

Submission to WAKA KOTAHI NZ TRANSPORT AGENCY on the:

Sustainable Workforce Consultation

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

02.11.2023



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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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1. Introduction

- 1.1. The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) welcomes the opportunity to submit on Waka Kotahi's draft operational policy for a sustainable public transport workforce.
- 1.2. In April 2023, the CTU submitted in support of the Land Transport (Regulation of Public Transport) Amendment Bill, which we argued would help to improve New Zealand's public transport system. We supported the development of the Sustainable Public Transport Framework (SPTF) because it recognises that public transport is a critical public good, and that it has a role to play in providing good work, meeting our emissions-reduction obligations, and improving the connectivity and wellbeing of New Zealand communities.
- 1.3. We note that Waka Kotahi's draft operational policy seems to be largely designed for the continuation of the current practice of contracting out public transport services to private operators. In contrast, the CTU supports progressively returning public transport services to public ownership, as this is the best way to ensure this sector is a source of good jobs and that it provides reliable and sustainable services for New Zealanders. We note that the Land Transport (Regulation of Public Transport) Amendment Act enables local government to directly own and deliver public transport services.
- 1.4. This comment notwithstanding, the remainder of this submission identifies aspects of the draft operational policy that the CTU supports and provides recommendations for how it could be strengthened.

2. Comments and recommendations

- 2.1. The CTU recommends that proactive and meaningful workforce engagement is incorporated as a guiding principle and in the machinery of the operational policy. Public transport workers, and their representatives in trade unions, have on-the-ground expertise and experience of what does and doesn't work in service design and delivery and what good workplace conditions look like. To deliver on the four objectives of the SPTF, it is important that this expertise and experience is recognised in the process for setting and improving workplace terms and conditions, reviewing current settings, and managing transfers.

- 2.2. To this end, the CTU recommends that the operational policy establishes *specific and explicit* obligations for existing and incoming employers regarding the timeframes in which planning, tendering, operating, and other relevant information must be shared with workers and their representatives in trade unions so that they can meaningfully engage and influence decision making. In all areas, relevant information should be shared as early as possible, and engagement with workers should be thorough and meaningful.

A National Public Transport Workforce Steering Group

- 2.3. The CTU supports the proposal to establish a permanent, cross-sectoral group to oversee and help support a sustainable public transport workforce. We note that a balance between employer and worker representation must be maintained in this group.

PTA and operator collaboration

- 2.4. Notwithstanding our preference for public transport to be publicly owned and operated, the CTU supports greater collaboration between PTA's and operators. The suggested measure to seek input from, and co-design initiatives with, the workforce is welcome. The CTU recommends this is strengthened to the effect that employers are required to seek worker input and to meaningfully consider this input. This will help to ensure workforce conditions continuously improve in the bus sector.

Workforce Key Result Areas

- 2.5. The CTU supports the proposal to develop Key Result Areas (KRA), as this should help inform decision making and support public accountability. However, we note that if KRAs are to be effective, there needs to be clear mechanisms for addressing underperformance in, for example, workforce health and safety. Absent these mechanisms, KRAs will simply become a reporting exercise. While it is always useful to have good data on workforce conditions, the focus must be on using this data to *improve* workforce outcomes.
- 2.6. The CTU recommends that KRAs are developed through tripartite consultation. This will help to ensure that the issues workers care about, and have the relevant expertise on, are adequately captured by the KRAs.
- 2.7. The CTU supports the proposal to undertake annual employee surveys to understand worker satisfaction, conditions, and other issues. The results of the surveys should be shared with the trade unions who represent workers in the bus industry as well as with the CTU.

- 2.8. The CTU recommends that the results of these surveys are, along with the KRAs, used to inform an annual analysis from Waka Kotahi or alternative agency on the conditions of employment in the bus sector, any issues that need to be addressed, and recommended actions for improving working conditions.

Tendering and contracting

- 2.9. The CTU recommends that the proposals regarding tendering and contracting should be guided by the principle of supporting good terms and conditions and continuity of employment for bus sector workers.
- 2.10. The enactment of a Fair Pay Agreement for the bus sector will help to achieve this, by ensuring that minimum wages and conditions are sufficiently fair and competitive to deliver decent work and attract a skilled workforce.

Indexation and independent reviews

- 2.11. The CTU supports the proposal for a 3-yearly (or more frequent) independent review of bus driver terms and conditions.

Eligible employees

- 2.12. During transfer processes, every effort should be made to ensure all workers – including, but not limited to, bus drivers – who want to be retained are retained. The CTU recommends this is more explicitly reflected in the operational policy.
- 2.13. Waka Kotahi’s current proposal only covers those workers who spend the majority of their time driving buses for a PTA service. This leaves out a range of other important workers in this sector, such as bus cleaners, refuelers, service workers, and operators. The CTU recommends that the eligibility criteria are extended to cover all staff whose main job is on a PTA service.
- 2.14. The CTU notes the eligible/non-eligible distinction waters down the obligations employers already have under the Employment Relations Act 2000 s 69OI.¹

¹ s 69OI(2) reads:

For the purposes of this subpart, an employee is an **affected employee** if, –

(a) as a result of a restructuring, the employee is, or will be, no longer required by his or her employer to perform the work performed by the employee; and

(b) the type of work performed by the employee (or work that is substantially similar) is, or is to be, performed by or on behalf of another person.

- 2.15. The CTU notes that any reference to employment ‘contracts’ should be removed from the operational policy. Under the Employment Relations Act 2000, employment relationships are ‘agreements’.

Existing employer obligations

- 2.16. The CTU strongly opposes (f)(iii), which would restrict existing employers from creating a termination-based benefit during the pre-tender process. This is an unnecessary and unjustifiable restriction on workers’ right to seek redundancy. As a matter of principle, while it is reasonable to seek to limit unexpected costs for incoming employers, this must not interfere with workers’ right to seek redundancy.
- 2.17. The CTU recommends a further obligation is included in this section to the effect that the existing employer must proactively engage with workers and their trade union representatives as soon as practicable in the transfer process. We refer also to paragraph 2.2.

Incoming employer obligations

- 2.18. The CTU notes that the requirement to nominate the level of staffing expected leaves open the ability of tenderers to deliberately underestimate the number of workers they need in order to avoid taking on workers on substantively similar terms and conditions. Further clarification is needed from Waka Kotahi on how this risk would be managed.
- 2.19. The CTU recommends a further obligation is included in this section to the effect that the incoming operator must proactively engage with workers and their trade union representatives as soon as practicable in the transfer process. We refer also to paragraph 2.2.

Valid offer

- 2.20. The CTU is generally supportive of the proposed policy for valid offers.
- 2.21. However, the CTU recommends that 9(b) is revised to “Similar location, which should be assessed on a case-by-case basis”. While 30km may be an acceptable distance in some circumstances and for some workers, it should not be a blanket rule. In the case where the new depot is more than several km away from the previous depot, the existing employees should be provided with compensation for the extra travel required.

Treatment of accrued employee entitlement

2.22. The CTU supports the proposed policy for the treatment of accrued employee entitlements.

Information and activity requirements

2.23. As discussed above, it is important that there are explicit information and activity requirements that ensure the workforce, and their representatives in trade unions, are actively involved in the transfer process from pre-tender to the start of the new unit. This will help to ensure that the objectives of the SPTF are met during transfers of service. The current provisions for this are too weak and need to be strengthened, as we have outlined above.

3. Conclusion

- 3.1. This submission has identified aspects of the draft operational policy that the CTU supports and provided recommendations for how this policy could be strengthened to ensure that it supports the delivery of good jobs and reliable public transport services.
- 3.2. The CTU thanks Waka Kotahi for the opportunity to submit on this work. We look forward to further engaging with Waka Kotahi on the implementation of the Sustainable Public Transport Framework.

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