

REVIEW OF REGULATION OF COMMERCIAL URBAN BUS AND FERRY SERVICES IN NEW ZEALAND

*Anatole Sergejew
Principal Advisor
New Zealand Ministry of Transport*

ABSTRACT

In 1989 legislation was passed in New Zealand giving public transport service operators the right to register and operate commercial services and to deregister such services with 21 days' notice. Regional councils have limited information on or control over these commercial services. The councils' principal role is to plan public transport and to contract "specified" services that are not provided through commercial registrations.

Among other things, the 1989 legislation was based on the principle that there should be competition within and between transport modes with minimal central and local government involvement and influence in the commercial environment, so as to promote the improved efficiency of the land transport system. Currently some 40% of bus patronage in New Zealand's largest city, Auckland, is carried on commercial services. The figure for the capital city of Wellington is 21%.

The New Zealand Transport Strategy set a new direction for transport in New Zealand, with a goal that by 2010 New Zealand will have an affordable, integrated, safe, responsive and sustainable transport system (Swain, 2002). The Land Transport Management Act 2003 provides the legislative framework to implement the strategy by enshrining the objectives sought for land transport (to be an integrated, safe, responsive and sustainable land transport system) in law.

At Cabinet's request, the Ministry of Transport, supported by Land Transport New Zealand, led a joint working group of central and local government officials and public transport operators in a review of legislative provisions regarding the control over commercial public transport services and their relationship with contracted services. The review considered information provided by consultants Booz Allen Hamilton on public transport trends and performance, and a financial analysis of bus operations in major New Zealand cities compared to Australian cities undertaken by LEK Consulting. The review drew upon this information to assess the performance of the current legislative regime in terms of the new broader goals for transport. The review included a public consultation phase. This paper describes the content and findings of the review.

BACKGROUND

Between the 1940s and the 1980s use of public transport in New Zealand steadily declined, reflecting the increasing ownership of private motor vehicles. Significant increases to the cost of public transport services were evident in the 1970s and 1980s. At that time these services were predominantly owned, planned and funded by local government, with some funding from central government.

Although the Urban Transport Act of 1980 specified that “the amount of any financial assistance ... to support the operation of an urban transport service shall not exceed the amount necessary to support the operation of an efficient and economic service of that kind”, there was limited action and success in controlling the cost of public transport services (Travers Morgan, 1994, p.4).

Public transport policy and legislation late 1980s–2001

In the late 1980s land transport policy focused on promoting a safe and efficient land transport system. Safety was promoted through operator licensing requirements, vehicle construction and roadworthiness rules, and driving regulations and enforcement. To promote the efficiency of the public transport system, a package of legislation was passed, taking effect from 1 July 1991, based on the principles that:

- government policy should be clearly separated from regulatory and service delivery functions;
- the ownership and operation of service delivery is best carried out in a corporate form, preferably by the private sector, on a commercial, competitive basis; and
- there should be competition within and between transport modes with minimal central and local government involvement and influence in the commercial environment.

Local government transport operations were required to be divested to commercial entities operated on a commercial basis at arm’s length from the council that owned them. Regional councils were prohibited from having an ownership interest in public transport operations. All publicly funded public transport was required to be contracted through competitive tendering, with a view to maximising competition by giving all operators the opportunity to tender for services.

The Transport Services Licensing Act 1989 (TSLA) gave public transport service operators the right to register and operate commercial services – for instance, where they believed the services could be fully funded through farebox revenue – and to deregister such services if, for instance, they were no longer profitable. Under the TSLA, regional councils must be given 21 days’ notice of the registration or deregistration of a commercial service. Regional councils can only decline to register such commercial services if they are likely to have a material adverse effect on the financial viability, or increase the net cost, of any existing contracted services, or if the service “is contrary to sound traffic management or any other environmental factor identified as being of importance to the region” (TSLA, s.49(2)).

The principal role for regional councils was to plan public transport and to contract “specified” services needed by the community but not provided through commercial registrations.

Effects of the 1989 public transport reforms

The effects of the 1989 public transport reforms have previously been reported to Thredbo (for example by Wallis and by Mein, 1995). It is generally agreed that an immediate effect of the public transport reforms in New Zealand was to reduce the cost of public transport. A study of three large local government owned operators showed a 35% reduction in real terms in the average operating cost per bus-kilometre between 1989/90 and 1993/94 (Travers Morgan, 1994, p.2). This saving was achieved mainly through staff cuts – the local government owned operators cut staffing levels by at least 40%. While driver wages remained largely unchanged, driver productivity was improved through requiring drivers to drive longer hours, and through improved scheduling (Travers Morgan, 1994, pp.3-4). The operating costs of privately owned operators did not change in real terms over the same period. Local government owned operators had to reduce costs to the more efficient level of private operators to survive competition or the threat of competition (ibid., p.4).

Maximum fare levels were controlled by regional councils. Between 1989/90 and 1993/94, fares increased only modestly (ibid., p.9). The total bus-kilometres of public transport services provided in the urban areas changed very little in that time (ibid., p.10).

Overall, public funding from regional councils and central government was reduced by 20% in real terms between 1989/90 and 1991/92, while fares and service levels were little affected (ibid., p.25).

There was a short-term adverse effect on patronage. And while in 1994 it was claimed that there was no evidence of a persisting adverse effect on patronage in the longer term (ibid., p.15), it took eleven years for bus patronage in the major centres to recover to 1990 levels (Auckland Sustainable Cities Programme, 2006a, pp.37).

Changes in public transport policy and legislation 2002–03

Policy and legislative changes in 2002–2003 significantly changed some of the framework established in 1989. The New Zealand Transport Strategy (Swain, 2002) set a new direction for transport in New Zealand with a goal that:

By 2010 New Zealand will have an affordable, integrated, safe, responsive and sustainable transport system.

The Land Transport Management Act 2003 provides the legislative framework to implement the strategy by:

- enshrining the objectives sought for land transport (to be an integrated, safe, responsive and sustainable land transport system) in law;
- removing the prohibition on regional councils having an ownership interest in public transport operations; and
- changing the focus of the procurement framework for public transport from competitive processes to obtaining best value for money in contributing to an integrated, safe, responsive and sustainable land transport system, having regard to the desirability of enabling fair competition and encouraging competitive and efficient markets.

To date there have been no corresponding changes to the provisions of the TSLA regarding the control over commercial public transport services and their relationship with contracted services. It was therefore timely to assess if these provisions are still appropriate, given the

government's broader transport objectives and changed direction outlined in the Land Transport Management Act 2003.

In December 2003, the New Zealand Cabinet agreed that a joint working group of Auckland and central government officials would be established to assess the need for changes to regulatory arrangements governing Auckland public transport, as part of the Sustainable Cities Programme of Action. The joint working group was led by the Ministry of Transport, supported by Land Transport New Zealand. The review focused on the provisions of the TSLA regarding control over commercial bus and ferry services and their relationship with contracted services. The review did not include passenger rail as all passenger rail services are contracted by regional councils.

EVALUATION OF EXISTING LEGISLATIVE REGIME

As part of the review, the joint working group released a consultation document and a submission booklet seeking stakeholder views on the existing public transport system and on options for change (Auckland Sustainable Cities Programme, 2006). A total of 51 submissions were received from public transport operators, local government and various user and advocacy groups. Most submitters agreed that the most important factors for the success of the public transport system were, in decreasing order of importance: reliability, frequency and coverage, safety, responsiveness to user needs, service integration, financial sustainability and service quality (King, 2007, Appendix A, p.3).

Data on trends in the general performance of bus and ferry services in the major New Zealand centres of Auckland, Wellington and Christchurch, compared to major Australian cities, was compiled for the review by consultants Booz Allen Hamilton. Using that data, the consultation document shows that the quality of New Zealand buses generally compares well with buses in the main Australian cities, being newer, and with a higher proportion of buses having super low floors and meeting Euro 3 emission standards (Auckland Sustainable Cities Programme, 2006a, pp.49–50). Recent bus boardings per capita, particularly in Wellington and Christchurch, compared favourably with Australia (*ibid.*, p.50), while the level of public bus funding per boarding in New Zealand was low compared to Australian cities (*ibid.*, p.51). Thus, in general, a quality bus fleet with a comparatively low level of public subsidy per boarding operates in New Zealand's major centres.

It is not easy to determine what has produced these good results. As the consultation document acknowledges, the performance of the public transport system is a product of a number of internal factors (for example, service frequency and coverage), external factors (for example, the cost and convenience of travel of other transport modes) and public transport policies including the level of public funding and the procedures for contracting services (*ibid.*, p.29).

The joint working group review focused on the legislative regime concerning contracted and commercial services. It was decided to evaluate that regime in terms of the degree to which it helps or hinders the planning and implementation of an integrated, safe, responsive and sustainable public transport system (the goal of the New Zealand Transport Strategy) having regard to the desirability of enabling fair competition and encouraging competitive and efficient markets (the focus of the procurement framework of the Land Transport Management Act 2003).

Integration

As far back as 1995, it was reported to Thredbo that “the competitive environment tends to have fostered short term decision making rather than a long term strategic view of the market. As a result, there has been little operator collaboration in the provision of joint timetables and information services, and little progress in the direction of integrated ticketing” (Mein, 1995). Local government submissions to the legislation review in 2006 suggested that the weakest aspect of the current regulatory arrangements governing commercial and contracted bus and ferry services was service integration and integrated fares (King, 2007, Appendix A, p.4). In terms of New Zealand’s major centres, integrated ticketing is in place in Christchurch and Hamilton, but not in Wellington and Auckland. The Ministry of Transport concluded that the current regulatory arrangements were contributing to integration difficulties. Where the public transport system is largely made up of contracted services, such as in Hamilton and Christchurch, an integrated system can be achieved through contract specifications. But integration can be problematic where there is a mix of contracted and commercial services, a mix of bus, ferry and rail modes, or a mix of commercial operators (such as in Auckland and Wellington) because:

- commercial bus and ferry services are fully funded from farebox revenue, and there can be a disincentive to integrate with a competing bus, ferry or train service as this would transfer customers and fares away from an operator’s services; and
- regional councils have limited influence over commercial services, making it difficult to achieve a fully integrated public transport system (ibid., p.4).

Safety

The Ministry of Transport believes that public transport safety is adequately managed through existing regulatory arrangements (ibid., p.4). This view was reinforced by submissions (ibid., Appendix A, pp.3–4).

Responsiveness

Local government believes that the current regulatory arrangements do not perform well in terms of responsiveness to user needs (ibid., Appendix A, p.4). However, the public transport industry has cited several instances of technical innovations introduced by the industry (both led by councils and by operators), and examples where operators have provided successful commercial services beyond what the region was prepared to contract (Bus and Coach Association, 2005).

The Ministry of Transport assessment was that while, under current legislation, operators can show innovation and respond very quickly to users’ needs and changes in demand by registering or deregistering commercial services, the lack of information about and limited influence over commercial services can make it difficult for regions to identify the needs of the public for public transport services, and to respond to those long-term needs through the complete implementation of their Regional Public Transport Plans; for example, in terms of achieving an integrated public transport network with consistent levels of service (King, 2007, pp.4–5).

Sustainability of services

Local government, particularly in Auckland, believes that the current regulatory arrangements do not perform well in terms of financial sustainability (ibid., 2007, Appendix A, p.4). While

95% of commercial registrations in Auckland in 2004 operate today, three operators abandoned a substantial block of commercial scheduled public transport services in 2005. It was estimated that contracting back these services would have cost approximately \$10 million. Currently, an operator is required to give the regional council 21 days' notice of their intention to abandon a commercial scheduled public service. While a longer notice period than the required 21 days was given for the Auckland deregistrations mentioned above, it still proved difficult for the Auckland Regional Transport Authority and Land Transport New Zealand to determine which services to retain and to secure the funds required to contract for their continuance. Also, in the time available, and given the configuration of the services that were deregistered, the contract to continue the services that were deregistered could only feasibly be given to the operator who had deregistered them.

The Ministry of Transport concluded that the lack of access to information about commercial services and the short notification period for deregistrations required in the current legislation can undermine planning and funding for a sustainable, continuous public transport service. However, the Ministry did not believe it is possible to fully protect funders from the impact of significant and unforeseen changes in public transport cost and patronage, which has been behind the large-scale deregistrations in Auckland in 2005 (ibid., p.5).

Achieving fair competition and efficient markets

The industry has argued that competition is a means to an end, not the end in itself, and that, generally, competition is seen as a means of achieving productive efficiencies (Bus and Coach Association, 2005, p.12). The more critical consideration is whether the total amount paid for public transport services represents value for money in terms of the services provided.

While, as noted earlier, the public subsidy per boarding is low compared to Australian cities, a financial analysis undertaken by LEK Consulting suggests that this is because in New Zealand a higher proportion of costs are recovered from the farebox (Auckland Sustainable Cities Programme, 2006a, pp.55–56).

The total bus income (public funding plus farebox revenue) per service kilometre for contracted bus services in Wellington is higher than in many other cities in Australasia, while the total bus income per service kilometre for Auckland is midrange and for Christchurch is comparatively low (ibid., p.47). It may be coincidence that the order of reducing total bus income per service kilometre for Wellington, Auckland and Christchurch corresponds to the order of increasing bids per bus contract tender of these cities (ibid., p.53).

Competition for public transport service contracts may provide some comfort that the total amount paid for public transport services represents value for money in terms of the services provided. Yet, in Auckland there are on average 1.3 bids per tender, and 83% of contracts are retained by the incumbent operator. In Wellington there are only 1.1 bids per contract and 88% of contracts are awarded to the incumbent (Auckland Sustainable Cities Programme, 2006a, p.53).

A recent High Court decision indicated that the limited competition in Wellington is partly due to a number of factors not directly related to the legislation. However, the High Court also found that commercial registrations are being used tactically to inhibit competition in Wellington by selecting services for registration that give the operator a commercial advantage for the services that remain to be contracted, or by registering a service as commercial if the operator is unsuccessful in contracting for it (King, 2007, p.5).

The High Court's findings were consistent with some submissions to this review. One international operator indicated it was interested in entering the New Zealand bus and ferry market but that the commercial registration system operated as an anti-competition barrier. An existing New Zealand bus operator indicated that one reason it was difficult to participate in the Auckland market was the use of commercial registrations by incumbent operators as a blocking mechanism to discourage other operators from bidding against them for contracted services. It is difficult to be reassured that the total amount paid for public transport services represents best value for money in terms of the services provided when there appears to be a low level of competition for public transport service contracts, and when commercial service registrations can act as a barrier to competition.

Overall evaluation of existing legislative regime

The Ministry of Transport concluded that overall, compared to Australia, a quality bus fleet with a low level of public subsidy per boarding operates in the major New Zealand centres. In addition, public transport safety is adequately managed by the existing regulatory arrangements. However, the Ministry concluded that current regulatory arrangements, and in particular the lack of information about and limited influence over commercial bus and ferry services, are hindering the ability of some regions to plan and implement an integrated, safe, responsive and sustainable public transport system having regard to the desirability of enabling fair competition and encouraging competitive and efficient markets.

PROPOSALS FOR LEGISLATIVE CHANGE

A range of options were considered in this review, ranging from no legislative change, with regional councils and public transport operators negotiating improvements, through to an option where regional councils would prescribe the form of delivery of public transport in their region, including the option of prohibiting commercial services altogether. The Ministry of Transport concluded that legislative change is necessary to give regions more surety in their ability to plan and implement an integrated, safe, responsive and sustainable public transport system and to enable fair competition and encourage competitive and efficient markets. However, the Ministry concluded that the ability of operators to register commercial services has:

- helped deliver a quality bus fleet with a low level of public subsidy per boarding in the major New Zealand centres; and
- encouraged technical innovation and enabled operators to provide successful commercial services beyond what the region might be prepared to contract.

The Ministry therefore recommended legislative change that would give regions more information about and control over bus and ferry services, while still allowing operators to continue to register and operate services on a commercial basis.

The proposal for legislative change is to empower regional councils to specify additional controls on commercial scheduled bus and ferry services in their Regional Public Transport Plans. The controls intended to allow regions to encourage fair competition and efficient markets are as follows:

- controls on the period of notice for registering and deregistering commercial services;

- a minimum duration for new commercial services and a maximum period between when they are registered and when they start;
- requiring individual trips to be grouped in any commercial registration; for instance, grouping all morning or afternoon peak trips as well as off-peak and weekend trips;
- empowering regional councils to decline commercial registrations submitted over the time of tendering through to the commencement of competing contracted scheduled public transport services.

The controls intended to help regions provide a more sustainable, consistent and integrated public transport system are as follows:

- requiring the provision of information about commercial services to assist with public transport planning (for example, detailed patronage information);
- setting quality (for example, vehicle quality, such as cleanliness and accessibility) and performance (for example, service reliability) standards, provided these standards are not more onerous than those applying to contracted services.

The proposed legislation would allow regional councils the discretion to decline or deregister commercial scheduled public transport services that do not meet the controls and decline new commercial registrations if they have reasonable grounds to believe that, based on previous history, the operator is not likely to meet the controls.

The proposal includes a number of checks and balances as follows:

- requiring any proposed control to be included in the region's public transport plan;
- clarifying the objectives of and process for developing those plans, in a manner that is transparent, consultative and consistent with the Land Transport Management Act;
- requiring regional councils to be satisfied that the controls are necessary to obtain best value for money;
- providing a right of appeal to the District Court against decisions to decline or deregister commercial scheduled public transport services;
- empowering the Minister of Transport to disallow any control within a specified period of it being imposed, if the control is unreasonable or does not deliver best value for money.

The proposed legislative change is intended to give regions more surety in their ability to plan and implement an integrated, safe, responsive and sustainable public transport system and to enable fair competition and encourage competitive and efficient markets, while retaining the ability of operators to register commercial services, develop technical innovations and provide successful commercial services beyond what the region might be prepared to contract.

SUMMARY

Current legislation in New Zealand gives public transport operators the right to register and operate commercial services and to deregister such services with 21 days' notice. Regional councils have limited information on or control over these commercial services. At Cabinet's request, the Ministry of Transport led a joint working group of central and local government officials and public transport operators in a review of these legislative provisions. The Ministry concluded that overall a quality bus fleet with a low level of public subsidy per

boarding operates in the major New Zealand centres. However, the lack of information about and limited influence over commercial bus and ferry services is hindering the ability of some regions to plan and implement an integrated, safe, responsive and sustainable public transport system, and can work against fair competition and efficient markets.

In view of these conclusions, the Ministry recommended legislative change to give regions more information about and control over bus and ferry services, while still allowing operators to continue to register and operate services on a commercial basis. Controls over the period of notice, and timing, for registering and deregistering commercial services, and requiring individual trips to be grouped, are intended to allow regions to encourage fair competition and efficient markets for contracted services. Controls requiring the provision of information about commercial services, and setting quality and performance standards for commercial services are intended to help regions provide a more sustainable, consistent and integrated public transport system. The proposals include a number of checks and balances, including a right of appeal against decisions to decline or deregister commercial scheduled public transport services, and empowering the Minister of Transport to disallow any control if it is unreasonable or does not deliver best value for money.

The proposed legislative change is intended to give regions more surety in their ability to plan and implement an integrated, safe, responsive and sustainable public transport system and to enable fair competition and encourage competitive and efficient markets, while retaining the ability of operators to register commercial services, develop technical innovations and provide successful commercial services beyond what the region might be prepared to contract. At the time of writing, the New Zealand Cabinet agreed that legislation be drafted to give effect to these recommendations.

REFERENCES

- Auckland Regional Transport Authority. (2006). *Working Paper: Critique of the existing public transport procurement system in Auckland, New Zealand*. Retrieved May 7, 2007 from http://www.arta.co.nz/shadomx/apps/fms/fmsdownload.cfm?file_uuid=4B36FAA3-BCD4-1A24-99F5-190D8538E4BA&siteName=arc
- Auckland Sustainable Cities Programme. (2006a). *Public Transport Procurement Legislation Review Consultation Document*. Retrieved May 7, 2007 from <http://www.transport.govt.nz/assets/Downloads/PTPL-review.pdf>
- Auckland Sustainable Cities Programme. (2006b). *Public Transport Procurement Legislation Review Submission Booklet*. Retrieved May 7, 2007 from <http://www.transport.govt.nz/assets/Downloads/PTPL-submission-booklet.pdf>
- Bus and Coach Association. (2005). *Re: LTNZ Passenger Transport Procurement Review – Industry Response to Issues Presented at Operator Workshop 1 22 September 2005*. Retrieved May 7, 2007 from <http://www.busandcoach.co.nz/assets/file/submissions/LTNZreview-BusIndustryResponsetoWorkshop1Issues10-05.doc>
- King, Hon. A. (2007). *Public Transport Procurement Legislative Change*. Minister of Transport, Wellington. Retrieved May 7, 2007 from <http://www.transport.govt.nz/assets/NewPDFs/pt-proc-cab-paper-260207.pdf>
- <http://www.transport.govt.nz/assets/NewPDFs/WGTA8230-Analysis-of-PT-Procurement-Submissions2.pdf>

Local Government New Zealand. (2006). *Submission to Ministry of Transport re: Consultation Document on the "Public Transport Procurement Legislation Review"*. Retrieved May 7, 2007 from

http://www.lgnz.co.nz/library/files/store_013/LGNZ_Submission_on_Public_Transport_Procurement_Legislation_Review.pdf

Mein, B. (1995). *Is Competition Working? The Experience in Auckland, N.Z.* Paper presented to the Fourth International Conference on Competition and Ownership in Land Passenger Transport, Rotorua.

Swain, Hon. P. (2002). *New Zealand Transport Strategy*. Minister of Transport, Wellington. Retrieved May 7, 2007 from

http://www.beehive.govt.nz/nzts/docs/nzts_v13_23nov02.pdf

Travers Morgan (NZ) Ltd. (1994). *Passenger Transport Trends and Transport Law Reform*. Draft report prepared for Transit New Zealand, Wellington.

Wallis, I. (1995). *Urban Bus Reform "Down Under": Six Years of Words, Actions and Achievements*. Paper presented to the Fourth International Conference on Competition and Ownership in Land Passenger Transport, Rotorua.