

INQUIRY INTO PRIVATISATION OF BUS SERVICES

Organisation: Rail, Tram and Bus Union of NSW

Date Received: 30 March 2022

The Tram and Bus Division of the Rail, Tram & Bus Union of NSW thanks the parliamentary committee for the opportunity to provide a submission into its investigation of the privatisation of the government run portion of the Sydney bus network.

Of the 15 Sydney Metropolitan Bus Service Contract (SMBSC) areas (Regions), the government provider, the State Transit Authority (STA) previously operated the 4 'core' Regions. Regions 6, 7, 8, & 9 together account for over 75% of daily bus services in Sydney. The government move to privatise these areas has to date provided no tangible benefit to either taxpayers, commuters, or workers.

The Liberal/National led State government has allowed ideological concerns to negatively impact the provision of passenger transport in the State's capital city via its pursuit of privatisation. These impacts have been several and varied, and at no time has the government or its agencies offered evidentiary based explanations as to why privatisation has been necessary or even beneficial. It should be noted that during this process, at the direction of the Transport Secretary the STA was directed not to enter into the tender process for any of the Regions, ensuring that the competitive tendering process suffered no competition from the public sector.

Region 6.

Prior to the announcement of the privatisation of the inner west of Sydney in May 2017 bus drivers were told, via a recorded video that all STA employees were directed to watch on paid time, that a new 5 year contract had been secured. This message was conveyed by then CEO Peter Rowley who confirmed that then Transport Minister Andrew Constance had made this commitment him, and commended staff for their successful implementation of a series of reforms designed to streamline services. Mere months later, the Region 6 tender was announced and the STA CEO had moved on.ⁱ Despite the acknowledged work in improving STA service delivery, the decision to privatise appeared to have been made and the minister was unsurprisingly supported by those who stood to gain the most.ⁱⁱ Other industry lobby groups were also working hard behind the scenes to ensure that the case was being made to privatise bus services and the potential corporate profit unlocked.ⁱⁱⁱ

The public face of the reasoning at the time was varied and often unsubstantiated. It included comparisons regarding complaint rates between bus services in Penrith (Region 1) and the Inner West (Region 6), as well as the performance of the government operator.^{iv} The first wholly ignores the extreme differences in operational environments between the Regions in question, as well as making the comparison without regard to adjusting for the difference in trips made or passengers carried per day. The second ignores that the government itself, specifically Transport for New South Wales (TfNSW) as the corporate embodiment of the government provision of transport services, is responsible for the STA performance.

Any shortcomings in the STA contractual outcomes could and should have been rectified by the NSW government, not allowed to continue and then be used as justification for turning services over to a private operator. A similar angle was taken after the Newcastle privatisation where it was claimed that the Minister had 'rescued' the Newcastle transport network. Here too, reasoning was light on numbers and information deliberately misrepresented to support the decision. Indeed, after having this brought to his attention in parliament, Minister Constance glibly brushed off the deception.^v

The STA had, in 2014 asked for extra funds to address network issues that had become apparent over time. This was to be paid for by redirecting \$5 million of the savings the STA had made that year into various initiatives to increase performance, in particular on time running which is a top tier KPI. This is reasonable and necessary; a transportation network, road in particular, is an organic system which needs flexibility to respond to various changes in a fluid operational environment. These can be internal and external, as well as structural. This request was rejected, and for two years the travelling public were subjected to deliberate and unnecessary delays in order to drive up complaints and reduce KPI compliance by the STA. TfNSW eventually agreed to commit \$7.5 million to improve performance across all of the STA operated Regions.^{vi} It remains one of the most glaring examples of the cynical politicisation of an essential service. Prioritising the future ideologically based position to the detriment of the general public and end users at the time. It is worth noting that the inner west of Sydney is bar one exception, held by Labor and Greens elected representatives.

The privatisation of the inner west was also the first time that workers saw the bare face of the intent which motivated it. Having long been promised they would be no worse off it soon became apparent to employees that TfNSW had approved a tender based on the business model of a two-tiered workplace. Ex-STA employees are more expensive in terms of overhead cost when compared to the new employees and so began a steady reduction of their work. This was facilitated by the differences in the relevant industrial instruments of each group which provided for differing maximum work hours among others. A second roster was created for new employees with shifts that the ex-STA drivers were unable to undertake due to these differences. Existing rosters of ex-STA employees diminished as work was moved from one roster to the other and employees with decades of public service to their credit had their regular work disappear and were left unsure of their day-to-day hours and earnings. This process began in 2018 and continues to this day. While all operators have proven to be nuanced in their strategic approach to managing the new contracts, none have been as mercenary or adversarial to their workforce as Transit Systems Pty Ltd (and their many related bodies corporate). We should remember that the company was hand-picked by the government with full knowledge of the business plan they were delivering their staff into.

Regions 7, 8 & 9.

TfNSW learnt from previous experience in Newcastle where the TfNSW directed changes immediately after privatisation drew strong community anger toward the incoming company. Service rationalisation in all remaining Regions was conducted prior to privatisation so as to shield the reputation of the incoming operator^{vii}. As with Newcastle and the Inner West, there was no community consultation for this process in contravention of the TfNSW Community Engagement Policy.^{viii} Predictably, this left a fundamental disconnect where one set of data (OPAL) was being relied upon as the sole metric of service validity as related to patronage level. Issues then arose from the fact that Opal data should be considered indicative only and does not take into account the circumstances of for example, a limited weekend service that caters to a retirement village, or school children that don't tap on. The end result was an operational outcome ungraciously trying to use an incomplete description of service usage as a roadmap for real world service delivery. This produced a predictable outcome in Region 8 (Northern beaches) which was the next Region to be privatised.^{ix}

Similarly, Region 7 (Northwest Sydney) suffered a complete lack of consultation. Residents and drivers protested and the City of Ryde council was ultimately forced to publicly point out that TfNSW standard operating procedure was to ignore their own policy requirement to consult end users regarding service changes.^x In both Regions 7 and 8, alterations to the planned service changes were subsequently made but were cosmetic to the overall design of the network. The direction to change anything was political in nature and only followed negative publicity. It is worth noting that in Region 7 and 8, there was nothing but support for privatisation from elected Liberal representatives in the form of the previously established justifications of the government.

Region 9 (Eastern Suburbs) services were in the unique position of being home to Labor representatives with a recent demonstration of privatisation to learn from and therefore the political sensitivity for TfNSW was significantly higher. High community engagement was understood to be a factor from the start and from a political perspective had to be neutralised. The result was a process that delivered the TfNSW policy for the first time ever in relation to the network overhaul that accompanies privatisation.

Part report back, part sales pitch, the 32 page 'Consultation Summary'^{xi} was everything that the public of the other Regions subject to privatisation should have been afforded. The fact that it came at the point of sharpest social resistance and greatest political opposition to the privatisation process can be no coincidence, particularly in light of its previous absence. The people of the Eastern suburbs were given due consideration for no other reason than it was required to achieve a political outcome. The irony is that in negotiations with the union over a planned 48 hour stoppage (described below), the minister made a verbal commitment to have TfNSW put in writing that the community and commuters would be consulted over any future changes. This was soon reneged on in favour of pointing to a policy that no one had been adhering to.

Workers.

As previously described the workers of Region 6 have been and continue to bear the burden of government acquiescence to corporate drive for profit. This brought learnings for the union and avoiding a two-tier workplace in the future became tied to the imperative of preserving conditions hard won over the last 90 years. As a result, discussions with TfNSW led to the inclusion of an 'Special Purpose Vehicle' (SPV^{xii}) clause, after proof of the financial disadvantage being experienced in Region 6 was provided to them.

Designed to stop the employing entity from employing workers pre-transmission of business, the SPV was purported by TfNSW to ensure there would be no two-tiered workforce in the future. As a matter of operation of the Fair Work Act 2009, when a State Award moves into the federal system, it becomes a Copied State Award.^{xiii} This is essentially a snapshot of the Award as it existed at transition which follows relevant employees for 5 years unless terminated. The SPV, while discouraging the introduction of another industrial instrument through intent, does nothing to stop it from happening in several industrial scenarios. The union had pointed this out but were unsuccessful in securing further changes to the SPV clause.

The threat of a 48 hour bus strike in August 2020 was primarily over privatisation but was widely reported as being COVID related due the pandemic.^{xiv} After discussions with the division and union consultation with its members, it was agreed to arrange a 2 hour meeting for all STA bus drivers during work time to allow TfNSW to address employee concerns of a two-tier workplace after the privatisation of the rest of the STA. At this meeting, senior TfNSW managers made the verbal commitment via simultaneous video conference to the staff of all 8 bus depots in Sydney that there would be no two-tiered system following privatisation. The commitment was made to all employees that it simply couldn't happen. While the union obviously welcomed this, concerns remained about the capacity of the SPV to act in the way it was portrayed. A back and forth of correspondence on the issue ensued and TfNSW remained firm in their view. Further, they cited legal advice that in the transmission of business, there was no opportunity for a Greenfield Agreement to be made- another avenue for two work conditions to co-exist. As a last-ditch effort, the RTBU asked for a contractual inclusion with a sunset clause that would have mitigated the roster differences that Region 6 had shown were so detrimental workers and their ability to meet financial commitments. This was refused.

While the union has been able to work progressively with the new operators of Regions 8 & 9 this was by consent and effectively leveraged company desire for a smooth transition into the preservation of STA Award conditions. Region 7 on the other hand became a salutary lesson for TfNSW as to why the union held concerns regarding the purported safeguards in place. The new operator of Region 7 made an application for and had approved a Greenfield Agreement prior to taking over, setting up the framework for a two-tiered workplace. The union appealed this to the Fair Work Commission (FWC), and ultimately to the Federal Court for full bench review. An outcome is still pending for that matter. Subsequent to this, the company was either given permission or successfully argued for the right to employ workers in the SPV pre-transmission. An Enterprise Agreement was then approved to cover less than 10 employees and now acts as a back up to the Greenfield Agreement should that be struck down. Region 7 was now guaranteed to inherit the Region 6 experience of a two tiered workplace.

Through constructive negotiations and in the context of the wider tender for many SMBSC contracts over the next 12 months as well as a depressed labour market, the company has agreed to negotiate a single agreement with a single set of conditions. If approved by employees, this will likely cost some of the rights and conditions won over the last 90 years of public bus provision. Yet another delivery of employees into a situation where they are going to be worse off and TfNSW had full knowledge of that fact before it happened.

In Region 6, unions continue to work to unify conditions while the company is adamant in its pursuit of inequality in the workplace. Differences between the workgroups (new vs old) in Region 6 include-

- 13 hour broken shifts vs 12 hour broken shifts.
- No toilet breaks scheduled between trips vs 6/8 minute breaks for most routes.
- 4 weeks annual leave vs 5 weeks annual leave.

There are many more, but these are the starkest. For over 3 years, workers and unions have been trying to fix a situation where the government deliberately forced employees into having their lives reduced to the quantum of a business overhead. The company remains committed to its original vision of cheaper employees no matter the human cost and further industrial action and service

disruptions are inevitable. In all cases of privatisation, it has fallen to unions to fight to make good the government commitment to workers that no one will be worse off.

The Public.

As discussed previously, commuters in both the inner west and other parts of the STA operations of the time had been dealing with sub-standard timetabling and services as TfNSW denied funding to update many of the operational inputs that facilitate on-time running. This led to the STA reporting to TfNSW that "...many adverse findings and customer experiences would have been averted if Transport for NSW had responded pro-actively to proposals in 2014 to improve on-time running of buses."^{xv}

The methodology for timetable reviews now rests primarily on OPAL data and given the incompleteness of the outcomes which reliance on that matrix is delivering, the issue cannot be said to have been wholly solved even now. To use generational technological change as a lever to progress the privatisation agenda, with full knowledge of the imposition on those who pay for the service is cynical beyond belief. To do it for two years is a devotion to ideology that will suffer no competition and ethically base.

A further by-product of privatisation is the introduction of another layer of responsibility before the blame for any transport issue reaches political circles. TfNSW also acts in this capacity and has been used on several occasions to divert politically sensitive issues away from the political realm. On occasions where the private operator is blamed for something, the mechanism of competitive tendering is held as the time of judgement where consequence will be weighed, and the public should take solace in that. This is of little help at the time and never eventuates.

Another issue of this administrative distance is that day-to-day alteration of services offer no opportunity for genuine feedback. It is quite a normal occurrence for passengers to turn up to their bus stop and find an A4 notice in a plastic sleeve telling them that services are changing, or their bus stop is being closed or moved and to call TfNSW to provide feedback. There is no instance where that feedback has had any impact in changing the planned outcome unless coupled with negative publicity such as in Newcastle or the Northern Beaches. While it is not feasible to consult in depth about every network change, there remains a fundamental gap in communication and accountability that could be met with something more constructive than casual disregard and dead-ending feedback.

The experience of transport services is also changed by the profit driven imperatives underpinning its new organisation. Passengers are now customers, and where previously profitable services would be utilised to offset the cost of unprofitable routes that meet a social demand, all services are now judged by the matrix of patronage and revenue return with human consideration removed. Public transport is supposed to facilitate people with no other option a way to travel and engage as functional members of society. It is a public service and has direct impacts on the quality of life of millions of people. In prioritising the creation of political distance and the opportunity for private companies to carve out a profit, the privatisation process has and will continue to erode the services that underpin the ability of the most vulnerable people in society to enjoy meaningful lives.

There are many services which are a legacy of historical requirements that may have been forgotten beyond the depot level. These services do not find a place in the new matrix used to determine service priority. The impact on a pensioner, or person with no car, or those with mobility issues or a myriad of others who rely on public transport as a crucial part of their lives is being ignored as they are reduced to an OPAL tap in a ledger. Decisions made at the desk of TfNSW planners, the TfNSW contracts department, or political representatives who do not travel the services in question yet impersonally reach out to negatively affect the lives of people that do, cannot continue with such disregard for genuine accountability or transparency. A public service must provide a public service, not a for-profit approximation of its former self.

Conclusion.

There remains a void in the evidentiary justification of why privatisation is a good thing for workers, commuters, or taxpayers. No positive business case has been sustained compared to the STA, which consistently returned millions by delivering services below budget annually. There has been no analysis provided of a breakdown of operational costs between private and government run operations in any of the 4 metropolitan Regions (or Newcastle in the Outer Sydney Metropolitan Bus Service Contract Region). There has been no explanation of the cost of breaking up a bus service which utilised cross Regional assets into individual non-supportive constituent Regions fit for bidding. This followed the strengthening of cross-regional operational ties by ex-STA CEO Peter Rowley in the search for cost savings via operational efficiencies.

Usual claims of more services or extra kilometres travelled after each service review or privatisation is no indicator as to real world service improvements and of no value in calculating anything except revenue per kilometre or operational overheads. Extra buses are often touted but it is never explained where they came from; the ebb and flow of assets behind the scenes is never explained and upon that absence a picture is drawn of ongoing improvement that is unjustified. It is never explained for example, that companies buy new buses and the government then leases them back for 15 years before taking ownership so as to keep them off the government budget bottom line but at a cost to taxpayers. Similarly, linking privatisation to the electrification of buses is meaningless when government is the body approving purchases and could do so for a public operator as well as a private.

Every reason given to date has been backed up by misrepresented figures or the use of complexity to obfuscate the true operational situation and capacity of the parties and decisions concerned. Politicised commentary is also in plentiful supply, as evidenced by government speakers at one of the last privatisation debates where the Liberal member for Vaucluse sagely compared the on time running of busses to ferries yet somehow forgot that the harbor has no road congestion. Such deliberate muddying of the waters speaks of reasoning that has no genuinely defensible basis which has characterised the entire process.

There is a duty of care, to workers, the communities they live in, and the people who rely on public transport as a public service. This is being wholly and callously ignored by a succession of Transport Ministers and their Liberal/National governments in favour of securing corporate benefit and political convenience. It has been shown throughout the process of privatisation that the self-touted

superior economic management of the Coalition has delivered nothing in the way of improved service or savings to the passengers or taxpayers of NSW. Instead, it has served up a vital public service as a buffet for corporate interests to profit from at the expense of those who pay for it.

ⁱ <https://www.governmentnews.com.au/bjus/>

ⁱⁱ <https://www.busnews.com.au/industry-news/1702/new-era-for-nsw>

ⁱⁱⁱ <https://tramandbusexpress.com.au/sta-ceo-comes-out-swinging-in-defence-of-buses/>

^{iv} <https://www.theguardian.com/news/datablog/2017/may/23/factcheck-just-how-bad-are-buses-in-sydneys-inner-west>

^v <https://www.newcastleherald.com.au/story/5337392/transport-minister-claims-government-rescued-newcastle-bus-network/>

^{vi} <https://www.smh.com.au/national/nsw/transport-authorities-frustrated-pleas-to-improve-bus-ontime-running-internal-report-20170829-gy6l9r.html>

^{vii} <https://www.facebook.com/watch/?v=10156018835992591>

^{viii}

https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/TP_Community_Engagement_Policy_2013.pdf

^{ix} <https://manlyobserver.com.au/balgowlah-bus-fury-after-school-kids-left-stranded-transport-issues-apology/>

^x <https://www.ryde.nsw.gov.au/Council/Media-Centre/News-and-Public-Notices/Council-not-consulted-on-controversial-bus-changes>

^{xi} https://www.mysydney.nsw.gov.au/sites/default/files/2021-10/SE%20Bus%20Changes_Outcome%20Report.pdf

^{xii} <https://www.investopedia.com/terms/s/spv.asp>

^{xiii} http://classic.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s768af.html#copied_state_instrument

^{xiv} <https://www.theguardian.com/australia-news/2020/aug/20/bus-strike-scheduled-for-sydney-cancelled-after-government-agrees-to-review-covid-mask-advice>

^{xv} <https://www.smh.com.au/national/nsw/transport-authorities-frustrated-pleas-to-improve-bus-ontime-running-internal-report-20170829-gy6l9r.html>