

Regulatory Impact Statement - Proposal to Manage Fare Evasion on Public Transport Services

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Transport.
2. It provides an analysis of options to provide an effective regime to manage fare evasion on public transport services.
3. Information on the cost of options has been provided where possible, although some options (eg a transit police) have not been fully costed. However, this is not expected to affect the validity of the overall analysis or conclusions.
4. The focus of much of the discussion is Auckland rail, where problems with the current enforcement framework have been highlighted as a result of the introduction of electronic smart card ticketing over 2013. However, problems with enforcing the offence also apply to other modes and regions, although fare evasion is currently considered less of a problem on other modes and in other regions.
5. Information on fare evasion is not as robust or complete as we would have liked. However, on balance, we think the proposal is worthwhile, particularly considered that: enforcement authorities will need to follow Ministry of Justice guidelines, the proposal has been developed in the context of a wide range of non-regulatory measures; and the public will be able to comment on policies relating to fare evasion in draft regional public transport plans.
6. The initial analysis was undertaken over 2012 and in some cases, the information and data has not been able to be updated. This is not expected to significantly impact on the data.

Viviane Maguire
Principal Adviser

Executive summary

7. The introduction in New Zealand of electronic public transport ticketing systems integrated across all transport modes means significant changes in ticketing processes, particularly on rail services. An inherent feature of these systems, for trains in particular, is that passengers are required to buy before they travel, rather than the current 'buy on-board' arrangements. Inspection services on board trains and buses will be limited to random spot auditing of tickets rather than inspecting all tickets, as is the current practice.
8. Overseas experience has shown that without effective deterrence and enforcement measures, the risk of some types of fare evasion markedly increases on rail networks where stations are not gated, and greater risks will emerge for bus transport.
9. Should legislation be amended, Auckland Transport is planning to employ public transport enforcement officers, warranted by the Commissioner of Police, to work as part of a team of ticket inspectors to enforce fare evasion across all public transport services, including issuing infringement notices to fare evaders, where appropriate.
10. The existing legislation restricts the ability of enforcement officers (other than the Police) to obtain the information necessary to issue infringement notices. While there is an existing infringement offence related to fare evasion in the Land Transport Act 1998, there is no corresponding duty for passengers to produce evidence they have paid the fare, nor any requirement to provide their name, address and date of birth details to an enforcement officer.
11. It is proposed to amend the Land Transport Act 1998 to clarify the powers of enforcement officers with respect to the offence of fare evasion. In particular, it is proposed that enforcement officers will be able to require passengers to:
 - provide evidence they have paid the correct fare
 - provide their name, address and date of birth details when a valid ticket is not produced, and/or
 - disembark the public transport service.
12. It will be an offence not to follow an enforcement officer's directions.
13. The proposal will allow enforcement officers to enforce the existing offence of fare evasion. It will be implemented as part of a comprehensive set of measures to manage fare evasion.
14. These measures include: clear signage indicating where a valid ticket is required: education campaigns to increase public awareness of the consequences of not paying the correct fare: and a graduated approach to enforcement such as warnings, blacklisting of smartcards, and the issuing of infringement notices.
15. Public transport enforcement officers will be required to exercise discretion over the issuing of infringement notices so they can take account of particular circumstances.

Status quo and problem definition

Summary of the problem

16. The underlying problem we are seeking to address is fare evasion. Addressing fare evasion is largely the responsibility of regional councils and Auckland Transport, in conjunction with public transport operators.
17. In response to concerns around fare evasion, Auckland Transport (with support from the Ministry of Transport and the NZ Transport Agency) have implemented a revenue protection strategy that includes a number of non-regulatory measures, which should assist with managing fare evasion.
18. Auckland Transport, however, does not have access to legislative enforcement powers, such as the power to require passengers to provide their name and address, and sanctions that can be enforced by the Courts, such as infringement fees or fines.
19. The remaining question for this regulatory impact analysis is whether to grant regional councils and Auckland Transport, these kinds of powers.

Introduction of integrated electronic ticketing

20. Electronic ticketing systems have been in use on New Zealand's bus services for over five years now. These are generally systems belonging to a specific operator or card provider (eg Snapper). Regional Councils across New Zealand are now introducing electronic ticketing, integrated across all public transport operators and modes, including rail and ferry.
21. This change is being led in Auckland, where Auckland Transport introduced an integrated electronic ticketing system (the AT HOP card) over 2013. Wellington is looking to transition to an integrated ticketing system by 2018. Most other regions with public transport systems are also expected to introduce integrated electronic ticketing systems over the next 2-5 years.
22. Electronic ticketing is defined as the arrangement in which the ticket is stored electronically on a microchip, commonly contained in a plastic smartcard with tickets being checked by presenting the smartcard to a smart reader.
23. Integrated ticketing is defined as tickets that are valid on more than one operator's service and/or mode of transport. The new Auckland system combines both of these features. National operating standards have been developed that define how the central core of a national system will function as well as how operator equipment such as on-board bus ticketing machines will interact with that system.¹
24. Electronic ticketing shifts most ticket sales from being cash transactions, often taking place on board rail and bus services, to pre-purchase of fares.
25. In the case of rail services, the expectation is that fares will be purchased, or smartcards validated on the platform *before* boarding and *after leaving* the service,

¹ These systems will also be able to collect common format information about public transport patronage.

(‘tag-on’ and ‘tag-off’). There will be random spot auditing of tickets and smartcards by roving ticket inspectors (smartcards are checked using hand held devices).

26. On buses, there are predominantly electronic ‘tag-on’ and ‘tag-off’ payments upon boarding and before leaving the service, with some residual cash on board sales.
27. The introduction of integrated electronic ticketing systems involves fundamental changes to:
 - the form of the ticket (it becomes a credit value stored on a plastic smartcard)
 - how tickets are purchased (when fully implemented it will not be possible to buy tickets on trains, and on buses it will become increasingly infrequent)
 - the requirement for passengers to have a valid entitlement to travel, rather than the opportunity to buy paper tickets
 - passengers’ responsibilities (they are required to swipe the card themselves)
 - the inspection or checking of tickets - inspection services on board trains and buses will be random auditing of tickets² (rather than inspectors on every train inspecting all tickets, as with paper ticketing systems)
 - other means of deterrence become possible (eg gating of rail stations, with electronic or mechanical barriers)
 - the same ticket is available across all operators and modes of transport (an integrated ticket)
 - staffing models, as it will allow for trains to become ‘driver only’.

Estimates of fare evasion

28. The move to electronic ticketing and new staffing models (fewer ticket inspectors) has impacts on fare evasion.
29. Fare evasion can involve:
 - travelling without a valid ticket
 - travelling on an incorrect fare (eg fraudulently claiming a concession)
 - ‘over-riding’ where a longer journey than has been paid for is taken.
30. Fare evasion can be deliberate or passive/unintended (eg where a passenger disembarks before a ticket inspector reaches them to inspect the ticket).
31. Under electronic ticketing, different types of fare evasion may increase or decrease:
 - Overall fare evasion is expected to reduce as:
 - it is more convenient and easier for people to pay fares, there is more accurate fare calculation, and less cash transactions
 - more fares are paid on busy trips (whereas staff might have had trouble clipping all tickets on a packed train in the past).
 - Fare evasion involving travelling without a valid ticket may increase, with fewer staff inspecting tickets.

² Electronic tickets are inspected using a hand held device.

Buses and Ferries

32. On buses, which account for the majority of public transport trips³ the risk of over-riding on buses is low, due to the requirement to tag-on and tag-off, enabling the correct fare to be charged. If passengers fail to tag-off they are charged the maximum fare for the route.
33. The risk of bus passengers travelling without a valid ticket may increase slightly under electronic ticketing as drivers are no longer issuing tickets to every passenger, although drivers can monitor compliance with the requirement to tag on. Passengers can circumvent this (for example, by using a cell phone to mimic the tone of a successful 'tag-on' and 'tag-off'). However, there is currently only anecdotal information on the level of this type of fare evasion on buses. In addition, although this type of fare evasion is likely to be low, it could be materially significant given buses are the predominant public transport mode.
34. Fare evasion on ferries is considered low (under both paper and electronic ticketing system) as most terminals are manually gated. Paper tickets are inspected prior to boarding. Under electronic ticketing, ticket inspectors monitor compliance with the requirement to tag on. It is also not possible to over-ride on many ferry services, which only travel point-to-point with no intermediate stops. Note that only three regions have ferry services (Auckland, Wellington and Canterbury).
35. Fare evasion on buses and ferries is considered less of a problem by operators, although we are not aware of any surveys by bus or ferry operators in Auckland or other regions. Anecdotally bus operators (in 2012) reported that passenger fare evasion could be between 3 and 5 percent of all journeys.

Estimating fare evasion

Some overseas jurisdictions undertake statistically rigorous surveys of fare evasion. For example, the Melbourne Department of Transport and RailCorp in Sydney undertake controlled cluster sample surveys to estimate evasion rates. These surveys implement rigorous procedures to ensure all passengers in the cluster are surveyed.

Auckland Transport's estimates are currently based on evasion that is detected and recorded by ticket inspections. This is likely to underestimate actual levels of evasion.

Auckland Transport also conducts blockades of stations. Blockades require all passengers to purchase a ticket and patronage and revenues are compared with previous equivalent days, to give an estimate of fare evasion. Data from blockades are likely to be more reliable but cannot be generalised to the network as a whole.

The surveys undertaken by Tranzdev in Auckland before the introduction of the HOP card were also likely to underestimate actual evasion as passengers without tickets could evade the survey.

Trains

36. There are only limited estimates of fare evasion on rail before the introduction of electronic ticketing. Surveys of Auckland rail passengers by the rail operator between May 2008–2011, found evasion rates that varied between 3–10 percent and averaged 6.4 percent. The Wellington train operator does not undertake any surveys on fare evasion.

³ Buses are the dominant urban public transport mode, accounting for 79 percent of all boardings. Rail accounts for almost 17 percent of all boardings, while ferries account for 4 percent of boardings.

37. Auckland Transport is currently recording approximately four to six percent fare evasion on its rail system, based on detected fare evasion (see sidebar on previous page). The revenue loss is estimated to be \$1.5–\$2 million per annum (against rail fare revenue of around \$33 million per annum).
38. Data from station blockades show higher levels of evasion. For example, a blockade on the Western Line in 2013 identified 6.8 percent fare evasion. Results from other blockades, however, have been volatile.⁴
39. Caution needs to be exercised in comparing data from before and after the introduction of electronic monitoring as the methodologies used are different.
40. The problems of fare evasion on trains is discussed in more detail below (paragraphs 56-65). However, the overseas experience is that fare evasion may increase on ‘open’ rail systems (that are not gated with physical barriers and where there are no on-board ticket inspectors).⁵
41. Auckland and Wellington will remain largely open systems.

Auckland Transport’s approach to managing fare evasion

42. Auckland is the first New Zealand city to move to electronic ticketing integrated across all modes, and is where fare evasion issues are currently of most concern.
43. Over 2012, a Working Group made up of the Ministry of Transport, the NZ Transport Agency and Auckland Transport, looked at the issue of fare evasion.
44. The Working Group examined a range of options to mitigate against fare evasion. It developed a graduated approach to address the increased risk of fare evasion on trains under electronic ticketing. This included ‘soft’ options (eg encouraging compliance through ‘nudges’), deterrent and detection measures (eg gating of stations) and enforcement measures (eg warnings and trespassing of persistent offenders).
45. Auckland Transport adopted its revenue protection strategy in September 2012, based on a graduated approach and a range of measures:

Ensuring passengers are aware of their obligations

- having (and communicating) a clear definition of a ‘paid area in which it is necessary for passengers to hold a “valid entitlement to travel” - ie a ‘ticket’
- advertising the changed ticketing arrangements
- customer education, for example, around the location and function of the ticket purchase service centres, and location of the fare paying devices
- revised Conditions of Carriage from rail and bus operators

⁴ Deloitte, *Auckland Transport HOP Roll Out Review*, May 2013, <https://at.govt.nz/media/196871/agenda-item-9i-attachment.pdf>.

⁵ Both Auckland and Wellington are considering moving to driver only operations to achieve further operating efficiencies.

- requiring the carrying of the correct identity documents to prove entitlement to concession fares
- reminding passengers of consequences of evading fares if caught (currently sanctions are limited)

Encouraging compliance

- making it easy to pay for fares prior to travel
- encouraging social compliance (peer pressure from other passengers to pay the fare)

Deterrence and detection

- gating entry into the 'paid area' on four stations in the Auckland rail network, and gating further stations as patronage and funding allows
- a formal (random) inspection regime of passengers on board rail and bus using revenue protection teams⁶
- using closed circuit television (CCTV) at station gate lines– useful as a visual deterrence
- use of lapel CCTV cameras by ticket inspectors.

Enforcement

- a graduated approach including: warnings; grey or black listing of cards that are misused; issuing infringement notices (currently very difficult); requiring passengers who have not paid to disembark; and issuing trespass notices to persistent evaders
- there is discretion to take account of a passenger's circumstances when applying these measures. For example, a passenger might misplace their ticket, not understand the ticketing requirements, or have other reasons for not having a valid ticket. Ticket inspectors are also required to exercise discretion to ensure their actions do not place vulnerable passengers, such as children, at risk.

Gating of Stations

46. A key part of Auckland Transport's fare evasion strategy is the gating of key train stations as patronage and funding allows. Four of the Auckland's 42 train stations are now gated, covering almost 80 percent of passengers travelling on the rail network.⁷
47. Gating rail stations is considered very effective in deterring fare evasion as it creates a physical barrier to entry for the rail network. However, gates need to be staffed to prevent people from jumping over the barriers. Fare evasion rates at gated stations that are staffed, are very low (around 2.5 percent).
48. Gating stations is very expensive and there are diminishing marginal returns for each additional station gated.⁸ It is also difficult to install effective gates at some stations.

⁶ If the proposal is agreed, the teams are expected to comprise one enforcement officer and two ticket inspectors. Currently only ticket inspectors are employed, due to problems with the legislation.

⁷ The gated stations are Britomart, Newmarket, Manakau and New Lynn.

49. Auckland Transport is currently investigating gating a further nine stations, subject to funding, which would cover around 98.5 percent of passenger trips. A robust business case would be required to secure funding from the National Land Transport Fund. While gating more stations may be viable, particularly as patronage increases, gating nine more stations is unlikely to be cost effective, given current patronage and fare evasion levels.

Inspection of tickets

50. Auckland Transport is currently employing around 50 ticket inspectors to undertake random inspection of tickets and staff the gated stations. There is also a train manager on board every train. Auckland is considering moving to 'driver-only' operations to achieve further operating efficiencies.
51. Currently, as outlined in the 'existing legislation' section below, ticket inspectors rely on non-legislative enforcement actions, such as warnings or asking people to disembark (or not board) the train.

Other cities' approach to managing fare evasion

52. The NZ Transport Agency requires all regional councils and Auckland Transport to have revenue protection policies and mechanisms including:
- monitoring fare evasion on their contracted public transport services (through reconciling monthly farebox revenue with patronage)
 - fare revenue protection mechanisms included in public transport service contracts and describe their approach to fare revenue protection in all requests for proposals for contracted public transport services.
53. As noted earlier, the Greater Wellington Regional Council (Greater Wellington) is planning to transition to an integrated ticketing system by 2018. Greater Wellington currently intends to gate only the Wellington central station - approximately 80 percent of passenger trips go through this central station. It is also considering moving to driver only operations once electronic ticketing is introduced on trains.
54. As noted earlier, most regions are expected to introduce electronic ticketing system, integrated across all modes and operators over the next 2-5 years.
55. Greater Wellington has similar concerns to Auckland Transport about the increased risk of fare evasion on trains, particularly for travel between ungated stations. Along with other regional councils, it supports measures that would improve the ability to enforce the existing offence.

Existing legislation

56. Ticket inspectors largely rely on non-legislative enforcement actions such as warnings or asking people to disembark (or not board) the train.

⁸ The capital cost of gating each station was estimated to be \$1.4 million per station on average in 2012. Annual operating costs were estimated to be around \$800,000 per station. The cost of gating Wellington stations is expected to be similar to Auckland.

57. There is an existing offence for failing to pay a public transport fare in section 79M of the Land Transport Act 1998. It reads:

“A person who fails to pay a passenger service or public transport service fare that he or she is liable to pay commits an infringement offence.”

58. However, the legislation does not include a corresponding statutory duty for passengers to provide evidence that they have paid their fare (whether by producing a paper ticket, smartcard, or otherwise), making it difficult to establish whether an offence has been committed. There is also no requirement for a passenger to provide their personal details (full name, full address, and date of birth) to an enforcement officer other than the Police.
59. As enforcement officers (apart from the Police) are restricted in their ability to obtain the information necessary to issue infringement notices (passengers would need to voluntarily provide the relevant information), the existing offence provision is currently not used for public transport fare evasion.

The risk of a culture of fare evasion developing

60. Auckland Transport's revenue protection strategy was adopted in 2012 and has been implemented since late 2012, when electronic monitoring was introduced on trains. Auckland Transport, however, has concerns that a culture of fare evasion could be developing on its train system, particularly for travel between ungated stations.
61. There is currently only anecdotal evidence about whether a culture of fare evasion may be developing. This includes media reports and observations by senior Auckland Transport staff that high levels of fare evasion are occurring at ungated rail stations in Auckland.
62. Media scrutiny has also made it clear there is a problem with the legislation, which has also led to passengers challenging the authority of ticket inspectors.⁹ Anecdotally it has been suggested that fare evaders on Auckland trains currently include many professional people.
63. Ideally, there would be more objective data to inform our analysis. However, the available evidence does suggest that a culture of fare evasion may be emerging on Auckland trains, including among regular commuters.
64. Should a culture of evasion become entrenched, this could compromise the integrity of the electronic ticketing system, and adversely affect the financial sustainability of public transport services.
65. Overseas experience (for example in Melbourne, Australia) suggests that without adequate enforcement, rates of fare evasion could become as high as 15 percent.¹⁰

⁹ http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11282603

¹⁰ A May 2012 estimate found that one in five passengers in Melbourne failed to buy a tram ticket, and one in ten passengers failed to buy a train ticket.

Objectives

66. The desired outcome is to minimise the number of passengers who evade paying their fares on all modes of public transport (train, bus and ferry).
67. The objectives are to:
 - deter passengers from evading fares, and prevent a culture of fare evasion developing
 - provide a cost effective approach to managing fare evasion
 - ensure sanctions are proportionate to the offence.

Options and impact analysis

68. As noted earlier, Auckland Transport is implementing a revenue protection strategy covering a large range on non-regulatory measures. The remaining question is whether to grant transport operators, like Auckland Transport, enforcement powers with legislative backing.

Options

Option 1: increasing the ability of enforcement officers to obtain the information necessary to issue infringement notices (preferred option)

Powers and penalties

69. Under this option, the current graduated approach to enforcement would continue and the powers of enforcement officers to enforce the existing offence would be clarified.
70. Specifically, the Land Transport Act 1998 would also be amended to give public transport enforcement officers (employed by Auckland Transport or a relevant regional council) new powers to:
 - a) inspect documents (i.e. smartcards and tickets) on public transport services
 - b) obtain the name, address and date of birth of a passenger suspected of committing a fare evasion offence
 - c) require a passenger to disembark or not board public transport services when a valid ticket cannot be produced.
71. The enforcement officer would be able to direct a passenger on a public transport service (or in a 'paid area'),¹¹ to produce evidence (for example, a ticket or a validated electronic card) that the person has paid the fare that he or she is liable to pay. If the passenger was unable to do so, an offence would be committed and the passenger would face an infringement fee of \$150, or a maximum fine on conviction of \$500. These are the same as the penalties for the existing section 79M offence in the Land Transport Act 1998.¹²
72. This offence would be subject to defences (eg the passenger boarded at a station where the ticket machine was inoperative). As with all infringement offences, the enforcement officer would have discretion not to issue a ticket, and/or give a warning.

¹¹ A defined area that will require a validated HOP card or ticket (eg beyond an electronic ticketing barrier).

¹² The infringement fee is set out in Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999.

73. If the passenger does not produce evidence showing that they have paid the fare, the enforcement officer would then be empowered to direct the passenger to:
- a) provide his or her full name, full address, and date of birth (enabling the enforcement officer to keep a record for future reference, cross-check for prior non-compliance, give a written warning or issue an infringement notice, as appropriate), and/or
 - b) disembark the service (consistent with existing conditions of carriage).
74. The amendments would also impose a duty on the passenger to comply with the enforcement officer's directions and create offences for failing to do so. Failure to provide name and address¹³ or failure to disembark the service if requested would be a more serious offence than failing to produce a ticket, with a maximum penalty on conviction not exceeding \$1,000.
75. These powers will allow enforcement officers to deal with most cases of fare evasion.
76. In line with the status quo, the more difficult cases (for example where a passenger refuses to comply or is suspected of giving false information) could be managed using the operational measures outlined earlier (eg using CCTV to identify non-compliant offenders, or asking the passenger to disembark the service).
77. The Police can also be called to cases where a person fails to provide their details as the Police can ask for a person's name and address using their authority under section 32 of the Policing Act 2008.
78. The Police will also need to be called in the more serious cases where fare evasion is accompanied by antisocial behaviour. Auckland Transport is working with the Police to target this type of offending. If necessary, this approach could be further developed, for example by using transport data to target such offending.

Staffing

79. The new powers could only be exercised by warranted enforcement officers.
80. Under section 208 of the Land Transport Act, the Commissioner of Police can warrant enforcement officers to enforce land transport legislation. The powers exercised in this context depend on the terms of the warrant of appointment.
81. The Police Executive has already agreed 'in principle' to the warranting of public transport enforcement officers (employed by relevant local authorities) to enforce legislation related to fare evasion.
82. Should the legislation be amended, this is likely to be complemented by staffing changes. For example, Auckland Transport has envisaged that some ticket inspectors would become warranted enforcement officers (whose warrants would include the proposed new powers). The enforcement officers would work as part of a team alongside ticket inspectors.

¹³ This includes providing false or misleading information.

Education

83. To be effective, the changes would also need to be accompanied by customer education by Auckland Transport to ensure passengers were fully aware of the sanctions that could be imposed for evading fares. Such customer education is included in Auckland Transport's fare evasion strategy.

Ensuring infringement notices are issued appropriately

84. There is a risk that enforcement officers could be too heavy handed and not use their discretion to take account of a passenger's circumstances. For example, a passenger might misplace their ticket, not understand the ticketing requirements, or have other reasons for not having a valid ticket. This risk will be mitigated as follows.
- 80.1. The legislation will provide for defences to the offence (for example, where the passenger boarded at a station where the ticket machine was inoperative).
- 80.2. The Ministry of Justice guidelines for new infringement schemes also require enforcement agencies (such as Auckland Transport) to develop formal operational guidelines about the issuance of infringement notices.¹⁴
- 80.3. The operational guidelines should cover when it may be appropriate for the enforcement agency to cancel an infringement notice and to ensure resolution of any disputes that might arise to minimise and mitigate any potential adverse effects on third parties (eg if a passenger seeking to avoid an infringement notice provides false details or provides details of an innocent third party).
- 80.4. The operational guidelines will also need to ensure enforcement officers act in a consistent manner when issuing infringement notices for example, by advising officers issuing infringement notices of the circumstances in which an alternative action, such as an oral or written warning, is more appropriate.
- 80.5. Enforcement officers will also be required to exercise discretion to ensure their actions do not place vulnerable passengers, such as children, at risk.
- 80.6. Regional councils (and Auckland Transport) and transport operators will also be expected by the NZ Transport Agency to have rigorous revenue protection strategies and transitional arrangements to deter fare evasion (like those developed by Auckland Transport).
- 80.7. Any unreasonable use of these powers is also likely to attract unwanted wider media attention. The Police Commissioner can also withdraw or alter warrants if enforcement officers misuse them.
- 80.8. The public will have regular opportunities to comment on the use of infringement notices within the wider revenue protection strategy through public consultation on draft regional public transport plans, which are updated every three years. These plans may include policies relating to fare evasion on public transport services.

¹⁴ <http://www.justice.govt.nz/publications/publications-archived/2008/infringement-guidelines/guidelines-for-new-infringement-schemes>.

Statement of the net benefit of the proposal

Deter passengers from fare evasion and prevent a culture of fare evasion developing

85. A culture of fare evasion is less likely to eventuate, as potential evaders weigh up the likelihood of being caught and the cost of an infringement fee or fine.
86. Issuing of infringement notices would be a last resort. The value of the proposed amendments lies largely in the deterrent effect. Mclean has suggested that their effectiveness in deterring fare evasion is a function of:¹⁵
 - issuing infringement notices to evaders
 - general visibility, including being seen issuing infringement notices by other public transport passengers
 - technology support (eg CCTV cameras).
87. It is not possible to provide definitive figures about the expected reduction in evasion associated with the proposal. The experience of Melbourne, Australia suggests that fare evasion on largely open systems can reduce with adequate enforcement. Surveyed evasion on Melbourne has been declining over recent years and is currently under 3 percent on trains, compared to a high of 10 percent in 2011. Fare evasion is currently under 5 percent on trams, compared to a high of 15 percent).¹⁶
88. This drop has been attributed to the introduction of a new revenue protection strategy, which is based on an enforceable, fine-based inspection system, improved technologies, and the introduction of revenue sharing, which gives operators a greater stake in reducing evasion.¹⁷

Provide a cost effective approach to managing fare evasion.

89. Auckland Transport has estimated that about 25 infringement notices for fare evasion would be issued every day on Auckland's trains. This is expected to result in about 2,500 cases of non-payment being lodged in court each year.¹⁸ The Ministry of Justice has advised that this volume of infringement notices would not have a significant impact on current court pressures.
90. The distributional impacts of the proposal are not known. However, train users tend to be middle-class or middle-income groups.¹⁹ As noted earlier, it has been suggested that fare evaders in Auckland currently include many commuters.
91. There is not expected to be significant numbers of infringement notices issued on other modes, or in other regions.
92. There will be costs to Auckland Transport of training enforcement officers.

¹⁵ Andrew Mclean, *NZTA Revenue Protection Investigation: Notes on Fare Evasion Issues in Open Ticket Systems, Report for the NZ Transport Agency*, 1 September 2011.

¹⁶ Public Transport Victoria, *Victorian Official Fare Compliance Series*, May 2015, <http://ptv.vic.gov.au/about-ptv/ptv-data-and-reports/research-and-statistics>

¹⁷ Similar approaches are also possible in New Zealand under the new public transport operating model.

¹⁸ Based on the payment rates for parking infringements (about 29 percent of notices are lodged in court).

¹⁹ http://www.geoffbertram.com/fileadmin/publications/Middle_class_capture.pdf.

Ensure sanctions are proportionate to the offence

93. This option provides the possibility of an infringement fee of \$150 for the offence of fare evasion, or a maximum fine on conviction of \$500. These are the same as the penalties for the existing offence under section 79M of the Land Transport Act.
94. The infringement fee for fare evasion is considered proportionate to the offence. The fee is at the lower end of the range of fees for transport related infringements. It is the same as the fee for failure to pay a passenger (eg taxi) fare and for many minor stationary vehicle and driving offences (eg failure to display a vehicle license or driving in a special vehicle lane).²⁰
95. Failure to provide name and address or to disembark the service would be a more serious offence than failing to produce a ticket, with a maximum penalty on conviction not exceeding \$1000. This level of fine is also consistent with those for similar transport related offences.

Option 2: transit police (enforcement officers with powers to detain and arrest)

96. In some overseas jurisdictions, a transport police force is used to patrol public transport services. This could be done by giving warranted enforcement officers additional powers under the Land Transport Act 1998 to detain passengers suspected of fare evasion and arrest passengers who fail to comply with an enforcement officer's directions.
97. The additional powers would be similar to powers in section 114 of the Land Transport Act 1998, which allows enforcement officers to stop and detain drivers for the purpose of establishing their identity, and to arrest drivers without warrant if they fail to comply with directions. Note these powers are currently exercised by enforcement officers employed by the Police.
98. This option would also require legislative change, which would include the changes in option 1, plus the additional powers to detain and arrest passengers.

Statement of the net benefit of the proposal

Deter passengers from fare evasion, and prevent a culture of fare evasion developing

99. A transit police with powers to detain or arrest passengers who fail to provide name and address details could provide a strong deterrent to many evaders. However, the deterrent effect would also depend on the likelihood of being caught.

Provide a cost effective approach to managing fare evasion

100. Establishing a dedicated transport police service would be a costly response to the problem of fare evasion in New Zealand. New Zealand's public transport systems are too small to justify the cost of a dedicated transport police service, which would need to receive similar levels of training and resourcing to the NZ Police.

²⁰ Land Transport (Offences and Penalties) Regulations 1999.

Ensure sanctions are proportionate to the offence

101. Establishing a dedicated transport police service would be a disproportionate response to the problem of fare evasion in New Zealand.
102. There is likely to be considerable public concern and disquiet about proposals to warrant enforcement officers with the authority to forcibly detain and arrest passengers, given that these powers are generally reserved for highly trained sworn Police officers. It is likely to be viewed as a disproportionate response to the problem of fare evasion, given the small sums of money involved.
103. The Police are not supportive of extending powers of arrest to non-sworn police officers such as employees of territorial authorities. In addition, many regional councils may not want to place their staff in highly confrontational situations. Most cases of fare evasion are relatively straightforward, and enforcement officers should be able to deal with these using the powers outlined in the preferred option proposal.
104. The more serious cases involving persistent offending and antisocial behaviours can be addressed by Auckland Transport and Regional Councils continuing to work with the Police to target these offenders. If necessary, this approach could be further developed, for example by using transport data to more effectively target such offending.
105. The Police can also be called to cases where a person refuses to provide their details, as the Police can ask for a person's name and address using their authority under section 33 of the Policing Act 2008.
106. It is noted that in many larger jurisdictions, the focus of transit police is more on criminal behaviour. For example, New South Wales now has a dedicated Police unit, but their focus is on criminal behaviour (commuter crime and safety on public transport services) rather than fare evasion per se. The NSW Police unit works alongside revenue protection officers employed by the transit authority. The revenue protection officers have limited powers similar to those in the preferred option (eg can ask people for names and addresses for infringements).
107. This option may breach the Bill of Rights Act 1990 because it involves the power to detain individuals. It may breach of section 22 (which concerns the liberty of the person) and there may be implications in terms of section 19 (freedom of movement) and section 23 (rights of persons detained or arrested). There is a risk this option would attract a section 7 report from the Attorney-General to the House of Representatives.

Conclusion

108. International studies and overseas experience show a combination of operational measures and powers with a legislative foundation provide the securest environment for reducing fare evasion.
109. Option 1 (legislative change) is the Ministry of Transport's preferred option to enable Auckland Transport and regional councils to manage fare evasion most effectively.

110. This option would provide a cost effective and proportionate means of providing Auckland Transport and other regional councils with the ability to manage fare evasion on public transport services more effectively.

Consultation

Government Agencies

111. The proposed approach was originally developed by a Ministry of Transport (the Ministry) and NZ Transport Agency (the Transport Agency) Working Group, which considered a range of options over 2012, including non-legislative options, in conjunction with Auckland Transport. The Transport Agency was also consulted on the development of this RIS and associated Cabinet paper.
112. The Transport Agency has noted it provides operational subsidies to public transport services through the National Land Transport Programme of investment. Any shortfall from passengers not paying their 'fair share' could affect other public transport users who would need to pay higher fares than otherwise.
113. The options have been discussed with the New Zealand Police and the Ministry of Justice at several stages in their development. Other agencies, such as the Department of Internal Affairs, the Office of the Privacy Commissioner and the Treasury were consulted as part of the departmental consultation process.

Regional Councils and Operators

114. Auckland Transport has been involved at a number of stages in the design of the revenue protection solutions. The Ministry and the Transport Agency liaised with Auckland Transport on the development of its fare evasion strategy with the expectation that infringement notices would be issued as part of a graduated approach to enforcement. The Ministry also consulted with the Greater Wellington Regional Council officials in developing the proposal.
115. Auckland Transport and the Greater Wellington Regional Council were also consulted as part of their membership of the Public Transport Leadership Forum.²¹
116. The Bus and Coach Association and some of the larger operators were involved through discussions at the Public Transport Leadership Forum. The NZ Transport Agency also had discussions in 2012 on issues around fare evasion with some of the larger bus operators, and the two metropolitan rail operators, Tranzdev and Tranz Metro.

Public transport users

117. The Ministry has not publically consulted on the proposal. It has engaged with the Public Transport Users Association (PTFU), which represents public transport users. The PTFU have concerns about increased fare evasion on Auckland trains and support stronger enforcement powers for ticket inspectors.
118. The public are consulted on draft regional public transport plans, including policies relating to fare evasion on public transport services.

²¹ A forum of public transport chief executives, convened by the Ministry of Transport and the Transport Agency.

Implementation plan

119. The proposal will be implemented through a variety of means including the following.
- The Police Commissioner issuing warrants to public transport enforcement officers employed by Auckland Transport (and other councils if appropriate) with powers specified in the warrants to enforce infringement offences for fare evasion.
 - Auckland Transport continuing to implement its revenue protection strategy with a package of graduated measures (as described earlier).
 - Customer education to ensure passengers are aware of the penalties for fare evasion.
 - Regional councils in other regions developing revenue protection strategies. These strategies may include the use of warranted enforcement officers where appropriate.
 - Bus, ferry and train operators revising (and communicating) their Conditions of Carriage.
120. The NZ Transport Agency has amended its Procurement Manual to require all regional councils and Auckland Transport to:
- include fare revenue protection mechanisms in public transport service contracts
 - include a description of the approach to fare revenue protection in all requests for proposals for contracted public transport services
 - monitor fare evasion on their contracted public transport services (through reconciling monthly farebox revenue with patronage).
121. The Procurement Manual sets out the requirements that councils must meet when procuring public transport services.
122. A minor technical amendment to the Local Government (Auckland Council) Act 2009 was enacted in 2015. This amendment made Auckland Transport an enforcement authority for the purposes of prosecuting infringement offences relating to failing to pay a public transport fare.

Monitoring, evaluation and review

123. As noted in paragraph 117–18 above, Auckland Transport and Regional Councils monitor fare evasion on their public transport networks, although, as noted earlier, there are limitations with the current methods of estimating fare evasion. We will explore ways to improve monitoring
124. The Transport Agency does not monitor fare evasion directly, but monitors the impact of fare evasion on public transport farebox revenue and the effectiveness of the revenue protection mechanisms in place. There are two main ways that such monitoring is undertaken:
- through looking at trends in farebox revenue and patronage, which can show up any concerning trends in farebox revenue and patronage
 - through the audit function, which looks at council processes and conformance with the Transport Agency's requirements.