

# International approaches to transport regulation

## *Foundation paper for the Regulation 2025 strategy project*

### Purpose of foundation paper

Webb Henderson was commissioned to undertake a comparative analysis of the 'frameworks' used in selected countries to regulate transport and related issues. This paper will be used to inform the different international experiences New Zealand can learn from in respect of transport regulation.

By 'frameworks' we mean the combination of:

- ▶ legislative instruments (acts, regulations, rules) used;
- ▶ government organisations which frame and give effect to that legislation;
- ▶ the regulatory approach adopted by different jurisdictions; and
- ▶ recent changes to these three factors in response to emerging issues.

### Initial findings

- ▶ The first step in this research was to compile a matrix indicating the main similarities and differences between New Zealand's primary legislation and that of four other countries: Australia, the UK, Canada and Singapore. Overall, primary legislation frameworks tend to be quite similar.
- ▶ Although the focus of this paper is on regulations (in the narrower sense than that for Regulation 2025 as a whole) legal instruments are just one part of the policy spectrum. Regulations, and the justification for them, are influenced by institutions which appear reasonably diverse across the comparator countries.
- ▶ Styles of regulation are also diverse. Several distinct approaches to transport policy have been observed in the literature. A brief analysis of the motivating factors underlying the frameworks adopted is provided, as well as consideration of whether regulatory styles are evolving and, if so, how?

### Key themes

- ▶ The formal role of independent institutions/expert groups to inform transport regulation and policy development;
- ▶ The perspectives provided and express trade-offs made by combined safety, service and monopoly modal regulators;
- ▶ The rise of passenger/consumer interests at the heart of transport regulation statutory frameworks; and
- ▶ An increasing role for international cooperation in transport regulation, such as technical standards and in response to technology change, in order to drive consistency (with at least shared borders) and promote cross-border trade in transport-related products.

## Emerging Findings

### *The role of independent institutions to advance strategic stakeholder engagement and complement traditional regulation/policy functions*

In Australia, there appears to be a greater emphasis placed on transparent, independent advice to government on transport issues. For example, in addition to the traditional policy and regulatory transport institutions, Australia has:

- ▶ the National Transport Commission (NTC), an independent statutory body charged with developing regulatory and operational reform for road, rail and intermodal transport; and
- ▶ Infrastructure Australia, an independent statutory body with a mandate to prioritise and progress nationally significant infrastructure.

Augmenting public sector expertise with the knowledge of independent expert groups ought to also be seen in the context of the Australian Government recognising that effective consultation and dialogue with key stakeholders in the transport industry is increasingly important to help combat the challenges facing the wider transport regulatory regime. For example:

- ▶ The National Ports Strategy, developed by the NTC and Infrastructure Australia in 2011, recognised the need for an independent panel of expert advisors to guide implementation of the strategy.
- ▶ A 2013 Independent review of Australia's aviation regulatory system found that the relationship between industry and regulator was a cause for concern as it had become adversarial in nature. The review concluded a more collaborative relationship could produce better safety outcomes and ensure the regulator better stayed in touch with rapidly advancing technology.

These practices and trends indicate a conscious shift in stakeholder management from a reactive risk management approach to a more proactive and transparent two-way strategic relationship with the transport industry.

### *Modal regulators that are both safety and economic regulators*

The UK regulatory model typically reconciles the interests of consumers with those of investors. This is predominantly achieved through a single modal regulator having a broad regulatory remit spanning economic, service quality and safety regulation. The statutory framework establishing the regulatory regimes may also extend to environmental, consumer interests and competition regulatory functions.

Such an approach (e.g. the UK Civil Aviation Authority (CAA) for aviation and the Office of Rail and Road (ORR) for rail) places responsibility for setting/negotiating regulated price and revenue levels with the same institution taking into the account operator compliance with key regulatory standards (e.g. health, safety, consumer interests and environmental obligations). For example:

- ▶ The new legislation expressly intertwines licensing, economics and passenger rights. The Civil Aviation Act 2012 provides that the UK CAA has a duty of ensuring "that license holders [airports] are able to finance the activities which are subject to the relevant license obligations."
- ▶ The ORR has a statutory duty to promote competition. This is supported by ORR having a range of functions and responsibilities to keep railway markets under review and to take appropriate measures where markets are not working to the benefit of users or funders.

Such regulatory institutions support a comprehensive market-wide understanding of highly complex sectors which, in turn, promote detailed data and information analysis, the understanding of inter-relationships in the sector, and the express recognition and reconciliation of trade-offs. Typically, such transport regulators also have concurrent competition law powers and statutory responsibility to monitor markets. This sees a highly proactive focus and understanding of competition in the sector supported through a programme of detailed market study investigations.

### *Passenger interests (including future consumers) increasingly at the core of statutory transport regulatory frameworks/duties*

An analysis of international regulatory statutory duties reveals an increasing trend to place consumer interests front and centre in legislation establishing transport regulator duties. For example:

- ▶ The UK ORR identifies “consumers at the heart of its work” as a key strategic objective. The statutory duties of the ORR as regulator are protecting the interests of users of the railway services as well as promoting the use of the railway services for the transport of passengers and goods.
- ▶ The UK’s Civil Aviation Act 2012, in setting out a refreshed regulatory framework for airport regulation, provides that the CAA has “a primary duty for its economic regulation to promote the interests of existing and future consumers, alongside a new licensing regime for airports”. Of course, not just passenger interests are recognised; the CAA duty for airport economic regulation is to further the interests of “passengers and owners of cargo”.

Placing passengers as a priority in transport regulation may incentivise industry to deliver outcomes identified by consumers as important, for example, promoting better facilities and providing more information for passengers. This can be challenging and may involve new challenges as consumer interests are typically not concentrated (contrast with industry lobby groups) and at times must be actively sought or promoted (designated consumer interest groups) by the regulator.

### *Cooperation in regulation and policy with regional and international partners*

Some countries (particularly those with shared borders) are increasingly focused on aligning regulatory approaches and recognising their trading partner’s technical standards, in order to promote trade in transport-related products (e.g. streamlining approvals for aeronautical products). Two recent initiatives include:

- ▶ Canada and the US have formed the Regulatory Cooperation Council (RCC) to increase regulatory transparency and coordination between the two countries. The RCC is, for example, looking at working together to develop regulations and standards to support:
  - the integration of intelligent transport systems; and
  - aligning regulatory approaches towards unmanned aircraft systems.
- ▶ Transport Canada and the CAA of China have been working cooperatively to better understand each other’s civil aviation programs in order to facilitate movement of aeronautical products between Canada and China. Negotiations towards a Bilateral Aviation Technical Arrangement (BATA) were completed in November 2014 and will help streamline the approval process for aeronautical products and eliminate the need for individual technical arrangements.

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