

**Submission  
No 258**

## **INQUIRY INTO PRIVATISATION OF BUS SERVICES**

**Organisation:** Transport for NSW

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# **Transport for NSW submission**

Portfolio Committee No 6 – Transport and Customer Service

*Inquiry into privatisation of bus services via the Sydney Metropolitan Bus Contracts*

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## Introduction

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Bus services in metropolitan Sydney are delivered across 14 geographical regions. Historically, services across these regions have been operated and maintained through a mix of government operations, through the State Transit Authority (STA), and franchised arrangements through private transport operators.

Over 130 million bus journeys are undertaken each year in metropolitan Sydney, and in the most recent customer satisfaction survey conducted on behalf of Transport for NSW (TfNSW) overall satisfaction across metropolitan Sydney bus services was 93 per cent. This is up from 79 per cent in November 2012, and 89 per cent in November 2017.

The franchising model adopted by TfNSW is very different to privatisation. Franchising leverages experience from private industry, whilst maintaining Government controls to ensure outcomes for commuters aren't compromised. Ownership of buses and depots as well as control of fares routes and timetables is retained by TfNSW and this ensures ongoing safety and service standards. Since 2011, TfNSW has awarded contracts for bus services across the metropolitan Sydney regions via a competitive tender process. This process is governed by the probity principles of transparency and fairness.

The bus services are not 'sold' and private bus operators do not pay Government to obtain the right to run a bus service. Instead, tenderers demonstrate through the tendering process that they are best placed in that region to provide outstanding services to customers and deliver the best value for money. The respective service contracts allocate risk appropriately between Government and the private bus operator and ensures the interests of NSW taxpayers are maintained.

The successful tenderer is only paid for the agreed services that have been delivered via a monthly fee. This fee is adjusted by abatements or performance payments dependent on actual performance against contract key performance indicators.

Under the franchising model, existing assets are not sold. The existing bus fleet and depots in the regions previously operated by STA remain owned by the NSW Government and are provided under a lease agreement to the private bus operators for the duration of service contracts. The obligations to maintain these assets are very specific and ensure that fleet and depots remain well maintained.

Importantly, as part of the franchising model used in across metropolitan Sydney, is that private bus operators may not alter the timetable, remove bus stops or change routes. TfNSW is responsible for the network design and any changes that occur in response to changing demand. Fares are set and fare collection methods, including Opal and contactless payment systems, are operated by TfNSW. The NSW Government retains the revenue from the operation of the bus services.

## Bus Region Operators

Region	Private Bus Operator	Suburbs covered in the region
One	Busways Blacktown Pty Ltd	Blacktown, Mt Druitt, Penrith
Two	Interline (Ingleburn Bus Services Pty Ltd)	Liverpool, Bringelly, Leppington, Edmondson Park, Glenfield, Minto, Campbelltown
Three	Transit Systems (NSW) Liverpool Pty Ltd	Fairfield (Parramatta, Fairfield, Liverpool)
Four	Hillsbus CDC Pty Ltd	Hills (Parramatta, Blacktown, Hills, Hornsby)
Five	Punchbowl Bus Company	Bankstown/Canterbury (Punchbowl, Bankstown, Canterbury, Hurstville)
Six	Transit Systems West	Inner West, CBD, Rockdale, Canterbury, Burwood, Kogarah, Sydney Airport, Campsie
Seven	Busways North West	North Shore and West (Chatswood, Epping, Macquarie Park, Ryde, Lane Cove, Willoughby)
Eight	Keolis Downer Northern Beaches	Northern Beaches (Wakehurst, Manly, North Shore)
Nine	State Transit Authority <sup>1</sup>	Eastern Suburbs (Bondi, Kingsford, Maroubra, Randwick, Coogee)
Ten	Transdev NSW South Pty Ltd	Sutherland, Menai, Taren Point, Miranda
Twelve	Transdev NSW Pty Ltd	Chatswood, Gordon, Hornsby, Berowra
Thirteen	Transdev NSW South Pty Ltd	Bankstown LGA (Bankstown, Parramatta, Liverpool)
Fourteen	Forest Coach Lines Pty Ltd	Northern Beaches
Fifteen	Busabout (Neville's Bus Company Pty Ltd)	Campbelltown

# Response to Terms of Reference

## 1(a) the modelling, rationale and process of privatising bus services

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The franchising model is common across many Australian and international jurisdictions. Before the franchising of STA Regions Six, Seven, Eight and Nine, only 10.5 per cent of Australian Urban Bus and Tramway industry activity was linked to the provision of scheduled bus services by the public sector.

Until April 2022, with the exception of Region Nine, all bus services in NSW are operated and maintained through a franchising model with private transport operators. The delivery of these services is oversighted by TfNSW to ensure that high quality and reliable services are delivered.

### Modelling and rationale

Bus patronage in metropolitan Sydney increased by over 50 percent in the six years prior to the commencement of the COVID-19 pandemic.. A growth rate surpassing all other forms of public transport.

The prevalence of the franchising model throughout transport services in Australia reflects what can be achieved when governments partner with the private sector. These partnerships have been proven to generate the opportunity to transform a one-size-fits-all model of service delivery into a service delivery model with multiple service types, including high-capacity routes and local and on-demand travel. Private bus operators develop expertise and bring innovation, investment and career opportunities for their employees and local relationships with the communities they serve.

Specifically, the franchising process in Greater Sydney has delivered greater value for money, service uplift and embedded social outcomes, which is outlined in the section titled 'Outcomes Achieved'.

The franchising model means TfNSW continues to retain control of the routes, timetables and bus stop locations. TfNSW will continue to set performance standards and monitor performance, to ensure service quality.

These principles are strongly embedded throughout the tender processes and the resulting passenger service contracts. These ensure that TfNSW can enforce these performance standards as a civil penalty under section 38 of the *Passenger Transport Act 2014 (NSW)* should any private bus operator fail to meet these standards. Further, the contract term is eight years after services commence, with a right for TfNSW to terminate at five years, should the operator not achieve certain performance benchmarks.

### Franchising process – Regions Seven to Nine

TfNSW commenced in-depth engagement with all industry participants, including private bus operators. Engagement was also undertaken with unions, industry peak bodies, technology providers, financiers, transport agencies in other jurisdictions, academics and advisors.

In December 2019, this engagement started with an industry briefing for Regions Seven to Nine, followed by an extensive market sounding process throughout December 2019 and January 2020. Organisations were invited to participate through the NSW Government's

eTendering website, supported by additional communications to known stakeholders, to ensure all potential interested parties were identified. Nineteen organisations participated through face-to-face discussions and a further thirteen written submissions were received. The engagement focussed on:

- Procurement packaging and tranches
- Access to information in data room
- Length of contract term
- KPIs, incentives and abatements
- Network optimisation and service design
- On Demand services
- Assessment of asset condition
- Zero emissions buses and infrastructure
- Bus depots
- Financing options.

Two further market sounding activities were subsequently conducted, focussing on driver training options and the COVID-19 pandemic's impacts on bidder's ability to participate in tenders and transition services.

TfNSW's procurement strategy and tender requirements were developed after considering all market sounding inputs, and were in alignment with:

- TfNSW's strategic directions and governance needs
- Requirements under the NSW Government's Procurement Policy Framework
- Transport cluster's procurement accreditation.

It was determined that an open tender would deliver the best procurement outcome, allowing any organisation with proven operational experience in a similar metropolitan environment, to participate. Each of the three operated regions were released as an individual Request for Tender in a staggered fashion. This was to ensure tenderers could devote adequate resources to each region and ensure that the specific needs of each region could be met.

Wherever possible, data was released early to bidders through a 'Virtual Data Room', to maximise the preparation time to prepare offers and ensure maximum visibility of the existing operations. Bidders could engage with TfNSW through the tender period via interactive sessions, or by submitting written questions through the data room; allowing participants to seek clarification, test ideas and ensure proposals met TfNSW's requirements.

Several offers were received for each region, resulting in a highly competitive process that generated significant additional value. The evaluation process considered a range of criteria in a structured and rigorous process and was conducted by a range of subject matter experts from across the Transport cluster and other NSW Government departments. External legal and financial advisors were also used in the evaluation and subsequent negotiation of the final contracts.

Importantly, TfNSW and STA management continued to provide regular updates to the STA workforce, who would transfer to the successful private bus operators throughout the tender period. A significant number of briefings were held, a dedicated website and email address were created, and a transition handbook was made available. Several information desk sessions were held at bus depots throughout the period, attended by both STA management and members of the TfNSW procurement team. Staff were able to drop in, discuss the franchising process and to provide feedback.

Independent probity advisors from Procure Group Pty Ltd supported the procurement process. Procure Group prepared a probity management plan and were present throughout the process. This was to ensure the plan was followed, transparency and fairness were maintained, and to provide an avenue for any concerns to be raised independently from TfNSW.

The procurement process was also subject to NSW Government's Recurrent Expenditure Assurance Framework<sup>2</sup>, and to three independent reviews throughout the tendering period in accordance with this framework's requirements.

## **Learnings and opportunities**

The contract requirements and tender assessments included a number of key learnings and improvement opportunities, captured over previous contract cycles and tendering activities. This included an increased focus on the importance of real-time, accurate data, enhanced responsibilities during disruptions. This aimed to improve information for customers and obligations to support disruptions in other public transport modes, both planned or unplanned, thereby enhancing TfNSW's ability to manage the integrated transport network holistically, and a focus on the requirements of an end-to-end customer journey.

Due to the staggered timing of the tenders for each of the three regions, it was possible to capture learnings and improvement opportunities for subsequent tenders. All participating tenderers were provided detailed feedback of both a general nature and specific to their tenders. This was to ensure bidding organisations understood TfNSW's requirements and subsequently had the opportunity to improve their future tenders.

## **Outcomes achieved – Regions Seven to Nine**

All successful tenderers demonstrated advanced approaches to scheduling and rostering, safety management, asset management, workforce management, stakeholder engagement and customer experience. In addition, all successful tenderers put forward several innovations that demonstrated their expertise and their ability to partner with TfNSW to improve customer outcomes over the life of the contract. While many of these require further development, there are contract obligations to work collaboratively with TfNSW to bring these to fruition during the contract term.

### **Region Seven**

The key benefits derived from this region's contract include:

- Over \$75 million in operational savings
- 35 zero emission buses, including associated depot infrastructure
- Smart bus stops and passenger information displays at key interchange locations.

### **Region Eight**

The key benefits derived from this region's contract include:

- Over \$100 million in operational savings

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<sup>2</sup> NSW Treasury webpage: <https://www.treasury.nsw.gov.au/information-public-entities/governance-risk-and-assurance/recurrent-expenditure-assurance-framework>



- 125 zero emission buses, including associated depot infrastructure
- Partnerships with TAFE NSW for the development and delivery of training programs for drivers and maintainers of electric buses
- Deployment of the Headway Management solution, which optimises customer outcomes on high frequency routes, such as the B-Line
- Digital passenger information displays at major interchanges and other key locations
- Retention and expansion of the successful On Demand service.

### **Region Nine**

The key benefits derived from this region's contract, due to commence in April 2022 include:

- Over \$200 million in operational savings
- 136 zero emission buses, including associated depot infrastructure
- ePaper passenger information displays at key interchange locations
- Advanced forecasting and modelling approaches, to anticipate rapid peaks in demand associated with the eastern suburb beaches.

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

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TfNSW is responsible for the planning and approval of changes to each and every bus route and timetable across Greater Sydney.

## Service change process

Planned service changes to bus routes and timetables will be introduced from time to time. For example, the introduction of timetable changes to support customer access to new transport projects, such as to the Sydney Metro, CBD and South East Light Rail, and Parramatta Light Rail. Other reasons for service changes are to better reflect changes in travel demand, and alignment with long-term transport strategies. Service changes can also be introduced to provide new or enhanced services in greenfield locations, such as Sydney's North West and South West, where new residential and employment growth is occurring.

Proposals to make changes to bus routes and timetables can originate from both TfNSW and the respective private bus operator. This includes adjustments to existing services or introduction of new services to cater for school travel. Customer and stakeholder feedback is used to help inform service planning changes and TfNSW regularly collaborates with bus operators, local councils and other stakeholders to identify service issues and suggestions for improvements. The proposed network changes require approval from TfNSW before they can be introduced.

Where bus routes are changed, TfNSW aims to ensure that customers ordinarily have alternative travel options available at similar levels of service and often at improved frequencies - even where a transfer between buses or modes is required. Existing bus routes can be changed, withdrawn or new bus routes introduced as part of wider network reviews or in a more targeted manner, to improve local access to bus services, responding to a particular area's specific needs.

## Recent 'Network 2020' service improvements

This program has delivered improvements to bus services in Sydney's contract Regions Seven to Nine, and redesigned bus services, to improve both their effectiveness and efficiency.

The key objectives of this program are:

- **Frequency:** Improving frequency across the network, including a core network of 'All-Day Frequent Network' routes and improvements on other routes, especially during off peak periods and weekends. The All Day Frequent Network operates consistent frequencies on all weekdays - every 10 minutes or more frequently during the day, and every 20 minutes or more frequently during the early morning and late evening.
- **Capacity:** Increasing capacity at constrained points, particularly with optimised allocation of high-capacity articulated buses and better matching capacity to demand
- **Simplicity:** Reducing the duplication of multiple routes and providing a simpler, easier to use service
- **Reliability:** Improving on time performance, facilitating better recovery from disruption and preparing for future initiatives, such as real time service management
- **Connectivity:** Increasing journey opportunities, particularly to strategic centres and improving connections between buses, and with other modes to facilitate this
- **Efficiency:** Improving productivity and optimising use of assets and resources.

The Network 2020 program of network changes aimed to maximise the number of people who benefit from the new network, including both current and future customers, while managing the inevitable changes to some existing customers' journeys. As a result of these network changes, some customers were required to transfer between services, and a small number of streets are no longer serviced by buses; resulting in some customers needing to walk further to their nearest bus stop. Network changes include:

- Splitting of some bus routes for improved reliability and to better reflect demand and travel patterns
- Shortening of bus routes and loss of some direct city services, to reduce duplication with other services
- Consolidation of other routes, to provide for a more attractive service overall.

The most recent suite of improvements was delivered in Region Nine. The changes in this region provide significant benefits that include:

- Core all-day frequent network
- Expanded overnight network
- Improved all-day service frequencies
- Integration with light rail, which reduces duplication and enables resources to be reinvested into improving feeder bus services
- Simplifying services on key corridors, to make buses easier and more attractive to use
- Improved east-west and north-south connectivity and access to key destinations, to increase the reach of public transport
- Increased frequency, capacity and connectivity on bus routes around the Green Square precinct
- Improved overall network reliability throughout the network design, timetabling and scheduling process.

## **The All Day Frequent Network**

This network is intended to form the core of the bus network, providing frequent, simple, and high-capacity services on key corridors and to major destinations. Their frequency and consistency allow for quick and easy transfer between services; improving the connectivity of the overall public transport system.

Network 2020 has delivered a number of All-Day Frequent Network routes across Regions Seven, Eight and Nine. These routes operate at least most every 10 minutes during the day and at most every 20 minutes in the early morning and late night, seven days a week. Some of these routes operate overnight or have a variant of the route operating overnight.

The All Day Frequent Network extends beyond the CBD, with several cross suburban routes in the Northern Beaches and Eastern Suburbs linking key destinations. These routes provide important connections to key destinations including Dee Why, Manly, St Leonards, Chatswood, Bondi Junction, Randwick, Green Square, Mascot and Sydney Airport.

The All Day Frequent Network timetables have been designed for at least 12 continuous hours of a frequency of every 10 minutes or more frequently every day of the week, with a consistent span across the week ranging from between 20 to 24 hours of service. During early mornings and evenings, frequency is every 20 minutes or more while they operate hourly or more where overnight services are provided.

## Bus stops

The determination of bus stops and infrastructure requirements is typically the responsibility of a local council's traffic committee. Councils are the consent authority for approving bus stop locations. While councils have ultimate responsibility for the provision or changes to existing bus stops, endorsement from TfNSW and the private bus operator must be obtained.

In some instances, TfNSW may initiate changes to bus stops, usually to reflect changes to road infrastructure, such as intersection upgrades or to improve the reliability of bus services where multiple bus stops are spaced closely together. Where bus stops are relocated or removed entirely, alternative bus stops must be located within reasonable walking distance.

In Regions Six through Nine, some bus stops were removed and new ones added, to support changes to the network introduced since 2020. In most instances where bus stops have been removed, customers are ordinarily in reasonable walking distance of alternative bus stops.

### Region Six

In 2020, bus network changes were introduced in Region Six. As a result of these changes, a total of 33 existing bus stops, or less than 1.3 per cent of all bus stops in the region, were no longer serviced by regular bus routes. Of these 33 bus stops:

- 16 bus stops continue to be served by the Bridj On Demand service
- 18 bus stops continue to be served by dedicated school services.

Eight new bus stops were also created in Concord, Five Dock and Lilyfield.

### Region Seven

In January 2021, bus network changes to Sydney's North West and Lower North Shore were introduced. As a result of these changes, a total of 12 bus stops are no longer served by regular route services. This accounts for around 0.5 per cent of all bus stops in this region. Dedicated school services continue to be service six of these bus stops.

These changes were implemented in advance of the transition to the incoming private bus operator, Busways.

### Region Eight

On 20 December 2022, bus network changes to Sydney's Northern Beaches and Lower North Shore were introduced. As a result of these changes, a total of 46 bus stops are no longer served by regular route services. This accounts for around 2.4 per cent of all bus stops in this region. Dedicated school services will continue to serve 41 of these bus stops.

These changes were implemented in advance of the transition to the incoming private bus operator, Keolis Downer Northern Beaches.

### Region Nine

On 5 December 2021, bus network changes to Sydney's South East were introduced as part of an integrated transport network. As a result of these changes, a total of 28 bus stops are no longer served by regular route services, accounting for around 1.6 per cent of all bus stops in this region. Dedicated school services will continue to serve by about nine of these bus stops.

These changes were implemented in advance of the transition to the incoming private bus operator, Transdev John Holland.

## 1(c) the economic, social, safety, employment and environmental implications of bus privatisation

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The NSW Government's Procurement Policy Framework<sup>3</sup> sets out minimum standards to support social outcomes. TfNSW recognises the opportunity that contracts of this size affords customers, and the contracts in Regions Six, Seven, Eight and Nine reflect these enhanced outcomes.

Performance against contract targets is reported and validated on a frequent basis throughout the contract term. A number of these measures are also reported at a whole of government level and fall under the oversight of the NSW Government Procurement Board<sup>4</sup>.

### Economic implications

The contracts in Regions Seven, Eight and Nine require a minimum level of engagement of small to medium sized NSW enterprises in the supply chains of the private bus operators.

Successful tenderers were required to demonstrate how this would be achieved, the areas of spend they would target and their commitment to achieving ongoing participation of these organisations. These targets and commitments form contract obligations that are reported, validated and enforced throughout the contract term.

### Social implications

#### Diversity and inclusion

Contract targets and commitments also focus on the workforce's diversity to be engaged by the private bus operators. These include measures, such as gender diversity in overall employment, leadership roles and non-typical roles, such as women in trades, disability engagement and accessible transport.

Tenderers were also required to demonstrate the measures they will take to increase other aspects of diversity. Targets and commitments, and associated reporting obligations, are enforceable under the contracts.

#### Community engagement

All successful tenderers were required to submit a stakeholder engagement plan to reflect their understanding of the local communities they are serving.

These plans identify the community groups, schools and other major facilities, and key organisations in their regions. The plans identify the specific needs of these groups and the strategies that will be employed through the contract term, to continue to understand and meet their requirements.

In many cases, partnerships with local community groups have been established and have led to a range of commitments around training and employment opportunities, support for community events and ongoing engagement forums.

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<sup>3</sup> NSW Government Procurement webpage: <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework>

<sup>4</sup> NSW Government Procurement Board webpage: <https://buy.nsw.gov.au/buyer-guidance/get-started/governance>

All successful tenderers were also required to submit a small and medium enterprise and regional procurement plan, which is annually reviewed by the operator in order to demonstrate how the operator will increase spend with small and medium enterprises and provide targets, which are reported on to TfNSW by the operator on a quarterly basis.

## **Safety implications**

Safety management systems and previous safety performance were also assessed for all successful tenderers. Safety considerations included vehicles safety, driving practices, rostering practices, customer behaviours, and local safety around routes and interchange locations.

Reporting systems are in place to ensure TfNSW's strict safety standards are met and are supported by inspections and registration requirements under existing regulations.

Financial KPI abatements and other regimes, including potential termination, will be enforced for any material service contract breaches. Private bus operators are also required under contract to participate in industry wide safety forums and safety campaigns. These may be led by either TfNSW or the private bus operators, depending on each region's specific requirements.

## **Employment implications**

Aboriginal participation in the service contracts is achieved through both the engagement of Aboriginal enterprises in operator's supply chains and through the employment of Aboriginal people. Successful tenderers were required to confirm they can meet these targets and demonstrate the strategies they would employ. They were also required to confirm their commitment to career development, retention and promotion of Aboriginal people.

The importance to partner with local Aboriginal communities in the regions they are serving is highlighted throughout the procurement process. The contract enforces achievement of these targets, with performance management measures to ensure realisable benefits will be delivered throughout the contract term.

Further employment implications are detailed under the term of reference 'The impact of bus privatisation on worker pay and conditions'.

## **Environmental implications**

The environmental management approaches and previous environmental history were assessed for all successful tenderers. Minimum standards were set out in the service contracts, to ensure environmental impacts from operations is minimised. This includes requirements for the maintenance of depot sites and compliance to regulation, such as contamination and water usage.

The most significant environmental outcome of the franchising model is the introduction of zero emission buses, which is discussed under the term of reference titled 'The transition to an electric bus fleet and supporting infrastructure'. Additionally, private bus operators have also committed to other emission reducing initiatives, such as solar panels on depots, use of 'green' energy, and on-vehicle technologies that guide drivers in the most efficient driving practices and training initiatives for their workforces.

## 1(d) the transition to an electric bus fleet and supporting infrastructure

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TfNSW is committed to transitioning its bus fleet of over 8,000 vehicles to zero emission buses. This will realise a range of environmental, economic and operational benefits, and deliver more comfortable journeys for customers. Public transport buses make up around 78 per cent of public transport emissions and are key to realising the state's goals on zero emissions.

### Zero Emissions Buses project

This project is developing plans for the transition of the NSW bus fleet in a timeframe that responds to the NSW Government Net Zero Targets<sup>5</sup> of 50 per cent reduction by 2030 and 100 per cent net zero emissions by 2050.

This transition will balance the speed of deployment against the need to support local industry and value for money. The project will address the full asset life cycle for the transition of NSW public transport buses from diesel and compressed natural gas fuel to zero emission technology.

In the initial stages, the focus will be on how to help mobilise the bus industry and supply chains, with a focus on local opportunities for assembly and manufacturing. The project will assess requirements needed for industry readiness. This includes skills development and training, market capacity and capability, technology performance, and depot and energy grid upgrades needed, to support the transition.

During deployment, the project will procure new zero emission buses and ensure depots are converted, and suitable infrastructure and systems are installed to deliver either electric charging or hydrogen fuelling. As a key sustainability initiative for the state, this project will be seeking to procure green energy sources for the fleet transition and considering sustainable means of asset re-use and recycling. These considerations include sustainable options for managing existing buses that will be replaced.

This project is in the 'Strategic Option' phase, developing a strategic business case which assesses options for:

- Prioritisation and timelines for transition to zero emission buses across NSW
- Technology (electric power, hydrogen power, charging, fuelling and other options)
- Delivery and financing strategies
- Local content and investment opportunities
- Existing fleet disposal approach.

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<sup>5</sup> Department of Planning and Environment project webpage: <https://www.environment.nsw.gov.au/topics/climate-change/net-zero-plan>

## **Announcement on Australian made order of zero emission buses**

On 14 February 2022, the Minister for Transport, the Hon. David Elliott MP, announced that TfNSW will be acquiring 79 electric buses, in collaboration with the Region Six operating partner, Transit Systems West. These buses will be locally manufactured by Custom Bus and operated from the Kingsgrove depot in Region Six. This order will help drive a post pandemic jobs recovery and initiate local manufacturing. Planning work has already commenced with Transit Systems West to provision a depot design and the power capacity required to turn the Kingsgrove depot into a fully electrified depot.

TfNSW is commencing a significant pilot of 40 electric buses over a 15 year term with accompanying smart charging stations, solar panels and large-scale energy storage at the Leichhardt depot. It is the first time TfNSW will adopt smart infrastructure to manage the electric buses, which will help to better understand the technology and make informed choices in the future. The pilot also uses an innovative financing model that allows it to be funded close to the price of diesel buses.

The pilot is being delivered with support from the Australian Renewable Energy Agency and Clean Energy Finance Corporation, in partnership with Transit Systems West and a joint venture between Transgrid and Zenobe. The joint venture leases the buses and charging infrastructure to Transit Systems West and its successor operator over a 15 year term, following which TfNSW has the option to buy the buses and charging infrastructure.



## 1(e) the impact of bus privatisation on worker pay and conditions

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The approach taken under the franchising model in relation to worker pay and condition is designed to enable existing employees to transfer to new private bus operators with limited or no impact on their pay and conditions, and to provide a period of guaranteed employment.

Under the terms of Transitional Agreements required by TfNSW, employees have transferred to new private bus operators with their current awards as at the time of transfer. Employees retain their entitlements, continuity of service and accrued leave, plus a number of other arrangements – including an employment guarantee period.

This, coupled with the Transfer of Business rules under the *Fair Work Act 2009* (Cth) (hereafter *Fair Work Act*), facilitates working arrangements continuing until any changes to wages and conditions are negotiated, and are agreed in the usual way, particularly during the employment guarantee period.

TfNSW also ensured that the transfer of award entitlements included a number of conditions that are common across public service organisations which, historically, had been reflected in STA policy only.

Take home pay is not in and of itself a term and condition of employment. It is not guaranteed, regardless of the nature of the employer as it can be influenced by a range of factors, such as service requirements, staffing levels and the availability of overtime.

The existing award covering bus drivers contains an income protection provision that limits the impact on take home pay due to roster changes or shift changes. This provision, as part of the award transferred, or will transfer, in the case of Transdev John Holland Buses in Region Nine, with employees to the new operators.

Wage outcomes across public and private bus operations remain overall comparable. While conditions of employment may vary, those employees transferring take their award conditions with them.

Most existing employees have transferred to the private bus operators, thereby retaining their skills and local knowledge, bolstered by the private bus operator's specialist development and career opportunities offered.

### Transitional agreement

In each Region, the operator is required to enter into a Transitional Agreement with TfNSW. The Transitional Agreement is legally enforceable and sets out the employment arrangements for the transition of employees covered by an award to the new private bus operator, including terms and conditions, and the transfer process.

The Transfer of Business rules of the *Fair Work Act* provide certain protections and transfer the three awards that apply to STA employees to the new operators as “copied state awards”. However, the Transitional Agreement goes further by providing additional protections and requiring private bus operators to recognise a wider range of entitlements and arrangements.

The Transitional Agreement requires the private bus operator to offer the same position at the same location without changes to grade, rate of pay or form of employment, to all operational employees. Similar provisions exist for non-operational staff.

Award entitlements and conditions of employment must be recognised by the new private bus operator under the Transitional Agreement. Permanent employees must receive an

employment guarantee period during which they cannot be made redundant unless by agreement, or have the award terms and conditions varied except by agreement entered into by or on behalf of the employees in accordance with industrial law.

Other benefits include the recognition of service and the transfer of accrued leave entitlements, purchased leave arrangements, superannuation arrangements, including defined benefits schemes and novated leases.

The employee travel pass also transfers to the new private bus operator under the Transitional Agreement. The pass entitles employees to free travel on the Opal network, family holiday passes and free travel for the employee and their immediate family on services, such as The Ghan and other interstate rail services. The pass arrangements remain for three years from transition, except for the free access to the Opal network and the entitlement to accrue service towards the Gold Pass, which remains for three and a half years.

Certain people policies and procedures also transfer and are retained for three to six months, to ensure a smooth transition. These can only be varied, discontinued or replaced after that time, in consultation with the unions representing the transferring employees.

The following sections provide further detail on the transitional arrangements for the two categories of employee.

### **Operational Employees - Offers of employment and the employment guarantee**

Under the Transitional Agreement, all employees directly associated with the delivery of services and operations of the region (operational employees), such as bus drivers, maintenance staff and operational senior and salaried officers, must be offered employment with the new operator of their region. The requirement to offer employment applies to all categories of eligible award staff (permanent, temporary, and casual). It also applies to trainees and apprentices.

The offer must include an employment guarantee under the same award terms and conditions, during which they cannot be made redundant unless by agreement, or have the award terms and conditions varied except by agreement entered into by or on behalf of the employees in accordance with industrial law.

The employment guarantee for Region Six is 18 months and for Regions Seven, Eight and Nine is two years.

Most employees are choosing to accept the offer of employment to date, as follows:

- Region Six: Four operational employees did not accept employment and sought redeployment, while more than 1180 accepted
- Region Eight: Four operational employees did not accept employment and sought redeployment; while more than 880 accepted
- Region Seven: 17 operational employees did not accept employment and sought redeployment; while more than 940 accepted
- Region Nine: Staff are due to transfer on 3 April 2022 and it is therefore unknown how many operational employees will seek redeployment.

In accordance with the NSW Government's Managing Excess Employees Policy, permanent employees who do not accept an offer and remain employed by STA at the respective private bus operator's bus services commencement date are declared excess.

This policy includes a three month retention period in which to apply for a priority assessment for vacancies across the NSW public sector. As they did not accept an offer of comparable

employment, they will not be eligible for a redundancy payment, as per Clause 25A of the *Government Sector Employment Regulation 2014*<sup>6</sup>.

### **Non-operational Employees – offers of employment**

Non-operational roles under the *State Transit Authority Senior and Salaried Officers Award* (Senior and Salaried Award) are those that deliver the corporate functions that support STA services. These were not significantly affected by the franchising of Region Six.

For Regions Seven, Eight and Nine, each new private bus operator has been required to identify any non-operational vacancies in their organisation and to provide those to TfNSW for potential matching with non-operational Senior and Salaried roles before they go out to market.

Where there is a match, private bus operators must interview the employee. If the employee is offered the role, they receive the same transfer arrangements as operational staff, including award coverage, employment guarantee and continuity of service. If an employee does not apply for a matched role or, where offered a matched role, accepts it, a redundancy is not payable.

Under the NSW Government's policy on the Transfer of Government Sector services or functions to the Non-Government Sector<sup>7</sup>, non-operational employees are also given support in finding ongoing employment across the public sector under the NSW Government's Sector Placement Strategy<sup>8</sup>. This includes support from the TfNSW redeployment team and a preferential assessment process for vacant roles.

Staff who are not matched with an operator or do not find other suitable employment will exit under the Managing Excess Employees Policy. No redundancy is payable where comparable employment in the NSW Government sector is offered, but not accepted.

## **Wages**

All transferring employees are guaranteed their current wage arrangements under the award, which transfers with them to the new private bus operator.

Prior to franchising of Region Six, STA entered into three-year agreements with unions, providing annual increases of 2.5 per cent under the:

- *State Transit Authority Bus Operations Enterprise (State) Award 2018*<sup>9</sup> – increases applied from 1 January 2018, 1 January 2019 and 1 January 2020
- *State Transit Authority Senior and Salaried Officers' Enterprise (State) Award 2018*<sup>10</sup> – increases applied from 1 January 2018, 1 January 2019 and 1 January 2020.

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<sup>6</sup> NSW Government Government Sector Employment Regulation 2014: <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2014-0060>

<sup>7</sup> NSW Government Premier & Cabinet: <https://arp.nsw.gov.au/m2016-02-transfer-government-sector-services-or-functions-non-government-sector>

<sup>8</sup> NSW Government Placement Strategy: <https://arp.nsw.gov.au/assets/ars/703b91cbd9/NSW-Government-Sector-Placement-Strategy.pdf>

<sup>9</sup> NSW Government Industrial Relations Commission: <http://www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/90e3676885dc3e17ca256b1e00303581/0fdffa694e1695b8ca258267001c6c44?OpenDocument&Highlight=0,state,transit>

<sup>10</sup> NSW Government Industrial Relations Commission: <http://www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/webviewdate/C8768>

The Award covering engineering and maintenance staff – the *State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2018*<sup>11</sup> provided for a 2.5 per cent increase from 1 January 2019.

On 1 June 2021, ahead of franchising in Regions Seven, Eight and Nine, a new 2021 Bus Operations Award<sup>12</sup> and a new 2021 Senior and Salaried Award<sup>13</sup> were made. They provide increases of 0.3 per cent<sup>14</sup> (plus superannuation) from 1 January 2021 and 2.5 per cent (2.04 per cent plus superannuation) from 1 January 2022. The awards expire on 31 December 2022<sup>15</sup>.

Wage increases under the *State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020 (Maintenance Award 2020)*<sup>16</sup> are 2.5 per cent from 1 April 2020, 2.15 per cent from 1 April 2021 and 2.04% from 1 April 2022 (plus superannuation). The Maintenance Award 2020 expires on 31 March 2023.

In Regions Six, Seven, Eight and Nine, awards were in force at the time of transfer and had a reasonable time before they passed their nominal expiry date. Negotiations for new agreements can occur prior to or after that date.

Under the Transfer of Business rules of the *Fair Work Act 2009*, these awards will remain in operation for up to five years. However, the awards can be replaced by new enterprise agreements negotiated with the employees prior to the end of that five year period.

The Fair Work Commission's recent Annual Wage Reviews<sup>17</sup> determined that the annual increase applied to modern awards would also be applied to copied state awards.

## Amendment of award terms for transfer

To enable staff to maintain conditions that formed part of STA policy rather than awards through the transfer process, it was agreed the following would be incorporated into all three STA awards prior to transitioning in Regions Seven, Eight and Nine:

- Eight weeks' unpaid Concurrent Parental Leave
- Arrangements for stillbirth/miscarriage/death of a child
- Arrangements for subsequent pregnancy/adoption
- Domestic Violence Leave provisions of ten days per year
- Altruistic Surrogacy Leave

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<sup>11</sup> NSW Government Industrial Relations Commission:

<http://www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/90e3676885dc3e17ca256b1e00303581/cc62e256c85772e4ca258353000ff441?OpenDocument&Highlight=0,state,transit>

<sup>12</sup> State Transit Authority Bus Operations Enterprise (State) Award 2021

<http://www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/90e3676885dc3e17ca256b1e00303581/15af8aae959de5e4ca2587140028cd00?OpenDocument>

<sup>13</sup> NSW Government Industrial Relations Commission:

<http://www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/90e3676885dc3e17ca256b1e00303581/cecc089be4c09bddca2587140028ed11?OpenDocument>

<sup>14</sup> Under NSW Government Wages Policy and NSW legislation, the maximum increase to employee related costs (i.e. the value of wage increases and any other changes to employment conditions) that the NSW Industrial Relations Commission (IRC) can award is 2.5%, inclusive of increases to the Superannuation Guarantee. For 2020-21, the Government reduced the increase allowed to be approved under Wages Policy to 0.3% plus superannuation.

<sup>15</sup> The Bus Operations Award and the Senior and Salaried Award published on the NSW Legislation website contain an increase of 1.04% for the second year of the awards. The second year increase was varied for each award to 2.04% on 30 September 2020. These variations have not been published to date.

<sup>16</sup> NSW Government Industrial Relations Commission:

[www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/90e3676885dc3e17ca256b1e00303581/a2f2e20484862ec2ca258573001e9678?OpenDocument&Highlight=0,state,transit](http://www.ircgazette.justice.nsw.gov.au/irc/ircgazette.nsf/90e3676885dc3e17ca256b1e00303581/a2f2e20484862ec2ca258573001e9678?OpenDocument&Highlight=0,state,transit)

<sup>17</sup> Australian Government Fair Work Commission: <https://www.fwc.gov.au/hearings-decisions/major-cases/annual-wage-reviews>

- Out of Home Care Leave
- Military Leave
- Emergency Leave.

Two other significant entitlements that lay outside of the Bus Operations Award; arrangements for qualifying for the payment of Saturday Public Holidays and the additional week's annual leave for shift workers, were also identified for inclusion.

This provided certainty for employees and private bus operators, removed ambiguity and legal uncertainty, and mitigated against future disputes about the interpretation of conditions of employment.

The absence of the fifth week of annual leave under the Maintenance Award was addressed by the inclusion of terms in the Services Contract for Regions Seven, Eight and Nine, requiring the ongoing payment of this entitlement. This was confirmed in writing to the unions.

The amendments to the Bus Operations Award and Senior and Salaried Award were agreed as part of the making of the new awards, whereas the Maintenance Award was varied to include the new provisions.

## **Engagement with unions and employees**

In the transition of Region Six, TfNSW attempted to engage with the unions although, the Rail Tram and Bus Union of NSW's industrial efforts at the time were focussed on campaigning against franchising.

In October 2019, when the NSW Government announced the franchising of Regions Seven, Eight and Nine, the then Secretary of TfNSW, wrote to the Secretary of Unions NSW and all unions representing STA employees, namely:

- The Rail Tram and Bus Union of New South Wales, including the Tram and Bus Division
- The Australian Services Union
- The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch)
- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch
- The Electrical Trades Union of Australia, New South Wales Branch,
- The Construction, Forestry, Mining and Energy Union (NSW Branch), and
- The Australian Workers' Union, New South Wales.

In the Secretary's letter, comprehensive information was provided about the franchising decision and the arrangements applicable to staff who will transfer to the respective private bus operators. The Secretary also committed to ongoing consultation through the tender and transition process. Similar information was also issued to all STA staff at the same time.

Following the franchising announcement, it was agreed between Unions NSW and TfNSW to establish a consultative group, which became the Peak Consultative Group, comprised of representatives of industrial organisations with members employed by STA and senior representatives from STA and TfNSW. It was expected that it would meet regularly through the tender and transition process.

In December 2019, the first meeting of this Peak Consultative Group was held, with many more meetings held as discussions between the parties about contractual and employment issues continued. STA also facilitated the release of employee union delegates to attend meetings at regular intervals.

Since the franchising announcements, STA and TfNSW have continued to update its staff about the progress of the franchising activities. TfNSW continued dialogue with employees, with regular information bulletins, frequently asked questions, information desks at each depot and a dedicated website through which they could ask questions and receive information.

In October 2019, the first instance, staff briefings were held at all depots and other offices with STA management, senior TfNSW representatives and workplace relations representatives. This was followed by a briefing specifically for non-operational Senior and Salaried Officers. STA has also maintained its regular consultative forums with the various groups of staff, including:

- The Senior and Salaried Officers Consultative Forum
- The STA- Rail Tram and Bus Union of NSW Consultative Meeting
- The Bus Engineering and Maintenance Productivity Committee Meeting

STA has also worked closely with individual employees, as required.

## **Consistent terms and conditions**

To avoid uncertainty and facilitate consistency in terms and conditions, the services contracts for Regions Seven, Eight and Nine provide:

- That a Special Purpose Vehicle must be the employer for all dedicated or operational staff, regardless of whether they are former STA employees or employees hired after transition
- That the sharing or leveraging of the employees or staff of any other entity to perform the roles of dedicated or operational staff is prohibited unless approved by TfNSW in specific circumstances.

It is the position of TfNSW that having one employer should lead to the same enterprise agreement covering employees performing the same work within the same region. It is the expectation of TfNSW that when it comes to negotiating a new agreement to replace the current award, the new private bus operator would involve all employees in bargaining.

It is an emerging trend within recently franchised Regions that the bus operators are seeking to move towards a single Enterprise Agreement across all workers, new and transferred.

## **Private sector wage negotiations**

The NSW Government Wages Policy, the transfer of state awards and the ongoing protective provisions of the *Fair Work Act*, have already been outlined above.

As noted, there is a cap on any increases to employee related costs that can be awarded by the NSW Industrial Relations Commission. There are no such constraints under the *Fair Work Act*. While the escalation figure for employee costs under the metropolitan bus contracts is the Wages Price Index, unions and employers can negotiate changes to wages and conditions that exceed that value.

The table below shows that private sector wage outcomes have continued to be similar to or exceed those in the public sector. A number of private bus operators are in wage negotiations having agreements that expired in mid-2021.

## Greater Sydney bus operator wage increases

Current Instrument	2017	2018	2019	2020	2021	2022
Superannuation Guarantee (July)	9.50%	9.50%	9.50%	9.50%	10.00%	10.50%
Wage Price Index (WPI)*	2.00%	1.70%	2.50%	2.10%	1.50%	N/A
State Transit Authority Bus Operations Enterprise (State) Award 2021 (Jan)	2.50%	2.50%	2.50%	2.50%	0.30%	2.04%
State Transit Authority Senior and Salaried Officers' Enterprise (State) Award 2021 (Jan)	2.50%	2.50%	2.50%	2.50%	0.30%	2.04%
State Transit Authority Bus Engineering and Maintenance Enterprise (State) Award 2020	2.50% (Jan)	2.50% (Jan)	2.50% (Jan)	2.50% (April)	2.15% (April)	2.04% (April)
Busabout and the Transport Workers' Union of Australia Fair Work Agreement 2018	2.65% (July)	-	3.00% Jan 3.00% July	3.00% (July)	#	#
Busways Group, Transport Workers' Union of Australia WU and Drivers Enterprise Agreement 2018 (July)	2.65%	2.00% (May)	3.00%	3.00%	#	#
Busways Group, Transport Workers' Union of Australia and Drivers Enterprise Agreement 2020 (Greenfields) (July)	N/A	N/A	N/A	N/A	2.50%	2.10%
Busways Driver/Mentor Enterprise Agreement 2021 (July) <sup>18</sup>	N/A	N/A	N/A	N/A	N/A	WPI1
CDC Dural Depot Drivers Agreement 2018 (July)	-	2.75% + 0.25%^	3.00%	2.75% + 0.25%^	#	#
CDC and TWU Drivers Agreement 2018 (July)	2.65%	2.75% + 0.25%^	3.00%	2.75% + 0.25%^	#	#
DC NSW Engineering Enterprise Agreement 2021 (Jan)	2.50%	2.25% (average) <sup>19</sup>	2.25% (average)	2.25% (average)	2.01% (minimum) <sup>20</sup>	2.00%
Forest Coach Lines Passenger Vehicle Drivers Enterprise Agreement 2019 (July)	3.00%	3.00%	2.75%	2.75%	3.00%	-
Interline Bus Service and Transport Workers Union of Australia Fair Work Agreement 2018 Agreement (July)	2.65%	2.75%	2.75%	3.00%	#	#
Keolis Downer Northern Beaches Pty Ltd "KDNB Bus Operations Enterprise Agreement 2021	N/A	N/A	N/A	N/A	N/A	2.04%

<sup>18</sup> Busways Driver/Mentor Enterprise Agreement 2021: New enterprise agreement from 1 November 2021. One-off Bonus Payment of \$2,000 paid on approval of the enterprise agreement by the Fair Work Commission.

<sup>19</sup> CDC NSW Engineering Enterprise Agreement 2021: Increases in 2018-2020 for each level of workshop staff ranged between 2.22% and 2.28%. Classification restructure implemented in 2021. Additional levels created to provide a pathway for workshop staff (Automotive Trades/Non-Trades); to remunerate in accordance with skills and competencies (eg single trade vs dual trade); and to create opportunities for an additional entry path (eg: Light Vehicle mechanics then can be trained up to Heavy Vehicle mechanics. As a result of the change, employees received differing increases, depending on their new classification. Some employees received an increase of 29% or more. The minimum increase in 2021 was 2.01%.

<sup>20</sup> CDC NSW Engineering Enterprise Agreement 2021: Increases in 2018-2020 for each level of workshop staff ranged between 2.22% and 2.28%. Classification restructure implemented in 2021. Additional levels created to provide a pathway for workshop staff (Automotive Trades/Non-Trades); to remunerate in accordance with skills and competencies (eg single trade vs dual trade); and to create opportunities for an additional entry path (eg: Light Vehicle mechanics then can be trained up to Heavy Vehicle mechanics. As a result of the change, employees received differing increases, depending on their new classification. Some employees received an increase of 29% or more. The minimum increase in 2021 was 2.01%.

Transdev NSW Bus Enterprise Agreement 2018-2021 (July)	3.00% <sup>21</sup>	2.65% <sup>22</sup>	2.75% <sup>23</sup>	3.00% <sup>24</sup>	#	#
Transit Systems West Services Engineering and Maintenance Enterprise Agreement 2021 (Jan)	N/A	Copied State Award	Copied State Award	Copied State Award	Copied State Award	2.50%
Transit (NSW) Services, Transport Workers Union and Bus Drivers Enterprise Agreement 2017 (July)	WPI	WPI	WPI	WPI	#	#
Transit (NSW) Services Engineering Staff Agreement 2021 (Jan)	2.50%	2.50%	2.50%	-	2.5% <sup>25</sup>	2.50%

# Enterprise agreement has expired and is under negotiation

\* Definition of Wage Price Index: The percentage increase in the ABS March quarterly Wage Price Index (WPI), total hourly rates of pay, excluding bonuses; Private, Public Transport, Postal and Warehousing A26033469T

^ 0.25% additional superannuation contributions on all hours worked

<sup>21</sup> Transdev NSW Agreement: Wage Price Index for Sydney as determined by the Australian Bureau of Statistics between the March quarters. Where the wage price index was greater than the prescribed increases in this enterprise agreement for 2017, 2019 and 2020, the wage price index was to apply as the wage increase. All enterprise agreement prescribed increases were higher than the corresponding wage price index increase.

<sup>22</sup> Transdev NSW Agreement: Wage Price Index for Sydney as determined by the Australian Bureau of Statistics between the March quarters. Where the wage price index was greater than the prescribed increases in this enterprise agreement for 2017, 2019 and 2020, the wage price index was to apply as the wage increase. All enterprise agreement prescribed increases were higher than the corresponding wage price index increase.

<sup>23</sup> Transdev NSW Agreement: Wage Price Index for Sydney as determined by the Australian Bureau of Statistics between the March quarters. Where the wage price index was greater than the prescribed increases in this enterprise agreement for 2017, 2019 and 2020, the wage price index was to apply as the wage increase. All enterprise agreement prescribed increases were higher than the corresponding wage price index increase.

<sup>24</sup> Transdev NSW Agreement: Wage Price Index for Sydney as determined by the Australian Bureau of Statistics between the March quarters. Where the wage price index was greater than the prescribed increases in this enterprise agreement for 2017, 2019 and 2020, the wage price index was to apply as the wage increase. All enterprise agreement prescribed increases were higher than the corresponding wage price index increase.

<sup>25</sup> Transit (NSW) Services Engineering Staff Agreement 2021: A one-off Agreement Payment Amount of \$1,400 was paid on approval by the Fair Work Commission in 2021.