

Stakeholders Expectations Of Land Transport Authority Concerning Public Service Vehicles

Presented by : Viren Kapadia, Partner Sherani & Co
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1. Good evening Ladies and Gentlemen. I see that you have a considerable agenda over the next two days in reviewing and coming up with a proposal for a new PSV Uniform system of processing applications by the Land Transport Authority (the Authority) that would meet the needs of the stakeholders and that which would facilitates at the same time the objectives of the Authority as set out in Section 8(1)(b) of the Land Transport Act (the Act). Section 38 of the Act mandates that the Authority establish Codes of Practice which specify the procedures, standards and other criteria which the Authority will use in considering applications and in conducting tests and inspections.
2. The task of commenting on stakeholders expectations on PSV matters and procedures is indeed an awesome one as the intricacies of the practice, procedure and the law as applied to different stakeholders can have a varied impact depending on the perspective one is looking at. I am conscious of the fact that the word "stakeholder" in the context of PSV matters would include persons who may apply for or object to taxi permits, rental permits, hire permits and road route permits involving omni-buses and carriers as well as for road contract licences. My particular experience over the last 10 years has been in mainly dealing with applications for and against bus operators and I do not profess any particular expertise in relation to matters pertaining to other aspects of the Act.
3. The public transport industry in Fiji is unique in the world. Private individuals and companies under government regulations meet public needs and

expectations with regards to transportation. The transport industry operates on a partnership. It is the partnership of four key stakeholders. The government which is the policy maker, the Authority which is the regulatory body, the permit operators who facilitate the services and of course the traveling public who are the consumers. Each of these 4 stakeholders have an important role to perform without which the public transport industry in Fiji would not function at what is today at minimal cost to the Government. Therefore it is vital for all stakeholders to have close consultation and cooperation with each other to ensure that this unique industry not only survives but thrives.

4. It is therefore encouraging to see that the Authority has initiated this workshop which I hope is a forerunner to other workshops dealing with other aspects of the Act which would ensure that this unique stakeholder partnership continues to provide a safe and economic mode of public transport. I hope that in the short time that you have together here that you keenly debate and enquire into the workings of the provisions of the Act and the Regulations as they apply to Public Service Vehicles. On my part I hope my comments relating to stakeholders expectations will assist you in focusing on the key areas of critical importance to transport operators which perhaps you may consider incorporating into the new PSV uniform system to be prepared by you.

5. In discussions with bus operators one major concern that comes across frequently is that of lack of enforcement of the provisions of the Act and the Regulations. For bus operators, illegal mini buses and taxis have been a woe who operate without any controls and their numbers seem to grow day by day. Mr. Andrew Campbell, a transport consultant with the Ministry of Environment has recently suggested that there are over 500 illegal mini vans and over 1,000 illegal taxis operating in Fiji. It is disheartening to see a line of illegal mini buses parked and plying for hire right in front of the Suva bus stand in full view of the police post at the Suva Market. Similarly taxis are picking up passengers from bus stops and bus stations in breach of Regulation 32. I do not know whether "open taxi stands" have been gazetted as defined in Regulation 32. I would urge you to consider placing special emphasis on enforcement of PSV and

illegal operators. We currently have a reasonably competent legislation which unfortunately is subject to criticism from stakeholders as existing provisions are not being enforced to the financial detriment of the stakeholders who have sought and obtained licences within the frame work of the Act. They need the protection the Act can give them. You have a responsibility to ensure their security from illegal operators. If they themselves are in breach of the Act then let the law follow its course.

6. The recent decisions of the Land Transport Appeals Tribunal (the Tribunal) has brought to light inadequacies in the way in which PSV licensing applications are currently dealt with by the Authority. The Tribunal's recent decisions has made the transport industry focus on the problems and difficulties that stakeholders experience in either applying for or objecting to various applications and/or amendments to PSV Licences and the way in which the Authority has up until now dealt with such applications.
7. These recent decisions of the Tribunal have caused considerable unease within the bus industry. In particular I refer to the decisions of the Tribunal in **Lekh Ram Vayeshnoi**, Appeal No. 72 of 2002, **Nadi General Transport Limited**, Appeal No. 36 of 2001 and that of **Flying Prince Transport Limited**, Appeal No. 40 of 2001. In these Appeals the decisions of the Authority were overturned and the application were granted in the latter 2 Appeals. I wish to draw your attention to the Tribunal's comments on the way in which load checks reports were carried out and how the Regional Manager's reports contained gross inadequacies leading the Board into error.
8. These decisions clearly show a need to rethink and re-look at the way in which applications are processed by the Authority. A team of officers is required within the PSV section to analyse the application and devise a plan on how and what load check reports are required. In the case of new applications, such as the recent application by Sunbeam for air-conditioned express services between Suva and Lautoka, it may well mean that the Authority should conduct a poll or a survey in the relevant areas to ascertain the need for a particular new type of

service. The integrity of the investigative work, load check reports, polling of potential passengers and recommendations made by the Regional Managers to the Board Members is central to the effective and competent operation and implementation of the relevant provisions of the Act as they apply to public transportation. The Authority must consider providing sufficient resources to the PSV section to effectively carry out these functions. You must try and incorporate into your reports all matters required as set out in Regulations 3(a), 4(3), 5(1), 7 and 9 and the relevant request for information should be on the application form.

9. At the present time I believe that not enough attention is paid to implementing a focused and effective regime for checking and reporting on PSV applications. In numerous instances I have seen inconsistent reports, blatant, inaccuracies and inadequacies in the way in which load checks and management reports have been prepared. All of you must now realise that with the advent of an easy Appeal system all decisions made by you relating to any PSV matter are likely to be reviewed on Appeal and will come under a microscope. Your investigations, load checks and reports must stand up to scrutiny, as should any ruling or decision of the Board Members. At the present time lawyers appearing at the Tribunal hearing cannot have confidence that they are able to defend the decisions that the Authority has made. You will see that numerous appeals by taxi and bus operators are being allowed by the Tribunal primarily on the basis of the fact that the decision was reached on an incorrect assessment of material facts or that Authority had exercised its discretion in an unreasonable manner or because of procedural unfairness resulting in a breach of natural justice. If the Authority were to improve on its investigative, report writing and recommendation procedure, I am sure we will see a considerable decline in the number of Appeals being filed and if filed then being allowed by the Tribunal. In my comments on the review of the LTA legislation workshop at the Warwick Hotel in Sigatoka on the 25th March 2004 I had highlighted similar issues concerning PSV matters. Participants at this workshop should avail themselves of the transcript of those discussions as they would be useful to them.

10. I will now summarize with my comments and observations some of the issues which the stakeholders would want your attention drawn to. This list is by no means exhaustive but do include some important expectations.

10.1 Lack of Enforcement

Lack of enforcement has already been referred to by me as a single most important issue raised by bus operators, licenced mini bus operators and taxi operators. The clear and present expectation of the Authority is that the provisions of the Act and Regulations be enforced strictly and by expanding the number of personnel in your enforcement section so that there is a visible presence on the road all the time.

10.2 Carriers & Regulation 53

The grant of carrier licences on bus routes is severely impacting on bus loadings. Section 66(4) of the Act is relevant here. The condition of no picking and no dropping introduced in some of the carrier licences is unenforceable and is a licence to carry on wasteful and financially destructive competition between permit holders. I believe non of the carriers so licenced comply with Regulation 53 construction requirements particularly as regards to safety of passengers. An appeal by **Tacirua Transport Limited**, Appeal No.179 of 2003 is yet to be ruled upon on the issue.

10.3 Summary Dismissal

Infrequent and rarely used provision for summary dismissal of frivolous scandalous or vexatious applications provided for in Regulation 4 of is of much concern. Clear criteria should be drawn up as to the circumstances in which a delegated officer can dismiss frivolous, vexatious and scandalous applications. The Applicant would still be able to appeal to the Board under Regulation 18 if it wants to.

10.4 Database of Stands, Bases, Permits, Drivers & Stages

Section 67 of the Act gives the power to the Authority to institute traffic

management practices or delegate the same to a Highway Authority and require the Highway Authority to adopt standards or codes of practices. Regulation 33(5) requires the Authority to keep maps, plans or other records showing the creation of taxi stands or bases and other relevant details of taxi stands or bases. I am unaware of the existence of such a data base which should incorporate bus stands and mini bus stands as well as carrier stands in it. There has been criticism of this lack of data base in the Tribunal's decisions in the Appeal by **Rajendra Narayan**, Appeal No. 182 of 2003 and in **Sanjesh Lallu**, Appeal No. 151 of 2003. A database of all permits and licensed PSV drivers should also be available for public inspection. I note that there is no marking of stages as they apply to bus fares as yet.

10.5 Natural Justice

In the processing and hearing of any PSV application the Authority must keep the principles of natural justice in its sight. Natural justice means that all applicants and objectors are to be given a fair hearing. Recent decisions of the Tribunal confirm that the notion of fair hearing means giving a fair opportunity to a party in controversy to correct or contradict any statements prejudicial to their views. It is in this context that the Tribunal has said that all load checks reports, internal memorandums and management reports prepared by the members of the Authority for the consideration of the Board Members must be made available at the Board hearing to applicants and objectors. See **Dee Cees Services Limited**, Appeal No. 195 of 2003. This accords with basic notions of transparency and fair play. I note that the Authority is currently not providing to objectors copies of the applications and objections by other operators and to applicants, copies of competing or similar applications. Currently there is much confusion when several applications in relation to similar routes are heard. The applicants and objectors do not have all of the documents before them. I would urge the Authority to reconsider this recent practice in the light of the principles of natural justice. The reliance on Regulation 4(6), I believe is misplaced. There was much common sense in the

practice of giving all documents to all applicants and objectors by the Transport Control Board over some 35 years. It is only a matter of time I am sure before the Tribunal is asked to rule on this issue. Delays in hearing an application and once heard in delivering a decision on an application has been a problem in the past. A strict time frame for processing application should be implemented. At the hearing a voice transcript of the proceedings should be obtained so that a proper transcript is available if the matter goes on Appeal.

10.6 Database of Revenue & Operating Costs

The Authority presently has no bus, taxi, minibus or carrier operating revenue and cost data base. The Authority has the power pursuant to Regulations 7 and 15 to require holders of permits to maintain records of revenue and expenditure. The Authority can also require a holder of a permit to provide an audited statement of that record. It is significant to note that this is not the financial accounts of the permit holder but a separate record of revenue and expenditure. This provision has not been implemented so far. A weighted cost index model for operating costs has already been provided to the Authority by the Fiji Bus Operators Association. The Authority can require permit holders to also keep records as to passenger loading relating to any public service vehicles being operated by a permit holder. These can be filed on a quarterly or annual basis. This provision is in the Regulations to facilitate data collection by the Authority so that the Authority can meet its obligations under the Act and therefore advance its Vision, Mission and Supporting Values that are so prominently set out in its annual reports every year. A proforma draft form of a quarterly revenue and expenditure report has been given by me to your senior managers. I believe that the implementation of the provisions of Regulation 15 will enable the Authority to better meet the expectations of all stakeholders in the public transport industry. This data base of revenue and expenditure as well as the record of passengers will enable the Authority to be more proactive rather than reactive in facilitating the needs of the traveling public and

when it comes to setting fares. Bus, minibus, carriers and taxi fare increases can be given on the basis of this data base without too much dispute. The process of applying for fare increase would be considerably less acrimonious and shortened hereby.

10.7 Smoke Emission

Smoke emission is a major problem in Fiji and has been recognised as such by the Ministry for Environment who have recently arranged for Mr. Andrew Campbell to carry out a 3 months study in Fiji. According to Mr. Campbell his study has found that a significant number of buses and taxis smoke. Surprisingly fewer trucks smoke as much as buses or taxis. He attributes this to some extent to better servicing and maintenance and better vehicle use by drivers. The 10 second rule set out in Regulation 47 is not being enforced as it should be. I believe you do not require a Trade Standards And Quality Control Decree certified watch to enforce this particular regulation. A normal watch is all it takes in New Zealand. The Authority must proactively consider and implement a Euro 2 standard (little or no emission) for all vehicles brought into Fiji within the next 12 to 24 months. It may be of little use to check for smoke emission at the time vehicles are brought in for Certificate of Fitness, as it is well known that additives can be put in the vehicle to stop smoke emitting from the exhausts which is effective for a day. The effective enforcement of the 10 second rules will clean up not only the public transport industry but all vehicles as well resulting in a cleaner, healthier environment for all of us and for the future generation.

10.8 Driving Standards

Enforcement of driving standards is again sorely lacking. The Authority should carry out a "Dob In a Bad Driver" or "Smoky Car" campaign for all PSV operators as a forerunner to a more extensive campaign including all vehicles. The driving standards of PSV drivers in general is perceived to be poor. Taxi and mini bus drivers are the worst offenders. They stop suddenly anywhere in the middle of the road to pick or drop passengers.

A more stringent theoretical, practical and medical test ought to be considered to clean up the industry in this regard. I am sure most stakeholders would welcome such a move.

10.9 Congestion at Bus Stations

A proper review of bus stations ought to be carried out as there is too much congestion leading to poor traffic flow because of poor design at major bus stations around Fiji. The Authority needs to liase closely with the municipal councils to facilitate a proper policy concerning traffic flow around the bus stations. I believe that a vehicular and traffic density report titled "Traffic Digest" was prepared by Worley Consultants Ltd in 2000 for the Public Works Department.

10.10 Passenger Liability Insurance

For many years I have pointed out to the various Boards that PSV operators, as part of the licence conditions, must have comprehensive insurance policy cover, with passenger liability extension of at least \$100,000. Sadly, to this date, the vast majority of PSV are not comprehensively insured. Passengers sitting inside these vehicles, if injured due to the negligence of the driver of that vehicle are reliant on compensation from the driver or the owner of that vehicle. In many instances these persons are impecunious and the injured passenger or the estate of the deceased passenger recover little if any thing. The Third Party Policy in respect of PSV covers the passenger for only \$4,000 inclusive of legal costs. There is an urgent need for the Authority to consider implementing under Regulation 7, an additional condition that before the permit is issued the holder of the permit must provide to it a copy of a comprehensive insurance policy covering property damage to the vehicle and other vehicles as well as passenger liability extension of at least \$100,000. The alternative of raising the amount from \$4,000 to say \$100,000 under Section 6 of the Third Party Act would require parliamentary intervention with its inevitable delays.

10.11 Assignment of Permits & VAT Registration

Regulation 17(1) prohibits an agent or representative being appointed to exercise any rights under any permit. It is common knowledge that much of the taxi industry operates on the basis of drivers being contracted who are required to pay the owner of the permit, approximately \$40 to \$50 per day and the driver retains possession of the vehicle and drives as he pleases, rarely from the base or stand allocated to that taxi permit. This practice is being carried on with the knowledge of the Authority and members of the public. In a recent appeal by me for a taxi proprietor the Authority took objection to this practice by my client who was proprietor of some 14 taxis operating from 2 bases. The report stated that none of the taxi drivers were being paid FNPf and no PAYE tax was being deducted. Furthermore no VAT was being paid. This is the first taxi application where I have seen these objections by the Authority. The Authority needs to consider its position on this matter as the taxi industry would be devastated if the Authority were to insist that all drivers be employed by taxi owners under a contract of employment. Few taxi drivers would be prepared to work at the gazetted rate of wages. In the same Appeal objections were taken by the Authority on VAT not being paid by the taxi proprietor. I believe that most single taxis owners would be earning at least a gross sum of \$15,000 per annum requiring compulsory VAT registration by the proprietor. I believe few sole taxi proprietors are registered.

10.12 Road Conditions

The Authority needs to liaise closely with the Municipal Councils and the Public Works Department with regard to deteriorating road conditions. This has been highlighted by the recent tragedy of a Sunbeam bus on Kings road. The bus was swept away by a massive land slide which I am informed by the operator was caused mainly by recent grading and excavation of the road. It is entirely conceivable that in any claims by the estate of the deceased upon the bus operator that the Public Works Department and the Authority would be joined as either Defendants or

Third Parties for not ensuring the safety of the road for public transportation. Poor road conditions have been a constant complaint of rural bus operators and almost all operators in the Northern Division.

10.13 Speed Limits

The current speed limit of 60km per hour for buses in Regulation 24(5)(d) needs to be reviewed in the light of more tar sealed roads and the fact that modern buses are capable of traveling at the national speed limit of 80km per hour with ease on these roads. I have on numerous times been told by bus operators that where buses are chartered by either the Police or the Authority that drivers are told to drive faster than the 60 km per hour as the bus seems to be traveling too slow at that speed.

10.14 Service of Decisions & Notices

Section 33 of the Act provides for notices to be issued to applicants and objectors by registered mail. This practice is not being followed. In particular decisions of the Authority are not being communicated with any sense of urgency to the parties affected. This has resulted in decisions and rulings of the Authority reaching the parties in some cases many weeks after the decision is made. Section 45(1) of the Act states that an Appeal must be lodged with the Tribunal not later than 14 days after the date of the decision. In the recent decision of **Nadi General Transport**, Appeal No. 36 of 2001, the Tribunal has ruled that time will run from the date of receipt of the Notice of Decision by the Appellant. The Authority ought to consider giving or delivering a ruling or judgment at a meeting of the Board and then publishing the same in a local newspaper.

10.15 Advertising

I also urge the Authority to consider advertising the issue or variation of a permit in the local news papers as required by Regulation 6(1). I reiterate that the Authority must take over the role of advertising applications for the issue, amendment or transfer of permits rather than leaving it to the applicants. The Authority ought to publish in a local newspaper all these

applications as well as any decisions of the Authority on a particular day of the week. This practice would give certainty to the transport industry and may well avoid the frustration and anxiety that stakeholders currently have over having to watch for applications being obscurely advertised in one of the three daily newspapers sometimes even on Sunday, and that too in the Daily Post which I believe has the lowest circulation figures but the cheapest advertising rate.

10.16 Excess Permits

Regulation 39(2) provides for excess passengers to be carried in a vehicle. I believe that this provision has been misused, particularly in the North where excess permits are being issued to carriers who then charge passengers fares and operate these vehicles as public service vehicles. The provisions of Regulation 39(2) are for emergency use only and for a limited period of time for commercial vehicles only. I am aware that excess permits are being renewed regularly at 4 to 6 weeks interval. In some cases these excess permits allow carrier operators to carry up to 20 passengers. The bus operators are most affected by this illegal practice and I urge the Authority to carefully consider the intent of Regulation 39(2) so that it is correctly applied in the future.

10.17 Taxi Signs for Bases & Stands

Regulation 32 relating to taxi signs as to base and stand have not been correctly implemented. I am unable to see what base a taxi is operating from with the current size of lettering from 50 meters. Nor am I able to see the lettering as to the stand it operates from, from 20 meters. Taxis currently operate from wherever they please. There are not clearly marked as to stand and base. There are no "open stands" gazetted in any municipal boundaries as far as I am aware of. Many taxi operators who have consulted me have advised me that if they were to operate strictly from the stands they sought to operate from they would be out of business. The Authority needs to carry out a careful review of all taxi stands in the country as the current system has failed.

10.18 Access Doors on Buses

Bus operators have sought resolution on the question of whether access doors must be fitted to old buses. Regulation 52(5) mandates doors. Bus operators have been advised that in most instances fitting doors to an old bus would cost between \$3,000 to \$5,000. I am told that there are approximately 500 to 750 buses around Fiji which would require fitting of doors which may cost the bus industry up to \$3 million. I urge the Authority to reconsider this particular provision which I believe rightly should apply to all new buses being registered.

10.19 Express Services

The definition of "express services" as set out in Section 65(3)(a)(ii) of the Act needs to be reconsidered as currently there is no such service in Fiji except for the recent Suva/Nausori express service that has been granted temporarily by the Tribunal to Island Buses and Tebara Transport .

10.20 Regulation 12 - Show Cause Provision

Regulation 12 is currently not being used as it should be. Numerous complaint letters are received daily in respect of PSV operators. These complaint letters are sent off to the respective Regional Managers who in turn pass them down to junior officers for investigation. Generally persons making the complaints do not get any response at all due to the large number of complaints that flood the Authority. Regulation 12 is a most effective mechanism available to the Authority to keep the PSV operators honest. Sadly the Authority has so far been unable to effectively use this provision. Where it has sought to apply this provision certain fundamental requirements have not been observed resulting in a bungled hearing. Stakeholders have the opinion that this provision is really a toothless tiger and the Authority it seems has put Regulation 12 in the "too hard" basket.

21.21 Complaints Procedure

The stakeholders feel that the Authority is not responsive enough to the

complaints lodged with it and lacks awareness of the consequences of their lack of action in this regard. In the unlikely instance of a complaint been acted upon it may be that several months have lapsed since the complaint was originally lodged. The affected operator would have lost considerable revenue in the meantime by illegal operations. Such inefficiency and lack of timeliness must not be condoned.

10.22 Front Counter Delays

A another frequent concern of the stakeholders is the long delays experienced at the counter at various Authority offices around the country. Senior Management of the Authority must urgently look into the consumer perception of ineffectiveness and in efficiency at the front office. There may be a case for better training and use of computer knowledge on the part of those who operate the front counters. A strong IT based infrastructure is essential that delivers the basic services with speed and efficiency.

10.23 Government Blueprint

Finally I would say that the implementation of the Government blueprint into the transport industry is a major concern. I believe the cabinet has approved amendment to the Social Justice Act and the Regulations to incorporate transport licences. However this Cabinet approval has not translated into a gazette notification as yet. How is the Authority to implement the 50/50 Rule. I believe that you will still need an applicant relying on the Blueprint to obtain a licence to show that he meets all the criteria set out in the Act.

11. The foregoing comments and observations of mine I hope will provoke further discussions and introspection of the practice and procedures relating to PSV currently being undertaken by you. The stakeholders concerns and expectations on PSV matters can be resolved within the frame work of the existing legislation. There however needs to be a will to take the bull by the proverbial horns in tackling difficult issues that you currently face in dealing with PSV applications.

A strong CEO of the Authority is required who can give direction and a vision for the future to you.

12. The public transport system is inherently competitive and the survival instinct leads many operators to cut corners if they can. A strong regulatory body will use the enforcement provisions effectively and in a just and fair way for the good of the traveling public as well as the stakeholders within the industry. The greatest resource in any organisation is its human resource. An educated and enlightened workforce will make any organisation prosper. Senior managers need to talk and listen to officers who are in daily contact with public transport users. They need to ask for suggestions and information from officers who have daily contact with the public. A regular consultative forum with the stakeholders to iron out difficulties would be commendable.
13. The challenge for you now is to apply your specialized skills, knowledge and experience in this industry to provide solutions that will mutually accommodate the needs of all stakeholders in this industry. Let me remind you that because of the competitive nature of the public service transport industry all operators are inherently insecure as they realise that a grant of a new service tomorrow could effectively destroy loadings on their existing service. You therefore have an important role in ensuring that stakeholders feel safe and secure about their future in this industry. A code of practice as to how PSV matters will be dealt should be published as soon as possible. I hope that I have today provided some insight on the perception of the stakeholders which may help you to understand what the stakeholders expectations are of you.
14. I thank you for listening and I wish you well in your deliberations on the agenda over the next two days.

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