# Moving People-Bus Service Contracts
## Principles and Guidelines


## February 2012

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# 1. Purpose

## 1.1 Context

A Bus Industry Confederation workshop held in August 2010 agreed to establish a Contracts Working Group, to develop a national position on bus contracts to assist State operators and their representatives in contract negotiations with Governments. It was agreed that this national position should identify core principles that the Industry should pursue in such negotiations. These *Guidelines* have been developed by the Working Group to fulfil this brief, for both route and school services contracted with governments.

In framing the *Guidelines*, BIC recognises that there is no magic bullet when it comes to contracts. Route and school services have many differences and each jurisdiction has many unique situations. For example, political philosophies relating to the roles of the public and private sectors in planning and delivering public transport services and attitudes towards asset ownership (e.g. depots, vehicles) can differ between jurisdictions. Such considerations often require local solutions suited to a particular context and category of service. However, there is much that is common between service types and across jurisdictions, where a common industry language and understanding of contracts and contracting options is likely to be beneficial to operators and the industry. Importantly, this is also expected to be of benefit to the governments with whom the industry negotiates service contracts and, by extension, to the communities for whose benefit services are provided.

The bus industry strongly believes that available evidence supports the view that the private sector provides the best 'value for money' bus services. It understands very clearly that its ultimate reason for being is to deliver public value for the communities for whom it provides services. This public value has two major elements:

- the benefits delivered to bus users;
- the benefits created for the wider community, in terms of reducing the external costs of road use (e.g. congestion, greenhouse gas emissions, air pollution, energy security, social exclusion, safety/health).

Both categories of benefit need to be delivered efficiently by bus operators.

The Australian bus industry has a high level of expertise in bus contracting, developed in Australia but also utilizing international experience over a long period of time, including active involvement in leading international forums such as the Thredbo Conference series on *Competition and Ownership in Public Transport* and various UITP conferences. The industry has fostered relationships with academic and industry experts, and with government, to grow public transport services and patronage and to develop contractual frameworks that support such growth. These connections and experience have been utilised in preparing these *Guidelines*. The *Guidelines* help to explain the industry's position on key contractual matters relating to route and school services, framed with public value uppermost in mind, while recognising the importance of a financially viable bus industry if quality bus services are to be provided on a sustainable basis for the community. It is intended that the document be reviewed with state authorities responsible for procuring bus systems/routes.

## 1.2 Report structure

A contract for route and school bus services sets out the rights, obligations and procedures that the parties to the contract agree. It provides a fall-back mechanism for when things go wrong but does not control day-to-day activities. The September 2011 Thredbo 12 Workshop, *Designing Contracts/Concessions: What Has Worked and What Has Not and Why*, identified a number of key risks to the success of a contract. The most significant risks were identified as:

- unclear description of government objectives and outcomes;
- poor quality in tender assessment (for competitively tendered contracts);
- allocation of risks and responsibilities;
- ensuring financial viability;
- dispute management and resolution arrangements;
- specifying the services to be provided;
- understanding the best technical content;
- changes over time in government/government policy;
- specifying performance indicators;
- distortions introduced during contract negotiations;
- collecting and acting on performance indicators;
- complexity in the scope of services;
- building and maintaining a positive partnership (between government and the operator);
- tendering process.

This range of factors shows why contracting is a difficult process and why these *Guidelines* are important. The *Guidelines* set out the Australian Bus Industry Confederation's views on these, and other, vital issues related to contracts.

# 2 Getting the Framework Right

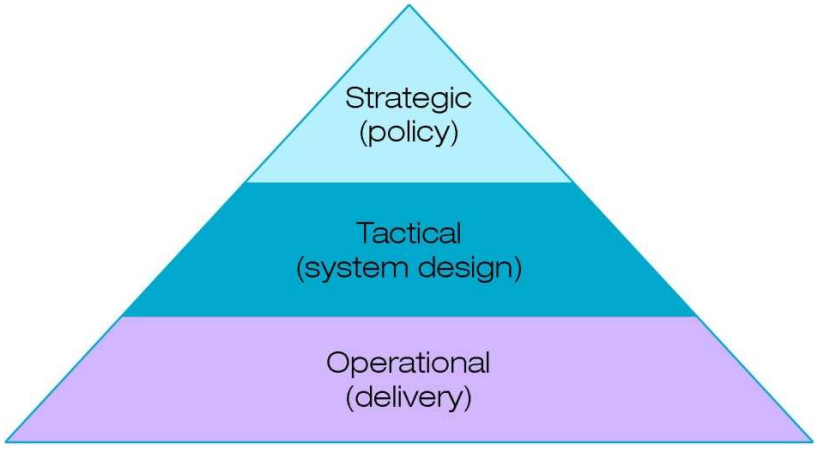
## 2.1 STO

Effective bus contracting regimes are most likely to be achieved when there is mutual commitment by government and service providers (bus operators and their industry representatives) to:

1. the goals towards which bus services are directed;
2. the service structures that are most likely to achieve these goals; and
3. the contractual arrangements that are intended to deliver 1 and 2.

This is about aligning the expectations and objectives of the negotiating parties. In framing its approach to these *Guidelines*, BIC draws on research findings from the Thredbo International Conference series, which distinguishes between the Strategic ('S' or policy), Tactical ('T' or system design) and Operational ('O' or service delivery) stages in the transport sector, as shown in Figure 1.[1]

**Figure 1: The Strategic, Tactical and Operational Stages of Transport**




The three levels in this framework can be summarised as follows:

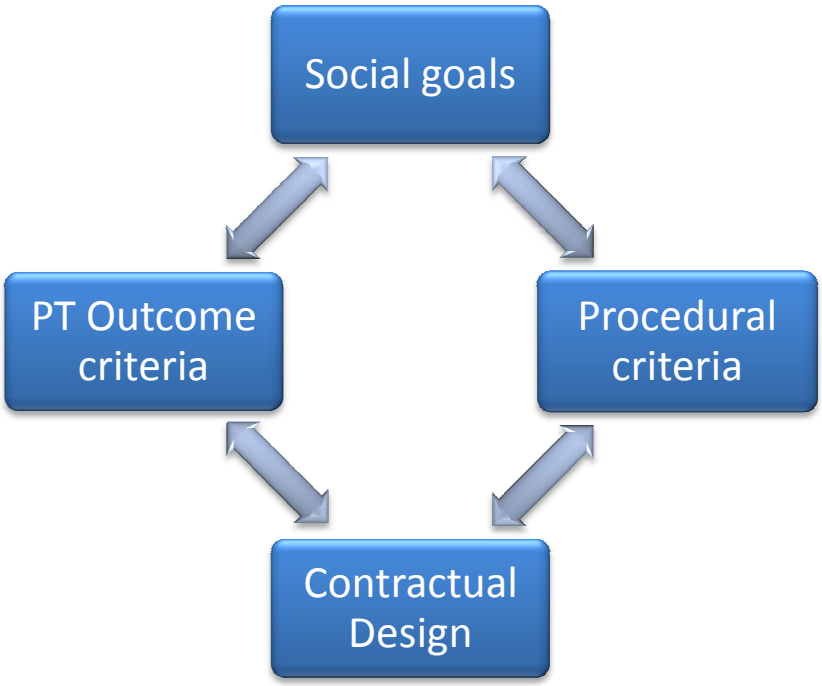
- ***strategic*** – broad transport policy goals and objectives (for example, the priority that is to be attached to reducing road congestion, as compared to ensuring that all citizens have access to a decent base level of public transport, to support social inclusion);
- ***tactical*** – transport system design and planning to achieve the intended strategic or policy level outcomes (for example, balancing radial and circumferential trunk bus services, to reduce road congestion, with minimum local service levels that support social inclusion);
- ***operational*** – delivery of services within the boundaries set by the strategic and operational levels.

Contracts are Tactical level mechanisms that should be formulated to manage service delivery at the Operational level (O), such that these services maximise the prospects of achieving the Strategic (S) or

[1] Van de Velde, DM 1999, *Organisational forms and entrepreneurship in public transport: classifying organisational forms*, Department of Transport Economics, Netherlands, pp. 147-157.

policy objectives of government, delivered as part of an integrated and coherent transport system (T). The best contractual outcomes need all three stages to be playing their part and need the flexibility to respond to the dynamic context of public transport. Contractual failures frequently reflect failures in the higher S/T stages. The *Guidelines* suggest ways to enhance integration through the S, T and O stages. They do so within a framework that sees contractual design flowing from social goals, public transport outcome criteria and procedural criteria relating to the contracting process.

**Figure 2: Framework for Contractual Design** (from Stanley & Longva, 2010)




### 2.1.1 Social Goals and Public Transport Outcome Criteria

At the 2009 Thredbo 11 Conference, participants thought public transport systems and services should be judged against what they contribute to six social goals (Stanley and Longva 2010).

1. Economic competitiveness (with congestion mitigation one key part of this goal area; maximising the efficiency of resource use in service provision is also very important).
2. Environmental sustainability (minimising the ecological footprint of service provision, including cost-effectively growing mode share against modes with a larger footprint).
3. Social inclusion (ensuring that all people have the accessibility needed to participate in society, irrespective of personal circumstances, such as household income level of personal physical capacities).
4. Livability, health and safety.
5. Regional development (an important goal for some jurisdictions).
6. Fiscal sustainability (achieving an acceptable cost-recovery rate in relation to outcomes achieved).

Other government objectives, in areas such as education policy, tourism and special events, may also be relevant to specifying bus service requirements, with subsequent implications for contractual specifications.

Translating these Strategic level goals down to the Tactical/Operational interface at which contract development and management takes place suggests that the public transport system/service purchaser and provider should pursue an approach with the following main objectives.

1. Maximising patronage per unit of service costs - a shorthand indicator of economic and environmental performance.
2. Maximising patronage by particular target groups - where these groups are seen as experiencing particular forms of transport disadvantage that is likely to adversely affect their well-being and/or probability of social inclusion, unless that transport disadvantage is addressed. Minimum public transport service levels are an effective way to meet this goal, with the relevant levels being ultimately a matter for governmental value judgement.
3. Meeting cost-recovery targets (to be specified by government)
4. Meeting environmental performance targets (to be specified by government)
5. Meeting health and safety standards/targets (to be specified by government).
6. Meeting other agreed objectives relating to transport to meet education policy and special events which may be integrated with or additional to route services

In relation to bus services, the matters that have been suggested as "to be specified by government" should not be imposed by government but should be the outcome of a consultation program that includes the bus industry.

Sub-objectives, related to the economic goal, can also be identified.

1.1 Customer satisfaction: recognising that the user experience of a public transport system/service may improve even if patronage does not grow and that this improvement in customer satisfaction is of value (i.e. is a benefit).
1.2 Labour shed enhancement: where work on the agglomeration benefits of transport system upgrades has identified that there may be occasions where agglomeration benefits flow from expanding labour catchments (Department for Transport 2006). This is most likely to be relevant for high capacity radial trunk public transport services to a CBD but may have relevance in supporting development of a polycentric city.
1.3 Facilitate education policy that provides school student transport (possibly best seen as a socio-economic goal).

These goals and, more particularly, the objectives and sub-objectives, provide foundational material for successful contractual specification, since they identify just what the system/service is expected to deliver. These intended outcomes should form the basis of key contractual performance incentive mechanisms (Key Performance Indicators, as discussed in Chapter 7).

### 2.1.2 Procedural Criteria

Procedural criteria have two important roles to play in a successful contractual setting:

1. they are important for probity;
2. they can be important for task effectiveness (this includes reducing the risk posed by necessarily incomplete contracts, where procedural criteria can provide a pathway to support sustainable

outcomes in the presence of such incompleteness, which might include matters such as dealing with special projects like electronic ticketing).

With respect to probity, the key requirements are transparency, accountability and procedural fairness. The task effectiveness focus recognises that some public transport contracting results have been very poor because of inadequate management of the contracting task. Four aspects of an effective task are:

1. allowing a suitable time frame to complete the task (which is partly dependent on such matters as the scale of the contract and the nature of the contracting environment – e.g. tendering versus negotiation);
2. ensuring that suitable transitional arrangements are in place when a change in operator is a possibility;
3. building trust and buy-in from all stakeholders;
4. providing adequate co-ordination with wider governmental policy areas that are affected by the outcome of the process (a whole-of-government approach, to capture synergies and avoid subsequent delays, revisions, etc).

The following sections elaborate on many of the above points.

## 2.2 Building a Trusting Partnership of Government and Industry/Operators

### 2.2.1 Building a Trusting Partnership

Achieving alignment across the Strategic, Tactical and Operational levels is no easy task. It is most likely to be achieved for bus services when there is a relationship of trust between the responsible government and the bus industry. Australian bus industry participants, working with respective State Governments, have pioneered the idea of trusting partnerships, where the focus moves successively from S (policy), through T (system design) to O (contracts). While government has ultimate accountability for contracted bus services, service effectiveness is most likely to be maximised in an environment of a trusting partnership.

Participants in the Thredbo 11 Workshop on Public Transport Contracting argued that a trusting partnership between the authority and provider should be grounded in five Cs:

1. **common** core objectives tied to public policy purposes (which goes back to the Strategic level discussed in Section 2.1);
2. **consistency** of behaviour and direction (underpinned by broad agreement about Strategic and Tactical directions);
3. **confidence** in a partner's capacity to deliver;
4. respect for each other's **competencies**; and,
5. demonstrated **commitment** to good faith in making and keeping arrangements and in principled behaviour.

Agreed and shared **governance arrangements** reflecting these principles provide the glue that ties these principles together. These *Guidelines* provide advice about how to implement such arrangements.

High level agreement about **core service objectives** is a critical part of the pre-contractual phase of government/bus industry service negotiation and is fundamental to delivery of successful bus services. This encompasses alignment about the goals/objectives outlined above and, flowing from those high level goals and objectives, alignment about goals related more specifically to contracting outcomes from

bus services. Governmental and operator goals for bus services might generally be expressed as in Table 1, with particular local circumstances sometimes providing nuances that need to be reflected in what these goals might mean for particular local contracts.

**Table 1: Governmental and industry goals for route and school bus services**

| Government goals | Operator goals |
|---|---|
| - Value for money<br>- Flexibility and continuity in service provision<br>- Accountability and transparency | - Business continuity<br>- Fair reward for investment & effort<br>- Clear operating guidelines<br>- Providing quality services |

Expressing these as goals as in the form of shared or common core objectives for services and their related contracts, which both government and bus operators/industry might accept, suggests the Vision Statement in Box 1:

## BOX 1: VISION STATEMENT

**Governments and bus operators agree that route and school bus contracts should seek to deliver:**

- **a quality service for the travelling public (the general public or school students as the case may be),**
- **with assured continuity for users and clear operating guidelines for operators and government alike,**
- **with demonstrable and continuing value for money for Government, and**
- **a fair return for the operator's investment, intellectual property and effort.**

### 2.2.1 Meeting governmental goals

**Value for money**

'Value for money' requires that bus services contribute to a transport system (T) which effectively meets government policy goals (S) and which does so efficiently, along the lines outlined in the Vision Statement. This is sometimes described as 'doing the right things and doing things right'. The emphasis or priority given to particular goals may differ from jurisdiction to jurisdiction and from time to time in a particular jurisdiction but should be clear, to maximize the chances of goal achievement. Specific high level policy goals that might be included are safety, universal access rights, cutting greenhouse gas emissions, congestion reduction, etc., as outlined in Section 1.1, with translation to bus services in terms of patronage, safety standards, environmental standards, etc, as outlined in Section 2.1 above. These elements reflect the value for money contribution of public transport in reducing external costs of motorized transport. These externality cost factors will mainly be relevant at network/corridor level and need to be recognized when making decisions on the level and nature of public transport services to be provided.

It is thus vital to recognize that 'value for money' is not the same as 'lowest cost'. Instead, it includes cost, service quality and the externality reduction dimensions noted above. Service quality is a difficult

concept and is discussed in some detail in section 7. Internationally, however, service quality is at least as important as cost in awarding the rights to provide public transport services.

Following goal specification, high level (Tactical) government-industry agreement on the type of services that maximize the chances of government policy goals (S) being achieved then provides the ideal basis for preparing and implementing 'value for money' service delivery contracts. At the same time, contracts need to be sustainable from the operator's perspective, ensuring that service quality is delivered commensurate with the level of resources provided.

Benchmarking of service performance is an important way of assuring efficient operation, particularly in an environment of negotiated contracts. Section 7 discusses key performance indicators that are suggested for benchmarking purposes. Competition or contestability, including the threat of tendering in a negotiated contracting environment, can contribute to assuring value for money, a matter to which the *Guidelines* return in Section 3.1. Value for money matters are discussed in greater detail in Section 9.

**Flexibility**

Flexibility has two important connotations:

1. the flexibility to change service structures during the course of a contract, for reasons such as changing demand patterns;
2. the flexibility to ensure service continuity in the event of a particular service provider becoming non-viable for some reason (a continuous bus service is self-evidently critical for effective customer service). Sustainable performance-based contracts significantly reduce the risk of operators becoming unviable.

Dealing with the first of these requirements suggests that the contract needs a service rationalization process, which must protect the operator's desire for business continuity as far as possible. This can be done through suitable contractual provisions at the start of a new contract, with an accompanying Practice Note or Explanatory Notes setting out how the parties intend to apply the relevant provisions. Dealing with the second, as a minimum, requires a clear process for managing such possibilities, including a government option on the assets of the business in the event of termination. Service continuity provisions should work within a graduated regime, with clear rights and obligations.

**Accountability and Transparency**

Accountability and transparency support probity and demonstrable value for public money. In a competitive tendering environment, accountability and transparency are about holding to the terms of the tender during the course of the contract, as far as possible, and being open about reasons for change if such change is needed (recognizing that change may disadvantage losing tenderers, if a contract had been won at tender). Sections 2.5.7 and 8 discuss transparency in greater detail

### 2.2.2 Meeting bus operator goals

**Business Continuity**

Given the long term investment in bus depots, the economic life of a route bus and the time it takes to reap benefits from innovation, seven to ten year contractual terms provide a good foundation for bus operator business continuity, with roll-over provisions if operator performance meets agreed (between

government and industry/operators) contractual benchmarks. The longer economic life of most school buses suggests a longer contractual term, with ten years plus roll-over based on performance being more appropriate. If the term of the contract is fixed at considerably shorter than key working asset lives, service costs will be unnecessarily high (assuming operator ownership of key assets, a matter discussed in Section 4).

Meeting an operator goal for business continuity requires a contractual process for handling service rationalizations, such as in the event that a particular service becomes surplus to requirements. It is also supported by contractual provisions that encourage an operator to innovate and, particularly in the case of route bus services, to grow his/her business. A patronage incentive can assist in this regard.

In an environment of competitive tendering for bus service contracts, business continuity will be less certain. However, roll-over provisions, in the event of good operator performance, can support continuity and act as an incentive to effective performance and business investment.

In an environment of negotiated contracts, if bus operators assert grandfather rights, then business continuity may ultimately require a preparedness to defend those rights through the courts. Protecting a relationship of trust between government and the bus industry, however, argues very strongly against either side seeking to precipitate such a situation. Continuation of high quality bus service delivery at efficient costs should help to avoid such a circumstance.

**Fair remuneration**

In a competitively tendered environment, the operator sets their bid price and should do so in recognition of business goals, including required return. 'Fair remuneration' in this circumstance means avoiding predatory pricing to buy market share. Competition legislation is intended to protect against such behavior and can be effectively supported by a governmental unwillingness to accept bids that are regarded as unreasonably low and hence not sustainable nor commensurate with the level of service required. This will reduce the risks of an operator being unable to complete his/her contractual obligations, with high associated transactions costs that this entails to ensure service continuity. Shadow pricing of bids by government, to test reasonableness of a bid, is used in some jurisdictions for this purpose (e.g. the Dutch province of Overijssel).

Where a contract is negotiated, not tendered, fair remuneration requires agreement about an acceptable level of costs and rate of return on the contract. Benchmarking of operator performance on costs and return can provide a basis for negotiations about whether some change might be needed. *Prima facie* high cost/high return operators should have remuneration brought back to an agreed band, unless they can demonstrate reasons why costs/returns should continue. Conversely, operators whose costs/returns are relatively low should have the opportunity to argue for an increase.

Cost indexation from contract start can help to ensure that remuneration remains fair during the course of a contract. A small 'at-risk' element in total remuneration, probably in the range of plus/minus two per cent of total remuneration, should be included as a spur to efficiency.

**Clear Operating Guidelines**

Clear operating guidelines are essential in supporting trust, providing both government and operators certainty about what will happen in particular circumstances. Such circumstances should include, for example, a service rationalization process (for example, when student numbers decline in a school/school region), emergency management procedures, vehicle and depot acquisition/disposal requirements, cure regimes, termination processes, dispute resolution procedures, etc.

## 2.3 Contract Negotiation Objectives

The preceding discussion suggests that a bus service contractual negotiation between government and the bus industry/operators should pursue the objectives set out in Table 2, with scope for some local nuances. BIC strongly believes that the negotiation process should include system design aspects at the Tactical stage, as well as the detailed contractual negotiations that logically follow.

Industry insists on using an intermediary (i.e. an industry association) to negotiate on behalf of the collective private bus operators. This is wide spread practice throughout Australasia. In doing so, this does not breach the Competition and Consumer Act 2010. The industry representative (appointed negotiator) simply liaises with the Government to delineate a contract template which is commended to the collective operators, who in turn can proceed with sign or seek amendments. The operators' competition is not fettered by the negotiator. Using an intermediary also keeps transaction costs low and reduces the amount of stakeholders and/or operators commercial and legal representatives a government (as the client) needs to deal with, which in turn simplifies and expedites the negotiation process.

**Table 2: Bus Service Contract Negotiation Objectives**

| | |
|---|---|
| **Relationship** | Promote partnership, openness and trust between the bus industry/operators and government |
| **Planning and delivery** | Provide for efficiency, flexibility and innovation in both planning and delivering bus services that are reliable, safe, punctual and clean |
| **Policy objectives** | Achieve patronage growth while supporting social inclusion and with a low environmental footprint, within the context of an integrated land use/transport system |
| **Commercial and financial** | Provide an environment for financial sustainability of operators and value for money for government, with transparency as to service costs and asset acquisition |
| **Public interest** | Provide for continuity of service |
| **Process** | Achieve the above through a process that is inclusive, transparent and accountable |
| **Terms and Conditions** | Generic terms and conditions should be agreed with Industry, to ensure consistency and sustainability |

## 2.4 Process Elements in a Negotiated Contractual Setting

The process elements referenced in the last row of Table 2 will depend on whether the rights to service provision are determined by a competitive tendering process or by negotiation. Within a negotiated regime, the key process elements are as outlined in Table 3.

**Table 3: Process Elements for Negotiated Bus Service Contracts**

| Commitment | Transparency | Documentation |
|---|---|---|
| - Operators and government must be committed to the process and its outcomes | - Government objectives<br>- Process and timelines<br>- Service cost evaluation criteria<br>- Probity and confidentiality<br>- Decision making framework<br>- Financial baseline<br>- Financial offer | - Process commitment deed<br>- Invitation to negotiate<br>- Contract design guide<br>- Draft contract<br>- Offer template and instructions |

Some further explanation of the elements of the '**Documentation**' column in Table 3 is needed.

- **Commitment Deed** – this is a document that records the formal commitment of government and the operator to bona fide participation in the negotiation process, confidential treatment of information and acknowledgement of how the process can be concluded. For System/sector wide contracts a document recording the commitment and process to achieve consistent and sustainable industry standards should be developed with the relevant operator peak body(s);
- **Invitation to Negotiate** – this document sets out the objectives, process and evaluation criteria to be used. It essentially explains how the process will work;
- **Contract Design Guide** – a plain language guide to commercial arrangements, with explanatory notes relating to underlying government policy. This document is a helpful way of setting out objectives and engaging all parties in the process;
- **Draft Contract** – this is an evolving document during contract negotiations, generally agreed between the government agency and the industry association, on behalf of bus operators. Substantive network design issues and commercial issues need to be resolved before commencing contractual negotiations. Negotiations then focus on issues of price and on detailed obligations;
- **Financial template and Instructions** – set out the information (and the way it is to be prepared) that will be the basis of the eventual financial agreement.

Further details on particular elements are included later in these *Guidelines*.

## 2.5 Key Elements in Contract Design

The contract negotiation process usually focuses on a small number of key elements, with that negotiation usually undertaken by government and the relevant Bus Association. The key elements are:

1. Term
2. Services
3. Network integration
4. Funding Model
5. Assets
6. Continuity of Service
7. Transparency
8. Marketing of PT including information services

An overview of these elements is presented in this section of the *Guidelines* and subsequent sections deal with some matters in greater detail. Risk allocation is also a vital element in contract design and is the subject of section 5 of these Guidelines.

### 2.5.1 Term

**Aims:** To establish a contract term which (1) provides value for money for government, (2) encourages operator innovation and investment and (3) provides an environment of financial stability for operators. To meet the government and operator objectives, terms should be at least 7 years, with a clear understanding of what happens at contract expiry.

**Influences:** Period needs to be long enough to encourage an operator to innovate and invest (pay for assets that are operator-owned), while giving the State the flexibility to respond to changing circumstances such as changes in government policy priorities and service needs. The term should be such as to permit the existence of some competitive tension, which can be through competitive tendering or 'virtual competition' if a negotiated contract is used (i.e. benchmarking).

**Outcome:** At least seven years for route service contracts, with roll-over for at least 3 additional years. Ten years for school-only contracts.

### 2.5.2 Services

**Aims:** (1) Clear and practical criteria for service design to aid network/service planning, budgeting, marketing and delivery. (2) Clear network/service planning responsibilities and decision making criteria. (3) Recognition of parties' need to introduce service variations by having clear and fair mechanisms for implementing and approving service variations. (4) Clear provisions giving the operator some flexibility in allocating services, if there is a patronage incentive in the contract or there is a net cost contract.

**Influences:** Not all bus services are the same and required services will change over time. Service requirements should generally be determined in Tactical level deliberations. For delivery of required services, service areas/routes need to be clearly identified and protected during the term of the contract, for efficient service provision and to protect operator business values. Performance and reporting requirements need to differ depending on the type of service being delivered. Clear procedures for service changes will assist pricing and support the process of change. If there is a net

cost contract or gross cost contract with patronage incentive, the contract should not fully tie the operator's hands in terms of services that must be run.

**Outcome:** Service specifications need to be developed with associated delivery and reporting requirements. Defined service planning and approval processes must be provided and provision be made for managing variations, including the remuneration consequences of change. The contract should allow the operator some scope to change service offerings if the contract is net cost or gross cost with patronage incentive.

### 2.5.3 Network Integration

The requirements here will depend on the nature of the network with which integration is sought. There are substantial differences between route and school contracts/services in this regard. Network integration for route services, for example, might relate to public transport marketing or fare evasion functions across modes. For school services, it might relate to feeding interchange locations where students change vehicles.

**Aims:** To ensure that the contract is clear about an operator's responsibilities with respect to interfacing with the wider transport network (such as in service co-ordination and network marketing).

**Influences:** Smooth and efficient co-ordination/integration supports a customer-friendly service, that will maximise patronage potential and customer satisfaction.

**Outcome:** Increased service patronage, from more integrated services and more integrated service information. Include contractual provisions that identify operator obligations with respect to the wider transport network, which may include matters such as timetable co-ordination (route and school), marketing integration (route), integration with fare and ticketing systems (could be both route and school). Provisions should be included to indicate how such obligations will be met and funded.

### 2.5.4 Funding Model

The discussion in this section refers to negotiated performance based contracts. Tendered contracts can propose different funding provisions and operators are free to choose whether or not to bid. However, most of the matters considered are also relevant to governments preparing an invitation to tender. Section 10 discusses some funding model issues in greater detail.

**Aims:** To establish a funding model that (1) provides for risks to be managed by the party with most control over those risks, (2) reflects service delivery targets and supports contract objectives and (3) is flexible, transparent and easy to administer.

**Influences:** Contract payments should provide fair reward for effort and outcomes, reflecting value for public money. Performance which exceeds/falls short of agreed benchmarks should be rewarded/penalised, within agreed bounds. Negotiated contracts need a transparent funding model for public accountability.

**Outcome:** For Metropolitan region route contracts this is most likely to be a gross cost contract with a small (+/- 2%) incentive regime. Costs should separate vehicle kilometre, vehicle hour and peak vehicle components. Provision for indexation allows for cost changes over time. For integrated route and school services in regional areas an incentive model may also deliver best value for money and meet government objectives

### 2.5.5 Assets

**Aims:** (1) To ensure that assets are managed efficiently, (2) are accessible if required to ensure service continuity and (3) are acquired efficiently.

**Influences:** Asset provision and condition (maintenance, replacement) is vital to sustaining service quality and to protecting a key resource that is needed for services. Contract conditions should promote asset protection. Ownership of assets should lie with the party most likely to maximise the value of those assets over time but such ownership should not create a practical barrier to service continuity.

**Outcome:** Operators should own and manage assets within a framework that provides: (1) existing fleet and depots – operator to have option to transfer assets to the state or a successor operator at market value. If an operator ceases to hold a service contract (e.g. because of termination), the state should have first right of refusal on acquiring those assets at market prices; (2) new fleet and depots – procurement should be subject to state approval; if operator ceases to hold a service contract, state has first right of refusal. Section 4 discusses asset ownership in greater detail.

### 2.5.6 Continuity of Service

**Aim:** To ensure that the bus services can be provided on a continuous basis.

**Influences:** Continuity of service is a keystone of successful public transport service. There must be adequate means of ensuring service continuity.

**Outcome:** Quality performance based contracts provide the highest safeguard for service continuity. Contractual provisions need to include a graduated regime for service continuity, which includes step-in provisions, default, cure and termination provisions, a dispute resolution procedure, end-of-term and transitional requirements and security arrangements (e.g. performance bond).

### 2.5.7 Transparency

**Aims:** For negotiated contracts, to establish arrangements that facilitate ongoing transparency on performance of the services, costs of service delivery, costs of asset procurement and operator sustainability.

**Influences:** Transparency, with associated regular monitoring and reporting during the contract term, will: allow the parties to develop a trusting partnership; enable the state to support a negotiated process and to make informed decisions about network management and development; improve business information systems for some operators, helping business survival; support operator business continuity goals; mitigate risks of regulatory capture; provide reliable information for the public.

**Outcome:** The contract negotiation process and subsequent contractual period should be transparent in relation to service and financial outcomes but protect operator confidentiality. Contract negotiations need to detail service and financial requirements for the negotiation process. Contractual provisions then need to specify monitoring and reporting requirements, set out compliance audit requirements and rights and detail operator performance review processes, while ensuring confidentiality obligations are protected. Section 8 discusses transparency in greater detail.

# 3. Bus industry position statement on procurement: Competitive tendering versus negotiation

Many route bus services were able to operate on a commercial basis for many years and some services could still operate from the fare box if required. However, this is now not true of most route bus services or of school bus services. There are strong economic, social and environmental arguments supporting financial support for bus services.

Most route bus services are now financially supported (subsidised) by governments because the majority of the benefits that flow from those services are not able to be captured in revenue flows by service providers but accrue as external benefits to the wider community, such as congestion cost savings and lower greenhouse gas emissions. Also, if services were required to operate commercially, fare levels may exacerbate issues of social exclusion for many people. Governments support route bus services primarily in recognition of the importance and scale of these 'external' benefits.

The rights to provide a route bus service require a service contract with government for the area/routes in question. Similarly, free/subsidised school bus services are provided to complement the provision of (usually compulsory) educational services in regional areas, where the bus service can be seen as meeting a Community Service Obligation linked to the educational product. In a number of cases, allowing the operator to use the revenue from school travel payments to integrate route services is a form of fare box model that provides benefit to the community they serve.

Where route/school services have previously been provided by a public operator, subsequent rights to private sector provision have usually been decided by government through a process of competitive tendering. Adelaide and Perth route bus services are examples of this approach. Where service origination has been by the private sector, Australian state governments have typically negotiated with the operator who started the service and have built up the assets and expertise(or their successor in time), as in much of Sydney, Brisbane and Melbourne.

International experience suggests that first round competitive tendering of previously government-provided route bus services typically reduces service costs by 10-50% (Wallis and Hensher 2007). In subsequent re-tendering, however, Wallis and Hensher note the tendency for cost increases, sometimes due to unsustainably low initial tender prices and/or to a shortage of bidders. BIC is not aware of comparable comprehensive data with respect to school services.

Additional to cutting costs, a key expectation in the use of competitive tendering has been that it would drive operator innovation and improve customer service. The Dutch, in particular, have been strong advocates of the competitive tendering approach for this reason but are reporting that results have frequently fallen short of expectations (van de Velde (2007). Eerdmanns et al (2009) attribute this disappointment to three reasons:

1. contractual reasons: the contract provided too little freedom to the operator to innovate and/or insufficient incentives for innovation (e.g. the authority typically wants to retain too much control, which discourages operator innovation and may encourage operators to simply focus on cost cutting, to maximise profits);
2. market reasons: the development potential of the concession/contract was too small for development;
3. organisational reasons: cultural differences between authorities and operators, and/or operator incompetence.

Van de Velde (2007) points out that Dutch transport authorities are now frequently seeking more of a relationship-based approach with operators, which is arguably more difficult under competitive tendering than with negotiated contracts. Section 2 above discussed ways in which relationship-based contracting can be pursued, using the trusting partnership approach.

In regimes where competitive tendering is used, a challenge for government is whether to negotiate a contract roll-over with an existing operator whose performance has been good. Wallis et al. (2010) reviewed the Adelaide experience with three rounds of tendering bus services and concluded that there was little to gain in terms of cost efficiency and quality enhancement by going to a fourth round of tendering. They argued that a move to Negotiated Performance-Based Contracts (NPBCs) can not only reduce transactions costs (associated with re-tendering) but also offers the opportunity to work closely with efficient incumbents to grow trust and build patronage.

Some Australian bus contractual negotiations have pioneered the relationship-based Negotiated Performance Based Contract (NPBC) approach, founded on a 'trusting partnership' between purchaser (government) and provider (the operator). The origins of this approach lie in the belief that, given scarce skills on both sides, such a relationship is most likely to deliver the best outcomes for government and the community. Competitive tendering remains a fall-back mechanism in the event that service providers operating under NPBCs do not measure up adequately against key performance indicators.

Provisions to guard against overly expensive contracts and 'regulatory capture' are critical in a negotiated performance-based contractual process. Australian experience suggests that, under NPBCs, transparency and accountability in this regard can be achieved if the following four conditions are in place:

1. Performance benchmarking to ensure that operator performance is efficient and effective. This benchmarking needs to be subjected to independent verification. Key performance indicators (KPIs) and the threat of competition (through tendering), in the event of inadequate performance, assists the maintenance of competitive pressure and efficient performance. The relevant association is best placed to represent the bus industry in setting up a benchmarking process.
2. An open book approach to costs, with a 3rd party auditor to verify the data.
3. The appointment of a probity auditor to oversee the negotiation process.
4. Public disclosure of the contract.

These matters are part of the requisite governance arrangements discussed in Section 2.

**BIC Position**

The choice between competitive tendering and negotiated performance-based contracts is a matter for jurisdictions. BIC believes that negotiated performance-based contracts, supported by the accountability and transparency arrangements listed above, will deliver better community outcomes over the long term. Whichever approach is used (CT or NPBC), BIC supports a trusting partnership between the authority and service providers (including industry associations), especially in relation to system planning (T). Under both regimes, BIC supports contract roll-over based on performance as a strong efficiency incentive.

# 4. Asset Ownership

The key strategic assets for bus services are bus depots and buses. The service contract needs to deal with:

- the ownership of existing assets at contract commencement;
- treatment of assets that are introduced during the term of the contract; and
- assets with remaining economic life at the end of the term of the contract.

Drawing on the work of Shleifer (1998), BIC believes that, when assets are publicly owned, the public manager has only a relatively weak incentive to undertake investment to reduce costs and to improve quality/innovate, because the manager gets only a fraction of the return. A private manager has stronger incentives because they get more of the returns. Hensher and Stanley (2008) have applied the idea to urban route bus services, arguing for operator ownership of assets to maximise incentives for asset productivity. In general, then, BIC favours but operator ownership of depots and buses but with government having sufficient access to these assets to assure service continuity.

**Aims:**

Building on section 2.5.5, the main aims in contracting for key bus service assets should be to:

1. recognize the cost of capital invested in those assets and provide a fair return on that investment;
2. have a predictable and fair contractual process for dealing with new and replacement buses and new depots, while still giving Government overall budget control measures and comfort on new depot locations;
3. have the asset available to provide continuity of service in all circumstances;
4. minimize the Peak Vehicle Requirement (PVR) for any given service criteria by maximizing efficiency of deployment;
5. allow sufficient spare capacity to ensure continuity of service , covering both planned and unplanned vehicle servicing and repair requirements;
6. minimize asset risk premium; and
7. ensure that assets are maintained and developed to a high standard, thus delivering quality, reliable services and facilitating continuity of service.

The expansion of aims in this section, compared to Section 2.5.5, is to be more specific about some of the particular **contracting issues** that need to be covered to ensure efficient acquisition and use of assets.

**Influences on cost/treatment of assets**

1. Interest rates;
2. Market returns on invested capital.
3. Tax policy.
4. Foreign exchange rates, as the majority of buses used in Australia are built on imported chassis.
5. Non contract use and policy with respect to allocation of cost or sharing of revenue.
6. Ownership.

**BIC Position**

1. Operators should own and manage assets.
2. Existing fleet and depot assets at the commencement of a contract should be subject to a return on assets based on market value and market returns.
3. For depots, a mechanism of a proxy market rent for owned depots is appropriate, based on an independent valuation. For fleet, an estimated weighted average of cost of capital applied to the current value of the assets is an appropriate rate of return.
4. Where the contract is a continuation of a previous contract that has been subject to a capital return on the existing fleet, a transitional arrangement taking account of the previous capital recoupment and/or return should be recognised.
5. As mentioned in Section 2.5.5 above, the state should have access to the key assets to ensure continuity of service in the case of a termination of contract and the operator should be recompensed at market value. Further, procurement of new fleet and depots should be subject to predetermined rules, a predetermined bus replacement program[2] and state approval for growth buses and new depots. In the case of new depots, state approval should require preparation of a business case by the operator.

[2] With contracts of 7-10 years,. This pre-determined replacement program may change during the course of the contract.

# 5. Risk Recognition and Allocation

## 5.1 Context, aims and general position

The 2011 Thredbo 12 Workshop on Designing Contracts and Concessions identified a number of key risks to the success, or otherwise, of a contract. In diminishing order of significance, these key risks included:

- unclear description of government objectives and outcomes: a matter that has been discussed in Section 2.2.1;
- poor quality in tendering/negotiation assessment: where, for example, the viability of bids needs to be robustly tested for viability and the trade-off between costs and service quality needs to be recognised;
- poor allocation of risks and responsibilities: the main subject of the current chapter;
- ensuring financial viability: an issue that has been re-iterated at several places in these *Guidelines*;
- dispute management and resolution arrangements: even though a trusting partnership should minimise the need to use such procedures, they are a fundamental requirement of any contract;
- specifying (clearly) the services to be provided: which should be self-evidently obvious but is sometimes poorly handled. Section 2.5.2 noted some issues in this regard;
- changes over time in government/government policy: always a possibility over a 7-10 year contract period and requiring agreed contractual procedures to introduce flexibility into resulting service offerings. This is one example why incomplete contracts are inevitable and why procedures to introduce flexibility more generally are important;
- specifying Key Performance Indicators: discussed in Section 7;
- tendering/negotiation process: discussed in Section 2.4 (and Section 5?).

To minimise both transaction costs and overall risk premiums, the aim is to clearly identify key risks and then allocate each risk to the party best able to manage that risk. There are cases, however, in which neither the operator nor the Government has direct control of a particular risk. In general terms, BIC supports the position that non-manageable risk is a commercial risk that should sit with the operator and is one of the contributing factors to the assessment of a fair return. A subsidiary aim of risk allocation could be to motivate desired behaviour in accordance with Government policy. An example is a patronage related payment component, which BIC supports.[3]

As part of the contract negotiation process, a risk analysis should be conducted jointly by government and the industry association, to agree on the main drivers and controllers of risk and how these are reflected in the contract, including indexation arrangements. In short hand terms, risks are either demand or supply side based, and can have both quantity and price dimensions. The following discussion uses this classification.

## 5.2 Patronage and yield risk

On the demand side, the degree to which patronage (quantity) and yield (or price) risk can be managed by the operator depends partly upon the degree of service planning freedom available to the operator. This is frequently low. As indicated in the table below, the major influences on patronage and yield

[3] The following section draws heavily on work carried out by a joint industry operator committee facilitated by LEK Consulting Pty Ltd in negotiations for renewal of Sydney metropolitan bus contracts.

generally sit with Government. Some medium impact factors cannot be much influenced by either the state or the operator and there are other factors, particularly marketing, reliability and quality of service, which can be managed by, or at least significantly influenced by, the operator. Table 4 sets out a suggested summary of the key drivers of movements in patronage and yield and whether the state or the operator has power to control them.[4]

**Table 4: Demand side risks**

| RISK DRIVER | State Control | Operator Control |
|---|---|---|
| *High Impact* | | |
| Land planning / land use | High | Nil |
| Bus service coverage | High | Nil or low |
| Bus service frequency | High | Nil or low |
| Modal integration | Medium to high | Nil or low |
| Bus priority | High | |
| Fares | High | Nil or low |
| *Medium Impact* | | |
| Economic cycle | Low | Nil |
| Population growth | Low | Nil |
| Car & fuel prices | Low | Nil |
| Parking costs | High | Nil |
| Service quality | Medium | Medium |
| Security – on bus | Low | High |
| Student travel system | High | Nil to low |
| Security – system, environment | High | Medium |
| Reliability | Medium | Medium |
| Marketing, information availability | High | High |
| *Low Impact* | | |
| Accessibility | High | High |

**BIC Position**

1. In a gross cost contracting environment where operators do not have a large degree of service planning freedom, patronage and yield risk should ultimately sit with Government but operators should be motivated by incentives and/or penalties to maintain high service quality and effective revenue collection.
2. Operators should be motivated to use whatever discretion they have on service planning and frequency to encourage patronage growth. A small patronage incentive is suitable for this purpose.

## 5.3 Production/cost risk

As a general principle, production and cost (supply side) efficiency are influenced both by **external factors,** such as movements in the economy broadly, and **internal factors,** such as an operator's efficiency and cost control. The former should be dealt with by a fair, agreed and independent system of indexation within the contracts, encompassing movements in general cost levels (of labour, fuel,

[4] This will depend on who is responsible for service planning.

parts, etc), to minimise any premium in the price to cover the risk. The latter should be a risk borne by the operator, meaning that the operator faces some unit cost risk, over which they have a high degree of control (e.g. whether to pay wage increases higher or lower than the general rate of wage increase). Table 5 shows the risk disposition for production side risks, assuming a general cost indexation provision is in the contract.

**Table 5: Production risks**

| RISK DRIVER | State Control | Operator Control |
|---|---|---|
| *High Impact* | | |
| Labour use | Medium (for example in New South Wales where there is a state owned operator) | High |
| *Medium Impact* | | |
| Fuel use/cost | Nil ability to manage | Low |
| Spare parts and repairs usage | Nil | Low |
| Labour on-costs, payroll tax | High | Low |
| *Low Impact* | | |
| Other resource use | Nil | High |
| Depot costs | Nil | High |
| Compliance costs | Medium | High |

**BIC Position**

1. Other than service volumes and extraneous impacts, production risk should sit with operators, who are responsible for industrial relations that affect the highest impact unit cost, labour.
2. The operator should bear the initial unit cost risk but should be compensated for general price movements through an indexation mechanism, which explicitly reimburses for general movements in the prices of (for example) labour, fuel and parts.

## 5.4 Investment risk and funding

We have argued in Section 4 that asset ownership should rest with the operator. The industry recognises that Government is entitled to transparency to ensure value for money in investment in assets. Further, the industry recognises that the purchase of new assets, which will impact on state budgets through the funding mechanism, should be subject to Government approval. It is the industry view that asset efficiency will be maximised by leaving the choice of specific assets to the operator, within bounds, such as a general specification for fleet and a ceiling price mechanism.

The purchase cost of a new approved vehicle must represent value for money, based on the vehicle specification. The operator must be able to demonstrate that it has conducted a competitive process for vehicle procurement and that its asset selection is based on a whole of life cost assessment. The cost of any additional features above the specification required by Government for the contract purchase should be borne by the operator, such as luggage bins fitted to school contract vehicles, to facilitate other uses of that vehicle.

**BIC Position**

1. Asset efficiency will be maximised by allowing the operator to make the asset selection, within bounds set by the State.
2. The asset price should be subject to a ceiling price determined through a fair and transparent mechanism.
3. Asset compensation should be by way of a proxy rent for depots and an annuity over the economic life of a vehicle, with a weighted average cost of capital interest rate applied.

## 5.5 Other Matters

**Industrial Risk**

With the recent reforms to the Australian industrial system, it is important that industrial risk is monitored and reviewed throughout the term of the contract. The new system reduces the operator's ability to control labour costs and the workforce has increased powers to take protected strike action which can adversely affect a contract's viability. The proposed partnership relationship between government and industry should help to keep this matter on the table for review, as needed.

**Government Agency Performance Risk**

The risk of poor performance by one or more government agencies adversely impacting on bus service quality has largely not been addressed in government bus contracts. For example, lack of bus priority treatments can adversely impact on-time running and may impact on contract penalty regimes. BIC believes that government and the bus industry should identify KPIs for government agency performance, which can be taken into account (inter alia) when reviewing operator performance.

**Change events**

The risks and treatment of change events needs to agreed, to help ensure smooth treatment during contract duration. For example, policy changes at any level of government that impact on bus service performance should be identified and managed in an agreed way. If such policy changes increase service costs, it is usual practice for the contract payment to be adjusted to offset this impact. Conversely if a policy change reduces costs.

**Indexation**

An indexation reset or review process should be provided for during the course of a contract, to allow any major discontinuities in costs, or other significant service influences, to be considered. For example, rapid increases in fuel prices a few years ago led to agreement for more frequent indexation of fuel costs in many contracts. Again, BIC believes that mature trusting partnerships can handle such discontinuities with ease.

**Force Majeure**

Bus contracts need to include a *force majeure* clause to free operators from liability n the event of extraordinary risks beyond their control (e.g. a major industry wide strike caused by national industrial issues or a flood event), which prevents them from fulfilling their obligations under the contract, or leads them to not meet certain contract KPIs, which may otherwise invoke penalty provisions. Operators need to take steps to limit the effects of a possible *force majeure* but should not be called to account for performance of their responsibilities under the contract if such care is taken.

# 6. Some legal aspects of contracts[5]

## 6.1 Scope

A bus service contract issued by government is a legal document that allocates on operator (or operators) the rights to provide a bus service, which is usually (but not necessarily) an exclusive right and is usually for a particular route or service area. It indicates what is to be delivered and the payment arrangements for the service, together with various provisions that manage the arrangement between buyer and seller, to support performance. More generally, a bus service contract now typically sets out (for example):

- the details of the service to be provided;
- conditions that must be met in the provision of that service (which may include operator obligations with respect to public transport system marketing, involvement in fare/ticketing systems, etc);
- service variation/flexibility provisions, including how changes in services will be handled;
- service continuity provisions;
- the term of the contract;
- the funding model;
- various financial, compliance and reporting requirements (e.g. insurance obligations; security provisions, such as a performance bond; use of brands; charter rights; advertising requirements);
- asset ownership, acquisition and replacement;
- access to assets and dealing with assets;
- arrangements for protection of intellectual property;
- treatment of *force majeure* events;
- what happens at the end of the contract term;
- how operator under-performance or non-performance will be handled, including conditions under which termination may occur; and,
- key performance indicators and incentive/penalty provisions.

In a negotiated contract, the scope of such contractual provisions should reflect the results of government-industry negotiation. In a competitive tendering situation, the contractual provisions will be a reflection of the government tender document, although negotiation with industry over that tender document (and, by implication, the associated contract) should help to improve service outcomes.

## 6.2 Wider legal context

The bus service contract exists within a broader government legal/regulatory and policy framework, which sets out very important matters, such as road rules, driver licensing requirements, work place OH&S obligations, working with children requirements, vehicle mass and dimension limits, other vehicle new and in-service standards, working hours regulations and how a government is to go about procuring goods and services, such as bus services. The latter might specify, for example, that services are to be

[5] This section draws on a presentation made by Mark Burton of Pitcher Partners to the Thredbo 10 conference *Towards the Ideal Contract.*

procured through competitive tendering, unless there are strong arguments to the contrary. Such 'strong arguments' might include, for example:

- grandfather rights asserted by some operators, which might precipitate a costly legal battle if competitive tendering is attempted; and
- efficient and effective performance by an incumbent operator, which might warrant a contract roll-over.

BIC favours contractual simplicity. To this end, it favours the contract **referring to** relevant legal and regulatory obligations but **not re-stating** those obligations. Specific policy requirements should be the subject of government-industry consultation, to facilitate a smooth negotiation process.

Within the last 10 years, bus service contract documents in Australia and many international jurisdictions have become more complex and prescriptive. Many contract provisions are either directed to micro management by a regulator that is normally ill equipped to manage the detail they have contracted to regulate, a worldwide issue, or directed to protection about what can go wrong. There has been a tendency to over-prescription of process and too little focus on outcomes. The result is a document that limits the ability of operators to be flexible and to deliver innovation. A further result is an administrative burden on the regulator that it is not equipped to handle. As a general principle, BIC strongly supports clarity in purpose and simplicity in specification of the contract, without loss of integrity. This requires a few common elements in preparing and settling the contract.

1. The contract should be preceded by a government/industry consultation process that seeks agreement on service delivery goals, commercial principles that are to be embedded in the document the roles of the various parties in system planning and the process for award of the rights to provide service. The nature of the conversation will depend in part on how the contract is allocated (by competitive tender of negotiation) but detailed consultation, to clarify the Strategic and tactical environment of the contract, will improve outcomes in either environment.
2. The contract should be outcome oriented (for example, delivering a quality, safe and reliable service for the patrons within the context of the policy of the State at the strategic level) and easy to understand. The continuing emphasis in these *Guidelines* on both government and operators being clear about their goals is intended, inter alia, to help meet this aim.
3. The contract should provide the legal protections that are reasonably required by the State and by the operator but without over prescription of process steps to achieve the desired outcomes.
4. The contract should be supported by explanatory notes (which set out, for example, how the parties intend to deal with particular matters that might be subject to significant change or dispute, such as changing service levels), templates (which set out, for example, various reporting requirements under the contract).

## 6.4 Contract Area

There is wide variation across Australia in terms of the scale of route bus service contracts, whether these are route or area-based (this is not the case with school contracts). The service unit whether it is a franchise area or a route, should be a decision stemming from travel patterns and service planning. Through routing, major corridors or orbital services may be suited to route base contracts, whereas local services are suited to franchise area contracts.

The default preference for planning and contracting urban route bus services should be franchise areas that reflecting travel catchments (which will, in turn, partly reflect physical and socio-economic geography), as this gives the greatest flexibility to adapt to market changes and helps to focus attention on building a custodial relationship with the community. Subsidiary contractual provisions may then be required to ensure that there is cross border cooperation among franchise area holders to ensure the best transport planning outcome for patrons.

There are limited scale economies and potential scale diseconomies in route bus operation. In the Australian model there are often large operators that operate from multiple depots which essentially give the characteristics of an agglomeration of small operators. Therefore, service parameters and depot locations related to those service parameters, are key determinants of optimal contract/area size.

The size of the operating unit to be contracted can be modestly influenced by the desire of government to reduce administration and transaction costs. However, forcing artificial combinations of operators into area based contracts for example is likely to increase transaction costs for operators, which will be passed back in increased service costs. It has been demonstrated in the French context (Yvrande-Billon 2007) that, in a market of fewer and large operators, there is in reality less competitive pressure.

## 6.4 Prescription versus performance based contracts

It has been usual for Australian bus service contracts to provide detailed specification of both service output requirements and detailed prescription of requirements for many of the specific inputs that are needed to produce the service outputs. Thus, for example, it is common to see contracts specify particular forms and/or levels of training required for various staff members.

A simpler approach is to simply specify the required performance outcome and place the obligation on the operator to achieve that outcome, such as ensuring that drivers are suitably trained to provide safe, customer friendly service. This then gives the operator scope to decide how to best meet that requirement, without removing legal obligations set in wider law. This approach has been used in states such as Western Australia, for example, in much road transport law/regulation, where detailed input prescriptions have been replaced by high level performance requirements.

BIC supports a move towards more simplified bus contracts, replacing prescriptive input specifications with output performance expectations when possible.

# 7. Performance and National KPIs

## 7.1 Scope

It has been argued in many parts of these *Guidelines* that efficient and effective bus services are important, for

- showing value for public money invested in services and
- long term operator business viability (sustainable contracts).

This section of the *Guidelines* proposes a number of Key Performance Indicators (KPIs), most (but not necessarily all) of which can be embedded within service contracts and be used to influence operator performance and remuneration.

The *Guidelines* propose benchmarks for both **operator performance** and **authority performance**, for two reasons. First, KPIs on both operators and the authority (Government) emphasise the partnership relationship that BIC sees as critical for the most effective delivery of bus services. Second, bus operator performance on some indicators can be strongly influenced by governmental actions, particularly for route bus services. For both reasons, KPIs for both operators and government are appropriate and are included herein. Section 5.5 also noted the argument for KPIs on government.

Section 2.1.1 outlined the high level goals/objectives towards which public transport services are directed. These were summarised as follows:

1. Maximising patronage per unit of service costs (which might include measures related to both cost efficiency and network effectiveness), with two possible sub-objectives
    a. Customer satisfaction
    b. Labour market enhancement (mainly relevant for rail services and BRT)
2. Maximising patronage by particular target groups - where these groups are seen as experiencing particular forms of transport disadvantage and where provision of a defined minimum service level is seen as an effective way to meet this objective;
3. Meeting cost-recovery targets (to be specified by government);
4. Meeting environmental performance targets (to be specified by government);
5. Meeting health and safety standards/targets (to be specified by government).

It is becoming common practice for **three main categories of KPIs** to be used for operator public transport service performance assessment, and related incentive/penalty payment regimes. These various matters can be included under those three categories:

- **Patronage Incentive** – which picks up the first point
- **Operational Performance Incentive** (OPI) – mainly focusing on point 3 but can also be used for 4 and 5 and can contribute to 1(a);
- **Qualitative Performance Incentive** (QPI) – which focuses on the customer satisfaction aspects of the first point (1(a)).

Point 2, concerning distributional aspects of service provision relates mainly to desired service levels and should form the basis of one KPI for government, as the primary service funder. Point 1(b), concerning the role of PT (especially rail and BRT) in extending labour catchments, is a fairly specialised KPI and should be dealt with on a case by case basis if such initiatives are proposed, which will mainly be in

relation to Bus Rapid Transit where bus contracts are concerned. Labour catchment extension is not discussed further in these *Guidelines*,

It is widely agreed that Key Performance Indicators against which performance is assessed should be characterised by what Pitcher partners call "the **SMARTS"**: **S**pecific, **M**easureable, **A**chievable, the **R**esponsibility of the party being assessed, **T**imely and, BIC suggests, **S**mall in number (recognising costs/difficulty of implementation). These criteria have been recognised in developing the proposed KPIs.

## 7.2 'Quality' KPIs

Quality is a vital but elusive concept in public transport, whose importance is high and on the rise, especially for route services. High quality route bus services are expected to attract higher patronage numbers than lesser quality services. A patronage incentive will pick up on part of such variation. However, focusing on particular important dimensions of quality is an important diagnostic supplement, which can help to improve services. Some dimensions of quality are usually included under an OPI and others under a QPI.

There are a number of difficulties in including 'quality' issues within a performance KPI regime for bus services, such as:

- whether to focus on production quality or on quality as it relates to customer satisfaction (e.g. how to clean a bus versus what the customer thinks about bus cleanliness). There is a distinct swing in Europe towards quality as it relates to *customer satisfaction*, and this is also measured for many Australian route bus services, since customer satisfaction is thought likely to help drive patronage gains, but both production and customer side measures remain important;
- no matter whether a production or customer satisfaction perspective is taken, which variables should comprise the relevant quality indicators and how should they be defined, measured and weighted? Consistent approaches to definition and measurement, in particular, are vital for effective benchmarking of one service/provider compared to another.

Authorities and operators are grappling with these issues and have a long way to go in terms of any consistent approach to quality. The range of quality variables included in service quality assessment is broadly consistent across many jurisdictions but measurement approaches differ and results are seldom openly published. For such reasons, these *Guidelines* propose a bare minimum number of quality indicators, which can be amended over time. BIC's research program will focus on this issue.

Hensher (2011) argues that both production (OPI) and customer satisfaction (QPI) indicators of quality should be included in an integrated approach to demand analysis, service costs and KPIs. For bus services, the most critical quality variables seem to be (not in any particular order):

- Reliability
- Travel time
- Personal safety at the bus stop
- Bus stop facilities (shelter; seats)
- Information at the bus stop
- Service frequency
- Safety
- Cleanliness of seats/vehicle*
- Driver behaviour*.

The asterisked items are those most under operator influence for route and school bus services and are, therefore, suitable candidates for inclusion in a set of operator service quality KPIs. Some can be categorised under an OPI regime and others under a QPI regime, where the latter is confined to attitudinal indicators (of customer satisfaction). Hensher's Service Quality Index (SQI) is a best practice way of measuring service quality.

## 7.3 Proposed KPIs

Tables 6 and 7 summarise a core set of proposed KPIs, for both operators and government, for route bus and school bus services respectively. Subsequent discussion suggests particular measures that should be used. Sections 7.3.1 to 7.3.3 discuss specific proposed indicators. How these KPIs are used to apply incentive/penalty regimes is a matter for negotiation between government and industry/operators but, in total, BIC believes that no more than about 2% of contract revenue should be at risk to either party. Achievement against the set of KPIs included in the contract can be used as one basis for assessing whether a contract might be rolled over with the existing operator at its completion, whether that contract was negotiated or won by competitive tender. Service efficiency, in terms of indicators such as cost/vkm or cost/vhr, are not included among the suggested KPIs, since they are largely determined when the contract is issued and should be influential in the initial awarding of the contract. Within a contract, the particular KPIs that are included would be listed in the body of the contract, while details of how the KPIs apply to a specific contract (e.g. specific performance thresholds) would be included in a schedule to that contract, since these details are specific to particular contracts.

**Table 6: Proposed Route Bus Service KPIs**

| Indicator | Operator KPI | Government/Authority KPI |
|---|---|---|
| Patronage Incentive | Yes - growth only (minimum hurdle rate to be surpassed) | Yes – extent to which Minimum Service Level is provided. |
| Operational Performance Regime | Cancellations<br>On-time running<br>Accident rate<br>Safety<br>Network efficiency | Fleet age<br>Kms of bus priority lane<br>Travel times<br>Contract administration (e.g. paying on time)<br>Safety at bus stops |
| Qualitative Performance Regime | Bus driver behaviour<br>Vehicle cleanliness | |

**Table 7: Proposed School Bus Service KPIs**

| Indicator | Operator KPI | Government/Authority KPI |
|---|---|---|
| Patronage Incentive | No | No |
| Operational Performance Regime | Cancellations<br>On-time running<br>Accident rate<br>Safety | Fleet age |
| Qualitative Performance Regime | Bus driver behaviour<br>Cleanliness of vehicles/seats<br>Complaints/compliments | Safety at bus stops |

### 7.3.1 Patronage Incentive for Route Bus Services

**Operator Incentive KPI**

Patronage incentives should be sufficiently large to potentially make a difference to operator remuneration but not so large that they create budgetary mayhem for government. The key issue for patronage growth is distinguishing the operator's contribution to growth. Growth may come (for example) from local population increase, rising fuel prices, new service roll-out that is funded by government, operator performance qualities, or some other factors. Recognising the desire to keep KPIs manageable, and to reward operator effort, BIC proposes that:

- a patronage incentive is paid at a modest rate and has only upside (no loss of revenue for loss of patronage, although services may possibly be revised downwards if patronage is declining);
- no payment is made if an operator's patronage growth is less than 2 per cent, on a moving base (if a 2% increase is achieved in year 1, that becomes the new base for year 2 and a further 2% increase must be achieved to be eligible for an incentive);
- no payment is made for growth that is attributable to additional service kilometres funded by government. A service elasticity of 0.3 is proposed is estimating patronage attributable to service growth).

The following formula applies these points.

*Patronage incentive = max [0, (passengers this year – passengers last year * 1.02 – passengers due to service growth)] * $X/passenger*

where:

- passengers due to service growth = passengers last year * % additional kms * 0.3 * % of year over which new service applied
- $X/passenger is the agreed amount paid per additional passenger (agreed between government and industry).

An important corollary of a patronage incentive is operator freedom to allocate at least some service kilometres to places where they are likely to maximise patronage. BIC proposes that every route bus contract should designate some service kilometres as 'flexible kilometres', the use of which is a matter for the operator to select to maximise patronage.

**Government KPI**

BIC proposes that the most suitable patronage incentive indicator for government relates to the extent to which social safety net services are available across the built-up urban area, as an indicator of the extent to which government is seeking to reduce mobility-related risks of social exclusion. Social safety net services in metropolitan areas are proposed as services

- within 400 metres of continuous metropolitan urban settlements
- with a frequency of at least once an hour from 6.00am to 9.00-pm, start of last run, seven days a week.

This measure could be varied to allow for a lesser frequency on Sundays or in school holidays but that is an unnecessary complication when the purpose is to benchmark provision on a consistent basis, across

parts of cities and between cities. Further work is needed to define suitable minimum service levels for non-metropolitan urban areas.

The proposed government patronage KPI is thus:

*% of metropolitan population within 400m of a route bus service (or tram/train service) with a frequency of at least once an hour from 6.00am to 9.00pm, start of last run, 7 days a week.*

It is not suggested that government would somehow be fined for not meeting a target like this but setting relevant KPIs does increase government accountability for performance and can help build understanding of some reasons why an operator may, or may not, perform well on particular KPIs, given interdependence between some government performance indicators and operator performance outcomes.

### 7.3.2 Operational Performance Incentive Regime

**Operator KPIs**

The same set of indicators has been proposed for both route and school bus services. However, the specific benchmarks that will be set for any particular KPI is likely to differ as between these different categories of service. Tables 8 and 9 propose specific measures for route and school bus services, the use of which depends in part on suitable performance monitoring systems. Where benchmark allowances on running times are not achievable at the starting point of a contract, timetables may need to be revised or the benchmark allowances increased, to reflect reality. Also, increasing traffic congestion over time may precipitate a need to revise benchmark allowances. Force majeure provisions should apply to KPIs.

**Table 8: OPIs for Route Bus Operators**

| Indicator | Route Bus | Benchmark Allowances |
|---|---|---|
| Cancellations | No cancellations | Allowance of 1% per calendar month (pcm) or one service, whichever is greater |
| On-time running<br>- early departures | No service to depart earlier than 59 seconds before scheduled time | Allowance of 1% pcm or one service, whichever is greater |
| - late arrivals | No service to arrive more than 5 minutes after the scheduled arrival time | Allowance of 5% pcm or one service, whichever is greater |
| Accident rate | To be defined (less than last year?) | To be defined |
| Safety | Vehicle inspection default recordings/vehicle | To be defined |
| Network efficiency | Boardings/vkm | To be defined |

**Table 9: OPIs for School Bus Operators**

| Indicator | Route Bus | Benchmark Allowances |
|---|---|---|
| Cancellations | No cancellations | Allowance of 1% per calendar month (pcm) or one service, whichever is greater |
| On-time running<br>- early departures | No service to depart earlier than 59 seconds before scheduled time | Allowance of 1% pcm or one service, whichever is greater |
| - late arrivals | No service to arrive more than 5 minutes after the scheduled arrival time | Allowance of 5% pcm or one service, whichever is greater |
| Accident rate | To be defined (less than last year?) | To be defined |
| Safety | Vehicle inspection default recordings/vehicle | To be defined |

**Government KPIs**

It has been argued that government performance can influence operator performance. The adjustment factor for service growth in the operator patronage incentive regime reflects such influence. For route bus services, the provision of bus priority measures also impacts operator performance, on matters like on-time running and patronage growth potential. A KPI is therefore proposed for government, relating to the kilometre length of bus priority lanes that are provided on route service routes. There would be no penalty on government for poor performance but the information should be transparent and government is then accountable to the electorate for its performance. Travel times (speeds) on bus routes are a related but broader measure of road network performance that is a government responsibility that affects bus service quality. A KPI on government is also proposed for travel times. Fleet age is proposed as a KPI on government for both route and school services, since this is a partial indicator of vehicle quality and environmental performance and is directly related to government policy on vehicle replacement. Proposed Operational Performance KPIs on Government are set out in Table 8.

**Table 10: OPIs for Government**

| Indicator | Route Bus Services | School Services |
|---|---|---|
| Fleet age (a proxy for vehicle quality and environmental performance) | Average vehicle age | Average vehicle age |
| Kms of bus priority lane | % of total service kms with bus priority lanes | n.a. |
| Travel times | Average running speed on bus routes | % of total travel on unsealed roads |
| Contract administration | On-time payment | On-time payment |
| Safety at bus stops | Reported incidents | Reported incidents |

Benchmarks have not been included for the indicators listed in Table 10 but should be developed between the industry and government, once a reliable data set is available on actual performance.

### 7.3.3 Qualitative Performance Incentive Regime

As noted above, QPI indicators have been restricted to some component customer satisfaction measures, with bus driver behaviour and cleanliness of vehicles and seats proposed as the most important indicators for bus operators. Safety at bus stops is proposed as a KPI on government. No specific measures are proposed for these matters, for reasons outlined in Section 8.2 above (which argued that there are no norms in this area at present). BIC will develop proposed measures in consultation with operators and governments. Driver behaviour, cleanliness of vehicles/seats and (perceived) safety at bus stops will all be measured by customer satisfaction ratings. BIC will survey each state to find out what current customer satisfaction rating methods are used for the matters listed, as a basis for proposing a common approach. Complaints (net of compliments) is a further potential QPI inclusion, as is a more generic measure of customer satisfaction, although the latter is less under operator control than the specific satisfaction components that have been proposed for inclusion (bus driver behaviour and vehicle/seat cleanliness).

# 8. Costs and Transparency

A corollary of BIC's position in favour of negotiated renewable contracts is that the industry and individual operators must be able to satisfy the State, through a transparent process, that they are delivering value for money at fair cost and fair margin.

This has been achieved in some jurisdictions by direct provision of financial statements to their procuring party. This is problematic in leaving with the regulator substantial accounting challenges with respect to allocation of costs among often diverse elements of businesses and normalization of costs.

A more creative and more effective approach was taken in the last round of contract negotiations in Victoria, where both parties agreed a set of procedures to be followed in a compilation of costs during the negotiation process. The operators then contracted an independent accountant to extract the agreed costs by following the *Agreed Upon Procedures* and submitting those costs in the standard financial template. The independent accountant provided a letter of assurance both as to the following of the *Agreed Upon Procedures* and a negative assurance that nothing had come to notice that would render the cost information misleading.

The procedures that were followed allowed for the smoothing of trends, where appropriate, and the proper basis of allocation of costs among diverse activities, not all of which might be subject to the contract. It also had the advantage of providing to Government only that information that they required with respect to the contract, in the form of a financial template.

A Government appointed independent auditor reviewed the working files and submitted a report to attest that the *Agreed Upon Procedures* had been followed. Operators whose costs appeared to be high through this analysis were required to justify their numbers or face a cut in remuneration. Those whose costs appeared low had the opportunity to argue for an increase.

**BIC Position**

BIC supports the approach of cost compilation by an independent accountant, subject to audit of agreed upon procedures via Government appointed auditor. The justification of costs outside the benchmark range is also supported.

# 9. Funding Model 1.01

This section of the *Guidelines* draws on Burton (2006). It elaborates on some matters from section 2.5.4., primarily from the viewpoint of a negotiated contract, although much of the material is equally applicable to competitively tendered service contracts. Section 2.5.4 proposed that the aims of the funding model should be to:

1. provide for risks to be managed by the party with most control over those risks (e.g. to minimise overall risk premiums). Risk was discussed in more detail in section 5;
2. reflect service delivery targets and support contract objectives (i.e. it should motivate desired behaviour, which includes the contribution of KPIs and related incentive/penalty regimes but also goes to higher order questions such as contestability, to encourage efficient and effective performance) and
3. do these things in a way that is flexible, transparent and easy to administer (this will help facilitate change over the course of the contract, reduce transactions costs and allow both parties to focus on what they do best, rather than haggling with each other).

Other parts of the Guidelines have pointed out that the funding model needs to be as simple as possible (linked to point 3 above) and should include a simple mechanism for variation of the costs and margin when services vary. This requires that the payment components within the contract should be sufficiently disaggregated to facilitate indexation (Section 5 included discussion on indexation, in a risk management context). The margin at the commencement of contract should be transparent and rewards to the operator should be linked both to an appropriate return on investment and to a margin on effort. For negotiated contracts, that margin should reflect normal rates of return for products with a similar risk profile.

Reflecting the wide range of influences on bus service costs and performance, contract remuneration formulae have become increasingly complex. This increases transactions costs and creates a growing likelihood of misunderstandings. Burton (2006) demonstrates this complexity very graphically. This argues for renewed efforts to simplify payment models. Hensher et al. (2011) have proposed a simplified model, which will be reviewed by BIC and its member associations for its applicability to Australian route service settings.

**BIC Position**

1. In negotiated contracts, starting costs should be based on efficient cost levels, which will require some form of comparative cost benchmarking. In a competitively tendered context, starting cost levels will reflect tender outcomes but governments should ensure that the bids are at financially sustainable levels, to support quality services that are safe and assure continuity.
2. For negotiated metropolitan route service contracts, a gross cost funding model, with an incentive/penalty regime is supported, although net cost contracts may be appropriate where the operator has considerable freedom over the service offering.
3. For negotiated (and, potentially, competitively tendered) contracts, transparent costs at commencement of contract should be separated into the following major groups and subgroups, to facilitate indexation;
    - Bus hours or driver wages costs.
        i. Bus drivers' wages
        ii. Payroll tax
        iii. Workers compensation insurance / workcover

- Bus kilometer or maintenance costs
    i. Fuel
    ii. Maintenance
- Overheads
    i. Rent for depots
    ii. Bus related overheads e.g. registration and comprehensive insurance
    iii. All other administration costs and depot overheads
    iv. Capital return on investment

4. The funding model should allow for operators to have the benefit or burden of efficiency gains or losses compared to the transparent cost basis established at commencement contract.
5. Margin should be linked to operating costs or size of activity.

Indexation should be provided on a comparison to widely accepted and independent indices appropriate to each of the major cost groups above. The regularity of indexation items should relate to their volatility. This would imply that fuel should be indexed monthly and wages and other costs probably six monthly.

Because of the different relationship between size of investment and size of activity among different forms of contract, BIC considers that there should be both a return on asset investment and a return on effort represented by the operating costs. In the simplest example the difference can be seen by a school contract on the one hand where there is a large investment in the bus relative to the size of the task versus a high frequency metropolitan operation where there is a higher proportion of task compared to investment. BIC considers that the appropriate return on assets is a weighted average cost of capital. It is the return which should compensate them for the use of capital, neither over rewarding them nor depriving them of a return that could be obtained by investing the capital elsewhere.

A tendency has arisen for regulators to apply a debt rate of interest to an annuity over the economic life of a bus. This is clearly inappropriate as it fails to recognise the equity that operators must apply to bridge the gap between the economic life of the vehicle and the life over which finances available.

The margin should be defined as a percentage of operating costs. This will reward the operator for efficiency gains and penalise the operator for efficiency losses. It will also facilitate service change mechanisms and maintain the level of margin in real dollars.

There should be a small penalty and incentive regime (~ +/- 2% of contract value), which must be linked to the degree to which the operator can control the elements making up the penalties or incentives. Section 7 discussed possible components of such an incentive/penalty regime.

# 10. Fares, Ticketing and Marketing

Route bus contracts generally include provisions that set out how fares are to be set and changed, the operator's obligations with respect to ticketing and marketing obligations. These important (primarily tactical level) considerations all recognise that bus services are usually only one part of an integrated transport system, where fares, ticketing and marketing have network implications and are often organised at network or system level. Operators may, of course, undertake their own marketing, to assist customers and build patronage, subject to any contractual provisions that relate thereto.

The particular arrangements that apply in any jurisdiction will reflect the range of modes in operation in that jurisdiction and the history of network/system development. Public transport fares are primarily a policy matter for government, reflecting considerations such as the expected external benefits from public transport use (e.g. congestion cost savings; accident savings, emission savings) and concerns about transport disadvantaged groups/people who rely on public transport, both considerations which justify fares lower than service costs. Where net cost contracts are in place, operators should have a greater degree of influence over fare setting.

Most capital cities either have, or are progressing at various rates towards, smart card ticketing systems but system marketing arrangements are more variable across jurisdictions. However, over the course of current or near-future 7-10 year contracts, network level arrangements for ticketing and marketing should be expected as common contractual obligations of operators, whether in negotiated of competitively tendered environments.

As KPIs become increasingly common in contracts, bus operator involvement in system level marketing, most likely organised through the state bus operator member association, should become the norm. In Melbourne, for example, this is achieved by BusVic being a Board member of the network marketing company, Metlink. Similar arrangements may be appropriate in other jurisdictions, including those where services are provided by a mix of public and private operators.

Some jurisdictions see network marketing as a government responsibility. The significance of external benefits from well patronised public transport services supports this view. However, operator closeness to the customer and role in revenue protection supports operator involvement as a partner with government in network level marketing. Similar arguments apply to network planning considerations. The inclusion of as patronage incentive within bus contracts also argues in favour of an operator voice in network marketing.

The bus service contract for route services should clearly set out the operator's obligations with respect to fares, ticketing and marketing, with a presumption that there is a role for operators as a group in network marketing as well as in service marketing. The contract should spell out what is required to meet operator network level marketing obligations, in particular, since this is likely to require governance arrangements to be implemented across the public transport network and involvement of both government and industry.

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