

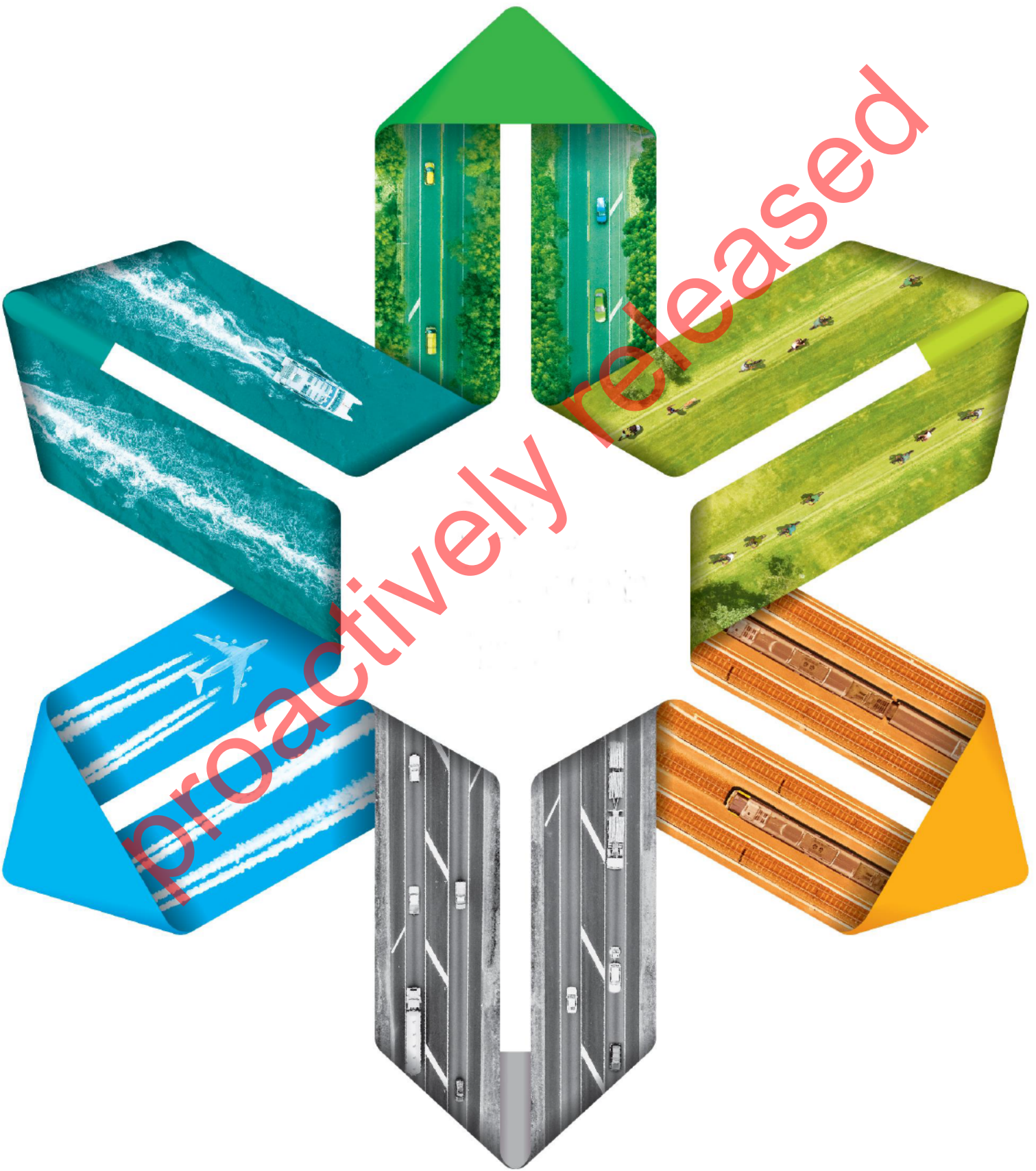
Review into the Regulatory Capability and Performance of the New Zealand Transport Agency

June 2019



Ministry of **Transport**
TE MANATŪ WAKA

Enabling New Zealanders to
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Executive summary

1. In October 2018, the New Zealand Transport Agency (NZTA) Board raised concerns that the Agency was not effectively performing its regulatory functions. These concerns related to a backlog of around 850 regulatory compliance cases. In November 2018, the NZTA confirmed that William Ball of Dargaville was killed in a vehicle certified by an inspecting organisation that the NZTA had significant concerns with over several years, but had failed to take appropriate action.
2. In response to these concerns, the Minister of Transport instructed the Ministry of Transport (the Ministry) to undertake a review into the operation and performance of the NZTA's regulatory function.
3. The Ministry commissioned MartinJenkins to assist in completing the review of the NZTA's regulatory capability and performance. The Ministry's review was a review of systemic deficiencies within the NZTA's regulatory function. The Ministry has, using the MartinJenkins report and other analysis, made an assessment against the Terms of Reference, as set out in Appendix One.
4. Overall, the Ministry's review has found that there were significant deficiencies in the NZTA's regulatory capability and approach that, over time, have led to regulatory failure within the Agency. The review identified no single cause for the regulatory failure at the NZTA, but rather a series of underlying factors. These included an overshadowing of regulatory functions, weak regulatory leadership and expertise, a lack of a clear regulatory strategy and approach, regulatory capability and resourcing challenges, the absence of a strong regulatory culture, structural constraints, lack of accountability and inadequate audit and risk management.
5. There has been a weak focus on the NZTA's regulatory role and functions. Regulatory responsibilities were overshadowed by priorities within its other roles and preoccupations. The powerful focus on customer service embedded in the NZTA over many years came at the expense of its focus on regulatory outcomes. There is the potential for real, or perceived, conflicts amongst the three functions of regulator, infrastructure deliverer and investor that have not been clearly identified. These need careful management, particularly regarding efficiency, cost and regulatory effectiveness considerations.
6. The dispersed nature of the NZTA's regulatory model, with some functions carried out by other agencies, has contributed to the NZTA not being able to operate as an effective end-to-end regulator for the land transport system.
7. There have been issues with regulatory accountability and decision-making within the NZTA over many years. Since the establishment of the NZTA, there was no single and clear accountability for regulatory decision-making as is present in many other regulatory agencies. The removal of the statutory Director of Land Transport role is likely to have been a contributing factor to this issue.
8. The broader authorising environment that the NZTA was operating within has influenced how the NZTA has developed and implemented its regulatory approach, particularly over the last 5 – 10 years. A strong influence over this period was the signal that the NZTA and other agencies were getting to reduce compliance and make it easier for people and businesses to engage with government.
9. Improving how people and businesses engage with government is not inconsistent with the delivery of good regulatory outcomes. However, in the context of the NZTA,

the focus on reducing compliance and improving customer service was not balanced with the Agency taking an effective, risk-based approach to the delivery of its regulatory functions. The strong customer focus adopted in the NZTA saw a loss of focus on compliance and enforcement across the Agency's regulatory function.

10. There have been positive signs of progress in recent times within the NZTA's regulatory function. The MartinJenkins report highlighted the work that the NZTA was undertaking throughout late 2017 and 2018 to define the Agency's regulatory approach. This is considered a shift towards good practice, but has not yet been operationalised. The report notes that the NZTA has a passionate and committed workforce with a genuine commitment to improving land transport safety
11. The NZTA has largely completed work on the backlog of regulatory compliance cases, with the assistance of Meredith Connell. Progress is also being made to build capability within the Rail Safety Regulator. The NZTA has now moved to establish a more robust regulatory function and approach through its Future Regulatory State Programme.
12. The Ministry has developed a series of recommendations in response to the findings of the review into the NZTA's regulatory capability and performance, which include the following:
 - the Minister of Transport sets expectations that the NZTA Board develops a new regulatory strategy to strengthen the Agency's regulatory focus and delivery, in line with the findings of the review (to be completed by December 2019). This regulatory strategy should:
 - be comprehensive, identifying and covering all of the NZTA's regulatory functions
 - define how the NZTA will identify risk across the land transport system, including how it will use its regulatory tools and interventions to target risk
 - include the development of an enforcement strategy that states how and when it will carry out its different regulatory roles in a way that is transparent and public, so the NZTA's regulated community can understand its regulatory approach
 - outline how it will manage any potential for actual or perceived conflicts between its roles of investor, infrastructure builder and regulator
 - establish clear accountabilities for regulatory decision-making within the NZTA
 - provide for a good regulatory culture where people are encouraged to raise risks and are able to exercise regulatory judgment within clear regulatory practices and approaches
 - define how the NZTA will assess the performance of its regulatory function.
 - the Minister of Transport sets expectations that the NZTA Board develops a new regulatory operating model that defines the capability, processes and

systems to implement the NZTA's enhanced regulatory strategy and approach (to be completed by December 2019)

- the Minister of Transport instruct the Ministry to work with the State Services Commission on the design of a statutory Director of Land Transport that would be responsible for exercising the NZTA's regulatory functions and powers
 - the Minister of Transport seek advice from the Ministry on any changes to the regulatory objectives, functions and powers of the NZTA that are thought necessary to strengthen the NZTA's regulatory role and focus
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 - the Minister of Transport and the Minister for Workplace Relations and Safety seek advice from the Ministry and the Ministry of Business, Innovation and Employment (MBIE) on exploring the merits of designating the NZTA as a health and safety regulator under the Health and Safety at Work Act 2015 (HSWA). A report back on this work should be provided to the Minister of Transport and Minister for Workplace Relations and Safety by October 2019
 - in making future appointments to the NZTA Board, the Minister of Transport considers whether the Board has an appropriate balance of regulatory expertise and capability.
13. Alongside these recommendations, the NZTA is undertaking a funding review, supported by the Ministry, to ensure that the Agency has the necessary capability and capacity to carry out its regulatory functions. This work is already underway but needs to be informed by the outcome of the Ministry's review into the NZTA's regulatory capability and performance.
14. The Ministry appreciates that the review of the NZTA may lead to concern about whether there is regulatory failure within other public sector entities. While all Government agencies, and their monitors, should be vigilant around the delivery of regulatory functions and keep these under supervision, the Ministry believes that there are some special features relating to the NZTA and its regulatory failure, the combination of which are less likely to be present in most other regulators. These include that:
- the NZTA had two other significant non-regulatory functions (investment and infrastructure delivery) that have overshadowed its regulatory roles and functions
 - there have not been clear accountabilities relating to the operation of its regulatory function, which were critical given the extent of its other roles
 - the NZTA only carries out part of the enforcement role which has made it harder for the Agency to see itself as a lead end-to-end regulator and enforcer.

Background

Significant concerns about the NZTA's regulatory function were raised in October 2018 ...

15. In October 2018, the NZTA Board announced that the NZTA had not performed its regulatory function effectively, in particular that it was too focused on education and self-regulation. The NZTA Board appointed law firm Meredith Connell to provide assistance, with a specific focus on managing the backlog of 850 regulatory non-compliance cases.
16. Following the identified issues, the NZTA announced that it would take immediate enforcement action to address non-compliance issues, a shift from the Agency's previous high-trust, education-focused approach. These actions included the review, suspension and revocation of transport service providers (e.g. vehicle inspecting organisations, vehicle inspectors, repair and specialist certifiers) and transport operators (e.g. Transport Service Licence holders).
17. In November 2018, the NZTA confirmed that William Ball of Dargaville had been killed in a vehicle certified by an inspecting organisation that the NZTA had significant concerns with over several years, but had failed to take appropriate action. In response to these concerns, the Minister of Transport instructed the Ministry to undertake a review into the operation and performance of the NZTA's regulatory function.
18. The NZTA Board commissioned Kristy McDonald QC to undertake a review to determine whether the NZTA's performance was a contributing factor in the death of Mr Ball. The McDonald review found that, in the NZTA's dealings with DDS, the Agency had failed to prioritise public safety and noted that the case was an example of wider systemic failures.
19. The McDonald review also found that the NZTA's approach of viewing regulated parties as customers and prioritising information and education at the expense of strong regulatory oversight and effective enforcement led the NZTA away from its statutory objective and is not consistent with public safety. The NZTA has since been taking action to address the recommendations in the McDonald review.

... which led to the Minister of Transport announcing an independent review of the NZTA's regulatory capability and performance

20. In response to the concerns raised by the NZTA Board and the death of Mr Ball, the Minister of Transport instructed the Ministry to undertake a review into the operation and performance of the NZTA's regulatory function, under section 132 of the Crown Entities Act 2004.
21. The objectives of the review were to:
 - form a clear assessment of whether there were systemic deficiencies within NZTA's regulatory capability and function and, if so, to what extent they contributed to the recent performance issues
 - make recommendations on the improvements in capability required to address any deficiencies in the NZTA's regulatory capability and function
 - ensure that the NZTA's regulatory function is set up to enable appropriate accountability and transparency

- provide the public with confidence that any regulatory deficiencies in the NZTA are appropriately identified and addressed, with safety of the public being the overriding priority.
22. The scope of the review¹ included assessing:
- whether the NZTA is performing as an effective, risk-based regulator based on good regulatory practice
 - whether the Agency is performing its regulatory functions as intended by the outcomes and provisions of the relevant legislation
 - whether the NZTA's investment, delivery and regulatory roles have resulted in any conflicts and impacts on the performance of its regulatory services function
 - how NZTA works with other regulators to carry out its regulatory functions and responsibilities
 - whether the regulatory function is set up to ensure appropriate accountability and transparency.
23. To assist with the review, the Ministry commissioned independent consultancy firm MartinJenkins to provide support and expertise in preparing findings in line with the Terms of Reference. A regulatory expert from WorkSafe New Zealand was seconded to the MartinJenkins team to assist the review. MartinJenkins report against the Terms of Reference is attached as Appendix One to this report.

Findings from the MartinJenkins report

24. The MartinJenkins report and its findings are based on an extensive assessment of documentation and correspondence provided by the NZTA and interested persons, alongside interviews with industry stakeholders, regulated parties, NZTA Board members, senior leaders and staff (both current and former). Through this process, MartinJenkins interviewed around 70 people and evaluated around 250 documents. The review looked at all of the NZTA's regulatory functions, including transport licensing, driver licensing, certification, rail safety and other road safety functions.

The review found a number of systemic factors that evolved over a number of years

25. MartinJenkins undertook a systemic analysis of the underlying factors that have, since the establishment of the NZTA in 2008, contributed to the performance issues identified in the NZTA's regulatory function. The report confirms that there are significant deficiencies in the NZTA's regulatory approach and capability that have impacted how the Agency has delivered and performed its regulatory functions over a number of years. The build up of these systemic deficiencies eventually led to regulatory failure within the NZTA.
26. The MartinJenkins report found that the following factors contributed to the capability and performance issues within the NZTA's regulatory function:
- **overshadowing of regulatory function** – there has been a weak focus on NZTA's regulatory roles and functions. Regulatory responsibilities were

¹ www.beehive.govt.nz/release/review-nzta-regulatory-performance.

overshadowed by priorities within its other roles (i.e. that of an investor and infrastructure deliverer) and preoccupations, in particular the powerful focus on customer service embedded in the Agency over many years at the expense of its focus on regulatory outcomes. There is the potential for actual, or perceived, conflicts of interest amongst the three functions of regulator, infrastructure deliverer and investor that need careful management, particularly regarding efficiency, cost and regulatory effectiveness considerations.

- **weak operational regulatory leadership and expertise** – regulatory experience at senior leadership and board levels has been weak. There has been a lack of awareness of regulatory issues and risk at the senior leadership and Board levels. Risks were not raised by management and the right questions were not asked. The removal of the NZTA Board's Regulatory Oversight Committee had a significant impact in reducing the Agency's focus on its regulatory functions and delivery. This occurred in early 2010 following a governance self-evaluation to reduce the number of Board committees, with a view to creating a more streamlined and integrated Board committee structure.
- **lack of a clear regulatory strategy** – there is no end-to-end strategy or operating model to enable NZTA to effectively discharge its regulatory roles and functions. However, since late 2017 and through 2018, there have been positive signs of people putting more focus on the regulatory function and beginning to develop key building blocks. This was put on hold under the current focus on strengthening compliance activity and is only now being focused on as part of the NZTA future state work for the regulatory function.
- **regulatory capability and resourcing challenges** – there have always been and continue to be regulatory operational capability challenges at the NZTA. The analytics and insights needed to support regulatory strategy and decision-making are under-developed. There has been under-investment in the regulatory capability and resourcing needed to do the regulatory job well. This has not been helped by inadequate funding for the regulatory function and a period where there was no agreement to fee increases in relation to the NZTA's regulatory activity.
- **the absence of a regulatory culture** – the collective leadership and empowered culture that are the hallmarks of an effective regulator have been missing at the NZTA. A pervasive culture of bad news being unacceptable influenced the way in which messages were communicated to senior leaders and the NZTA Board, particularly from 2016. Taking regulatory action was seen as a failure, with a strong emphasis placed on achieving compliance through education and engagement.
- **structural constraints** – structural change has been an ongoing challenge for achieving a consistent regulatory approach. The structure of the NZTA at inception was one of three quite separate functions (infrastructure, investment and regulation) from previous separate organisations. This resulted in three disparate functions with different preoccupations, ways of working and cultures.
- **lack of accountability** – from the establishment of the NZTA there was no clear single recognised accountability for regulatory decision-making as in many other regulatory agencies (e.g. a Director/Chief Executive). The Chief Executive also had other larger functions, which had significant focus and prioritisation by previous governments. There was a lack of robust, practical

good practice guidance for frontline staff to make effective regulatory decisions, combined with a weak mandate from senior management to enable and support frontline decision-making to address issues of non-compliance

- **weak audit and risk management** – there were critical flaws in NZTA's internal audit process. The Office of the Auditor-General's (OAG's) external audits have a much narrower focus and, therefore, did not identify the presence of regulatory failure. There has been a lack of continuous risk management and assurance across the NZTA's regulatory functions.
27. In addition to the findings above, the MartinJenkins report identified positive signs of progress in recent times within the regulatory function. In particular, the report notes that the NZTA has a passionate and committed workforce with a genuine commitment to improving land transport safety. The review also found that the NZTA has started work to define its regulatory approach, alongside putting in place some short-term fixes to address the backlog of regulatory compliance cases.
28. The report identified what would be expected to be present within a well functioning regulator, informed by previous reviews and evidence on good regulatory practice. The report compares a framework of regulatory best practice against the current state of the NZTA's regulatory function. The Ministry anticipates that this work will be key to guiding the NZTA in its work to strengthen the Agency's regulatory performance over time.

Responding to the Terms of Reference for the review

29. Below is an assessment of the key findings in the context of the Terms of Reference set for the review. The assessment uses the MartinJenkins report and Ministry analysis in responding to the Terms of Reference.

Was the NZTA performing as an effective, risk-based regulator based on good regulatory practice?

30. The foundations of modern regulatory practice and good governance are set out in a combination of established evidence, practices and guidance, including:
- Government Expectations for Regulatory Practice
 - Operating Expectations Framework for Statutory Crown Entities
 - OECD Best Practice Principles for Regulatory Policy
 - the Productivity Commission Regulatory institutions and practices report
 - the Government Regulatory Practice Initiative (G-REG). This is a network of central and local government regulatory agencies established to lead and contribute to regulatory practice initiatives. It develops guidance that improves leadership, culture, regulatory practice and workforce capability in regulatory organisations and systems
 - other internationally recognised commentators on regulatory practice, such as Malcolm Sparrow's Regulatory Craft work.

31. MartinJenkins also outlined in its report what an effective regulator looks like. To be successful, regulators need to have:
- an approach to regulatory practice that is based on a sophisticated understanding of the nature of the risk, the nature of regulated parties and changes in the regulated environment
 - an understanding of how they use their regulatory levers and tools in a balanced, proportionate and risk-targeted way to achieve compliance
 - leaders who foster a culture that values operational flexibility and adaptation to changes in the regulatory environment, continuous learning and a culture of challenge and “speaking up”
 - comprehensive processes and systems to enable robust, consistent and evidence-based decision-making
 - capability across all levels of the organisation and a purposeful, structured and integrated approach to achieving a professional workforce
 - communication and engagement processes that promote the legitimacy of the regulatory regime
 - an ability to fulfil their regulatory objectives within constitutional and statutory requirements.
32. The review has found that many of the key features of an effective regulator are missing at the NZTA (see pages 2 - 6 of the MartinJenkins report). For many years, the NZTA has lacked a comprehensive, end-to-end regulatory strategy for overseeing the delivery of its regulatory roles and functions. The review also found that NZTA as an organisation has not had a clear view of the risk and parties it is regulating in the land transport system. It has also lacked a clear understanding of its regulatory roles, including how it works across these roles to effectively target risk.
33. The MartinJenkins report found that the NZTA does not make clear to regulated parties how it will perform its regulatory role and approach, have robust practice frameworks, operational policy and service design, or a clear approach to ensuring that appropriate regulatory capability is in place at all levels of the organisation. It also does not have a culture of encouraging the raising of risks and of allowing regulatory decision-making flexibility within consistent regulatory approaches and frameworks.
34. The MartinJenkins report also found significant deficiencies in how the NZTA delivers its regulatory functions. This resulted from the absence of a clear operating model to translate the NZTA's regulatory functions and responsibilities into practice. This was not just limited to the delivery of its frontline capability. The review noted that the NZTA did not have a full appreciation of the wider capability it required to operate as a well functioning, risk-based regulator (e.g. regulatory intelligence, research and evaluation, operational policy and practice, risk and assurance).
35. There is also a concern from regulated parties that, like other regulators when regulatory failures occur, a strong swing in regulatory approach is at risk of occurring. By this, we mean there may be a strong focus back to enforcement alone rather than the regulator taking a balanced and proportionate approach to the use of regulatory tools. The NZTA needs to ensure it is thinking about all of its regulatory levers

(education, engagement and enforcement), taking a risk-based approach to the use of these in different situations. The NZTA also needs to be clear with stakeholders about how it exercises its enforcement approach to address this perceived concern.

Was the NZTA performing its regulatory functions as intended by the outcomes and provisions of the relevant legislation?

36. The MartinJenkins report found that there were regulatory deficiencies at the point of entry (and renewal of entry) into the regulatory system (see page 23 of the MartinJenkins report). This resulted from where the NZTA treated the issuing of licences as a service for payment, rather than them qualifying for a privilege to operate. There was regulatory failure at the point of operating within the system when operators were allowed to continue with non-compliant behaviours over extended periods of time. In relation to other regulatory functions, a self-regulatory approach was also adopted.
37. The MartinJenkins report concluded that the most significant contributor of regulatory failure has been the lack of oversight and leadership over the regulatory system, including the role and functions of the NZTA within this system. The review found that the NZTA has not had an overarching strategy or regulatory practice framework for leading, planning and operating as an effective land transport regulator across the entire system. It is clear from the review findings that the NZTA did not understand its regulatory roles and functions or how to execute them effectively.
38. More work is required to ensure that recent improvements across the NZTA's regulatory function are fit-for-purpose to fully support the Agency's regulatory role across road, rail and safety management (including speed). This includes ensuring that the NZTA has strong engagement with others in the land transport sector who also have responsibility for regulatory activity, such as New Zealand Police, Road Controlling Authorities, Key Service Delivery Partners and others with delegated responsibility for the delivery of regulatory functions.

Did the NZTA's investment, delivery and regulatory roles result in any conflicts and impacts on the performance of the Agency's regulatory services function?

39. The MartinJenkins report highlighted that there has been a strong preoccupation with other NZTA functions and that the focus of the Board and senior management was on infrastructure and investment responsibilities. The review found that the regulatory function was a small area of activity by comparison and was not a focus in the reasons for establishing the NZTA or in expectations signalled to the Agency, particularly from a regulatory stewardship perspective.
40. There was also strong focus on embedding a customer service ethos in the Agency (see page 26 of the MartinJenkins report). The review found that this powerful focus on customer service came at the expense of good regulatory outcomes and has adversely influenced regulatory decision-making within the NZTA.
41. The role of the regulator was perceived largely through a customer service lens, which encouraged communication with customers, understanding and responding to their needs and making transactions as efficient as possible. While efficient and effective delivery of regulatory activity is important, this was at the expense of considering the people the regulatory regime was intended to serve and the appropriate use of regulatory tools, including enforcement. Taking enforcement action was seen as a failure by senior management within the NZTA (see page 43 of the MartinJenkins report).

42. The broader authorising environment that the NZTA was operating within has influenced how the Agency has developed and implemented its regulatory approach, particularly over the last 5 – 10 years. A strong influence over this period were the signals that the NZTA, along with other agencies, were getting to reduce compliance and make it easier for people and businesses to engage with government (see page 25 of the MartinJenkins report).
43. The role of the NZTA's regulatory function was perceived through a customer lens, with the parties it was regulating seen as customers that the Agency was providing a service to. The NZTA's regulatory approach was heavily premised on regulated parties, which it perceived as customers, willingly complying if supported in the right way. The MartinJenkins report identifies this issue as a serious deficiency in the NZTA's regulatory approach.
44. Improving how people and businesses engage with government is not inconsistent with the delivery of good regulatory outcomes. However, in the context of the NZTA, there was a relatively limited understanding of the impact this focus had on the delivery of effective regulatory outcomes, or how a more customer orientated approach could work within a regulatory context. The focus on reducing compliance and improving customer interactions was not sufficiently balanced with the Agency taking an effective, risk-based approach to the delivery of its regulatory functions.
45. The MartinJenkins report concluded that there is the potential for conflicts of interest amongst the three functions of regulator, infrastructure deliverer and investor that need careful management, particularly regarding efficiency, cost and regulatory effectiveness considerations (see page 2 of the MartinJenkins report).
46. The review concluded that it is not clear that the NZTA had appropriate systems and processes in place to adequately manage these conflicts and trade-offs. There was no clear evidence from the MartinJenkins report that the NZTA understood that there could have been an actual, or perceived, conflict or tension between its different roles.
47. The Ministry considers that, without appropriate checks and balances in place, the current institutional settings may create the potential for the NZTA's investment and infrastructure building roles, especially given the significant focus on these roles, to conflict, or to be perceived to conflict, with its regulatory role.
48. Having multiple roles within an agency in itself is not an issue. However, the lack of understanding about how the roles interact, including the absence of processes and systems to manage actual or perceived conflicts between these roles, presents a challenge to the delivery of effectively regulatory outcomes.
49. For example, in relation to road safety, the NZTA is a funder of regional safety projects, a Road Controlling Authority itself and it has a regulatory role. It is not clear from its structure, strategies, processes or systems that it appreciates the fact that it has these different roles, when it is performing these roles and how it may manage any conflicts (e.g. how it ensures that it manages its own compliance with speed management requirements).
50. As the NZTA also starts to play a more active role in rail investment under the Future of Rail, it could potentially have a greater role as an investor, contract manager and regulator. The Ministry considers that this could potentially lead to actual or perceived conflicts where it will be asked to regulate itself or its contractors, while being expected to drive delivery of critical projects within time and budget.

51. Recognition and careful management of these conflicts is needed to ensure that the NZTA can perform its regulatory roles and functions effectively. The NZTA needs to establish robust practices, systems and processes for identifying and managing actual or perceived conflicts across its functions, particularly where these conflicts could erode the delivery of effective regulatory outcomes.
52. Ongoing monitoring by the NZTA Board is needed to ensure that any actual or perceived conflicts are effectively managed. This is critical in ensuring that the NZTA's regulatory function has a strong voice and ability to make effective decisions in a balanced and independent way.
53. The proposal to establish the statutory Director of Land Transport role would provide an added check and balance within the NZTA to help manage any conflicts that could impact the performance of the Agency's regulatory function. If progressed, the Director of Land Transport would have full discretion and flexibility to make regulatory decisions independent of the Agency's other functions, or any other factors that are not in the interests of safety.
54. The Director of Land Transport would, however, be guided by a decision-making framework (including operational policy and practice) and enforcement strategy. It is expected that the NZTA would make public its decision-making framework and enforcement strategy to ensure there is transparency to the regulated community on how the Agency exercises its regulatory functions and powers.
55. The NZTA Board would be accountable for overseeing the development of the NZTA's regulatory strategy and approach. However, individual regulatory decisions to enact its regulatory strategy and approach would sit solely with the Director of Land Transport.

Did the NZTA work effectively with other regulators to carry out its regulatory functions and responsibilities?

56. The MartinJenkins report highlighted challenges in how the NZTA worked with other agencies, regulators and stakeholders, such as sector groups, in the delivery of its regulatory functions and responsibilities (see pages 58 – 62 of the MartinJenkins report). The review highlighted a specific challenge with the dispersed nature of the NZTA's regulatory model, with some functions carried out by other agencies within the regulatory function. This may have impeded the NZTA's ability to see itself and operate as an effective end-to-end regulator for the land transport system.
57. The MartinJenkins report found that the NZTA has made progress on its relationships with other transport regulators, including seeking peer review of internal documents and advice. However, this has not reached a mature state yet. MartinJenkins observed that the relationship has tended to be one-directional, with the NZTA seeking advice from other transport regulators rather than having a group that is sharing learnings across regulators.
58. A large part of the enforcement function for the land transport system is undertaken by the New Zealand Police. As well as its road policing role, the New Zealand Police also carries out functions closely associated with the NZTA's regulatory roles in relation to transport licensing and vehicle standards in a subgroup of the New Zealand Police's Road Policing function, the Commercial Vehicle Safety Team (CVST). The CVST has responsibility for the monitoring and enforcement of the land transport regulatory framework across the commercial vehicle sector.

59. The review heard from both the NZTA and the New Zealand Police that the relationship had been challenging but had improved in the last few years, particularly given the NZTA's renewed focus on safety and the New Zealand Police's focus on the relationship. A key factor behind these challenges was a poor alignment of purpose and priorities (see page 60 of the MartinJenkins report).
60. With some of the enforcement model for commercial vehicle safety being outside the NZTA, the review has found that it makes it more difficult for the Agency to establish a coherent, end-to-end regulatory approach, [REDACTED]
61. In addition, the Ministry is of the view that consideration is needed in relation to the interface of the land transport regulator with the health and safety at work regulatory system. Currently, the Civil Aviation Authority and Maritime New Zealand are designated as health and safety regulators within a scope of designation specified in a document issued by the Prime Minister under the Health and Safety at Work Act 2015 (HSWA). Withheld for confidentiality
62. These designations recognise the significant mutually reinforcing overlap between the objectives of HSWA and the transport regulatory system and that it is much more efficient and effective for these regulators to think holistically about safety issues under transport legislation and HSWA. For example, Maritime New Zealand, when looking at safety issues on a ship, considers maritime safety legislation obligations and HSWA obligations and determines how best to deliver safety outcomes.
63. It also means that the regulated parties do not have to deal with multiple safety regulators, which can be inefficient and confusing. Without designation, there is a risk that the regulators will defer to other regulators in the overlap, thereby creating unintended gaps between their activities and focus.
64. To achieve good safety outcomes for the transport regulatory system (both road and rail), it is important that the NZTA is able to look from the start to the end of the supply chain for transport operators and determine how best to deliver safety outcomes.

Was the regulatory function set up to drive home appropriate accountability and transparency?

65. The MartinJenkins report concluded that there have been issues with regulatory accountability and decision-making within the NZTA over many years. The review found that since the establishment of the NZTA, there was no clear identifiable single accountability for regulatory decision-making as in many other regulatory agencies (see page 3 of the MartinJenkins report).
66. The MartinJenkins report noted that the NZTA Board had reserved decision-making over particular functions and powers set out in an instrument of delegation (e.g. finance, funding, procurement, highway and network operations and planning). However, the Board had not specifically reserved any powers or functions relating to the NZTA's regulatory role. These were delegated at an organisational level to the NZTA's Access and Use Group (see page 50 of the MartinJenkins report).
67. However, there does not appear to be a clear understanding of the range of regulatory functions and how accountabilities were delivered, and the Chief Executive also had other larger functions which had significant focus and prioritisation by the Government. This created challenges around the responsibility for regulatory

decision-making within the NZTA. As a result, there was limited focus and accountability for the performance of the regulatory function.

68. The MartinJenkins report found that changes to the NZTA's Board Committee structure had reduced the governance focus on the regulatory function. In 2010, changes were made to streamline the NZTA Board's existing committees. Through these changes, the Regulatory Committee was subsumed into the NZTA's Investment and Operations Committee. The MartinJenkins report found this change had worked against the effective governance of the regulatory function (see page 48 of the MartinJenkins report).
69. The MartinJenkins report also identified that delivery of the regulatory function did not get sufficient focus from the Senior Leadership Team of the NZTA. This was due, in part, to the strong focus on funding and infrastructure delivery within the Agency. The low level of regulatory expertise at the NZTA's senior leadership level further isolated and marginalised the Agency's regulatory functions.
70. The previous land transport regulator (Land Transport Safety Authority) had a statutory Director that was accountable for making and exercising the powers and functions of the regulator.
71. When the NZTA was created, the Director of Land Transport role was removed, which looks to be a key contributor to a loss of focus and voice of the regulatory function. The regulatory operational functions were then not clearly and effectively delegated to the Chief Executive and were carried out by other functions, such as the Access and Use Group, with key enforcement decisions delegated to a group of adjudicators (some of which did not have regulatory experience).
72. Currently, there is no single role within the NZTA that is accountable for leading the regulatory functions across the Agency to ensure high-quality regulatory decisions are made. While the recent structural changes have gone some way to pulling together some of the regulatory functions into one group, other functions exist outside of this structure (e.g. operational policy, intelligence). It is also not clear whether the NZTA Board understands what regulatory functions it has, to whom it has delegated these functions and how the delegation is being exercised.
73. The Ministry believes there should be a clear single point of accountability for leading the regulatory function and regulatory operational decision-making of the land transport regulator.
74. Without a clear and accountable decision-maker, the Ministry is concerned that the voice and focus of the regulator could be lost over time. Maintaining the status quo could create ongoing challenges in strengthening the accountability and independence of regulatory decision-making in the land transport system.

Proposed Recommendations

75. The Ministry proposes a package of recommendations for responding to the various findings of the review. These include:
 - the Minister of Transport setting expectations that the NZTA Board develop a new strategy to strengthen the NZTA's regulatory approach and delivery (to be by December 2019)
 - the Minister of Transport setting expectations that the NZTA Board establish a new regulatory operating model that defines the capability, processes, and

systems to implement the NZTA's enhanced regulatory strategy and approach (to be by December 2019)

- the Minister of Transport instructing the Ministry to work with the State Services Commission on the design of a statutory Director of Land Transport that would be responsible for exercising the NZTA's regulatory functions and powers. The proposed Director of Land Transport role would be progressed through the Regulatory Amendment Bill, which is due for enactment in 2020
- the Minister of Transport should seek advice from the Ministry on any changes to the regulatory objectives, functions and powers of the NZTA that are thought necessary to strengthen the NZTA's regulatory role and focus. Any changes through this process would be progressed through the Regulatory Amendment Bill
- [REDACTED]
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- the Ministry working with MBIE to explore the merits of designating the NZTA as a health and safety regulator under HSWA. Advice will be provided to the Minister of Transport and Minister for Workplace Relations and Safety by October 2019
- in making future appointments to the NZTA Board, the Minister of Transport should consider whether the Board has an appropriate balance of regulatory expertise and capability.

76. Alongside these recommendations, the NZTA is undertaking a funding review to ensure NZTA has the necessary capability and capacity to carry out its regulatory role. This work is already underway but needs to be informed by the outcome of the Ministry's review into the NZTA's regulatory capability and performance.
77. Together, the Ministry considers that the proposed recommendations will respond to the key issues impacting the capability and performance of the NZTA's regulatory function. Further detail on these recommendations is set out below.

Developing a new regulatory strategy ...

78. The findings from the MartinJenkins report have made it clear that NZTA needs to develop a comprehensive regulatory strategy that articulates a proportionate and balanced risk-based approach to regulating the land transport system. This strategy needs to set out how NZTA works across its regulatory roles and functions to target risk across the land transport system.
79. This means setting out both internally and externally what its regulatory roles are, the risks it regulates in the system, how it targets its focus and the parties that it regulates. It is important that this regulatory strategy contains all of the Agency's regulatory functions (i.e. safety and speed management, rail and other functions across the Board), not just its transport regulatory services.

80. The Ministry considers that the regulatory strategy should:

- be comprehensive, identifying and covering all of the NZTA's regulatory functions
- define how the NZTA will identify risk across the land transport system, including how it will use its regulatory tools and interventions to target risk
- include the development of an enforcement strategy that states how and when it will carry out its different regulatory roles, in a way that is transparent and public, so NZTA's regulated community can understand its regulatory approach
- outline how the NZTA will manage any potential for conflict between its roles of investor, infrastructure builder and regulator
- establish clear accountabilities for regulatory decision-making within the NZTA
- provide for a good regulatory culture where people are encouraged to raise risks and are able to exercise regulatory judgment within clear regulatory practices and approaches
- define how the NZTA will assess the performance of its regulatory function.

81. The strategy is critical in providing industry, regulated parties and the NZTA's own staff with clarity on the NZTA's regulatory roles and functions, including how the Agency goes about exercising its regulatory mandate within the transport system. The Ministry believes that the NZTA's Future State Programme is a good start but needs to be broadened to cover the issues above and to take account of the findings of the review.

... and regulatory operating model

82. Sitting alongside the strategy, the NZTA needs to develop a new operating model for the regulatory function. The operating model needs to set out the core capabilities that NZTA needs to build to give effect to its regulatory strategy. This includes considering what effective capabilities would look like around operational policy, practice and design, education and engagement, assurance, regulatory intelligence, research and evaluation and proportionate enforcement. A specific focus on supporting effective decision-making and building a strong regulatory culture needs to be at the centre of the capability build.

83. The Ministry recommends that the Minister of Transport set expectations for the NZTA Board to establish a new regulatory strategy and operating model that responds to the review findings by December 2019. It is important that this work happens at pace, but it also needs to be balanced with the NZTA having sufficient time to respond.

84. The MartinJenkins report found clear deficiencies in the assurance systems and processes that the NZTA had across its regulatory function. Post the outcome of the Ministry's review, it is critical that the NZTA Board look to improve the NZTA's risk and assurance approach so it is better positioned to assess potential delivery and performance risks across the regulatory function in the future. At the same time, the Board also need to focus on creating a culture within the NZTA that promotes

effective risk management and supports people to speak up and raise risk in a safe way.

Establishment of a statutory Director of Land Transport

85. There has been a lack of clear focus and accountability within NZTA around the leadership of the regulatory functions across the Agency and in ensuring high-quality regulatory decisions are made.
86. As an immediate step, the Ministry's view is that the NZTA needs to take steps towards identifying all of its regulatory functions, making sure there is good understanding of these functions at board and senior leadership level and that there are clear delegations around the regulatory functions. Taking this step will help create greater accountability, independence and focus for regulatory decision-making.
87. The Ministry believes that, while this is a good first step, more needs to be done given the past issues around clarity and accountability for regulatory operational decision-making, the challenge with multiple roles and potential for conflict or tension within roles.
88. The Ministry believes there should be a clear single point of accountability for leading the regulatory function and regulatory operational decision-making of the land transport regulator. It is critical that the person exercising this role has deep regulatory knowledge and experience.
89. The Ministry does not believe it is easy for the Chief Executive of a multi-focused agency to perform the statutory director role. The Ministry also considers that, while the Board is able to establish and delegate functions to the role, this role needs to be backed by statute to ensure that regulatory focus and expertise are maintained over time.
90. The OECD² provides guidance on the institutional arrangements for regulators. This guidance outlines the typical roles and duties of a board of a regulator as covering strategy, governance and risk management, including matters such as setting strategic direction and developing policy, appointing the Chief Executive, monitoring performance and ensuring compliance with legal obligations. It notes that, while in some ways there are similarities to private sector models of corporate governance, in many ways the board's role and function are significantly different for regulators.
91. The OECD guidance also outlines that, where large numbers of operational regulatory decisions are undertaken, these are normally found in a statutory role or are clearly delegated to the Chief Executive or another role within an organisation. This recognises that these decisions are often regulatory operational decisions rather than those typically undertaken by a board, requiring understanding of investigative and enforcement decision-making.
92. This is the approach taken in many jurisdictions, including New Zealand, in relation to the design and governance of regulators. Regulatory operational decision-making is often found in a statutory role with an appointee with good regulatory decision-making experience, as in the Directors of Civil Aviation and of Maritime New Zealand, and as also evidenced in a range of other countries' land transport regulators. In some instances, the operational regulatory functions outlined in statute are delegated

² OECD Best Practice Principles for Regulatory Policy – The Governance of Regulators (2012).

by the Board to the Chief Executive in a sole purpose regulator (for example WorkSafe New Zealand), or to other positions within the organisation.

93. The Ministry considers that a statutory Director of Land Transport role should be created within the NZTA and that this role should be established in law. The purpose of this role would be to provide a greater level of accountability, independence and focus in how the NZTA exercises its regulatory powers, functions and decision-making.
94. The key benefits of establishing the statutory Director of Land Transport role include the following:
- provides a single point of accountability for how the powers and functions of the regulator are exercised
 - reduces the potential for the NZTA's regulatory function to become diluted or lost over time by having a statutory officer with accountability for exercising the function
 - provides greater clarity and transparency to industry, regulated parties and the NZTA's own workforce about where accountability for regulatory decision-making exists
 - provides the public with increased confidence that a dedicated, regulatory expert will be appointed to focus on making well considered regulatory decisions that are in the interest of public safety.
95. The Ministry believes there is a high risk that, without a statutory role, over time the regulatory voice and focus of the land transport regulator could be lost again with competing demands and conflicts across the NZTA's other roles.
96. It is recommend that the Minister of Transport direct the Ministry, working with the State Services Commission, to undertake detailed work on the design and functions of the statutory Director of Land Transport role. A key focus for this work will be on ensuring that the design of the role works within the construct of the Crown entity model.
97. If agreed to, the proposed Statutory Director role would be progressed alongside other legislative changes as part of the Regulatory Amendment Bill, which is under development and due for enactment in 2020. It is expected that the Ministry will develop a Cabinet paper in late 2019 seeking to progress this initiative, alongside other amendments to improve the transport regulatory framework.
98. In the interim, the Ministry recommends that the NZTA takes immediate action to identify all of its regulatory roles and to clarify its approach to regulatory decision-making. Taking these steps will assist in progressing the proposal to establish the Director of Land Transport role.

Refreshing the NZTA's regulatory objectives, functions and powers

99. The land transport system is complex, with multiple agencies and roles. The regulatory framework for land transport sits primarily in the Land Transport Act 1998, supported by a series of land transport regulations and rules. The Land Transport Management Act 2003 defines the NZTA's scope, objectives and functions. The objectives, functions and powers of the regulator are established through this

regulatory framework. The Railways Act 2005 sets out parts of the role of the rail regulator.

100. The current framework does not set out the NZTA's regulatory objectives, functions and powers in a comprehensive, consolidated and clear way. Each of these components exists within different parts of the land transport regulatory framework. This arrangement has created a situation where the NZTA's regulatory objectives and functions are not as clear as they could be within the regulatory framework.
101. The Ministry considers that further work should be undertaken to better define the NZTA's regulatory objectives, functions and powers. This is an important step in providing the NZTA with greater direction and focus on its regulatory roles and functions. It will also assist in providing the wider transport industry, regulated parties and other regulators with clarity over the NZTA's regulatory roles and functions.
102. It is recommended that the Minister of Transport direct the Ministry to progress work to review, consolidate and update the NZTA's regulatory objectives, functions and powers. This work should also consider whether the NZTA has all of the legislative powers and tools it requires to carry out the role of an effective regulator. These changes could be progressed alongside the statutory director role as part of the Regulatory Amendment Bill.

Reviewing regulator co-ordination and cohesiveness

103. Strengthening co-ordination and engagement needs to be a priority in improving the performance of the land transport regulatory system. The review found there is a need to improve the level of coherence and alignment between the land transport regulator and other agencies and regulators, both within and outside of the transport system.
104. Work is needed to assess whether the current allocation of compliance and enforcement functions in the land transport system achieves the best outcomes for the NZTA as a regulator and the wider transport system.
105. In relation to the role of the New Zealand Police, the review found that the separation of the enforcement role from the NZTA had created difficulty in achieving a coherent regulatory approach.

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107. The health and safety at work system is another important interface with the land transport regulator. Currently the Civil Aviation Authority and Maritime New Zealand are designated as health and safety regulators, under HSWA, within a scope of designation specified in a document issued by the Prime Minister.
108. These designations recognise the significant mutually reinforcing overlap between the objectives of health and safety work and the transport regulatory systems and that it is much more efficient and effective for these regulators to think holistically

about safety across the sectors they regulate. For example, Maritime New Zealand, when looking at safety issues on a ship, considers maritime safety legislation obligations and HSWA obligations and determines how best to deliver safety outcomes.

109. The designation system also means that the regulated parties do not have to deal with multiple safety regulators, which can be inefficient and confusing. Without designation, there is a risk that the regulators will defer to other regulators where there are overlapping roles and responsibilities, thereby creating unintended gaps between their activities and focus.
110. To achieve good safety outcomes for the transport regulatory system (both land services and rail), it is critical for the NZTA to be able to look from the start to the end of the supply chain for transport operators and determine how best to deliver safety outcomes using both health and safety and transport legislation.
111. It is proposed that officials at the Ministry and MBIE undertake work to assess whether there would be merit in designating the NZTA as the health and safety regulator for the land transport system under HSWA for both road and rail. It is recommended that a report back on this work should be provided to the Minister of Transport and the Minister for Workplace Relations and Safety by October 2019.

Strengthening regulatory capability on the Board

112. The MartinJenkins report noted concerns about the mix of regulatory capability and experience amongst the NZTA's Board and Senior Leadership Team. In the context of the Board, the review concluded that members were highly capable and respected individuals, and at various times there were Board members with some awareness of regulatory issues through their experience or training.
113. Generally, however, the review highlighted there had not been any in-depth regulatory experience among Board members. The lack of proactive testing of regulatory performance at Board level is a symptom of this.
114. The review found there were no perceived issues amongst the NZTA Board in the regulatory area until 2015/16 when there were concerns about rail regulation and driver licensing. From the early days, the regulatory area was considered as low-risk and specific attention was not prompted.
115. The review found that the Board did not appear to proactively question the performance of the regulatory function. In fact, it is not clear that the NZTA Board fully understood its regulatory responsibilities, as defined in the legislation, until the recent focus on addressing the backlog of regulatory compliance cases.
116. All of the current Board members terms end in 2019 and the Ministry is working to complete an appointment process. The progression of this appointment process had been delayed to wait until the outcomes of the NZTA review are known.
117. This process provides Ministers with an opportunity to consider the needs, composition and skills required of the NZTA Board to ensure that it is well placed to perform its regulatory role.
118. It is important that expectations are set to ensure that the NZTA Board puts in place appropriate risk management and assurance systems to monitor the overall capability and performance of the Agency's regulatory function.

Funding

119. The NZTA is currently undertaking a funding review of its regulatory functions, supported by the Ministry. It is important that this review look at all of the NZTA's regulatory functions and what capabilities it needs to build to be an effective, risk-based regulator.
120. The funding review needs to consider funding sources for the NZTA's regulatory function and how there can be a more principled and transparent basis for how, and where, regulatory activity is funded. The funding review also needs to take account of any work on the NZTA's regulatory strategy and operating model.
121. A funding review of the NZTA's rail regulatory function is also in the final stages. The review supports the Ministry's view that the NZTA's rail regulatory function has been underfunded for some years. The NZTA is taking important steps to build its rail regulator function, which needs to be supported by increased funding.
122. Further advice on the NZTA's funding review will be provided to the Minister of Transport before the end of 2019.

System performance

123. The Ministry appreciates that the review of the NZTA may lead to concern about whether there is regulatory failure within other public sector entities. While all government agencies, and their monitors, should be vigilant around the delivery of regulatory functions and keep these under supervision, the Ministry believes that there are some particular features relating to the NZTA and its regulatory failure, the combination of which are less likely to be present in most other regulators. These include that:
 - the NZTA had two other significant non-regulatory functions (investment and infrastructure delivery) that have overshadowed its regulatory roles and functions
 - there have not been clear accountabilities relating to the operation of its regulatory function, which were critical given the extent of its other roles
 - the NZTA only carries out part of the enforcement role which has made it harder to it to see itself as a lead end-to-end regulator and enforcer.
124. The Ministry will continue to monitor the NZTA and other transport regulators. As part of our new monitoring approach, put in place in January 2019, the Ministry has developed lines of enquiry to assess regulatory capability and performance, based on good regulatory design principles, which we are using with the Board's of the transport agencies to monitor regulatory performance. As part of our regulatory stewardship work, the Ministry will also undertake periodic assessments of the regulators and parts of the regulatory system.

Appendix One – Terms of Reference into the New Zealand Transport Agency's Regulatory Capability and Performance

Purpose

This review (the Review) will provide advice to the Minister of Transport on the performance of the New Zealand Transport Agency's regulatory function. The Review will undertake an assessment of all components of NZTA's regulatory capability and delivery. The Review is being conducted under section 132 of the Crown Entities Act 2004.

Background

In late September 2018, the NZTA Board raised concerns that the Agency's function was not performing optimally. The concerns specifically related to a backlog of regulatory compliance cases that had not been appropriately managed.

Cases within the backlog were across NZTA's regulatory function, including vehicle certifiers, training course providers, licensing agents, road transport operators and drivers. The number of businesses and people affected by the performance issues is significant given the nature of the Agency's regulatory function.

In identifying these concerns, the NZTA Board appointed law firm Meredith Connell to support the Agency in managing the backlog of regulatory compliance cases (around 850 cases). The Managing Partner of Meredith Connell was appointed by the Board to manage NZTA's overall response to the backlog of cases. The scope of this work also included:

- undertaking a review into the underlying causes of the performance issues in the Agency
- developing a future state to address capability gaps within the Agency's regulatory function.

On 16 October 2018, the Minister of Transport, along with the NZTA Chair and Chief Executive, made a public announcement about the performance issues affecting the Agency's delivery of its regulatory function and responsibilities.

On 21 November 2018, NZTA announced that Dargaville Diesel Specialists (DDS), a vehicle certifier of concern, was found to have issued a Warrant of Fitness to a vehicle that was subsequently involved in a fatal crash. William Ball, 65, was a passenger in the front seat of the car. He was injured in the crash and died 26 days later. The Police investigation found that Mr Ball's seatbelt was in frayed condition and had failed to function properly during the crash.

The NZ Transport Agency was aware DDS had serious regulatory compliance issues on an intermittent basis since 2011. There were a number of opportunities to undertake enforcement action and the most serious infraction took place just weeks prior to the crash when NZTA observed DDS staff issuing warrants without properly inspecting vehicles, including seatbelts.

NZTA has admitted to failings in its regulatory approach and has appointed Kristy Macdonald QC to look at the Dargaville case and release her findings publicly. While NZTA is undertaking its own reviews, I have asked the Ministry, as NZTA's monitoring agency, to undertake an external assessment into NZTA's regulatory function.

Objectives of the review

The objectives of this Review are to:

- form a clear assessment of whether there are systemic deficiencies within NZTA's regulatory capability and function and, if so, to what extent they contributed to the recent performance issues
- make recommendations on the improvements in capability required to address any deficiency in the NZTA's regulatory capability and function and appropriate accountability
- provide the public with confidence that any regulatory deficiencies in the NZTA are appropriately identified and addressed, with safety of the public being the overriding priority.

Scope

The Review is being undertaken under section 132 of the Crown Entities Act 2004. This provision enables the responsible Minister to review the operations and performance of NZTA at any time. Section 132(4) requires that NZTA must take all reasonable steps to cooperate with the Review.

The scope of this review will cover the following:

- the overall performance of NZTA's regulatory services function, in particular consideration should be given to:
 - whether the Agency is performing its regulatory functions as intended by the outcomes and provisions of the relevant legislation
 - whether it is performing as an effective, risk-based regulator based on good regulatory practice. This should cover governance; leadership; operational policy and practice; regulatory intelligence; people capability and capacity and the balance of education, engagement and enforcement
 - how NZTA works with other regulators to carry out its regulatory functions and responsibilities
 - whether the NZTA's investment, delivery and regulatory roles have resulted in any conflicts and impacts on the performance of the Agency's regulatory services function.
 - whether the regulatory function is set up to drive home appropriate accountability and transparency.
- The review should cover delivery of all of the NZTA's regulatory services, including driver testing; issue of driver licenses; grant and revocation of Transport Service Licenses; vehicle certification, registration and licensing; issuing heavy vehicle permits; speed management; rail safety and any other relevant statutory functions

- The review should also consider, where appropriate, any findings or lessons from the internal NZTA review into the backlog of regulatory compliance files and the Dargaville Diesel Specialist (DDS) compliance case.

Out of scope

The Ministry is currently undertaking, as part of its regulatory stewardship function, an assessment of whether the regulatory framework for the transport system is fit-for-purpose. Findings from the Review may assist the Ministry in its assessment of the broader regulatory framework. However, an assessment of the regulatory framework (as opposed to the implementation and enforcement of that framework) is not the purpose of this review.

Governance

The Review will be overseen by the Ministry. The Ministry may appoint others to support it undertaking the review.

Consultation and engagement

The Ministry will have access to any person(s) or information held by NZTA that is necessary in producing findings in response to the scope of this Terms of Reference. The Ministry can also seek the views of external parties where this could assist in producing the findings for the Review.

Deliverables

The Ministry will be accountable for providing a report that examines each focus area set out in the scope section of this document. The document will be provided no later than four months from the date to the agreement of these Terms of Reference.

The reviewer(s) will be required to consult on a draft report of its findings with the Ministry and the State Services Commission before the final Review Report is submitted to the Minister of Transport.

Timing

The review is intended to produce its findings and recommendations by March 2019.