



22 December 2021

OC210884

**Hon Michael Wood**  
**Minister of Transport**


**Action required by:**  
Monday, 28 February 2022


## **SETTING NEW OBJECTIVES FOR THE PLANNING, PROCUREMENT, AND DELIVERY OF PUBLIC TRANSPORT**

### **Purpose**

To seek agreement on new overarching objectives for the planning, procurement and delivery of public transport and provide advice on the implications of these objectives. This briefing also provides advice on progressing labour market interventions and options for the name of the framework that replaces the Public Transport Operating Model (PTOM).

### **Key points**

- Following your direction we have developed revised objectives for the new framework for planning, procuring and delivering public transport services (the new public transport framework) that target mode shift, a sustainable labour market, improved environmental and health outcomes and value for money from public investment.
- These new objectives will guide the development of operational policy and we propose they are embedded through amendments to the Land Transport Management Act 2003 (LTMA).
- The labour market objective can be supported by more specific interventions. You have three options to achieve this: through amendments to the LTMA; through including bus drivers in the Part 6A provisions of the Employment Relations Act; or through Waka Kotahi NZ Transport Agency's (Waka Kotahi) procurement policy. These options are not mutually exclusive.
- s 9(2)(g)(i)  

- We propose you invite Waka Kotahi to develop operational policy to progress labour market interventions in the first instance. This will provide the fastest pathway to establishing labour market protections and will be required even if the interventions are legislated.

- We understand you would like to enable public transport authorities to provide public transport services in-house. This would require an amendment to the LTMA to create an exception from the requirement to outsource activities funded from the National Land Transport Fund.
- s 9(2)(g)(i) 
- We have compiled options to name the new framework for the planning, procurement, and delivery of public transport services. These options are listed at paragraph 41.
- We previously signalled a two-stage process for policy decisions, to allow earlier decisions on the new name and objectives, with decisions on more substantive policy issues later. However, this will delay progress with reforms, particularly from a legislative perspective. We recommend a single Cabinet process to enable all policy decisions to be taken in June 2022.
- Operational policy will be critical to the implementation of the new public transport framework. We propose to establish a working group on operational policy, with membership to include public transport authorities, unions, and bus operators.

## Recommendations

We recommend you:

- 1 **agree** to set the following objectives for the planning, procurement, and delivery of public transport services:
  - a) public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe Yes / No
  - b) employment and engagement of the public transport workforce provides for a sustainable labour market and sustainable provision of public transport services Yes / No
  - c) well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology Yes / No
  - d) provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives Yes / No
- 2 **agree** to embed these objectives through amendments to the Land Transport Management Act 2003
- 3 **invite** Waka Kotahi NZ Transport Agency to develop operational policy for labour market interventions Yes / No
- 4 **agree** that the labour market interventions should achieve the following outcomes:

- a) bus drivers have the opportunity to maintain employment if there is a change of operator Yes / No
- b) the substantive terms and conditions of bus drivers are not negatively impacted by a change of operator Yes / No
- c) the terms and conditions of the bus driver workforce are improved to increase recruitment and retention Yes / No
- 5 s 9(2)(g)(i) Yes / No
- 6 **indicate** your preferred name for the new framework for the planning, procurement and delivery of public transport services (paragraph 41 refers) Yes / No
- 7 **agree** to establish a Working Group on operational policy focused on implementing reforms to the planning, procurement, and delivery of public transport services Yes / No
- 8 **agree** to a single Cabinet process, seeking decisions on all policy matters in June 2022. Yes / No



Robert Anderson  
**Manager, Mobility and Safety**  
 22 / 12 / 2021

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
Robert Anderson, Manager, Mobility and Safety	<span style="background-color: #cccccc; color: red;">s 9(2)(a)</span>	✓
Jacob McElwee, Principal Adviser, Mobility and Safety	<span style="background-color: #cccccc; color: red;">s 9(2)(a)</span>	

## SETTING NEW OBJECTIVES FOR THE PLANNING, PROCUREMENT AND DELIVERY OF PUBLIC TRANSPORT

We have drafted new objectives for the new public transport framework based on your direction

- 1 In September 2021, we provided you with advice on the outcomes of consultation and next steps for the PTOM review. In this advice we proposed new objectives for the planning and procurement of public transport incorporating feedback from consultation (OC210669 refers).
- 2 You provided feedback on the new proposed objectives and we met with you to further understand your direction for reform. The table below sets out the objectives proposed in OC210669, your feedback, the revised objectives, and our rationale for the proposed wording.

Table One: Revised objectives for the new public transport framework

Objectives proposed in OC210669	Feedback and direction	Revised objectives	Rationale for revised objectives
Public transport services support mode shift from private motor vehicles, including by being reliable, frequent, accessible, affordable, and safe.	You indicated you are comfortable with this objective.	Public transport services support mode shift from private motor vehicles, by being integrated, reliable, frequent, accessible, affordable, and safe.	We have added 'integrated' since integration (such as integrated ticketing and integration of services) is critical to the usability of public transport services.
There is sustainable provision of public transport services, including through a sustainable labour market.	You indicated you would like this objective to have more emphasis on improved outcomes for the public transport workforce and to be focused on these outcomes as opposed to wider sustainability issues.	Employment and engagement of the public transport workforce provides for a sustainable labour market and sustainable provision of public transport services.	The revised objective is intended to encompass a range of factors that might impact the sustainability of the labour market, including: <ul style="list-style-type: none"> <li>• terms and conditions of employees</li> <li>• protection of the substantive terms and conditions enjoyed by for transferring employees</li> <li>• shift patterns and hours of work</li> <li>• opportunities for training and career progression.</li> </ul>

Objectives proposed in OC210669	Feedback and direction	Revised objectives	Rationale for revised objectives
Well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by utilising low- and zero-emission technology.	You indicated you are comfortable with this objective.	Well-used public transport services reduce the environmental and health impact of land transport, including by reducing reliance on single-occupancy vehicles and by using zero-emission technology.	We propose to remove reference to 'low-emission technology'. The revised wording reflects the Government's objective is to transition to 'zero-emission technology', as opposed to 'low emission' technology. This is consistent with the 2025 zero-emission bus mandate.
Procurement supports value for money from public transport investment, including by ensuring competitors have access to public transport markets.	You indicated that in your view access to public transport markets may not necessarily lead to the best outcomes. You also indicated a desire to have a procurement framework that enables public provision of services, should public transport authorities wish to pursue this model	Provision of services supports value for money and efficiency from public transport investment while achieving the first three objectives.	We have removed the access to market objective. However, we propose that this objective still sets an expectation that the provision of services supports value for money and efficiency from investment.

**The new objectives will guide the development of operational policy and could be embedded through changes to the Land Transport Management Act 2003**

- 3 Together the new proposed objectives target:
  - 3.1 mode shift through improvements to the quality of public transport
  - 3.2 a more sustainable labour market through an improved model of employment and engagement of the workforce
  - 3.3 improved environmental and health outcomes through increased patronage and the use of zero-emission technology
  - 3.4 value for money and efficiency when achieving these objectives.
  
- 4 One of the key purposes of establishing these objectives is to guide the development of operational policy, which will sit behind any legislative reforms. We propose to establish a Working Group on operational policy. This would focus on how to give effect to the new objectives, along with any other more detailed policy changes (see paragraphs 52-53 and Appendix One for more detail).

- 5 In addition, we recommend that the new objectives are embedded through amendments to the Land Transport Management Act 2003. Specifically, section 115 sets out the principles that guide the performance of functions in relation to public transport. Section 115 currently includes two principles that relate to the founding objectives of PTOM:
- 5.1 competitors should have access to regional public transport markets to increase confidence that public transport services are priced efficiently
  - 5.2 incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services.
- 6 To embed the new objectives, these principles could be replaced, and the other remaining principles could be amended to give effect to the new objectives. We provide further advice around the labour market and the value for money objectives below.

**The labour market objective can be supported by more specific interventions**

- 7 We have proposed adopting a broad labour market objective for the new public transport framework. As outlined above, this reflects that there are a range of options available to both public transport authorities and bus operators that can be implemented to improve labour market sustainability and make bus driving a more attractive occupation. We understand, however, that you would prefer to establish more specific labour market interventions focused on protecting the terms and conditions of public transport bus drivers.
- 8 As part of the PTOM review discussion paper, we consulted on options to establish these protections, namely:
- 8.1 amending the Land Transport Management Act
  - 8.2 extending the Part 6A protections in the Employment Relations Act 2000 (ERA) to public transport bus drivers
  - 8.3 changes to Waka Kotahi procurement policy.
- 9 Feedback on these options was mixed and, as we have noted above, the options are not mutually exclusive.
- 10 We understand you would like to progress labour market interventions as a priority. You have also signalled that you would like to include public transport bus drivers under the Part 6A protections in the ERA. We provide advice on this option below. We have sought input from the Ministry of Business, Innovation and Employment (MBIE) in preparing this advice.

s 9(2)(g)(i)

- 11 Section 237A of the ERA stipulates that the relevant Minister may only recommend inclusion of a new occupation in Schedule 1A, which lists the occupations subject to the Part 6A protections, if:
- 11.1 the Minister receives a request to do so from a person or an organisation; and

11.2 if the category of employees:

11.2.1 are employed in a sector in which restructuring of an employer's business occurs frequently; and

11.2.2 have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business; and

11.2.3 have little bargaining power.

12 We are not aware of any request to include public transport bus drivers in Schedule 1A. s 9(2)(g)(i)

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s 9(2)(g)(i)

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13 s 9(2)(g)(i)

14 s 9(2)(g)(i)

*We recommend inviting Waka Kotahi to develop operational policy for labour market interventions*

15 s 9(2)(g)(i) we propose that labour market interventions are established through Waka Kotahi procurement policy in the first instance. This will provide the fastest pathway to protecting bus driver wages and conditions in future procurements and will be necessary even if the interventions are legislated.

16 Based on your direction, we recommend the labour market interventions aim to achieve the following outcomes:



- 16.1 bus drivers have the opportunity to maintain employment if there is a change of operator
- 16.2 the substantive terms and conditions<sup>1</sup> of bus drivers are not negatively impacted by a change of operator
- 16.3 the terms and conditions of the bus driver workforce are improved to increase recruitment and retention.
- 17 Should you agree to this approach, we recommend inviting Waka Kotahi to develop operational policy to give effect to these outcomes. We note that the Bus Driver Terms and Conditions Steering Group, which is chaired by Waka Kotahi, was established to progress outcomes consistent with 16.3. We envisage this Steering Group could be tasked with informing the development of operational policy.
- 18 We consider the development of operational policy should precede Cabinet decisions on reforms because:
- 18.1 the Government's objectives for the public transport labour market have been well signalled
- 18.2 this will enable the sector to plan for implementing labour market interventions in upcoming service procurements<sup>2</sup>
- 18.3 the development of operational policy can further inform future Cabinet policy decisions, should they be required.

*The proposed labour market outcomes can be achieved in different ways*

- 19 The outcomes in 16.1 and 16.2 will need to be achieved through procurement and at the time that there is any change in the operator that holds a service contract. The outcome in 16.3 could be achieved during a contract term or at the point of procurement through:
- 19.1 bargaining between an operator and its employees and/or unions representing employees
- 19.2 collaborative initiatives between operators, unions, and public transport authorities
- 19.3 negotiation of a sector-wide fair pay agreement for bus drivers (subject to legislation being in place)
- 19.4 procurement requirements set by Waka Kotahi and/or public transport authorities – for example setting a minimum base rate or incentivising operators to propose initiatives that improve the terms and conditions of employees as part of tendering.

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<sup>1</sup> We suggest this would include terms and conditions such as leave entitlements, wage rates, and redundancy provisions, but would not include additional benefits such as access to an onsite gym.

<sup>2</sup> Auckland Transport and Nelson City Council are developing plans for upcoming service procurements.

- 20 We note that the outcomes in 16.1 and 16.2 are focused on preserving existing terms and conditions at time of transfer – rather than incentivising operators to improve terms and conditions (or rewarding them for doing so) in order to make bus driving a more attractive occupation. However, we see greater value in pursuing improvements in bus driver terms and conditions through service procurement – particularly given issues with driver recruitment and retention are widespread throughout the sector.

*Should you wish to legislate more detailed labour market interventions, we recommend amending the ERA*

- 21 We consider that any amendments to the LTMA in relation to the labour market should be limited to the high-level objective, as set out in Table One. Should you wish to legislate more detailed labour market requirements for bus drivers, we recommend progressing these through employment legislation. This would avoid establishing requirements in the LTMA that duplicate the existing framework in the ERA. It would also ensure legislative protections for the workforce continue to be set out in employment legislation.
- 22 Should you wish to pursue amendments to the ERA, we will talk to MBIE about the likely process and timing of this work, subject to your other priorities for the Workplace Relations and Safety portfolio.

*The proposed labour market outcomes offer benefits for employees and the sector, but could also reduce competition for public transport contracts*

- 23 Achieving the proposed outcomes could provide a number of benefits including:
- 23.1 improving welfare outcomes for bus drivers
  - 23.2 reducing the potential for workforce disruption if there is a change of operators as a result of tendering
  - 23.3 preventing operators from seeking to win contracts by offering less attractive wages and conditions – which could impact the ability to secure drivers and deliver the contracted services.
- 24 However, there is a risk that achieving the proposed outcomes means:
- 24.1 prospective bidders for a tendered contract would have greater uncertainty about the operating costs of service contracts, given uncertainty about the number of employees that might transfer from an incumbent. This would likely result in risk pricing
  - 24.2 there may be terms and conditions of incumbents that cannot reasonably be met by prospective bidders, such as access to an on-site gym
  - 24.3 operators may be required to hold multiple collective employment agreements with the same union and/or have bus drivers on substantially different terms and conditions within the same workforce.
- 25 Competition, or the possibility of competition, is an incentive for service innovation leading to efficient costs (see Appendix Two for more details). We anticipate together these impacts would likely reduce competition for, and/or increase the price of, public

transport contracts. This is because of challenges with achieving the desired outcomes and the associated uncertainty about operating costs.

- 26 We consider these risks could be mitigated by re-designing the procurement framework and bus service contracts to minimise uncertainty for prospective bidders. For example, the contracting framework in New South Wales requires incumbent operators to make information available to all bidders on individual contract staff, including payroll costs, leave entitlements, and years of service. In doing so, incumbents are required to assign employees to individual contracts.
- 27 Appendix Three provides a high-level comparison of the end of term employee transfer arrangements in the Auckland metro rail franchise and in Australia. Further work will be needed to assess the suitability of these approaches for the New Zealand public transport bus sector.
- 28 We also anticipate that the negotiation of a fair pay agreement for bus drivers would result in greater consistency in the minimum terms and conditions offered by different operators, thereby increasing certainty about costs for operators.

**The new ‘value for money’ objective signals greater flexibility around the procurement approach**

- 29 Removing ‘access to market’ from the value for money objective will lead to greater flexibility around the procurement of services. We anticipate that, when combined with labour market protections, this will likely lead to less competition for contracts and a greater ability for public transport authorities to negotiate contracts with incumbent operators. Public transport authorities could use cost transparency and market benchmarking to demonstrate value for money and cost efficiency from procurement.
- 30 We understand part of your intent of removing the access to market objective is to enable public provision of public transport services. Under the current framework this could only occur if the services were provided by a Council Controlled Trading Organisation under contract with a public transport authority. This contract would also need to be won as part of a competitive tender.
- 31 We understand you would also like to enable in-house provision of public transport services, without a competitive procurement process. Enabling in-house provision of public transport services would have wider implications, which are explored below.

**Enabling in-house provision of public transport services would require a change to the current requirements for funding activities from the National Land Transport Fund (NLTF)**

- 32 While the access to market objective that underpinned PTOM, and the corresponding principle in Part 5 of the LTMA, are specific to public transport, they reflect a broader approach to procurement within transport.
- 33 Under sections 24, 25, and 26 of the LTMA, Waka Kotahi can only fund activities from the NLTF that are outsourced<sup>3</sup>. The only exceptions to this are for minor and ancillary

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<sup>3</sup> Section 24(2)(b) requires that all payments from the NLTF are made in accordance with a procurement procedure. Section 25(4) states: “It is a condition of every procurement procedure that

works and in-house professional services. We do not consider these exceptions could reasonably include the in-house provision of public transport services. This requirement applies to all activities funded from the NLTF.

34 We note it would be possible to amend the LTMA to enable in-house provision of public transport services. This could be done by creating an exception to the current outsourcing requirement – thereby enabling Waka Kotahi to fund public transport services whether they are outsourced or provided in-house. Before doing this, you would need to consider whether there is justification for creating an exception for public transport services and whether other activities funded from the NLTF should still be subject to an outsourcing requirement.

35 s 9(2)(g)(i)

36 However, it may be desirable to consider in-house provision where this would increase the public value<sup>4</sup> delivered from investment. The profit-making objective of private businesses may not always align to broader outcomes desired by government. For example, in the case of public transport, a public transport authority could argue in-house provision would better support improved outcomes for employees or enable accelerated decarbonisation.

37 Based on our consultation and engagement on the PTOM review we are not aware of any desire from public transport authorities to bring service provision in-house. However, we understand your intent is to make the new framework enabling of in-house provision – and it would be up to public transport authorities to elect to move to such a service delivery model. Public transport authorities would also need to demonstrate how such an approach would support value for money.

38 We have not considered whether other activities funded from the NLTF should continue to be subject to an outsourcing requirement, as this is beyond the scope of the PTOM review. According to recent media reports there is already interest from Wellington City Council in in-sourcing the provision of all council services and infrastructure.

39 s 9(2)(g)(i)

### **We are providing separate advice on the Procurement Work Programme**

40 Your office queried whether obligations around the procurement of buses could be established through the PTOM review, given slave labour allegations against some

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the Agency or an approved organisation must procure outputs from a provider other than the Agency or that organisation (as the case may require), or its employees”.

<sup>4</sup> The overall benefit to society.

bus manufacturers. We are providing separate advice on the Procurement Work Programme, including the interaction between MBIE's work programme to address modern slavery and the PTOM review (OC211002 refers).

**We have compiled options to name the new framework for planning and procurement of public transport services**

- 41 We have sought input from your office in compiling options to name the framework that replaces PTOM. The suggested names are:
- 41.1 Connecting Communities: Public Transport Framework for a Sustainable New Zealand
  - 41.2 Connecting Sustainably: New Zealand's Public Transport Framework
  - 41.3 Moving Together Sustainably
  - 41.4 A Connected New Zealand: Sustainable Public Transport Framework
  - 41.5 Onboard Together: Aotearoa Sustainable Public Transport.
- 42 We note there are multiple initiatives with a similar name to 41.1 namely:
- 42.1 the Community Connect public transport concession, and
  - 42.2 Connected Communities – an Auckland Transport initiative focused on improving key transport corridors
- 43 An alternative option, not included in the list above, is an abbreviated title 'Sustainable Public Transport Framework'
- 44 We are seeking direction from you on your preferred name for the new framework. Subject to your preferences, we suggest you consider a suitable Te Reo translation for the name.

**The direction of reforms is likely to increase the cost of providing public transport services**

- 45 The new objectives, which target outcomes such as mode shift, a more sustainable labour market, and decarbonisation, will drive significant benefits for public transport users, employees, the environment, and those living in urban areas.
- 46 However, these objectives will also likely increase the costs of providing public transport – particularly when combined with removing the 'access to market' objective (see Appendix Two for more detail). These increasing costs will likely be borne primarily by both central government (through the NLTF) and by public transport authorities. This may also mean that achieving the mode shift targets set out in the Emissions Reduction Plan (for example through significantly growing public transport networks) will cost more.
- 47 Wider initiatives that target increasing the affordability of public transport, such as Community Connect and other fare concessions, will likely also reduce the fare

revenue available to meet the costs of providing public transport services. This will likely put additional pressure on public transport authorities and the NLTF.

**We will provide advice on remaining policy proposals for the PTOM review in March 2022**

- 48 To date we have provided advice on:
- 48.1 the design and initial implementation of the 2025 zero-emission bus mandate (OC210795 refers)
  - 48.2 setting new objectives, progressing labour market interventions, and enabling in-house provision of services (this paper).
- 49 Subject to your decisions on this paper, in March 2022 we will provide advice on:
- 49.1 enabling decarbonisation of the public transport bus fleet
  - 49.2 improving roles and relationships between key players in the public transport sector
  - 49.3 whether changes are required to the framework for exempt services
  - 49.4 how on-demand public transport services should be treated under the new framework.
- 50 Table Three below outlines a revised project timeline including the provision of advice in March 2022.

**We propose a single Cabinet process to seek policy decisions for the new framework**

- 51 We previously signalled a two-stage process for policy decisions – seeking Cabinet decisions on the new name and objectives first, and seeking more substantive policy decisions later. However, this will ultimately delay progress with reforms, particularly from a legislative perspective. We expect moving to a single Cabinet process would enable policy decisions by Cabinet in June 2022.

**We propose to progress development of some operational policy in tandem with refining the remaining policy proposals**

- 52 Operational policy will be critical to the implementation of the new public transport framework. You have indicated that implementing labour market interventions should be a priority. To achieve this, we have recommended inviting Waka Kotahi to develop operational policy that supports your desired outcomes. We envisage Waka Kotahi may task the Bus Driver Terms and Conditions Steering Group with guiding the development of this operational policy.
- 53 We also propose to establish a Working Group to develop broader operational policy, for example enabling decarbonisation and reviewing the Waka Kotahi Procurement Manual. This Working Group will be directed by Cabinet policy decisions, and will be comprised of representatives from Te Manatū Waka, Waka Kotahi, public transport

authorities, unions, and bus operators. A draft Terms of Reference is attached in Appendix One for your information.

*Table Three: Revised PTOM review project timeline*

<b>Activity/Output</b>	<b>Indicative Timing</b>
Stakeholder engagement on policy options	Commenced in October 2021 and ongoing
Decisions on new name, objectives, labour market intervention	February 2022
Confirm membership of working group on operational policy	February 2022
Commence development of operational policy for labour market intervention	February/March 2022
Advice on outstanding policy issues	March 2022
Initial meeting of the operational working group	March 2022
Draft Cabinet paper seeking policy decisions	Late April 2022
Cabinet paper seeking policy decisions	Early June 2022

**Appendix One: Draft Terms of reference for the PTOM review Working Group  
on Operational Policy**

PROACTIVELY RELEASED BY  
TE MANATŪ WAKA  
MINISTRY OF TRANSPORT



# PUBLIC TRANSPORT OPERATING MODEL OPERATIONAL WORKING GROUP

## Terms of Reference

December 2021

### Purpose

1. To develop operational policy that supports the Government's reforms to the planning and procurement of public transport services.

### Background

2. The Public Transport Operating Model (PTOM) is the framework that governs how public transport bus and ferry services are planned, procured and delivered. It has been in place since 2013 and all regions have now implemented (or are in the final stages of implementing) it. As part of good policy practice, the Ministry of Transport is now reviewing PTOM to consider whether it:
  - has achieved the original objectives
  - remains fit for purpose to support the Government's objectives for public transport and wider objectives
3. It is envisaged that any reforms will be made through a combination of legislative changes and operational policy. The key areas of reform relevant to this Working Group are:
  - establishing new overarching objectives
  - enabling decarbonisation of the public transport fleet through supporting alternative asset ownership arrangements
  - improving outcomes from the partnership between Public Transport Authorities and operators
  - regulating on-demand public transport services and providing a framework for planning and procurement
  - matters relating to exempt services.
4. It is anticipated that matters relating to addressing labour market issues in the public transport sector will be considered by the Bus Driver Conditions Steering Group.

### Membership

- **Waka Kotahi NZ Transport Agency:** TBC
- **Ministry of Transport:** TBC
- **Public Transport Authorities:** TBC
- **Bus Operators:** TBC
- **Unions:** TBC

## Meeting format

5. Meetings will be held monthly.
6. They will be virtual meetings through Microsoft Teams, with the option of occasionally meeting in person.
7. Meetings will be facilitated by Te Manatū Waka in the first instance. Minutes will be taken and circulated to group members but will not be released more widely.
8. The agenda and any papers will be circulated no later than three days prior to the meeting.

## Chairperson

9. Meetings will be chaired by Te Manatū Waka in the first instance, until Cabinet decisions have been made. Once Cabinet has made decisions and policy direction has been set, Waka Kotahi will chair and facilitate the meetings.

## Expected contributions of group members

10. To commit to working together to implement the government direction on reforms to planning and procurement of public transport services.
11. To provide direction and clarification and ensure clear and open two-way communication between the Working Group and the group/organisation they represent, including:
  - sharing any relevant information about projects or work being undertaken with the wider steering group.
  - canvassing the views and opinions of the organisations they represent as required, and to share these views with the working group at subsequent meetings
  - reporting back to the organisations they represent as required.
  - keeping information confidential as required, so that topics or items that are still under development can be shared and discussed within the working group.
12. Maintain good relationships with other relevant parties, such as the Bus Driver Conditions Steering Group

## Outputs

13. The Working Group will update the Procurement Manual and the Guidelines for preparing regional public transport plans.

**Appendix Two: Independent research found tendered contracts cost significantly less than negotiated contracts under PTOM**

- 1 Research by Ian Wallis<sup>5</sup> compared the impacts of alternative procurement methods (tendered vs negotiated contracts) under PTOM on contract prices in Auckland and Wellington.
- 2 The research found that:
  - 2.1 for the tendered contracts, significant cost reductions were achieved compared with previous tendering rounds, reflecting the considerable increase in the number of bidders per contract; and
  - 2.2 for the negotiated contracts, gross costs averaged 10–15 percent higher in Auckland and 30–35 percent higher in Wellington than the equivalent tendered costs.
- 3 According to Ian Wallis' research these cost disparities reflected the weak position of the regional councils in their contract negotiations with operators. He concluded that this was a result of the councils not having recourse to tendering as a fallback negotiating position and coming under considerable time pressures to introduce the new services.
- 4 Ian Wallis has further estimated the resulting increase in costs to public transport authorities in Wellington and Auckland. This has been estimated as an increase to gross costs of approximately \$50 million per annum for both Wellington and Auckland.
- 5 s 9(2)(g)(i)



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<sup>5</sup> Wallis, I (2020) Value for money in procurement of urban bus services – Competitive tendering versus negotiated contracts: Recent New Zealand experience. *Research in Transportation Economics* 83.

**Appendix Three: A comparison of approaches for safeguarding employment and terms and conditions at the end of the contract term**

<b>Features</b>	<b>Auckland Metro Rail Special Purpose Vehicle</b>	<b>Typical Australian private metro bus contract</b>
<b>Description of mechanism</b>	<p>Auckland Transport (AT) has a call option under its rail services contract to require the incumbent private operator to sell to the incoming operator either the shares or assets of its Special Purpose Vehicle (SPV) used to deliver the rail services. A template Sale Purchase Agreement (SPA) is prescribed to support the sale of shares.</p> <p>AT exercised its option to require the sale of shares in the SPV in its recent rail services procurement.</p>	<p>Contractual obligation on government to require the incoming operator to make offers of employment to existing contract staff.</p>
<b>Occupations</b>	<p>Includes all staff employed by the SPV to deliver the rail services, except for named senior management positions.</p>	<p>Contract staff are generally defined as all employees employed to carry out the contract services. In some cases, senior management, administration and non-operational staff are excluded.</p>
<b>Terms and conditions</b>	<p>With the option for the sale of shares in the SPV there is no change of employment or employer, leaving terms and conditions unchanged.</p> <p>With the option for a sale of assets held by the SPV, the incumbent operator terminates staff employment, who are then entitled to redundancy, and AT requires the new operator to make offers of employment.</p> <p>However, if offers are made on the same or more favourable terms and conditions, and service is treated as continuous, then employees are not entitled to redundancy under the Rail and Maritime Transport Union Collective Employment Agreement.</p>	<p>Employment offers are required to be on equivalent terms and conditions.</p>
<b>Leave entitlements</b>	<p>Under the share sale option, leave entitlements remain unchanged.</p> <p>Under the asset sale option, staff employment will be terminated</p>	<p>Leave entitlement balances transfer to the incoming operator if an employee accepts an offer of employment from the incoming operator.</p>

	<p>and leave entitlements required to be paid out. However, the incoming operator, union and its members could agree to transfer leave entitlements to the new employer.</p>	
<b>Funding of entitlements</b>	<p>Historically, the liability for funding and accruing leave entitlements has been held by AT. The new operator is responsible for leave management and differences between actual and forecast leave balances.</p>	<p>The outgoing operator is required to transfer funds to the incoming operator for the value of leave entitlements for transferring employees.</p>
<b>Information for procurement</b>	<p>Vendor financial and taxation due diligence information is provided to assist bidders assess the commercial implications of the sale of shares for the SPV. Noting that the preference of bidders was for a sale of assets to avoid uncertainties around the quantification and transfer of tax and other undischarged liabilities of the SPV.</p>	<p>The operator is required to provide information on employees for disclosure as part of a procurement process, including, occupation, terms and conditions, years of service, leave entitlements, payroll, etc.</p>
<b>Implications for contract prices</b>	<ul style="list-style-type: none"> <li>• Potential for bidders to request an indemnity from AT in relation to assets and liabilities under the sale of either the shares or assets of the SPV (or include a bid premium)</li> <li>• Sales of shares in the SPV or offers on the same or more favourable terms and conditions removes the risk of redundancy costs.</li> </ul>	<ul style="list-style-type: none"> <li>• The outgoing operator does not need to include end of term redundancy costs in the contract price.</li> <li>• The operators bidding for the new contract have information to accurately price the labour cost of contract employees.</li> <li>• The incoming operator will inherit the existing terms and conditions of employment and may seek to negotiate changes over the contract term.</li> </ul>
<b>Implications for contract structure</b>	<ul style="list-style-type: none"> <li>• Requires an SPV structure and supporting reporting regime with ring fencing of staff, assets and liabilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Employees need to be dedicated to a specific contract.</li> </ul>