

**NEW PUBLIC TRANSPORT
LEGISLATION FOR VICTORIA**

DISCUSSION PAPER

JANUARY 1995

DEPARTMENT OF TRANSPORT

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NEW PUBLIC TRANSPORT LEGISLATION FOR VICTORIA

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INTRODUCTION

Strengthening Competition in the Public Transport Sector

1. The Government is establishing a new legislative framework for Public Transport in Victoria to remove remaining impediments to:
 - (a) commercialisation of public transport operations; and
 - (b) implementation of the Government's wider public transport reforms.

2. This paper outlines for discussion the legislative options being considered by the Government to implement change in Victoria's public transport sector. A key purpose of the changes now being considered is to gain for Victoria's public transport the types of economic benefits and efficiencies which are potentially achievable from real competition in all sectors of the economy. The directions for change in this respect are consistent with recommendations of the Commonwealth Government's Independent Inquiry into Competition Policy. The new legislation aims both to increase effective competition in Victoria's public transport sector and to ensure the continued provision of public transport services which are essential to the public interest, but which may be vulnerable to unfair competition. It is proposed that the new public transport legislation will:
 - (a) Remove regulatory restrictions on competition in the road passenger public transport sector.
 - (b) Ensure public transport services continue to be provided in the public interest.
 - (c) Strengthen the government sector's capacity to achieve commercial best practice standards in the delivery of public transport services by:
 - facilitating establishment of a more commercial structure for the PTC; and
 - increasing the range of skills and experience available to the PTC Board by providing for additional appointments to the Board.
 - (d) Facilitate access to the State's rail transport infrastructure by:
 - Providing an explicit legislative base for the current administrative arrangements for the safety accreditation of government and private sector operators of rail based public transport presently implemented under a general head of power for the safety of public transport.

- Implementing appropriate operational and commercial arrangements for management of rail infrastructure, control of access to the infrastructure and operation of rail transport services on it.
- Providing for the pricing of access to rail infrastructure by private and public sector transport operators.

Form and Coverage of the Proposed Legislation

3. A Public Transport Bill will be brought into the Parliament in the 1995 Autumn session to give effect to the changes determined by the Government following consultation. The Bill will extract and consolidate public transport references from the Transport Act 1983, where appropriate replacing existing provisions with new sections implementing the policy directions outlined in this paper. Obsolete or redundant references relating to Public Transport currently in the Transport Act will not be carried across to the new Bill. These include references to:
 - (a) The former Ministry of Transport and Director-General of Transport.
 - (b) Special acquisition powers granted to the PTC to acquire land associated with the City Loop.
 - (c) The Victorian Transport Service including provisions dealing with determinations in respect to salaries.
4. Parts, Divisions and Sections of the Bill are to be arranged so that the roles of the key people and organisations involved in public transport and the interactions and interfaces between those roles are clearly defined. Some current provisions of the Transport Act dealing with administrative and other details relating to public transport will also be relocated to schedules in the Bill.
5. Those provisions of the Transport Act which do not apply exclusively to public transport matters will remain in the Act as they are pending further decisions by the Government on such matters. The Transport Act will continue in force in so far as it applies to the powers and responsibilities of the Minister for Roads and Ports.
6. It is proposed that the Bill will cover transportation of passengers for hire or reward by means of heavy rail, light rail and tramway vehicles and commercial passenger road vehicles, but excluding the vehicles listed below which will continue to be covered under the Transport Act:
 - (a) taxi-cabs;
 - (b) hire cars;
 - (c) "special vehicles" such as courtesy buses carrying hotel guests or business clients, etc. for which separate fares are not charged; and

- (d) vehicles used solely the carriage of passengers for religious, philanthropic, educational, sporting or social purposes;
7. In addition consideration will be given to enabling the Bill selectively to address safety issues associated with the provision of other forms of public transport on land or water including those offered as part of tourist attractions such as horse drawn coaches and other vehicles drawn by draught animals, steam and traction engine rides, motor cycle pillion rides, river and lake cruises and the like.

REGULATION OF ROAD BASED PUBLIC TRANSPORT

Current Regulation of Road Based Public Transport

8. Victoria's road based public transport is presently regulated by the Roads Corporation issuing separate licences for each vehicle involved. There are ten different types of licences issued by the Roads Corporation in respect to vehicles covering a total of approximately 6,000 public transport vehicles. Each licence stipulates the specific public transport services which the vehicle may legally be used to provide. The Attachment to this paper provides further detail on the present commercial passenger vehicle licensing system.

Criticisms of the Current System

9. The licensing system outlined above is open to the criticisms that:
- (a) It is a barrier to new entrants to the public transport sector and reduces effective competition within the sector. The legislative requirement that licences are to be granted or not granted having regard to the effect upon existing services of the services proposed to be provided is particularly restrictive.
 - (b) By limiting the uses to which particular vehicles can be put, the system reduces transport operators' flexibility to respond to market demand and commercial opportunities.
 - (c) The prescriptive nature of the system makes it cumbersome to administer and requires a high level of administrative effort and resources.
 - (d) Licences to operate route bus services are an unnecessary addition to the system of contracts managed by the Department of Transport to ensure the provision of appropriate services.
10. Processes for letting route bus service contracts, including school bus services, based on payment of a set rate per kilometre travelled have also been criticised as being less than fully competitive. The Minister for Public Transport has established an Industry Working Party to advise on present difficulties in relation to the bus contracts and on ways in which these difficulties may be addressed.

Constraints on Change to the Current System

11. Because the issue of licences is restricted, the licences have a value that relates to the commercial returns available from operation of the public transport businesses they confer the right to operate. Licenses are traded on this basis and may appear as assets on the books of the operators who hold them.
12. The licence system currently extends across a spectrum of road based public transport ranging from large scale route bus operations to one person, one vehicle school bus operations. Any changes proposed must be sensitive to the differences in the nature and scale of the businesses involved.

Options for Legislative Change

13. The criticisms of the present system can be effectively addressed by the introduction of a system of accreditation by the Secretary of Transport to qualify public transport operators and drivers solely on the basis of their fitness to provide the service.
14. Provisions in the Bill relating to accreditation will be capable of being extended, by means of a regulation making power, to all forms of non-rail public transport irrespective of the mode of travel involved.
15. The Bill will require public transport operators seeking accreditation to meet standards relating to:
 - (a) the ability to provide passenger transport services including the ability to manage the operators' transport business operations;
 - (b) safety of passengers and the public;
 - (c) service to passengers;
 - (d) vehicles and equipment (including their design, service, maintenance and condition).
16. The Bill will also require persons seeking accreditation as drivers of non rail based public transport to meet standards relating to their:
 - (a) medical (including psychological) fitness;
 - (b) aptitude, training and skills;
 - (c) character.
17. Heads of power to make regulations on the specific matters to be examined in determining transport operators' and drivers' compliance with standards will be specified in schedules to the Bill.

18. The Minister for Public Transport has also established an Industry Working Party to advise on road transport accreditation matters. The Working Party has presented a report to the Minister on its investigation of the issues involved. The report will be taken into account in drafting the schedules and regulations and the Working Party will be consulted in the course of that process.
19. There are a number of different ways in which the new accreditation system might be implemented by the Bill. The options include:
- Option 1: The immediate abolition of licences.
- Option 2: Retention of licences as an interim measure while removing any requirement to take into account in issuing new licences the effect on existing services of doing so and indicating that licences will be phased out over a period to be specified.
- Option 3: As for Option 2 while retaining the licence system into the future.
20. Option 1 would achieve the Government's deregulation objective immediately, but too rapid implementation may lead to some disruption in the industry.
21. Options 2 and 3 have the disadvantage of continuing to restrict operators' immediate ability to use their buses flexibly. This restriction is eliminated in Option 2 on expiration of the specified period.
22. Options 2 and 3 could be modified to replace the existing licence categories with a single licence category to provide an immediate flexibility in the potential use of buses.
23. In implementing any of the options concerns of existing operators could be addressed by:
- (a) Providing that all existing licensed operators would be automatically accredited to operate services under the new Act for a period to be specified.
- (b) Subject to review of the basis on which contracts are awarded
- for route bus operators, the preservation of existing fixed term contractual arrangements;
 - for school bus operators preservation of existing arrangements until replaced by term contracts.
- (c) Designation of some non-route bus services as contract services required to be continued in the public interest as outlined at paras. 26 and 27.
24. The Regulator-General is empowered under the Regulator-General Act 1994 to regulate prices, quality standards and market conduct, to conduct enquires and to report on Regulated Industries. The basis on which bus contracts are awarded

could be reviewed under these provisions. This would require the Bill to declare the bus industry to be a Regulated Industry for the purposes of the Regulator-General Act. The Industry Working Party on Bus Contracts will be consulted and its views sought on whether the industry should be declared a regulated industry for this purpose.

PROVISION OF SERVICES IN THE PUBLIC INTEREST

25. Services need to be delivered in an orderly manner in the public interest. Operators need to be protected from competitors seeking to operate services selectively by failing to provide off-peak services or by by-passing intermediate destinations between major transport nodes, etc. Many, although not all, of the services with a strong public interest component are services currently delivered under contracts let by the Department of Transport and include bus and ferry services.
26. In addition to the present contracting powers contained in the Transport Act it is proposed that the Bill will provide a specific power for the Secretary of Transport to contract with transport operators for the provision of public transport services designated as required in the public interest. The Bill will preclude operators from operating services designated in this way without a contract with the Department of Transport. It is intended that these provisions should apply to all modes of public transport.

STRENGTHENING THE PTC'S COMPETITIVE POSITION

Adopting a More Commercial Structure

27. While each of the PTC's separate business units currently operating transport services have some degree of autonomy, they are supported by the Corporate Headquarters providing a variety of central services. The business units report to the Chief Executive and are directed by the Board.
28. It can be argued that as part of a larger corporate structure the business units may be disadvantaged in competing with smaller more flexible and "lean" private sector operators now entering or wishing to enter the public transport sector. The Government wishes to consider the option of establishing individual PTC business units as transport businesses in their own right. The options for establishing the legal structure for this are:
 - Option 1: Specifying the individual business units and the constitution of their boards of management and corporate charters in the Bill to enable the new organisations to come into being on dates to be proclaimed.
 - Option 2: Providing a general power in the Bill to establish individual business units or "service agencies" with separate boards of management and business charters.

- Option 3: Establish separate business units under the State Owned Enterprises (SOE) Act 1992.

PTC Board Membership and Powers

29. Until 1992 the PTC Chief Executive had sole responsibility for management of the Corporation. In 1992 amendments to the Transport Act established a Board responsible for management of the Corporation's affairs. The Board comprises:
- (a) a Chairperson appointed by the Minister;
 - (b) the Chief Executive of the Corporation (appointed by the Minister); and
 - (c) 2 people appointed by the Minister who have such managerial or other qualifications as the Minister considers necessary to enable the Board to carry out its functions.
30. The Auditor-General's Report on Ministerial Portfolios, May 1994, referring to the PTC noted that other major public sector business enterprises "now operate with full boards of management drawn predominantly from external sources and representing a carefully balanced mix of skills and expertise appropriate to the operational environment of the entity." In particular, Government policy announcements have stressed the need for the Boards of State Business Enterprises to include members with strong commercial skills.
31. The SOE Act specifies that the board of directors of each State business corporation constituted under that Act shall consist of not less than four and not more than nine directors. Membership of Boards which have been established under the SOE Act include boards with:
- (a) four members:
 - Melbourne Water Corporation
 - (b) five members:
 - Victorian Plantations Corporation
 - Power Net Victoria
 - Victorian Funds Management Corporation
 - (c) six members:
 - Melbourne Parks and Waterways
 - State Trustees Limited
 - Rural Finance Corporation
 - (d) seven members:
 - Transport Accident Commission
 - Port of Melbourne Authority
 - CitiPower Ltd.
 - Power Car Aust. Ltd.

- Eastern Energy Ltd.
- Solaris Power Ltd.
- United Energy Ltd.

- (d) eight members:
- Treasury Corporation
 - Victorian Power Exchange
 - Generation Victoria

32. Boards of organisations in New South Wales which could be seen as comparable to the PTC in terms of the scale and complexity of their operations include the State Rail Authority and the State Transport Authority which both have a minimum of five members and a maximum of eight.

Options for Strengthening the PTC Board

33. It might be argued that by limiting the PTC board membership to four, the Transport Act unnecessarily restricts the ability of the Board to recruit to its ranks the range of skills and experience necessary for effective and strategic management of the PTC. In implementing change under the SOE Act the Government has in most cases chosen to appoint boards with more rather than fewer members within the range prescribed by the legislation.
34. It is not clear at this point whether the full range of skills and experience necessary for a fully effective PTC Board can reasonably be expected to be encompassed by four individuals. This will become clearer in the light of experience as the newly appointed Board gains experience in its role over the coming months.
35. The Board's view, developed in the light of experience, on its optimum membership should be a key factor in the Minister determining whether the membership should or should not be increased. To provide for a possible change there are two legislative options:

Option 1: Including in the proposed Bill a provision similar to that referenced at para. 55 above replacing the figure 2 in part (c) with the words "not less than 2 or more than (*a specified number up to 7*)"

Option 2: Use Section 8(1) of the SOE Act which provides that the constitution of the board of a reorganising body may be changed by Order of the Governor in Council.

36. Both options would provide a degree of flexibility to address future circumstances as they arise while preserving the Government's ability to limit membership of the Board to four persons if it turns out that no change is required. Option 2 would require the PTC to be declared as a reorganising body under the SOE Act. While this would not be warranted solely for the purposes of a minor change to the PTC Board, it would be appropriate if the more fundamental changes to the PTC outlined in this paper were also to be implemented under the SOE Act.

FACILITATING ACCESS TO RAIL INFRASTRUCTURE

Current Arrangements for Regulation of Access to Rail Infrastructure

37. The key issues impinging on questions of access to the rail infrastructure are:
- (a) Safety.
 - (b) Pricing of Access.
 - (c) Terms and Conditions of access, including management of priorities for day to day access to infrastructure shared by a number of competing operators.
38. The State owned train and tram track infrastructure including traffic control systems is currently managed by the PTC. As the operator of the Melbourne metropolitan tramway system and statewide rail passenger and freight systems the PTC is the major user of this infrastructure. Access by private sector operators to the rail infrastructure has been limited. Safety has in part been addressed by operators using PTC crews and rolling stock. The Colonial Tramcar Restaurant also operates trams driven by PTC staff. Interim (safety) accreditation arrangements have been put in place administratively under general provisions of the Transport Act (applying to operations on land owned or previously owned by the PTC) which enable access to the rail infrastructure by operators including:
- (a) The New South Wales State Rail Authority (SRA) operating its XPT Sydney – Melbourne services in accordance with a corridor management agreement with the Victorian Department of Transport.
 - (b) Australian National Railways (AN) through the Melbourne – Adelaide "Overland" service operated by AN and the PTC and for which a corridor management agreement is being negotiated.
 - (c) The National Rail Corporation (NR) operating freight services into and through Victoria.
 - (d) West Coast Railways contracted by the Department of Transport to operate the Warrnambool – Melbourne service and Hoys Roadlines contracted to operate the Cobram – Melbourne service. Both of these companies currently use PTC crews and rolling stock but may in the longer term use their own resources.
 - (e) The South Gippsland Tourist Railway operating on a line which also remains accessible by the PTC.
 - (f) Tourist railways operating on closed PTC branch lines at Queenscliff, Daylesford, Maldon, Healesville and Mornington.

39. Rail Safety Accreditation Guidelines used in accrediting the operators listed above have also been provided on an advisory basis to operators of public transport services conducted on non-PTC land. These are:
- (a) Emerald Tourist Railway
 - (b) Walhalla Goldfields Railway
 - (c) Bendigo Tram
 - (d) Ballarat Tram
40. Priorities for day to day access to State Government rail infrastructure shared by the various operators are managed by the PTC.
41. The principles for access by the NRC to the State rail infrastructure are laid down in the Shareholders Agreement which established the NRC. Access prices for other transport operators are determined by the Department of Transport on the basis of cost information including internal charging rates provided by the PTC.
42. A number of private sector companies additional to those referred to above are seeking access to the rail infrastructure to operate passenger and freight services with their own rolling stock and crews.

Criticisms of the Current System

43. The present arrangements, while ensuring rail safety in the current circumstances, do not fully address the Government's policy requirement to encourage greater private sector involvement and competition in the provision of rail based public transport services. New processes and systems are needed to ensure that the excellent safety standards now in place continue to be maintained in the future.
44. The PTC's ability to exercise powers and authorities which in effect determine priorities for its own and its competitors' access to the infrastructure represents a potential conflict of interest. Difficulties arising from conflict of interest situations could be expected to occur increasingly as the number of private operators increases unless such situations are avoided or effectively addressed either by structural organisational change or by external scrutiny and management processes.
45. Improved information systems for calculating infrastructure capital, depreciation and maintenance costs need to be developed to ensure that access pricing is fair and commercial.

Legislation to Address Safety Issues

46. Action has been taken administratively to address by accreditation the safety issues concerned with transport operators' access to the State Government rail infrastructure. This will be reflected in the Bill by the provision of an explicit

legislative basis for accreditation of organisations involved in the provision of rail based public transport. Consideration will also be given to extending coverage of these provisions of the Bill to all rail based passenger and freight transport services operating in Victoria.

47. Recent amendments to the Transport Act place on the Department of Transport the obligation to ensure that Victoria's public transport system is efficient, effective, safe and reliable. A Rail Safety Accreditation Panel the members of which will be appointed by the Minister is being established. The Panel will receive administrative support from the Department of Transport and will be responsible to the Secretary. The rail safety arrangements and processes to be implemented reflect the "co-regulatory" approach adopted overseas as well as elsewhere in Australia and will involve:
- (a) The Rail Safety Accreditation Panel ensuring that safety systems and equipment employed by transport operators, including the PTC, meet standards in relation to design, construction, maintenance and operation required to guarantee the safety of life and protection of property and making recommendations to the Secretary of Transport on accreditation of operators on that basis.
 - (b) Each transport operator being responsible and accountable to ensure that all of the standards against which it has been accredited by the Secretary are unfailingly met.
 - (c) The Rail Safety Accreditation Panel commissioning random as well as regular safety audits of each operator's safety systems and the operator's compliance with standards.
 - (d) The Rail Safety Accreditation Panel recommending on the use of such sanctions as are appropriate, including where necessary withdrawal of accreditation, if breaches of standards by operators are detected.
48. The Bill will specify the powers to be exercised by the Secretary in accrediting rail transport operators.
49. Similar to accreditation standards for road based public transport rail transport operators including freight operators would be required to meet standards relating to:
- (a) the ability to provide rail transport services;
 - (b) safety of passengers and the public;
 - (c) service to passengers; and
 - (d) vehicles and equipment.

50. Heads of power to make regulations on the specific matters to be examined in determining rail transport operators' compliance with standards will be specified in schedules to the Bill. Standards are currently set by the PTC. It is important that responsibility for the setting of standards should be a separate activity from the audit of potential and existing operators and the investigation of incidents. The Bill must provide for the appropriate level of independence in these matters.
51. The draft Intergovernmental Agreement on Rail Safety Regulation is currently being finalised by a Working Group established by the Standing Committee on Transport for consideration by the Australian Transport Council (ATC). The Bill will need to provide any legal powers which may be necessary to meet Victoria's obligations under the Agreement including incident reporting and investigation. Timing of the completion of the Intergovernmental Agreement is uncertain at this point. To provide necessary flexibility some matters expected to be covered by the Agreement may need to be dealt with by means of regulation making powers rather than by explicit provisions in the Bill itself.

Options for Legislative Change to Address Infrastructure Issues

52. Options to address non-safety related issues associated with access to the rail infrastructure include:

Option 1: Continuation and strengthening of the PTC's present management of infrastructure and transport operations, including train control and extending this approach by vertical integration to any individual PTC business units which might in the future be established as transport businesses in their own right. Under this option:

- Rail transport operators who are the prime users of defined geographical areas/corridors would manage the rail transport infrastructure supporting their operations.
- Other transport operators seeking access to such infrastructure would do so on terms and conditions negotiated with the prime user.
- The Department of Transport would ensure that access is provided to users of the infrastructure on equitable and commercial terms and conditions.

Option 2: Continuation of PTC responsibility for rail infrastructure management and train control which would require:

- amalgamation within the PTC of rail infrastructure management and train control responsibilities as a separate business;

- the Department of Transport ensuring that access is provided to users of the infrastructure on equitable and commercial terms and conditions.

Option 3: Establishment of a separate statutory Rail Infrastructure Corporation as an arm of Government to own, construct and maintain the infrastructure. The Infrastructure Corporation could control access by transport operators to the infrastructure (although this requires further review) and set access prices. This is an extension of the internal separation within PTC proposed as Option 2. Under one variation of Option 3 the Corporation could also be responsible for train control. Alternatively, this function could be undertaken by the prime transport operator in particular geographical areas/corridors.

53. In all options operators who believe they are not being fairly treated would be entitled to appeal to the Secretary of Transport.
54. Option 1 provides the opportunity for transport managers to improve performance in all aspects of their operations including infrastructure provision and maintenance. Both are major cost areas and typically present significant opportunities for savings and improvements in effectiveness of service provision.
55. Options 1 and 2 have the advantage of being minimum change options which could be implemented with little disruption to changes occurring within the PTC now.
56. It should be noted that the National Transport Planning Taskforce's December, 1994 report *Building for the Job - A Strategy for Australia's Transport Network* recommends that "Owners of track infrastructure develop systems to allow open access to the rail network including separate accounting for the cost of maintaining and operating track infrastructure." Other reports relevant to this issue include:
- (a) The Industry Commission, Report No. 37 Urban Transport which stated that State Governments should be open to . . . options for reforming urban rail in ways that promote greater efficiency, including the creation of a separate infrastructure authority.
 - (b) The Victorian Commission of Audit, 1993 which suggests "that management of the rail and tram infrastructure . . . be rolled into a single distinct entity, which would be responsible for the construction and maintenance of the assets to a standard required by its users. Service providers would contract with the infrastructure management entity for access to the network and pay an access charge based on the cost of those assets."
 - (c) The Independent Committee of Inquiry Report *National Competition Policy* which advocates that where a natural monopoly element (the rail corridor) is vertically integrated with potentially competitive activities (freight or passenger services) there should be a presumption in favour of separation at the ownership or control level.

57. If a Rail Infrastructure Corporation (Option 3) were to be established then this could be done either by:
- (a) Specifying the Corporation, its structure, functions, resources and powers in the Bill, enabling the new organisation to come into being on a date to be proclaimed; or
 - (b) Providing a general power in the Bill to split from the PTC those functions, resources and powers concerned with infrastructure to a separate infrastructure corporation when the necessary preparatory work was completed.
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ATTACHMENT

VICTORIAN COMMERCIAL PASSENGER VEHICLE LICENCES

Commercial passenger vehicle licences issued in Victoria Cover the following vehicles:

1. Approximately 4,100 buses (designated Public Commercial Passenger Vehicles) operated on Route Services under contract to the Department of Transport or as school buses under contract with the Department of Education. Contracts for new route services are not let in circumstances where a new operator would be able to "cream off" custom from existing route services by selective scheduling of services or other means. Licences applying to route services are issued by the Roads Corporation only with the approval of the Department of Transport. Many of these buses, licensed as indicated below, are also able to operate as charter buses referenced at para. 3 below:
 - 1,490 Metropolitan Omnibus (MO) licences
 - 130 Urban Omnibus (UO) licences
 - 550 Country Omnibus (CO) licences
 - 1,938 School Omnibus (TS) licences
2. Approximately 200 tour buses conveying passengers on no set timetable from an origin to a destination, (including intermediate stops) specified by a Touring Omnibus (TO) licence.
3. Approximately 860 charter buses (1 to 3 star standard licensed to pick up within a given radius of a point specified by the licence and 4 and 5 star standard licensed to pick up anywhere in Victoria):
 - 567 Metropolitan Charter (MC) licences (Melbourne)
 - 68 Urban Charter (UC) licences (major country centres)
 - 230 Country Charter (CC) licences (areas not covered by MC or UC licences)
4. Approximately 1,000 twelve plus seater buses used, in accordance with the Private Omnibus (PO) licence, for the carriage of passengers for religious, philanthropic, educational, sporting or social purposes.
5. Approximately 250 vehicles having Special Vehicle (SV) licenses such as buses owned by hotels, "courtesy" cars, vintage wedding cars and other road based public transport vehicles not covered by other licenses.

Note that legislation covering the licensing of vehicles referred to at paras. 4 & 5 above is assigned to the Minister for Roads and Ports. No change is proposed in respect to the licensing of those vehicles at this time.