

INQUIRY INTO PRIVATISATION OF BUS SERVICES

Organisation: BusNSW

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BusNSW Submission to Inquiry into the Privatisation of Bus Services

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Introduction

BusNSW is the peak body for the NSW private bus and coach industry. Our members provide essential services and provide a key interface with the travelling public. BusNSW's mission is to foster the efficient and sustainable growth of public transport in NSW, and to promote the benefits of bus and coach travel.

Buses play a vital role in delivering public transport in NSW and prior to COVID carried around 330 million passengers per year. More passengers are carried by bus in NSW than by any other mode including rail.

BusNSW members provide bus services under Transport for NSW contracts in Sydney metropolitan and outer-metropolitan areas, and in NSW rural and regional areas. They also provide "non-contracted" services in the long distance, tourist and charter sector.

BusNSW understands that the focus of the Legislative Council's Inquiry is on the modelling, rationale and process of privatising bus services, and the impact that privatisation has had on the community who use bus services and the workers who provide them. The Inquiry will also consider the transition to an electric bus fleet and supporting infrastructure.

BusNSW considers that the model used to tender the Sydney metropolitan regions, where bus services were previously operated by the State Transit Authority (STA), is part-privatisation of government-operated services and would better be described as "franchising". Ownership of assets (buses and depots) and decisions regarding contracted bus services (which includes routes, timetables and bus stops) remains with the NSW Government. Further to this, the Independent Pricing and Regulatory Tribunal (IPART) is responsible for determining fares.

BusNSW questions the timing of the inquiry given the market process for the three STA regions (7, 8 and 9) is complete and the contracts have been awarded to private operators. BusNSW notes that eight metropolitan bus region contracts (where private operators had previously met Transport for NSW performance targets and value for money benchmarks) were put to tender by the NSW Government in 2012/13 and considers that it would be unfair for a government bus operator in the Sydney metropolitan area to avoid any competition.

Outlined below are BusNSW's comments in response to each of the Inquiry's Terms of Reference.

1(a). The modelling, rationale and process of privatising bus services

Following the 2004 Unsworth Review of Bus Services in the Greater Sydney Metropolitan area, the former state Labor Government determined that the way bus services were delivered needed urgent reform. As a result, the *Passenger Transport Amendment (Bus Reform) Bill 2004* was introduced to reform the arrangements for the planning, contracting and funding of bus services. The Bill introduced a maximum contract term of 8 years for private bus operators, introduced performance standards and reporting requirements within the contracts, and removed the automatic right of contract renewal for private bus operators.

Following the Unsworth Review, contract regions in the Sydney metropolitan area were reduced from 87 to 15, with these 15 larger regions considered to be the right size and scale for efficient operations. The new *Sydney Metropolitan Bus Service Contracts (SMBSC)* were progressively introduced from 2005. These contracts moved from a “net cost” to a “gross cost” model which underwrote efficient costs and provided the operator with a margin.

Under these new contracts all fare revenue was deducted from the monthly contract payment, which effectively meant that all fare revenue was returned to Transport for NSW (TfNSW). The contracts provided incentives when patronage exceeded expectations and required bus operators sharing a boundary to develop a formal agreement to foster cooperation and minimise service duplication (i.e., a neighbouring service provider agreement).

In 2011 following a change in Government, Sydney Metropolitan Bus Service Contracts for eight (8) privately operated regions were put out to tender, with seven-year contracts progressively awarded from mid-2012. New contracts for Sydney regions 10 and 13 were negotiated by the incumbent operator after agreeing to provide access to its bus and depot assets at the end of a second term. The regions operated by the government bus operator, STA, were not included in this competitive tender.

While several contract holders were awarded different regions under the tenders, there was only one new entrant added to operate Sydney bus services (Transit Systems in Region 3). Despite this, the government cited a saving of \$45 million per annum had resulted from the market process. A proportion of the savings were associated with STA’s Western Sydney Buses operation being transferred to a private operator.

After a public tender, the NSW Government contracted Keolis Downer to operate light rail, bus and ferry services in Newcastle (previously operated by the STA) from July 2017. The ten-year contract included the provision of on demand style services in some areas and greater focus on on-time running after the first pick up point.

In 2018, a private operator, Transit Systems won a competitive tender to operate bus services in Sydney’s Inner West (Region 6), which was the first Sydney metropolitan region formerly operated by the government operator (STA) to be tendered. Transit Systems began running the services and a new on demand solution in Sydney’s inner west from 1 July 2018.

In 2019, The NSW Government announced that it would be undertaking the next round of competitive tendering of Sydney metropolitan bus contracts and that the

three remaining STA operated regions (Regions 7, 8 and 9) were included in the tender process.

Tenders for Region 8 opened in June 2020 and closed in September 2020, with Keolis Downer announced as the successful tenderer in May 2021. Tenders for Region 7 opened in August 2020 and closed in December 2020, with Busways announced as the successful tenderer in July 2021. Tenders for Region 9 opened in November 2020, with a joint venture of Transdev and John Holland announced as the successful tenderer in November 2021.

The NSW Government announced the appointment of the three successful private operators to manage these contracts, citing cost savings of \$75 million (Region 7), \$100 million (Region 8) and \$200 million (Region 9) over the eight-year contract periods. When the Region 9 contract commences in April 2022 it will mean that all contracted bus services across NSW will be delivered by private operators.

Between January 2022 and September 2022, the remaining ten (10) Sydney metropolitan regions will be put out to tender in three tranches as follows:

- Tranche 1: Regions 4, 12 and 14. Tenders will open between January and March 2022, and contracts are expected to be awarded in June 2022.
- Tranche 2: Regions 3, 5, 10 and 13. Tenders will open between April and June 2022, and contracts are expected to be awarded in December 2022.
- Tranche 3: Regions 1, 2 and 15. Tenders will open between July and September 2022, and contracts are expected to be awarded in February 2023.

BusNSW notes that there were significant changes to the operating environment since a competitive tendering process for bus contracts across Sydney was announced in 2019. In 2020, BusNSW raised concerns regarding the renewal of Sydney Metropolitan Bus Service Contracts for private operator regions. There were two major considerations for government and industry at this time, which in BusNSW's opinion supported the negotiation of new performance-based contracts with incumbent operators as an interim arrangement (based on an adequate contract tenure).

Firstly, the impact of Covid-19 was far reaching and evolving on an almost daily basis at the time. For the near future, private bus operators would be focused on maintaining operations and taking care of the health, safety and welfare of their workers and customers. The commercial and operational impacts of the Covid-19 pandemic created a situation where privately operated businesses needed certainty as they progressed through a transition stage and prepared for a new normal.

Secondly, the pathway to transition to a zero-emission bus fleet. A negotiated contract renewal process would have allowed government to work with existing private operators who have a willingness to invest in the considerable infrastructure and energy supply required to charge electric bus fleets at their depots. The development of strategies relating to infrastructure investment, amortisation of costs and long-term access to bus depots owned by private operators could have been achieved via a negotiated contract renewal.

There are academic studies and evidence from other jurisdictions around the world which demonstrate that governments can design and conduct a negotiated contract renewal process that maximises the opportunity for incumbent operators to respond in an innovative way. A negotiated process does not preclude the introduction of new types of services, new types of buses and the delivery of the NSW Government's Future Transport 2056 strategy. This is supported by a paper titled "[The compelling case for returning to or continuing with negotiated contracts under the transition to a green fleet](#)" by David A. Hensher, Professor and Founding Director, Institute of Transport and Logistics Studies (ITLS), The University of Sydney Business School.

BusNSW recognised that the NSW Government had commercial reasons to franchise STA contract regions 7, 8 and 9 (refer above), however a decision to retender the other regions in the Sydney metropolitan area at this time did not provide these same opportunities due to the competitive tender undertaken previously. If a value for money outcome could not be achieved through direct negotiations with private operators, Transport for NSW would still have the option of proceeding to an open market process.

An option to maintain stability for communities across Sydney via negotiation with companies who have local knowledge and are prepared to make investments that support jobs and economic development was not taken up. BusNSW notes that the NSW Passenger Transport legislation provides government with flexibility when procuring bus services.

1(b). The impact on the commuting public through the loss of bus stops and services

BusNSW is not aware of any direct correlation between "privatisation" and a loss of bus stops and services. Network reviews are undertaken for all metropolitan contract regions from time to time, which can involve changes to routes, service frequency and coverage, connections and the positioning of bus stops. BusNSW understands that in parts of Sydney, the community and media have linked the review of public transport networks to "privatisation".

BusNSW is aware of commuter concerns regarding changes to bus stops and services in former STA Regions, particularly Region 9 in the Eastern Suburbs of Sydney. However, it should be noted that the private operator for this Region does not commence operations until 3 April 2022. These changes appear to have been made by government and are based around connections to other public transport modes, rather than any changes associated with "privatisation".

It should be noted that for all private bus contracts in the Sydney metropolitan area, the government retains control or ownership of the bus assets and has responsibility for planning and approving bus services (including routes, timetables and bus stops). Bus network reviews generally aim to provide better connections to where customers need to go for work, schools, health, and social and recreational activities.

BusNSW believes that the contracted operator is best placed to make recommendations about service improvements within its area of operation. Bus operators should be encouraged to provide innovative solutions as customer needs change through the contract term.

Currently, there is little support or incentive for operators to recommend changes to services. Under the contracts, operators can apply for service changes via a *Bus Service Alteration Request* (BSAR) process. Proposed changes can relate to growth associated with changes to demographics, whilst others can relate to requests from customers to improve convenience or safety. BusNSW recommends a more transparent method of assessing bus service alterations, including consideration of non-monetary benefits and other benefits to customers.

BusNSW believes that a network review process should be based on a trusting and quality partnership between bus operators and government. This provides the best opportunity for genuine consultation and customer outcomes. The success of bus services is centred around customer convenience including pick-up and set down locations, preferred travel times and not having to change services. Improved vehicle tracking technology and passenger information allows bus operators to actively monitor services and identify what alterations are required.

For any changes during the contract term, private bus operators in the Sydney metropolitan area have passenger relations plans to follow. These plans outline the consultation process required to ensure that there is minimal impact to the travelling public when implementing changes to services.

BusNSW notes that the Sydney Metropolitan Bus Service Contracts include strict Key Performance Indicators (KPIs) for punctuality and that monthly [on-time running results](#) are published. Until June 2017, Transport for NSW monitored on-time running through monthly surveys conducted over a sample period at the start of the trip. As of July 2017, the *Public Transport Information and Priority System* (PTIPS), which is a real-time data platform, replaced manual surveys as the source of information for these on-time running results.

The metropolitan bus contracts also include a number of customer service related KPIs that measure customer complaints, response times, passenger information and customer satisfaction. By publishing [Customer Satisfaction Index](#) results, Transport for NSW is able to drive accountability for continual improvement of customer outcomes across the transport network.

Failure to meet Transport for NSW contract KPIs can result in financial penalties (abatements) and possibly lead to the termination of a contract. As a result of these contract controls, BusNSW has the opinion that the “privatisation” of bus services in NSW is unlikely to have any detrimental impact on the commuting public.

1(c). The economic, social, safety, employment and environmental implications of bus privatisation

There are clear economic benefits from “privatisation” and little doubt that the private sector operates bus services far more efficiently than a government operator. This is supported by independent analysis undertaken in Australia over the past decade. For example, IPART’s 2016 Report into *Public Transport Fares in Sydney and Surrounds* found the relative cost efficiency between private and public bus operators in the Sydney metropolitan area was stark. That report found that private operators were “operating

at efficient costs” while those run by the STA required significant reductions in cost “to achieve the efficient cost benchmark.”

BusNSW understands that unit cost savings on transition from public to private operations can range from 20 per cent to as high as 55 per cent. Typical areas of greater efficiency include improved staff productivity, greater labour flexibility, better asset utilisation, more efficient procurement and leaner management structures.

As outlined above, the NSW Government retains ownership of assets (buses and depots) and control of service planning and fares under the “privatisation” model in NSW. For this reason, we consider that social impacts are not directly linked to “privatisation” and that social benefits can be achieved following the transition of service provision from a government operator to a private operator. As outlined above, operator input to the government controlled service planning process can help to achieve positive social outcomes for customers and the community.

With regard to safety, the NSW Bus Industry is highly regulated based on NSW Passenger Transport legislation. Bus operator accreditation has evolved since 1990 with the independent audit process commencing in December 2007. Each bus operator is required to develop and implement a formal Safety Management System (SMS) and Drug and Alcohol Program. The audit process requires operators to have one independent audit within each three year term of their accreditation to operate bus services in NSW. The operator’s SMS, Drug and Alcohol Program, bus maintenance and other safety issues are audited as part of this process. Further to this, bus operators are required to complete an Annual Self Assessment Report (ASAR) every year for submission to Transport for NSW.

The Sydney Metropolitan Bus Service Contracts also include safety related performance measures. This includes reporting on Incidents Due to Failure to Conduct Contract Bus Maintenance, Contract Bus Maintenance (Major Defects) and Preventable Accidents. As outlined above, failure to meet KPI targets can result in abatements and/or the termination of a contract.

The combination of the accreditation and contract compliance requirements outlined above means the “privatisation” of bus services is unlikely to impact safety. Data provided by Transport for NSW for vehicle inspections via the [Bus Industry Quarterly Dashboard Reports](#) indicates that there is already a high level of compliance for operators (private and STA) providing regular passenger services in NSW.

The market process for STA regions required operators to offer employment to identified categories of staff and confirmed that statutory transfer of business rules would apply to any transferring employees. BusNSW understands that the majority of staff are to receive an offer of employment with existing terms and conditions being guaranteed for 2 years. Following this the normal enterprise agreement bargaining process of negotiation between the employer, employees and their bargaining representatives would take place. As a result, the “privatisation” of bus services should have minimal impact on existing employees.

The Sydney metropolitan bus contracts now require battery electric buses to be procured, allowing government to address the environmental concerns associated with pollution and emissions from the diesel bus fleet. Whilst not linked to “privatisation” this has broader economic and social benefits. Modern technologies provide an energy source that is cleaner than oil, resulting in lower carbon dioxide and air pollutant emissions including nitrogen oxide and particulates. The cleaner and quieter vehicles provided by this technology create more liveable communities and better health outcomes for the population. They also have the potential to improve public perceptions of bus travel and thereby grow public transport patronage.

The introduction of Electric Vehicles is providing a considerable challenge for operators to transition to an “electric ready workforce.” There is a need for the development of accredited training qualifications and pathways for mechanics and workshop staff to address the safe handling of high voltage systems for electric buses. Broader training will also be necessary to develop the skills required to address changes to business practices and work health and safety, particularly for bus drivers and operational staff and contractors. BusNSW is involved with the development of micro skills training (short courses) for staff and a new nationally recognised unit of competency relating to the operation of battery electric buses and coaches.

1(d). The transition to an electric bus fleet and supporting infrastructure.

In 2021 Transport for NSW released the ‘Zero Emission Bus Transition Strategy’ to respond to the challenge of transitioning the bus fleet in NSW to zero emissions. The Strategy provides for the transition to Zero Emission Buses (ZEBs) according to the following sequence:

- Engage key partners and support industry readiness activities.
- Pursue ‘no regrets’ enabling activities, including hydrogen trials, to provide a foundation for full transition.
- Deliver a first phase, focused on Metropolitan regions, followed by strategic review; and
- Deliver at scale to target (from 2024) and move to business as usual.

BusNSW generally agrees with this approach. Given the level of change needed and that both engineering development of electric vehicles and options for generating electricity are still evolving, the introduction of electric vehicles and technologies needs to be managed on a progressive basis according to short, medium and long-term strategies. These strategies should not be a “one size fits all” model but need to be modified to reflect the different operating conditions and requirements that exist throughout the state. The sequence should support the ability to move between technologies as they evolve in order to avoid stranded assets.

BusNSW agrees that the initial focus of the Transition Strategy should be on metropolitan operators and depots where TfNSW has long term access rights (i.e., current and previous STA depots and private operator depots where TfNSW may have an interest). BusNSW notes that the NSW Government’s response to the parliamentary

inquiry into electric buses in NSW (published in March 2021) indicated that while infrastructure upgrades to government-owned depots will be funded by the government, the model for funding upgrades to privately owned depots is unclear. It is important that bus replacements continue at normal levels for metropolitan contract regions whilst a model for funding upgrades to privately owned depots is developed. This should be based on ZEBs with negotiated commercial arrangements for the installation of infrastructure and charging equipment. Bus service contracts and their mechanisms for bus procurement (via the Transport for NSW bus procurement panel) will play a vital role in managing the transition timeline.

Government may need to consider a new business model to operate electric buses where the partnership role and risk are clearly quantified. Bus operators will require assistance to make changes to operational practices including refuelling, maintenance, fleet and parts compatibility, and meeting new regulatory and compliance regimes.

The commitment in many countries to zero emissions at the tailpipe for buses opens up an era under transition with a new set of risks and uncertainties to both bus operators and the regulator. The switch to clean energy brings energy providers, both generators and distributors, as well battery pack and electric or hydrogen bus providers, and infrastructure specialists, into the mainstream of service provision, signifying that the risks in transition over the next 30 or so years should be shared amongst a larger set of upstream service providers who stand to gain through new opportunities from the transition. De-risking through greater sharing is common in many supply chain ventures and is an appealing way of transitioning to a green energy future for the provision of bus services. We promote the idea of a competitively defined supply chain partnership procurement model, implemented through tendering or negotiation, as a way of spreading the risk to all who will gain from this new future. This has the potential, without guarantee, to support many more bus operators staying in (or indeed entering) the industry to enable an effective competitive process, especially the relatively smaller operators who currently lack the expertise and knowledge to weather this transition, best described as an extreme event. (Hensher, D.A. Is it time for a new bus contract procurement model under a zero emissions bus setting? Transportation Research Part A, 25 March 2022).

With a transition to ZEBs, there is uncertainty in relation to who is best placed to manage risk in a number of areas. A solution could be a new supply chain model that is based on a partnership between all the key stakeholders in the chain, with the regulator and a committed bus operator being the main participants, but working closely with bus manufacturers, financiers, energy suppliers and infrastructure/charging specialists.

Private operators generally have a preference to manage the installation of infrastructure required to operate ZEBs at depots when they have ownership of the property. BusNSW supports a system where there are clear rights linked to the funding and ownership of the fixed and portable infrastructure and equipment required to operate ZEBs. Most private operators who own their depot would be willing to manage the risk associated with the installation and maintenance of ZEB infrastructure where there is a suitable mechanism to amortise the costs.

There is a need to ensure the supply of electricity is stable and abundant and is procured in a way that meets the NSW Government's environmental goals and economic expectations for bus operators. As demand for electricity to charge electric bus fleets grows there is a risk that electricity providers will increase prices. The significant uncertainty in relation to medium to long term electricity pricing means there is a need to have a suitable indexation mechanism for energy in TfNSW bus service contracts. Similarly, any strategies requiring bus operators to use "green energy" which we understand is higher than standard rates will require payment adjustments to bus operators.

The NSW Government needs to ensure a smooth supply pipeline to support electric bus production and after sales service. This will help to ensure the retention of qualified and experienced tradespeople with the specialised skills needed for electric bus transition. Technology grants, research and development grants, payroll tax exemptions and employment incentives should also be considered to support manufacturers and provide innovative solutions to government.

The NSW Government's plans to transition the diesel fleet to a zero emissions fleet will mean considerable upheaval for bus operators during the next term of their bus service contracts. There is significant uncertainty regarding the cost impacts of operating electric ZEBs over the medium to long term, and a limited understanding of how key performance indicators that are related to the operation and maintenance of the fleet will be affected.

The energy supply required for battery electric buses also means that operators are reliant on an electricity network and energy providers, with potential impacts on the provision of services being outside of an operator's control. Further to this, bus network reviews will need to be completed in order to establish what zero emission buses and charging technology is best suited to the respective routes, timetables, driver/vehicle shifts and operating environment.

The "privatisation" of bus services previously operated by STA is unlikely to impact on the transition to an electric bus fleet and supporting infrastructure given the NSW Government's ownership or control of bus and depot assets. Close engagement with industry is critical to providing sustainable infrastructure and bus operations.

1(e). The impact of bus privatisation on worker pay and conditions

The new contracts for private bus operators in Regions 7, 8 and 9 ensure that all bus drivers and maintenance staff currently employed by STA have their pay and entitlements guaranteed for two years from the commencement date of the contract. These staff also have accrued entitlements such as annual leave, sick leave, long service leave, superannuation and a three-year travel pass, carried over to their new employer.

Beyond this specific case, wages for drivers and maintenance staff are on par between private and public bus operators. For example, the weekly wage for a senior STA bus driver in 2020 was \$1114.30. For private operators, the weekly wage for bus drivers in private bus operations varied between \$1112.64 to \$1123.66. There are practical

reasons for this. Bus drivers across Sydney are in high demand and any significant pay gap is likely to result in the loss of drivers to a neighbouring operator.

The main difference between private and public bus operators is around operational requirements and scheduling efficiency. Greater flexibility is built into the individual Enterprise Agreements of private operators than in the *State Transit Bus Operations Award*. By way of example, clause 35.4 of the STA Award allows drivers to return to the depot for their meal break and to be paid for that travelling time. Private operators have far more flexibility in allocating meal break locations for drivers, allowing for more efficient scheduling and minimising “dead running”.

BusNSW acknowledges that in some cases the transition from the government operator to a private operator has resulted in two different agreements applying to drivers working from the same depot (i.e., legacy STA drivers who have remained under existing STA terms and conditions, and new drivers who have been employed after the contract commencement date and work under a private operator Enterprise Agreement). BusNSW notes that the Transport Workers Union has sought assistance from the NSW Government to address this issue via support for consistent pay and conditions.

1(f). Any other relevant matter

The *Passenger Transport Act 2014* was the outcome of the first comprehensive review of passenger transport legislation since the Passenger Transport Act was enacted in 1990. In 24 years much had changed in the delivery of public transport. Transport legislation needed to enable a modern, flexible and integrated public transport network driven by the needs of customers.

Since the 2014 Act was published the NSW Passenger Transport Regulation has not been updated (other than renaming the Regulation in 2017 due to the 10 year life of the regulation expiring). BusNSW has the view that parliamentary resources should be used to explore opportunities for improvements to the NSW Passenger Transport legislation. For example, BusNSW has been seeking changes in regard to the following.

- First, an amendment to the *Passenger Transport (General) Regulation 2017* to permit test supervisors to request transport safety workers to provide a sample of oral fluid (saliva) for the purpose of testing for the presence of drugs, as an alternative to a urine sample.
- Second, an amendment to the *Passenger Transport (General) Regulation 2017* to allow a person who is 20 years of age and holds an unrestricted licence, to be eligible for a Bus Driver Authority (rather than 21 years of age). This would assist to resolve current bus driver shortages in NSW.

Conclusion

The NSW Government uses several different procurement strategies to procure bus services which include open tenders, direct negotiations with operators and industry-based negotiations, which are all designed to ensure there is a fair market outcome for taxpayers.

There is a need for each type of procurement to have a mechanism that facilitates a fair allocation of risk, given the current uncertainty of operating a fleet that will have a growing proportion of ZEBs during the operator's contract term.

A key challenge for government is how to best share the risks associated with transitioning to ZEBs without denuding the market of players going forward. All players in the supply chain have a lot to learn in delivering services post-transition in a cost-efficient and cost-effective way.

The NSW Government's current strategy for Sydney metropolitan bus contracts is essentially moving to a management contract where most of the asset risk is carried and covered by the state. BusNSW considers that there has been a missed opportunity to negotiate performance based contracts and resolve depot access and ZEB infrastructure issues for private operator regions in the Sydney metropolitan area.

Thank you for the opportunity to contribute to this inquiry. If you would like to discuss these comments in more detail, please do not hesitate to contact me

Regards,
Matt Threlkeld
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