

OC230510

27 June 2023

Tēnā koe [REDACTED]

I refer to your request under the Official Information Act 1982 (the Act) for:

- any policy documents, advice, or other materials related to Part 6C of the Land Transport Act 1998 (chain of responsibility), and
- any advice or other materials the Ministry of Transport holds on chain of responsibility.

On 26 June 2023, a member of my team spoke to your colleague [REDACTED] and following that conversation we understand the request has been refined to focus on the following themes:

- the Government's position on chain of responsibility;
- work that may be underway in relation to aligning our position with Australian policy, particularly anything associated with the Heavy Vehicle National Law provisions on chain of responsibility;
- work that may be underway on chain of responsibility matters.

Edward also asked us to process this request urgently.

We have processed your request urgently

To enable us to provide information as soon as practicable, we have focussed our consideration on official information we hold related to workplace road safety and the most recent advice provided to Government.

This means that the response includes recent and relevant information held by the Ministry. We may hold further information that is in scope which we have not been able to review before processing your request in the requested timeframe. If there are specific questions you have, or you would like to make a further request, please let us know.

We also note that, in this case, relevant information may be held by:

- the Ministry of Business, Innovation and Employment (MBIE), in relation to the Health and Safety and Work Act 2015 (HSWA)
- WorkSafe, as workplace safety regulator, and
- Waka Kotahi New Zealand Transport Agency (Waka Kotahi), as land transport regulator.

We are releasing some documents to you

There are several relevant documents online which give you information about our position on chain of responsibility matters, including work we have underway:

- Road to Zero Strategy and Action Plan, on our website: <https://www.transport.govt.nz/area-of-interest/safety/road-to-zero/>
- Mackie Research report, “Managing vehicle-related risks from supply chain pressures”, on WorkSafe’s website: <https://www.worksafe.govt.nz/about-us/news-and-media/worksafe-report-identifies-steps-for-improving-transport-safety/>

These documents will help you put our work in context. We recommend that they be read alongside the other links we have provided in this response.

We are also releasing two documents to you:

1. OC220232 – Work time, logbooks and fatigue management technology review
2. OC191262 – Designation of Waka Kotahi NZ Transport Agency as a work health and safety regulator

Both OC220232 and OC191262 have some redactions (of signatures and contact information) under section 9(2)(a) of the Act to protect the privacy of natural persons.

I have considered the public interest in this information and do not consider that the interests protected by withholding this information is outweighed by other considerations which would make it desirable to make that information available.

My team has prepared the following information to assist your consideration of these two documents.

Chain of responsibility under the Health and Safety at Work Act 2015

Businesses and other organisations have broad duties under HSWA to protect people at work.

Fulfilling these duties effectively means, in part, considering the impact of broader contextual factors on road safety, such as schedule pressures, procurement decisions, and the nature of client-contractor relationships on chain of responsibility issues. This chain of responsibility applies both “vertically” and “horizontally”, requiring both those procuring transport services to take reasonable steps to ensure the safety of those services, and importers and suppliers to ensure that “plant” (defined as including vehicles) is, to the extent reasonably practicable, without risks to health and safety.

Worksafe is responsible for monitoring and enforcing compliance with HSWA.

General information about the health and safety at work regulatory system may be found on MBIE’s website: <https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems/health-and-safety-at-work-regulatory-system/>

General land transport statutory context

As you know, the purpose of “chain of responsibility” laws is to ensure that all those with responsibility for activities that affect compliance with road transport laws should be held legally accountable if they do not meet their obligations. Chain of responsibility provisions recognise the effects of the actions, inactions and demands of off-the-road parties in the transport chain.

Part 6C of the Land Transport Act 1998 outlines “chain of responsibility” laws specific to land transport. In general, Part 6C provides that it is an offence to cause or require drivers to breach speed limits, maximum work time, or rest time requirements, or to cause or require drivers to breach maximum gross weight limits.

Workplace road safety under Road to Zero

Road to Zero underpins the Ministry's policy work on chain of responsibility issues. This strategy sets out our vision for a New Zealand where no one is killed or seriously injured in road crashes, and a target of a 40 percent reduction in death and serious injury by 2030. Information about our work is available online, including annual monitoring reports: <https://www.transport.govt.nz/area-of-interest/safety/road-to-zero/>

We particularly note the outcomes report of the Vehicles as a Workplace Reference Group, available at the above link, which addresses issues relevant to chain of responsibility.

In the Ministry's view, there are opportunities to strengthen our current regulatory settings for work-related driving. Our regulatory framework needs to incentivise the right behaviours in commercial transport, apply obligations at the right level, and ensure we can enforce these obligations in a responsive and risk-based manner.

Two key elements to our work under Road to Zero include:

- reviewing logbook and work-time requirements under the Land Transport Act 1998, and
- reviewing the roles and powers of regulators (including considering designating Waka Kotahi to take on functions from HSWA).

Work time limits, logbooks, and fatigue-monitoring

More effective management and enforcement of the working hours of commercial drivers could provide important road safety benefits. The Land Transport Act 1998 and the Land Transport Rule: Work Time and Logbooks 2007 specify maximum driving hours and rest requirements. Commercial drivers are required to record their hours of work in a logbook, with many operators using paper-based logbooks. This makes it difficult to enforce the regime. Additionally, telematics (devices that track and monitor vehicle movements) and fatigue-monitoring technology show promising potential to improve safety if carefully implemented.

In 2022, the Ministry commenced a review of work-time limits, logbook and fatigue-monitoring technology. The Ministry recognises the need to engage with industry and unions to better understand the issue of fatigue, including the benefits and challenges of potentially changing regulations in this area.

"OC220232 Work time, logbooks and fatigue management technology review" contains our most recent advice in this area.

Reviewing the roles and powers of regulators

Under HSWA, agencies other than WorkSafe may be designated to regulate work health and safety, where an agency has specialist sectoral knowledge and there potential efficiency and co-ordination gains from such a designation.

Work has continued throughout 2022 on designating Waka Kotahi to take on functions under HSWA. HSWA provides a critical lever to influence how businesses think about road safety. Businesses have a duty to ensure the health and safety of their workers under HSWA. In taking-on HSWA functions, Waka Kotahi would have an effective lever to improve road safety in the commercial transport sector by ensuring businesses recognise driving for work as an area of critical risk and have mitigation plans in place.

To-date, work has been focussed on assessing the scope of the Waka Kotahi potential HSWA designation, with a view to ultimately presenting options and analysis on the merits of various scopes to the Minister of Transport.

“OC191262 Designation of Waka Kotahi NZ Transport Agency as a work health and safety regulator” contains our most recent advice in this area.

Other agencies and workplace road safety

In addition to the broader health and safety obligations on businesses, some commercial vehicle services are required to be licensed and comply with requirements under the Land Transport Act 1998 aimed at improving road safety, consumer protection and personal security. These requirements are guided by the provisions in Part 6C of the Land Transport Act.

Waka Kotahi is responsible for the operation and enforcement of the commercial licensing and certification system under the Land Transport Act, while New Zealand Police are responsible for roadside enforcement activity. Further information about chain of responsibility specific to the land transport system is available on the Waka Kotahi website: <https://www.nzta.govt.nz/commercial-driving/chain-of-responsibility/>

The most recent research report on workplace safety that I am aware of is the paper “Managing vehicle-related risks from supply chain pressures”, prepared by Mackie Research for WorkSafe and publicly available on the WorkSafe website: <https://www.worksafe.govt.nz/about-us/news-and-media/worksafe-report-identifies-steps-for-improving-transport-safety/> While not Government policy, the Mackie report outlines contemporary perspectives on issues related to chain of responsibility and is guiding our current work under Road to Zero to further develop health and safety legislation and enforcement.

You may also be interested in information on WorkSafe’s website regarding managing risk throughout the contracting chain: <https://www.worksafe.govt.nz/topic-and-industry/road-and-roadside/keeping-healthy-safe-working-road-or-roadside/part-a/managing-risk-throughout-the-contracting-chain/>

Your rights in relation to this response

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman’s website www.ombudsman.parliament.nz.

Please note the Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

We hope this information is of assistance.

Nāku noa, nā



Helen White
Manager, Mobility and Safety
Te Manatū Waka Ministry of Transport

BRIEFING

Designation of Waka Kotahi NZ Transport Agency as a work health and safety regulator

Reason for this briefing	<p>On 30 September 2019, Cabinet directed officials to report back to the Minister of Transport and Minister of Workplace Relations and Safety on the merits of designating the Waka Kotahi NZ Transport Agency (the Transport Agency) as a work health and safety regulator under the Health and Safety at Work Act 2015.</p> <p>This briefing provides a summary of the merits of designating the Transport Agency as a work health and safety regulator and proposes further detailed work and a joint meeting of Ministers.</p>
Action required	<p>Consider the merits of designating the Transport Agency as a work health and safety regulator.</p> <p>Agree to a joint meeting to discuss this further with officials in order to make an 'in principle' decision.</p>
Deadline	20 December 2019
Reason for deadline	Cabinet directed agency advice to Ministers with a view to making an 'in principle' decision by December 2019. This timing allows the Transport Agency to incorporate work health and safety functions into its regulatory strategy and capability from the outset, which it is currently developing.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Kirstie Hewlett	Deputy Chief Executive, MoT	s.9(2)(a)	
Lisa Collins	Manager, Health and Safety Policy, MBIE		

MINISTER'S COMMENTS:

Date:	10 December 2019	Briefing number:	1792 19-20 (MBIE) OC191262 (MoT)
Attention:	Hon Phil Twyford Hon Iain Lees-Galloway	Security level:	In Confidence
For information	Hon Stuart Nash		

Minister of Transport's office actions

☐ *Noted*

☐ *Seen*

☐ *Approved*

☐ *Needs change*

☐ *Referred to*

☐ *Withdrawn*

☐ *Not seen by Minister*

☐ *Overtaken by events*

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Executive Summary

1. This briefing (developed by officials from the Ministry of Transport, MBIE, the Transport Agency, Police and WorkSafe) covers the merits of designating the Waka Kotahi NZ Transport Agency (the Transport Agency) as a work health and safety regulator for the land transport sector under the Health and Safety at Work Act 2015 (HSWA).
2. The review of the regulatory capability and performance of the Transport Agency identified that a lack of regulatory coordination had been a contributing factor to the regulatory failure. As a result, Cabinet agreed in October 2019¹ to commission work from officials to assess the merits of designating the Transport Agency as a work health and safety regulator.
3. You are being asked to approve the continuation of more detailed work to progress designation, subject to a joint meeting with senior officials in early 2020.

Background

4. Under HSWA, the Prime Minister can designate agencies other than WorkSafe to regulate work health and safety, where an agency has specialist sectoral knowledge and there are:
 - 4.1. **Efficiency and effectiveness gains** from having a regulator think holistically about safety issues.
 - 4.2. Opportunities to **reduce potential gaps** where two agencies are working in the same space, each thinking the other agency is taking responsibility and action.
 - 4.3. Opportunities to **reduce potential duplication** of expertise and effort when two agencies have similar roles working towards the same goals, including **minimising unnecessary burdens** on the sector.
5. Overlapping regulatory systems for land transport and work health and safety has created duplication, gaps and missed opportunities, as outlined in the Martin Jenkins Review into the capability and performance of the NZTA. No single agency has had end-to-end oversight of the land transport regulatory system because regulatory functions have been dispersed amongst various agencies. Dispersing the functions has prevented a single regulator from taking a more holistic approach to regulated parties, makes it more difficult to understand causes of risks through the supply chain. It does not always encourage the use of the most appropriate regulatory lever to address the risk at hand. This can result in poor delivery of safety outcomes.
6. **WorkSafe** has finite resources to improve outcomes across all types of work and industries. It therefore focusses its efforts where there is the greatest risk of harm and intervention would make the most difference. WorkSafe can achieve better outcomes, in terms of harm reduction, from investment in the higher risk sectors where there is no alternative regulator with a safety focus.
7. **NZ Police** have similarly finite resources and their responsibility for enforcing compliance with health and safety legislation is just one area of their road policing responsibilities.

¹ <https://www.transport.govt.nz/assets/Import/Uploads/About/Documents/2.-OC190867-Cabinet-paper-NZTA-regulatory-review.pdf>

8. The **Transport Agency** does work with commercial operators as part of the transport regulatory regime, however, it does not have the broader legal responsibility or legislative enforcement tools that are found in the Health and Safety at Work Act.

Options

9. We considered two options for this paper (others were initially considered but discounted as they were sub-optimal in terms of health and safety outcomes and efficiency gains):
- 9.1. **Maintaining the status quo** (the 'do nothing' option), and
- 9.2. **Designating NZTA** as a work health and safety regulator.
10. Designating the Transport Agency is deemed the preferred option because we anticipate it will provide the following benefits:
- 10.1. **Effectiveness** – the Transport Agency is familiar with the business models and operations of the organisations it regulates, as well as the technical specifications of the vehicles they operate. The agency would be able to look better across the end-to-end land transport system, and use this information to target the areas of highest risk. Having the designation would also enable the Transport Agency to have a broad range of tools to think about how best to deal with a compliance issue. i.e; where poor shift management and commercial incentives on the part of a business have caused the harm, the HSWA tools may be more appropriate, where it is purely driver fault, the transport regulation might be more appropriate.
- 10.2. **Efficiency** – facilitating the integration of HSWA and land transport safety regulatory activity, saving time and money for the regulated parties and the government agencies
- 10.3. **Durability** – enhanced resilience in the wider regulatory system, by fostering a community of practice to innovate and improve best practice between the work health and safety regulators.
- 10.4. **Fairness and Accountability** – makes transport sector participants accountable to a single regulator responsible for compliance with land transport safety rules, as well as their work health and safety responsibilities.
11. Designation is unlikely to have a positive impact unless it is accompanied by appropriate resourcing. However, we note that making an early decision 'in principle' on the designation will enable the Transport Agency to incorporate HSWA into its regulatory strategy and the capability build it is undertaking, so there will be some efficiencies. Other designated health and safety regulators receive some of the funding collected by the Health and Safety at Work Levy. If a designation is agreed in principle, work will be undertaken on funding.
12. We appreciate there may be concern about adding functions to the Transport Agency when it has recently had a regulatory failure. However, the Transport Agency is making good progress on developing its regulatory strategy, systems and processes and bringing in more capability. An early in principle decision on designation will ensure it can effectively incorporate HSWA into its new strategy and processes, rather than it being added on later. It will also enable the Agency to work closely with WorkSafe and leverage its operational policies and knowledge as it builds its strategy and operating model.
13. Any designation could "Go Live" once further detailed work is done and Ministers agree the necessary building blocks have been put in place at the Agency. Designation is by the Prime Minister on recommendation from Cabinet.

14. We also understand that there may be some concern that there are conflicts to be managed within the Agency between its regulatory role and other roles. Cabinet has already agreed that these will be managed by the following:
- (a) The appointment of a Statutory Director that is independent from the other agency functions and is not carried out by the Chief Executive.
 - (b) The Agency Regulatory Strategy will outline the processes for management of any perceived or actual conflicts.
 - (c) The monitoring of processes and procedures around management of conflicts by the Agency Board and the Ministry of Transport as part of its monitoring role.

Next Steps

15. We recommend that you jointly meet with the relevant senior officials early in the New Year with a view to then making an 'in principle' decision to designate. If the decision is made to designate, officials will then undertake more detailed work, including defining the detailed scope of designation and the associated cost, enhancing the mitigations to the identified risks including providing reassurance around conflict management, and identifying sustainable funding.

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Purpose of report

1. The purpose of this briefing is to respond to a Cabinet directive for officials to report back to the Minister of Transport and Minister of Workplace Relations and Safety on the merits of designating the Waka Kotahi NZ Transport Agency (the Transport Agency) as a work health and safety regulator under the Health and Safety at Work Act 2015 (HSWA).

1.1 This briefing provides you with an overview of the:

- ability to designate agencies other than WorkSafe and benefits of this approach
 - scale of the health and safety challenge in the road transport sectors
 - current legislative landscape and operational enforcement of health and safety in the land transport sector (both road and rail)
 - merits of designating the Transport Agency as a work health and safety regulator compared to the status quo
 - risks, broad financing options, and suggested next steps ahead of seeking approval from the Prime Minister to designate the Transport Agency.
2. We will arrange a joint meeting for you with the relevant senior officials early in the new year, with a view to making an 'in principle' decision.
 3. For the purpose of this paper the potential scope for the Transport Agency to be designated is broadly defined as work that occurs in the land transport sectors – such as the provision of freight and passenger services on the road and rail networks. Ideally, the designation should build on the Transport Agency's scope of functions under its primary legislation. Should you decide, in principle, to designate the Transport Agency, the exact scope of designation will be determined by more detailed policy work prior to approval of the designation by the Prime Minister.

Agencies other than WorkSafe can regulate health and safety at work

1. Section 191 of HSWA enables the Prime Minister to designate an agency as a work health and safety regulator, having regard to the specialist knowledge of that agency. The designation must specify the scope of the designation:
 - for a particular industry, sector, or type of work or circumstance, and
 - the functions or powers that the designated agency may exercise under HSWA.
2. Designation is by the Prime Minister, on recommendation from Cabinet. Notice of the designation is given in the *New Zealand Gazette*.
3. WorkSafe is currently the work health and safety regulator for all sectors and industries, apart from the maritime and civil aviation sectors, where Maritime New Zealand (MNZ) and the Civil Aviation Authority (CAA) have already been designated².
4. A designated agency reports to its responsible Minister on its activity under HSWA, and is funded for this activity through its usual Vote appropriation by money collected from the Health and Safety at Work levy. The Minister for Workplace Relations and Safety and the responsible Minister for the designated agency (in this case the Minister of Transport) may give joint policy directions to the designated agency. WorkSafe or the designated agency may also perform functions or exercise powers in the other agency's area if that agency gives consent to do so.

Designation under HSWA has several benefits

5. Designations recognise the mutually reinforcing overlap between the objectives of HSWA and other regulatory systems, and that there are efficiency and effectiveness gains from having regulators think holistically about safety issues. It helps reduce the potential for gaps when there are two agencies working in the same space, with each thinking the other agency is taking responsibility. It also aims to avoid duplication of expertise and effort when two agencies have similar roles working towards the same or complementary goals.
6. For example, if Maritime New Zealand was investigating safety issues on a ship, it can use its levers under both the maritime safety and the work health and safety regulatory systems to determine how best to achieve health and safety outcomes. This means that Maritime NZ can take a holistic, end-to-end approach to improving both maritime safety, and work health and safety outcomes.
7. Designation is also intended to increase efficiency and reduce burdens for regulated communities by only having one regulator with which to interact on a day-to-day basis. It can be confusing and costly for regulated parties when dealing with two regulators that have a focus on safety, but are coming from different regulatory approaches, for example; a performance-based regulatory system and a prescriptive, rules-based system, as is the case now for the land transport sector.

² Maritime NZ is the designated work health and safety regulator for work on board ships and ships as workplace (excluding the military), and the CAA is designated for work to prepare an aircraft for imminent flight, work on board an aircraft for the purpose of imminent flight or while in operation, and for aircraft as workplaces while in operation (excluding the military).

Overlapping regulatory systems create duplication, enforcement gaps and missed opportunities

8. The design of the current regulatory systems for work health and safety and land transport safety both overlap – in terms of legislative obligations and regulatory functions of agencies. This is because the work health and safety regulatory system applies to all work across all industries, including transport industries.
9. There are also multiple organisations with responsibilities for enforcement and leadership of different aspects of the system. This has allowed for a system where different agencies defer to each other, and no single agency has a good overview of what is happening across the whole commercial transport sector. This means that despite best endeavours, the design of the system has led to agencies only being able to address the symptoms of risks, rather than treat the root causes. In some areas their work overlaps, and in others there are gaps between them – see below.



The legal requirements on businesses and workers overlap...

10. All businesses (including the road and rail sector) have a broad duty under HSWA to protect workers and other people from the risks arising from their business³. All businesses must ensure they have considered and managed the health and safety risks arising from their business, so far as is reasonably practicable.
11. Under HSWA, workers must take reasonable care to avoid causing harm to themselves and others. This includes workers operating vehicles, such as driving vehicles or trains for work.
12. Under the Railways Act 2005, participants in the rail sector must also ensure, so far as is reasonably practicable, that none of their rail activities are likely to cause serious injury or death.
13. By contrast, for road transport there is a more prescriptive approach. While sections 94 and 95(1) of the Land Transport Management Act 2003 do require the Transport Agency to contribute to a "safe" land transport system, other legislation is exclusively focussed on offences and the potential consequences. For example, an employer breaches transport law

³ Workers includes employees, contractors, volunteers, and people gaining work experience. Other people includes passengers, bystanders, customers and visitors

if their drivers falsify log books under their direction – but there is no direct requirement to stand a driver down if they report to work impaired by fatigue. By comparison, fatigue would be a hazard to be managed under HSWA.

...and so do the roles and functions of Government agencies.

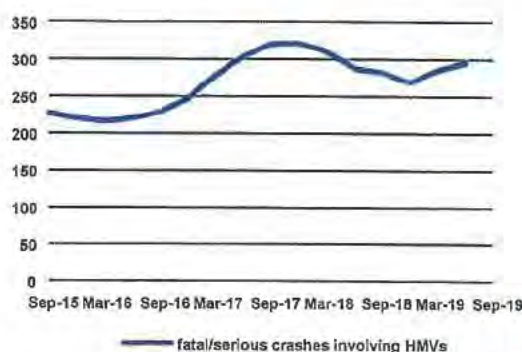
14. WorkSafe is the primary work health and safety regulator. Along with MBIE in its regulatory stewardship and policy role, it is responsible for advising on the performance of, and making recommendations to improve, the effectiveness of the work health and safety system.
15. WorkSafe also has a leadership role coordinating the implementation of work health and safety initiatives with other agencies. It permits a range of high risk work operations, for example; major hazard facilities, and adventure activities. WorkSafe conducts assessments in workplaces to see how effectively businesses are managing their risks and focusing on key risks like hazardous substances, key controls like health monitoring, or other system enablers like worker engagement.
16. The Transport Agency is responsible for regulating commercial public and passenger safety in land transport and controls the regulatory system by certifying and licensing participants in the land transport sector. As part of its statutory functions, the Transport Agency must also contribute to an effective, efficient and safe land transport system in the public interest. It also investigates and reviews accidents and incidents involving land transport.
17. WorkSafe and the Transport Agency have similar functions such as education and engagement, investigation, information analysis, and prosecution. This means both agencies can be involved in developing guidance on safe land transport, or investigating the same incidents where death or serious injury has occurred, or both could be working to influence a business to improve safety. For an overview of the breakdown of their functions, please see Appendix A.
18. While NZ Police is not a HSWA designated agency, some of their Commercial Vehicle Safety Team (CVST) officers are warranted as HSWA inspectors by WorkSafe. The Police CVST have responsibility for on-road commercial vehicle safety enforcement (inspecting heavy goods vehicles at the roadside, for instance). NZ Police use their commercial vehicle expertise to gather evidence, but WorkSafe remains the regulator. If the matter is serious, WorkSafe can take a prosecution forward once an investigation is complete. CVST and WorkSafe have a shared agreement setting out agreed ways of working for training, coordination of activities and information sharing. The Transport Agency, WorkSafe and CVST also sometimes conduct joint operations. Separately, we are also reviewing the interface between the CVST and the Transport Agency to see whether improvements could be made in this area too.

What's the scale of the challenge with health and safety in the land transport sector?

19. Our current understanding of work health and safety outcomes in the land transport sector is limited by the availability of data and the way in which different agencies currently collect information. Overall we believe that work health and safety outcomes in the land transport sector (particularly in regard to road use) have not been improving at the same rate as other sectors of the economy.
20. The Transport Agency's quarterly Road Safety Outcomes report⁴ does not distinguish between work related and non-work related incidents. However, the Ministry of Transport

⁴ <https://www.nzta.govt.nz/assets/resources/road-safety-outcomes/docs/rso-jul-sep-2019.pdf>

and Police have work underway to differentiate work-related incidents and hope to be able to measure this in the near future. Overall, we can see a general trend that the number of fatalities and injuries is not reducing. The number of fatal/serious crashes involving heavy motor vehicles (as they are more likely to be in commercial operation) has also risen from 221 in 2015 to 270 in 2018.



21. The new 'Road to Zero' road safety strategy acknowledges that far too many workers are involved in crashes that result in deaths and serious injuries. Research suggests that around 25% of road fatalities involve a person driving for work⁵.
22. Work-related road safety is a key area of focus for the new road safety strategy. This is not only because of the size of the problem, but also because there is a real opportunity for businesses across the supply chain to take steps to significantly improve the safety of their workers and the public on the road.
23. In developing Road to Zero stakeholders expressed concern that some businesses do not treat road safety as a critical health and safety risk, and that businesses in all sectors need better information about how to meet their obligations. Fatigue, distraction and vehicle safety are seen as priority issues, as well as using chain of responsibility obligations⁶ to drive change. Stakeholders have also noted that factors such as long working hours can impact on the safety of workers travelling to and from their workplace.
24. Many roles in the land transport sector are also sedentary. This means, for example, truck drivers can suffer from work-related health problems. A study of the health of truck drivers in the US found that whilst drivers might describe their health as good, 83.4% were overweight, 56.3% had chronic fatigue, 70% were at risk of sleep apnoea and about 40% had cardiovascular concerns⁷.
25. Looking ahead, there are also opportunities and risks around emerging technologies in the transport sector and the changing nature of transport-related work. Those changes might make it advantageous to have one transport regulator with specialist sectoral knowledge taking a holistic view of the transport safety system and the work health and safety system. Stakeholders have also expressed a desire for there to be better coordination and leadership by regulators in the system. A greater focus on work health and safety in the land transport sector is warranted, and we have an opportunity to determine what the most efficient way to do this is.

⁵ Lilley, R. (2019) Factsheet 44 - Work Related Fatal Injury Study - 3: Work-related Road Traffic Fatalities 1999-2014. Injury Prevention Research Unit. University of Otago.

⁶ The offences set out in Part 6C of the Land Transport Act 1998 (such as permitting work time breaches)

⁷ Tedestedt George, C. (2018) An Inquiry into Contextual Factors Impacting the Occupational Health, Safety, and Well-Being of New Zealand Truck Drivers: an Ecological Systems Approach, p.211

<https://openrepository.aut.ac.nz/handle/10292/12005?show=full>

There is scope to improve the land transport health and safety system

26. The deliberate overlap of the land transport safety regulatory system, and the work health and safety regulatory system has created an unintended gap in the delivery of those regulatory systems. This has led to missed opportunities where the land transport sector is not receiving the holistic and focussed attention from a work health and safety perspective. Outcomes on the ground have not been improving as rapidly as they could, given there are two safety regulators in the same space.
27. WorkSafe has a finite resource to improve work health and safety outcomes across all types of work and industries, so focusses on where there is the greatest risk of harm and where intervention would make the most difference. WorkSafe can better utilise its resources to influence those sectors where no other regulator, with a safety focus, exists to do that work.
28. WorkSafe has not pro-actively focussed on the land transport sector because the Transport Agency regulates safety in the land transport sector. WorkSafe has taken limited focussed regulatory action in relation to road and rail incidents when the risk of harm has warranted an intervention.
29. For example, the risk of harm to workers doing maintenance work in rail tunnels, and the risk of harm in the event of a fire in a rail tunnel. WorkSafe has also been working with the Transport Agency's Rail team to identify and develop a coordinated approach to catastrophic risk in rail. In 2018, WorkSafe began a programme of work to reduce vehicle⁸-related harm, as vehicles and mobile plant such as forklifts are the single biggest cause of fatalities at work across all sectors. Nevertheless, for the above reasons, the land transport sector has not been prioritised by WorkSafe.
30. The Transport Agency and the transport regulatory regime has some focus on commercial operators and its work contributes to health and safety at work outcomes (such as advice on tackling driver fatigue). However, as it does not have the legal responsibility to enforce HSWA requirements, it has not been able to look from the start to the end of the supply chain for transport operators. It has missed out on a more integrated approach for dealing with operators from taking a work health and safety perspective.
31. NZ Police have similarly finite resources in this area and their ability to enforce compliance with work health and safety legislation is just one area of their road policing responsibilities. As they are not a designated agency, NZ Police cannot access the dedicated funding to support their work as warranted health and safety inspectors. Police have tended to focus their attention on the acute risks (crashes) rather than the chronic risks (such as the health problems associated with sedentary work) as that is more aligned with their core road policing objectives. To date, Police have not undertaken more than 1500 hours of HSWA investigations per year.
32. In summary, the design of the current system has meant that no single agency has prioritised work health and safety in the land transport sector in their regulatory work programme. Whilst they have all been active in regulating for safety outcomes, the health impacts of work in the land transport sector have been neglected. No single agency enjoys an end-to-end perspective of the regulatory system that would enable them to take a holistic approach to improving outcomes on the ground.

⁸ Work vehicles covers a wide variety of vehicles, including those operating mostly off the road network e.g. forklifts, cranes, excavators, quad bikes.

What are the objectives for designation?

33. In assessing the merits of designating the Transport Agency as a work health and safety regulator we have considered some general principles, as well as four regulatory stewardship objectives to assess the options.
34. The general principles for designation under HSWA are:
- designation should provide operational independence for the regulator(s)
 - designated functions and powers should enable the agency to be an effective HSW regulator.
 - designation should recognise regulatory interfaces while minimising the risk of gaps between regulators.
35. In considering the merits of designating the Transport Agency, we have used four of the Treasury's regulatory stewardship objectives⁹ to assess these against:
- 35.1. **Effectiveness** – measurable, improved work health and safety outcomes for the land transport sector
- 35.2. **Efficiency** – reduced duplication of effort across agencies, making sure that the right agency is in the right place at the right time, with the right technical expertise, with minimised unintended consequences or undue regulatory burdens
- 35.3. **Durability** – enhanced resilience in the wider regulatory system, so that it can adapt and evolve over time, whilst performing to a consistently high standard
- 35.4. **Fairness and Accountability** – the system respects rights and delivers good process – e.g.; accountability, fair and impartial decision-making, opportunities for those affected by to be heard, and opportunities for review or appeal

What are the options?

36. Two broad options are considered in this briefing:
- 36.1. **Maintaining the status quo** (the 'do nothing' option), and
- 36.2. **Designating the Transport Agency** as work health and safety regulator for the land transport sector.
37. The first option is unlikely to deliver a significant improvement to health and safety in the land transport sector.
38. The second option, to designate the Transport Agency as a work health and safety regulator for the land transport sector is consistent with the Government's wider ambitions to improve work-related health and safety in the land transport sector.
39. We have also discounted an alternative options at this early stage. We considered that enhancing the status quo by WorkSafe increasing its focus on land transport would not deliver better outcomes than designating and funding the Transport Agency, because the efficiencies would not be gained while the duplication of effort remains. WorkSafe would not

⁹ <https://treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

have the whole land transport system view that the Transport Agency would be able to take. It would also mean WorkSafe would be less able to focus in other areas of harm where there is not a sector focussed regulator.

Assessing the merits of designation

40. The table below highlights the merits of designation compared to the status quo, followed by a more detailed analysis of the merits below.

	Status quo	Designation
Effectiveness	<p>WorkSafe has less technical expertise and specialist knowledge of the transport sector participants and risks. WorkSafe also has less strong relationships with transport sector participants</p> <p>The risk of a gap in the delivery of regulatory activities continues as the two agencies defer to each other within the overlap, creating unintended gaps in focus and delivery</p> <p>Unlikely to see much change in the level of awareness about work health and safety requirements among sector participants</p> <p>The level of WorkSafe activity in the land transport sector continues to be subject to variability based on transport risks and harm compared to other sectors</p>	<p>Utilises the Transport Agency's specialist knowledge of the land transport sector, its participants, and technical subject matter expertise</p> <p>Increases awareness of work health and safety regulatory system via more regular contact with the regulator (the Transport Agency)</p> <p>Continued targeted and end-to-end focus of work health and safety in land transport – improving outcomes</p> <p>Broadening of the Transport Agency's focus from acute injury to include health outcomes and support worker engagement</p>
Efficiency	<p>Regulators continue to duplicate effort, for example; inspections, investigations, data collection</p> <p>WorkSafe develop and duplicate sector knowledge that already exists in the Transport Agency</p> <p>Continued potential for confusion of regulated parties having to deal with and comply with two safety systems</p>	<p>Regulators can streamline and focus resources, so there is potential for more impact and better value for money</p> <p>Reduces confusion for regulated parties by only dealing with a single safety regulator</p> <p>The Transport Agency works across road and rail so will also enable better understanding of risks across freight networks</p>

		Road safety outcomes, and work health and safety could be improved through the use of tools available under HSWA.
Durability	Little change. Concentrates work health and safety expertise at WorkSafe	Increases New Zealand's work health and safety regulatory capacity – spread across four agencies. Possibility for innovation and spreads risk of failures in oversight Potential for better adaptation of work health and safety interventions as transport technology and risks evolve with a transport focused regulator.
Accountability	Ongoing risk of a gap between the enforcement activities of the two agencies	The Transport Agency has end-to-end oversight of regulating operators in the land transport sectors. Greater potential for cultural change within industry

How would designation be more effective?

41. Designation is designed to take advantage of technical expertise and sector-specific knowledge held by agencies. It also enables efficiencies by streamlining administration in one agency, minimising compliance costs and avoiding duplication between agencies. The Transport Agency would be able to use its end-to-end intelligence within the land transport sector to more effectively target its interventions at the highest risk areas.
42. As the lead agency responsible for safety oversight of the land transport sector, the Transport Agency is a 'known quantity' for operators in the rail and road systems. The Agency is also familiar with the business models, operations and technical specifications of the organisations that it licenses and the vehicles they operate. This varies according to the type of licence and the size and complexity of the licence holder's operations. Nevertheless, there is sector specific knowledge and technical expertise for the land transport sector within the Transport Agency that does not exist to the same level at WorkSafe.
43. Provided that designation is accompanied by an appropriate funding commitment, it would deliver a net increase to the regulatory work being undertaken to promote work health and safety, and to enforce compliance with HSWA in the land transport sector. Given the currently limited activity in the land transport sector, there is a low baseline on which to improve. As the Transport Agency gradually builds up its work health and safety capability, designation could deliver a more effective health and safety regulatory system.

How would designation be more efficient?

44. The knowledge and the relationship that the Transport Agency has with regulated parties creates an opportunity for more efficient regulatory oversight. For instance, if the Transport Agency was conducting a safety assessment at a licenced rail operator, this could be integrated with a health and safety assessment, saving time, money and effort for the agencies and reducing unnecessary burden on the rail operator.
45. The two land transport sectors (road and rail) are quite distinctive from each other, requiring different regulatory approaches, and also diverse within themselves. For instance, oversight of operator licence holders in the rail sector encompasses everything from small heritage and tourism operators to KiwiRail. Work taking place on the road network will include large companies with fleets of heavy goods vehicles or coaches, along with small taxi companies and providers of vehicle recovery services.
46. Given the diverse nature of the regulated parties that the Transport Agency is already responsible for overseeing, there is already evidence of the agency taking a tailored approach to regulatory oversight and being able to accommodate different regulatory styles. The Transport Agency will, however, require long term support and monitoring from the Ministry of Transport, WorkSafe and MBIE to ensure that they successfully integrate the HSWA roles into delivery of their regulatory activity.

How would designation be more durable?

47. Designating the Transport Agency (accompanied by a corresponding funding appropriation) would grow the overall size of the regulatory community looking at work health and safety in New Zealand. It would also spread that expertise from WorkSafe to the three transport regulators (CAA and Maritime NZ are already designated) and open an opportunity for innovation and development of best practice in the different organisations. The risk of diluting expertise in the Transport Agency and spreading it thinly would have to be countered with an appropriate increase in overall funding.
48. By having another agency effectively regulating work health and safety, New Zealand would benefit from a community of regulators that is able to leverage off each other's knowledge (avoid each other's mistakes) and improve regulatory practice overall. Whilst WorkSafe would remain the primary regulator (providing the three designated transport agencies with advice and support), in time it is possible that best practice in certain issues could be developed in the transport regulators that will be of value to WorkSafe.

How would designation be more accountable?

49. It should be emphasised that designating the Transport Agency will not introduce any new regulatory requirements on the land transport sector. The sector is already subject to the requirements of HSWA. Designation would facilitate more frequent discussion about work health and safety issues between the regulator and the regulated parties, helping to deliver improved levels of compliance. There will be more of a focus on how they are meeting those requirements in conjunction with transport safety obligations.
50. The Transport Agency would have the opportunity to take a more holistic approach to assessing the cause of risks in the land transport sector by looking up and down the supply chain. So, rather than treating the symptoms in terms of taking enforcement action for breaches of work health and safety regulation, the Transport Agency could address the root cause of the breach, which may be several steps up the supply chain. This would make the originator of the risk accountable for mitigating it.

51. Having a single designated work health and safety regulator for the land transport sector, participants would be accountable to a single agency for their operational safety and their work-related health and safety. The combined effect of one regulator promoting good practice and enforcing compliance could drive a cultural change amongst sector participants.

Recommendation

52. Considering the above factors, we recommend that you jointly meet with the relevant senior officials to discuss this further, with a view to taking an 'in principle' decision on designation.
53. We will continue to progress more detailed work towards designating the Transport Agency as the work health and safety regulator for the land transport sector. At this stage we would like to flag some key risks and mitigations, as well as options for funding these new regulatory functions for the agency.

Risks associated with the designation of the Transport Agency and proposed mitigations

54. We have identified five key risks with designating the Transport Agency. We will conduct further work as part of the next phase of the project to further explore and mitigate these risks.

i) Capability

55. There is a risk that some stakeholders could argue the Transport Agency is not capable of taking on new responsibilities at this time.
56. Having just been through a high-profile regulatory failure, the Transport Agency is making good progress on rebuilding its regulatory strategy and capability. An 'in principle' decision to designate would mean that new health and safety regulatory functions could be built into the foundations. By factoring in work health and safety regulatory practices into its regulatory strategy at this early stage, the agency has an opportunity to deliver those functions more effectively and efficiently than if they were added on at a later stage.
57. It will also enable the Agency to work closely with WorkSafe and leverage its operational policies and knowledge as it builds its strategy and operating model.
58. The Transport Agency would also have to reconcile two different regulatory approaches – the more prescriptive, rules-based system in land transport, and the more performance-based system for work health and safety. We think this risk can be managed as the Transport Agency is already responsible for delivering multiple different regulatory systems. WorkSafe has effective processes and procedures that could be adopted by the Transport Agency.

ii) Inconsistency

59. There is a risk that designating the Transport Agency creates potential inconsistency in application of health and safety regulation between regulators. This already exists in the different ways that WorkSafe, CAA and Maritime NZ target their interventions.
60. As above, if the in principle decision is made now, this risk can be managed by the Agency building HSWA practices into the foundations of its regulatory strategy and operating model, and working closely with WorkSafe to ensure consistency with WorkSafe processes and systems to support decision-making and regulatory actions. A decision later may result in it being an add-on and increase the risk of inconsistency.

61. With more than one regulator actively regulating work health and safety, we need to foster a community of practice across the regulators to help drive improvements in best practice.

iii) Handling conflicts of interest

62. As an organisation responsible for the funding of the land transport system, management of the state highway network, and regulation of land transport operators, there is the potential for a perceived conflict of interest. For example, as a major procurement authority, the Transport Agency can be both a client of, and regulator of, contractors working on road construction and repairs.

63. This risk was considered in the review of the Transport Agency's regulatory performance. The report did not suggest that having multiple roles is in itself a concern, but rather that systems and processes need to be in place to manage any conflicts. Cabinet has already agreed that these will be managed by the following:

(a) The appointment of a Statutory Director that is independent from the other agency functions and is not carried out by the Chief Executive.

(b) The Agency Regulatory Strategy will outline the processes for management of any perceived or actual conflicts.

(c) Monitoring any processes and procedures around management of conflicts by the Agency Board and the Ministry of Transport as part of its monitoring role.

iv) Use of new powers

64. The powers granted to regulators under HSWA are very broad, and there is a risk that the Transport Agency could try to use them to fill perceived gaps in existing land transport regulations. The Transport Agency could make use of the extensive powers granted under HSWA, and the discretion that the Act gives regulators, to pursue objectives other than improving work health and safety.

65. We believe this risk can be managed, we are already reviewing and providing NZTA with a similar range of powers and tools in transport legislation. So, there will not be an incentive to use HSWA just for the regulatory powers, but rather because it is the more appropriate legislative framework.

v) Scope

66. The recent re-designation of Maritime NZ and the CAA has reiterated the importance of precisely defining the scope of designation, ensuring that the impacts of designation under the new HSWA legislative framework are well understood, and ensuring there is sufficient time to do this properly. The second lesson, which extends beyond work health and safety, is the importance of a strong and ongoing monitoring programme to ensure that Ministers have a clear line of sight to the effective delivery of regulatory activity. The agencies will work collaboratively to design the scope of any designation to ensure it is well defined and understood.

67. Functions of a HSWA regulator are much broader than a pure focus on safety, so it is important that designated regulators have an ongoing mentoring and support relationship with WorkSafe. This helps them to develop the capability to fulfil other functions supporting, promoting and enforcing areas such as worker engagement and participation, and health monitoring.

68. The Ministry of Transport is also currently developing an enhanced monitoring role to ensure all of the designated agencies: The Transport Agency, CAA, and Maritime NZ are performing their HSWA role effectively. This will be developed with MBIE and WorkSafe.
69. The next phase of our risk management work as we develop our approach to designation will include ensuring the above and any other risks are explored and mitigations are put in place.
70. There are also a range of additional potential checks and balances, including:
- the new Transport Agency statutory director role being developed
 - the incorporation of HSWA approaches in the development of the Transport Agency's regulatory strategy from the outset
 - the flexibility of the designation mechanism that allows for adjusting the scope of the role to address and avoid potential conflicts of interest
 - the ability of WorkSafe to perform functions in respect of the scope of designation of another agency (with its consent)
 - the joint policy direction that Ministers can give the designated agency
 - the improved monitoring of agency capability and approach by the Ministry of Transport

Options for funding designation

71. A prerequisite for achieving a significant step-change in land transport work health and safety outcomes is sustainable baseline funding. A decision on funding mechanisms does not need to be taken now, but it will need to be taken as part of the designation.
72. There is only really **one source of funding**. The Health and Safety at Work (HSW) Levy.
73. The cost of the Transport Agency's health and safety regulatory activity should be recovered from the Health and Safety at Work levy – the dedicated funding source specific to this purpose. A staged increase in baseline funding would be expected, beginning from the point of designation, as the Transport Agency builds up its capacity, capability and activity. Should the agency require additional funding to cover increased work health and safety activity, it would need to seek this through Budget as normal, with it then recovered from the levy.
74. Whether a levy rate increase will be required to cover the designation appropriation will depend on the timing of designation, the baseline funding level required by the Transport Agency, and the level of future levy revenue.
75. A fiscally neutral transfer of WorkSafe's appropriation from Vote Labour Market, to Vote Transport to fund the Transport Agency is a sub-option. As land transport work health and safety regulatory activity has never been specifically funded, it would likely create a funding shortfall at WorkSafe. This could impede its ability to effectively regulate other sectors. This would not be a preferred way forward.
76. Alternative funding sources have been discounted in preparing this briefing, as there is already a dedicated levy that is specific to funding work health and safety regulatory activity. To propose alternatives would mean that the land transport sector could be double-charged for work health and safety regulatory oversight.
77. For comparison, Currently Maritime NZ receives \$6.1m annually and CAA \$1.64m annually for their respective HSWA activities. This is recovered from the HSW levy. Of WorkSafe's total funding, \$96m is recovered from the HSW Levy, and \$1.5m from Crown funding for a

public register for hazardous substances. WorkSafe is also funded from energy safety and major hazard facilities levies, and receives funding from ACC for harm prevention activity. All capital expenditure comes from Crown funding, and not the HSW Levy.

78. Ahead of detailed scoping work, we do not know the level of baseline funding the Transport Agency would require. As part of the proposed next stage of designation work the Transport Agency will determine estimated resourcing requirements and associated costs. Agreement on a sustainable funding mechanism will be central to the future decision to designate. Starting work now to embed work health and safety regulatory practices in the design of the Transport Agency's new regulatory strategy is likely to deliver better value for money. It would be easier to remove these practices, if necessary, from the agency's regulatory strategy, rather than trying to add them on as an extension at a later date.

Stakeholders' views on designation

Agencies and the Police

79. We have worked closely with WorkSafe in preparing this advice, and they support designation of the Transport Agency as a work health and safety regulator. Their support is subject to further work to resolve concerns that the broad powers granted under HSWA could be directed at achieving transport safety outcomes, or used to fill perceived gaps in land transport regulations, rather than directed at improving outcomes in the work health and safety system.
80. The Transport Agency is enthusiastic about taking on responsibility for regulating work health and safety in the land transport sector. More work is required to ensure that the organisation has properly scoped out what it would mean for them, but subject to an appropriate funding mechanism being agreed, the agency is highly supportive of designation.
81. Police believe that having the Transport Agency as the regulator for HSWA in the commercial vehicle industry could be leveraged to bring benefits for the sector, as the Transport Agency already has significant expertise in all areas of the transport sector as opposed to WorkSafe NZ who is predominately focussed on other issues.
82. In Police's view, having the Transport Agency as the regulator would enhance the Transport Agency/Police road safety focus and allow both parties to focus on the whole journey of the commercial vehicle, including loading, transport, distribution and final destination - the Transport Agency and Police already interact in many of these areas. Police is looking forward to understanding how the new designation would work in practice. Many of the benefits of alignment with the Transport Agency would be contingent on the nature of their MOU with NZ Police.

External stakeholders

83. We have not thoroughly discussed the proposal with external stakeholders at this stage in the policy development process. In the reference group on workplace safety, as part of the road safety strategy development, stakeholders did recommend that there be better alignment and coordination between the regulators, and designations should be explored. There is a sample range of views on designation below. A more extensive programme of engagement with stakeholders will be undertaken next year.
84. *TRANSPORT SECTOR - "If there can be some streamlining, for example on the implementation of the health and safety regulations, we would support that."* Nick Leggett,

85. *"From our point of view we want a level playing field and inspections are good because they keep everyone honest."* Dennis Robertson, Road Transport Association chief exec
<https://www.stuff.co.nz/business/107265754/police-defend-big-drop-in-commercial-vehicle-inspections>
86. TRADE UNIONS – We have had some engagement with the RMTU (representing rail workers) on the location of the regulatory functions for rail safety. In May 2018, the RMTU proposed that WorkSafe NZ take over the whole of the responsibility for rail safety. The RMTU has shifted from this view following its involvement in the National Rail Industry Advisory Forum that the Transport Agency sponsors. We understand that the RMTU's current view is that there should be a single stand alone transport safety regulator for all modes, which would have the compliance regulatory role for land, sea and air with a director of transport safety.
87. Other unions active in land transport have not expressed a formal view. We propose to engage with the CTU, RMTU and other relevant unions (First, Tramways, Amalgamated Workers) during the consultation phase.

Proposed next steps

88. If, after having jointly met with the relevant senior officials, you agree 'in principle' to designate the Transport Agency, a policy paper to Cabinet will be required, seeking its agreement to recommend that the Prime Minister designate the agency, including agreement to the scope of designation and the funding level and source.
89. We also suggest that the Transport Agency should demonstrate its regulatory capability before designation, including that it has the people, regulatory strategy, and operating model to deliver its functions.
90. The detailed policy work on the scope of designation will also need to consider:
- how best to define the industry, sector, type of work or circumstance to be designated
 - what functions and powers the Transport Agency would be designated for
 - how to best address the areas where the Transport Agency is most likely to need support to develop its capability, such as worker health, worker engagement and participation, upstream duties such as work health and safety in design, or safety risks that are not rail or road-specific
 - overlaps or gaps with WorkSafe and Police and the need to update cooperation agreements.
91. We anticipate that it will take 8-12 months to effectively undertake this work to inform the Cabinet paper.
92. Targeted consultation with interested stakeholders, including participants in the land transport sector will also be undertaken.

Recommendations

94. We recommend that you:

- a) **agree** to a joint meeting with officials with a view to making an 'in principle' decision to designate the Transport Agency as a work health and safety regulator and to commission the detailed work that will be required before a designation can be made Yes/No
- b) **note** that ahead of designation the following conditions must be met:
- i. definition of the detailed scope of the Transport Agency's designation
 - ii. agreed sustainable baseline funding
 - iii. the Transport Agency demonstrating capability to deliver its regulatory functions
- c) **note** that we will :
- i. work with WorkSafe and the Transport Agency to define the detailed scope of designation
 - ii. ask the Transport Agency to work out their resourcing requirements and the associated costs

s 9(2)(a)

Kirstie Hewlett
Deputy Chief Executive, Regulatory and Data

s 9(2)(a)

Lisa Collins
Manager, Health and Safety Policy
Labour and Immigration Policy, MBIE

MINISTER'S SIGNATURE:

DATE:

Appendix A – Comparison of HSWA functions and NZTA's similar land transport functions

WorkSafe functions	NZTA current functions
Monitoring and enforcement of compliance – assessments and investigations by inspectors	Yes
Publishing information about its approach to enforcement and its performance standards for completing investigations	Yes
Developing codes of practice	Yes
Providing guidance, advice and information	Yes
Developing safe work instruments (a type of legislative instrument)	Similar mechanism is proposed in NZTA Bill
Collecting, analysing and publishing statistics and information relating to work health and safety eg collating notifications to identify patterns of risk and develop information for interventions	Yes
Engagement - fostering cooperative and consultative relationships between businesses and workers and their representatives	Limited
Supporting development of work health and safety initiatives in collaboration with other agencies or interested persons	Yes
Promoting and coordinating the sharing of information with other regulatory agencies	Yes
Promoting and supporting research, education and training	Yes



30 June 2022

OC220232

Hon Michael Wood

Minister of Transport

WORK TIME, LOGBOOKS AND FATIGUE MANAGEMENT TECHNOLOGY REVIEW

Purpose

Update you on the outcomes of the work time limits, logbook and fatigue-monitoring technology review, as outlined in the *Road to Zero Action Plan 2020 – 2022*.

Key points

- Fatigue contributes to death and serious injuries (DSIs) in and around vehicles at work. Cumulative time spent driving contributes to fatigue and harm. The exact impact fatigue and work time have on DSIs cannot be reliably estimated, given the complex nature of contributing factors, and issues involving data collection and determining when a driver is fatigued.
- Some jurisdictions (for example, the European Union, Canada and the United States) specify separate driving time limits from overall work time limits. Our daily work time limit is similar to these jurisdiction's driving time limit, but our weekly work time limit is comparatively high. Australia has more stringent work time rules than ours, but similar rules for operators that have an approved Fatigue Management System.
- There is a lack of evidence to determine whether reducing work time limits would decrease DSIs and a risk of negative unintended consequences. We need to further engage with industry and unions to better understand the issue of fatigue, including the benefits and challenges of potentially reducing work time limits.
- We recommend Waka Kotahi NZ Transport Agency (Waka Kotahi) establishes a road safety partnership similar to the National Road Safety Partnership Program in Australia which has had success in improving organisational road safety culture. This would be run by industry and governed and funded by government agencies, who collaborate on evidence-based interventions to tackle key risks of harm in work-related road activity.
- Electronic monitoring software in vehicles has the potential to reduce collisions by up to 20 percent. For these to be successful they need careful implementation and monitoring, as well as clear leadership and communication by management. We will work closely with the partnership to investigate how to encourage uptake and successful implementation of these technologies.

Recommendations

We recommend you:

- 1 **agree** for us to engage with industry and unions to better understand the issues surrounding fatigue and work time rules Yes / No
- 2 **agree** to Waka Kotahi establishing a partnership between government agencies (ACC, Te Manatū Waka, NZ Police and WorkSafe), drivers' unions and private sector organisations, to support best practice for work-related road safety Yes / No
- 3 **agree** to share this briefing with the Road to Zero Ministerial Oversight Group, and discuss the partnership at the group's next meeting Yes / No
- 4 **note** that we will work closely with the partnership to investigate how to encourage uptake and successful implementation of fatigue-monitoring and other safety technologies.



Matt Skinner
Acting Manager, Mobility and Safety
30 / 06 / 2022

Hon Michael Wood
Minister of Transport
..... / /

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Matt Skinner, Acting Manager, Mobility and Safety	s 9(2)(a)	✓
Hannah Stapley, Adviser, Mobility and Safety		

WORK TIME, LOGBOOKS AND FATIGUE MANAGEMENT TECHNOLOGY REVIEW

Reviewing work time limits, logbook requirements and fatigue management technology was an action committed to under Road to Zero

- 1 The *Road to Zero Action Plan 2020-2022* (the Action Plan) made a commitment to review the logbook and work time requirements under the Land Transport Act 1998 and the Land Transport Rule: Work Time and Logbooks 2007 (the Rule) to help reduce the risk of fatigue-related harm on New Zealand roads. This includes:
 - reviewing maximum driving hours and rest requirements, with comparison to other jurisdictions such as the European Union (EU), to determine whether they remain fit-for-purpose or require altering
 - reviewing logbook requirements, including whether to mandate the use of e-logbooks to improve auditing and enforcement of work time limits
 - examining the future role of transport technology, particularly telematics (that is, vehicle tracking and monitoring) and fatigue-monitoring technology, to address safety risks in the course of driving for work.
- 2 While several amendments have been made to the Rule, we have not comprehensively reviewed the work time and logbook requirements since they were enacted in 2007. Other jurisdictions, such as Australia and the EU, have enacted lower work time limits than New Zealand's
- 3 Another action outlined in the Action Plan is to support and encourage private sector initiatives to establish best practice road safety standards. The private sector can help to drive change by setting clear standards for safety practices and technologies in their procurement practices and maintaining appropriate oversight over the services they contract. We considered this action when undertaking this review of work time limits, logbook requirements and fatigue management technology.

We know that fatigue contributes to vehicle-related harm in the workplace, but the scale of harm is difficult to quantify

- 4 Research suggests that around 25 percent of deaths on our roads involve someone driving for work, whether as a commercial driver or as a secondary part of their main role, such as driving a company car to and from places of work¹. Often it is other road users who are killed in these crashes, particularly for crashes with heavy vehicles.
- 5 Research into supply chain pressures found that most work-related crashes involved trucks or semi-trailers, with 57 fatal crashes and 170 serious injuries involving trucks in 2019². Over 50 percent of fatal crashes involving trucks had contributing factors related to the truck driver — among these were fatigue, speeding, drug and alcohol use, or distraction.

¹ Te Manatū Waka Ministry of Transport. (2019). *Road to Zero Action Plan 2020-2022*.

² Tedestedt George, C., Mackie, H., Ashby, L., Hirsch, L., Tappin, D., Lamm, F., & Crawford, J. (2021). *Managing vehicle-related risks from supply chain pressures*. Mackie Research.

- 6 A WorkSafe literature review³ estimated 28 percent of those in the transport, postal and warehousing sector are fatigued often, most, or all the time while working. Crash Analysis System (CAS) data shows fatigue was a contributing factor in 130 (or 9 percent) of the DSIs involving trucks and 21 (or 7 percent) of the DSIs involving buses in New Zealand from 2015 to 2019. Heavy vehicle driver fatigue is associated with a significantly higher proportion of DSIs compared to other vehicle driver fatigue. Draft findings from a study commissioned by the AA Research Foundation found fatigue was a factor in around 6 percent of higher severity crashes involving light vehicles driven for work.
- 7 This data does not necessarily mean heavy vehicle driver fatigue is the cause of the crash. Of those heavy vehicle DSIs with fatigue as a contributing factor, around half had another road user deemed at-fault, as opposed to the heavy vehicle driver. Many of the fatigue-related DSI crashes had additional contributing factors. Therefore, the scale of harm caused by fatigue on our roads is difficult to estimate.
- 8 The occurrence of fatigue-related crashes is also likely to be under-reported. Recording fatigue as a contributing factor is based on the discretion of the Police officer reporting the crash.
- 9 Internationally, there are no known studies that have provided a reasonable estimate of the harm created by driver fatigue or work time.

Supply chain pressures can result in drivers working over the prescribed hours, falsifying logbooks and other risky behaviours that contribute to harm on our roads

- 10 WorkSafe commissioned Mackie Research to investigate approaches to minimise the vehicle-related risks that emanate from business models, contracts and contracting, and supply chain pressures (the Mackie report⁴). Annex 1 shows the contextual factors and symptoms found that cause harm when working in and around vehicles in the supply chain. The most prominent of these include:
 - financial and customer pressures, particularly due to the high competition in the transport sector and the number of small businesses, which can lead to a lack of focus on safety
 - driver shortages, which have increased during COVID-19 outbreaks due to workers having to self-isolate, resulting in increased time pressures
 - inflexible work shifts and scheduling pressure, which can lead to workers being unable to fully recover between shifts, as well as poor health and wellbeing
 - a lack of incentives to comply with regulations and best practice safety measures, through perceived likelihood of enforcement or conflict with other goals.

³ Barton, J. (2021). *Risk factors, prevalence, and interventions to address workplace fatigue literature review*. WorkSafe.

⁴ Tedestedt George, C., Mackie, H., Ashby, L., Hirsch, L., Tappin, D., Lamm, F., & Crawford, J. (2021). *Managing vehicle-related risks from supply chain pressures*. Mackie Research.

- 11 All these pressures can lead to fatigue and a poor safety culture among workers and organisations working in and around vehicles. This can result in unsafe behaviours including distraction, speeding, aggressive driving, fatigue and lack of compliance with work time and logbook requirements.

There are many other health and safety issues faced by those working in and around vehicles, many of which intersect with fatigue, contributing to harm on our roads

- 12 Along with fatigue and sleep disorders, truck drivers are more likely than the general population to have other significant health issues including obesity, diabetes, and work-related stress. Poor physical health of drivers has been associated with a range of harms. Many physical and mental health issues are interrelated and some can cause an increased likelihood of crashes. For example, an increase in body mass index (BMI) has been associated with fatigue and a greater incidence of crashes⁵.
- 13 Other common behaviours by drivers of heavy vehicles that contribute to DSIs include inattention, use of drugs or alcohol, and driving too fast for the conditions. These factors may be related to fatigue in some instances, for example, fatigue could cause inattention and the use of drugs or alcohol could cause fatigue.

We analysed which policy options tackle the root causes of harm, take a Safe System approach and are most likely to reduce DSIs

- 14 Ensuring that businesses and other organisations treat road safety as a critical health and safety risk is the strategic objective of the work-related road safety focus area, as outlined in the Action Plan. When undertaking the review, we used the following main criteria to analyse policy options:
- likelihood of addressing the root causes of fatigue and harm in and around those driving for work, including the factors outlined in the Mackie report
 - likelihood of improving organisations' culture and practices regarding treating road safety as a critical health and safety risk, as per the objective laid out in the Action Plan and a key theme from the Mackie report
 - likely impact on reducing work-related DSIs on our roads, in line with Vision Zero and the 2030 goal
 - incorporating the Safe System⁶ approach, which acknowledges humans make mistakes and all system users share the responsibility for managing crash forces to a level that does not result in death or serious injury.

⁵ Wiegand, D.M., Hanowski R.J., & McDonald S.E. (2009). Commercial drivers' health: a naturalistic study of body mass index, fatigue, and involvement in safety-critical events. *Traffic Injury Prevention* 10(6), 573-579.

⁶ The four Safe System principles under Road to Zero are: (1) People make mistakes that lead to road crashes; (2) The human body has a limited physical ability to tolerate crash forces before harm occurs; (3) The responsibility for safety is shared amongst those who design, build, manage and use roads and vehicles; (4) All parts of the system must be strengthened so that, if one part fails, road users are still protected.

We compared our work time and rest requirements to other international requirements and evidence

Our daily work time limit and rest requirements for heavy vehicles are similar to other jurisdictions, but our weekly work time limit is comparatively high

- 15 Table 1 compares New Zealand's work time limits for heavy vehicle drivers with that of the EU, Canada and the United States, and further analysis is included in Annex 2. Key differences are:

15.1 New Zealand does not distinguish between driving time and overall work time in our work time rules (work time includes driving and any other work such as loading and unloading, maintenance and administration)

15.2 New Zealand's daily work time limit and rest requirements for heavy vehicle drivers are similar to other jurisdictions.

15.3 Our weekly work time limit is higher than the EU's and the United States, and similar to Canada's.

Table 1: Comparison of New Zealand requirements to those of other jurisdictions

	New Zealand	European Union	Canada	United States
Daily work hours limit	13	14.25, or 10 if night work performed unless negotiated in an employment agreement	14	14
Daily driving hours limit	n/a	10 twice a week, 9 on all other days	13	11
Rest stops required during shift	30 minutes every 5.5 hours	45 minutes every 4.5 hours	2 hours in 30-minute blocks	30 minutes every 8 hours
Daily continuous rest hours required	10	9 three days a fortnight, 11 on all other days	8	10
Cumulative maximum weekly work hours	70	60, and an average of 48 over 17 weeks	70	60
Cumulative maximum weekly driving hours	n/a	56	n/a	n/a
Weekly continuous rest hours required	24	24	24	34

Smaller vehicles driven for work are subject to less stringent work time rules than heavy vehicles in New Zealand, the EU and the US, but are the same among different vehicle classes in Canada

- 16 In New Zealand, drivers of small passenger service vehicles doing trips of less than 100km can extend their continuous work time to seven hours before requiring a break of 30 minutes. This assumes that drivers will have down-time between trips. Work time requirements do not apply to drivers of cars or medium rigid vehicles carrying goods, if used within a 50km radius of the vehicle's base.
- 17 The EU work time requirements do not apply to small passenger goods or service vehicles, but some EU members have their own rules. The US only stipulates that short-haul goods and passenger services must not exceed 14 hours work time in a day. Canada's heavy vehicle work time limits also apply for small goods and passenger vehicles.

Australia's daily work-time limits for heavy vehicles are lower than ours, but increase to similar levels similar with an approved Fatigue Management System (FMS)

- 18 Heavy vehicle operators in Australia can apply to have less stringent work time limits and rest requirements, at similar levels to those in New Zealand, by having an approved FMS in place. New Zealand also has an Alternative Fatigue Management System (AFMS) scheme, however it allows much less flexibility in work time limits compared with the Australian System. Table 2 compares the work time limits and rest requirements of operators in Australia with and without an approved basic FMS. There is further information and commentary on this in Annex 3.

Table 2: Requirements in Australia for operators with and without an FMS

Rest Requirement	Without a Basic FMS	With a Basic FMS
15 continuous minutes rest required after no more than:	5.25 hours work time	6 hours work time
30 minutes rest time, in blocks of at least 15 continuous minutes after no more than:	7.5 hours work time	8.5 hours work time
60 minutes rest time, in blocks of at least 15 continuous minutes after no more than:	10 hours work time	11 hours work time
7 hours continuous rest break after no more than:	12 hours work time in a 24-hour period	14 hours worktime in a 24-hour period
24 hours continuous stationary rest time after no more than:	72 hours work time in a 7-day period	84 hours work time in a 14-day period
2-night rest taken on consecutive days after no more than:	144 hours work time in a 14-day period	144 hours work time in a 14-day period

The impact of changing work time limits is unknown, given the complex nature of fatigue and the inconclusive evidence around the impact of work and rest time on DSI reduction

- 19 Lowering work time limits and increasing rest requirements addresses some factors causing fatigue, including long working hours, inadequate recovery, and sleep deprivation, but not others such as driving at times that don't align with drivers' circadian rhythms, stress, and other health issues.
- 20 In New Zealand, data on the length of driving time when crashes occur is incomplete and unreliable. While overseas studies should be interpreted with caution, given the complexities in measuring the impact of fatigue, some could suggest that:
- 20.1 increasing our 30-minute rest stop requirements, or off-duty time of 10 hours by more than an hour would not have any impact on reducing DSIs⁷
- 20.2 reducing the time over which drivers may drive before taking a 30 minute break from five and a half hours to four hours may help reduce fatigue.⁸

There are risks of negative unintended consequences if work time rules are reduced

- 21 The Mackie report highlighted the importance of system collaboration and safety culture to manage vehicle-related risks from supply-chain pressures. Reducing work time limits without addressing these pressures is likely to create pushback from operators. This could result in negative unintended consequences such as non-compliance and overall reduction in positive safety culture among operators.
- 22 Reducing work time limits is one aspect of a Safe System approach that focuses on driver behaviour. However, it will not address other aspects or users of the system, such as organisations and vehicle safety, so in isolation is unlikely to have a large DSI reduction without a holistic approach to driver fatigue and safety in the workplace.

Given the unknowns surrounding work time, fatigue, and harm on our roads, we need to engage with industry and unions to better understand the issues

- 23 The Mackie report recommends that the wider system of driver fatigue, including work time rules, be reviewed alongside industry. We will engage with industry and unions to better understand the wider issue of fatigue, including the benefits and challenges of reducing work time limits, and will provide further advice once this engagement has concluded.

E-logbooks could increase compliance in adhering to work time and rest requirements, but currently there are constraints preventing us from mandating these

- 24 Failure to produce a logbook of work time details upon request of an enforcement officer (either NZ Police or Waka Kotahi), or producing a logbook with omissions,

⁷ Chen, C., & Xie, Y. (2014). The impacts of multiple rest-break periods on commercial truck driver's crash risk. *Journal of Safety Research*, 48, 87–93.

⁸ Wang, L., & Pei, Y. (2014). The impact of continuous driving time and rest time on commercial drivers' driving performance and recovery. *Journal of Safety Research*, 50, 11–15.

results in penalties up to \$500 and up to 35 demerit points for the driver. If a breach of work time limits occurs, the driver can be fined up to \$2,000 for each breach and will be disqualified from driving for at least a month upon conviction. Employers of drivers who breach these rules could be fined up to \$25,000.

- 25 The number of convictions and fines for work time or logbook breaches has decreased over the past five years. The cause of this is unclear.
- 26 A potential option for increasing compliance would be mandating e-logbooks through telematic solutions that track driving hours, along with location and speed, providing additional safety-related data to the transport operator. These are currently mandatory in some other jurisdictions, such as the EU. While these may ensure current rules and breaks are adhered to, they do not address fatigue overall.
- 27 Consultation has recently closed on changes to the road user charges (RUC) system, including the mandating of electronic RUCs and the ability to use this data for enforcing logbook requirements. We will provide you with more advice around e-logbooks after policy decisions have been made on the use of e-RUC.

Using vehicle monitoring and fatigue monitoring technology may improve driver safety and mitigate harm on our roads, but must be implemented carefully

- 28 Telematics solutions gather data for operators on their fleet including vehicle location, driver behaviour and vehicle activity. Some can monitor many unsafe behaviours in real-time including fatigue events. These types of solutions lead to significant improvements in safety, with collision reduction up to 20 percent. They are particularly successful when accompanied by supervision, feedback and coaching.
- 29 Due to their complexity and cost, these systems require support and processes within organisations for successful implementation and to maximise safety benefits. Therefore, we do not recommend making them mandatory. However, organisations would benefit from leadership from central Government or industry bodies, to encourage uptake and help with successful implementation.

We recommend Waka Kotahi establishes a Road Safety Partnership (the Partnership) to tackle key risks of harm in work-related road activity

- 30 A Partnership would provide a platform that brings together stakeholders from across the supply chain, taking a collaborative and holistic approach to tackling root causes of harm, including fatigue. It would give the ability to share information regarding road safety, and bring together experts and industry to inform evidence-based interventions. It could also allow for leadership in implementing vehicle and fatigue-monitoring technology effectively, to optimise the safety benefits.
- 31 Our proposal is modelled on the National Road Safety Partnership Program (NRSP) in Australia, which has been effective at improving organisational road safety culture and reducing work-related vehicle harm.
- 32 We propose that the Partnership:

- 32.1 aims to reduce DSIs from vehicle-related work accidents and the costs that come with those, including time off work, rehabilitation, and compensation
 - 32.2 has a tripartite model bringing together and giving shared responsibility to Government, industry representatives and workers' unions across the supply chain and other relevant organisations
 - 32.3 has a governance group made up of key government agencies, providing oversight and evaluation and a steering group with key stakeholders
 - 32.4 co-designs safety interventions, which could include educational resources, establishing good practices for managing fatigue risk, and leadership or investment into successful implementation of safety technology
 - 32.5 incorporates the use of ACC funding methodology and other funding methods to target preventing and reducing the highest risks of harm.
- 33 Te Manatū Waka would work closely with the Partnership to further explore the future role of vehicle and fatigue-monitoring technology, including investigating incentives to encourage uptake and successful implementation, as well as other interventions to tackle fatigue and harm in work-related road activity.

The Partnership aligns with other actions and priorities under Road to Zero

- 34 The Partnership can take a system-wide view to reducing harm, tackling the key risks of harm. It brings together government agencies, workers, industry bodies, organisations across the supply chain, unions and researchers to look at a wide range of risks in work-related road activity.
- 35 A Partnership supports best practice road safety in the private sector, another action committed to in the Action Plan. It provides a platform for the private sector to help drive change. It can be used for organisations to collaborate on setting clear standards for safety practices and technologies in their operating and procurement practices.
- 36 The Partnership provides a platform for employers to implement best practice safety initiatives, to achieve their obligations under the Health and Safety at Work Act 2015 (HSWA) of eliminating risks where possible, and minimising harm when elimination is not possible. We are also currently investigating the benefits and feasibility of designating Waka Kotahi as a HSWA regulator, which would require Waka Kotahi to educate and engage with industry bodies, unions, employers and organisations to promote improvements in health and safety practices. This Partnership provides a platform for Waka Kotahi to carry out its new role, should it be designated.

There are several risks and considerations that need to be taken into account when establishing a Partnership

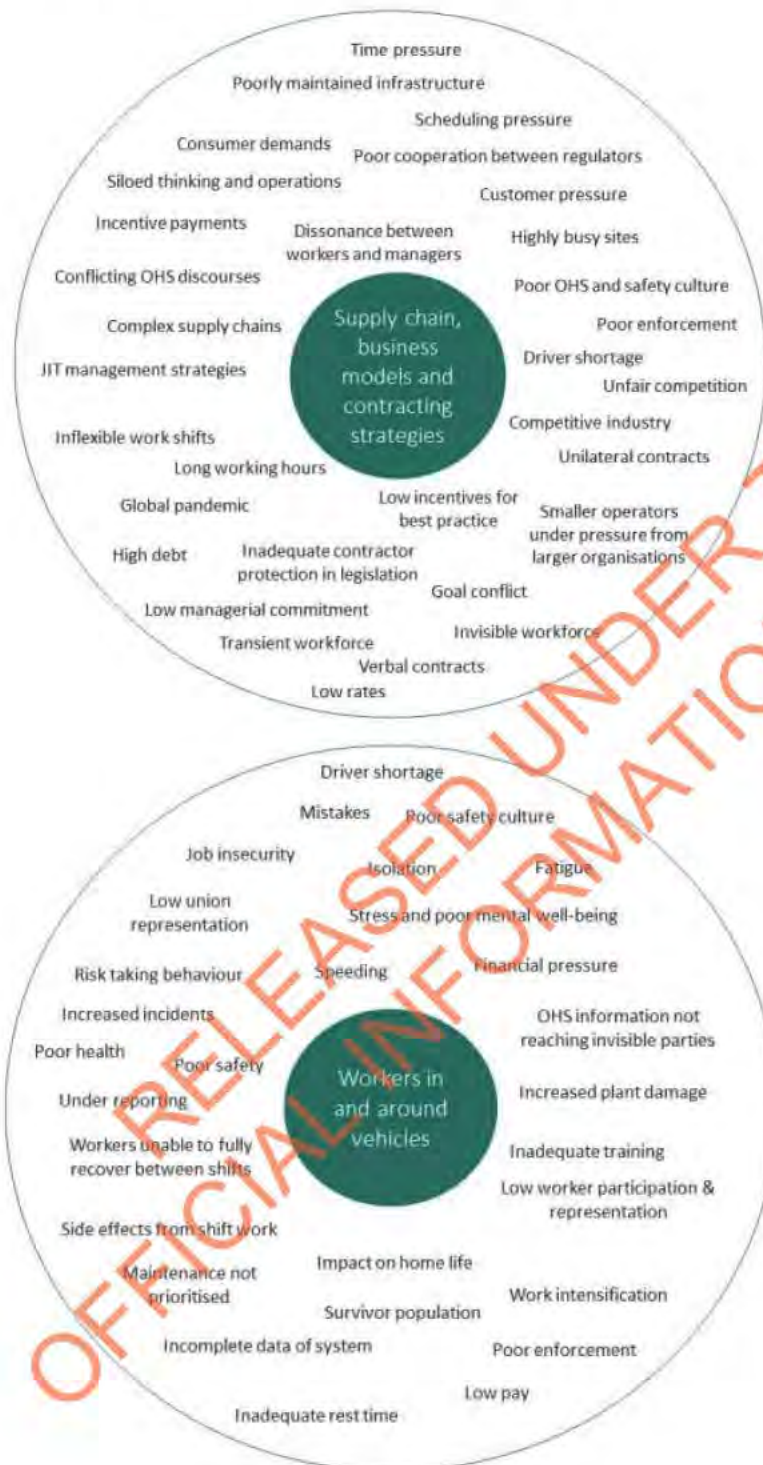
- 37 Based on lessons learned from Australia's NRSP, we propose the development and implementation of a Partnership includes:
 - 37.1 early discussions with Chief Executives to promote buy-in, resourcing and financing for the partnership spread amongst the relevant government agencies and ensuring senior level staff are on the governance board

- 37.2 an independent chair for the Steering Committee to ensure fairness around decisions being made and arbitrate where needed.
- 37.3 consideration in the terms of reference as to the extent to which the scope should include additional initiatives and goals, such as emissions reduction
- 37.4 using the Partnership as the vehicle to design or implement safety interventions with industry that are already underway, or industry can put forward initiatives they have been working on that require funding, to ensure short-term progress and value.

Next steps

- 38 We will engage with industry and unions to better understand the issues surrounding fatigue and work time rules. We will provide further advice once this engagement has concluded.
- 39 The next step for the Partnership is to begin to socialise the concept, and decide on terms of reference, with the other relevant Ministers and their Chief Executives, including those at Te Manatū Waka, Waka Kotahi, ACC, WorkSafe, Police and MBIE. We will begin to socialise the concept at the Road to Zero Chief Executive Governance Group in August 2022 and will provide some talking points and draft terms of reference for you to discuss at the Ministerial Oversight Group meeting in September 2022.
- 40 These discussions should include the possibility of having an environmental focus alongside a safety focus. If it is decided to include an environmental focus, discussions will also need to be had the relevant environmental Ministers and Chief Executives.
- 41 The Partnership can be included in the next Road to Zero Action Plan, to signal the importance to industry and agencies.

ANNEX 1: CONTEXTUAL FACTORS AND SYMPTOMS OF HARM IN AND AROUND VEHICLES AT WORK⁹



⁹ Tedestedt George, C., Mackie, H., Ashby, L., Hirsch, L., Tappin, D., Lamm, F., & Crawford, J. (2021). *Managing vehicle-related risks from supply chain pressures*. Mackie Research.

OHS – occupational health and safety.

JIT – just in time strategy, whereby goods are delivered immediately before they are required.

ANNEX 2: INTERNATIONAL COMPARISON OF WORK TIME AND REST REQUIREMENTS OF HEAVY VEHICLE DRIVERS

Comparing the EU, US and Canada, New Zealand has the highest daily driving time limit of 13 hours (alongside Canada). However, as we don't break out driving limits from work time limits, our daily total work time limit is lower than the EU, Canada and the United States. A notable difference is that this is reduced to 10 hours in the EU, though, when night work is performed. There are no restrictions in New Zealand based on the time-of-day work is performed.

Our weekly work time limit of 70 hours is the same as Canada's. The EU and the United States have a lower weekly work time limit of 60 hours, and in the EU this must average 48 hours or less over a 17-week period. Our weekly continuous rest requirement of 24 hours is the same as the EU and Canada, but lower than the United States requirement of 34 hours.

New Zealand's requirements for rest breaks while on duty are more stringent than the United States and less stringent than the EU and Canada. In New Zealand, a driver must take a rest stop of 30 minutes after no more than five and a half hours. In the United States this requirement is 30 minutes every eight hours, and it is 45 minutes every four and a half hours in the EU. Canada requires two hours total of rest stops across a 14-hour shift, in blocks of no less than 30 minutes.

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ANNEX 3: COMPARISON OF NEW ZEALAND AND AUSTRALIAN WORK TIME AND REST REQUIREMENTS FOR HEAVY VEHICLE DRIVERS

The daily work time limits and rest requirements for operators with a basic Fatigue Management System (FMS) in Australia are similar to the current work time limits in New Zealand. In New Zealand, a 30-minute break is required after five and a half hours of driving, which is equivalent to the Australian requirement for operators with a basic FMS of 60 minutes worth of breaks after 11 hours driving. The maximum of 13 hours work time in a 24-hour period in New Zealand is similar to the 14 hours maximum in Australia for those operators with a basic FMS.

While the daily requirements are similar, New Zealand's weekly work time and rest requirements differ from those operators in Australia with a basic FMS. Our weekly rest requirement of 24 continuous hours after 70 hours of work time in a week is similar to that of Australia's without an FMS, where a 24-hour continuous break is required after 72 hours of work time in a week. With a basic FMS, Australian operators have this same 24-hour rest requirement, except after 84 hours of work time within a 14-day period. Another notable difference is that New Zealand does not have any requirements for a two-night consecutive rest like Australia for operators both with and without a basic FMS.

For an FMS to be accepted by the National Heavy Vehicle Regulator (NHVR) in Australia, it must include:

- appropriate scheduling and rostering, including operating within accordance of the operating limits and the time taken for the transport task to be completed safely
- ensuring drivers are in a healthy and fit state to perform the duty required
- training and education to ensure both administration staff and drivers meet set competencies
- effective communication and management practices that affect safe operations of business
- adequate workplace conditions that meet health and safety standards and provide proper rest for drivers
- quarterly and annual internal review to verify all activity complies with the FMS
- records and documentation that are maintained and reviewed to ensure management, performance, and verification of the FMS.

New Zealand also has an Alternative Fatigue Management System (AFMS) scheme that can be applied for through Waka Kotahi, which has standards regarding health and safety, fatigue prevention, training, fitness to drive, workplace conditions, and scheduling and rostering. Ours differs from Australia's in that the operators with an AFMS must stick to normal operating limits where possible and are allowed flexible operating limits only to deal with specific circumstances, where fatigue related risk is appropriately managed. The daily work time limit can only be increased by 2 hours and results in an extra hour rest requirement and an hour of reduced work time in the following period.