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REPORT TO PARLIAMENT

REVIEW OF THE PUBLIC TRANSPORT AUTHORITY ACT 2003 (PTA ACT) REQUIRED UNDER SECTION 70 OF THE ACT

INTRODUCTION AND EXECUTIVE SUMMARY

1. BACKGROUND

The Public Transport Authority of Western Australia (PTA) was formed on 1 July 2003 by the Public Transport Authority Act 2003 (PTA Act). The PTA is responsible for the operation of all bus, train and ferry public transport services in the greater metropolitan area under the Transperth brand. It also operates public transport services in regional centres, operates road coach and rail passenger services to regional areas under the Transwa brand, and administers and manages school bus services. The PTA is also responsible for administration of, and draws powers from, the Government Railways Act 1904 (GR Act) and the Rail Freight System Act 2000. The PTA also exercises powers under the Public Works Act 1902.

In addition to these transport services, the PTA is responsible for designing, building and maintaining public transport infrastructure, and for protecting the long-term viability of Western Australia's freight rail corridor and infrastructure.

The PTA is a statutory authority established under Section 5 of the PTA Act, 'an Act to establish a State agency responsible for providing public passenger transport services anywhere in the State and performing functions under other Acts, to amend or repeal certain Acts, and to provide for related matters'. Section 5 establishes the PTA as a body corporate with perpetual succession.

Section 6 of the PTA Act establishes the PTA as an agent of the State with the status, immunities, and privileges of the State. The PTA is an SES organisation under the Public Sector Management Act 1994 (Section 8).

Under Section 70 of the PTA Act, the Minister is to carry out a review of the operation and effectiveness of the Act as soon as is practicable after every fifth year anniversary of the commencement of the Act. The PTA reached its five year anniversary on the 1st July 2008.

2. REVIEW PROCESS

The review provided an opportunity for public submissions with these submissions being considered on behalf of the Minister by a Steering Committee comprising representatives from the Public Transport Authority, Department for Planning and Infrastructure, a representative of the major bus companies providing Transperth bus services and the Minister's Office.

The review process was as follows:

- i. The Public Transport Authority established a PTA Act Review Steering Committee comprising representatives from the Public Transport Authority, Department for Planning and Infrastructure, a representative of the major bus companies providing Transperth bus services and the Minister's Office.

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- ii. The Steering Committee requested public submissions from interested parties. This included a public advertisement dated 20<sup>th</sup> March 2009 and direct correspondence with a range of interested entities.
- iii. Submissions were received from the Rail, Tram and Bus Union of WA and Mr Heymans, a citizen of Western Australia.
- iv. The Steering Committee reviewed the submissions and provided a draft report, including recommendations for legislative change to the Minister for Transport.

A late submission (11<sup>th</sup> May 2009) was received from the Deputy Commissioner of Police proposing a transport policing option which would result in a change to the role of security officers on the public transport system. Should this policy decision be taken by Government, a change in the PTA Act would not be required to implement that decision.

### 3. TERMS OF REFERENCE

The terms of reference for the review are established by section 70 of the PTA Act and included:

- (a) *the effectiveness of the operations of the Authority;*
- (b) *the need for the continuation of the functions of the Authority; and*
- (c) *any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.*

### 4. RECOMMENDATIONS

A review of the *Public Transport Authority Act 2003* recommends the following:

1. That the governance model for the Public Transport Authority continue in its present form, a statutory authority without a board of directors.
2. To amend PTA Regulation 34 to provide that PTA may enter into commercial arrangements permitting third party use of Authority Property for telecommunications purposes. The term of any commercial arrangement should be limited to 10 years, without obtaining the Minister's approval or to a period between 10 to 50 years with the Minister's approval, so as to be consistent with current restrictions in the PTA Act regarding creating interests in or over Authority Property
3. That section 12 of the PTA Act be amended to allow for subsidies to be paid to operators of non-commercial public transport bus services in limited circumstances.
4. That the PTA Act and/or Regulations include provisions for the Chief Executive Officer or Delegate to approve Assistance Animals on public transport and that a consequential amendment be made to the *Dog Act 1976* to remove all references to the carriage of dogs on public transport.
5. That the PTA Act include regulation making powers, similar to those contained in section 23(23b)(h) to (j) inclusive and section 23 (23c) of the GR Act, to enable the Governor to make PTA Regulations dealing with:
  - a. deeming the owner of a vehicle to have committed an offence in relation to the parking of their vehicle, unless the owner nominates the driver of the vehicle as the offender; and
  - b. removal and disposal of abandoned vehicles.

6. That disciplinary procedures and penalties are outlined in the PTA Act. Procedures outlined in the PTA Act should reflect the principles of procedural fairness and natural justice.
7. That the PTA Act review include a consequential amendment to the GR Act abolishing the existing Government Railways Appeal Board and the PTA Act be amended to specify that an appeal against the decision of the Chief Executive Officer to impose a disciplinary penalty may be appealed to a constituent authority of the WA Industrial Relations Commission. The authority should comprise a single commissioner/ arbitrator sitting alone.
8. That the PTA Act be amended to incorporate specific provisions to compel a PTA employee to give evidence in relation to an internal investigation of a complaint or report of unacceptable behaviour or performance by an authorised person or security officer. This should not remove the privilege against self-incrimination.
9. Rather than relying only on the issue of a certificate by the Chief Executive Officer of the PTA under section 7 of the GR Act on each occasion that the issue of whether land is or is not Authority Property is in dispute, it is recommended that a deeming provision be included in the PTA Act that deems any land on which public passenger transport infrastructure, except bus stops, is managed and controlled or operated by or on behalf of the PTA (including car parks servicing that infrastructure) to be Authority Property for the purposes of the PTA Act.
10. That the powers granted under section 19A of the *Forrest Place Act* be extended to include transit officers appointed under the PTA Act. This would provide clarity for PTA's security personnel as to where they can and cannot exercise their security powers in relation to the eastern concourse of the City Station.
11. That the PTA Act review include a consequential amendment to the *Public Works Act* to allow the construction of bus and ferry infrastructure required for PTA to carry out its public passenger transport functions be expressly recognized in that Act, and that the Minister for Works be given the express power to delegate construction of bus infrastructure to PTA under section 5A of the *Public Works Act*.
12. That the PTA Act grants PTA the power to install bus stop signage on any piece of land determined by PTA, whether or not owned or managed and controlled by PTA, to be the most convenient location given the bus route and number of boardings and the PTA Regulations be amended to create an offence where a person interferes with a bus stop sign, even if it is not located on Authority Property. With recommendation 8, the location where bus stop signage is installed will be deemed to be Authority property.
13. That an amendment is made to PTA Regulation 6 to make it an offence for a person to be on a closed station without a valid ticket. The recommended change will enable PTA to reduce fare evasion and discourage anti-social behaviour for the reasons stated above.
14. That the provisions of the GR Act that contain limitations or averments through the referencing of "this Act" be transferred into the PTA Act, including the power to arrest where a person fails to provide personal details or provides false personal details.
15. That section 58 of the PTA Act be amended to include 'assault of a public officer' as an offence for which authorised "security officers" have the power to take offenders into custody
16. That additional averments for the proof of certain matters that appear in the GR Act be included in the PTA Act section 68, consistent with section 96 of the GR Act.

17. That the PTA Act include a provision giving authority to nominated PTA personnel, nominated in writing and whether or not a legal practitioner, to represent the PTA in all respects.
18. That section 58 of PTA Act be amended to provide powers to transit officers or a police officer to summarily interfere to obviate or remove any danger or annoyance to other members of the public or other persons. The clause would only allow for the interference under prescribed conditions and once the danger or annoyance has been averted any subsequent arrest must be attended to as prescribed in specific arrest powers.
19. That the role of the Special Constable be clarified in the PTA Act, including process for appointment and specific powers that can be applied by the Special Constable.
20. That section 56(3) of the PTA Act be amended to include the ability to appoint contractors as "security officers" on the understanding that these contractors would undergo the same selection process, authorised training and enjoy the same associated powers.
21. That section 64A be amended to include an offence under s74A of the Criminal Code to be a "relevant offence" for the purposes of a prohibition order.
22. The above recommendations be presented as part of a review of the PTA Act and the operations of the PTA. Any resulting changes to the PTA Act and consequential changes to the PTA Regulations will be addressed through the normal legislative change process and presented back to Government and/or Parliament.

## REPORT

### THE PUBLIC TRANSPORT AUTHORITY

The first five years of operations as the Public Transport Authority have been extremely successful. For an organisation in the business of public transport, there can be few achievements more noteworthy than a major expansion of its network and services resulting in an increase in passengers. This has been achieved in the PTA's first five years of operations.

The start of passenger services on the Mandurah Line on 24 December, 2007 meant that, overnight, the PTA increased the size of its rail network by 70 per cent; increased its railcar fleet by 34 per cent; added 62 new feeder bus routes; and increased the size of its potential catchment by about four hundred thousand people

The past five years have also delivered the Thornlie spur line and station on the Armadale Line, a major upgrade and extension of the Joondalup Line and 31 state-of-the-art three-car trains, virtually doubling our rollingstock. This work included the world-class facilities at Perth Underground and Esplanade Stations.

Public transport patronage numbers are equally impressive. By the end of the five years, the total boardings on the bus, train and ferry system which Transperth operates across the greater metropolitan area were at 108.8 million a considerable five year growth. In considering the relative contributions, the impact of the Mandurah Line was immediately apparent – with only six months' contribution from the new line to the end of June 2008, annual train total boardings jumped 19.2 per cent (to 42.6 million) and fare-paying boardings 25.6 per cent (to 28.5 million); while the corresponding bus figures were increased by 1.7 per cent (to 65.7 million) and 1.2 per cent (to 39.4 million).

Despite the pressure of increased patronage, Transperth, has continued to provide a very high level of service, as has the regional operator, Transwa. At Transwa, the AvonLink (99 per cent) and road coaches (95) achieves excellent on time running results, the MerredinLink and the Prospector have more recently been badly affected by a significant program of works to upgrade the Eastern Goldfields Railway (EGR), which was completed in August 2008. The Australind (83 per cent) was affected by speed restrictions imposed because of track conditions. However, this track has also undergone a major upgrade which, though it has disrupted services through much of 2008/09, should provide much better results in years to come.

Transperth and Transwa have enjoyed strong customer support over the past five years. Overall satisfaction with the level of service offered by Transwa is currently sitting at 88 per cent; for Transperth (system-wide) it is virtually steady at 82.4 per cent. The PTA has put a great deal of effort into passenger safety and security. This has included a major expansion of the CCTV system over the past five years, the use of red light cameras at high risk level crossings and an increase in lighting and security personnel.

The school and regional town bus operations have refined and expanded their services during the five year period and both continue to offer a high level of service to their respective customer bases.

Another milestone was the successful implementation of the SmartRider electronic ticketing system. Because of its flexibility and convenience, SmartRider – still the only operating system of its kind in Australia – has ushered in new levels of customer service. It has also given the PTA, for the first time, immediate and precise statistical information on passenger movements, enabling us to more accurately refine our services to better suit our customers.

There is no doubt that we are on the brink of a transport revolution. Attitudes are changing and behaviour is changing. Public transport is seen as one of the ways in which we can

achieve a sustainable future and, just as importantly, it is recognised as a viable solution accessible to everyone. We are on the verge of a period of major expansion for the public transport sector, the scene for which has been set over the past decade. The recent rate of growth has been remarkable. In 1968/69, 78/79 and 88/89, total boardings were in the mid-60s (million). Ten years later it was 74.3 million. In the next financial year, we expect the figure to comfortably exceed 120 million.

Planning has been underway towards meeting this growing demand by ordering a further 15 three-car train sets (45 railcars). These trains, the same as those ordered for the new southern train line and the northern line expansion, are quieter, offer improved acceleration and comfort, have a practical see-through design and feature regenerative braking for improved energy efficiency. The PTA has also accelerated deliveries of the Euro 4 Compressed Natural Gas (CNG) buses, with 233 expected over the next three years. While the PTA has reconfigured and slightly expanded some of the car parking areas along the Mandurah Line, it also has a program under way to extend parking on the Joondalup Line and is working actively to encourage our customers to look for ways other than Park 'n' Ride (for example, bus, cycle, walk or drop-off) to get to the train.

The PTA came into existence on the 1<sup>st</sup> July 2003 with the introduction of the PTA Act. The legislation brought together the functions of the then WA Government Railways Commission and the Transperth, regional and school bus operations of the Department of Transport. The Act has served the PTA well apart from a few areas raised as a result of this review.

## CORPORATE GOVERNANCE

Government services are delivered through a range of forms from a Government Department, statutory authorities with or without a board of directors, through to public owned companies via corporatisation. The method of delivery of those services will depend on many factors, including the role of the agency, the need for independence and the extent of any commercial operations, if any. The Public Transport Authority was established as a Statutory Authority based on a governance model which does not include a board of directors.

Corporatisation of a government agency is used for the purpose of commercialisation of government services providing greater independence and autonomy. It is the process of establishing a government business as a separate entity that operates as a private sector business while retaining government ownership<sup>1</sup>. It creates a corporate form and is mainly used for fully commercial Government services<sup>2</sup>. The PTA is not currently a fully commercial Government service.

Statutory authorities are often used by Governments where it is seen as desirable for activities to operate outside a traditional departmental structure. The model is often used for agencies that have a single or primary role and are established by legislation<sup>3</sup>. It is a model used to improve the efficiency and effectiveness of government entities with specialised functions<sup>4</sup>. Statutory authorities are sometimes established with a board of directors, particularly where a level of independence is required from Government. Public transport is clearly a service that the Government provides policy direction on and although its related services clearly fall within the statutory authority category, a board of directors is not necessarily required.

<sup>1</sup> Anglicare Tasmania, "The Corporatisation of Government Agencies: Does it work for public housing?" 2008

<sup>2</sup> Australian Public Service Commission, "The Australian Experience of Public Sector reform" Occasional Paper Two, 2003

<sup>3</sup> Uhrig, J, "Review of the Corporate Governance of Statutory Authorities and Office Holders" Review commissioned by the Commonwealth Government, June 2003

<sup>4</sup> OECD, "Distributed Public Governance: Agencies, Authorities and Other Government Bodies", 2002

- 1. It is recommended, therefore that the governance model for the Public Transport Authority continue in its present form, a statutory authority without a board of directors.***

## FUNCTIONS

### Telecommunications Access

The PTA Act permits PTA to engage in the secondary function of earning revenue by engaging in commercial activities that are not inconsistent with, and do not have an adverse effect on, the performance of its other functions and are authorised by the PTA Regulations (section 12(3)(b) PTA Act).

PTA has many telecommunications ducts and cables on Authority Property (predominantly rail reserve) to provide telecommunication and signalling services for its own operations.

PTA has excess capacity in those ducts and cables. In addition, there is sufficient unused space on Authority Property to enable further ducts and cables or telecommunications facilities to be installed underground or above ground.

PTA seeks to utilise its strategic landholding corridors throughout the State to enable it to enter into commercial arrangements with telecommunications carriers or other government agencies permitting third parties to run cabling through PTA's ducts and cables, or allow the third parties to install their own ducts and cables or other telecommunications facilities on Authority Property in return for payment of a commercial fee.

This proposal would further the State's Telecommunications Policy "*Western Australia – A Connected Community: State Communications Policy*".

PTA Regulation 34 as currently drafted is not broad enough to permit PTA to allow third parties to use PTA telecommunications infrastructure or to install its own telecommunications infrastructure on Authority Property absent some connection with PTA's core functions of providing public passenger transport services or management of government railways and the freight rail corridor.

- 2. Therefore, it is recommended to amend PTA Regulation 34 to provide that PTA may enter into commercial arrangements permitting third party use of Authority Property for telecommunications purposes. The term of any commercial arrangement should be limited to 10 years, without obtaining the Minister's approval or to a period between 10 to 50 years with the Minister's approval, so as to be consistent with current restrictions in the PTA Act regarding creating interests in or over Authority Property***

In addition, the extent and types of access rights granted to third parties will need to take account of PTA's main functions and not adversely affect PTA's ability to continue to undertake those main functions in the future.

By granting access to Authority Property for telecommunications purposes, to the private sector, PTA will be in a position to generate not insignificant revenue for redistribution into funding PTA's main functions, and access by other government departments and agencies, will assist in improving intra-government communications systems for the State's overall benefit.

## Subsidy Payment

The PTA does not currently have the capacity under the PTA Act to pay subsidies to bus companies to operate services. Section 12 of the PTA Act states that:

*"The main function this Act gives the Authority is to provide and operate safe and reliable public passenger transport services, either directly or through persons with whom it contracts."*

This does not permit the PTA to pay a subsidy to an operator to operate a bus service that is not commercially viable that requires funding support for the service to be operated or continue to be operated in the public interest.

Section 12 allows the PTA to enter into a contract with an operator to provide a public passenger transport service, on PTA's behalf, and PTA pays the contractor for the service provided. Any fare revenue collected by the contractor is collected as trustee for the PTA and retained by the operator as an offset against the cost payable to the contractor under the contract.

Currently there are situations where the payment of a subsidy is made under the Transport Coordination Act, to the operator of a non-commercial service, (i.e. where the fare box revenue does not meet the cost of operation) and the amount that we pay is the difference between the fare box and cost of operation. This is typically done so that the service can continue in the public interest. If the PTA withdrew funding the operator would withdraw the service, so it is subsidized as a community service (CSO). The PTA does not market this service as a PTA service and the fare revenue is retained by the operator. Three of these services currently exist in remote circumstances, with a low level subsidy being paid to keep the service viable and operating, these being, Perth to Port Hedland, Kalgoorlie to Laverton and the East Pilbara Service – servicing Marble Bar, Nullagine, Port Hedland and Newman.

- 3. It is recommended that section 12 of the PTA Act be amended to allow for subsidies to be paid to operators of non-commercial public transport bus services in limited circumstances.**

## Assistance Dogs on Public Transport

The PTA is currently updating its policy to address the issue of Assistance Dogs on public transport. The requirement for the carriage of animals on public transport is currently covered by the *Public Transport Regulations 2003*. Passengers with a visual or hearing impairment are entitled to travel with a Guide Dog on public transport. The current review of that Policy seeks to broaden this provision to include other Assistance Dogs, where it meets certain requirements.

The *Dog Act 1976*, administered by the Department of Local Government and Regional Development, also has provisions for Guide Dogs under Section 8. The provision allows for people who are blind or partially blind to travel with a Guide dog. Section 8(3) allows the Minister of Local Government; Heritage; Citizenship and Multicultural Issues to provide written approval for 'specified dogs'.

The Department of Local Government and Regional Development are currently in the process of amending the *Dog Act 1976*. The amendment proposes to broaden the provision to allow Assistance Dogs on public transport. The term Assistance Dog is defined as 'a dog trained by a prescribed organisation' in the proposed amendment. The prescribed organisation will be determined by the Department of Local Government and Regional Development. In addition, the Departmental CEO, not the Minister has the authority to issue written approval for 'specified dogs'.

Dog training organisations provide a range of dogs including Service, Companion, Therapy and Alert Dogs. Only Service Dogs are trained to travel on public transport. The proposed definition of Assistance Dog potentially allows the approval of dogs which are not specifically trained to travel on public transport. This poses a risk to the safety of PTA employees as well as the safety and comfort of the travelling public.

With the introduction of the PTA Act in 2003, this provided the opportunity for all issues related to what can and cannot be carried or taken onto Authority property to be included in that Act or its Regulations. To avoid confusion, the PTA should be the sole government agency approving Assistance Dogs other than Guide Dogs, which the Regulations automatically allow, on public transport.

- 4. *It is recommended that the PTA Act and/or Regulations include provisions for the Chief Executive Officer or Delegate to approve Assistance Animals on public transport and that a consequential amendment be made to the Dog Act 1976 to remove all references to the carriage of dogs on public transport.***

#### REGULATION MAKING POWERS

As a public transport provider in current times, PTA is also compelled to provide more car parking to encourage the public to come to catch public transport.

Car parking spaces are much sought after and supply cannot seem to satisfy demand. Accordingly, PTA needs to monitor its car parks to ensure that commuters do not stay longer than is permitted and that they abide by the rules regarding parking where permitted or designated by PTA.

However the effectiveness of monitoring and enforcing the parking regulations is restricted at Transperth's bus stations due to the absence of "owner onus" provisions in the PTA Act.

PTA enjoys the benefit of such provisions in respect of car parks and areas servicing government railways, but not other non-rail infrastructure, such as the Bus Port, Wellington Street Bus Station and Booragoon Bus Station.

In addition, PTA has power, in respect of government railway land, to remove and dispose of vehicles that are abandoned on government railway land. This power is derived from the power to make regulations on this subject by section 23(1)(23c) of the GR Act. PTA does not enjoy the same power to remove and dispose of abandoned vehicles on other PTA property such as bus stations and bus depots.

- 5. *It is recommended that the PTA Act include regulation making powers, similar to those contained in section 23(23b)(h) to (j) inclusive and section 23 (23c) of the GR Act, to enable the Governor to make PTA Regulations dealing with:***
- a. deeming the owner of a vehicle to have committed an offence in relation to the parking of their vehicle, unless the owner nominates the driver of the vehicle as the offender; and***
  - b. removal and disposal of abandoned vehicles.***

The inclusion of the additional regulation making power will enable PTA to better regulate car parking and vehicular access to all PTA facilities, and should result in improved driver behaviour at PTA car parks.

## HUMAN RESOURCES

A number of human resource issues have arisen over the past five years resulting in different legislation applying to different groups of employees. Managing disciplinary issues is complicated with some staff falling under conditions of the GR Act while others come under the Public Sector Management Act. A separate tripartite Disciplinary Appeal Board (the Railways Appeal Board) under the GR Act still exists for some employees, and there is no obligation on PTA employees to participate in and / or provide evidence to an internal investigator charged with investigating reports or complaints of inappropriate or excessive behaviour towards PTA customers.

### **Discipline**

The PTA currently has an inconsistent mix of disciplinary penalties, procedures and appeal entitlements that apply to its employees. Specifically:

- The regulation of penalties and the appeal process for “specified award “ employees under the GR Act, employees employed under the GR Act immediately prior to its amendment by the PTA Act in 2003;
- Regulation of penalties for other employees in Industrial Awards and agreements. However, penalties are not consistent.
- Appeal rights to two different appeal mechanisms – one to the Railways Appeal Board for “specified award” employees and one to Western Australian Industrial Relations Commission (WAIRC) for other employees.

Disciplinary processes are specified in one of three industrial awards and five industrial agreements registered in the WAIRC for wages employees and by policy for salaried officers. The procedures are not identical for each wage award. The procedures are prescriptive and, unlike normal public sector procedures or common law provisions, set specific time frames in which any disciplinary action must be initiated (7 days from the date PTA becomes aware of any incident that may possibly result in disciplinary action), formal charges laid (within 30 days of the date of occurrence) and final determination being made (90 days from the occurrence). Failure to comply with a time line renders any disciplinary action void.

Any changes have to be negotiated and agreed with the relevant industrial union. The current round of enterprise bargaining has seen a claim by the union to withdraw existing penalties relating to fines or regression of employees as they do not have statutory backing.

The restrictive nature of the timelines has resulted in the PTA being forced to charge officers, particularly transit officers, with a range of disciplinary breaches prior to concluding its investigation. This is done to preserve its right to take action if a breach of discipline is sustained.

In the past 12 months the investigation section of PTA has investigated approximately 72 complaints of inappropriate behaviour of PTA employees with varying amounts of participants or suspect officers. In most cases 1- 6 individuals are involved in the matter. In all cases where investigation is not completed by 30 days the individual officers are charged – with resultant personal stress on the individual. Approximately 90% of complaints are dismissed upon completion of the investigation process – in other words 90% of officers are unnecessarily charged.

**6. To address an inconsistent and complex approach it is recommended that disciplinary procedures and penalties are outlined in the PTA Act. Procedures outlined in the PTA Act should reflect the principles of procedural fairness and natural justice.**

With all employees coming under procedures in a single piece of legislation, it ensures all employees are treated consistently. Existing case law and precedents set clear parameters on the need for any disciplinary matter to be finalised in a reasonable time frame.

The Railways Appeal Board (The Board) has its genesis in the GR Act. Access to The Board is limited to wages employees employed prior to the creation of the PTA who were covered by the *Government Railways Locomotive Enginemen's Award 1973-1990* (now superseded) or the *Railways Employees Award No 18 of 1969*. The Board's determination is final. No further appeal is available except to the Supreme Court on matters of law. However, since the 2005 Workchoices amendments to the Commonwealth *Workplace Relations Act 1996* there has been a question as to whether The Board has any capacity to hear appeals. The *Workplace Relations Act*, relying upon the trading corporations powers under the Commonwealth Constitution, were seen to imply the PTA is / was a constitutional corporation and therefore the Board could not hear any appeal. Consequently no application has been made. Pending changes to the Commonwealth Act and moves to return State Government employees to State industrial regulation will remove this impediment.

The PTA is of the view that the Board is no longer appropriate. It covers a constantly reducing number of "specified award" employees. It is tripartite with a magistrate, employer representative and union nominated representative. The majority of PTA employees have appeal rights to the WAIRC. Any appeal should be to a constituent authority of the WAIRC, potentially the Public Service Arbitrator, whose decision is not subject to further appeal. Reference to a consistent authority also provides capacity to dispense with the tripartite constitution of the board and refer matters for determination by a single arbitrator or commissioner.

**7. It is recommended that the PTA Act review include a consequential amendment to the GR Act abolishing the existing Government Railways Appeal Board and the PTA Act be amended to specify that an appeal against the decision of the Chief Executive Officer to impose a disciplinary penalty may be appealed to a constituent authority of the WA Industrial Relations Commission. The authority should comprise a single commissioner/ arbitrator sitting alone.**

The PTA Act makes provision for the appointment of authorised persons and security officers. Since the commencement of the PTA the role of Transit Officers has increased. The capacity to detain and apply force to PTA customers requires appropriate training and then internal review and investigation processes to respond to complaints of inappropriate behaviour or excessive use of force. The PTA has an internal investigation section that has primary responsibility for investigation of such matters. PTA investigations are subject to the oversight and review of the Corruption and Crime Commission. While Transit Officers have powers to arrest, unlike Police, there are no statutory provisions placed upon Transit Officers to compel an officer to participate in an interview or provide evidence to the PTA when investigating a complaint or disciplinary matter.

The PTA increasingly is seeing officers not willing to be interviewed as witnesses or to be seen to give evidence against other Transit Officers. PTA practice has been to interview

officers by means of an audio and video recording device similar to police, corrective services and other inspection services. Such method provides an indisputable record of the conversation and speeds up the investigation process as the taking of contemporaneous notes is time consuming. It also allows a free flowing discussion which is important from a procedural fairness and natural justice perspective.

The effect of such advice and the reluctance of officers to participate is further delaying the completion of investigations and the PTA's ability to prove or disprove a breach of discipline.

***8. It is recommended that the PTA Act be amended to incorporate specific provisions to compel a PTA employee to give evidence in relation to an internal investigation of a complaint or report of unacceptable behaviour or performance by an authorised person or security officer. This should not remove the privilege against self-incrimination.***

### PTA LAND AND PROPERTY

There has been some concern about the uncertainty of the geographic limitations of what comprises "Authority Property" for the purposes of PTA transit officers and revenue protection officers exercising powers of arrest and powers to issue infringement notices for offences occurring on, or in respect of, Authority Property.

Section 7 of the GR Act does overcome this uncertainty to a degree, by empowering the Chief Executive Officer to issue a certificate advising that any specified land is included as portion of a government railway, and accordingly is also "Authority Property" for the purposes of the PTA Act section 3, even where the land is not registered as freehold land in the name of the PTA or as Crown land reserved for railway purposes (e.g. where PTA has built rail infrastructure, including rail commuter parking on road reserve or held in freehold by another government agency, such as the WA Planning Commission).

***9. Rather than relying only on the issue of a certificate by the Chief Executive Officer of the PTA under section 7 of the GR Act on each occasion that the issue of whether land is or is not Authority Property is in dispute, it is recommended that a deeming provision be included in the PTA Act that deems any land on which public passenger transport infrastructure, except bus stops, is managed and controlled or operated by or on behalf of the PTA (including car parks servicing that infrastructure) to be Authority Property for the purposes of the PTA Act.***

This deeming provision will assist PTA in regulating the conduct of persons and vehicles on Authority Property. This will improve the ability of PTA transit officers to clearly advise the public of the boundaries of Authority Property.

### Exercise of powers of Security Officers over Eastern Concourse area of City Station

The *Forrest Place and City Station Development Act 1985 (Forrest Place Act)* empowers Railway Special Constables appointed under section 74 of the GR Act to exercise their

powers on the Eastern Concourse area above the City Station, as if that area formed part of a government railway.

At the time the Forrest Place Act was enacted, the PTA Act did not exist. The GR Act was the only governing legislation with respect to government railways and security personnel were only appointed as Railway Special Constables under section 74 of the GR Act. Now, security personnel are generally appointed only as security officers under section 56 of the PTA Act, meaning they have more limited powers of arrest as set out in section 58 of the PTA Act.

PTA also leases a portion of the concourse area from the City of Perth, being that area where fare gates and steel fencing have been installed and that area from the fence/fare gates up to the escalators leading down to the platforms of the City Station. PTA therefore manages and controls this portion of the concourse area, so that it falls within the definition of "Authority Property" for the purposes of the PTA Act.

***10. Therefore, it is recommended that the powers granted under section 19A of the Forrest Place Act be extended to include security officers appointed under the PTA Act. This would provide clarity for PTA's security personnel as to where they can and cannot exercise their security powers in relation to the eastern concourse of the City Station.***

#### LAND RESUMPTION POWERS

PTA currently has express power to resume land to build a railway, via the *Public Works Act 1902*, section 99, subject to complying with the compensation provisions in Part 10 of the *Land Administration Act 1997*.

However, PTA has no corresponding express power to resume land to build other types of public passenger transport infrastructure such as bus stations, bus depots and ferry infrastructure. Such bus and ferry infrastructure is still clearly a "public work" within the meaning of the *Public Works Act*, being "any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose" as described in paragraph (19) of the definition of "public work" in section 2 of the *Public Works Act*. However, it is not listed as an express example of a public work within the definition of "public work" in section 2 of the *Public Works Act*.

Accordingly, PTA is currently required to consult and obtain approval from the Governor, and in turn the Executive Council, before embarking on the construction of a bus station and resumption of land consequent to that construction. The construction of that public work is also to be carried out by the Minister for Works, via Department for Treasury and Finance (section 11 *Public Works Act*). The Minister for Works has no express power of delegation of such public work to the PTA, as exists for other types of public works in section 5A of the *Public Works Act*.

PTA's ability to identify suitable sites to locate bus depots in the metropolitan area is becoming more problematic. Based on current planning, considerable bus service expansion will be required in the Transperth network over the next 10 years, requiring about 10 to 12 additional depots as the bus fleet expands. These buses will operate primarily in the mid to inner CBD areas and need to be located close to their area of operation to achieve effective use of public funds on these subsidized services. There is also the requirement, with CNG fuelled buses, that the depots be located near high pressure CNG pipelines. This is becoming increasingly difficult and PTA has had to pay high premiums to upgrade gas lines

to accommodate PTA's drawdown requirements. PTA envisages that over time, PTA's only option is to resume land to enable these facilities to be located in the right place.

***11. It is recommended that the PTA Act review include a consequential amendment to the Public Works Act to allow the construction of bus and ferry infrastructure required for PTA to carry out its public passenger transport functions be expressly recognized in that Act, and that the Minister for Works be given the express power to delegate construction of bus infrastructure to PTA under section 5A of the Public Works Act.***

The change recommended will streamline the process of delivering transport infrastructure, in particular bus stations and related infrastructure, as a public work (i.e. The Governor in Executive Council need not be involved, but the Minister for Works, via Government of the day, is still to determine that the public work is required) and it will allow PTA to exercise the powers of compulsory acquisition afforded to other delegates via section 10 of the *Public Works Act*.

#### **BUS STOPS – POWER TO INSTALL ON NON- PTA PROPERTY**

PTA installs bus stop signs at various locations to signify to bus commuters where a bus will stop to allow them to get on or off a bus. This is clearly within PTA's primary function of providing a public passenger transport service.

The location and removal of bus stops have created problems for the PTA. The PTA currently has no express statutory power to locate bus stop signs on property that is not Authority Property – bus stops are commonly located on road reserve that is under the care, control and management of local authorities, and the PTA constantly faces the problem of having its signs removed by vandals or members of the public who may be disgruntled with a bus stop being located on their front verge.

Consideration may need to be given to a potential consequential amendment to Section 55(2) of the *Land Administration Act 1997* (LAA). Section 55(2) of the LAA currently states "Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*, the local government within the district of which a road is situated has the care, control and management of the road." This Section may need to include the PTA Act.

***12. It is recommended that the PTA Act grants PTA the power to install bus stop signage on any piece of land determined by PTA, whether or not owned or managed and controlled by PTA, to be the most convenient location given the bus route and number of boardings and the PTA Regulations be amended to create an offence where a person interferes with a bus stop sign, even if it is not located on Authority Property. With recommendation 8, the location where bus stop signage is installed will be deemed to be Authority property.***

The recommended changes will allow PTA to install bus stops from time to time where they are required to best suit public transport needs and discourage removal of bus stop signs by either issuing a summons to appear in Court or issuing infringement notices to persons who interfere with or remove bus signs.

## CLOSED STATION

A person is not contravening the PTA Act or PTA Regulations by being on the platform without a ticket. A person only contravenes the PTA Regulations if he/she is on a conveyance (bus, train, ferry) without a valid ticket, or if s/he attempts to travel without a valid ticket. The fact that someone is on a platform is not conclusive evidence that s/he is attempting to travel without a valid ticket.

Since the PTA introduced the Smartrider ticketing system to all Transperth services, it has moved to make certain key rail stations "closed stations", requiring people to buy a cash ticket or validate their Smartrider card as a condition of entry to that station. This is to reduce the potential for fare evasion via use of the Smartrider card. As PTA receives only 25% of its revenue from fare collections, with the balance provided by Government, PTA cannot afford to allow the revenue base from fare collections to be reduced through fare evasion when measures such as the "closed station" can play a major part in reducing fare evasion.

In addition, the concept of "closed stations" promotes the use of rail stations principally as a place to be just for the purpose of catching a train or bus, and not a place to congregate, meet friends and stay as a destination. This reduces the potential for stations to become places where groups of people can engage in anti-social behaviour.

The closed stations are the stations with the greatest volume of commuters passing through them, namely the City, Perth Underground and Esplanade stations and Clarkson, Joondalup, Whitfords, Warwick, Stirling, Fremantle, Midland, Bassendean, Armadale, Thornlie, Bullcreek, Murdoch, Cockburn Central, Wellard, Rockingham, Warnbro and Mandurah.

***13. It is recommended that an amendment is made to PTA Regulation 6 to make it an offence for a person to be on a closed station without a valid ticket. The recommended change will enable PTA to reduce fare evasion and discourage anti-social behaviour for the reasons stated above.***

## SECURITY

Powers related to the management of security for the PTA are drawn both from the PTA Act and the GR Act. As a result, there are major differences in managing security on the train system and the ability to manage security on the bus and ferry systems.

One example is the power of arrest contained in section 49(4) of the GR Act where a person commits an offence and refuses to give his/her personal details or gives false personal details. It applies only to an offence against "this Act", being the GR Act. Unlike the GR Act, the PTA Act does not have similar provision. The PTA Act provides for the ability to request a person's details, but no power of arrest if they fail to provide personal details or provide false personal details.

Incorporating all security and offence related provisions in the single piece of legislation addresses the issue of the lack of powers that are currently experienced by PTA "authorised persons" and "security officers" who may have reason to deal with a person on other than 'railway' property. The GR Act specifically addresses conduct on a railway and as the PTA also operates buses and ferries placing similar provisions in the PTA Act allow for inappropriate conduct to be dealt with in accordance to the provisions of the PTA Act.

***14. It is recommended that the provisions of the GR Act that contain limitations or averments through the referencing of "this Act" be transferred into the PTA Act, including the power to arrest where a person fails to provide personal details or provides false personal details.***

Section 58 of the PTA Act grants powers to those authorised as "security officers" under section 56 to take offenders into custody in certain circumstances (powers of arrest). These circumstances do not include 'assault of a public officer'. Transit officers on the public transport system are subject to violent and aggressive behaviour from time to time resulting in injuries. The legislation does not provide the ability for transit officers in these circumstances to make an arrest for this offence.

***15. It is recommended that section 58 of the PTA Act be amended to include 'assault of a public officer' as an offence for which authorised "security officers" have the power to take offenders into custody.***

Section 96 of the GR Act contains some averments that assist in streamlining prosecutions and that have not been included in section 68 of the PTA Act.

For example, the following averments should be added into the PTA Act:

- that the production of a copy of the Government Gazette, a true copy or a notice certified by the chief executive officer, or an employee authorised by the chief executive officer, is evidence, until the contrary is proved, of the making and existence of a rule, by-law, regulation, order or notice and of all preliminary steps necessary to give full force and effect to the same; and
- Averments that any real or personal property is or forms part of Authority property, is under the care control and management of the PTA.

***16. It is therefore recommended that additional averments for the proof of certain matters that appear in the GR Act be included in the PTA Act section 68, consistent with section 96 of the GR Act.***

Currently, the GR Act includes provisions that give authority for authorised members of the PTA to represent the PTA in any proceedings. This is not the case under the PTA Act and therefore provides difficulties when participating in proceedings related to bus and ferry operations.

***17. It is therefore recommended that the PTA Act include a provision giving authority to nominated PTA personnel, nominated in writing and whether or not a legal practitioner, to represent the PTA in all respects.***

Section 58 of the PTA Act and in particular 58(3) does not allow for the intervention of an "authorised person" or "security officer" unless the person is first warned that their continued

behaviour may result in their arrest. Employees currently rely on the provisions of the GR Act to exercise summary interference, via section 50. However this can only apply to offences under the GR Act and in most cases the elements of the offence relate to "being on a railway".

***18. For the same responsible approach to be adopted on the other transport disciplines operated by the PTA, it is recommended that section 58 of PTA Act be amended to provide powers to transit officers or a police officer to summarily interfere to obviate or remove any danger or annoyance to other members of the public or other persons. The clause would only allow for the interference under prescribed conditions and once the danger or annoyance has been averted any subsequent arrest must be attended to as prescribed in specific arrest powers.***

Section 74 of the GR Act deals with the provisions of a Railway Special Constable and since 2002 it has been the subject of a number of opinions from the State Solicitor's Office as to its meaning, the powers of such a class of person and the limitation that it places on such persons. During that time other legislative changes have taken place which now renders section 74 ineffective.

The PTA Act does not include provisions for the appointment of special constables. By including the ability to appoint special constables in the PTA Act, it allows for a system to be clearly and openly established for the appointment, training and powers for a special constable. This would reflect the provision of a Police Special Constable as provided for within the *Police Act 1892* and will address the many administrative issues that are faced by the Security Section since the introduction of the *Criminal Procedures Act 2004*, *Criminal Investigations Act 2006* and recent amendments to the *Interpretations Act 1984*.

***19. It is therefore recommended that the role of the Special Constable be clarified in the PTA Act, including process for appointment and specific powers that can be applied by the Special Constable.***

The PTA has not had the ability to appoint non PTA employees as "security officers" under the PTA Act to provide a higher level of security for bus operations. Currently contract staff are utilised to provide a security presence on the bus system, these contractors are security officers as per the *Commercial Agents Act* but not "security officers" appointed under the PTA Act with consequential powers of arrest derived from the PTA Act. In situations where these contractors are required to deal with violent or aggressive persons, they rely on the provisions "citizen's arrest" as provided for in the *Criminal Investigations Act 2006*. Whilst the carriage of batons is authorised through the security licence, the use of OC spray could result in criminal charges.

***20. It is therefore recommended that section 56(3) of the PTA Act be amended to include the ability to appoint contractors as "security officers" on the understanding that these contractors would undergo the same selection process, authorised training and enjoy the same associated powers.***

By allowing these contractors to be appointed as security officers under the PTA Act the organisation can ensure that the level of training and accountability is equal to other officers employed to perform a similar function.

Section 64A of the PTA Act has recently been inserted and replaced the provision found in the PTA Regulations for the ability for habitual offenders to be prohibited from using public transport in certain circumstances. Since the introduction of the regulation not one person has been placed on a prohibition order. This is mainly due to the most commonly preferred charge that relates to anti-social behaviour is that provided for under section 74A of the *Criminal Code* – Disorderly Conduct. This is not currently a “relevant offence” for the purposes of a prohibition notice.

In 2008 and 2009 there have been 177 and 35 disorderly conduct charges, respectively. Of these, 4 offenders in 2008 and 2 offenders thus far in 2009 would have met the requirements of a prohibition order.

A charge of disorderly conduct, only needs to be proved that it was in a public place or that it was in the view of the public or the hearing of members of the public. The charge of disorderly conduct also offers a greater scope of outcomes to magistrates and is considered to be the most appropriate charge to be preferred.

***21. It is therefore recommended that section 64A be amended to include an offence under s74A of the Criminal Code to be a “relevant offence” for the purposes of a prohibition order.***

***22. The above recommendations are presented as part of a review of the PTA Act and the operations of the PTA. Any resulting changes to the PTA Act and consequential changes to the PTA Regulations will be addressed through the normal legislative change process and presented back to Government and/or Parliament.***