

Report 13.731
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Committee Council
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Public transport services provided by bus - responsibility for licensing and safe operation

1. Purpose

To outline the legislative roles and responsibilities of various parties involved in the delivery of public transport services by bus, regarding licensing and safe operation of those services.

2. The decision-making process and significance

No decision is being sought in this report. Officers consider this report to be a briefing for information only.

3. Background

This briefing is timely due to:

- recent experience of the Commercial Vehicle Investigation Unit of the New Zealand Police (known as the 'CVIU') 'pink stickering' buses, meaning they had to be taken off the road, disrupting services (causing cancellations etc) during April and May and giving rise to questions as to whether Greater Wellington Regional Council (GWRC) should itself be assessing the condition of buses to ensure the safety of the travelling public
- the introduction of the Public Transport Operating Model (PTOM) through the repeal of the Public Transport Management Act and amendments to the Land Transport Management Act, removing specific legislative ability for regional councils to monitor and enforce contracting requirements and controls
- officers commencing work drafting new public transport services contracts, to be entered into in the new PTOM environment.

This briefing is focussed on public safety. There is no 'bus' equivalent to the Railways Act regime, which imposes rail-specific safety requirements, roles

and responsibilities, and is the subject of Report 13.687. Any general or additional safety obligations under the Health and Safety in Employment Act 1992 are not covered by this report.

4. Organisations involved

A number of organisations have a role to play in the delivery of passenger transport services by bus in the Wellington region. Note that for bus services, there is no equivalent of the Railways Act classification of the roles of the organisations involved. The roles are more generic, and are set out below. Specific obligations are discussed in section 6 of this report.

GWRC	funds and procures public transport services by bus
Operators	providers of bus services under a contract with GWRC, or as a commercially registered service For example: NZ Bus (Go Wellington and Valley Flyer), Mana Coach Services, Tranzit Group, Uzabus (Madge), North Bus (Runcimans)
Drivers	operate buses in accordance with road rules and contract requirements
NZTA	funds public transport services; grants driver licences and transport service licences; authorises vehicle inspectors; may inspect vehicles for compliance with land transport rules
Vehicle inspector	inspects vehicles and issues certificates of fitness
Police	inspect vehicles for compliance with land transport rules and safety generally
CVIU	a nationally managed unit of the Police, responsible for monitoring all areas of the commercial vehicle industry, including trucks, buses, taxis, couriers, mobile cranes, and mobile homes.

A useful table setting out the various responsibilities in table format, is at Appendix 1 of the advice at Attachment 1.

5. Legislative scheme

We have obtained legal advice from Kensington Swan in relation to the statutory requirements and responsibilities associated with the licensing and safe operation of public transport services by bus. A copy of the advice is at Attachment 1 to this report.

The legal requirements for bus safety relate to vehicle specifications, an inspection and certification regime to check compliance with those specifications at various times, and a licensing regime. The New Zealand Transport Agency (NZTA) is generally responsible for implementing these requirements. The requirements are contained in:

- Land Transport Act 1998
- Land Transport (Road User) Rule 2004
- Land Transport Rule: Passenger Service Vehicles 1999
- Land Transport Rule: Heavy Vehicles 2004
- Land Transport Rule: Vehicle Exhaust Emissions 2007
- Land Transport Rule: Heavy Vehicle Brakes 2006
- Land Transport Rule: Vehicle Equipment 2004
- Land Transport Rule: Vehicle Dimensions and Mass 2002
- Land Transport Rule: Vehicle Standards Compliance 2002 ('Compliance Rule')
- Land Transport Rule: Operator Safety Rating 2008
- Land Transport Rule: Operator Licensing 2007

The main points regarding the legislation are summarised below.

5.1 Licensing requirements

NZTA has responsibility for granting licences to drivers, and transport services licences to operators of bus services under Land Transport Rule: Operator Licensing 2007. Requirements for licences are set out in section 6.2 of this report (Role of operators and drivers).

GWRC has no role to play in relation to the grant of licences, but GWRC has an interest in making sure that operators and drivers meet the legislative requirements.

5.2 Bus safety and enforcement

Operators are required to ensure that each bus has a certificate of fitness (**CoF**), issued by a vehicle inspector approved by NZTA. The CoF is like a car warrant of fitness, for a larger vehicle, and is required to be reissued every six months. It requires a number of checks to be made, of the vehicle's roadworthiness and safety. Inspectors are required to follow NZTA's 'Vehicle Inspection Requirements Manual' when assessing vehicles for a CoF.

A CoF is valid when issued, but the fact of issue does not mean that the CoF continues to be valid for the full period of the following six months – the status of items may change. Hence the possibility of the CVIU requiring a vehicle off the road as a result of a roadside inspection, even if the vehicle has a current (i.e. not out-of-date) CoF.

5.3 Regional public transport plan and contracts

GWRC's legislative responsibilities in relation to passenger transport services are limited to planning of the network and setting the strategic direction and context for public transport services in the Wellington region, which it does through the regional public transport plan (**RPTP**).

Under the Land Transport Management Act 2003 (as recently amended), a key focus of the RPTP is on segmentation of the network of public transport services in the region into 'units'. Some aspects of the procurement of contracts for delivery of services in those units must be reflected in the RPTP.

Under PTOM, GWRC will grant an exclusive contract to an operator for all services in a particular unit. Operators will have contractual obligations to GWRC, to meet the legislative requirements regarding licensing (of drivers and vehicles) and operation of the service.

All contracts will also address health and safety issues in general, in the context of GWRC in its role as principal to those contracts.

6. Comment

6.1 GWRC's role

The key role for GWRC in relation to the operation of public transport services, is the planning, funding and contracting of those services. There is a legislative requirement in relation to planning – to prepare the RPTP as mentioned above.

There is no legislative requirement on GWRC directly relevant to bus safety (which is different from the position with rail services). However GWRC includes relevant provisions in its contracts with operators – both in relation to vehicle safety issues specifically, and health and safety issues generally.

In relation to the land transport legislative requirements, a key aspect of the Kensington Swan advice is that it addresses GWRC's responsibilities as the party which enters into contracts with operators to provide public transport services. The advice notes:

- GWRC is not a licensed operator of transport services, and does not seek to be
- It is appropriate that it is the operator's responsibility, and not GWRC's responsibility, to ensure that vehicle and other safety standards and requirements are met. There are no specific statutory or regulatory requirements for GWRC to participate directly in the licensing and safe operation of public buses. Rather this is a matter for the bus operators themselves (at paragraph 36)
- GWRC should not seek to get involved in depth with the public transport service operators' responsibilities, but it would be good practice for GWRC to retain the power to monitor operator compliance (at paragraph 10).

Currently, in its contracts with operators, GWRC required operators to:

- comply with relevant transport service, vehicle and driver licensing regulations; ensure vehicles are registered, presented and maintained as required by law; ensure vehicles are kept clean, tidy and safe
- comply with all relevant legislation and in particular the Health and Safety in Employment Act (including regulations and codes of practice); any instructions given by GWRC relating to health and safety
- notify GWRC of any action which could result in the cancellation or suspension of any licence
- notify GWRC of any accidents which occur during the operation of a service.

GWRC has the right to:

- inspect vehicles for compliance with the Council's requirements at any time, and require any vehicle to be removed from service if it does not comply
- monitor and investigate the operation of the service to ensure consistency with the required standards of safety and service quality
- terminate the contract if the operator has not notified GWRC of any action which could result in the cancellation or suspension of any licence.

Consideration is being given to working with operators to vary the current contracts to require more reporting, in particular in relation to any issues they become aware of which may affect the certification status of any buses.

Under PTOM, it is likely that GWRC will require operators to have in place auditable processes and plans as part of their regulatory compliance regime, and that GWRC will have a right to monitor and audit that compliance if necessary. The focus is likely to be on monitoring the processes operators are going through to ensure compliance, rather than auditing actual compliance.

6.2 Role of operators and drivers

Licensing: In order to operate a passenger transport service, an operator must hold a transport service licence. Getting a licence requires an operator to:

- hold a 'certificate of knowledge of law and practice' (obtained by passing a test designed to show that the person has knowledge of the laws and practices relating to the safe, efficient and proper operation of a transport service)
- have met the 'fit and proper person' test
- ensure the vehicles to be used meet the required standard (eg by obtaining a CoF for each vehicle).

The operator must ensure that every vehicle used for operation of the service is maintained in a fit and proper condition and in accordance with any relevant legal requirements (such as the various Land Transport Rules).

Operators must also display a transport services licence card in each bus.

Each bus must be licensed and registered, as for all vehicles operated on a road.

Bus drivers must hold a licence with a P (passenger) endorsement. In order to obtain that endorsement, drivers must have met the 'fit and proper person' test and attend and pass a course approved by NZTA.

Certificate of fitness: Operators are required to ensure that each bus has a CoF, issued by a vehicle inspector approved by NZTA (see section 5.2 above).

General: Operators must ensure buses comply with all land transport safety rules on an ongoing basis.

6.3 Role of NZTA

NZTA is the licensing authority and has responsibility for administration of the Land Transport Rules. NZTA's specific responsibilities include:

- Grant of transport services and driver licences
- Approval of vehicle inspectors, who will inspect vehicles to assess whether a CoF can be issued
- Enforcing the requirements of land transport legislation – through enforcement officers authorised for that purpose.

In addition, NZTA is a key funder of public transport services.

6.4 Role of Police and CVIU

The Police are entitled to inspect vehicles at any time for compliance with any land transport legislative requirements.

The CVIU is a nationally managed unit of the Police, which has specific responsibility for monitoring all areas of the commercial vehicle industry, including buses. Bus inspections will generally be undertaken by the CVIU.

6.5 Role of GWRC councillors

There is no 'bus' equivalent to the Railways Act regime, which imposes rail-specific safety requirements, and under which both GWRC and GWRL have a specific statutory role, and therefore specific responsibilities.

Rather, the general provisions of the Health and Safety in Employment Act apply to GWRC as principal to the contract with the bus operator. Those general obligations will be the subject of a separate report, and are briefly touched on in the attached legal advice.

7. **Communication**

Communication of this briefing beyond the Council is considered unnecessary.

8. **Recommendations**

That the Council:

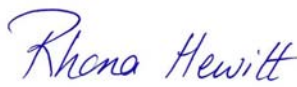
1. *Receives the report.*
2. *Notes the content of the report.*

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Attachment: 1. Kensington Swan opinion