RUB. The RUB is a procurement tool, which can be amended by Waka Kotahi as part of its statutorily independent role in setting procurement rules.

³ This is required to retain a contracted model of service delivery.

- 25 Legislating the Mandate could also provide more certainty that PTAs would comply with the Mandate, compared to the RUB. This is because Waka Kotahi could choose to allow variations or exemptions to the RUB when approving a procurement plan and/or funding. However, if the Mandate was legislated, we would also need to consider whether penalties should apply for failing to comply and whether there should be a mechanism for PTAs to seek exemptions or variations from the Mandate. A loss of flexibility for PTAs could also have perverse outcomes, whereby investment in zero-emission buses is prioritised over maintaining or improving services.
- 26 On balance, we do not recommend establishing the Mandate in the LTMA, because of the potential for perverse outcomes. It would also be a significant departure from the existing structure, where legislation provides the overarching framework for decision-making and detailed prescriptive requirements are in operational policy.
- 27 We consider it is important that investment decisions support the 2025 Mandate and engagement with PTAs has indicated that funding is a major constraint on decarbonisation of the bus fleet. You have a bid to support decarbonisation of the bus fleet in Budget 2022. We are also considering public transport decarbonisation including the 2025 Mandate, alongside other initiatives in developing the Government Policy Statement on land transport 2024. We will provide advice on this separately.

We have explored whether PTAs need new tools to change ownership arrangements, particularly in relation to depots

- 28 In our post-consultation advice (OC210669 refers) we identified some potential tools that PTAs might need to change asset ownership arrangements, and/or to get control of strategic assets, particularly depots. These included transferring asset provisions in contracts, land use planning controls, and compulsory acquisition powers. Our engagement with PTAs suggests these types of tools are either already available or not currently required to change asset ownership arrangements. This is because:
- 28.1 some PTAs have identified land already under public ownership (either by the PTA or a territorial authority within their region) that could be suitable to establish bus depots
- 28.2 Greater Wellington Regional Council already has asset transfer provisions in its public transport bus service contracts to gain a degree of control over some strategic bus depots
- 28.3 where land for potential depots is privately owned, PTAs consider they will be able to identify and get control of land through commercial processes.
- 29 We note that obtaining commercial agreement with operators to secure control over existing assets (and particularly depots) could be difficult, particularly where ownership provides a competitive advantage or there is a highest and best use outside of public transport. However, in such circumstances, PTAs and Waka Kotahi suggested a pathway of compulsory acquisition, even if made possible, could be divisive and harmful to relationships with operators. We do not recommend establishing new powers for PTAs to gain control of public transport assets.

We have explored whether changes are required to enable bulk procurement, for example of vehicles and/or charging infrastructure

- 30 Should PTAs seek to change asset ownership arrangements, there could be cost efficiency benefits in bulk procurement of vehicles and/or charging infrastructure. Bulk procurement could be on a regional, multi-regional, or national basis. Our assessment is there are no current legislative barriers to bulk procurement.
- 31 Under existing settings, bulk procurement at a multi-regional level can be achieved through a syndicated contract – that allows multiple PTAs to join an order. For example, a PTA could establish a contract with a bus manufacturer for a specified number of zero-emission buses with certain specifications and other PTAs would be able to become party to this contract and effectively add to the order at the same unit price.
- 32 This form of bulk procurement would allow PTAs with smaller networks (and bus orders) to gain cost savings by benefiting from bulk procurements by PTAs with larger networks (and bus orders). Alternatively, PTAs could establish a bus supplier purchase panel which would be accessed by operators without requiring PTAs to own assets directly.
- 33 While centralised procurement at a national level is possible, it would likely only be desirable if all PTAs elected to own vehicles and/or charging infrastructure. We do not expect this to eventuate given the wide range of capability between PTAs and the potentially limited benefit of asset ownership for regions with small public transport networks.
- 34 Even if all PTAs elected to own vehicles and/or charging infrastructure, we also expect it could be difficult to achieve and gain efficiencies from national procurement. While the RUB specifies a common set of minimum standards for public transport buses, PTAs have established their own vehicle quality standards that go beyond the minimum standards in the RUB.
- 35 Furthermore, we expect there will be further variation in requirements set by PTAs in the case of zero-emission buses – for example in the case of electric buses, the design of vehicles would need to consider local climate, topography, and the expected maximum vehicle range required. As a result, centralised procurement nationally:
- 35.1 may not be feasible because of differences in vehicle requirements; or
 - 35.2 may not achieve the expected cost efficiency benefits because different vehicle specifications would mean:
 - 35.2.1 vehicles would need to meet the highest specifications to ensure they meet the needs of all regions; or
 - 35.2.2 differences in vehicle requirements result in reduced cost savings.

- 36 We also anticipate centralised national procurement could delay decarbonisation because negotiating and agreeing specifications across regions would likely be a lengthy process. A centralised procurement agency would also have to accept and manage much greater procurement and technology risks than individual regions, which would likely result in a longer decision-making process.
- 37 For these reasons we do not recommend pursuing centralised national procurement of vehicles or charging infrastructure. Should you wish to pursue this further, Waka Kotahi has indicated it does not currently have capability to undertake bulk procurement of zero-emission buses or charging infrastructure across multiple regions or nationally. As a result, you would need to discuss this direction with Waka Kotahi officials.

Standardisation of technology should reduce barriers to entry and enable inter-operability of vehicles

- 38 The sector has recently agreed to adopt a charging standard for electric buses, which has been reflected through amendments to the RUB. This will enable inter-operability of vehicles between depots and regions once the vehicle fleet is decarbonised and supporting infrastructure is in place. Over time we expect the potential risk pricing by operators, and corresponding benefits of public ownership of vehicles may be less significant. However, we expect depots will continue to be strategic assets, particularly in the main centres, both for ensuring service continuity and to enable potential competition for service contracts should PTAs continue to outsource.

There are opportunities to improve roles and relationships in the public transport sector

We recommend adding new requirements in the LTMA for PTAs when preparing regional public transport plans

- 39 Through consultation and engagement PTAs and territorial authorities (TAs) identified issues arising from the split of responsibilities – with PTAs responsible for services and TAs responsible for infrastructure. This was seen by some stakeholders as one of the biggest issues impacting the ability to deliver high-quality public transport systems.
- 40 Consultation and engagement with stakeholders has not identified any simple solutions to these issues. Submitters and stakeholders have largely suggested moving responsibilities from one entity to another, or reforming local government to replicate Auckland Transport type structures in other regions.
- 41 In OC210884 we identified a range of options to address these issues. These options, our analysis following engagement, and our recommended changes to requirements in the LTMA are summarised in Table Two.

Table Two: Options, analysis, and recommended changes to the LTMA to improve roles and relationships between regional councils and territorial authorities

Option identified in OC210884	Analysis from Engagement	Recommended changes to LTMA requirements
Requiring regional councils to prepare RPTPs in partnership with territorial authorities (TAs).	This could lead to challenges with preparing and finalising RPTPs. We consider regional councils should remain responsible for preparation of RPTPs, but there should be greater onus on regional councils and TAs to work together during preparation.	Regional councils should prepare RPTPs in collaboration with TAs, and in doing so, identify in RPTPs the infrastructure necessary to support public transport service provision. This would reinforce the existing requirement that regional councils collaborate with TAs to deliver the regional public transport services and infrastructure necessary to meet the needs of passengers.
Requiring TAs to demonstrate in RPTPs how they will support reliable, frequent, accessible and affordable public transport.	This could be seen as allowing regional councils to direct TAs on what is required to deliver public transport services – impacting on the autonomy of TA decision-making. However, greater collaboration should support improved outcomes.	
Making regional councils responsible for funding public transport infrastructure.	Regional councils and TAs can already negotiate changes to funding responsibilities.	No change, any shift of responsibilities should be on a case-by-case basis considering the capacity and capability of the relevant organisations.
Requiring regional councils to give effect to local transport strategies and plans	Requiring regional councils to give effect to local transport strategies and plans could be seen as directing regional council decisions.	Add publicly consulted local transport strategies to the matters that must be considered by regional councils when preparing RPTPs. Currently the matters include regional policy statements, regional plans, and district plans prepared under the Resource Management Act.

We recommend Waka Kotahi develops guidance, through the SPTF Working Group, on how to improve partnering between PTAs and operators through procurement and contracting

- 42 Consultation on the Discussion Paper identified a range of concerns about the relationship between operators and PTAs. Operators consider the structure of contracts overly negative, with a focus on penalties for not meeting stringent performance measures – rather than bonuses for exceeding a performance level. Operators have also frequently referred to a ‘master-servant’ relationship between PTAs and operators.
- 43 PTAs suggested more alignment between the motives of PTAs and operators would lead to more of a partnership, noting that establishing shared values around achieving mode-shift could improve relationships. PTAs also noted the importance of engaging proactively with operators on key issues.

- 44 Through engagement stakeholders also noted the relationship between PTAs and operators varies, with good relationships between some – while others might suffer from a lack of trust. This could be down to individual personalities and/or history between PTAs and operators. Our view is it is not the role of central government, through Te Manatū Waka or Waka Kotahi, to mediate these relationships. Furthermore, legislation cannot require entities to have good relationships.
- 45 The LTMA includes requirements to support a partnership between PTAs and operators – see Appendix 1 for details. We consider these requirements are fundamentally sound, however consultation and engagement with the sector suggests the application of these requirements is varied.
- 46 We recommend guidance is developed on how to improve partnering between PTAs and operators through procurement and contracting. This would fill a potential gap between legislative principles and what happens in practice. This guidance would be the responsibility of Waka Kotahi and would be guided by the SPTF Operational Working Group. We anticipate the Working Group could consider opportunities to better align the motives of operators and PTAs – such as targeting patronage growth and mode shift outcomes.

Implementation of the SPTF will likely see more variation and less consistency in procurement and contracting

- 47 Through consultation operators sought a stronger role for Waka Kotahi in ensuring national consistency around procurement, contracts, and vehicle standards. Operators also suggested Waka Kotahi should have oversight of PTA performance and relationships with operators. Meanwhile, PTAs suggested there was value in greater national consistency and Waka Kotahi's role in this should be primarily around sharing best practice.
- 48 The implementation of the SPTF will likely see greater flexibility around procurement, asset ownership, and service delivery models. This will mean more variation (and likely less consistency) in procurement and contracting. Waka Kotahi will be tasked with establishing operational policy that supports implementation of the SPTF. We consider this is within the existing legislative roles and responsibilities of Waka Kotahi, and does not require changes to the LTMA.

The SPTF should deliver greater transparency of operator costs and financial performance

- 49 Following consultation on the Discussion Paper we have considered whether there would be benefit in increasing the transparency of operator costs and operator financial performance. This is because as set out in our previous advice (OC210884 refers), we anticipate the SPTF could see a greater ability for, and more interest from, PTAs to procure public transport services through negotiation with incumbent operators. If negotiation with incumbent operators becomes more common, the value of benchmarking may be limited without financial transparency to support negotiations.

We recommend that Waka Kotahi develops operational policy to support increased transparency of operating costs and financial performance to ensure value for money from procurement

- 50 Engagements with key stakeholders has demonstrated strong support from PTAs for greater transparency around operator costs and operator financial performance. We are aware operators have previously been reluctant to provide this type of information, including to independent third parties, based on commercial sensitivity.
- 51 PTAs have identified that greater transparency could help inform the negotiation of significant contract variations with operators and could improve relationships between operators and PTAs by increasing trust about pricing of services. We see this transparency being required to support a more mature partnership between councils and operators and it will also support achieving your desired labour market outcomes. We note that moving more towards an open book relationship between operators and PTAs would be more consistent with the approach taken internationally, including in Australian jurisdictions.
- 52 We consider achieving greater cost transparency from operators when procuring a new contract or when negotiating a significant contract variation would best be addressed through operational policy and guidance. This is because decisions about the type of information that is required to demonstrate value for money is primarily an operational consideration – and will differ depending on the method of procurement. As a result, these requirements should be identified prior to procuring and contracting services. We propose the Working Group guides the development of this operational policy and guidance.

We propose changes to the framework in the LTMA for exempt services to better align with SPTF objectives

We recommend Waka Kotahi develops guidance on processes relating to the registration and variation of exempt services

- 53 Stakeholders have noted variation in the administration of exempt services among PTAs, with some having processes that are readily available and easy to follow, while others may not have any formal process. Entrada, which operates Intercity, suggested the administration of exempt services should be transitioned to Waka Kotahi to improve consistency. However, in our view PTAs are best placed to consider the impact of exempt services on regional public transport networks. As a result, in order to retain PTA oversight centralised administration would likely result in duplication of administrative burden.
- 54 However, we see benefit in greater consistency around processes for registration and variation of exempt services. To enable this, we recommend Waka Kotahi develops guidance for PTAs with the aim of achieving this outcome.

We recommend increasing the minimum notice period in the LTMA to withdraw an exempt service that has been identified as integral in a RPTP

- 55 The current minimum notice period in the LTMA to withdraw an exempt service is 15 working days. We consulted on whether this should be increased to give PTAs a greater opportunity to establish a replacement service, should this be required. Auckland Transport suggested increasing the minimum notice period to 180 days.
- 56 In our view a balance needs to be struck, such that operators are not required to maintain an uncommercial service for longer than necessary, but PTAs should have sufficient opportunity to establish a replacement service (such as through an interim contract with the incumbent operator) should the service be integral to the network. We do not recommend increasing the notice period for services that have not been identified as integral.
- 57 We recommend establishing a minimum notice period for withdrawal of an exempt service that has been identified as integral in a RPTP to 60 working days. We consider a longer period would likely be unreasonable and potentially unenforceable given it could require an operator to operate at a loss for an extended period.

We recommend retaining an Order in Council process to remove or create an exempt service

- 58 Some stakeholders suggested the process to remove an exempt service should be through RPTPs and should not require intervention by central government or the relevant Minister. However, in our view there is a need for checks and balances when considering whether to remove an exemption and require a service to be provided under a contract, and the process requirements around preparing and adopting an RPTP may not provide this. Furthermore, the removal of an exemption through an RPTP could limit the ability of central government, including Waka Kotahi, to consider the affordability and overall benefits of bringing an exempt service under the SPTF.
- 59 On balance we consider the Order in Council processes to create or remove an exemption should remain, but the criteria should be amended.

We recommend establishing explicit triggers for commencing the Order in Council process

- 60 Currently the LTMA is silent on when the Order in Council process set out in section 150 should be commenced, and particularly when Waka Kotahi should undertake the necessary process to inform a decision. This has led to some uncertainty around who can initiate the process.
- 61 We consider there would be benefit in establishing explicit triggers to commence the process, to increase clarity for PTAs and Waka Kotahi. We recommend establishing two alternative triggers:
- 61.1 a PTA requests that Waka Kotahi commences the process; or
- 61.2 the responsible Minister requests that Waka Kotahi commences the process.

- 62 Clarifying that a PTA can make a request directly to Waka Kotahi to commence the process would reflect that in most cases we expect a decision to add or remove an exempt service would come from a PTA. The main risks from this would be that:
- 62.1 on request of PTAs, Waka Kotahi commences the process in a situation where the responsible Minister is unlikely to support an Order in Council to either add or remove an exempt service; and/or
- 62.2 Waka Kotahi receives an increasing number of requests directly from PTAs to add or remove exemptions – leading to resourcing challenges.
- 63 We consider these risks are small. Since PTOM was established through amendments to the LTMA there has only been one request relating to bringing an exempt service under PTOM and no requests to have a contracted service replaced by an exempt service.
- 64 Allowing the Minister to trigger commencement of the process reflects the Minister's role in making a decision to recommend, or otherwise, an Order in Council. We anticipate the Minister would only commence the process with the support of the relevant PTA. However, the process currently set out in the LTMA requires that Waka Kotahi consults with the relevant PTA in any case. We do not propose any change to this.

We recommend amending the criteria in the LTMA to assess whether an exemption should be added or removed

- 65 The current criteria in the LTMA for adding or removing an exempt service primarily hinge on whether a service is integral to a region's public transport network and whether its fares need to be regulated⁴. We suggest this takes a narrow view of why it might be desirable to contract a service that is currently being provided commercially (and conversely why it might not be desirable to commercialise a service that is currently contracted).
- 66 We recommend amending the criteria to reflect the objectives of the SPTF. Specifically, we recommend the following criteria:
- 66.1 whether the service is an integral part of region's public transport network; and either
- 66.2 whether the service needs its fares to be regulated; or
- 66.3 whether contracting/exempting the service would have a positive overall impact on achieving the SPTF outcomes – namely achieving mode-shift, a sustainable labour market, health and environmental outcomes, and value for money/efficiency.

⁴ There is an additional criterion in relation to adding an exempt service that is currently contracted, which is that it will not receive subsidy. We do not propose any change to this additional criterion.

- 67 This change would broaden the criteria that must be considered when assessing whether an exemption should be added or removed. ^{s 9(2)(g)(i)}

We recommend Waka Kotahi develops guidance on how exempt services should be transitioned into the SPTF, if an exemption is removed by Order in Council

- 68 There has been no experience to date with bringing exempt services under PTOM through the Order in Council process. However, Entrada suggested operators should be compensated where an exemption is removed to recognise the loss of a commercial operation. We note the introduction of PTOM effectively brought services that had previously been provided commercially under a contracted model, and in recognition of this some operators were awarded 'Like-for-Like' negotiated contracts. We consider this type of approach may be appropriate where a commercial service is brought under the SPTF. We recommend Waka Kotahi develops guidance on how exempt services should be transitioned into the SPTF, if an exemption is removed through the Order in Council process.

We have considered whether inter-regional public transport services should be included in the SPTF

- 69 Inter-regional services are currently classified as exempt. This creates uncertainty around how to approach planning and procurement of these services. However, we recommend retaining this exempt status under the SPTF. This is because under the SPTF, regional public transport planning will continue to provide the foundations for planning, procurement, and delivery of public transport services. RPTP processes are not well suited to planning inter-regional services, particularly where a service might operate across more than two regions.
- 70 The transport content of the Emissions Reduction Plan approved by Cabinet (CAB-22-MIN-0080 refers) includes actions to deliver a national public transport strategy and to develop a business case toolkit for interregional passenger services. This work will consider how inter-regional services should be planned and funded, to enable the development of a national public transport network.

We recommend including on-demand public transport services in the SPTF

- 71 On-demand public transport services⁵ are not regulated by Part 5 of the LTMA under the current definition of public transport. This means there is uncertainty for the sector about the ability to plan, procure and fund contracted on-demand services. Commercial on-demand public transport services can also be established without any oversight from PTAs.

⁵ Services provided in shared vehicles, that are available to the public generally, but do not have a schedule (such as the MyWay service in Timaru).

72 We consulted on options for how on-demand services should be treated, and we received mixed feedback. The key themes were around:

72.1 retaining flexibility and not inhibiting innovation; and

72.2 providing greater certainty around planning, procurement and funding on-demand services.

73 We recommend expanding the application of Part 5 of the LTMA to clarify the types of services that can be contracted and funded by PTAs and to regulate some on-demand public transport services under the exempt services framework. Table Three below sets out our recommended approach to achieve this.

Table Three: Proposals to include on-demand services in the SPTF

Nature of Service	Proposed services within scope of new Part 5	Rationale and Implications
<p>Provided under contract to a PTA and/or identified as integral to the PT network</p>	<p>All passenger services available to the public generally, except those defined as excluded services, which are:</p> <ul style="list-style-type: none"> • Ministry of Education contracted/funded services • Event transport not available to the public generally • Tourism services 	<p>We recommend a broad definition of public transport for contracted services to make it clear that PTAs can contract and fund a wide range of potential passenger transport service types.</p> <p>Decisions about what services should be delivered by PTAs will be contingent on investment decisions rather than the legislative definition of public transport.</p>
<p>Provided commercially</p>	<p>Scheduled public transport services, plus services not operated to a schedule (excluding shuttle services⁶) if the service is:</p> <ul style="list-style-type: none"> • provided in shared vehicles – users can expect to share the vehicle with other users without prior arrangement; and • available to the public generally – anyone can book to use an individual service, subject to vehicle capacity; and • provided exclusively in buses (vehicles with 9 or more seats); or • provided by 10 or more vehicles. 	<p>We recommend a smaller subset of potential commercial services are captured by Part 5 and the exempt services framework. This will:</p> <ul style="list-style-type: none"> • limit the types of services that are regulated to those more likely to impact contracted public transport networks: <ul style="list-style-type: none"> ○ because they are able to use bus lanes; or ○ are more likely to impact contracted public transport services because the service is operated at scale • reduce the regulatory burden on potential operators of commercial on-demand services • reduce the administrative burden on PTAs.

⁶ A shuttle service is a service provided to or from an airport, a bus or ferry terminal, or a railway station.

- 74 These changes would:
- 74.1 provide greater certainty to Waka Kotahi, PTAs, and operators about the ability to plan, procure, and fund on-demand services
 - 74.2 ensure the SPTF objectives are reflected in the planning and procurement of on-demand public transport services
 - 74.3 enable greater service integration and would enable PTAs to consider the potential impact of commercial on-demand services on the wider public transport network.
- 75 The key risk of these changes would be the potential to inhibit innovation by:
- 75.1 placing more restrictions on how contracted services are planned and procured
 - 75.2 presenting an administrative barrier to some commercial services through the registration process; and
 - 75.3 enabling PTAs to decline the registration of on-demand public transport services under certain circumstances.
- 76 However, we consider these risks can be mitigated through the development of new procurement guidance for on-demand public transport services and additional guidance around the situations in which on-demand services might be desirable.
- 77 We consider the registration process itself will have limited regulatory impact, particularly given it will only impact a subset of potential on-demand services and given the intention to increase consistency of registration processes across PTAs through national guidance. We also consider the current criteria for declining a registration are appropriate (see Appendix Two) – taking into account the role of PTAs in planning, procuring and delivering public transport networks.
- We recommend amending the definition of a unit in the LTMA to ensure PTAs can procure and contract on-demand services separately to timetabled services*
- 78 The LTMA requires that all contracted services have to be structured into units for the purposes of procurement and contracting, and each unit has to be a minimum of all the timetable services for one route. Every unit also has to be contracted on an exclusive basis
- 79 We consider it is important that the SPTF allows on-demand services (and other potential service types) to be contracted separately from timetabled services. This will provide greater flexibility around service models, facilitate innovation, and enable a wider variety of potential service providers to enter the market. To achieve this, the definition of unit will need to be amended to clarify that PTAs can establish units that are limited to services without a timetable (e.g. on-demand services).
- 80 We also recommend that Waka Kotahi should review operational policy in relation to establishing units to ensure PTAs have the ability to procure and contract on-demand services separate to, or bundled with, timetabled services.

The SPTF will likely result in more complex operational policy and investment decisions

- 81 The direction of proposed reforms to the framework for planning, procurement, and delivery of public transport services will result in far more flexibility for PTAs. This flexibility will likely result in more complex operational policy to account for a wide variety of service types, ownership arrangements, and delivery pathways. It will also likely make investment and procurement decisions more complex and challenging for Waka Kotahi.
- 82 There is a risk this will make it difficult to develop operational policy for the SPTF, and once implemented the framework could be difficult to administer. However, we anticipate PTAs will respond to this flexibility gradually, meaning more substantive changes to delivery models (such as public provision of services) will likely take some time to evolve. This will provide a longer timeframe to develop operational policy and investment frameworks that account for these more fundamental changes. There will also continue to be an onus on PTAs to demonstrate the value for money from different procurement and delivery pathways when seeking co-funding from Waka Kotahi.

We will prepare a paper for Cabinet to reflect your decisions

- 83 As set out in OC210884, we are targeting Cabinet policy decisions on the SPTF in June 2022. To support this, we will prepare a paper for Cabinet to seek policy decisions based on your decisions on this paper, and previous policy decisions. We anticipate it may be necessary to seek further clarification or decisions on certain policy matters in preparing this paper for Cabinet.
- 84 We expect Cabinet policy decisions in June will enable the introduction of a Bill to amend the LTMA in late-2022.

The SPTF Working Group will guide the development of operational policy recommended in this advice

- 85 You agreed to the establishment of a Working Group on operational policy to implement reforms to the planning, procurement, and delivery of public transport services (OC210884 refers). The Working Group will guide the development of operational policy to support the SPTF objectives and the more detailed reforms recommended in this advice. Waka Kotahi will ultimately make decisions on any changes to operational policy, reflecting its statutory functions and responsibilities.

Appendix One: Requirements in the Land Transport Management Act 2003 (LTMA) in relation to partnership between public transport authorities and operators

- 1 Section 115(1)(a) of the LTMA: *Regional councils and public transport operators should work in partnership and collaborate with territorial authorities to deliver the regional public transport services and infrastructure necessary to meet the needs of passengers.*
- 2 Section 117(1)(a) of the LTMA: *The purpose of a regional public transport plan is to provide a means for encouraging regional councils and public transport operators to work together in developing public transport services and infrastructure.*
- 3 Section 124(c)(v) of the LMTA: *A regional council must, before adopting a regional public transport plan, take into account— the views of public transport operators in the region.*
- 4 Section 125(1)(c) of the LTMA: *When preparing a draft regional public transport plan, a regional council must consult every operator of a public transport service in the region.*

PROACTIVELY RELEASED
TE MANATŪ WAKATŪ
MINISTRY OF TRANSPORT

Appendix Two: Grounds for declining registration or variation of exempt services

1 Section 134 of the Land Transport Management Act 2003 specifies:

(1) A regional council may, on the grounds set out in subsection (2), decline to—

(a) register an exempt service; or

(b) record in the register a variation of the route or routes of an exempt service.

(2) The grounds are that—

(a) the exempt service, or the variation of the route or routes, is—

(i) likely to have a material adverse effect on the financial viability of any unit; or

(ii) likely to increase the net cost to the regional council of any unit; or

(iii) contrary to sound traffic management or any environmental factor identified by the regional council as important to its region; or

(b) the regional council is yet to adopt its regional public transport plan; or

(c) the regional council has adopted a regional public transport plan and it identifies the service as integral to the public transport network.

PROACTIVELY RELEASED BY
TE MANATU TUHAKA
MINISTRY OF TRANSPORT