

Departmental Disclosure Statement

Land Transport Management (Regulation of Public Transport) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 March 2023.

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Part One: General Policy Statement

The Land Transport Management (Regulation of Public Transport) Amendment Bill (the **Bill**) establishes the Sustainable Public Transport Framework (**SPTF**), which will replace the Public Transport Operating Model. The SPTF is a new framework for the planning, procurement, and delivery of public transport services, which addresses systemic issues affecting the sector. Legislative changes are also necessary to remove barriers to decarbonisation, and to clarify and improve the regulation and administration of some public transport services.

New objectives for planning, procurement, and delivery of services

The SPTF is underpinned by new objectives prioritising mode-shift, fair and equitable treatment of employees, and improved environment and health outcomes. The Bill embeds these objectives in the regulation of public transport, and in the performance of relevant functions by Waka Kotahi New Zealand Transport Agency (the Agency) and by regional councils. (Regional council in this context includes Auckland Transport, unitary authorities (other than Auckland Council), and territorial authorities that have the public transport function.)

Enabling regional councils to operate public transport services

The Bill enables regional councils to operate public transport services in-house or to continue to outsource the operation of services. This will provide increased flexibility in how regional councils deliver services and give effect to the SPTF objectives. This proposed change acknowledges that outsourcing of services to private operators may not always align with wider objectives for public transport services, for example, improving the terms and conditions of employees or accelerating the decarbonisation of the bus fleet.

Enabling different asset ownership arrangements

The Bill removes the requirement for a local authority's interests in public transport services to be held in a council-controlled trading organisation. This will provide greater flexibility in relation to asset ownership, allowing regional councils to directly own public transport assets, such as buses, ferries, and depots.

Supporting benchmarking of different service delivery models

The Bill establishes a new requirement for public transport services to be planned, procured, and operated in an open and transparent manner. The Bill requires openness and transparency in relation to operating costs, service performance, the vehicles or vessels used to deliver services, aggregate employee terms and conditions, and financial performance of operators. This will support benchmarking and investment decisions for different service delivery models.

Encouraging greater collaboration between regional councils and territorial authorities

The Bill establishes a requirement for regional councils and territorial authorities to prepare regional public transport plans (RPTPs) in collaboration. RPTPs will need to identify the infrastructure necessary to support public transport services. This is intended to increase collaboration between regional councils and territorial authorities. It also reinforces the existing requirement that regional councils and territorial authorities collaborate to deliver the regional public transport services and infrastructure necessary to meet the needs of passengers.

Improving framework for exempt services

The Bill makes several changes to the framework for exempt services, including—

- increasing the minimum notice period to withdraw exempt services that have been identified as integral in a regional public transport plan—to give regional councils an opportunity to establish a replacement service;
- clarifying that the Agency should undertake the process to inform a decision to add or remove an exemption if the Minister or regional council requests this;
- amending the criteria to add or remove an exemption to better align with the SPTF objectives.

Clarifying treatment of on-demand public transport services

The Bill expands the definition of public transport to include unscheduled (on-demand) public transport services and shuttle services. This change clarifies the treatment of on-demand public transport services, enabling regional councils to provide any form of passenger transport service through any mode, other than air transport, whether delivered to a timetable or not.

The Bill expands the scope of exempt services to include commercial on-demand services and commercial shuttle services. The Bill allows some exempt on-demand services and all exempt shuttle services to be operated without being registered with the regional council. This ensures that a smaller subset of commercially operated passenger transport services are subject to registration requirements—limited to those services more likely to affect public transport services provided by regional councils. This mitigates the potential for increased regulatory burden on operators and the potential for increased administrative burden on regional councils.

The Bill also ensures that regional councils can procure, contract, and deliver on-demand services separately to timetabled services. This is achieved by amending the definition of unit and removing the requirement for every unit to be contracted on an exclusive basis.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Evaluation of the Public Transport Operating Model</i> KPMG and Mott Macdonald, December 2020. Available from the Ministry of Transport website: https://www.transport.govt.nz/assets/Uploads/Report/EvaluationPTOM.pdf</p> <p><i>PTOM Impacts on Bus Driver Employment Conditions and Wage Rates</i> Allen + Clarke, August 2018. Available from the Ministry of Transport website: https://www.transport.govt.nz/assets/Uploads/Report/PTOM-Research-Final-Report-26-June-2019_incl-exec-summary-marked-up_Redacted.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement: Sustainable Public Transport Framework</i> Ministry of Transport, 20 July 2022. Available from the Ministry of Transport website: https://www.transport.govt.nz/assets/Uploads/Document-12-Sustainable-Public-Transport-Framework-RIS_Final_Redacted.pdf</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Information regarding the potential costs and benefits, including in relation to compliance, is outlined in the Regulatory Impact Statement, available on the Ministry of Transport website.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Officials have not identified any inconsistency with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill does not affect Māori rights and interests protected by the Treaty of Waitangi. Impacts of the Bill are limited to the planning, procurement and delivery of public transport services. The Bill does not change existing consultation requirements set out in the Land Transport Management Act 2003 and Local Government Act 2002 for regional public transport plans, including the duty to consult with Māori.

The Bill is expected to support improvements to the terms and conditions of those employed in the public transport sector, including bus drivers. Data from the 2013 Census indicates that Māori are more likely to work as bus drivers compared to the general population and are therefore more likely to benefit from improvements to terms and conditions.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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A copy of the advice can (soon) be accessed, subject to the Attorney-General waiving legal privilege at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/ .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry of Transport released a discussion paper for public consultation in May 2021. The paper sought feedback on the review of the Public Transport Operating Model. The feedback informed the issues and opportunities identified as part of the review and development of the Sustainable Public Transport Framework.</p> <p>The discussion document and summary of submissions can be found on the Ministry's website: https://www.transport.govt.nz/area-of-interest/public-transport/public-transport-operating-model/</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Following public consultation on the discussion paper the Ministry of Transport undertook engagement with key stakeholders on policy proposals, including Waka Kotahi NZ Transport Agency, regional councils, public transport operators, and unions. This engagement informed policy advice to the Minister of Transport and informed Cabinet policy decisions.</p> <p>The Bill will also be supported by the development of operational policy by Waka Kotahi NZ Transport Agency, which will include further engagement with key stakeholders in the public transport sector.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
Clause 19 replaces section 150 of the Act, which is the power to make regulations in relation to exempt services. The replacement section updates existing prerequisites, processes, and criteria in relation to the Minister recommending the making of regulations by Order in Council.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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