

Regulatory Impact Statement

New Policy Framework for Bus and Ferry Public Transport Services

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Transport.

Limits on options analysed

This RIS covers all the major options available at a generic level, but does not cover options at the extreme ends of the policy spectrum like fully deregulated urban bus and ferry markets or state provision of urban bus and ferry services.

Limits on analysis undertaken

While a competition analysis was completed, a full welfare analysis was not undertaken. The Ministry of Transport was of the view that the independent competition analysis provided the level of analysis that was most feasible to do and could meaningfully inform the decision-making process. While a wider welfare analysis could have been completed the value of doing so was questionable given that:

- many of the key features of the Public Transport Operating Model (PTOM) are new and have not been trialled elsewhere making it difficult to assess their likely costs and benefits (for instance the interplay between tender rounds and negotiated contracts)
- service and relationship development will be a dynamic process under PTOM with a range of potential pathways that different regions could follow depending on prior events and decisions made, making it difficult to assess the extent and timing of benefits and costs
- the competition analysis also suggested that the success of PTOM is dependent on how it will be implemented, which requires making assumptions at this time that are difficult to quantify

If the decision is taken to implement PTOM, its somewhat experimental nature means that monitoring and evaluation will be particularly important to ensure PTOM is delivering as intended.

Consistency with matters in the Government Statement on Regulation

The options considered in this RIS have a direct impact on market competition and businesses. The main difference between the options relates to the balance between the interests and powers of regional councils as procurers of urban bus and ferry services, and urban bus and ferry operators who provide a mix of fully commercial services and services under contract to regional councils.

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High Level Summary

Status quo

Background

To aid the reader, this background section is set out in three parts.

Part 1: Arguments and facts relating to the subsidisation and regulation of the New Zealand passenger transportation system.

Part 2: A description of the current operating system for urban bus services.

Part 3: The problem definition and objectives.

Part 1: Arguments and facts relating to the subsidisation and regulation of the New Zealand passenger transportation system

Subsidising the New Zealand Public Transport System

Governments subsidise public transport because of the positive economic, environmental and social externalities that public transport can generate. Because operators of public transport services are not the benefactors of these externalities, without government subsidies, there would be an under-supply of public transport relative to the potential benefits that could be achieved.

Urban bus services are the backbone of New Zealand public transport, accounting for 80.5 percent of all public transport trips made. In 2009/10, out of a total of 125.64 million trips made on public transport, 101.2 million trips were made on buses. Eighty-eight point two percent of all bus boardings were made in New Zealand's three largest public transport markets: Auckland (47.1 percent), Wellington (24 percent), and Canterbury (17.1 percent). Urban ferry services play a much smaller role accounting for 4.87 million trips made in 2009/10.

In 2009/10 central and local government¹ spent approximately \$307 million on purchasing public transport services. \$224.3 million was used to purchase urban bus and ferry services. Most of this expenditure (85 percent) occurred in the three largest public transport markets of Auckland (52 percent), Wellington (19 percent) and Canterbury (14 percent).

Regulating the New Zealand Public Transport System

There is a growing body of literature across a number of jurisdictions on how bus markets function and what are effective interventions to deliver an optimal level of public transport services at a price that public transport users are willing to pay.² A

¹Broadly shared 50:50 between central and local government.

²See for example the Eddington Transport Study: Main Report: Volume 4 <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/adobe/pdf/187604/206711/volume4.pdf> ; papers presented at the Thredbo International Conference Series on Competition and Ownership in Land Passenger Transport <http://www.thredbo.itls.usyd.edu.au/papers/>; Mees et al (2010) Public

common theme across the literature is that decision-makers need to consider a range of factors and mechanisms when determining how best to ensure the operating environment for the delivery of public transport supports the objectives set for public transport. Reliance on one mechanism alone like complete deregulation or large subsidies is unlikely to result in an optimal level of service or encourage patronage.

Prominent in the literature is the Eddington Transport Study from the United Kingdom. This study identifies three key factors that are necessary to secure the successful operation of buses in urban areas.

The three factors are:

- *competition forces*, which create on-going incentives for efficiency, and responsiveness of provision to the needs of users
- *cooperation* between operators and local authorities as neither party on their own can meet the things passengers are looking for (eg operators need local authorities to invest in infrastructure or measures that enables buses to travel faster relative to cars and conversely local authorities rely on operators to ensure buses are maintained to a safe standard and provide passengers with a 'quality experience')
- *coordination* of services is essential to delivering services that users value and are confident will meet their travel needs (eg predictable, reliable, frequency and coverage), at a price that is affordable to both users and funders³

The challenge is to get the right balance between these three factors. Exclusive reliance on one factor to deliver the desired objectives may not achieve an optimal outcome. For instance, competition may result in more services being provided than might be provided otherwise, but absent some level of cooperation and coordination there is a risk that the additional services:

- are concentrated on a few routes contributing to an oversupply of public transport that increases congestion rather than alleviates it (ie buses running almost empty) and does not meet wider demand for public transport
- are not well spaced over time (ie instead of operating at 10 minute intervals over a hour, six buses all arrive at the same time) discouraging use of public transport⁴

Unless there is a level of regulation in the passenger bus market, both domestic and international evidence suggests that the balance between these three factors will not be optimised leading to less than ideal outcomes.

[transport network planning: a guide to best practice in New Zealand Cities](http://www.nzta.govt.nz/resources/research/reports/396/docs/396.pdf)
(<http://www.nzta.govt.nz/resources/research/reports/396/docs/396.pdf>)

³Coordination is particularly critical to an efficient public transport network, as it provides the basis for passengers to access far more origins/destinations at better frequencies than could be achieved if all services were separate point-to-point services and did not intersect with each other.

⁴ See further Estache, Antonio and Gomez-Lobo, Antonio (2004) Limits to competition on urban bus services in developing countries World Bank Policy Research Working Paper

Part 2: A description of the current operating system for urban bus services

Responsibility for the delivery of urban bus and ferry services is split between regional councils, territorial authorities and operators. Oversight is provided by the NZ Transport Agency (NZTA) which distributes funds from the NLTF and SuperGold Card payments.

Regional councils are responsible for planning a public transport system that meets the needs of their communities and that they are, in part, prepared to pay for. Regional councils also provide network-wide support in the form of bus timetables, call centres, web sites and marketing. Territorial authorities provide public transport infrastructure such as local roads, terminals and bus priority measures. Operators provide buses and the associated infrastructure, for example depots and delivery of the actual service (eg drivers and ticketing systems) and services that can be provided on a commercial basis without subsidy. The NZTA provides support and oversight in the form of procurement and other guidance⁵ and approval of procurement strategies necessary to secure funding from the NLTF. It also influences regional planning through nation-wide initiatives like the development of a farebox recovery policy.

Overview of the current regulatory environment for the planning and procurement of urban bus and ferry services

Technically, the current regulatory environment for the planning and procurement of urban bus and ferry services is governed by the Public Transport Management Act 2008 (PTMA) which came into force on 1 January 2009 replacing the Transport Services Licensing Act 1989 (TSLA).

In April 2009 however, the Minister of Transport advised regional councils and operators of his intention to review the PTMA. Consequently, most of the measures under the PTMA have yet to be implemented, and the operating environment that existed under the TSLA is still largely in place. Although it can be argued either way, because the TSLA is actually the system in place 'on the road', and because there are several ways that the PTMA could be implemented, for the purposes of this RIS, the TSLA is treated as being the Status Quo.

The Transport Services Licensing Act 1989

The TSLA gave passenger transport 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, for instance, if they were no longer profitable. A commercial service could be a single service on a route (for example the 10:48 from Smithville to the city) or all the timetabled services on a route.

Under the TSLA, regional councils' principal role was to plan for passenger transport services and to contract in any *additional* services that were not provided on a commercial basis, but were considered necessary by the regional council to meet non-financial objectives. Prior to the passage of the TSLA and associated

⁵ For instance, providing fare setting guidance that regions' can use when reviewing their fares through the RPTP.

legislation⁶, public transport services were predominately owned, planned, and funded by local government, with some funding from central government.

The principle purpose of the TSLA and associated legislation was to introduce the potential for greater competition in the market for passengers. This would be achieved by allowing any person or company to operate bus services provided base safety and quality standards (for instance certificate of fitness) were met. Government's involvement was restricted to more high level functions like wider public transport planning as opposed to delivering services directly (which many regional councils' did prior to the introduction of the TSLA).

Public Transport Management Act 2008

The PTMA was developed in response to the perceived shortcomings of the TSLA. The PTMA was designed to give regional councils greater control over public transport services, particularly services provided on a commercial basis. The PTMA did this by giving regional councils the ability to:

- impose controls on commercial services like requiring an operator to share patronage and revenue information with the regional council or adopt common signage to conform to a network wide brand
- require commercial services to be provided under contract to the regional council

The use of these powers is discretionary and there are a number of requirements in the PTMA that regional councils must meet before they can utilise them.

The Minister's decision to review the PTMA reflected his concern that the PTMA gave regional councils too much control over bus and ferry operators and that it may chill private sector investment and innovation.

Annex A sets out the key features of each of the options in question, the TSLA, the PTMA and PTOM.

Part 3: The problem definition and objectives

There are a number of concerns with the current regulatory environment.

Lack of regulatory certainty

Of most immediate concern with the current operating environment is a lack of regulatory certainty that has led to delays in procurement. The regions most affected by the decision to review the PTMA are Auckland and Wellington. They have suspended further tendering of contracted bus and ferry services until the review of the PTMA is complete. Auckland last completed a major tender round in 2005. In 2009 the Greater Wellington Regional Council (GWRC) was preparing to go out to tender for services in the Hutt Valley, but shortly before tendering documentation was issued NZ Bus registered a significant number of trips as commercial services, which would have impacted on the proposed tender. Subsequent discussions between GWRC and NZ Bus resulted in the tender round not proceeding.

⁶ The TSLA was part of a package of legislation that included the Transit New Zealand Act 1989 that required all publicly funded passenger transport be contracted through competitive tendering and the Local Government Act (No. 4) 1989 which amended the Local Government Act 1974 to require publicly-owned local authority transport operations to be divested to commercial entities (either a local authority trading enterprise or sold outright to a private party). Regional councils were prohibited from having an ownership interest in passenger transport operations.

The lack of any significant tendering rounds in the two regions for over 5 years has compounded value-for-money concerns. The vast majority of contracts in Auckland and Wellington are now being rolled over for short periods under 1 year, and are receiving cost adjustments based on NZTA's old cost index, which was found to overinflate cost increases, rather than the new index that was introduced in 2009.

Canterbury (the other major public transport region) recently completed a tender round and some other small regions completed tender rounds (eg Taranaki). The tender round in Canterbury did attract strong interest from operators, led by the three incumbent operators in Christchurch, who as a result of the tender round, now provide approximately a third of the services each.

Evidence of a sub-optimal operating environment

There is prima facie evidence that there are issues across at least two of the building blocks — competition and cooperation — in the main markets of Auckland and Wellington. Firstly, direct competition between operators of urban bus and ferry services for passengers in New Zealand is virtually non-existent.⁷ The main competition that operators face for passengers is not from other operators but from the private car, which accounts for the vast majority of trips made by New Zealanders.

The main form of competition that exists in urban bus and ferry markets in New Zealand is for service contracts tendered out by regional councils. However, when compared to Canterbury, competition for service contracts appears weak in Auckland and Wellington. A review conducted by L.E.K. on tenders undertaken in 2004/05 found:

- an average of 1.33 bids per tender in Auckland and 1.12 in Wellington compared to an average of 2.39 bids per tender in Canterbury
- lower contract turnover (ie replacement of incumbent operator with a new operator) in Auckland (17 percent) and Wellington (12 percent) compared to approximately 39 percent in Canterbury

A separate exercise conducted by Hyder Consulting and Ian Wallis Associates on behalf of GWRC found costs per mean standardised bus kilometre in Auckland and Wellington were higher than in Canterbury. In 2006/07 the cost per vehicle kilometre varied from \$3.85 in Auckland, \$2.94 in Wellington and \$2.43 in Canterbury.^{8,9}

In relation to cooperation, there have been significant tensions between operators and the respective regional councils in Auckland and Wellington for a number of years. The TSLA was viewed by regional councils as an impediment to delivering value for money for public subsidies. Under the TSLA operators were encouraged to

⁷ There is some 'incidental' competition between operators where services briefly overlap, for instance when they enter the central business district or airport services running across other services, but there is no evidence that operators are actively competing with other operators in those situations for passengers.

⁸ Greater Wellington Regional Council (2008) Procurement Strategy for Bus and Ferry Services pp 82-83 (<http://www.gw.govt.nz/assets/Transport/Public-transport/Docs/ProcurementStrategyforBusandFerryServices-PDF.PDF>)

⁹ In the 2009/10 financial year mean unstandardised gross operating costs per bus kilometre were estimated to be \$4.63 in Auckland, \$4.58 in Wellington and \$2.70 in Canterbury. (Preliminary findings of NZTA Research Project *Effectiveness of PT 'Spend'*)

view the urban bus and ferry market in terms of individual trips (ie operators could register an individual trip as commercial), whereas regional councils were focused on how to organise the wider network to generate network efficiencies.

On the network side of the equation, because regional councils did not have a 'right of access' to information relating to commercial services, and commercial services were subject to light regulation,¹⁰ regional councils struggled to effectively plan for and implement an integrated public transport service.¹¹ On the cost side of the equation, the lack of competition for tenders (ie on average of just over 1 bid per tender) has raised concerns about the extent to which services were being priced efficiently.

Although operators disagreed with the views of regional councils there is some evidence collected in support of policy work done for the PTMA¹². This indicates that the presence of commercial registrations around which subsidised services had to be contracted were hampering regional councils' ability to achieve the best price for tenders. Anecdotally, it has also been suggested that some operators were using commercial registrations (in part at least) to gain a tactical advantage in tender rounds.

The lack of cooperation (especially in Auckland and Wellington) between regional councils and operators raises concerns about the extent to which services can effectively be coordinated to improve network efficiency. Better coordination of services increases the probability of maximising the overall service level (both in terms of frequency and origin / destination points) available for a given level of funding important to increasing patronage. It also increases the probability of achieving desirable objectives associated with public transport like reducing congestion (eg higher average loadings per trip).

It is unclear that the PTMA would have resulted in a better operating environment as:

- regional councils faced some quite onerous hurdles before they could utilise some of the discretionary powers provided for them in the PTMA, suggesting that regional councils may have been reluctant to use the powers available or faced strong resistance if they tried to (ie. a level of regulatory uncertainty would have remained)
- operators' willingness to invest in their businesses and innovate may have declined due to uncertainty about what powers a region would use and uncertainty about their businesses future¹³

¹⁰For instance, operators only had to give 21 days notice of their intention to register a service as commercial, and the 'service' could be as small (ie one trip one way) or as large as (ie full route full timetable service) the operator deemed viable as an ongoing commercial concern.

¹¹They were also concerned about controlling the quality of commercial services. Auckland Sustainable Cities Programme chapter 7

¹²L.E.K. (2006) Procurement review: NZ Government Department - Update Land Transport New Zealand, Wellington. (unpublished); SAHA (2008) Analysis of commercial registrations in Auckland with addendums Ministry of Transport, Wellington. (unpublished)

¹³Operators argued that the ability to register commercial services provided them with a core set of services upon which increased their confidence to invest in bus assets and provide more services on a commercial basis than they might have otherwise.

- while it would have (theoretically) been possible to build more competition into the system, this may have come at the expense of developing greater levels of co-operation (particularly) and co-ordination into the system

Problem Definition

The value for money road users and rate payers receive from their financial support of urban bus and ferry services has been declining. Patronage growth has not grown at a commensurate rate as subsidies, indicating a decline in public good benefit per dollar spent. Between 2000/01 and 2009/10 central and local government funding for urban bus and ferry services increased by 131 percent in real terms¹⁴ yet patronage grew by only 44 percent over the same period.

The current regulatory and operating environment for the delivery of urban bus and ferry services has been identified as a key contributing factor.¹⁵ The way in which the regulatory environment is operating has encouraged tactical behaviour on the part of some operators which has made it difficult for some regional councils to secure adequate levels of competition for tenders. This, combined with disputes over 'who owns the service' has led to tensions between operators and regional councils undermining co-operation (and to a lesser extent, co-ordination) in the operating environment. As such, there are concerns with each of the "three Cs"¹⁶ that have been identified as being so important to the running of a successful bus service.

In particular, the regulatory and operating environment does not:

- create a sound platform for operators to invest in their businesses and take a more innovative approach to service delivery
- encourage new entrants to seek to enter local markets
- enable regional councils to effectively plan, invest in PT infrastructure and network wide support services, and coordinate services to create an attractive network of services

These issues manifest themselves in a number of ways such as limited competition for tenders and difficulty in coordinating service development between operators and regional councils. Ultimately, these have led to concerns about the value for money received from the subsidies outlaid.

¹⁴ As measured against the NZTA's Public Transport Cost Adjustment Index.

¹⁵ There are concerns with the way in which the regulatory environment is set up, and also the way in which it is being implemented (especially in Auckland and Wellington).

¹⁶ Competition, cooperation and coordination

Objectives

The objective is to increase value for money by addressing the operating and regulatory factors that are contributing to the problem by:

- providing a better level of regulatory certainty for key stakeholders involved in the provision of urban bus and ferry services
- supporting a greater level of cooperation and coordination between regional councils (including Auckland Transport) and operators of urban bus and ferry services
- maintaining and enhancing the level of competition for the provision of urban bus and ferry services to increase confidence in cost
- enhancing transparency round planning and procurement of urban bus and ferry services

Regulatory Impact Analysis

Options

Options analysed

Three options, including the proposed Public Transport Operating Model, have been identified for comparison purposes. These are as follows.

Option One: The current operating status quo (TSLA) — this option reflects the regulatory environment that existed under the Transport Service Licensing Act which, although it no longer exists in legal effect, remains the main influence on the delivery of urban bus and ferry services in New Zealand.

Option Two: The proposed Public Transport Operating Model (PTOM) — this is the model that is proposed in the Cabinet paper.

Option Three: The PTMA as assessed as likely to be implemented in the two largest markets of Auckland and Wellington. This option reflects the approach that Auckland and Wellington may have pursued with their networks, namely a fully contracted and fully tendered operating model.

There are points in between these models (for example, it would be possible to implement a different model under the PTMA). The models assessed have been chosen as they represent the broad spectrum of practicable options available. This allows the analysis to demonstrate where genuine differences exist between the models.

Options considered but rejected

Three further options were considered but rejected. These three options were:

- procure all urban bus and ferry services through direct negotiation
- reduce the level of subsidy provided for the purchase of urban bus and ferry services
- promote greater direct competition between operators for bus passengers

The first option is the approach that has been adopted in New South Wales and Victoria for the procurement of bus services. This model was discounted as it would mean there would be no competitive testing of contract prices and nothing to benchmark negotiated prices against. Competition remains the best mechanism for maintaining downward pressure on costs and provides an incentive for operators to innovate to gain an advantage over their competitors in the tendering process.

Technically, while the second option might lead to an improvement in value for money, it does not directly address the four objectives identified. Reducing the overall subsidy level would restrain costs, but it does not:

- improve regulatory certainty
- support cooperation and coordination between regional councils and operators
- enhance competition
- enhance transparency of planning and procurement

Reducing the amount of subsidy available for the procurement of urban bus and ferry services is better viewed as a separate issue rather than an alternative to improvements to the operating environment.

With regard to the option of encouraging greater levels of direct competition between operators, this was what the TSLA sought to encourage. For the last two decades, under the TSLA, operators could register any individual bus or ferry trip as a commercial service. However, the registration of a trip did not grant the incumbent operator exclusive operating rights, as this would undermine the potential for direct competition between operators for passengers. A competing operator could also register the same trip as a commercial service and compete for the same passenger market if the competing operator considered it viable to do so. Despite the regulatory environment being supportive of direct competition between operators for passengers, there is little evidence of this actually occurring and being sustainable beyond the short run. Generally, where commercial opportunities existed they have only been able to support one operator at a time. Nor, despite growing demand for public transport, is it expected that opportunities for more direct competition will increase in the foreseeable future.¹⁷ Consequently, options involving encouraging more direct competition between operators to drive improvements in urban bus and ferry service delivery were not considered.

Analysis

The following analysis begins with a high level comparison of the impact of the two options (PTOM and PTMA) as compared against the current situation under the status quo (TSLA) in achieving the objectives outlined on page nine.

The focus of the analysis is on the impact on the three largest markets of Auckland, Wellington, and Canterbury (albeit there is now some uncertainty in Canterbury because of the recent earthquakes) which account for approximately 88.7 percent of all boardings on bus and ferry services in New Zealand, and 85 percent of subsidies paid for urban bus and ferry services.

¹⁷This is consistent with findings of the UK Competition Commission http://www.competition-commission.org.uk/press_rel/2011/may/pdf/2611_Press_Release.pdf p2

Comparing the potential impacts of PTOM and the PTMA against the TSLA (status quo) on achieving the objectives

Objectives	TSLA (description of status quo)	PTOM	PTMA
Improving regulatory certainty for stakeholders	Continued risk of tension between regional councils and operators associated with tendering.	<i>Positive impact.</i>	<i>Neutral impact.</i>
Supporting cooperation and coordination between councils and operators	Does not encourage cooperation and coordination.	<i>Positive impact.</i>	<i>Neutral impact.</i>
Maintaining and enhancing competition to restrain costs	Competition likely to remain weak.	<i>Neutral impact.</i>	<i>Positive impact.</i>
Enhancing transparency of planning and procurement	Transparency limited.	<i>Positive impact</i>	<i>Neutral to positive impact.</i>

Conclusion (overall value-for-money assessment of the three options)

Continuation of the status quo is the least likely of the three options to meet the objectives outlined on page nine. Value for money is likely to decline further due to weak competition in Auckland and Wellington which account for 71 percent of total subsidies paid for urban bus and ferry services. Increased regulatory certainty and better coordination and cooperation will remain a challenge if regional councils consider incumbent operators are attempting to game tender rounds to their advantages.

The PTOM and PTMA options represent improvements over the status quo. The PTOM represents an improvement over the status quo in that it should support greater coordination and cooperation between regional councils and operators, which should support patronage growth. It would support greater transparency round the provision and cost of urban bus and ferry services. It may lead to increased competition for service contracts, but the extent of potential competition is constrained to some degree by the need to balance competitive outcomes against achieving greater levels of coordination and cooperation. The potential for greater levels of competition is difficult to assess under PTOM, because many of the components designed to increase competition and their interaction have not been tried here or in other jurisdictions.

The one distinct advantage the PTMA has over the status quo is that it has the most potential to support increased competition in Auckland and Wellington for bus service contracts. That said, due to uncertainty about how regional councils will use the discretionary powers available to them under the Act, and the relative success of implementing them if incumbent operators seek to challenge the application of discretionary powers, it is unclear whether the PTMA will have a positive impact across the other three objectives relative to the status quo.

It could be argued that the PTMA should be amended to reduce the risks identified above. While this is theoretically possible, it would take more time and would result in further regulatory uncertainty in the interim. Also, such a move would reduce cooperation between regional councils and operators going forward, especially given the progress that has been made in the development of PTOM.

The following sections provide more detailed analysis, which utilises the framework discussed on page three regarding the important building blocks for the creation of a well functioning and affordable public transport system: competition, coordination and cooperation.

Competition

Competitive markets play a critical role in New Zealand in enhancing New Zealanders' material well-being. Competition, or rather the lack of it, was a critical factor in the decision to deregulate the provision of urban bus services in New Zealand in 1989 under the TSLA. Initially, the changes resulted in significant cost savings for the public funding. Between 1989/90 to 1991/92 central and local government funding dropped by 20 percent in real terms, with services and fares little affected¹⁸. Robust competition for service contracts also appears to be keeping costs down in Canterbury.

However, more recent evidence, as discussed under the status quo, suggests that competition in the largest markets of Auckland and Wellington is weak. Improving competition should lead to a reduction in prices for services without necessarily decreasing private sector investment in critical assets like buses and depots.

Because the opportunity for direct competition between operators for passengers is weak at best in New Zealand, the main form of competition that exists is competition for services contracted by regional councils including Auckland Transport. The PTOM contains proposals that will impact on competition for service contracts. Key proposals include, segmenting a region's network into units for contracting purposes, using direct negotiations alongside tendering to secure contracts with operators, and longer tenure lengths than have been the historical norm.

PTOM compared against TSLA

To assist with an analysis of the PTOM the Ministry secured an independent competition assessment that compared the PTOM proposals against the TSLA. The full report can be found at the following link:

<http://www.transport.govt.nz/ourwork/land/documents/PTOMCompetitionAssessment2011.pdf>

¹⁸ Sergejew A "Review of regulation of commercial urban bus and ferry services in New Zealand" p 2
http://www.thredbo-conference-series.org/downloads/thredbo10_papers/thredbo10-themeB-Sergejew.pdf downloaded 12 April 2011

Main findings of the competition assessment from the Executive Summary (p 2)

The assessment found that, compared to the current status quo, PTOM is likely to have **some negative and positive effects** on competition in the provision of subsidised and commercial bus services. Further, some components of PTOM are likely to have a greater effect on competition than others. The degree to which competition is promoted under PTOM will depend on the success of transitioning to units, implementing gross contracts with incentives and creating league tables for units to compare the performance of subsidised and commercial units.

It is unclear, what the overall effect on competition could be, as while it is possible that the positive aspects of PTOM could outweigh the negative, there is still a high degree of scope for the negative aspects, namely negotiating exclusive contracts for long periods of time with incumbents to have a far greater effect. This means that the Government's desire to achieve value for money could be compromised.

The following table (p 65) summarises the likely effects of the PTOM on competition compared to the current status quo.

Competition Assessment of individual components of PTOM compared to TSLA

Component of PTOM	Possible impact on competition	Possible negative or positive competition effect
Introduction of units. Units are issued for single full route/timetabled trips	Low. Greater impact in Auckland and Wellington.	Positive
Exclusive contracts for commercial and subsidised routes	Low in the short-run could be moderate in long run. Greater impact in Auckland and Wellington.	Negative for commercial contracts
Regional councils can negotiate as well as tender bus services with bus operators	Likely to be high	Negative for negotiated contracts and could also affect tendered services
Length of contract for bus operators could be extended for up to 9-12 years	Possibly moderate	Possibly negative
Performance based contracts are awarded	Possibly moderate	Positive
Benchmarking table is produced assessing the performance of each unit	Moderate	Possibly positive

The competition assessment was completed prior to some key components of the PTOM being finalised and, positively, aspects of the model have changed that address some of the competition concerns raised in the report. The most significant development is in relation to tenure length. For standard negotiated contracts and tender contracts are to be for 6 and 9 years respectively, as opposed to the worse case scenario used in the report of 12 years. Units that are provided without a direct subsidy (ie fully commercial) operators will have tenure of 6 years as opposed to perpetual tenure. In addition, some fully commercial services will be treated as exempt (ie considered not part of the region's public transport network) and will not be provided under contract and therefore will not enjoy exclusive operating rights and be subject to direct competition.

Quality tender design was also identified as a matter of importance under PTOM, given that not all of a region's services would be subject to a tender. Improvements to tender design are something that is applicable under all three options.

PTMA compared against TSLA

Because the PTMA has made it possible for a regional council to move to a fully contracted fully tendered operating model, it is likely that more competition for contracts would occur than under the TSLA. However, the implementation of such an approach in Auckland and Wellington may not have been immediately successful if there was strong incumbent operator resistance. This is because the PTMA requires regional councils to satisfy themselves, on reasonable grounds, that the contracting requirement is necessary (section 16(2)). This opens the door for potential litigation between regional councils and incumbent operators.¹⁹ In the short to medium term tendering may be further delayed as these matters are resolved.

Coordination

Coordination of services is about meeting the needs of public transport users and ensuring public transport contributes to the efficient use of the road network. In the former case it is about organising services such that they are attractive to users. This involves replicating as much as possible the features of car travel that makes it most attractive: reliability, frequency (ie can leave any time), and connectivity (ie can go from any place to place). In the latter case it is about coordinating services so that they do not add to the problems they are meant to alleviate. For instance, adding to congestion pressure due to too many services travelling through the same road corridor at the same time.

In New Zealand the main challenge is to better coordinate services to better meet the needs of existing users as well as attract and retain new users. At the moment coordination in the Auckland and Wellington markets is less than optimal.²⁰ For instance, in Auckland each of the five main operators maintains their own different fare schedules.²¹ Implementation of integrated ticketing would make travel by passenger transport easier and simpler for passengers needing to use multiple services. Also, from a user perspective, integrated ticketing would also mean there would be no loss or disruption to their experience from ticketing system changes that might result from a major change in operator.

PTOM compared against TSLA

Compared to the TSLA, the PTOM is more likely to result in better coordination of services because under the TSLA option coordination will be difficult while there is a mix of commercial and contracted services. From an operator perspective the value of the commercial registration is that it provides a core set of services to maintain and protect their market position. Initiatives that might put those services at risk, for instance, increased access to revenue and patronage information are likely to be resisted and may undermine efforts to coordinate services better. Nor does the current status quo provide operators with incentives to consider their services in

¹⁹ Although under the PTMA (or the TSLA) a commercial registration does not represent an exclusive right to operate a service, it could be argued that, given the length of time a registration has been in place, it constitutes a property right, which the regional council is taking away.

²⁰ See further Ashmore DP, and Mellor AD, (2010) "The 2008 New Zealand public transport management act: rationale, key provisions, and parallels with the United Kingdom" *Research in Transportation Economics* 29 pp 164-182. p 169

²¹ NZ Bus, Ritchies, Howick and Eastern, Birkenhead, and Urban Express.
<http://www.maxx.co.nz/info/pricing-passes/bus-fares.aspx> downloaded 28 March 2011.

terms of a network as opposed to a localised service (eg how does their local service link in with wider services provided by other operators to expand the travel options available to customers).

Other advantages of the PTOM over the TSLA include:

- units provide a better basis for developing and coordinating services as there are clear service boundaries that an operator needs to focus on to achieve performance targets
- greater input of operators into Regional Public Transport Planning processes through joined up business planning processes, which should contribute to more efficient service design (ie operator not just concerned with the commerciality of their registered services, but all services)

PTMA compared against TSLA

Assuming regional councils are able to effectively use the discretionary powers available to them under PTMA, the PTMA should lead to improved coordination of services. This is because regional councils would effectively control service development in their region and therefore could take a 'top down' approach to service coordination. How quickly regional councils can take the lead in this regard is dependent on how quickly they are able to impose contracting requirements and/or controls on commercial services. Under the PTMA there is a risk of incumbent operators appealing decisions to the Environment Court or District Court. If appeals occur, service planning and development is likely to be limited due to uncertainty about the potential outcome of an appeal.

Cooperation

Cooperation between regional councils and operators matters. Both provide critical assets necessary to enhancing urban bus services attractiveness relative to car use. For instance, bus services are a flexible form of transport capacity that can be deployed relatively quickly in response to demand pressures. Greater cooperation between regional councils and operators may increase both parties willingness to incrementally invest in new assets (eg operators buy more buses, regional councils invest in real time information systems) in response to demand pressures and do so more quickly than where the relationship between the two was purely contractual in nature.

PTOM compared against TSLA

A key feature of the PTOM is for the development of robust partnerships between regional councils and operators to meet the goal of growing patronage with less reliance on subsidies. Because PTOM has been developed in close collaboration involving the main regional councils and operator representatives, the potential for cooperation is much higher than under the TSLA. In addition, the ability to extend tenure for repeated periods (for high performance) provides an added incentive for operators to cooperate with regional councils to grow patronage within a unit. This reduces potential risks associated with transitioning to a new operating environment.

Ultimately the extent to which greater cooperation will result from adopting a more collaborative partnership approach, rather than the more traditional purchaser provider relationship, will only become evident over time as regional councils and operators respond to service and contract challenges as they arise.

PTMA compared against the TSLA

The PTMA is unlikely to lead to increased cooperation between regional councils and operators compared to the TSLA. This is because the PTMA was not developed in a collaborative manner and its passage was controversial leading to the current review. Nor does the PTMA actively encourage greater cooperation between regional councils and operators (ie does not recognise it as a valuable component to the delivery of urban bus and ferry services). Cooperation could develop if regional councils make active endeavours to develop partnerships with incumbent operators, but there is a risk that such efforts could be viewed negatively as a form of collusion.

Potential impacts of the PTOM

The following table provides an indication of the potential impacts of PTOM (option two) and PTMA (option three) across a range of impacts relative to the likely future state under the current operating status quo of the TSLA (option one).

Impact	PTOM	PTMA
Cost of subsidy	If competition under PTOM is greater (or similar) to the status quo then there should be a positive effect on subsidies (ie lower overall subsidies for a given level of services).	Higher levels of competition should have a positive effect on subsidies through lower service delivery costs. Success dependent to some degree on regional councils being able to implement a fully contracted fully tendered service model in their regions.
Fare levels	Unclear. Could result in more optimal fare levels, which better balance public objectives with commercial requirements as operators will have increased input into regional council fare policy through Regional Public Transport Plans. Assuming that overall efficiency remains unchanged, and fares rise, then passengers will meet a greater share of the cost of services relative to funders.	Unclear. Fares set by regional council. Less operator input into their setting. Potential risk is that improvements in service efficiency associated with improved competition for contracts is used to keep fare levels unnecessarily low for political reasons rather than a more efficient allocation of costs between funders and users.
Service innovation and investment	PTOM is more likely to result in joined-up innovation and investment between regional councils and operators than under the TSLA because both parties are linked by contract and share PTOM objectives. This should be positive overall for passengers as it should contribute to a better overall experience (eg real time information, better marketing of particular services etc). In turn overall investment levels should be more optimal as timing and nature of investment of both parties is better aligned.	Unclear. Service innovation primarily driven by regional councils with some limited input from operators if a regional council welcomes it. Operators' decision to invest and innovate closely linked to content of contract and tenure.

Impact	PTOM	PTMA
Increase in patronage	<p>PTOM more likely to result in better retention of 'marginal' passengers through the provision of a better quality and coordinated service than might be provided under the TSLA. Over time, the effect of retaining more passengers will become more pronounced as more people join the pool of regular PT users. This is positive for achieving economic and environmental benefits, and reducing the per passenger subsidy.</p>	<p>Unclear. Regional councils may be more willing to invest in infrastructure that supports increased use of PT (eg bus lanes that speed up travel), as more confident about control over investment outcomes (ie able to recover cost through retention of associated revenue streams from more passengers). However, limited incentive for operators to invest in initiatives that encourage greater patronage, which may be critical for retaining passengers, if not attract them in the first instance (eg positive customer experience when boarding / exiting bus).</p>
Efficient use of the wider transport network	<p>Better coordination of services and patronage growth is likely to contribute to a more efficient use of regional transport network where congestion on the network is pronounced like Auckland. Such an outcome is less certain under the TSLA where regional councils' ability to plan services is constrained to some degree by the presence of individual trip commercial services.</p>	<p>Regional councils more able to 'drive' efficient use of wider network through greater control over public transport services moving through transport corridors.</p>
Efficiency of network design and planning	<p>PTOM should lead to improvements as greater operator input into planning can contribute to identifying network efficiencies. Operators incentivised by the need to grow the commerciality of units. Greater transparency round why particular services are provided. Important at a time when Auckland and Wellington looking to invest more in PT infrastructure.</p>	<p>Unclear. In the short run in Auckland and Wellington efforts to improve network design may be frustrated by disputes over the application of PTMA powers to commercial services. Nor would regional planning necessarily be well informed by operator assessment of what investments will enhance commerciality and grow patronage if traditional purchaser provider relationship is the norm.</p>
Service continuity — transitioning to a new operating environment	<p>Positive. PTOM a sector solution and so there is greater buy-in and commitment to make it work.</p>	<p>Likely to be negative, as passage of PTMA strongly resisted by incumbent operators.</p>
Entry by new operators	<p>Could be limited. Depends on what units are available under tenders and design of tender rounds. Important that regional councils drive tender design to optimise opportunities for entry. Access to patronage and revenue information will enhance new entrants' ability to compete. Exempt services will be subject to direct competition.</p>	<p>Positive as all of the network is subject to tendering. Combined with better tender design and greater access to information like patronage and revenue information new entrants should be attracted to bid in Auckland and Wellington.</p>

Conclusion

The operating environment for the delivery of urban bus and ferry services has been subject to review for a long time. As a consequence there has been no substantive tender round in Auckland since 2005 and since 2006 in Wellington. The vast majority of contracts in those two regions are currently being rolled over on a short term basis. Given that these two regions account for 71 percent of subsidies paid for urban bus and ferry services, this outcome undermines confidence in cost and makes it difficult to implement service improvements.

The PTOM has the potential of unblocking the state of operating limbo that currently exists in those two regions. If regional councils and operators can work more effectively in partnership and do so in a transparent manner the value for money which funders and users of public transport receive should improve.

In order to meet passengers' needs and government's objectives for urban bus and ferry services there is a need to focus on three inter-related factors: competition, coordination and cooperation. The conclusion of the independent competition assessment is that PTOM has potentially both positive and negative effects on the competition for urban bus and ferry contracts and the overall competitive effect is assessed as neutral compared to the status quo. The trade off for greater potential competition under the PTMA is the expectation that PTOM will lead to better coordination and cooperation between regional councils and operators than has been the situation to date and the benefits of these improvements may out-weigh the uncertain competition outcomes. As alluded to earlier in the RIS, getting the balance right between competition, cooperation and coordination is important to getting public transport to deliver desired objectives. In addition, some of the concerns raised by the competition assessment regarding PTOM have been addressed through aspects of design.

Benefits under PTOM will not accrue immediately. This reflects that a gradual transition away from the current operating system is planned. Many of the benefits associated with PTOM — assuming that the model is successfully implemented — will result from relatively subtle changes in behaviours and incentives.

A risk of PTOM is its reliance on voluntary behaviour change on the part of participants to act 'in the spirit' of PTOM. For instance, local operators' willingness to compete with each other in Auckland and Wellington for tendered contracts. In addition, because key features of PTOM are new (eg league table concept, linking tendering and negotiation together), and in light of experience to date here and overseas with tendering, negotiation and long tenure length, there are downside risks associated with PTOM. To manage these risks the Ministry recommends the following actions (inter-alia) be taken, assuming PTOM proceeds.

- That if initial tender rounds are not deemed to have resulted in adequate competition, as reflected in prices and determined by the NZTA, then all units other than those subject to 'like-for-like' negotiations are put out for tender, and further direct negotiations not entered into until such a time there is confidence in costs.
- There should be a strong emphasis on transparency during and post-transition from the current operating environment to a future state. This could include, but

not be restricted to, publicising league tables and regular reporting on overall network performance and cost by regional councils.

- Implementation of PTOM be closely monitored and evaluated to ensure implementation is occurring as intended and there is an opportunity to address potential weaknesses with PTOM before they become embedded.
- Review PTOM after a specified period of time to determine whether or not PTOM is delivering as intended.

Implementation

If approved, PTOM will be implemented in full in Auckland, Wellington and Canterbury.²² Due to the complexity of PTOM and the size of the public transport networks in other regions, other regions will likely be expected to implement some components of PTOM (eg segmenting network into units), but not necessarily all (eg league table). Where a component of PTOM is not a requirement, regions will still be encouraged to consider whether such components would be useful in delivering urban bus services.

Much of the PTOM can be implemented without changes to legislation. As part-funder, the NZTA will have a central role in implementing non-legislative policy decisions. Specifically, NZTA will amend its:

- procurement manual
- contract template guidelines
- key performance indicators
- Regional Public Transport Plan guidelines

Some changes to legislation are proposed to increase regulatory certainty and ensure PTOM is implemented as intended. The proposed changes involve:

- clarifying the purpose and objectives underpinning the legislation
- removing the majority of discretionary powers regional councils have and replacing them with more definitive sections on what can be done and what is required (for instance segmenting a region's network into units and requiring all services to be provided under some form of contract)
- redefining what can be registered as a commercial service by an operator
- expanding the role of the regional public transport plan to incorporate a greater emphasis on business planning

Implementation Risks

Due to the complexity of the PTOM and a focus on a different way of doing business (ie emphasis on developing partnership relationships as opposed to a more traditional purchaser provider relationship) there are important implementation risks.

- *Lack of on-going buy-in into PTOM.* This risk is to be managed principally through the involvement of the Public Transport Leadership Forum (PTLF) in oversight of the implementation of PTOM. The PTLF is led by the chief executives from the Ministry of Transport and the NZTA and its wider membership is drawn from

²²Subject to constraints presented by the Christchurch earthquakes.

regional councils, public transport operators (including metro rail) and one territorial authority representative. It is expected that the members of the PTLF would ensure support for the effective implementation of PTOM within their respective organisations.

- *Lack of competition under PTOM.* This risk would be visible if there are large numbers of units where there is only one bid, or alternatively the bids are at the higher end of the estimated price scale. This risk is to be monitored on an ongoing basis. If there are insufficient bids for a tender then the relevant council would be able to consider fallback options for increasing confidence in cost including retendering and/or putting out more units for tender than originally planned.
- *Failure by operators to deregister existing individual trip commercial registrations to enable tendering to proceed within units.* This risk is to be managed by recognising the value that commercial registrations represent to operators. Operators with existing commercial registrations²³ will be offered the opportunity to negotiate, on a one-off basis, some units directly for a 12 year tenure. The number of units offered for negotiation will roughly be equivalent with the number of kilometres the incumbent operator has registered as commercial. Most commercial registrations are found in the Auckland and Wellington markets and account for approximately 25 percent²⁴ of the total market in those two regions.
- *Inability to combine well designed tenders and improved access to patronage and revenue data.* The NZTA will lead on the procurement and planning implications of PTOM and support good tender design. Initially this will involve consideration of special procurement procedures or amendments to existing procurement procedures to early tender and negotiation rounds. In turn, the NZTA will play a critical role, through implementation of integrated ticketing services and part-funder, in ensuring patronage and revenue data is provided in a timely and appropriate manner to potential competitors during tender rounds. This may involve either following up individual regional councils to see that they have collected the information, and/or support regional councils securing information from operators.
- *Implementation of PTOM with the Minister's goal and objectives for PTOM.* The Ministry will continue to play an oversight role, including reviewing design developments to ensure they support the Minister's goal and objectives.

²³Or have a history of providing services within a region.

²⁴Based on the proportion of in-service kilometres registered as commercial.

Monitoring, evaluation and review

Monitoring and evaluation of PTOM will be led by the Public Transport Effectiveness Steering Group (PTESG), whose membership includes the Ministry of Transport, NZTA, regional council representation, and public transport operator representation. The PTESG is responsible for overseeing the implementation of the Public Transport Effectiveness Action Plan, which PTOM complements. There are synergies between monitoring and evaluating PTOM with other monitoring and reporting activity the PTESG is already undertaking. In addition, the PTESG is best placed to disentangle the effects of PTOM from other action plan activities and external factors like fuel price movements. The PTESG reports to the Public Transport Leadership Forum (PTLF) whose membership is similar to the PTESG, but at a higher level of representation (ie most are chief executives).

The proposal in the Cabinet paper is for the PTESG to report, through its annual report to the PTLF on the action plan, on progress with implementing PTOM. In turn, the Cabinet paper also recommends that the Chief Executives of the Ministry of Transport and the NZTA, in consultation with regional councils and transport operators, prepare a report for the Minister of Transport on the operations of PTOM after it has been fully implemented and has had a chance to bed in. The report is to be completed no later than 31 December 2015.

To support transparency and to provide useful signals to those implementing PTOM, it is important that the PTESG identify early on the metrics it will be monitoring in relation to the implementation of PTOM, specific areas of evaluation to determine PTOM's contribution to specific metrics, and the likely parameters of a report to the Minister of Transport. Early signalling of review intentions should act as an incentive for all parties to behave 'in the spirit of PTOM' and continue to work together.

From a Ministry perspective key metrics and evaluation activity should be closely linked to the goal for public transport and objectives identified in the Cabinet paper and RIS. Individual metrics should be measurable and easy to collect (ie does not add significant cost to the implementation of PTOM).

The following table provides an indicative overview of what the monitoring and evaluation framework might look like using the goal and objectives outlined in the RIS. It is split into four columns.

- The goal and objectives that PTOM is intended to contribute to.
- Examples of metrics that are relevant to PTOM (ie PTOM may have a positive or negative impact on) and which need to be monitored to observe any changes.
- Examples of factors that underpin movements in the metrics.
- Examples of areas for evaluation to determine what contribution PTOM has made to the factors and in turn the high level metrics.

Goal	Examples of relevant metrics	Examples of relevant factors	Examples of PTOM's contribution
Growing patronage with less reliance on subsidy (ie improving patronage revenue relative to in-service costs)	Fare revenue per in-service km travelled	<ul style="list-style-type: none"> • Service level availability (including total network kms) • Fare price 	<ul style="list-style-type: none"> • Joint initiatives between Regional Council (RC) and operator that result in increased patronage • Clear rationale for determining what is an optimal fare level vis-a-vis growing patronage and recovering costs
	Cost per in-service km travelled	<ul style="list-style-type: none"> • Tender price • Negotiated contract price 	<ul style="list-style-type: none"> • More bids per tender • Benchmarking results in tight price parameters for negotiated contracts and consequently prices for tendered and negotiated services are similar
	Patronage (at unit and regional level)	<ul style="list-style-type: none"> • Service quality • Regional service integration 	<ul style="list-style-type: none"> • Operators meeting KPI targets in their contracts • Operators working with other operators as well as with RCs to link complementary services
Improving regulatory certainty for stakeholders	Days to complete negotiation discussions with preferred operator	<ul style="list-style-type: none"> • Acceptance of benchmarking outputs by operators • Extent to which content of contracts is uncontroversial 	<ul style="list-style-type: none"> • RC's contracting requirements transparent and well understood in advance of negotiations
	Number of disputes between RCs and operators brought to the Ministry of Transport and NZTA's attention	<ul style="list-style-type: none"> • Type of dispute • Level at which dispute has to be resolved 	<ul style="list-style-type: none"> • Is the dispute related to interpreting PTOM or something else?
	RC and operator assessments of how PTOM is working	<ul style="list-style-type: none"> • Results of targeted stakeholder survey 	<ul style="list-style-type: none"> • As per survey results

Goal	Examples of relevant metrics	Examples of relevant factors	Examples of PTOM's contribution
Supporting cooperation and coordination between councils and operators	Level of customer satisfaction	<ul style="list-style-type: none"> • Value for money • Service frequency • Service reliability • Vehicle quality and comfort 	<ul style="list-style-type: none"> • Improvements in customer satisfaction correlate to improvements in service delivery associated with better planning between RC and operator • Higher levels of overall private investment in improving vehicle quality relative to a given level of public subsidy due greater levels of trust between RC and operator
	Number of joint initiatives	<ul style="list-style-type: none"> • Type of joint initiative • Impact on patronage and service costs 	<ul style="list-style-type: none"> • Metrics and relevant factors are PTOM specific and therefore would give a good indication of PTOM's impact
	Effectiveness of service reviews in relation to network design	<ul style="list-style-type: none"> • Level and willingness of operator participation • Ease and cost of implementing service changes 	<ul style="list-style-type: none"> • RTP's clearly signal RC activity and policies in relation to PT delivery providing operators with greater certainty about operating conditions within region
Maintaining and enhancing competition to restrain costs	Average number of bids per tender	<ul style="list-style-type: none"> • Robustness of benchmarking methodology 	<ul style="list-style-type: none"> • Metrics and relevant factors are PTOM specific and therefore would give a good indication of PTOM's impact
	% of tenders with only one bid	<ul style="list-style-type: none"> • Performance of new operator where contract has been turned over relative to ex-incumbent 	
	Variance in tender and negotiated standardised costs	<ul style="list-style-type: none"> • Movement of units within league table rankings 	
	Operator turnover for contracts	<ul style="list-style-type: none"> • Expressions of interest in each tender round 	

Goal	Examples of relevant metrics	Examples of relevant factors	Examples of PTOM's contribution
Enhancing transparency of planning and procurement	Quality of Regional Public Transport Plans (RPTP)	<ul style="list-style-type: none"> • Content and coverage of RPTP • Level of stakeholder feedback on RPTP 	<ul style="list-style-type: none"> • Clarity and robustness of RC's intention vis-a-vis network development and key policies like approach to fare setting • RPTP content well linked with joint business planning outputs between RCs and operators
	Quality and availability of service delivery information	<ul style="list-style-type: none"> • Level of information provision • Publication frequency and timing • Level of operator reporting compliance (to RC) • Level of RC reporting compliance (to the NZTA) 	<ul style="list-style-type: none"> • Metrics and relevant factors are PTOM specific and therefore would give a good indication of PTOM's impact.

Consultation

The PTOM was developed with direct input from the Auckland Regional Transport Authority (now Auckland Transport), GWRC, Environment Canterbury, the NZTA, Bus and Coach Association of New Zealand (BCA), and bus and ferry operator representatives. Three workshops were held over March, April and May 2010 where the high level design of the PTOM was agreed to. The high level design was then tested with the Public Transport Leadership Forum (PTLF) in late June 2010²⁵. The PTLF supported the high level design and recommended that more detailed design work be undertaken to clarify how the model would work in practice. A core working group was set up to complete more detailed design work. Members of the core working group are: Auckland Transport, GWRC, the BCA, two bus operator representatives (Ritchies and NZ Bus), the Ministry of Transport and the NZTA. Work was led by the regional councils and operators, with input and support provided by the Ministry and the NZTA. The Ministry was also responsible for reviewing the proposals developed by the core working group to make sure they fit with the Minister's goal and objectives.

In November 2010 the Minister of Transport reported to Cabinet on the development of PTOM [Cab Min (10) 42/6 refers]. The paper identified the PTOM objectives and

²⁵The PTLF is a public transport chief executive forum established by the chief executives of the Ministry of Transport and the NZTA. Membership is drawn from across central and local government, bus and ferry operators, and metro rail operators. More information can be found at the following link <http://www.nzta.govt.nz/about/newsletters/exchange/issue1.html>

provided a high level overview of the proposed components of PTOM. The Cabinet paper was also publicly released in February 2011 and is available for review on the Ministry of Transport's website.

Environment Waikato²⁶, Environment Bay of Plenty, and Otago Regional Council were also consulted on the detailed design of the PTOM. The three regional councils have expressed concern about their ability to implement the PTOM and implications for their own public transport networks. These concerns are legitimate and there is the issue that the PTOM has principally been designed with Auckland and Wellington in mind. The intention is that the large regional councils lead in the development of the PTOM and the smaller regional councils follow, using components of PTOM that reflect their situation.

Separately the BCA has also provided its wider membership with regular updates on PTOM developments. All operators currently providing urban bus services in New Zealand are members of the BCA.

Wider consultation with third parties with potential knowledge of New Zealand markets and operators outside New Zealand has not occurred.

The Department of Internal Affairs, Local Government New Zealand, Ministry of Economic Development, Ministry of Education, Ministry for the Environment, Ministry for Social Development, Office for Disability Issues, Office for Senior Citizens, and the Treasury have been consulted on the Cabinet paper and RIS. The Department of Prime Minister and Cabinet have been kept informed.

²⁶ Environment Waikato attended the first workshop, but then dropped out due to resource pressures.

Annex A: Overview of the Features of the Different Operating Models

<i>Service description</i>		
PTOM	TSLA	PTMA
Area based franchises (described as units under PTOM) provided under contract with RC and with legislated exclusive operating rights within franchise boundaries.	Mix of commercial services registered by operators and provided without subsidy, and contracted services procured by RC. Non exclusive operating rights. A commercial service can be as small (eg part of an individual trip) or as large (eg full route full timetable service) as an operator considers commercially viable.	All services provided under contract with RC, but no legislated exclusive operating rights.
<i>Approach to procurement</i>		
PTOM	TSLA	PTMA
A mixture of tendering and direct negotiation of all unit contracts. Tendering to precede negotiated contracts. Tender price information used to inform negotiated prices.	All contracted services subjected to a tendering process.	All services subject to tendering process.
NZTA provides procurement guidance and endorses RCs procurement strategies.	As for PTOM.	As for PTOM.
<i>Tenure Length</i>		
PTOM	TSLA	PTMA
Like for like negotiated contracts 12 years (one off). Other negotiated units 6 years. Tendered units 9 years. Fully commercial units 9 years.	Up to 12 years maximum before requiring putting out to tender (NZTA procurement requirement). Historically contracts length has ranged between 3 and 9 years. Trend is toward longer contracts. Fully commercial services not subject to tenure term.	Up to 12 years maximum before requiring tendering (NZTA procurement requirement).

<i>Contract Type</i>		
PTOM	TSLA	PTMA
All contracts performance based, with a common base contract applicable to all units.	Movement toward greater use of performance-based contracts.	Performance based contracts.
All subsidised units have a risk and reward share mechanism in their contracts. Fully commercial units may have a risk and reward mechanism in their contract (case-by-case basis).	Mix of gross cost contracts (ie all revenue is retained by RC) and net cost contracts (ie all revenue is retained by operator).	Most likely gross cost contracts with possibly some form of revenue incentive.
Operators to provide revenue and patronage information to RC (NZTA). Patronage information publicly available. Revenue information only shared on a controlled basis with competitors for units subject to tender.	Operators only required to provide revenue and patronage information for contracted services not commercial services.	Operators required to provide revenue and patronage information to RC (NZTA). RC to determine whether or not to make publicly available.
<i>Planning</i>		
PTOM	TSLA	PTMA
RC responsible for service planning. Expanded role for RPTP to cover procurement intentions of RC. RPTP must cover a range of policies relating to the procurement and delivery of PT services (eg fare setting, exemption policy).	RC responsible for planning through RPTP process. Technically operator responsible for planning for commercial services, but in reality commercial service development influenced by contract service requirement.	RC fully responsible for service planning through RPTP.
NZTA provides guidance on RPTP development.	As for PTOM.	As for PTOM.

Unique features of PTOM without similarities under TSLA or PTMA

Each region and sub-units will have a **commercial ratio** calculated for them. The commercial ratio measures the extent to which the costs of services are met from fare revenue. The commercial ratio will be used for a range of purposes including informing decisions about how much a region's network should be subject to tendering, placement of individual unit's place in the region's league table (see below) and monitoring performance.

If a region is large enough, all units will be ranked in a **league table**. The purpose of the league table is to encourage ongoing competition between operators after contracts have been entered into. The incentive to compete is the opportunity to negotiate a new contract at the end of the term of the existing contract rather than face a tender round. Units at the top of table are more likely to be subject to direct negotiation when their current contract ends and vice versa.

A unit's position on the table is based on the unit's overall commercial ratio and relative patronage growth on services within unit.