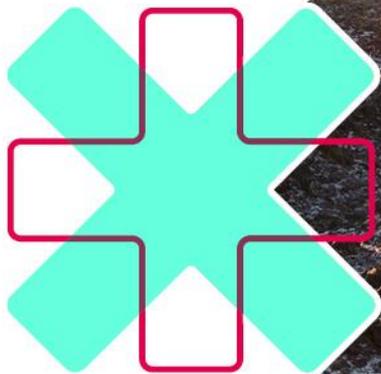
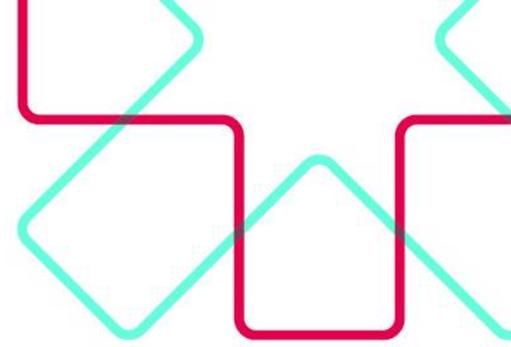


REVIEW OF THE NEW ZEALAND TRANSPORT AGENCY'S REGULATORY CAPABILITY AND PERFORMANCE

Report for the Ministry of Transport

26 June 2019





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PREFACE

This report has been prepared for the Ministry of Transport by Doug Martin, Tom Gott and Natasha Kuka from MartinJenkins (Martin, Jenkins & Associates Limited) and Alan Cooper (Chief Advisor, Better Regulation) from Worksafe.

Alan Cooper was seconded into this project to provide advice and guidance around effective regulatory practice.

MartinJenkins advises clients in the public, private and not-for-profit sectors. Our work in the public sector spans a wide range of central and local government agencies. We provide advice and support to clients in the following areas:

- public policy
- evaluation and research
- strategy and investment
- performance improvement and monitoring
- business improvement
- organisational improvement
- employment relations
- economic development
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Our aim is to provide an integrated and comprehensive response to client needs – connecting our skill sets and applying fresh thinking to lift performance.

MartinJenkins is a privately-owned New Zealand limited liability company. We have offices in Wellington and Auckland. The company was established in 1993 and is governed by a Board made up of executive directors Kevin Jenkins, Michael Mills, Nick Davis, Allana Coulon and Richard Tait, plus independent director Sophia Gunn and chair Hilary Poole.



HE MIHI

We would like to thank everyone who has contributed to this review. We have been overwhelmed by the willingness with which people engaged with the review, from participating in interviews, to providing key documentation and written submissions, and responding to follow-up questions.

Many interviewees spoke about their desire to support NZTA in being a stronger regulator within the wider transport system. We also observed a real commitment to achieving better safety outcomes for the New Zealand public.

We acknowledge that some of the questioning in the interviews was direct and challenging, particularly for NZTA staff.

We thank you again for your collective contribution.



EXECUTIVE SUMMARY

MartinJenkins was commissioned to provide independent insights and conclusions as input for a review of the New Zealand Transport Agency (NZTA) by the Ministry of Transport. This report sets out our conclusions and rationale for these.

The key conclusions of the current review are summarised below:

Regulatory failure and its causes

- A fundamental conclusion of this review is that there have been a number of contributing factors to instances of regulatory failure within NZTA, and which have had influence at different times over the years since the inception of the organisation in 2008. Active steps are now being taken within the organisation to address the issues that have led to this regulatory failure.
- There have been issues at different points of the regulatory cycle and system. These have included: lack of clear regulatory strategy; lack of a comprehensive regulatory scope (for example, to include road safety and speed; adequate focus on rail regulation); issues in implementation of regulatory decision-making; issues with applying sanctions in a timely manner when appropriate, and a focus on providing a service when the primary role is to regulate (for example, service efficiency approaches to issuing of licenses).
- The contributing factors to regulatory failure at different times in the evolution of the NZTA are identified in more detail in this report.

Preoccupations with other NZTA functions and potential for conflict of interest

- From inception of the NZTA, regulatory responsibilities have been overshadowed by preoccupations with other NZTA functions. There has been a diluted focus on the regulatory function as a result, with increased focus in 2017/18 and 2019.
- In this regard, NZTA faces challenges in carefully managing priorities across its three functions of regulator, infrastructure deliverer and investor, particularly regarding efficiency, cost and regulatory effectiveness considerations.
- It is not unusual for State agencies to have multiple functions, and in these cases there are mechanisms in place to manage and mitigate any risk of potential conflicts amongst these different functions.
- In this regard, where the NZTA adopts concurrent roles of regulator, infrastructure deliverer and investor, there is the potential risk for operational considerations to be given undue emphasis over regulatory considerations in operational decision-making.
- It is not clear that the NZTA has been, or is, positioned to adequately manage the risks that different and potentially conflicting priorities might pose.



Influence of a strong customer service focus

- From around 2012 until mid-2018 there has been a powerful focus on customer service, without clarity as to what that means when delivering regulatory functions, that has adversely influenced regulatory decision-making and activity.
- There are a range of parties regulated by the NZTA including the public (road users), licensed agents acting on behalf of NZTA and other contracted suppliers.
- The documents we have reviewed and the majority of the interviews we conducted have revealed a heavy leaning towards to a desire to satisfy all individuals who transacted with the Agency whether that was through a licence or permit application or through some third-party relationship.
- However, some of the parties NZTA treated as 'customers' are not customers of the Agency. For example the various third-party organisations that deliver regulatory activities on behalf of NZTA. Typically, these are commercial businesses that seek to make profit while issuing permissions on NZTA's behalf. This is a privilege that they have been afforded by the Agency. NZTA's role is to audit their reliability, remedy their shortcomings, and where necessary revoke their permission in the interests of the public.

Weak regulatory experience, capability and culture among senior leaders from inception to the present day

- Regulatory experience has been weak at governance and senior leadership levels. Individuals with deep regulatory experience have been either at lower levels within the organisation or few in number at senior levels. There are some staff and managers below senior levels with strong regulatory expertise and knowledge.
- There has been a lack of visibility of regulatory issues and risks at the level of the Board and the Executive Leadership Team (ELT).
- There has been a lack of proactive challenging and questioning around regulatory performance at Board level, until mid 2018.
- Over the years a pervasive culture of bad news being unacceptable has developed and influenced the ways messages were communicated to managers and the Board, particularly from 2016 until mid-2018.
- There has been an uplift in regulatory compliance activity over the latter half of 2018 and early 2019.
- A General Manager, Regulatory, was appointed in April 2019 who brings regulatory experience and focus to the role.

Challenges with regulatory accountability and decision-making

- Under the Land Transport Management Act 2003 the NZTA Board has accountability for exercising powers and undertaking specific functions with regard to the New Zealand land transport system. This includes regulatory powers and functions. This does set the Agency apart from other transport regulatory agencies where the regulatory accountability lies with the Director (for example aviation and maritime).



- The Board has the ability to delegate powers and functional responsibilities to the Chief Executive, and has exercised this ability in some cases while reserving some powers and functions to itself.
- A Consolidated Instrument of Board Delegation (updated on 4 March 2010) sets out functions and powers that are reserved to the Board, with the assumption that other functions and powers will be delegated to the Chief Executive. We note that the Board is quite specific about having some key approvals and decisions reserved to it for functions such as Highway and Network Operations and Planning, and Funding and Procurement, but ‘has not reserved any powers and functions to itself which relate to powers and functions in legislation which are within the responsibility of the Access and Use Group’¹.
- This could be taken as a further indication that regulatory matters and decision-making have a low priority, or lower than other functions, for the Board.
- Some enforcement decisions were delegated to a group of adjudicators (until the adjudicator role was disestablished in 2018), and therefore away from the individual close to the action and best placed to manage the risk.
- Operational staff commented to us that they have felt unsupported in making regulatory decisions for quite some time, not just in recent years. They said there were difficulties in knowing how to escalate cases and or get agreements from senior managers to act on non-compliance.²

Challenges with audits and risk-management approaches

- Particularly in the period from 2016 onwards, there were critical flaws in NZTA’s internal audit approach that influenced the type, focus and messaging of risk and assurance reporting.
- The OAG’s external audits focus is on NZTA’s reporting of its performance over the past year, therefore it does not look for instances of regulatory failure.
- There have been challenges for the Ministry of Transport in its role of monitor of the NZTA (these are addressed in a separate report from the current review).
- There has been a lack of continuous risk management strategy for the regulatory functions within NZTA.
- There was a much stronger focus on strengthening regulatory risk management in late 2017, and during 2018. We understand that most recently, in April/May 2019, the processes for scrutiny and management of internal risk and assurance reports have been tightened to provide increased oversight and integrity.

Lack of regulatory strategy, effective leadership and culture

- There was no real strategy for the regulatory function and system until around 10 years after NZTA’s formation, and even today this is at a high level. It requires more specificity and has not yet been operationalised.

¹ Consolidated Instrument of Board Delegation – Attachment 3 to Board Paper 10/03/0359, 20 April 2010

² Interviews and staff workshops



- There is more work to be done to round out the strategy – for example, ensuring that it addresses the potential conflicts of interest in the NZTA adopting concurrent roles of regulator, infrastructure deliverer and investor.
- The collective leadership and empowered culture that are the hallmarks of an effective regulator are missing at NZTA. We understand that this is currently being addressed by the organisation.

Structure

- Structure and structural change have been an ongoing challenge for achieving and supporting a consistent regulatory approach. The effects of structural change are discussed below in this report.

Regulatory capability and supporting resources

- There have always been and continue to be operational capability challenges for NZTA in its regulatory role.
- The analytics and insights needed to support regulatory strategy and decision-making are under-developed at NZTA, due to systems and capability challenges.
- There has been under-investment in the regulatory capability and resourcing needed to do the regulatory job well.

NZTA has a regulatory workforce that is passionate about land transport safety

- NZTA has a regulatory workforce that is passionate about land transport safety, and the elimination of harm from the land transport system.
- There are individuals within the Agency who really care about what they see as their role, and who understand what it means to be an effective regulator.
- As a result, there is capability and some good work completed that provides a starting platform for strengthening the regulatory function within NZTA. The Agency is addressing the development of the regulatory function, and the appointment of a Regulatory General Manager in April 2019 will assist with this.

Recent initiatives show some positive progress for strengthening approaches to regulatory strategy and management

- Since around the end of 2017 and the beginning of 2018 there have been positive signs of people putting more focus on the regulatory function and beginning to develop key building blocks, although this has been delayed with the current focus on strengthening compliance activity.
- Work has been completed on a Regulatory Management Strategy (endorsed by the Board) and a draft Compliance Intervention Model reflecting good regulatory practice has been developed. These frameworks still require further work to ensure they are fit-for-purpose to fully support the role of NZTA as regulator across road, rail and safety management.



- Work has also been progressed on establishing a capability framework to support regulatory objectives. This is still in development and needs further work to ensure that it aligns with strategy and reflects a comprehensive statement.
- The establishment of a separate Regulatory Group that brings together previously distributed regulatory activity, and with a General Manager reporting to the Chief Executive, provides an opportunity for a focus on the regulatory function. There is still room for further strengthening of the connection with some regulatory functions that remain distributed (for example, strategy and safety).
- Recent uncovering of failures of compliance and enforcement has meant a short-term focus on addressing these failures through an increase in the compliance and enforcement activity of the Agency. This has successfully cleared a backlog of cases and strengthened processes around the taking of enforcement decisions. An independent legal firm Meredith Connell has assisted in leading this work.
- There is a current focus on re-building NZTA's regulatory capability through:
 - developing a clear statement of purpose for the regulatory function
 - clearly defining accountability for decision-making and service delivery
 - empowering frontline staff to make the appropriate decisions for compliance intervention, and
 - ensuring that front-line staff feel they have a clear mandate from senior management to support their regulatory decision-making.
- Given the current strong focus on strengthening the compliance and enforcement activity within the NZTA regulatory function, there is an inherent risk to be managed of a pendulum swing towards this orientation as the default position for regulatory decision-making.
- We understand that, having addressed the backlog of regulatory decisions, the current Board is now committed to addressing the forward-looking strategy (including developing and operationalising best regulatory practice). This work has now started.
- An effective regulator will take a balanced approach to regulatory activity, one that is informed by a regulatory strategy for making decisions and choosing interventions that are outcome-focused and that address attitudes to compliance and the level of risk and potential for harm. This means working with a regulatory toolkit that spans a spectrum of regulatory choices across information provision, education, and directional and enforcement activity for influencing behaviour at system, organisational or individual levels.



INTRODUCTION

Why this review was commissioned

- 1 On 23 November 2018, the Minister of Transport, the Hon Phil Twyford asked the Ministry of Transport, as the monitoring agency of the New Zealand Transport Agency (NZTA), to review NZTA's performance of its regulatory functions.³ The review was commissioned under section 132 of the Crown Entities Act 2004.
- 2 This review was prompted by a number of concerns that have emerged around NZTA's regulatory performance and a backlog of compliance cases that had not been properly managed.
- 3 The three objectives of the Ministry of Transport's review were to:
 - a 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
 - b make recommendations on the improvements in capability required to address any deficiency in NZTA's regulatory capability and function, and appropriate accountability
 - c provide the public with confidence that any regulatory deficiencies in NZTA are appropriately identified and addressed, with safety of the public being the overriding priority.
- 4 Given these objectives, the scope of the review included:
 - a the overall performance of NZTA's regulatory services function
 - b all of NZTA's regulatory services
 - c considering any lessons from the internal NZTA review into the backlog of regulatory compliance files and the Dargaville Diesel Specialist compliance case.
- 5 MartinJenkins was engaged on 13 December 2018 to provide independent insights and conclusions as input to the review for the Ministry of Transport to consider, particularly regarding the assessment of systemic deficiencies within the NZTA regulatory capability and function. Alan Cooper, Chief Advisor Better Regulation at WorkSafe NZ was contracted as a member of the MartinJenkins review team.
- 6 The findings of the MartinJenkins review will be incorporated with other analysis from the Ministry before final recommendations are made to the Minister of Transport.

Background: NZTA and its operating environment

- 7 In this section we describe the environment that NZTA operates within. This will be important context for readers in understanding our conclusions about NZTA's regulatory capability and

³ <https://www.beehive.govt.nz/release/review-nzta-regulatory-performance>



performance, including the underlying causes that have contributed to performance issues within NZTA's regulatory function.

NZTA and its functions

- 8 The New Zealand Transport Agency (NZTA) was established on 1 August 2008 as a Crown entity under the Land Transport Management Act 2003 (LTMA), by the 2008 amendments to that Act. When NZTA was established it combined the expertise and functions of Land Transport NZ (created in 2004) and Transit NZ. The regulatory functions within Land Transport NZ were originally performed by the Land Transport Safety Authority in 1993.⁴
- 9 NZTA is the government's key land transport delivery agent. The Agency's objective is to perform its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest (LTMA, section 94). NZTA is governed by a Board of six to eight members.
- 10 NZTA has three core functions:
 - a **Investment** – to manage funding of the land transport system. In 2018/19, the Crown is forecast to collect \$3,694 million of road tax revenue.⁵
 - b **Infrastructure** – to manage the state highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with the LTMA and the Government Roding Powers Act 1989.
 - c **Regulation** – to manage regulatory requirements for transport on land, including (but not limited to) maintaining and preserving records and documents concerning activities within the land transport system.

⁴ <https://www.transport.govt.nz/about/history/>

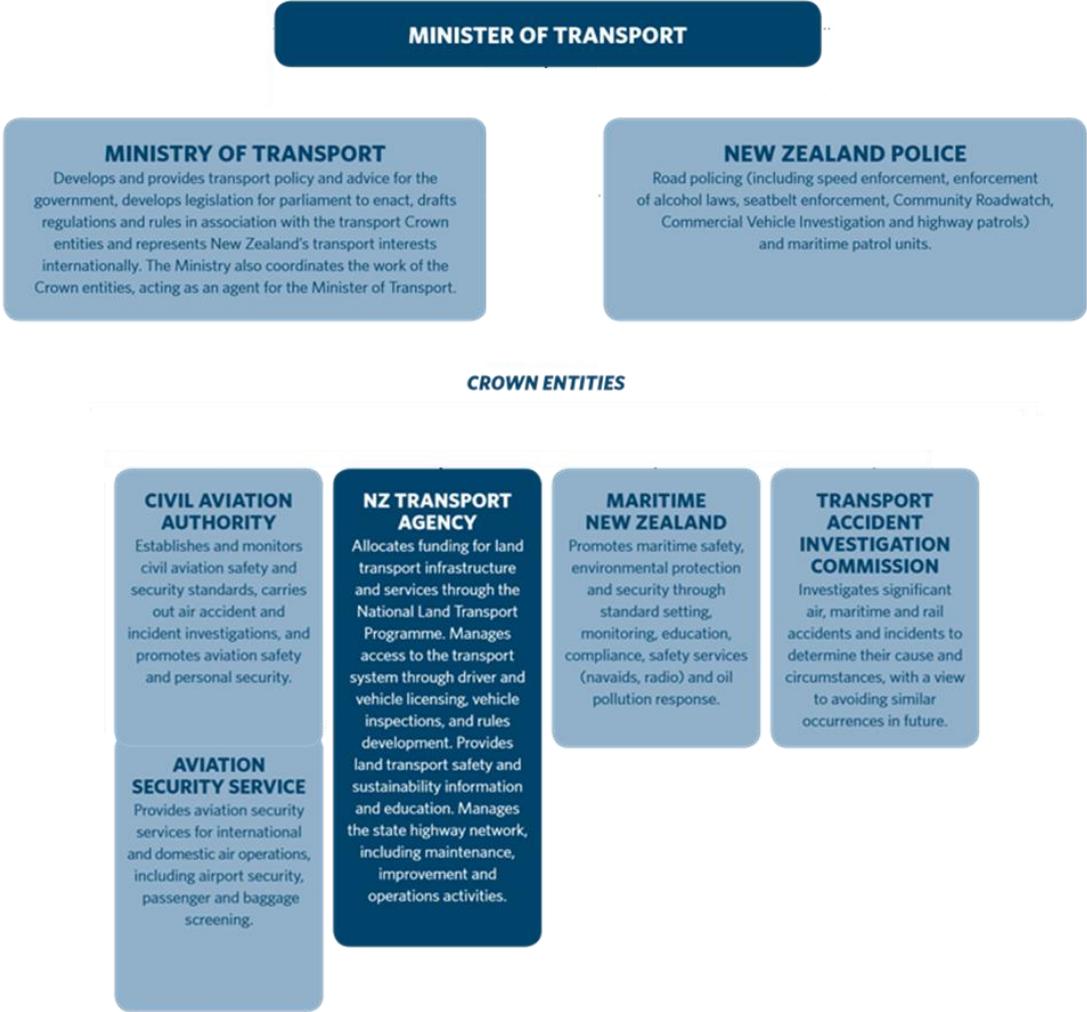
⁵ <https://www.budget.govt.nz/budget/pdfs/estimates/v1/est18-v1-trans.pdf>



Relationship of NZTA with other transport agencies⁶

11 NZTA is part of a wider transport sector, as outlined in the following diagram.

Figure 1: Key government organisations in the transport sector



12 Alongside NZTA, key agencies in the land transport sector include:

- a **Ministry of Transport** – Created in 1968, the Ministry is the government's principal transport adviser. Most of its work consists of providing policy advice and support to Ministers. The Ministry of Transport is also the monitoring agency for NZTA. The Ministry aims to focus on improving the performance of the transport system and monitoring the performance of the Crown entities, and to achieve better value for money for government investment.

⁶ <https://www.nzta.govt.nz/assets/site-resources/content/about/docs/nz-govt-transport-sector-diagram.pdf>



- b **Civil Aviation Authority (including the Aviation Security Service)** – CAA is a Crown entity established in 1992 under the Civil Aviation Act 1990. It has two functions: aviation safety and the rules underpinning it, and the Aviation Security Service (Avsec).
 - c **Maritime New Zealand** – This is a Crown entity established in 1993 under the Maritime Transport Act 1994. Maritime NZ has three key roles: regulation and compliance; providing maritime safety infrastructure; and response to incidents. Maritime NZ and NZTA have shared oversight where road and rail intersects with ferry services.
 - d **Transport Accident Investigation Commission** – This is a Crown entity established in 1990 by the Transport Accident Investigation Commission Act 1990. The principal purpose of the Commission is to determine the circumstances and causes of accidents and incidents with a view to avoiding similar occurrences in the future, rather than to assign blame to any person.
- 13 Collectively with NZTA, these agencies cover the spectrum of air, sea and land transportation.
- 14 There are also significant jurisdictional overlaps with the Health and Safety at Work Act 2015 (HSWA). CAA and Maritime NZ are designated to administer HSWA for their respective sectors. NZTA and WorkSafe have significant areas of jurisdictional overlap and these are managed through a memorandum of understanding.

Wider policy and accountability context

- 15 NZTA's functions and activities are guided and influenced by several key transport-focused documents.
- 16 The **Government Policy Statement on Land Transport (GPS)** sets out the government's priorities for expenditure from the National Land Transport Fund (NLTF) over a 10-year period. It is a statutory document required by the Land Transport Management Act. It also sets ranges of expenditure for defined activities. The GPS is central to transport planning processes, as local authorities develop their regional land transport plans (RLTPs) using the signals provided in the GPS. NZTA selects projects from within the RLTPs to develop the three-year National Land Transport Programme, which gives effect to the GPS. The current GPS took effect from 1 July 2018. Table 1 provides a summary of recent GPS's on Land Transport and their main focus.

Table 1: Focus of recent GPS's

GPS	Focus
GPS (4) 2018/19–2028/28	This presents a number of changes in direction, prioritising a safer transport system free of death and injury, accessible and affordable transport, reduced emissions, and value for money. ⁷
GPS (3) 2009/10–2018/19	The government's priority was for land transport investment to support national economic growth and productivity. The priority was investing in the State Highway (SH) network as a key way to increase efficient movement of freight and generate better value for money.
GPS (2) 2012/13–2012/22	The government's overarching goal for transport under this GPS was: an effective, efficient, safe, secure, accessible and resilient transport system that supports the growth of our country's economy in order to deliver greater prosperity, security and opportunities for all New Zealanders. There were three focus areas for this GPS: economic growth and productivity, value for money, and road safety.

⁷ <https://www.transport.govt.nz/multi-modal/keystrategiesandplans/gpsonlandtransportfunding/>



GPS	Focus
GPS (1) 2015/16–2024/25	The government's priority was to drive improved performance from the land transport system by focusing on economic growth and productivity, road safety, public transport, and value for money.

- 17 The GPS is the mechanism that sets out expectations for Government investment spend from the NLTF. It does not refer to expectations from the regulatory function. Regulatory functions are instead set up by statute and funded through different funding sources.
- 18 **Safer Journeys** is the government's strategy to guide improvements in road safety between 2010 and 2020. The strategy is underpinned by the Safe System approach, which means working across all elements of the road system (roads, speeds, vehicles, and road use) and which recognises that everybody, including network and vehicle operators, designers and users, share responsibility for road safety.
- 19 As a Crown entity, NZTA is also subject to generic accountability requirements, including those set out in Table 2:

Table 2: Types of accountability requirements for Crown entities

Accountability type	Purpose
Annual Letter of Expectations	Sets out the Ministerial priorities for the agency for the coming year.
Statement of Intent	Sets out the agency's strategic intentions and medium-term plans and provides a base against which performance can later be assessed.
Statement of Performance Expectations	Sets out NZTA's annual performance expectations and provides a base against which actual performance can be assessed.
Monitoring by the Ministry of Transport	The Ministry of Transport is an agent of the Minister to help the Minister discharge his or her responsibilities (unless directed otherwise); and to undertake other functions such as administering appropriations and legislation as required by statute. ⁸
Annual auditing by the Auditor-General	This provides Parliament, public entities, and the public with independent assurance that public entities are operating, and accounting for their performance, in keeping with Parliament's intentions. KPMG has been the appointed auditor of NZTA on behalf of the Auditor-General since the 2013/14 Annual Report.

- 20 Other relevant documents for public sector agencies are the Performance Improvement Framework (PIF) Reviews led by the State Services Commission. The PIF is a future-focused review that aims to support performance improvement and challenge and support State sector leaders to drive organisational change for better outcomes for New Zealanders over the medium term. Independent reviewers lead each PIF Review.
- 21 The NZTA has experienced two PIF Reviews (2010/11 and 2017/18) and one Follow-up PIF Review (2012). The findings of these reviews are discussed later in this report.

⁸ Statutory Crown Entities – A Guide for Departments, June 2014



Expectations for ‘modern’ regulatory approaches

- 22 For some time, there has been an expectation that regulators should focus on outcomes rather than only on compliance with rules. In part, this has been driven by societal expectations that regulation will not be unreasonably intrusive, and a recognition that it is desirable to achieve performance that goes beyond minimum compliance with the rules.
- 23 The shift away from a purely command and control approach also recognises that regulators are rarely resourced to enforce all rules or to hold all people accountable for every detected or suspected regulatory breach. Regulators have to make choices about when and how they intervene. It is expected that they will be able to demonstrate that their efforts are contributing to the outcomes and targets set for them.
- 24 During the 1990s most New Zealand regulators were focusing on adopting so-called ‘modern regulatory’ approaches and models. These included, for example, responsive, risk-based, problem-focused and customer-focused approaches. These various regulatory approaches have continued to evolve through to today.
- 25 There is no single prescribed approach or method that can be adopted by all regulators. In New Zealand, there has been a tendency to combine **responsive** approaches, which address the regulated party’s attitude to compliance, and **risk-based** approaches, which address the level of risk and potential for harm.⁹
- 26 Internationally, regulators are on a similar development pathway. Individual agencies have to select an approach, or mix of approaches, that best suits their context, regulatory environment and functions. The common aim is to demonstrate that effort is directed towards achieving outcomes.
- 27 Table 3 sets out some government directives, guidance documents and publications that have had relevance for regulatory agencies in New Zealand:

Table 3: Generic government directives, guidance documents and publications

Directive, document, publication	Description
2008 Enduring letter of Expectations	<p>This letter from the Hon Bill English was directed to all chairs of Boards of statutory Crown entities and Crown companies. The letter requires a more focused, efficient state sector that delivers services differently and more cost effectively. The letter emphasises the need to:</p> <ul style="list-style-type: none"> • ensure value for money for New Zealanders • demonstrate performance • engage with Ministers and monitoring Departments.
2009 Government statement on Regulation: Better Regulation, Less Regulation	<p>This is a government commitment that new regulation should be introduced only if it is necessary and only if it is reasonable and robust. The Government also committed to reviewing existing regulation to identify and remove unnecessary, ineffective or excessively costly requirements. This statement was written during an economic recession with the intent of enabling productivity.</p>

⁹ See 2014 Regulatory institutions and practices (NZ Productivity Commission)



Directive, document, publication	Description
2014 Regulatory institutions and practices (NZ Productivity Commission)	This inquiry report looked at various institutions, practices and elements that affect how regulations are designed and implemented in New Zealand. The report made recommendations on how to make institutions and practices work better. It concluded that there is no single superior regulatory strategy. It explains a range of approaches and sets out what successful regulation looks like.
2017 Government expectations for good regulatory practice (Treasury NZ)	This sets high-level expectations for government regulatory agencies. The expectations cover system design and regulatory stewardship. This includes a high-level overview of good regulatory practice.

Application to NZTA

- 28 Letters of expectation for the NZTA from 2009 through to 2017/18 do not specifically focus on regulatory effectiveness, with the exception of the Letter of Expectations 2018. They do, in places, reinforce the 2009 Government statement on Regulation (Better Regulation, Less Regulation) and the need to enable productivity.
- 29 In 2019 the letter of expectation requires the agency to focus on reducing the number of fatalities and serious injuries. It also sets an expectation that NZTA deliver its regulatory functions efficiently and effectively.
- 30 Important for the New Zealand regulatory context is the Pike River coal mining tragedy of November 2010. Key recommendations for effective regulatory practice included ensuring that there be adequate regulatory oversight over and focus on health and safety, that directors discharge their governance responsibilities for health and safety, including their responsibility to hold management to account, and that there be more worker participation in managing health and safety.¹⁰
- 31 Recommendations reinforced the need to adopt a focus on the risk of harm and the importance of identifying and managing this risk by all parties.

The land transport regulatory system and NZTA's role within this

A complex system with multiple agencies and roles

Land transport system

- 32 The land transport system is complex, with multiple agencies and roles. The Ministry of Transport has a role as the lead system designer, with responsibility for the legislative framework and settings. NZTA has a role as principal regulator within the system, and works in conjunction with a number of third parties on aspects of assessment, compliance and enforcement (for example, NZ Police, VTNZ, AA, key service delivery partners, WOF and COF certifiers, Road Controlling Authorities, KiwiRail and others). These roles are explained below under 'third party involvement'.

¹⁰ Royal Commission on the Pike River Coal Mine Tragedy – Snapshot p 1



- 33 Other key partners in the system include local government, Road Controlling Authorities, the Accident Compensation Corporation, the Energy Efficiency and Conservation Authority, the Department of Internal Affairs, WorkSafe NZ, the Ministry of Business, Innovation and Employment, and the Treasury.
- 34 The dynamic of the road transport regulatory system has tended to be highly prescriptive, with expectations of operators and users prescribed in rules and regulations. At different times NZTA has oscillated between a highly compliance-oriented approach in its regulatory role (particularly in early years) and a more flexible, more service-oriented approach (in later years). Most recently NZTA has adopted a position of strong enforcement of regulated operators' compliance with requirements.

Rail

- 35 NZTA is the primary safety regulator for rail under the Railways Act 2005, approving safety cases, licensing operators and monitoring performance against operator rail safety cases, and investigating incidents and accidents. A licence to operate is granted by the regulator on the basis of each rail participant's safety case, which outlines their 'safety system'. Through the safety case the regulator needs to be satisfied that the prospective participant has an effective approach and the capabilities necessary to manage safety risks relating to their operation.
- 36 Major regulated operators in this system are the government-owned KiwiRail, which operates freight, ferries and long-distance passenger services, and Transdev Auckland and Transdev Wellington, which operate the metropolitan services in these regions. There are a number of smaller industrial, heritage and tourist operators (around 90 in total).
- 37 The regulatory system under the Railways Act focuses on safety outcomes, with responsibility for managing safety risk sitting with the operator. Each operator is responsible for developing and managing their own policies, standards, procedures, capabilities and culture to ensure safety. NZTA has an oversight role over this system through approving and monitoring safety case performance for access and ongoing participation in the system.
- 38 In addition, and unlike in the road system, NZTA's role in the rail system explicitly encompasses worker safety as well as public and passenger safety when in the rail corridor.
- 39 KiwiRail is the owner of a significant volume of interconnected rail networks throughout the country (the National Rail System). In this capacity KiwiRail has responsibility for management of the infrastructure asset, and for granting permission for organisations to operate rail vehicles or perform services on the National Rail System. Operators must have and comply with the terms of an individual access agreement granted by KiwiRail. This agreement requires compliance with the National Rail System Standards and Rail Operating Rules and Procedures, which focus primarily on the interoperability and interface arrangements for safe rail operation on its network. In this regard KiwiRail has been described as having a limited co-regulatory role in the system.
- 40 For operators on the National Rail System these standards complement the requirements for rail safety risk management as outlined in the individual safety cases. Rail participants operating on networks outside the National Rail System are not bound by the National Rail System Standards and Rail Operating Rules and Procedures.
- 41 Irrespective of this situation, the NZTA has a primary role for rail safety regulation across all operators in the rail system, including KiwiRail.



NZTA regulatory responsibilities

- 42 NZTA has transport responsibilities under:
- a five main Acts – the Land Transport Management Act 2003, the Land Transport Act 1998, the Railways Act 2005, the Government Roading Powers Act 1989, and the Road User Charges Act 2012
 - b 13 sets of regulations
 - c a number of land transport rules.¹¹
- 43 The Ministry or NZTA can develop land transport rules, but generally it is NZTA that produces the rules, with the Ministry taking a role for land transport policy and recommending rules development. Rules development takes into account the policy objectives of the Ministry of Transport and is informed by operational insights from NZTA and third parties with a regulatory role to play (such as NZ Police).
- 44 The scope of the NZTA regulatory function includes **safety-related functions** of motor vehicle registration, motor vehicle certification, driver licensing, transport service (operator) licensing, rail safety systems, speed limit setting, traffic control devices, road user rules, and **revenue for safety functions** of fuel excise duty, road user charges, motor vehicle licensing, and road tolling.¹²
- 45 The regulatory role of NZTA extends to regulation of roading design and implementation for road safety, alongside speed limit setting and traffic control devices. In this regard, there is interaction with local government and Road Controlling Authorities (RCAs).
- 46 NZTA maintains three key regulatory registries:
- a The **motor vehicle register** records information about the New Zealand vehicle fleet as well as the person responsible for each vehicle's use. Vehicle information includes details such as make, model, colour, weight, and usage category (for example private passenger, goods, taxi, ambulance, rental, and hearse).
 - b The **driver licensing register** records information about licence holders in New Zealand, including their class of licence, and any special conditions.
 - c The **Road User Charges (RUC) register** records information relating to road user charges licensing and related information.

Third party involvement

- 47 Under the Land Transport Management Act (section 97) a number of functions have been delegated to third parties (individuals and organisations) who operate as regulators on behalf of NZTA (for example, for issuance of warrants of fitness, certificates of fitness, and driver licences). In this regard, the NZTA has a regulatory role for monitoring and evaluating the performance of these third parties.

¹¹ See Appendix 1 for more detail on legislation, regulations and rules.

¹² *Taking a strategic approach to the Transport Agency's regulatory and compliance work.* Board paper 2017/11/172 10 November 2017.



- 48 Some third parties are defined as key service delivery partners (KSDPs). KSDPs are defined as organisations that are contracted or appointed by NZTA to deliver regulatory products or services and who have sufficient market share and/or are of sufficient size and standing within an industry segment to be able to represent and influence the customer expectation of that industry segment.¹³
- 49 Many parts of the regulatory functions are performed by parties under contracts or similar agreements. In particular:
- a The New Zealand Police leads the road policing areas, including the Commercial Vehicle Safety Team, highway patrol, the Police Infringement Bureau and district road policing.
 - b VTNZ undertakes all of the driver licensing testing (around 3,000 tests a year).
 - c AA and VTNZ jointly manage renewals of driver licences and licence endorsements.
 - d The Low Volume Vehicle Technical Association (LVVTA) is contracted to administer modified vehicle standards and the Low Volume Vehicle certification system on behalf of NZTA.
- 50 Regulatory functions are primarily funded by third-party participants in the land transport system, such as the public and commercial operators. A Memorandum Account records the accumulated surplus or deficit arising from providing the functions in any given year.
- 51 KiwiRail is the owner of a significant volume of interconnected rail networks throughout the country (the National Rail System). In this capacity KiwiRail has responsibility for management of the infrastructure asset, and for granting permission for organisations to operate rail vehicles or perform services on the National Rail System. Operators must have and comply with the terms of an individual access agreement granted by KiwiRail. This agreement requires compliance with the National Rail System Standards and Rail Operating Rules and Procedures, which focus primarily on the interoperability and interface arrangements for safe rail operation on its network.
- 52 Irrespective of this, the NZTA has a primary role for rail safety regulation across all operators in the rail system.

Delivery on the role for NZTA

- 53 The Regulatory Group within NZTA is accountable for operational policy, entry, in-service performance, and exit functions to manage harms and risk for road and rail safety.
- 54 However, there is a range of capability in other areas of NZTA that also contribute to the effectiveness of the NZTA regulatory function, and which need to come firmly within the arena of regulatory activity. One is that of Road Safety, which is a focus of the Safety, Health and Environment Group. The Group is responsible for 'development of system solutions and interventions that consistently deliver positive improvements in land transport safety and environmental performance'. As noted above, NZTA already has responsibility for regulating for worker safety in the rail safety system.

¹³ <https://vehicleinspection.nzta.govt.nz/virms/entry-certification/intro/definitions-and-abbreviations>



- 55 Another is the role of regulatory leadership within the roading and rail systems, which is expressed through the Regulatory Management Strategy and Framework, the driving capability for which currently resides within the Strategy, Policy and Planning Group.
- 56 The intelligence and insights function that exists in the Operations Group to support service design has a wealth of information that is relevant to informing effective, risk-based regulatory decision-making.
- 57 The challenge is to ensure that these connections are made across the organisation to ensure that they inform the work of the Regulatory Group and are in turn informed by the Regulatory Group (for example, frontline insights to inform strategy and policy work, and regulatory insights for adopting a regulatory approach to Safety).

Previous reviews of regulatory functions

- 58 There have been a number of reviews of aspects of the NZTA regulatory function that have relevance for the current review.
- 59 Table 4 outlines four previous reviews.

Table 4: Previous reviews of regulatory functions

Review	Date
Inquiry into the performance of the New Zealand Transport Agency in relation to Dargaville Diesel Specialists – by Kristy McDonald QC	2019
Inquiry into the use of external security consultants by Government agencies – by Doug Martin and Simon Mount	2018
Independent Review of Driver Licensing End to End System Integrity – by KPMG	2016
A high-level plan for developing the New Zealand Transport Agency's rail safety regulatory function	2015

- 60 Much like this current review, each of these reviews was triggered by a serious incident or, in the case of the rail safety regulatory function, a concern that the function was not being appropriately resourced and delivered.
- 61 Each of these reviews found substantive problems with aspects of the regulatory function they investigated. Appendix 3 provides more detail about each review.

Common issues arising

- 62 Three common issues emerge from these reviews:
- a need to strengthen the regulatory 'systems' involved, including purpose, strategy, and processes
 - lack of effective and robust control mechanisms for entry and access to the key vehicle and licensing registers
 - lack of quality assurance to manage the performance of regulatory agents.

With the benefit of hindsight, in our view each of these reviews provided sufficient signals to identify much wider systemic issues within NZTA's regulatory function.



OUR APPROACH TO THIS REVIEW

Introduction

63 This section explains our sources of information for this review and the methodology we followed.

No attribution to individuals

64 In this report we have included a number of quotes from interviews, but we have deliberately not attributed any of these comments to specific individuals. Interviews and workshops were conducted in confidence.

Limitations of the review: A focus on key themes and patterns

65 This review was undertaken over three and a half months from January to April 2019, and included a significant number of interviews and documents to review. Due to the limited timeframe we have had to rely on identifying common themes and patterns of issues raised. We have not been able to undertake any deep dives into specific subject areas, such as the driver licensing regime.

Information gathering

66 This review has been informed by three main sources:

- a desktop material
- b interviews and workshops
- c additional information provided (including by email to a mailbox specifically established for this review).

Desktop material

67 We have reviewed over 250 documents provided by NZTA, the Ministry of Transport, interview participants and other sources.

68 We have also reviewed publicly available information such as transport-related legislation, Board minutes, Statements of Intents, Annual Reports, and website material about NZTA.

Interviews and workshops

69 We carried out 72 structured interviews with key stakeholders and subject-matter experts, including current and former Board members, executives and staff of NZTA, current and former Ministry of Transport officials, representatives of land transport sector interest groups and regulatory partners of NZTA, and representatives from other regulators, and we also held workshops with frontline NZTA staff.



- 70 Before each interview and workshop, we provided a schedule of proposed questions. Most interviews followed the structured schedule of questions, but some interviews focused on matters the interviewees specifically wanted to raise. See Appendix 2 for a sample of the interview questions used.
- 71 In drawing our conclusions from the information gathered we have triangulated what we have heard in a number of interviews with evidence in the documentation provided to us. We have not drawn conclusions based on the views of one individual. We have signalled where we are reporting on information reported in interviews, and this generally means from more than one. Where we are reporting on the views from a single interview in order to clarify a particular point, we have indicated that this is the case.

Information emailed

- 72 The Ministry of Transport established an email mailbox specifically for the review (NZTAregulatoryreview@transport.govt.nz). The mailbox was monitored regularly and documents relevant to the review were forwarded to the project team. We received 43 separate documents from the Ministry.
- 73 Any responses outside the scope of the review were separately managed by the Ministry of Transport.

Methodology

Scope of our analysis

- 74 The focus of the MartinJenkins review is 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’¹⁴. In this regard, the purpose of our review is to understand and assess the underlying causes that have contributed to the recent performance issues within NZTA’s regulatory function. This requires taking a backward look at the performance of the Agency and covering different points in time.
- 75 The terms of reference for our review included 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;

¹⁴ Terms of Reference into the New Zealand Transport Agency’s Regulatory Capability and Performance – Objectives of the Review



- 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.¹⁵

76 We have looked at the NZTA regulatory function from the time of formation of the NZTA in 2008 until mid/late 2018 when the backlog of non-compliance cases emerged and was being addressed.

The framework we used

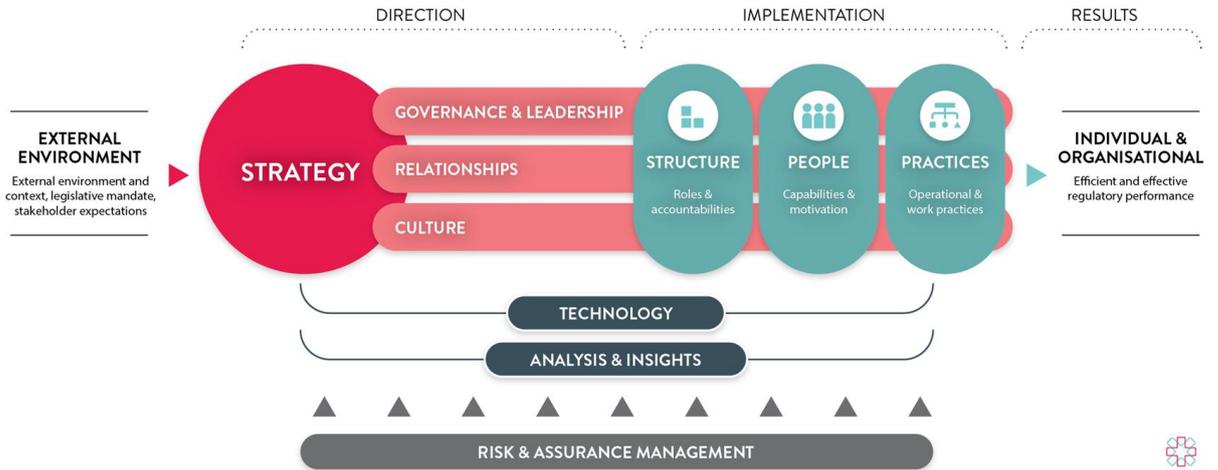
77 We have used a proven organisational capability and performance framework to guide our analysis for this review. This framework recognises that successful organisations seek to achieve efficient and effective performance results as shaped by expectations and factors in the external environment. To do this the organisation needs to apply capability across a number of dimensions, including strategy, governance and leadership, culture, structure, relationships, technology, analytics and insights, people capabilities, operational and work practices, and feedback loops via risk and assurance management activity.

78 This framework is illustrated in the diagram below:

¹⁵ Terms of Reference into the New Zealand Transport Agency's Regulatory Capability and Performance



Figure 2: Organisational capability and performance framework



- 79 The dynamic in the framework moves from left to right. Key influencers for organisational capability and performance are the external environment and in particular the legislative mandate and stakeholder expectations. These factors drive focus and strategy, which are also informed by technology and analytics insights. Governance, leadership and culture play a defining role for the behaviours, skills and work practices in the organisation.
- 80 Using this framework as a guide, we have assessed NZTA’s regulatory capability and the way the Agency is performing at different times against both expected good practice and as intended by the outcomes and provisions of the relevant legislation.
- 81 Applying this framework addresses the scope of the review required by the Ministry of Transport.



CONCLUSIONS

Introduction

- 82 This section of the report sets out our conclusions across the various dimensions of NZTA's regulatory capability and performance. The key conclusions arising from the analysis have been summarised in the Executive Summary of this report. This section provides more detail on these key conclusions.
- 83 The section that follows, 'Detailed analysis' (page 37), provides the assessment and findings that form the basis of the conclusions given in this section.

Overview: Regulatory failure and its causes

Regulatory failure

- 84 For the purposes of this review, regulatory failure is defined as that point where an intended regulatory outcome is not seen to be achieved, as evidenced by an incident or accident which otherwise would have been avoided through the actions of the regulator.
- 85 A recent example is the situation in January 2018 where a person lost their life in an accident, where their vehicle had a frayed seatbelt which snapped, and there was corrosion found on both front A pillars – but the vehicle had been given a warrant of fitness (WoF) in December 2017 by Dargaville Diesel Specialists (DDS) where, among other things, the WoF inspection failed to inspect the vehicle's seatbelt webbing properly.
- 86 This case was reviewed by Kristy McDonald QC who found that NZTA had known about issues of DDS non-compliance (and in some cases serious) with expected WoF practices over some years, but had not taken appropriate enforcement action to address this. DDS and its vehicle inspectors were permitted to continue issuing WoFs to New Zealand drivers for considerably longer than was reasonably safe.¹⁶ The failure of the WoF system in this case was an instance of regulatory failure.

There have been systemic deficiencies within NZTA leading to regulatory failure

- 87 There have been systemic deficiencies within NZTA's regulatory capability and function (as described here and under the next heading), which have led to instances of regulatory failure. In this area, our conclusions align with the conclusion of Kristy McDonald QC that the Dargaville Diesel Specialist situation was not an isolated incident, but was an example of wider systemic issues within the regulatory function of NZTA.¹⁷

¹⁶ Inquiry into the Performance of the New Zealand Transport Agency in Relation to Dargaville Diesel Specialist, Kristy McDonald ONZM QC, 30 January 2019 pp 11-12

¹⁷ Ibid p3



88 From our analysis of documentation over time and interviews, we conclude that there have been regulatory deficiencies occurring over time which in turn have contributed to regulatory failure.

Regulatory deficiencies have occurred at different points of the regulatory cycle and system

89 There was regulatory deficiency at the point of entry (and renewal of entry) into the regulatory system when NZTA treated the issuing to parties of licences to operate as those parties paying for a service, rather than their qualifying for a privilege to operate. There was regulatory deficiency at the point of operating within the system when operators were allowed to continue with non-compliant behaviours over extended periods.

90 Until around 2013/14 little attention was given to the regulation of rail. The Railways Act 2005 specifies an outcomes approach where operators take responsibility for managing rail safety risk through their safety cases, with NZTA providing initial approval and ongoing assessment of the safety cases. External reviews of the rail safety regulatory function identified significant issues in the rail area, including the level at which the rail safety regulator sits within the current NZTA organisational structure, the level of support and resources available to the rail safety regulator, the level of focus on compliance assessments, and the need for NZTA to actively promote its Independent Rail Safety Regulator as one of its key delivery services.

91 Since then work has been done to strengthen the resourcing of the rail regulatory function, and a rail regulatory strategy has been developed. However, given the need to effectively manage the potential for catastrophic risk, and the intensification of investment in rail activity (particularly passenger services), there is more work to be done to ensure that the strategy and resourcing are able to meet the demands that will be placed on the rail regulatory function.

92 The current work in strengthening NZTA's compliance function has addressed a failure to deal with non-compliance at the point of operating within the roading system.

93 Perhaps the most significant aspect of regulatory deficiency has been the failure to provide oversight and leadership over the regulatory system and the role and functions of NZTA within this system. NZTA has not had an overarching strategy or regulatory practice framework for leading, planning and operating as an effective road transport regulator across the entire system.

94 More work is required to ensure that recent developments are fit-for-purpose to:

- a fully support the role of NZTA as regulator across road, rail and safety management (including speed), and
- b guide its interactions with others in the sector who also have responsibility for regulatory activity within the system such as NZ Police, Local Authority Road Controlling Authorities, Key Service Delivery Partners, and others with delegated responsibility for regulatory work (such as WOF and COF certifiers).

There is no single cause for regulatory failure

95 There are several causes, and they are not associated with one specific point in time. Causes relate to:

- a lack of effective oversight of the regulatory function dating from the formation of NZTA



- b NZTA focusing specifically on customer service at a key point in its evolution, which overshadowed focus on regulatory actions
- c the inability to develop a single end-to-end regulatory strategy for the function until it was too late – developmental work on this was overtaken by the need for a concentrated focus on non-compliance issues
- d the lack of robust, practical good-practice guidance for frontline staff in making effective regulatory decisions – that is, the tools to translate strategy into action
- e a weak mandate from senior management to enable and support frontline decision-making to address issues of non-compliance, and
- f the degeneration of regulatory capability in the road transport area, and the immaturity of this capability in the rail area.

Overshadowing of regulatory function by customer service focus and preoccupations with other NZTA functions

Regulatory responsibilities have been overshadowed by other preoccupations

- 96 Messaging in Transport GPS, Letters of Expectation and other whole-of-government messages (such as Better Regulation, Smarter Regulation) have naturally shaped the attention and activity of the Board and Executives at various times right up to the present.
- 97 In NZTA, as a multi-dimensional organisation where the regulatory function has been less prominent in terms of size, money involved and profile, these other messages would seem to have contributed to NZTA paying less attention to its regulatory responsibilities and how they are being discharged within the organisation.
- 98 In this way the regulatory responsibilities of the Board were overshadowed by other preoccupations with infrastructure and investment considerations, despite the regulatory function being a statutory responsibility under the Land Transport Management Act.
- 99 Having said this, we note that the regulatory responsibilities and regulation activities are given appropriate prominence as a key functional area for NZTA in the Statements of Intent in the early years.
- 100 Similarly, the regulatory function was overshadowed by other preoccupations with infrastructure and investment considerations at senior management (ELT/SLT) levels within the organisation. This meant that it was left to track along as it always had for the first few years after the NZTA was formed.
- 101 We did not see any evidence of an embedded, ongoing mechanism at Board or Executive level to regularly 'check in' on whether NZTA was complying with its statutory mandate, and particularly with regard to the regulatory function.



There has been a weak focus on the regulatory function

- 102 When NZTA was formed, the focus of the Board and senior management was on infrastructure and investment responsibilities. The regulatory function was a small area of activity by comparison and was not a focus in the reasons for establishing NZTA, nor in expectations from the Minister.
- 103 Board 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. Generally, however, there has 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.
- 104 For the Board there were no perceived issues in the regulatory area until 2015/16, when there were concerns about rail regulation and driver licensing. From early days the regulatory area was designated as low risk, and specific attention was not prompted.
- 105 Nor did the Board seem to proactively question the performance of the regulatory function. In fact, it is not clear that the Board over time fully understood its regulatory responsibilities as defined in the legislation, until the recent focus on compliance and enforcement.
- 106 Evidence of this was the restructuring of the Board Committees in 2010. An initial Regulatory Board Committee had been established, whose purposes included, among others, to 'provide independent expert advice and assurance' to the Board 'regarding the exercise of its statutorily independent functions'¹⁸. However, following the review of Board Committees in 2010 it was decided that this committee was not necessary, and regulatory matters were transferred to the newly formed Investments and Operations Committee (I&O). The I&O Committee had a major focus on investments and operations, alongside regulatory function performance.¹⁹
- 107 The regulatory function did get some attention in late 2009/10, probably due to the wider government interest in Better Regulation, Smarter Regulation and the expectation for reducing compliance costs in all government agencies.
- 108 In the light of current theory around willing compliance and government objectives for reducing the compliance burden, it was concluded by senior management that the work of the regulatory function, particularly in the regions, was too strongly focused on addressing strict compliance with the land transport rules and regulations.
- 109 At this point the Access and Use Group (A&U) embarked on a transformation programme, with a vision for the next three years to: 'introduce change that will transform the A&U business to align with the CEO priority by reducing compliance costs, improving levels of customer service and modernising our business tools'.
- 110 From this point a preoccupation with a customer service ethos was a key factor in shaping the approaches to regulatory activity.

¹⁸ See Terms of Reference – Regulatory Board Committee.

¹⁹ See Terms of Reference – Investment and Operations Board Committee.



There has been a powerful focus on customer service

- 111 The interest in adopting a customer service approach began in 2009/10, gained momentum over the next few years, and was particularly strong in 2013/14. Regulated parties were seen as customers to whom NZTA provided services that enabled the customers to willingly comply with their obligations for land transport safety.
- 112 The rationale was that, in order to influence behaviour, the regulator really needed to understand the customer's unique situation, need and challenges, and work towards achieving willing compliance through addressing these needs.
- 113 The interpretation of the regulatory theory of the day was that one might assume that the vast majority of 'customers' would willingly comply. Customers included the general public, commercial transport operators, and those parties who were carrying out a function on behalf of the NZTA (both organisations and individuals).
- 114 The role of the regulator was perceived through a customer service lens, which encouraged communication with customers, understanding and responding to their needs, and making transactions as efficient as possible.
- 115 Enforcing compliance was recognised as an option but was often seen as the intervention of last resort and was significantly overshadowed in messaging by a more communications-oriented, customer service approach.
- 116 Further evidence of the strong effect of the customer service ethos is seen in the orientation of NZTA at this time to its role at the point of entry (and re-entry) of participants into the land transport system.
- 117 The work around entry/access to the system was seen by NZTA as providing a service or product for a fee.
- 'NZTA customers purchase products or services to gain access to the network, directly or via agents, and the Agency then regulates them as network users.'*²⁰
- 118 This seems a fundamental misunderstanding of the nature of the regulatory system and the role of the regulator at this point within it.
- 119 This orientation, which saw access as a transaction point, was ripe for attention from a customer service angle – to make it more efficient and easier for the customer.
- 120 Similarly, renewals were also seen as transactions where services were provided for a fee. There was therefore a focus on how to make the transaction more efficient, sometimes at the expense of regulatory effectiveness.
- 121 The development of an Access and Use business strategy for becoming a 'World Class Regulator' (2012/13) put customer service first and regulatory functions second. One plank in this

²⁰ The Access and Use Compliance Model 2012, page 8.



strategy was an A&U Compliance Model (2012) that reads in part like a Customer Service manifesto aimed at driving out any past notions of being compliance-oriented.

'To truly understand our customers, we must talk to them (not always audit or investigate), know them, know their unique individual and collective challenges, have honest and hard conversations before we determine a course of action to create a transport solution²¹.'

- 122 There are assumptions here that a customer service approach will deliver the required regulatory outcomes if we just keep trying and trying. We don't see any evidence of NZTA applying negative intervention logic (that is, a testing for the possibility of different outcomes) that might have flagged inherent risks in the assumed logic.
- 123 The competency of staff at senior leadership levels in Access and Use from 2012 onwards was primarily in customer service and operations management, and not in regulatory management or practice.
- 124 The focus on customer service was alluded to by the Performance Improvement Framework Reviews conducted in 2010/11, 2012 and 2017/18, which recognised the challenge of attaining a balance between effective regulatory performance and a focus on customer service, while supporting the compliance focus.²²

Experience, capability and culture among senior leaders

Regulatory experience at senior leadership levels has been weak

- 125 Over 2012–15 NZTA recruited individuals into senior leadership roles in Access and Use who had strong skills and experience in customer service and operations management. These were talented people with a passion for the service ethos, but with little or no experience in regulatory issues (other than attending training or conferences).
- 126 Staff perceptions were that these senior leaders were determined to change the focus away from what they saw as a heavy compliance orientation to one that saw (in the words of some frontline staff) 'hard enforcement action as a failure'.²³
- 127 There were presentations, workshops and written messaging on the 'new way' that people were expected to behave.
- 128 Staff at lower levels of management had some regulatory experience (Tier 3 and below), but their voice was not heard at senior levels, particularly at ELT.
- 129 This continued even until the later period when the Transport Access Delivery (TAD) function was established. The head of this function was a Director and a member of SLT, but not a member of ELT.

²¹ Access and Use Compliance Model 2012 p

²² See discussion on PIF reviews later in this report.

²³ From interviews and workshops with staff who were in the organisation at the time.



130 This situation meant that there was now no representation of the regulatory function at ELT. In a situation where ELT members had no regulatory experience, this meant that the voice of a key function of the Agency was not able to be heard as it should have been.

There has been a lack of visibility of regulatory issues and risks at Board and ELT

131 Reporting to the Board on regulatory risks was generally light. In the first years of the NZTA the regulatory function was viewed as low risk, and other matters gained more attention. In our view there were only weak signals going to the Board in reporting, and no-one on the Board had strong enough regulatory antennae to hear or see these signals. From 2016, internal audit reporting was summarised for the Board Audit and Risk Assurance Committee, which made it a challenge to identify issues at Board level. The Board did identify some regulatory compliance issues in 2018 and took some action to address them.

132 This was reinforced by interviewees, where generally people could not recall any discussion on regulatory risks or could only recall one or two small matters being raised – both early on and more recently (until mid-2018). When prompted there was a retrospective reflection that perhaps the ‘regulatory part was not getting enough attention’. Board members reflected that ‘there was something wrong in our reporting’ why they did not know about the regulatory failure in the system.

133 Interviews with senior managers also indicate that there was little or no discussion around regulatory matters and risks from 2016 at ELT level within the organisation.

134 As noted above, the Regulatory Board Committee was subsumed into the Investment and Operations Board Committee in 2010, thus removing a vehicle at Board level that had a sole focus on regulatory matters.

135 In our view this was a critical decision point. While the intention was to ensure a more streamlined, fit-for-purpose and integrated Board committee structure, the risk was that, if not well managed, the investment side would dominate any regulatory considerations at the Committee.

136 There were weak signals of risk in some reporting that do not seem to have been interpreted as signalling something more meaningful to follow up on (for example, ‘partially effective’ ratings in internal assurance reporting).

A pervasive culture of bad news being unacceptable influenced communications to managers and the Board

137 We also observe that there was a culture of bad news not being acceptable at senior management levels, particularly from 2016. Interviews and comments from frontline staff support this conclusion.

138 We found no evidence that bad news was not acceptable at the Board level. However, often the Board just did not get bad news reported to it.²⁴

²⁴ See our commentary in the section of the report on Risk and Assurance



- 139 Interviews and comments from frontline staff support this conclusion.
- 140 In line with this, when reviewing documentation from 2016 onwards we observed a tendency for regulatory papers to the Board to provide updates on process, rather than the substantive findings or impact – until mid-2018 when there was an increased focus on regulatory risk at Board level.
- 141 In this later period (2016–18) some reports also did not make it to the Audit and Risk Assurance (ARA) Committee or the Board, such as the Review of Adjudicators, and this would have prevented the Board from having effective oversight. In this period internal audit reports were vetted by senior managers ('sponsors') and sometimes negative messages were diluted before any reporting to the Board.

Audits and risk management

There were critical flaws in NZTA's internal audit process

- 142 In our view, in the period 2016–19 there were some critical flaws in the NZTA internal audit process. In particular:
- a The near-final reports go for sign-off to the sponsor who is responsible for the area. This reduces the independence of the review, because the sponsor is not limited to fact-checking only. We were made aware of at least one case where the sponsor had amended the risk rating from 'not effective' to 'partially effective', to effectively fly under the radar. This amended rating was the one later reported to the Board Audit and Risk Assurance Committee.
 - b Only a short summary of the internal audit is presented to the ARA Committee. Typically, the Committee receives a couple of paragraphs and an overall effectiveness rating. This reduces the Committee's ability to fully understand the issues at hand. The Board then receives its reporting from the ARA Committee, effectively a summary of the summary.
 - c Business units have a culture of carrying out a pre-audit before the audit. On the face of it, this approach has merits, but we were told by frontline staff that often negative information identified in the pre-audit is not disclosed or is hidden from the auditors.
- 143 The independence of the internal auditor is at question when audit results are shaped to meet the requirements of internal management.
- 144 We understand that most recently, in April/May 2019, the processes for scrutiny and management of internal risk and assurance reports has been tightened to increase oversight and integrity:
- a The Audit and Risk Assurance Board Committee now receives full audit reports
 - b the Chief Executive reviews all audit reports, and meets quarterly with the General Manager Corporate Services and Senior Manager Audit and Risk to discuss the reports, and



- c General Managers are now required to accept the actions from audit reports and sign them to confirm that they will be implemented in accordance with the agreed management response.

There has been a lack of continuous risk management strategy for the regulatory functions

- 145 We would describe NZTA as immature in regulatory risk and assurance management. The focus on risk and assurance has been intermittent, particularly when key issues are signalled, but light in terms of strategy and ongoing monitoring. We suspect this has been the case since NZTA was established.
- 146 Based on our interviews and the documents we received, we did not observe a clear and continuous risk management strategy in place for the regulatory functions. In 2016 an independent review by EY found that 'risk management, particularly around large risks (delivery, property programme, ERP) are managed within silos, with little evidence of this occurring cross-Agency'.²⁵

OAG external audits have a much narrower focus and do not pick up regulatory failure

- 147 The external audits by OAG (via KPMG) have not led to regulatory concerns. This is partly due to the auditing standards, which restrict the scope to a main focus on whether the money appropriated by Parliament has been used as intended, and also because they focus only on whether the performance assessment is reasonable, not whether the agency should be concerned about the assessment.
- 148 One of the ways that performance failures can be identified is through public complaints or requests for enquiries to the OAG. The OAG reported to us that they have received only one complaint about the regulatory part of NZTA over five years.
- 149 The Auditor General has the ability to decide to conduct performance audits at its own discretion, and did conduct some performance audits of NZTA functions in the period covered by the current review. However, none of these were in the regulatory area.

Ministry of Transport monitoring over the years has faced challenges for raising issues of regulatory failure

- 150 This report does not address in detail the Ministry of Transport's monitoring of NZTA as that is a focus of a separate report to the Ministry.²⁶ However, we do make the following observations:
- a The factors at play in the relationship between NZTA and the Ministry of Transport as monitor are complex, and therefore warrant a separate assessment.
 - b The experience of monitoring was one where there seemed to be issues and challenges on both sides.

²⁵ New Zealand Transport Agency Summary Report, 27 May 2016, prepared by EY.

²⁶ MartinJenkins is providing the Minister of Transport with a separate report on the Ministry's monitoring of NZTA.



- c From the Ministry's perspective NZTA was at times quite resistant to the monitoring role, becoming quite defensive when issues were raised. In addition, NZTA was slow or resistant to providing information that had been requested to support an assessment, or it provided a mass of information that was difficult to navigate.
- d From NZTA's perspective, at times when the Ministry's comments were perceived as focusing on costs and inputs rather than outcomes NZTA found it hard to see the value that the Ministry's monitoring role was providing.
- e The Ministry has recently developed a refreshed approach to monitoring and is currently using this approach in its monitoring role.²⁷

Regulatory strategy, leadership and culture

There was no real strategy for the end-to-end regulatory function and system until around 10 years after NZTA's formation

- 151 Earlier approaches to regulatory activity were defined by the prescriptive requirements of legislation, regulations and rules.
- 152 Later approaches and regulatory operating models for road regulation were informed by interpretations of modern regulatory theory and customer service ethos. These were driven by specific individuals with a passion for and expertise in efficient customer service delivery.
- 153 Following the review of the approaches to rail regulation and the appointment of staff with regulatory experience, the rail regulatory area developed a good-practice regulatory strategy and framework (2015/16).
- 154 For roading regulation, it is only after the transformation process in 2017 with the creation of the Transport Access Delivery (TAD) Group that we see attempts to develop a regulatory management strategy and a capability framework to give effect to this. As with rail, there were individuals within this group who had an understanding of the need to develop the regulatory oversight instruments needed to guide a balanced approach to regulatory practice. These strategies were developed also in conjunction with expertise in the Strategy, Policy and Planning Group of NZTA – realising the cross-team collaborative dynamic that the transformation was designed to achieve.
- 155 The recent strong focus on compliance enforcement activity has placed further development of these strategy statements, frameworks and their promulgation within the organisation on hold.
- 156 We note that these later planning documents make more reference to 'regulator' and 'regulated parties' than to 'customer'.

²⁷ NZ Transport Agency – Monitoring approach, December 2018 (draft).



Leadership and culture that are the hallmarks of an effective regulator are missing at NZTA

- 157 We would expect to see in an effective regulator a strong collective leadership and culture where there is a clear, shared vision that provides a solid underpinning for regulatory planning and decision-making at all levels. This is missing in NZTA. There are, and over the years have been, differing understandings at leadership, management and staff levels as to what the underlying mandate is for regulatory work and decision-making.
- 158 We would expect staff to be empowered by a clear mandate and supported by their managers in their decisions. It is not enough to simply have the delegated authority.
- 159 The mandate and support from leadership is and has been lacking. At times staff have received messages that run contrary to what they are seeing needs to be done. At other times they have been castigated and even publicly rebuked for making what they have seen as the right decisions, particularly regarding decisions to enforce compliance.
- 160 There has not been a culture of enabling people in their work, resulting in uncertainty and people being afraid of making decisions.
- 161 As a result, staff either have taken a soft option approach (and in some cases are directed to do this even in the Standard Operating Procedures (SOP)) or have passed the decision up the chain to the next level or across to the adjudicators (causing bottlenecks) or, as we have been told, they have ignored the issue and taken the attitude ‘Why bother, as any hard action will not be condoned by senior management?’.

Structure

Structure has been an ongoing challenge for achieving and supporting a consistent regulatory approach

- 162 NZTA structural arrangements over the years have presented significant challenges for developing an end-to-end approach to regulatory activity and for developing a consistent culture across the regulatory functions.
- 163 The structure of NZTA from inception was one of three quite separate functions (infrastructure, investment and regulation) from previous separate organisations – three disparate functions with different preoccupations, ways of working and cultures.
- 164 Infrastructure and investment were the dominant functions in terms of attention and influence within the organisation.
- 165 The regulatory function was also siloed into separate areas of focus. This was recognised as a challenge for a common, consistent approach to regulation.
- 166 Despite attempts from successive CEOs the silos were never broken down. In this regard, the absence of a regulatory strategy to guide decisions on resourcing and activity within and across the regulatory function would not have helped.



- 167 Lack of strategy and siloed activity in the structure also encouraged or reinforced a delivery approach rather than one of a focus on regulatory outcomes. There were little pockets of excellence, often driven by particular individuals. So you get a cycle of project-based activity rather than strategy-driven activity.
- 168 On the positive side, the establishment of a separate Regulatory Group in late 2018 with a General Manager reporting to the Chief Executive provides for greater visibility and emphasis on NZTA's regulatory functions and responsibilities within the organisation.

Regulatory capability and supporting resources

NZTA faces challenges in its regulatory operational capability

- 169 The conceptual model adopted as a regulatory framework for the regulatory function for road and rail is that of Braithwaite's pyramid for responsive regulatory approaches to differing attitudes to compliance, with a risk and public interest overlay. This reflects generally accepted good practice among regulators globally and in New Zealand.
- 170 NZTA need to do a lot a more work on the tools and training that enable staff to apply the conceptual framework. As the Agency recognises itself:
- '... we are needing to address now legacy regulatory system, particularly compliance and enforcement policy, practice and capability, needs that have not been high priority for some years.'*²⁸
- 171 There are challenges with the levels of maturity of staff for regulatory competency (versus technical competency – although a lot of this has also been lost over the years). There are also not the mechanisms in place to address this in terms of a well-developed practice framework, guidelines (other than often outdated SOPs), or operational policies and practices to guide consistent regulatory decision-making.
- 172 These gaps have been identified through the current compliance work being conducted and highlighted in the recent inquiry by Kristy MacDonald QC – that is, some of the basics were just not happening or in place.
- 173 In late 2017 after the formation of Transport Access Delivery (TAD) there was an opportunity for a focus on the regulatory compliance function that had not existed before. At this time work was initiated on developing capability frameworks, strategies and compliance models to address this regulatory skills gap. This work has been put on hold due to the current focus on sorting outstanding compliance issues.

The analytics and insights needed to support regulatory strategy and decision-making are under-developed at NZTA

- 174 The two main registers that support regulatory activity in road transport (the motor vehicle register and driver licensing register) are old and need to be replaced by more modern infrastructure

²⁸ See the Terms of Reference for a proposed review of regulatory operations in June 2018.



solutions. There are issues of data integrity and a lack of integration of data across these databases. This poses significant challenges for analysis and insights to inform regulatory decision-making.

- 175 Our assessment is that NZTA has struggled to sustain a high-performing internal analytics and insights function within the regulatory area. This may have been inherited from LTNZ days. One interviewee commented that in '2005 we realised as a regulatory agency we needed to develop some form of intelligence. Had three or four attempts at this. Never cracked it.'
- 176 Our view is that the organisation has mainly relied on intelligence from the sector and staff and other independent sources (such as reviews) for its insights, rather than supporting a dedicated function to achieve this. Staff described the organisation as 'data rich but intel poor'.
- 177 In the 2018 PIF review, the report noted that NZTA will need to lift its capability and its capacity in data analytics and insights. Much of the information available now is not used or not used to its full potential; that is a dividend sitting on the table.²⁹

There has been under-investment in the regulatory capability and resourcing needed to do the job well

- 178 The work of the regulatory function is funded from fees and charges, and as such is subject to the amount of the fee and the amount of activity engaged in.
- 179 The Access and Use (A&U) Group embarked on a transformation programme in late 2010, with a vision for the next three years of transforming the A&U business by reducing compliance costs, improving levels of customer service, and modernising business tools, in particular IT infrastructure.³⁰
- 180 The programme faced some challenges, including funding for initiatives. The programme acknowledged that A&U had inherited a financial situation where the cost of delivering its regulatory and compliance services was more than the revenue received. In 2011, there was a deficit of around \$6 million.
- 181 Over the next four years or so, NZTA managed to reverse this situation to the point when there were positive surpluses in the regulatory accounts. This enabled increased investment in initiatives in the regulatory function. However, the focus of this investment seemed more in the area of achieving efficiency gains to improve the customer experience (such as an improved driver licensing experience) than to support capability building for regulatory effectiveness.

NZTA has a regulatory workforce that is passionate about land transport safety

- 182 NZTA has a regulatory workforce that is passionate about land transport safety and the elimination of harm from the land transport system.

²⁹ Review for the New Zealand Transport Agency Waka Kōtahi, April 2018

³⁰ A&U Transformation Programme, Future State Visioning, Business Operating Model Report, 17 December 2010.



183 There are individuals within the Agency who really care about what they see as their role, and who understand what it means to be an effective regulator.

Recent initiatives show positive progress for strengthening approaches to regulatory strategy and management

184 Since the end of 2017 and the beginning of 2018 there have been positive signs of people putting more focus on the regulatory function and beginning to develop key building blocks, although this has been delayed with the current focus on strengthening compliance activity.

185 Work has been completed on a Regulatory Management Strategy (which has been endorsed by the Board), and a draft Compliance Intervention Model reflecting good regulatory practice has been developed. These frameworks still require further work to ensure they are fit-for-purpose to fully support the role of NZTA as regulator across road, rail and safety management.

186 Work has also been progressed on establishing a capability framework to support regulatory objectives. This is still in development and needs further work to ensure that it aligns with strategy and reflects a comprehensive statement.

187 The establishment of a separate Regulatory Group with a focus for regulatory management, and with a General Manager reporting to the Chief Executive, will lead to more informed discussion on regulatory issues at senior management levels.

188 Recent uncovering of failures of compliance and enforcement has meant a short-term focus on addressing these failures through an increase in the compliance and enforcement activity of the Agency. This has successfully cleared a backlog of cases and strengthened processes around the taking of enforcement decisions. Meredith Connell has assisted in leading this work.

189 There is a current focus on re-building NZTA's regulatory capability through:

- a developing a clear statement of purpose for the regulatory function
- b clearly defining accountability for decision-making and service delivery
- c empowering frontline staff to make the appropriate decisions for compliance intervention, and
- d ensuring that front-line staff feel they have a clear mandate from senior management to support their regulatory decision-making.

190 Given the current strong focus on strengthening the compliance and enforcement activity within the NZTA regulatory function, there is an inherent risk to be managed of a pendulum swing towards this orientation as the default position for regulatory decision-making.

191 We understand that, having addressed the backlog of regulatory decisions, the current Board is now committed to addressing the forward-looking strategy (including developing and operationalising best regulatory practice). This work has now started.

192 An effective regulator will take a balanced approach to regulatory activity, one that is informed by a regulatory strategy for making decisions and choosing interventions that are outcome-focused and that address attitudes to compliance and the level of risk and potential for harm. This means working with a regulatory toolkit that spans a spectrum of regulatory choices across information



provision, education, and directional and enforcement activity for influencing behaviour at system, organisational or individual levels.



DETAILED ANALYSIS

This section presents our assessment of NZTA's regulatory capability and performance against the dimensions of the organisational capability and performance framework outlined above in 'Our approach to this review' (see page 18).

Strategy

Expected good practice: Strategy

- 193 Good-practice regulatory decision-making and activity is underpinned by a clearly articulated regulatory strategy and approach and regulatory practice framework.
- 194 Regulatory strategy sets the aims and purpose for the regulatory work, shapes the work programme and includes:
- a purpose, principles, core functions, links to the agency's legislative mandate, approaches to risk and compliance management, the basis for intervention choices and priorities (supporting a balanced use of interventions for education, engagement and enforcement), and the basis for choices about investment and resource management to support effective regulatory activity
 - b a focus on the regulatory system and regulatory stewardship and leadership to ensure sustainability of good regulatory practice and ongoing continuous improvement of safety performance from regulated parties, and
 - c mechanisms and measures for assessing how effectively the strategy has been implemented.
- 195 A regulatory practice framework translates the strategy into action through providing:
- a pathways for effective decision-making (triage, and intervention decision models), guidelines for good-practice regulatory approaches to operational policy and procedures, and a range of tools for use in intervention approaches
 - b roles and associated competencies for regulatory activity.
- 196 Key influences on regulatory strategy will be the agency's legislative mandate (what it is expected to focus on under statute), and current understandings of effective good regulatory practice (which are reasonably well-developed globally and among New Zealand regulators – see the work of the Productivity Commission 2014, the output of the Common Compliance Capability Programme 2011, and Government expectations for good regulatory practice, April 2017).
- 197 An agency's Board plays a key role in setting strategy, together with senior management. The Board is the overall approver of the strategy. In the case of NZTA this would be expected to span all three main areas of infrastructure, investment and regulation.



What we observed: Strategy

Current focus on non-compliance management

- 198 NZTA has a current focus on addressing non-compliance with expectations, particularly in the area of road and vehicle safety. This has been in response to a number of instances of serious non-compliance with requirements for Warrant of Fitness and Certificate of Fitness testing by third parties, and also the certification of engineering for vehicle tow bars, and a number of other areas of non-compliance.
- 199 These issues have been a recent preoccupation for the organisation, and expertise has been contracted in to address this: a Partner from Meredith Connell as Regulatory Compliance Lead on the non-compliance project and resource to assist with compliance enforcement work.
- 200 The Regulatory Compliance Lead has also been working on developing a refreshed strategy for the regulatory function, which we understand will have the following core elements:
- a a statement of clear purpose for the regulatory function
 - b clarity of accountability for decision-making and service delivery
 - c empowering of frontline staff to make appropriate decisions for compliance intervention
 - d a clear mandate from senior management to support frontline decision-making.
- 201 The intent is to: ensure that there is absolute clarity on the role for the regulatory function; support staff in their decision-making; and remove regulatory risk from non-compliance by regulated parties.
- 202 This has been described as taking the regulatory function 'back to basics'.
- 203 In the short term, this means narrowly defining regulatory strategy to address short- to medium-term issues and perceived risks from non-compliance.
- 204 It does not articulate a balanced approach to regulatory activity, one that is informed by a regulatory strategy for making decisions and choosing interventions that are outcome-focused and that address attitudes to compliance and the level of risk and potential for harm. A balanced approach to regulatory activity includes working with a regulatory toolkit that spans a spectrum of regulatory choices across information provision, education, and directional and enforcement activity for influencing behaviour at system, organisational or individual levels.
- 205 The current narrowly defined regulatory approach does not address the need for the longer-term strategy that will ensure the agency is responsive to changes in the environment and that it develops and sustains the regulatory capability needed for this.

Evolution of regulatory strategy over time

- 206 Since NZTA's inception, there have been varying understandings and expressions of regulatory strategy within the organisation.
- 207 The main definers of regulatory strategy in the early days of NZTA appear to be the requirements in the relevant legislation, regulations and land transport rules. This is reflected in a paper to the Board's Regulatory Committee in 2009:



*'The regulatory functions are set out in the Land Transport Management Act 2003, Land Transport Act 1998 and associated rules and regulations. Together they set out the requirements on the agency, participants, agents and others to ensure that risk is appropriately shared and managed.'*³¹

- 208 The legislation and rules are quite prescriptive, and this may have encouraged NZTA to focus on the specific activities required of it rather than taking a broader view.
- 209 A review of issues in 2011 found that there was and had been a 'dominance of compliance thinking and action and experience'³² in NZTA's Access and Use function. The review concluded that a 'number of staff would like to operate in a different manner, but believe they are prevented from doing so by rigid legislation and rules, and by funding constraints.'³³
- 210 The Agency's main focus at this time was on responding to the government's agenda for developing the transport network and infrastructure, and this may have dominated the discussions around strategy and tactics at Board level. Assumptions were made that the regulatory function was not an area of risk or priority, and this function was essentially left to its own devices to get on with the job.³⁴

Performance Improvement Framework (PIF) Reviews

- 211 The Performance Improvement Framework (PIF) was developed by the State Services Commission, the Treasury and the Department of the Prime Minister and Cabinet, with the first reviews conducted in 2010. The PIF Review is intended as an organisational development tool, with a focus on the future, having relevance for the organisation's strategy; as such, it is not intended as an audit or assessment of current service delivery or a performance audit.
- 212 PIF Reviews challenge and support Public Service leaders to drive organisational change over the medium term, building agency and sector capability to deliver better outcomes for New Zealanders.
- 213 Independent reviewers lead each PIF Review. They ask 'What is the contribution New Zealand needs from this agency?'. They consider where the organisation will need to focus over the next four or more years to achieve a substantial lift and shift in its future capability, its contribution to system performance, and its ability to support current and future governments. They rate various aspects of the organisation as to how well it is preparing for the future. The reviewers may also identify strategic issues that, if not addressed, will be a brake on future performance. The organisation responds with a commitment to focusing on priorities for organisational improvement.
- 214 In the light of all this, the organisation takes assurance from the assertions of the PIF Review that it is on the right track to meet the challenge for the future, or needs to adjust its focus and activity

³¹ Report on Regulatory Functions to Regulatory Board Committee 7 July 2009.

³² A&U Group – Report on Organisational and Structural Issues, and Recommended Changes to Implement the Future State Vision (Gow/Crequer), 15 April 2011.

³³ Ibid.

³⁴ Interviews with Board members and Executives at the time support this conclusion.



as indicated in the ratings provided, and this is reflected in the organisation's response and commitment statement or action plan that accompanies each PIF Review report.

PIF Reviews of the NZTA

- 215 NZTA has experienced two PIF Reviews (2010/11 and 2017/18) and one Follow-up PIF Review (2012).
- 216 The 2010/11 PIF Review commentary addressed the main areas of focus or activity of the Agency across investment and infrastructure development and the regulatory function. The effectiveness of safety priorities, regulatory functions and regulatory impact and management were rated as 'needing development', and as was the need to address ageing supporting IT infrastructure for the regulatory function.
- 217 Core activities of driver licensing, vehicle registration, review of RUC, licensing of rail, and licensing and warranting of vehicles and operators were seen to be 'proceeding well'.³⁵
- 218 We note that (in keeping with government priorities of the day) the 2010/11 Review acknowledged the regulatory challenge of reducing compliance costs while maintaining a compliance focus and a customer service orientation, commenting that there was still some room for improvement.³⁶
- 219 The 2018 PIF Review endorsed the changes to the NZTA operating model from a functional focus to the value chain approach, particularly for the effect this would have for 'bringing "service" and the "customer" to be the central focus' for the organisation as a whole, including the approach to regulation.³⁷
- 220 NZTA leadership picked up on this endorsement as an 'opportunity to improve our regulatory systems to ensure they are both relevant and responsive to current and future customers and technologies'.³⁸
- 221 Given the more strategic nature of the PIF Reviews, the reviewers will not see performance detail that might signal some deep underlying or systemic issue within the regulatory function. Nevertheless, there are assessments in both the early and later Reviews that provide some indications of potential risks to address. We have indicated the 'needing development' ratings for the regulatory function and regulatory management and impact in the PIF Reviews of 2010/11 and 2017/18.
- 222 In addition, the 2010/11 and 2012 Reviews both suggested that there seemed to be a lack of senior management capacity focused on safety, with no 'safety champion' as such. The comment was made that the NZTA's deliberate position was that 'everyone had safety in their job

³⁵ Performance Improvement Framework – Formal Review of the New Zealand Transport Agency (NZTA) May 2011 p 23

³⁶ Ibid p16

³⁷ Performance Improvement Framework Review of the New Zealand Transport Agency Waka Kōtahi April 2018 p16

³⁸ Ibid p 6



description' but that this approach is not enough for a safety focus. The coordination of safety by the Strategy and Performance Group was not regarded internally or externally as successful.

223 The 2017/18 Review acknowledged some recent issues with the integrity of the driver licensing system and 'the challenges of delivering smart, robust services that meet customers' needs and enable innovation while maintaining the safety and integrity of transport services.'³⁹

An emerging focus on customer service in strategy

224 Providing value for money was and is always a priority for any government agency. NZTA is required to take account of value for money when giving effect to the Government Policy Statement on Transport (GPS). This was expressed as a strategic priority in the Statement of Intent 2009–12: 'Improve customer service and reduce compliance costs'. To give effect to this priority, NZTA would, among other things:

- a embed the customer service ethos into the NZTA
- b develop the NZTA customer service model
- c introduce monthly customer surveys.⁴⁰

225 This strategic focus on customer service was applied not just to regulatory activity but to all areas of NZTA's business across Access and Use (A&U), Highways and Network Operations (HNO), and Regional Planning & Partnerships (RP&P).

226 The A&U Group embarked on a transformation programme in late 2010, with a vision for the next three years to:

*'introduce change that will transform the A&U business to align with the CEO priority by reducing compliance costs, improving levels of customer service and modernising our business tools.'*⁴¹

227 This transformation programme had three areas of focus: enhancing business efficiency, improving customer service, and modernising IT infrastructure. The programme faced some challenges, including funding for initiatives.

228 The land transport funding system is set up so that land transport user fees and charges (driver and operator licensing, WOF/COF fees and toll collection) fund NZTA regulatory activities for licensing, audit, inspection and enforcement activities, administration of the driver licensing and transport service licensing registers, and tolling operations.

229 The transformation programme acknowledged that A&U had inherited a financial situation where the cost of delivering its regulatory and compliance services was more than the revenue received. The net financial situation of the regulatory function was a deficit of \$6 million in 2011.⁴²

³⁹ Ibid p 39.

⁴⁰ Statement of Intent 2009–12, p 23.

⁴¹ 'A&U Transformation Programme, Future State Visioning', Business Operating Model Report, 17 December 2010.

⁴² From interviews with executives and confirmed in the document 'Access and Use Group, Delivering long-term value for money through business transformation', December 2015.



- 230 NZTA recognised the need to address this deficit and over the ensuing four years they moved from a situation of deficit to a net surplus of \$11 million in the memorandum account in 2014/15.⁴³
- 231 This was seen as providing an opportunity to address the historical under-investment in infrastructure, and for modernising business systems and processes to enable future step changes in efficiency, and in particular to increase digital service delivery.⁴⁴

Customer focus overshadows the regulatory role

232 A five-year roadmap was developed for the Access and Use Group in 2012, which committed the Group to be:

- a balancing the tensions between managing safety risk, providing quality customer services and compliance costs
- b providing customer choice and services that make it easy for customers to get it right (as a means of increasing levels of voluntary compliance)
- c risk and intelligence led
- d financially sustainable and delivering value for money
- e excellent at delivering an integrated approach towards compliance that matches our activities to the risk behaviours of road users.⁴⁵

233 From interviews and subsequent documentation it seems that 'balancing the tensions between managing safety risk, providing quality customer services and compliance costs' proved to be a challenge.

234 In 2014 there was a renewed focus on customer service as a fundamental underpinning of the business model for A&U. Changes of personnel resulted in a renewed business strategy for A&U, which set the goal for A&U to be a 'world class regulator'. This was explained in the following way:

*'Putting customers at the heart of our business underpins our approach and goal outlined in the Access & Use Business Strategy of becoming a "world class regulator", by designing our regulatory activities and services to assist customers to make the smart (compliant) choice.'*⁴⁶

And

'With our business strategy, we have set a five-year journey to grow the level of willing compliance with transport regulation in these areas [Safe Road Vehicles, Safe Road Users, Safe Rail System, Revenue for Network Management]. Our focus is on making the smart, or compliant,

⁴³ See Access and Use Group, Delivering long-term value for money through business transformation, December 2015.

⁴⁴ Ibid

⁴⁵ Access & Use Five Year Roadmap, Paper to the Senior Leadership Team, 17 September 2012.

⁴⁶ Explained in Consultation Proposal, Regional Review, 30 October 2014 p1



*choice easy. This is about both helping and incentivising the people we regulate to willingly comply.*⁴⁷

235 In instructions to staff about this regulatory business strategy, the assumption that usually the 'customer' will comply willingly is made explicit:

*'Most cases of non-compliance can be adequately dealt with through lower level responses such as encouragement, guidance and direction.'*⁴⁸

However, the regulatory business strategy does recognise that a different approach may sometimes be needed:

'Seriousness is linked to the level of harm we are managing. For example, we should not use encouragement alone if that means we are knowingly allowing someone to do something that is unlawful or unsafe.'

236 The documentation around the regulatory business strategy at this time emphasises a customer-centric approach for encouraging ease of access and increased customer-willing compliance. This tends to overshadow the other messages in the strategy that indicate the possibility of a more balanced approach.

237 The focus on customer service continued with the transformational structural changes implemented in 2017, where a customer service focus was a fundamental underpinning logic for organisational transformation. One aim of the transformation was to provide 'People-Centred Services' geared to 'simplifying our customers' lives with innovative services and experiences that make it easy for them to do what they need to.'⁴⁹

238 This focus would have been encouraged by a review commissioned by the incoming Chief Executive in 2016, which recommended, among other things, that NZTA develop an Agency-wide strategy that is customer- and partner-focused. This review also recommended that a key design principle for the Operating Model be 'customer focus and customer led design of process and reporting.'⁵⁰

239 Interviews with external stakeholders and NZTA staff support our conclusion that attention to more 'customer-focused' and 'softer' interventions overshadowed stronger enforcement methods. Staff indicate that they felt they were prohibited from taking enforcement action where they had identified substantive non-compliance. We were told that some standard operating procedures (SOPs) stipulated that investigations staff must go through a process of four (or five) visits to educate or discuss things with the operator before taking enforcement action. We were also told that 'taking an enforcement action was deemed a measure of failure as regulator' by management.

240 External parties in interviews commented on the perception that NZTA was a soft touch, and that it was relatively easy to avoid serious sanction for non-compliance.

⁴⁷ Ibid.

⁴⁸ Being a World Class Regulator, 18 March 2015.

⁴⁹ NZTA Transformation Slide Deck FINAL, 2017.

⁵⁰ New Zealand Transport Agency, Summary Report, 27 May 2016



Development of more robust regulatory approaches in rail

- 241 The Pike River Coal Mine tragedy contributed to an increased awareness in New Zealand of catastrophic risk. Following a number of rail safety case reviews, and a subsequent realisation of potential significant risk, NZTA commissioned an independent review of the rail safety regulator function in 2013.⁵¹ The findings of this review were used to inform changes to NZTA's approach to delivering the rail regulator function.
- 242 This work resulted in the establishment of a Director Rail Safety role, and the appointment of a new manager to lead the rail team through a transition to a new regulator model.
- 243 The aim was for NZTA to be a more proactive regulator, guided by a regulatory strategy for rail and with increased resource in the rail area to support rail safety outcomes.
- 244 A further review of the rail regulatory area in 2015 strengthened the focus on developing a cogent risk-based rail regulatory strategy and operating model.⁵²
- 245 Additional resource was allocated to the rail safety regulator function, enabling a more proactive approach to engagement and auditing of performance against rail safety cases, and a rail safety operating model was developed to provide high-level good-practice guidance for regulatory decision-making. The regulatory operating model encompassed a number of principles, including for an intelligence-led, risk-based, proportionate and tailored, systems-focused orientation. The model also outlined a range of interventions across education and advice and compliance activity.
- 246 There is still work to be done to strengthen the rail regulatory function. While there had been an increase in resources in 2015 (from 9 to 17 FTE), a review of resources in May 2018 recommended a further uplift in resources to deliver the current regulatory operating model (to 21FTE).⁵³ This same review also (among other things) recommended the development of a rail regulatory strategy that sets out the resources required to achieve the vision, and states how those resources will be applied through principles and practice to achieve efficient regulatory outcomes.
- 247 The rail capability needs to be commensurate with effectively regulating in a situation of growth in intensity of the rail industry, increased aspirations (both public transport and freight), and the consequent increasing safety risk, particularly for managing catastrophic risk.
- 248 An internal assurance review in June 2018 found that while there were significant improvements in regulatory processes for safety case approval, safety assessment and investigations, there was room for improvement in management oversight and governance of the function – in two areas in particular. First, there was a need to ensure that the activities of the rail safety function aligned with the requirements of legislation. Second, there should be a stronger connection between the priorities of the function and those of the organisational Regulatory Management Strategy Governance Group (which comprised General Managers from the Strategy, Policy and Performance Group, Transport Access Delivery Group, and Customer Design and Delivery Group).

⁵¹ ATRMS Independent Review Report into Rail Systems Team, December 2013.

⁵² Graeme Aitken, A high level plan for developing the New Zealand Transport Agency's rail safety regulatory function, April 2015

⁵³ NZTA Rail Regulator Resourcing Review, Navigatus, May 2018



There is evidence of longer-term strategy and good practice frameworks in work completed recently in NZTA, but which has not yet been operationalised

- 249 Following the restructuring of NZTA in mid-2017, we see the emergence of a more strategic approach to the regulatory function. The establishment of the Transport Access Delivery (TAD) function with a focus on regulatory compliance was a catalyst for some of this work.
- 250 A paper to the Investment and Operations Board Committee in November 2017 set out plans to develop a regulatory management strategy for the Transport Agency.⁵⁴ This strategy would set out how NZTA will undertake its responsibilities as a Regulator – ‘including outcomes sought, how the TA will set and manage priorities to achieve those outcomes, and the principles and approaches that will be used in undertaking activities that influence the compliance of people with their regulatory obligations.’
- 251 A high-level regulatory management strategy was endorsed by the Board in June 2018. This strategy set out five regulatory priorities that needed addressing:
- a **Regulatory system design** – Co-create an increasingly outcomes-based transport regulatory framework (collaboratively with Ministry of Transport)
 - b **Governance and engagement** – Target engagement to build trust in NZTA as a regulator
 - c **Management and leadership** – Design and implement end-to-end management of NZTA’s regulatory services
 - d **Delivery and innovation** – Leverage technology that makes the NZTA an efficient agile regulator by design
 - e **Regulatory practice** – Lift NZTA’s capability to meet the regulatory challenges of today and tomorrow.⁵⁵
- 252 This strategy was at a quite high level, and the above priorities for attention demonstrate the work that still needed to be done to operationalise the strategy and implement and embed it within the organisation.
- 253 We understand that this work has not as yet progressed further.
- 254 Further strategic and structured work expressing aspects of good regulatory practice in early to late 2018 included:
- a **Land Transport Regulatory Management: Compliance Intervention Model** (June 2018)
 - The paper provides an overview of the legislation that establishes NZTA’s regulatory role and functions and the guiding principles that underpin its regulatory management framework. Principles reflect good practice: outcomes focused; risk-driven; intelligence-led and evidence-based; consistent, fair and proportionate in interventions;

⁵⁴ Taking a Strategic Approach to the Transport Agency’s Regulatory and Compliance Work 11 November 2017

⁵⁵ NZTA Regulatory Management Strategy (Influencing Behaviour in a Changing World): Enhancing NZTA’s regulatory performance 2018-2023



transparent and accountable; committed to having the capability and capacity to meet compliance management needs.⁵⁶

- The model recognises a balanced approach to compliance management and presents a hierarchy of interventions, which range from ‘informing and educating regulated parties through directive, restrictive and enforcement actions. NZTA will not necessarily move progressively through the hierarchy from the base upwards. Rather we will choose the most appropriate intervention, or mix of interventions, for the circumstances.’⁵⁷
- The paper is a policy draft, which has not yet progressed to implementation.

b **NZTA Regulatory Capability Programme Design** (November 2018)

- A project to evaluate the Agency’s current and future needs and design a structured programme to regulatory capability building – to be done by late December 2018. This would build on work commenced in 2015.

c **Towards Exemplary Compliance and Enforcement Operations** (2018)

- This paper provides a good summary of issues and good practices.

d **Terms of Reference for a Review of Regulatory Operations** (late 2018)

- This is a review ‘to provide assurance to the Board and SLT that we have a full understanding of the breadth of our regulatory work and we have appropriate plans in place that will provide us with confidence about the integrity of regulatory systems and practices.’

e **Regulatory Decision-making: Good Practice System Model for NZTA decisions regarding entry to the Land Transport System and for instances of non-compliance** (October 2018)

- This document is a comprehensive statement of ‘what good looks like’ in a regulatory decision-making good-practice system model. It provides the characteristics of a good regulatory decision regarding entry and for instances of non-compliance, and the key components of a regulatory decision-making system including across strategy, culture, leadership, process, people and reporting for assurance.

255 This work exhibits good practice and provides a useful basis for informing any further work that might be completed to round out the NZTA regulatory strategy and frameworks to underpin and support good regulatory practice.

⁵⁶ Land Transport Regulatory Management: Compliance Intervention Model, 12 June 2018, Policy Draft.

⁵⁷ Ibid.



Governance and leadership

Expected good practice: Governance

256 Good practice governance is where the Board sets the strategic direction and priorities, sets board policies and management performance expectations, identifies and manages risk, and monitors and evaluates organisational achievements in order to exercise its accountability to the organisation and its stakeholders.⁵⁸

257 It is good governance to ensure that an entity has in place a clear protocol that sets out the communication channel for board members with management and staff.⁵⁹

Governance principles

258 The Financial Markets Authority (FMA) published a useful set of principles as high-level guidance for effective governance. These cover aspects of ethical standards, board composition and performance, board committees, reporting and disclosure, remuneration, risk management, auditors, shareholder relations, and stakeholder interests.⁶⁰

259 All of the principles apply in the case of the NZTA Board, but of particular interest are the following:

- a **Board composition and performance** – To ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.
- b **Board committees** – The board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.
- c **Risk management** – Directors should have a sound understanding of the key risks faced by the business and should regularly verify that there are appropriate processes to identify and manage these.⁶¹

Functions and powers for effective governance

260 The FMA principles summarise the steps for effective governance as including:⁶²

- a regularly scanning the environment, beyond the organisation, to ensure that what it is attempting to achieve remains relevant and achievable
- b establishing a framework for identifying and managing risks
- c within the entity's brief under its enabling legislation (for example, the Land Transport Act and the Land Transport Management Act) and government policy directives, and taking into consideration the environmental scan and risk identification, defining the organisation's

⁵⁸ see MCH Governance e-Manual at www.mch.govt.nz/about-ministry/te-kiwai/governance/governance-e-manual

⁵⁹ Ibid

⁶⁰ Financial Markets Authority, Corporate Governance in New Zealand, Principles and Guidelines, A handbook for directors, executives and advisers

⁶¹ Ibid p2

⁶² Ibid



strategic direction. This will include its formal Vision, Mission and Strategy and the Statement of Intent.

- d developing a governance 'umbrella' that clearly sets delegations and parameters for operational activities
- e ensuring, in the Statement of Intent and other documents, that appropriate key outcomes and results are specified and that resources have been allocated
- f appointing, supporting and evaluating the Chief Executive and, in the case of Crown entities, ensuring that the appropriate consultation with the State Services Commission has occurred in respect to CE appointments, evaluation and remuneration
- g communicating with the organisation's stakeholders, particularly Ministers, the Ministry and central agencies (a role often delegated to the CEO) to ensure they are kept appropriately informed and are able to fulfil their responsibilities towards the entity
- h ensuring that the board complies with contractual and statutory requirements and with the board's own policies
- i setting standards for, and evaluating, the board's own governance performance in accordance with any requirements in the organisation's SPE, and
- j ensuring that Ministers or other 'appointers' are aware of the appropriate balance needed, in the board's view, for succession planning.

What we observed: Governance

Powers and functions of the Board and delegations

261 Under the Land Transport Management Act the regulatory functions of NZTA are vested in the Agency's Board. The powers and duties related to these functions are exercised on behalf of the Board by various employees in the regulatory function of the Agency through a number of instruments of delegation.⁶³

262 The Board recognised that it was neither practicable nor possible for it to perform all of the functions or exercise all of the powers required to operate NZTA effectively.⁶⁴

263 The instrument of delegation reserves certain functions and powers to the Board, namely those for governance, employment, finance, funding and procurement, contracting and purchasing, and highway and network operations and planning. These are set out in the Consolidated Instrument of Board Delegation dated 20 April 2010. It is noted that 'the Board has not reserved any functions and powers to itself which relate to powers and functions in legislation which are in the responsibility of the Access and Use Group.'⁶⁵

⁶³ Enabled under the Land Transport Management Act 2003.

⁶⁴ Consolidated Instrument of Board Delegation Attachment 3 to Board Paper 10/03/0359, 20 April 2010.

⁶⁵ Ibid.



264 This is line with the Board's philosophy for moving 'towards a state in which delegation is normally made to the organisational level at which the risks associated with the delegated authority are best managed.'⁶⁶

265 In 2009 there were five Board Committees to assist the Board's effectiveness in key areas. These were:

- a State Highways Board Committee (held monthly)
- b Strategic and Investments Board Committee (held monthly)
- c Audit, Risk and Assurance Board Committee (held quarterly)
- d Remuneration and HR Board Committee (held quarterly)
- e Regulatory Board Committee (held quarterly).

266 The purpose of the Regulatory Board Committee was to:

- a 'provide strategic governance over sustainable control, access and use of New Zealand's transport networks'
- b 'oversee Agency legislative and regulatory responsibilities ...' and
- c 'provide independent expert advice and assurance to the NZ Transport Agency (NZTA) Board (the Board) regarding the exercises of its statutorily independent regulatory functions'.

267 Key areas of focus were to maintain an overview of risks associated with regulatory functions and ensure that NZTA meets its statutory obligations for regulatory and licensing functions affecting vehicles and drivers, access to or between networks, and the integrity of the registers.⁶⁷

268 The Terms of Reference of the Regulatory Board Committee provide for a committee that had a mandate for keeping a governance eye over the regulatory functions of the Board and of the Agency.

A change to Board Committee structures reduces the strength of governance focus on the regulatory function

269 Following a governance self-evaluation in early 2010 and subsequent Board Committee discussions, the decision was made to reduce the number of Board Committees. The rationale for this decision was to achieve a 'more streamlined, fit for purpose and integrated Board committee structure'.⁶⁸

270 The evaluation resulted in a proposal for four standing Board committees: a Planning Board Committee; an Investment & Operations Board Committee; a Remuneration & HR Board Committee; and a Finance, Risk and Assurance Board Committee.

271 The Terms of Reference of the Remuneration & HR Board Committee and Finance, Risk and Assurance Board Committee remained as for the predecessor committees. The Planning

⁶⁶ Ibid

⁶⁷ Regulatory Board Committee Terms of Reference March 2009

⁶⁸ Board Paper 10/03/0356 NZTA Board Committees 17 March 2010



Committee was to provide governance and strategic advice in respect of New Zealand's land transport networks.

272 The purpose of the Investments & Operations Committee was 'to exercise stewardship in respect of NZTA's transport network investment decisions, and to oversee the performance of the NZTA's business operations, including the Agency's legislative and regulatory responsibilities, and the state highway business'.⁶⁹

273 This change achieved integration of the regulatory function with other functions, but in our view worked against the achievement of effective governance over the regulatory function. There was now no longer a specific forum for focusing on regulatory strategy, regulatory risk and practice and operations at governance level, or for bringing specific regulatory experience to the Board's attention.

274 This was significant given that there was not a lot of regulatory experience on the Board.

Highly skilled and experienced Board, but with less developed regulatory experience

275 From inception the NZTA Board has comprised highly experienced and skilled people who have brought a range of skills, knowledge, experience and perspectives to the governance role. This has included deep experience in corporate governance, planning and infrastructure development and management.

276 The one area where there has been less 'deep' representation is regulatory management and experience (even up to the present day). A number of Board members have had some association with regulatory matters through work in local government planning, or through experience with NZ Police, but this has not equated to experience working within the entire regulatory system.

277 As a result, we have not found any real challenge or questioning by the Board of the performance of the regulatory function over time, until the recent focus on compliance and enforcement activity.

Preoccupation with NZTA functions other than the regulatory function

278 A constant feature of the dynamic of NZTA Board attention and activity from inception until recent times has been the preoccupation with NZTA functions other than the regulatory function, despite this being a key component of the objective and functions of the Agency under the Land Transport Management Act 2003.⁷⁰

279 In this regard, assumptions appear to have been made at Board level that there were no major issues or risks in the regulatory area, and that it did not need specific attention.⁷¹

⁶⁹ Investment and Operations Committee Terms of Reference

⁷⁰ LTMA 2003 ss 94- 95

⁷¹ Confirmed in interviews with past and current Board members



Lack of visibility at Board level of risks in the regulatory area

- 280 Reporting to the Board on regulatory risks was generally light. In our view there were only weak signals going to the Board in reporting, and no-one on the Board had strong enough regulatory antennae to hear or see these signals.
- 281 This was reinforced by interviewees, where generally people could not recall any discussion on regulatory risks or could only recall one or two small matters being raised. When prompted there was a retrospective reflection that perhaps the 'regulatory part was not getting enough attention'. Board members reflected that 'there was something wrong in our reporting', as a reason why they did not know about the regulatory failure in the system.
- 282 Interviews with senior managers also indicate that there was little or no discussion around regulatory matters and risks at ELT level within the organisation.
- 283 It appears that assumptions were made that the Agency was complying with its statutory requirements and mandate.

Expected good practice: Leadership

- 284 Leaders and managers articulate a common view of the organisation's regulatory role and functions and they focus resources and activities on key priorities to address risks and achieve desired regulatory outcomes.
- 285 Managers build capability and support the ongoing development of people to enable good regulatory decision-making. They create an environment of continuous improvement where decisions are discussed and there are opportunities to question and learn.
- 286 Leaders have a deep level of regulatory expertise and experience in regulatory leadership to effectively lead and support the work of their teams.
- 287 Managers ensure that delegation holders are appropriately trained and competent and have sufficient capacity to exercise the delegations they hold.
- 288 Perceived and real conflicts of interest are actively and pragmatically managed.
- 289 Regarding the exercise of decision-making authority, decision-makers understand their authority, the possible range of decisions, and the statutory or regulatory basis and justification for the decision.
- 290 Decision-makers are independent, knowledgeable, understand the context of the decision and the bigger picture, use intelligence to inform their work, can deal with the level of complexity of the decisions they make, and remain open-minded and prepared to think through the consequences of the decision for the achievement of the regulatory purpose.

What we observed: Leadership

- 291 NZTA is currently responding to a backlog of regulatory matters that have been brought to light following the recent issues relating to warrants of fitness and vehicle certification. To achieve this a Regulatory Compliance Lead has been contracted to lead the remedial work programme.



- 292 We heard from a number of NZTA staff that, at one level, they are relieved that NZTA is now taking a firmer regulatory position. On the other hand, they are concerned that:
- a good work undertaken since 2017/18 has been put on hold
 - b competent regulatory staff have been disempowered, and
 - c the regulatory pendulum is at risk of swinging to a regulatory approach that is unreasonably hard.

293 This review has found that while there were some promising improvements to leadership of regulatory focus in 2017/18, there have been leadership challenges dating back to when the Agency was created in 2008.

294 In 2014 the New Zealand Productivity Commission conducted a review of regulatory institutions and practices in New Zealand. The review concluded that more attention should be paid to leadership skills. In particular it concluded that:⁷²

'High-quality leadership is also important for developing the cultures within agencies that support effective regulation, in particular the ability of agencies to learn from their mistakes and successes. Some New Zealand regulators need to work harder at building these cultures. Evidence collected through this inquiry highlighted poor internal communication within some agencies, with workers feeling unable to challenge poor practices, or not hearing a clear organisational mission from their senior managers. Previous restructures of regulatory organisations have also been disruptive, with insufficient attention paid to the cultural aspects of change or the smooth operation of regulatory functions'.

- 295 In respect of leadership, this review has considered:
- a the clarity of NZTA's regulatory approach and strategy
 - b communication from senior leaders about regulatory functions
 - c staff willingness to challenge the Agency's regulatory approach and/or practices
 - d the extent to which NZTA has been recognised as a leader of the regulatory system.

Clarity of NZTA's regulatory approach and strategy

296 It was suggested to us that when NZTA was formed in 2008 there was largely a rules and compliance focus. It was also suggested that there was some confusion and cross-over between the Agency's front-end compliance activities and those of its partner agencies – in particular, the New Zealand Police. Changes have been made in the intervening years to more clearly define the respective roles.

297 The expression that has been used is that NZTA needed to be 'on the balcony rather than on the dance floor'. A number of people we spoke with interpreted this as the Agency developing a culture and practice of deferring to other agencies and avoiding direct involvement in enforcement and compliance activity.

⁷² NZ Productivity Commission, 2014, 'Regulatory Institutions and practices, Cut to the Chase'



298 Kristy McDonald QC, in her Independent Inquiry into NZTA's Performance in Relation to Dargaville Diesel Specialists, found that from 2014 a customer-focused approach has been introduced. We have found that this customer focus was introduced as early as 2011/12.

299 The development of the customer focus has been addressed in the discussion on regulatory strategy above. The development of this focus had a strong impact on the regulatory approaches and the messages from leadership around expectations for regulatory activity – namely, to be customer-centric and always adopt 'softer' approaches to non-compliance in the first instance.

300 Between 2012 and 2015 (date not specified) the Agency developed 'The Access and Use Compliance Model'.⁷³ This described an intention to adopt a 'Responsive Integrated Problem-Solving' Model.

'In Access and Use, in terms of our regulatory "Philosophy", we assert that our regulatory frameworks will have integrity and be fit for purpose. This is about:

- *Using our legislative tools wisely to deliver desired transport outcomes for New Zealanders*
- *Encouraging and enabling our stakeholders/customers to be accountable for and self-manage their personal and business risks*
- *Applying costs appropriately so that, in general, those generating or directly benefiting from our activities pay the cost*
- *Incorporating responsiveness into the framework so that innovation is enabled*
- *Achieving high levels of understanding and buy-in to maximise willing compliance.*

301 The paper did not preclude the possibility of using enforcement but focused more heavily on a 'willing compliance' approach than on explaining when enforcement will be appropriate, and which specific types of enforcement interventions will be appropriate in which situations. We heard differing views as to whether all interventions required an escalation approach – that is, starting at education and progressing through to revocation or prosecution. The explanation of the model seems contradictory and open to interpretation on this point. Statements include:

'We will encourage people to voluntarily comply in the first instance, and deal with non-compliance appropriately.'

"We have a cascading range of approaches to address the level of non-compliance risk and impact, using within these approaches a diverse range of tools and instruments:

1. *Inform and assist, capacity building, coaching*
2. *Help companies check and manage their own compliance, create a willingness to engage and discuss*
3. *Show a likely path before penalty and/or prosecution*
4. *Graduated penalty/intervention framework*
5. *Enforcement/exit for deliberate, serious and repeat offending*

⁷³ NZTA, date not specified, 'The Access and Use Compliance Model'.



“Intervention Guide – Note: It should be noted that the interventions are not rigidly set from column set to the next but should be viewed as a sliding scale that guides an intervention considered against the individual circumstances.”

- 302 The use of the word ‘customer’ is contentious in the broader regulatory community. Some agencies avoid using the word and prefer terms such as ‘regulated entity’ or ‘regulated community’. It is obvious and essential that regulators should seek to minimise the burden for people who transact with them, as failing to do this would ultimately damage a regulator’s reputation and undermine confidence in its ability. However, efficiency in the delivery of regulatory activity or functions should not be at the expense of overall effectiveness.
- 303 We believe that when a regulator uses the term ‘customer’ they should understand that their ultimate customers are the people the law seeks to benefit or protect. NZTA’s customers are the land transport users of New Zealand, who expect to be safe on the transport network.
- 304 The documents we have reviewed and the majority of the interviews we conducted have revealed a heavy leaning towards to a desire to satisfy all individuals who transacted with the Agency whether that was through a licence or permit application or through some third-party relationship.
- 305 Some of the parties NZTA treated as ‘customers’ are absolutely not customers of the Agency. A key example is the various third-party organisations that deliver regulatory activities on behalf of NZTA. Typically, these are commercial businesses that seek to make profit while issuing permissions on NZTA’s behalf. This is a privilege that they have been afforded by the Agency. NZTA’s role is to audit their reliability, remedy their shortcomings, and where necessary revoke their permission in the interests of the public.

Communication from senior leaders regarding regulatory functions

- 306 At the Board level we found that there was little focus on the regulatory role. This was despite the Board directly holding and delegating NZTA’s regulatory functions. This has been addressed in the discussion around governance above.
- 307 The attention of the Board was mainly drawn towards NZTA’s investment and infrastructure responsibilities. Routine audits were mainly concerned with the appropriate management of the road infrastructure investment. Given their scope, it was unlikely that these routine audits would reveal any deficiencies in the effectiveness of regulatory activities. In the absence of information to the contrary it has been assumed that there are no issues.
- 308 The Board was made aware of the critical reviews relating to rail regulation and driver licensing.⁷⁴ These reviews did result in action being taken in the specific area of concern. The Audit Risk and Assurance Committee (ARA) of the Board also commissioned a broader health check of the regulatory function in April 2016. The findings of that health check were reported to them by way of a summary report two years later in August 2018.

⁷⁴ Australian Transport Risk Solutions Pty Limited, 2013 , ‘Independent Review Report into Rail Systems Team and KPMG, 2016 ‘Independent Review of Driver Licensing End-to-End System Integrity’



- 309 However, the summary report did not adequately alert the committee to the potential for significant regulatory system failure. The inadequacy of the health check was reported to ARA in November 2018.⁷⁵ The lack of timeliness in following up the health check is consistent with a general impression that regulatory functions were not given priority.
- 310 The Board was also informed about progress with the transformation that the Access and Use Group was undergoing between 2011 and 2015. Through these updates the focus on 'willing compliance' and customer-centric regulatory approaches ought to have been visible to them.
- 311 As far as we can tell, there has been no direction from the Board as to its expectations of how the Chief Executive should be discharging the regulatory functions that they have delegated to him. This is in line with the general dynamic of attention being on other things and the view that the regulatory function will look after itself.
- 312 As previously described, there was a 'willing compliance' and 'customer-centric' approach adopted from 2011/12. The communication of these messages has been a powerful influence on practice and behaviour within NZTA. A few individuals have asserted to us that these approaches were not intended to preclude staff progressing immediately to prosecution or revocation actions, if the circumstances required that level of intervention. However, regardless of what message was intended, what staff predominantly heard was that interactions needed to be customer-friendly and that education and advice was always the first response to non-compliance.

Positive examples have emerged

- 313 Despite this, more recently there have been examples of good regulatory leadership from lower levels of management. The work to transform the regulatory approach for rail (2015–17), despite being done in isolation from road regulatory functions, reflects good current regulatory thinking. The challenge will be to fully implement this given the issues of low regulatory maturity and overall capacity and capability.
- 314 In 2017, the organisational transformation undertaken by the CEO at that time sought to increase the focus on regulatory activity. He appointed a Director Transport Access Delivery to lead this work. While part of the broader senior leadership team the role remained outside the Executive Leadership Team (in our view a fundamentally flawed approach).
- 315 Under this structure significant work was done to revise the regulatory approach. This work included developing a regulatory strategy, which has been approved by the Board. The regulatory direction built on the approach developed for rail regulation. All of this work is on hold and has not been implemented.
- 316 Since the events that led to this review, a further reorganisation has brought together a wider range (but not all) of NZTA's regulatory functions and activities. This change sends a clearer message about the importance of the regulatory functions within NZTA. There will however be a limit to what can be achieved without more active and more cohesive senior-level leadership of the regulatory functions.

⁷⁵ NZTA, 2018 Audit, Risk and Assurance Board Committee Paper 2018/11/A294



Staff willingness to challenge regulatory approach and/or practices

- 317 We spoke to many passionate staff who believed in the importance of NZTA's mission and who were determined to do their best to contribute to road safety. So, it was surprising to find that, despite the apparently widespread belief (internally and externally) that NZTA had inappropriately softened its approach to enforcement, we have only seen a few examples of documented evidence of staff or others raising concerns with senior management or the Board.
- 318 Some staff talked about being 'beaten up with customer service messages' or suggested that staff who continued to use enforcement approaches were structured out of the organisation. In this context, what is clear is that staff focused on doing what they could within the existing structure and the prevailing culture of customer service. This may be, in part, a contributor to challenges that the agency faced with inconsistency of delivery across its regions.

The extent to which NZTA has been recognised as a leader of the regulatory system

- 319 Overall NZTA is not seen as a strong system leader for land transport. Although most people we spoke to were highly complementary about key individuals they dealt with, they emphasised that those positive relationships were based solely around those individuals, not the agency as a whole.
- 320 Several people have said that the frequent restructuring has made it challenging to know who to contact. Some have told us that the quality of engagement has varied over time.
- 321 We heard from industry representatives that they wanted a strong regulator that was willing to deal firmly with those operators who were able to undercut competitors through being non-compliant. NZTA had identified this industry expectation when they interviewed stakeholders in 2011.⁷⁶ At least from the industry perspective, they have failed to deliver. People outside of NZTA told us that the customer approach taken by NZTA was inappropriate for a highly competitive road transport industry.
- 322 The industry were concerned that NZTA was not performing as a regulator and that operators who choose to comply are unfairly bearing costs that are being avoided by non-compliant operators.
- 323 Third-party agencies are frustrated at a lack of consistency in how different operators are treated. An example given was that small WOF garages are infrequently audited while the larger providers were subject to regular and repeated visits.
- 324 We were also told that third-party agencies needed more certainty in their agreements with NZTA. They explained that the practice of rolling over contracts for a year at a time makes business planning more difficult.
- 325 Several people we spoke to recognised that the agency's priorities are not well aligned with those of the commercial businesses that complete regulatory tasks on NZTA's behalf.

⁷⁶ 2011, Report on Interviews with External Stakeholders/Partners, NZTA (TAD)



Interactions with the NZ Police

- 326 We heard from both NZTA and the NZ Police that the relationship had been challenging for a number of years but had recently improved since the change of government and since NZTA's renewed focus on safety.
- 327 We heard that sitting behind these challenges was a poor alignment of purpose and priorities. One perspective was that the contractual arrangement had historically been too focused on outputs over outcomes. Another perspective was that NZTA was focused on productivity and enabling industry while the Police were focusing on road safety outcomes.
- 328 We also heard opinions that the contractual nature of the relationship in itself made it more difficult for the agencies working effectively as partners.
- 329 We also heard a clear view that the legislative framework is out of date, hard to navigate and too rules focused.
- 330 A challenge is that there is no end-to-end view of the legislative framework and how it is applied. The Ministry of Transport contracts NZTA to draft rules, and the expectation is that new rules will then be enforced by the NZ Police. There is some debate about whether responsibility for enforcing some of these rules should lie with NZTA or Police. We heard concerns about resourcing implications and whether some of the rules were impractical.
- 331 This raises questions about effectiveness from a system perspective. If new rules are a proportionate response to a public safety or welfare issue, we would have expected that, when the rules are designed, consideration would be given to how enforceable they will be.
- 332 We also expected that there would be some monitoring of the effectiveness of the legislative framework.

Relationships

Expected good practice: Relationships

- 333 No organisation can perform its role effectively without open, productive and effective internal and external relationships. High-performing organisations rely on a constructive two-way relationship that provide information and support and are built on trust. Organisations with great products and services can still fail if they can't establish constructive relationships with those that matter.
- 334 Effective relationships have clear escalation pathways for issues and communications from parties – for example, a clear single point of contact for ease of access.
- 335 As outlined above, the NZTA has a primary role as regulator in the land transport sector. There are a number of other parties that make a regulatory contribution to the system.
- 336 We would expect to see constructive relationships between NZTA and:
- a its staff, as the key enablers for the regulatory function
 - b the Minister of Transport, and the Ministry of Transport as the lead, monitor, and policy agent of the wider transport system



- c the Police, as they are the lead organisation for road policing and commercial vehicle safety
 - d KiwiRail in its 'co-regulatory' role in the rail sector
 - e third parties operating in a regulatory capacity on behalf of the NZTA as they are implementing NZTA's functions. We would expect to see clear roles and accountabilities here, with NZTA providing support and guidance to enable these parties to discharge their responsibilities effectively.
 - f sector interest groups, because they are able to both influence sector behaviour as well as provide advice on the impact of NZTA actions and other activities. Sector interest groups can promote the required attitudes and behaviours on behalf of the regulator
 - g the public, as the public is the customer and end-user of the transport network
 - h other transport regulators, because they can share good practice and insights
- 337 Having an effective relationship does not always mean agreeing with each other. It is important that each party can effectively express its own views and purpose. These views may not always align, but good relationships will recognise the disagreement and find some middle ground where possible.

What we observed: Relationships

338 From the documentation, we can see relationships have always been important to NZTA and have been an area of focus.

339 In 2014 one of the priorities of the transformation was Exceptional Stakeholder Relationships assisting quality decisions.⁷⁷

340 Earlier (2010) the importance of stakeholder relationships was expressed as:

NZTA is highly dependent on stakeholders and partners for its current service delivery. This is particularly true for Access & Use – the relationships with its extensive agent network and government partners such as Police and Justice are critical to on-going optimal service delivery. The increased reliance on partners and stakeholders for risk and intelligence-based decision making means a more trusted and higher value relationship is required. Partners and stakeholders will be expected to make decisions for the NZTA on less prescriptive, qualitative criteria such as safeness, efficiency and value rather than on highly prescriptive criteria such as inspection checklists.⁷⁸

341 In 2011, NZTA commissioned a report on feedback from 24 key stakeholders. This found two contrasting views:

- a On the one hand there are very positive and often laudatory views of the relationship – almost always because of the way particular individuals work with the stakeholders. Overall there is a wish by stakeholders to work more closely with the Agency.

⁷⁷ Access and Use Group, Delivering long-term value for money through business transformation, October 2014.

⁷⁸ Access and Use Transformation Programme Future State Visioning, Business Operating Model Report, 2010



- b But on the other hand there is a consistent concern with what is perceived as an attitude that focuses on process and rules rather than outcomes, and where a poor understanding of the commercial drivers for industry can result in a focus on minor detail that has little to do with safety risk.⁷⁹ Stakeholders wanted and needed consistent relationships.
- 342 There is a consistent message from current stakeholders in the transport sector that over the past 2 – 3 years NZTA has neglected many of its key relationships⁸⁰.
- 343 Many relationships have been particularly dependent on specific individuals. This was evident with many interviewees indicating they still ring the previous NZTA person with queries or for support. In some cases, this was simply because they did not know who the new replacement was, or found it too difficult to find out.
- 344 Many people we interviewed had not considered escalating concerns directly with the NZTA Board if they failed to make progress within the organisation. This was a concern as it reduces the Board's ability to provide leadership or direction in this area, and possibly meant that issues just festered away.
- 345 External providers noted that they have found it challenging to get a consistent NZTA view.

Staff do not feel they have been treated well

- 346 Our assessment based on interviews is that staff in the regulatory function do not consider they have been treated well by the organisation – and for a sustained period over the past four to five years. We note that this view shared with us is inconsistent with the 2017 Ask Your Team results, which indicated that 73% of the respondents agreed NZTA was a great place to work.⁸¹ However, this survey covered the entire organisation.
- 347 Many staff at lower levels feel that from as early as 2013/14 there has not been a climate of trust at NZTA. Staff reported that they feel unsafe to express their views. One interviewee noted that a regular comment by a senior executive was: 'If you're not on same boat get off.' Notably, some interviewees were visibly upset during our interviews. These interviewees felt relieved that someone was finally listening to their views.
- 348 Staff desperately want to belong to an agency that's credible, but many feel that some of NZTA's credibility as a regulator has been lost.
- 349 We were given many examples demonstrating the loyalty of NZTA staff to NZTA's core safety objective. One interviewee commented that 'what's held the agency together is the frontline staff – managed to maintain a good relationship.'
- 350 Staff reported they had lost connections with other people and groups as the organisation has gone through so many restructurings.

⁷⁹ Access and Use Group Transformation, Report on Interview with External Stakeholders/Partners, 06 July 2011

⁸⁰ From interviews with key stakeholders in the sector.

⁸¹ Ibid



Relationship with the Minister of Transport and Ministry of Transport has waxed and waned

- 351 The relationships between the Ministry of Transport, NZTA and Police need to be particularly strong because of the collective role they play in delivering the transport system. NZTA operates within a highly devolved model that makes the relationships even more important.
- 352 We were told in interviews that the relationship between the Board and the Minister of Transport has generally been productive. NZTA has been responsive to the priorities of the Minister of the day, perhaps sometimes to the detriment of the regulatory function, when there was such strong focus on investment and 'building roads'.
- 353 The relationship with the Ministry of Transport has at times (and over the period from inception to the present day) been difficult and fraught. Interviewees commented about a lack of trust on both sides. This was also observed by external groups as commented in interviews. Perhaps this lack of trust sometimes manifested in NZTA attempting to take on policy development in recent times because it considered that the Ministry of Transport did not have the will and resources to progress issues of concern.
- 354 Note, however, that this is inconsistent with a statement in the Briefing to the Incoming Associate Minister, May 2017, which stated:
- We enjoy a good working relationship with the Ministry of Transport and look to them to lead on strategic policy initiatives and any legislative reform in the sector which enables us to then implement, enforce and monitor the required regulatory activities.*
- 355 Many commented that the power dynamic was also a factor, with NZTA being seen as having all the resources and power and the Ministry of Transport as not having the resourcing or technical understanding that NZTA had.
- 356 Our subsequent reporting on monitoring will cover this relationship in more detail.

The relationship with Police has also been challenging

- 357 We heard two quite different stories about the relationship with Police. One was that Police were not being held sufficiently accountable for the services that they were required to deliver. NZTA was concerned that all the funding was not being used to fund road policing activities. A few mentioned that the Police contract was the largest government funded contract for services (around \$320 million),⁸² and therefore there was significant Ministerial interest in this contract being effective.
- 358 Police on the other hand felt they were being measured on outputs rather than outcomes, and that the baseline funding was insufficient. The contract was pushing Police to focus on doing volume work rather than impact work and that they were under increasing pressure to be more efficient to the detriment of quality. There was also some misalignment of priorities between the two organisations; NZTA had more of a focus on productivity (driven by government expectations of public sector agencies) while Police were more focused on safety.

⁸² Briefing to the Incoming Associate Minister, May 2017.



- 359 We do not think NZTA and Police have had sufficient open dialogue focused on the outcomes of each organisation, particularly regarding safety and what this means for each side. Some commented that there has been some improvement but that priorities are still not properly aligned.
- 360 At a regional level we heard a number of examples of frontline staff at NZTA working closely alongside frontline Police. This appeared to be operating effectively but this approach may not have always been supported by National Office.

Parties acting as regulator on behalf of NZTA

- 361 Parties acting as regulator on behalf of NZTA have the delegated functions and powers as if they were the NZTA. In this regard, they need to see themselves as making regulatory decisions on permitting access to the land transport system for people and vehicles. The fact that they receive a fee for doing this should not diminish their role as regulator.
- 362 The challenge they face is to act as regulator, but through delivering this function in a respectful, fair and efficient manner. The receipt of a fee for 'service' is an ongoing challenge in a regulatory model where the regulatory functions are delegated to third parties who pay a fee.
- 363 In interviews many commented that WOF and COF providers probably do not see themselves in the role of a regulator acting on behalf of the NZTA Board. They see themselves as providing a service to their paying customer. For some this probably means they see the commercial imperative as more important than the regulatory responsibility. Some of the recent issues with non-compliance that are being addressed by the NZTA would seem to confirm this.
- 364 Parties acting as regulator on behalf of NZTA need to be provided with support and guidance so that they understand their role in the system and can discharge their responsibilities effectively.
- 365 NZTA also needs to engage effectively as regulator for monitoring and auditing these third parties.
- 366 We heard strong feedback from the large parties that they have had insufficient engagement with NZTA, particularly over the last two to three years. We were told that NZTA needs to focus on getting the main agents back on board and engaging directly with them, and as a group.
- 367 We also heard that NZTA hasn't created certainty around contract tenure (rolled over contracts), which leads to a lack of investment in systems by those parties acting on its behalf.
- 368 We found that not all the parties discharging a regulatory role on behalf of NZTA roles are acting in this role by design. In some cases, it is very clear an organisation is operating as a regulator, such as KiwiRail, AA, VTNZ and VINZ. However, sometimes these organisations are filling a void in the system that has been neglected or inadequately resourced. The Low Volume Vehicle Technical Association is an example of an organisation filling a void.

Sector interest groups

- 369 Many sector interest groups appeared pleased with the current action NZTA is taking regarding non-compliance. As one interviewee commented: 'NZTA has spent too much time working with willingly compliant and largely compliant.' Managing non-compliance is seen as valuable because it directly addresses the non-compliance activity but also sends signals to other parties in the



system. Some interviewees commented that they are already starting to see positive effects of NZTA taking action.

- 370 Many groups commented that when people do not follow the rules this has a detrimental effect on the whole market, as it drives down the standards and there is a race to the bottom.
- 371 In the past, sector interest groups have not felt listened to by NZTA. Sector interest groups told us they have a number of significant concerns about the transport network that they do not think have been adequately addressed by NZTA. Stronger action on the following would be supported:
- a driver fatigue (in road and rail)
 - b speed management
 - c Lime Scooters
 - d enforcement of RUC
 - e the operating rating system (although we note this is currently under review).⁸³

The public

- 372 Many were complimentary of the 'social media' presence of NZTA in notifying the public about changes to the transport network and providing information about incidents and events on the network.
- 373 However, some commented that the public probably do not understand that NZTA is the road and rail regulator. One example given was that if there is a rail incident, media do not generally contact NZTA first.

Other transport regulators

- 374 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. We observed that the relationship has tended to be one-directional, with NZTA seeking advice from other transport regulators, rather than having a group that is sharing learning across all.
- 375 We were given some specific examples of sharing expertise: Maritime NZ officials reviewed a Review of Rail Report in 2015 and provided advice around the establishment of the Assessment Panel, and TAIC has more recently offered itself as another form of 'intelligence' that NZTA can leverage.

⁸³ <https://www.nzta.govt.nz/commercial-driving/operator-rating-system-ors/how-the-ors-is-calculated/>



Culture

Expected good practice: Culture

- 376 'Culture' refers to the values, beliefs, attitudes and behaviours of the organisation. Establishing and maintaining the right culture within an agency is critical, as culture can have a disproportionate impact on the outcomes the agency seeks to achieve.
- 377 In a regulatory agency we would expect to see a culture that focuses on regulatory outcomes, risk management, and fair and proportionate responses, and that sets clear expectations. Regulation would be treated as a professional discipline, supported by technical knowledge.
- 378 The organisation would have a culture of trust where staff would be empowered to make decisions that are within their capability and technical expertise. Staff would feel comfortable making judgement calls on regulatory action, even in the face of regulatory ambiguity. Decision-making would be guided by the organisational strategy, management and practices.
- 379 A focus on outcomes would see judgements being made around performance and risk, rather than solely on the basis of technical compliance with rules and specifications.
- 380 A culture of collaboration would be evident, and you would see teams working together to achieve collective outcomes.
- 381 The environment would foster continuous learning and improvement. Staff would be empowered to take on greater responsibilities where appropriate. The culture would recognise that people can make mistakes, and they would then be provided with additional guidance and support as appropriate.
- 382 The wider organisational culture would be positive, and the parts would feel connected to each other and part of the overall organisation and mission of the organisation.

What we observed: Culture

- 383 Culture has always been a key consideration within NZTA. One senior executive reflected that 'culture and leadership' have always been the most important things to support effective operational delivery. We reviewed a number of documents where the role of culture in supporting structural and transformational change is acknowledged:
- a In a 2017 Risk Assessment Summary, the importance of effecting change over time was recognised: 'embedding a new culture takes time, around three to five years'.⁸⁴
 - b In 2014, it was said that 'we are tackling the challenge of making significant culture change in a high volume, highly dynamic, and complex regulatory service business'.⁸⁵

⁸⁴ Attachment 1: NZ Transport Agency Risk Summary – June 2017 by Key Focus Area

⁸⁵ Access and Use Group, Delivering long-term value for money through business transformation, October 2014



- c In 2011, as part of the consultation design, NZTA identified 12 desired culture changes. The issues to be addressed included aspects of decision making, connections, accountability, confused relationship management, things don't get finished, teams are self-contained, reliance on the 'deter-exit' end of regulatory spectrum, and a lack of agility and responsiveness.⁸⁶
- 384 We would describe the current culture in the regulatory area as unsettled. All groups interviewed recognised that the approach and environment had changed, and they were uncertain if it was taking them down the right highway. Some thought perhaps it was too early to say.
- 385 On the positive side, a large majority of interviewees reported being committed to the 'safety' of the New Zealand public. A safety focus linked right back to the overall objective of NZTA, which is to carry out its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.
- 386 The importance of safety was mentioned by a range of NZTA people, from governance levels right through to compliance staff, and also by external parties. Interviewees spoke about their real concern about the rising road toll, the need to focus on reducing speed, and the quality of vehicles in the New Zealand fleet.
- 387 One Board member remarked that the 'public need to be confident we are capable and delivering on our role'.
- 388 However, many felt that some or all of the 'safety' focus of NZTA had been lost over time. Several interviewees noted this might have stemmed from when the Land Transport Safety Authority was disestablished, and the word 'safety' was removed from the regulatory agency's title. Others commented that the safety group sitting outside NZTA's main regulatory group indicated that the organisation did not see a link between the regulatory function and safety.
- 389 The reduced use of 'safety' was also evident across accountability documents, up until 2018 where we observed a much stronger focus on safety coming through the Government Policy Statement and other accountability documents. That is not to say that 'safety' was not referred to in previous key documents, more that its focus was tempered by other considerations such as efficiency in those times.

Comments on the regulatory function culture

Non-compliance

- 390 Regulatory staff reported that before the contracted Regulatory Compliance Lead began providing additional support, they did not feel empowered to make adverse compliance decisions. We were provided with specific examples where staff were directly instructed not to progress matters further, or where progressing matters further was unreasonably and deliberately difficult to achieve. This lack of empowerment continued over a long period (estimated 2012 to 2017).
- 391 That picture of a lack of action or a refusal to take adverse action was reinforced by industry and sector interest groups. They told us of cases where they had directly raised concerns with NZTA

⁸⁶ 2011 A&U Consultation Design Phase



about specific providers and these had either not been followed up or had been dismissed. One provider mentioned that NZTA's view was that if a provider was complaining about another provider in the system, then it was unlikely to be legitimate.

392 In 2016, EY noted that there is a perception by some external groups that NZTA does not fully fulfil the role of the regulator. The agency was described as having a 'culture of set the rules and stand back'.⁸⁷ That same report also said the 'organisational culture is one of high-level delegation to third and fourth tier leaders, some of whom lack the following:

- Technical skills and capabilities
- Experience and the ability to make timely and accurate decisions.'

393 Lack of action was probably damaging to the regulatory culture of the organisation because staff were not empowered to perform the role they were employed for. It also resulted in an uneven playing field within the industry, leading to a 'race to the bottom'.

394 In our view the lack of focus on non-compliance had three main causes:

- The approach to Customer Service* – The customer service model has muddied the boundaries between regulated parties and customers. Regulated parties have been treated as customers, which has meant that the focus has been more to educate than enforce. Some argued this was unintended, but our view is that even if it was unintended, we were not made aware of documentation that supported a more nuanced understanding. Some staff were told that addressing non-compliance was not customer service. Some staff members recalled a specific incident where they were told: 'We're not down on the dance floor we are up on the balcony'. In other words, don't look at individual cases, look at the system.
- The adjudicator model* – The adjudicator function was intended to act as a specialised independent decision-maker, but over time the volume of cases became unmanageable and the generic standards were too difficult for staff to comply with, resulting in cases waiting in a long queue or not being provided to the adjudicators.
- No system view* – Leadership within the organisation did not have a system view of the state of the regulatory system. The reporting to the Board on regulatory issues was limited. For example, internal audit findings were reduced to two sentences for the Investment and Operations Committee. Leadership simply did not have a regulatory overview because 1) they had never sought one, and 2) they had never been provided with one, perhaps because it did not exist.

395 Dissent was not tolerated. Staff reported that if you challenged the plan you got restructured out. People spoke about the learnt behaviour of people just keeping their head down and not wanting to be seen to rock the boat too much, for fear of losing their position. A small number of staff that did speak out were reprimanded publicly.

396 It was acknowledged that the lack of focus on non-compliance had changed recently with the introduction of the Regulatory Compliance Lead of the Regulatory function and the working

⁸⁷ New Zealand Transport Agency Summary Report, 27 May 2016 EY



through of all outstanding non-compliance cases. However, two concerns were raised in response to this:

- a First, NZTA would not be able to sustain this intensity of focus long term due to capacity and funding constraints, leading perhaps to future failure.
- b Second, addressing non-compliance is only one part of the regulator's role and should not be the sole focus. The regulator also needs the ability to step up onto the balcony and look at the broader system perspective, identifying and targeting systemic risks. There was concern that the focus on individual cases had detracted from the wider regulatory focus needed.

Connections

397 The regulatory part of NZTA reported not feeling connected to the wider organisation. Some interviewees felt that the regulatory area was a 'poor cousin' within the organisation and given limited attention. More senior people tended to explain this approach as being due to the regulatory area being seen as lower risk than other areas like Investment or Infrastructure.

398 In our view, however, the regulatory function was not given the prominence it deserved (this is discussed in more detail in other sections).

Silos

399 We also read material from as early as 2010 and 2011 indicating that there were some silos in the regulatory function,⁸⁸ including regional siloes as well as silos in specific functional areas. There were also some siloes outside the regulatory function. While silos can be positive through creating increased focus and attention, they can also be negative if the connections are lost between the silos.

400 This continued through to 2016, when EY found that NZTA's wider leadership group was not currently demonstrating and promoting the values, behaviours and culture it needs to in order to support a one-agency strategic direction and create customer value.⁸⁹

External views

401 Externally NZTA was seen as having a defensive culture, with the agency not being comfortable with faults being identified. External organisations reported being saturated in documentation, rather than NZTA being up-front about its key issues and mitigation strategies.

402 External groups reported cases of NZTA staff needing approvals from the highest levels of the organisation. This was contrasted with other organisations that enable staff at the same levels to engage with external groups and agree on matters. At the heart of this was trust, and how far NZTA trusted and empowered its staff to carry out their role effectively and to their full ability.

⁸⁸ Access and Use Transformation Programme Future State Visioning (17/10/2010) and Business Operating Model Report Building tomorrow's organisation from today's Access and Use - the Design Phase (2011)

⁸⁹ New Zealand Transport Agency Summary Report, 27 May 2016 EY



Internal audits

403 There was a culture of 'red' risks being considered bad. People either did not want internal audits done, or actively influenced the ratings for internal audits. We were told of one project where the risk rating was amended by the responsible manager, with the result that it did not get the attention it needed.

Learning and culture

404 We saw deliberate efforts made to improve regulatory capability with the introduction of a regulatory capability programme in 2017 and the establishing of a relationship with the government's regulation programme (G-REG Initiative) at that time.

Structure: Roles and accountabilities

Expected good practice: Structure

405 An organisational structure sets out how certain activities and areas are directed in order to achieve the organisation's goals. These activities and areas can include rules, roles, and responsibilities.

406 The structure determines how job tasks are formally divided, grouped, and coordinated within an organisation. Successful organisational structures define each employee's job and how it fits within the overall system.

407 The organisational structure also determines how decision-making is allocated to different levels within the organisation and how information flows between those levels. For example, in a centralised structure, decisions flow from the top down, while in a decentralised structure, decision-making power is distributed among various levels of the organisation.

408 The phrase 'form follows function' (borrowed from architectural design) is often used as a guiding principle for organisational structure. Under this principle we would expect that an effective organisational structure would be developed only after the organisation's goals and purpose have been developed.

409 Similarly, when it comes to sorting organisational issues, the thing to fix last is structure. Invariably there are other arrangements that need to be addressed, such as leadership and management practices, culture, and even the strategy of the organisation.

410 This leads to the alternative definition of an effective organisational structure as being one that does not impede the organisation in achieving its goals. For example, an effective structure will include clear roles and accountabilities, good information flows between and across levels, and structural arrangements that facilitate decision-making at the appropriate levels within the organisation.



What we observed: Structure

- 411 NZTA was established in 2008 through joining together two quite different organisations, Land Transport NZ (LTNZ) and Transit NZ. LTNZ itself was the result of joining the previous Land Transport Safety Authority (LTSA) and Transfund NZ into a single organisation in 2005.
- 412 The intent behind this reorganisation was, among other things, to achieve greater integration of the funding, infrastructure and regulatory functions. In effect, however, there was little change in terms of structure. As we understand it, the regulatory function very much resembled the regulatory function within LTNZ, and which was itself very similar to that of the LTSA.
- 413 NZTA structural arrangements over the years have presented significant challenges for developing an end to end approach to regulatory activity and the development of a consistent culture across the regulatory functions.
- 414 Despite attempts from successive CEOs the silos were never broken down. In this regard, the absence of a regulatory strategy to guide decisions on resourcing and activity within and across the regulatory function would not have helped.
- 415 Lack of strategy and siloed activity in the structure also encouraged/ reinforced a delivery approach rather than one of a focus on regulatory outcomes. There were little pockets of excellence, often driven by a particular individual. So, you get a cycle of project-based activity rather than strategy driven activity.
- 416 The establishment of a separate Regulatory Group in late 2018 with a focus for end-to-end regulatory management, and with General Manager reporting to the Chief Executive provides for greater visibility and emphasis on the NZTA's regulatory functions and responsibilities within the organisation.
- 417 Structural change was a feature of the development of the NZTA (and the regulatory function) over the past ten years. These changes had both positive and negative implications for the organisation and its people. The following sections outline these structural changes over time.

Access & Use Structure 2009 – comprised three operationally focused groups that focused on their specific areas of interest

- 418 The Access & Use Group discharged the regulatory functions, and activity was initially divided into three categories:⁹⁰
- a Development and maintenance of operational policy, guidelines and standards to ensure there is an appropriate set tool [sic] available for operational staff; effective communication with stakeholders, partners, agents and the public. These services and the group's services are structured around road users, vehicles and commercial operators
 - b Regional compliance activity to identify and target the known risk. Regional Operations looked after this activity.

⁹⁰ Report on Regulatory Functions 7 July 2009 to Regulatory Board Committee



- c Transactional activity to ensure that users are appropriately authorised/ licensed to use the land transport system and the fees and charges collected. The Transport Registry Centre delivered this.
- 419 This structure was essentially the same as that in the earlier organisation of the Land Transport Safety Authority.
- 420 Three broad groups delivered these activities:
- a Operational Policy, across three themes: Road User Behaviour, Vehicles, and Commercial Operations – Road and Rail. The Operational Policy group translated the high-level government strategies and policies into workable policies and guidelines for staff in Regional Operations and the Transport Registry Centre, and also for industry and the general public.
 - b Regional Operations, across the three themes: Commercial Operators, Vehicles, and Road Users. This group carried out a range of regulatory compliance interventions in those three areas, with interventions including enforcement, deterrence, reviewing and auditing, advising, informing and educating.
 - c Transport Regulatory Centre, across a number of areas including customer enquiries, motor vehicle registrations and renewals, RUC licences, revenue collection from fees and charges, driver licensing, national registers of motor vehicle registrations and driver licenses, tolling, and taxi licensing.
- 421 While the structure presented some challenges (for example the sheer size and scope of the Transport Registry Centre, and the span within Regional Operations), the A&U structure did seem to offer the possibility of an end-to-end connection from Operational Policy through to the delivery arms of Regional Operations and the Transport Registry Centre.
- 422 However, as we noted above under 'What we observed: Strategy' (page 38), the business was very operationally focused. There was nothing that summarised the goals and strategy of the regulatory function at this stage – meaning that there were no prompts for people to see the possibilities for using the structure to develop an end-to-end systems approach.

Access and Use - Transformation 2010–13 for enhanced efficiency and improved customer service

- 423 The A&U Group embarked on a transformation programme in late 2010, with a focus on enhancing business efficiency, improving customer service, and modernising IT infrastructure.
- 424 The aim was to develop a business model that would drive business efficiency, improve customer focus, and reduce the compliance burden on New Zealanders seeking to access and use the land transport system.
- 425 This transformation programme resulted in some structural changes. The aim was for the structural design of the Access and Use Group to support the intent of the Transformation Programme to 'maximise our contribution towards the objectives and priorities of government and operate in the ways outlined by the NeXUS and Safer Journeys Strategies.'⁹¹

⁹¹ Building tomorrow's organisation from today's. Access and Use – the Delivery Phase 4 Aug 2011 p17.



- 426 The final design consisted of a Group Manager A&U with three National Manager Reports (Direction, Design and Delivery) and four Regional Manager Reports.
- 427 On its face, this structure maintained the earlier functions, but split them out into separate units, with the aim of enhanced focus and more efficient operation. The Direction Group took on operational policy, and the Design Group took on the role of ‘putting flesh on the policy bones’ through guidelines and technical advice. The Delivery Group addressed the areas that the Transport Registry Centre had previously dealt with. The Regional Groups maintained the local frontline delivery presence.
- 428 In this way, the structure offered an opportunity for end-to-end support for the regulatory function, from operational policy through to framework and guideline support to delivery both nationally and regionally.
- 429 It was recognised in the consultation documents around the proposed and final decisions on structure that a number of other factors were important for the success of the A&U Transformation. These included leadership capability, cross-cutting roles operating across the different A&U functional groups and providing technical and regulatory advice (for example, the principal advisory roles), workforce planning, the right culture, and sustaining the future (that is, managing costs and revenues). These aspirational conditions would prove difficult to put in place.
- 430 Interviews indicated that despite best intentions it was difficult to implement the new structure and achieve the end-to-end systems view. The splitting of operational policy from framework design was a challenge. Operational preoccupations always took precedence, meaning it was difficult to find time to work ‘on the business’ and any available funds were often used to just operate the business as usual. One comment was ‘It [the structure] has never been put in place as it should have.’
- 431 As we noted above, the business was always very operationally focused, with no regulatory strategy or overarching framework to guide leadership and management decisions on roles and responsibilities. The frontline continued to operate as it always had.
- 432 Appointments to leadership roles in the new structure appear to have been guided by the broad intent of the transformation programme, which was to enhance efficiency, improve customer focus, and modernise IT infrastructure.
- 433 These new managers brought skills and experience in commercial operations and customer service management that would have a significant impact for the ongoing focus of A&U.

Aiming for national consistency of approach in the regions

- 434 There was a high degree of inconsistency of operational approaches across each of the four regions, and this was seen as important to address:

‘... there has not been a clear and consistent view on what are core activities, what are targeted and temporary risk reduction activities and where discretionary value-added activities fit across regions. Regions have also taken different approaches to how they assess and encourage compliance, and how they assess risk and make decisions on how to apply various resources.’



Each region also has its own view on 'what good looks like' and sets its own measures and objectives'.⁹²

435 A first step was the creation of a National Manager Operations role over the four Regional Managers in mid-2014. The role had a remit to increase consistency of operations and to strengthen and clarify the various regulatory roles that were the responsibility of the regions.

436 In late 2014 some further enhancements were made to the regional structure to clarify roles and accountabilities. In addition, there would be a centralised plan that would be implemented by regions, and that would be connected to key national Delivery strategies and projects. This plan would be owned by the National Manager Operations.

437 These activities and changes might be seen as opening the door for the 'philosophy' of the National Office to have a stronger influence over the regulatory activity in the regions than previously.

438 This philosophy is summarised in the preface to the consultation document on proposed changes:

'Putting customers at the heart of our business underpins our approach and goal outlined in the Access & Use Business Strategy of becoming a 'world class regulator', by designing our regulatory activities and services to assist customers to make the smart (compliant) choice.'⁹³

2017 – a refreshed NZTA organisational strategy, a new operating model and significant changes in the organisational structure

439 Under the new Chief Executive further structural changes were made. These changes were significant, and were aimed at addressing the siloed ways of working that had developed within the whole organisation, and not just in A&U.

440 The fundamental change was to adopt a value chain model consisting of three main elements – strategy, systems and customer service – which were underpinned by safety and environment and the customer experience, and then supported by the organisational functions that form the structure.

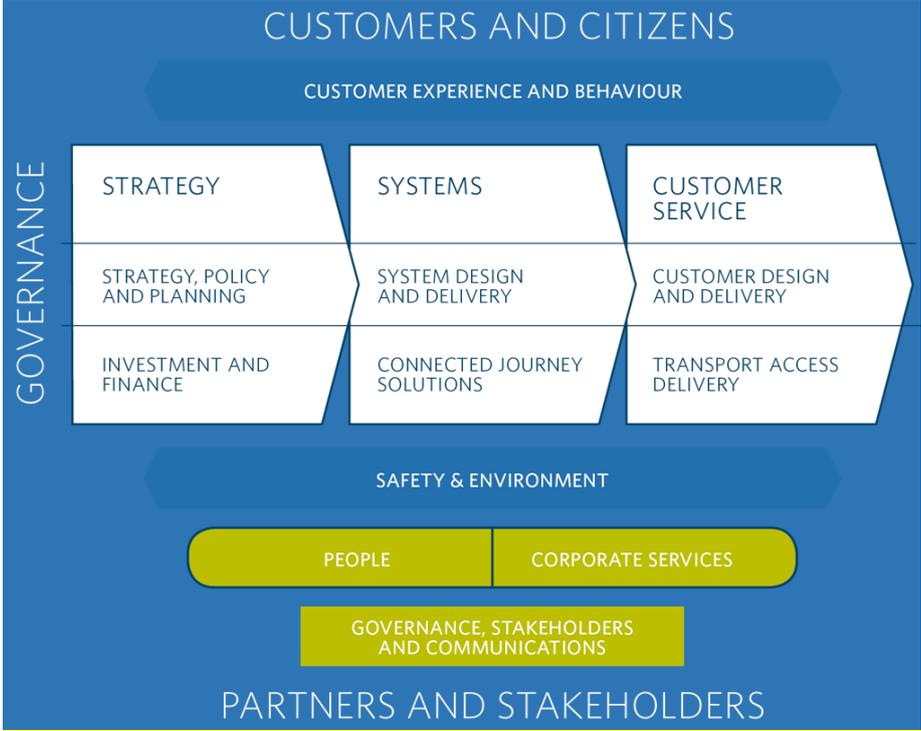
441 This is best shown in the diagram below:

⁹² Consultation Proposal, Regional Review, Version 1 Final 30 October 2014 p7

⁹³ Ibid p1



Figure 3: Organisational Structure Transformation 2017



- 442 In practice, each group depends on others to deliver services. Each group would be clear on its role and responsibilities, but the model requires people to come together to deliver on outcomes. The notion of 'teams of teams' is invoked.
- 443 We note the continuing (even strengthened) focus in the model on customer service at a whole-of-NZTA level, and this would have implications for the regulatory function as well.
- 444 Another feature of the model is the establishing of a separate group Transport Access Delivery, (TAD) which would have a key focus on the regulatory function, but particularly on regulatory compliance. This followed a review of the Access & Use function by the incoming new Chief Executive, which identified issues with NZTA's regulatory compliance function.
- 445 Establishing the TAD group with responsibility for compliance activity as a separate stand-alone functional area did have the positive effect of increasing the focus on that area (identified as an issue in a 2016 review⁹⁴).
- 446 However, this carving out of the Transport Access Delivery function only addressed the delivery side of the regulatory function. Regulatory strategy and operational policy, for example, would be driven as a section of the Strategy, Policy and Planning Group. This meant that the new strategy

⁹⁴ EY Board Summary Report 2016



did not achieve an end-to-end regulatory function in the organisation. Other aspects of regulatory activity were also not included in TAD.

- 447 In addition, the move from a functional organisational structure to a value chain was a major shift for people in the organisation. This was a challenge to understand, a challenge to make it work, and a significant challenge to manage the change. We understand from interviews that these changes caused some significant disruptions for staff, including where some people felt that they were allocated to new roles that were quite different from their previous role, and to which they were not suited.
- 448 All of this posed significant challenges for the regulatory function, making it more difficult to rise above preoccupation with business as usual (and disruption) in order to adopt a more strategic, pro-active approach to the regulatory business.
- 449 Despite this, it precisely at this time that some work was beginning to emerge for developing regulatory strategy.

2018 – a structure that recognises the wider regulatory role and a focus for regulatory management

- 450 Related to this increased focus on the regulatory function, the organisational structure was further enhanced in late 2018 to create a new Regulatory Group, as well as a new Operations Group.
- 451 A number of functions from other areas were brought into the new Regulatory Group, including:
- a operational policy (ex-Transport Access Delivery (TAD) and ex Customer Design & Delivery (CD&D))
 - b all the assessment decision making (ex CD&D)
 - c all other TAD functions (Service Providers, Road Corridor, Rail).
- 452 This does present the opportunity for providing the focus that the regulatory function needs in NZTA and for building on the work that has been initiated
- 453 The focus of the new Regulatory Group was to be on regulatory management to ensure effective regulatory systems management of risks, and improve regulatory outcomes, by creating a primary accountability for regulatory management, including regulatory decisions and activities.⁹⁵
- 454 ‘The Group’s strategic focus will be to identify and address system weaknesses, and target activity to risks and threats to the integrity of the transport system.’⁹⁶
- 455 This structure within the NZTA provides for a primary accountability for regulatory management that has the opportunity to give the regulatory functions and responsibilities of the Board a real focus. The Group would be accountable for operational policy, entry, in service performance, and exit functions to manage harms and risk.

⁹⁵ Proposed functions of a Regulatory Group November 2018 (Note: Functions informed by an independent perspective from the Regulatory Compliance Lead of the Regulatory function)

⁹⁶ Ibid



- 456 A short statement of the rationale for the Group acknowledges short term objectives as being to⁹⁷:
- a restore public confidence and trust in NZTA's regulatory compliance management, as well as improve land transport safety outcomes.
 - b ensure the Group's role and purpose are clear internally and externally, and
 - c ensure that staff are empowered to perform their roles, including holding people to account (no industry capture) and being firm but fair.
- 457 We note that their aspects of regulatory activity that still reside in other Groups, such as strategy in the Strategy, Policy and Planning Group, and intelligence and insights in the Customer Experience and Behaviour Group. The design recognised this, and the expectation was that the regulatory Group would work with these other Groups to achieve the required integration of activity for an 'end-to-end' result.
- 458 Judging from previous challenges with achieving integration and collaboration across functions in the organisation, some proactive leadership attention will need to be applied to ensuring that this occurs.
- 459 The General Manager of this Group would report to the Chief Executive. This reporting line would enable the voice of the regulatory function to be heard at Chief Executive and senior management levels.

People and capability

Expected good practice: People and capability

- 460 As well as technical capability relevant to its various functions and activities in its specific industry, an effective regulator should also have capability in regulatory practice, including capability in exercising judgement and discretion in decision making.
- 461 For many regulators it is a challenge to build both the industry technical capability and the core regulatory skills.
- 462 Some technical specialists such as engineers and mechanics may not have the personal attributes needed to carry out assertive regulatory action, particularly if nuanced judgement and discretion are needed, rather than a strict compliance with rules approach. It will also probably be impracticable for all regulatory practitioners to develop the highly technical knowledge and skill required by the relevant agency.
- 463 It is not essential that every staff member be both the technical specialist and a capable regulatory practitioner. Bringing both capability areas to bear can be achieved through cooperative approaches to working.

⁹⁷ Regulatory Group, Decision Objectives, Rationale and Implications, 6 December 2018



- 464 At a leadership level, decision makers should have access to both technical capability and regulatory practice capability. This capability may be vested in members of the leadership team or alternately accessed on an as-needed basis.
- 465 At a managerial level, the essential competence is the ability to lead and manage staff. However, we would expect to see some managers, particularly at tier 3, who come from a regulatory background.
- 466 People managing regulatory teams must have a robust understanding of the regulatory model or approach that is taken by their agency. Their attributes ought to include the ability to make, or support staff who make, regulatory decisions that may be punitive and not welcomed by the recipient and/or other regulated entities.
- 467 To operate as a modern regulator, including making efficient and effective intervention choices that are impactful and contribute to outcomes, a strong regulator intelligence capability is needed.
- 468 A regulatory agency should have a practice framework and a training programme that covers the agency's regulatory model and approaches and how to use the regulatory tools that are relevant to individuals in their roles.

What we observed: People and capability

- 469 We observed that the evolution of regulatory capability differed between the Rail Safety Team and the Road Corridor Team.

Rail Safety Regulator

- 470 A 2013 independent review of the NZTA Rail Safety Team found 'that the NZTA rail team is currently perceived by some sectors of the rail industry and other related Government Agencies in a negative manner and as a soft regulator.'⁹⁸ The review attributed this perception to a number of factors, including:
- a the low status of the role within the agency
 - b inadequate resourcing
 - c outsourcing of the compliance assessment task.
- 471 In 2015, a high-level plan for developing skills and attributes within NZTA's rail safety regulatory function found that the team's resources were generally deficient in areas other than the 'rail Knowledge' side of evaluating safety cases and conducting assessments. The report indicated that ideally the team would have, either within the team itself or available to it from elsewhere, the mix of skills and attributes to cover the full range of regulatory functions.
- 472 We are aware that from 2106 work has been done to address capacity and capability challenges for this team.

⁹⁸ 2013, Australian transport Risk Solutions Pty Limited, Independent review report into Rail Systems Team



- 473 In May 2018, Navigatus Consulting completed a review of NZTA's indicative business case (IBC) to increase resources for the Rail Safety Regulator.⁹⁹ Following the 2013 independent review, resources had been increased from 10.5 to 15 FTE and staff competencies had been upskilled. The IBC was seeking a further increase, to 21 FTE. Navigatus made a number of observations about capacity and capability:
- a 'Despite recent improvements in the RSR [Rail Safety Regulator] this needs a more complete set of rail and regulatory expertise to be fully effective.'
 - b 'The ROM [Rail Safety, Regulatory Operating Model] is a comprehensive model that reflects other examples of current contemporary regulatory practice in New Zealand.'¹⁰⁰ However, the report said further that 'The Rail Safety ROM was published before the resources to operate it were provided. This has created the uncomfortable position where the RSR cannot deliver all of the stated activities.'

Other regulatory functions

- 474 A number of people we spoke to said that the regulatory teams that were integrated into NZTA in 2008 (excluding the Rail Safety Regulator) brought with them a command and control approach to regulating. At the time, the agency carried out a range of direct roadside enforcement activity, which for various reasons has reduced since then.
- 475 A key change for frontline regulatory staff was the introduction of the responsive/problem solving approach to regulation in about 2012. This brought with it the very strong customer-centric approach to delivering regulatory activities.
- 476 Our observation is that, despite the loss of capacity through various restructurings, there continues to be within the agency a number of people with either technical capability or some regulatory experience. However, there has been an absence of strong leadership and strategy to enable NZTA to develop consistent and effective approaches to regulatory activity.
- 477 From the creation of NZTA through to about 2016, there has been inadequate regulatory understanding and capability at the senior leadership level.
- 478 This lack of capability was also an issue at the 3rd tier management level, with managers coming from non-regulatory backgrounds. We believe that this lack of experience was aggravated by a naïve emphasis on 'making it easy to comply', without adequate consideration of how non-compliance will be identified and resolved. In our opinion, insufficient effort was directed at identifying those who were likely to be non-compliant and providing staff with adequate support to respond efficiently to non-compliance.
- 479 We have heard from staff that they were frustrated by what they saw as an inappropriate focus on customers. Operational staff felt that enforcement was frowned upon. We heard staff speak about taking a 'semi-stealth' approach to bringing a prosecution or ensuring that before they escalated a matter for a decision, they had gathered 'too much evidence for it to be ignored'.

⁹⁹ 2018, Navigatus Consulting (for MoT), A Review of the NZTA Indicative Business Case to increase resources for New Zealand's Rail Safety Regulator

¹⁰⁰ 2017, NZTA Rail Safety: Regulatory Operating Model



480 We heard that some operational staff resisted the changes, while others submitted to them. Most of those we interviewed agreed that operational practices varied between regions and between staff.

481 We also heard from staff that when they escalated issues to management it was hard to get regulatory actions approved. In May 2017, an assurance report relating to the role of 'Adjudicators' found that a backlog of files was produced in part because of an absence of agreed escalation criteria and a potential lack of confidence by the Commercial Licensing team to make decisions. This review also identified that more work was required to assist staff to meet file standards for decisions to be made.

Intelligence

482 To focus its regulatory interventions NZTA was relying on risk models such as the star rating system for transport operators. It is widely accepted that the models are flawed¹⁰¹. Operational staff were generally critical of the tasking lists that they were given and of the denial of any opportunity to use local insights and information to direct some of their work.

483 We were told that intelligence capacity and capability within the organisation has been limited and continues to be under-resourced. We note that in March 2018 the Audit, Risk and Assurance Board Committee was briefed on the establishment of a Risk and Intelligence team in NZTA.¹⁰²

Training

484 Training of new staff coming into the agency has largely depended on the local manager and peer support.

485 More recently the Agency's training programme has been developed further. This has included the adoption of the NZ G-Reg, level 3 Certificate. While this is a positive step, the G-Reg certificate is an entry-level qualification: it does not cover the specific regulatory activities or the use of regulatory tools that are available to NZTA's operational teams.

486 From 2017, work has been done to introduce a regulatory management strategy and an operating model (across all regulatory regimes – not just rail), but this work has been on hold and is not fully developed or implemented.

487 A clear regulatory strategy and approach, a full understanding of available regulatory tools, and comprehensive guidance to support consistent practice and decision making are all prerequisites to developing an effective training programme.

488 We acknowledge that good work has been done to introduce a training programme, but the effectiveness of the programme will be constrained by the absence of an agreed, coherent regulatory approach.

¹⁰¹ We have heard that pre assessments can be completed to ensure a high star rating on the 'official' assessment

¹⁰² 2018/03/A261, Audit, Risk and Assurance Board Committee Paper, Risk and Intelligence function at the NZ Transport Agency



Operational and work practices

Expected good practice: Operational and work practices

- 489 An effective regulator should have a comprehensive suite of operational policies and positions to guide the way in which regulatory functions will be carried out. These policies and positions should align the various regulatory activities undertaken within the organisation and clarify roles so that the strategic goal can be achieved.
- 490 Given the way in which land transport regulatory functions and activities are dispersed across third-party providers and partner agencies, the policies should also seek, where possible, to align approaches and clarify respective roles.
- 491 In order for activities to be undertaken consistently, there must also be comprehensive guidance that supports and enables operational staff to carry out their roles.
- 492 Given the nature of the regulatory activities undertaken by, and on behalf of, NZTA, we expected that the guidance would cover both technical process and good regulatory practice and decision making.
- 493 For a regulatory organisation to function efficiently there has to be a level of judgement and decision making that is delegated to front-line operational staff. Delegation on its own is never enough: staff must be supported and enabled to make decisions (appropriate to their role), and there must be a culture of trust.
- 494 Internal quality assessment and measures are important. The purpose ought to be learning, reflecting and improving. Using quality assessment to single out or criticise individuals will inevitably act against the efficient exercise of judgement and timely decision making. Regulatory organisations must accept that sometimes, with the benefit of hindsight, the decisions made by frontline staff may turn out to be less than ideal.
- 495 A good regulator will have identified all of its regulatory and non-regulatory tools and levers and be clear on when and how it uses each. It is inevitable that in any regulatory system there will be challenges with out of date regulations or rules or a potential for new or improved regulatory levers.
- 496 The regulator should have policy and procedure in place to describe the use of regulatory tools and to address specific challenges that may arise from outdated law. The agency should also engage with its Ministry to seek a legislative fix. It is important that they think about how to operate within the existing policy setting as well as seeking to influence future change.
- 497 Changing regulations and rules takes time and in some cases what an agency sees as a priority will not be a priority for the Ministry or Government.

What we observed: Operational and work practices

- 498 We did not carry out a full desk-based review of NZTA's policy or procedures, but we did review some example documents and spoke with a range of NZTA staff.



- 499 Staff confirmed the existence of SOPs that step them through the technical processes they undertake. The general consensus is that those SOPs have existed throughout the lifespan of the agency. There were mixed views as to how up to date the SOPs are. The examples we saw were updated as at July 2018.
- 500 We have also seen intervention guidelines and tools that have been produced initially for the Rail Safety Team, and then more recently for the Road Corridor Team.¹⁰³ This draws on a responsive regulatory approach with a risk and public interest overlay. The model draws on contemporary regulatory theory, but the challenge is to understand how staff are enabled to apply the model in their decision making.
- 501 The model is accompanied by a decision tree, the purpose of which is 'to provide direction as to where an appropriate outcome is likely to fall and is not a prescriptive approach'. We found that the decision tree was hard to apply to some scenarios. In the case of a repeat offender who is not willing to engage to learn their legal responsibilities and is therefore making flawed decisions that persistently fall short of their legal duties, the tree drives you down multiple possible pathways. Interestingly, none of the pathways lead to prosecution.
- 502 It is also unclear what the status of the Intervention tools are for the Road Corridor Team, given that:
- a the Regulatory Management Strategy has been approved for development by the Board but not completed or implemented as yet
 - b development of the regulatory approach (for all of NZTA's regulatory function) has been on hold while the contracted resource has been working to clear the backlog of investigations
 - c only the Rail Safety Team has a fully developed and approved compliance operating model (as at February 2018).
- 503 Conceptually, the draft regulatory model seems appropriate, but there appears to be a significant gap in the guidance provided to staff to apply this model in their work.

Operational policy

Internal

- 504 We have received varying accounts of the scope and currency of operational policy that exists. Operational staff believed that there was no clear link between their processes and the organisation's strategy.
- 505 What is clear is that not all of the regulatory components have been recognised by the organisation and there are significant challenges with alignment. A key example is that licence issuing has been seen as a customer service function and delivered separately from the other regulatory functions. As a customer delivery function, a key performance indicator has been the turnaround time for issuing licences. We heard concerns from several people that this has shifted focus away from the safety purposes for which the licence regimes exist.

¹⁰³ Road Corridor Team – Intervention Guidelines & Tools



- 506 Several people told the review team that there have been examples of the licensing team issuing a Transport Service Licence (TSL) to a family member of a previous TSL holder who was under active investigation and potentially facing licence revocation, with no communication between the separate functions within NZTA.
- 507 NZTA's enforcement policy is widely described as 'prosecution as a last option'. Even senior people have described a 'soft regulatory approach'. One senior manager said that the approach before 2017/18 had been 'Educate and a wet bus ticket'.

Guidance

- 508 Guidance documents are mainly described as process heavy and often 'tick box' in nature. Operational and management staff expressed a desire for a more outcome-focused approach.
- 509 Other than the work undertaken for the Rail Safety Team beginning in 2016, we saw no evidence of guidance on good regulatory practice or approaches for NZTA. There is no equivalent of a good practice framework to support consistent regulatory decision-making and activity.
- 510 There is a common view that regional variations have been an ongoing challenge in practice, and it is recognised that this has frustrated large national companies that interact with the agency. This suggests that guidance is ineffective. However, we accept that the guidance may not be the sole reason for siloes and inconsistent practice.
- 511 The regulatory model adopted from about 2012 was based largely on the compliance pyramid. Despite this, we have not seen evidence of regulatory effort being directed towards those industry participants who were unwilling or incapable of complying. To the contrary, staff have expressed concerns that¹⁰⁴:
- a they were not allowed to question tasking lists
 - b local intelligence was ignored
 - c targeting was seen as inconsistent with the customer approach.

Availability of regulatory tools

- 512 During interviews and workshops, we were told that staff believed that there were insufficient intermediary intervention options to support their regulatory activity. 'Revocation is a blunt instrument!' was a commonly expressed view.
- 513 However, we were also told from an operational policy perspective that while there were clearly challenges with the legislation often when staff claimed that they had insufficient tools it was clear that they actually did not have a full understanding of all of the options that were available to them.
- 514 This highlights the absence of a robust practice framework and clear guidance to support managers and staff in their day-to-day regulatory activity.

¹⁰⁴ Staff workshop during the course of this review



515 We understand from interviews that in recent times to address issues of non-compliance the contracted Regulatory Compliance Lead has introduced new approaches to regulatory decision-making without the need for additional legislative interventions.

Delegation and trust

516 We heard a strong message that operational staff felt unsupported in making regulatory decisions. This was particularly seen as an issue from about 2012, when there was an increasing focus on customer service delivery.

517 One person explained: 'The flavour was always customer service, but I never heard any management directive not to use enforcement if the risk warranted it.' However, other people said they were actively discouraged from taking revocation or prosecution action. They described difficulties in knowing how to escalate cases or get agreements from more senior managers to act. As we noted above, we heard staff speak about taking a 'semi-stealth' approach to bringing a prosecution or ensuring that before they escalated a matter for a decision they had gathered 'too much evidence for it to be ignored'.

518 Another example given related to a conversation with a senior manager about poor-performing Warrant of Fitness garages. The staff member was allegedly told that 'people [the garage operators] need to earn a living'.

519 A further example was of managers being required to watch a video recording of a business owner complaining about the compliance approach of staff at NZTA's Palmerston North office. The managers were then provided coaching on customer-focused approaches.

Role of the adjudicators

520 Much of the regulatory decision making of NZTA sat with a team of three staff known as 'Adjudicators'. It had been decided that, particularly for revocation decisions, a degree of independence was required. Over time, the scope of the adjudicator function appears to have grown to the point that they were the predominant enforcement decision makers for NZTA.

521 NZTA staff have mixed views about the value of this independent decision body within the organisation. Some of the frontline supervisors believed that, had the model been properly resourced, it would have been useful to the extent that it took a significant part of the workload away from them. Others we spoke with share our reservations about the lack of delegation to the staff who do the work. The individual closest to the action will be best placed to make an informed decision, and to follow up on compliance with the decision.

522 We accept that some independent input to decision making is important. However, there are other ways that this can be achieved – for example via a decision-making review panel. With the disestablishment of the adjudicator role in 2018, this is the mechanism that now exists within the NZTA. It is also the mechanism that is used within other regulators in the transport sector in New Zealand.

523 In practice the Adjudicators became backlogged with files and they were a barrier to progressing matters in a timely way. This was due to a range of challenges, including:

- a inadequate resourcing



- b what has been described as a “gold standard” requirement for evidence gathering
 - c inadequate training and support for staff to achieve the evidence standard required.
- 524 Despite the vital importance of timely enforcement decision making, surprisingly the agency took several years to address the challenges with the Adjudicator model.
- 525 We have heard that the known challenges with getting an enforcement decision, either through a manager or the adjudication process, deterred some staff from progressing matters.
- 526 A range of people told us that with structural and leadership changes that occurred from about 2017, the environment changed significantly, and staff felt they were able to speak up. They felt less concerned about the consequences of raising issues. Some expressed disappointment that to some extent this momentum has been lost since the interim arrangement with the Regulatory Compliance Lead of the Regulatory function was introduced.
- 527 NZTA’s operational staff have not been appropriately empowered or supported to make regulatory decisions. The low trust environment within the agency has diminished the confidence of some staff.

Quality assurance

- 528 At NZTA the main focus of measuring has been on outputs. Many of the people we spoke to told us that there was little consideration of outcomes for measuring the effectiveness of regulatory activity. Measuring the effectiveness of regulatory interventions against outcomes is an ongoing challenge for regulators in general.
- 529 We have not seen evidence of any monitoring of the end-to-end regulatory system that is led by NZTA.

Technology

Expected good practice: Technology

- 530 Technology refers to methods, systems, and devices used. Technology is a key enabler within an organisation as it brings together tools that make it easier to create, use and exchange information, that make tasks easier to execute, and that sometimes solves problems. In fact, in our digital age technology is as much a driver of strategy as an enabler.
- 531 In a regulatory organisation we would expect to see technology being used to aid decision-making and to facilitate interactions with stakeholders, as well as to enable knowledge and information management. It would include fit-for-purpose databases that: are current in data capture; exhibit data integrity; are integrated to provide a single source of truth; provide ease of access; and maintain appropriate security levels.
- 532 The technology would: be maintained over time; be supported and sustainable (reinvestment); enable regulatory delivery; enable collaboration with third parties; be fit for purpose; promote efficient working; and enable productivity.



533 It is challenging for any organisation to keep pace with technological advances. Systems can easily become out of date or out of step with current practice. A technologically focused organisation would ensure it had oversight of key technological enablers within the organisation and, as far as possible, maintain these.

What we observed: Technology

534 Because of the wide scope of our review we were not able to explore in depth the range of technology used for the regulatory function within NZTA. Instead we have identified several key themes that emerged from the interviews and documentation.

535 Although the importance of technology was a theme both in interviews and in the documentation, we saw a real disconnect between the two in terms of specific focus.

536 The interview feedback indicated that technology was not being used to effectively implement or support the regulatory functions and decision-making. In contrast, we concluded that the organisational view of technology as shown in the documentation was in fact about using technology as a lever for efficiency for delivery of customer service to both the public and external parties, rather than using it to improve the operationalisation of the regulatory function.

537 In the interviews, both internal and external interviewees identified technology as a weak area for NZTA's regulatory function. We heard four main themes in the interviews:

- a registers to give effect to the regulatory area were based on needs in the 1990s and are not integrated for information sharing or analysis.
- b there is a lack of data integrity in the systems.
- c the organisational attention given to technology for facilitating an improved customer experience actually detracted from the organisational focus on the regulatory function.

538 One further view was that the legislation sometimes inhibits or constrains a move to using technology in some cases, but we found limited evidence for this. For example, some transport-related legislation still refers to using 'registered post'.

The registers were and are a liability

539 When NZTA was established it did not inherit fit for purpose or future-proofed systems. The government also did not fund any merger costs, including IT costs.

540 The Ministry of Transport had owned three key registers (referred to earlier) and transferred these to NZTA for \$1. What NZTA found was that the registers were a large liability and were going to be unsupported by 2015.¹⁰⁵ One senior executive commented that the systems were 'near collapse'. As a result, NZTA self-funded an upgrade. This upgrade had to be resourced from baseline funding, because in the regulatory area fees can only be used for the purpose for which they were levied.

¹⁰⁵ Briefing on the Access and Use Transformation Programme, 23 September 2010



541 It is perhaps relevant here that this was just before the global financial crisis. The government then had limited ability and no appetite to invest in modern tools and technology.

There is a lack of data integrity

542 Interviewees commented on the lack of data integrity in the systems. The comments included the following:

- a if an address is updated in the motor vehicle register this does not update other related registers that record information about the vehicle.
- b Warrant of Fitness stickers are not tracked.
- c it is possible to (fraudulently) register a vehicle as a farm vehicle, then change the class at the post office to a passenger vehicle.

543 Interviewees also commented that the motor vehicle and driver licence registers operate in silos, as they do not communicate with one another. For example, the system will not alert anyone if someone has lost their licence but is requesting an inspection for a vehicle that they technically cannot drive.

544 One further implication of the registers not talking to each other is the proliferation of small work-around databases, using software such as Microsoft Access or Excel.

Technology overshadowed regulatory focus

545 Interviewees spoke about a significant organisational focus on technology – with a particular focus on making things easier for customers and the process more efficient. In the documentation we observed a strong focus on a more integrated, automated and self-service-based transaction management model, aimed at reducing costs and improving service delivery.

546 This is reflected in the 2010 Transformation Programme documentation:

Access and Use will have a future business model that delivers the right things, in the right way, and for the right price. Customers will be at the centre of everything we do and will experience high levels of satisfaction with the quality services we provide that are enabled through the smart use of technology at least possible cost.¹⁰⁶

547 NZTA has been credited with using technology to reduce the costs faced by customers. There were contact centre technology upgrades, including technology to enable better anticipation of customer enquiries.¹⁰⁷

548 While the intention was to invest in technology and systems that will enable staff to focus more efficiently on face-to-face and complex customer interactions, where regions can add the most value,¹⁰⁸ we do not think that was achieved for regulatory staff.

549 An e-log book was developed (2017) as an efficiency tool for heavy vehicle users (and this would have assisted the NZTA as well), but we understand from interviews that there were difficulties

¹⁰⁶ Briefing on the Access and Use Transformation Programme, 23 September 2010

¹⁰⁷ Access and Use Group, Delivering long-term value for money through business transformation, December 2015

¹⁰⁸ Decision Document, Regional Review, 24 November 2014 (Version 1)



with achieving voluntary use as it challenged people in a culture of using hard copy log books that they could more easily manipulate. NZTA should have recognised the challenges in this industry and perhaps adopted a different approach.

550 In some cases, however, the implementation of new technology which simplified customer processes might have improved compliance or at least provided the NZTA with additional tools to assist regulatory action. For example, the change to a new provider for practical driver license tests delivered automation of the recording of the test script, providing the NZTA with the ability to improve auditing of Driver Licence testing officers and detecting fraudulent behaviour.

Technology for regulatory functions has not kept pace with industry

551 In 2016, EY found that the core systems are robust for most parts of the organisation but are not integrated or easy to use.

552 In the same report external stakeholders were reported as saying that the 'systems were robust, albeit old'. Stakeholders suggested that NZTA needs to invest more resources into making the agency easier for external parties to interface with, in order to enable efficient sharing of information and to enable work to be done more efficiently. The feedback was that the technology made it difficult for both customers and external stakeholders to work with NZTA.

553 In our interviews with internal staff people told us:

- a NZTA is not using modern tools and technology to get to the nub of the issue.
- b the industry is so far ahead of us technologically.
- c there were some simple and smart technology solutions that could really contribute to capability building (for example a digital learning and development centre for inspectors).

Analytics and insights

Expected good practice: Analytics and insights

554 Analytics refers to the putting together of information to deliver deeper understanding or insights. Insights provide valuable information about your system and your users and reveal actions you can take to improve your operations. Insights cannot generally be obtained without analytics and analytics relies on data.

555 In a regulatory agency we would expect to see analytics and insights as a core part of the regulatory functions. An analytics and insights team (or resource) would carry out environmental scans and deep dives to identify current and future risks, weaknesses and opportunities in the system, as well as trends. These analytics and insights guide future resourcing and support targeting of current resources and interventions.

556 Information would be gained from multiple sources. Staff would understand the importance of data and intelligence and contribute to gathering data and maintaining the currency of the regulatory knowledge base. The analytics and insights resource would also use other information such as databases, global trends and patterns.



557 Insights would be communicated to regulatory staff to support their regulatory activity, including decision-making. Staff would make regulatory decisions that are informed by analytics and insights on risks and risk trends.

What we observed: Analytics and insights

NZTA has struggled to sustain a high-performing internal analytics and insights function

558 Our assessment is that NZTA has struggled to sustain a high-performing internal analytics and insights function within the regulatory area. This may have been inherited from LTNZ days. One interviewee commented that in '2005 we realised as a regulatory agency we needed to develop some form of intelligence. Had three or four attempts at this. Never cracked it.'

559 Our view is that the organisation has mainly relied on intelligence from the sector and staff, and other independent sources (such as reviews) for its insights, rather than supporting a dedicated function to achieve this. Staff described the organisation as 'data rich but intel poor'.

560 The 2018 PIF review report observed that NZTA will need to lift its capability and its capacity in data analytics and insights. Much of the information available now is not used or not used to its full potential; that is a dividend sitting on the table.¹⁰⁹

561 In the 2016 EY Summary Report it was observed¹¹⁰:

- a 'Customer insights do not lead strategy development or prioritisation of Agency goals and outcomes. Whilst information sharing with partners (Police, ACC, AA and VTNZ) takes place, it is largely at an operational/ functional level. There is a huge opportunity for information sharing and leveraging partnerships in information strategy.
- b The Agency lacks an integrated Business Intelligence group for the collation, analysis of, and interpretation of information that enables the organisation to make decisions and share data with other Agencies to achieve their goals.'

562 In 2016 EY recommended strong information management to give the organisation the 'ability to act'. They also recommended establishing a workgroup to review the current information management and business intelligence processes and determine whether they enable the organisation to gather data for effective decision making.

Structurally there have been teams focused on intelligence

563 Within NZTA there have been dedicated teams focused on intelligence but a recurring view we heard was that these have not been effective. In the current TAD group there is a Manager, Risk & Intelligence with three associated FTE intelligence positions. Currently only the management position is filled. In 2012, Access and Use had an intelligence manager and an associated team. Four of the six FTE positions appear to be regionally focused.

¹⁰⁹ Review for the New Zealand Transport Agency Waka Kōtahi, April 2018

¹¹⁰ New Zealand Transport Agency Summary Report 27 May 2016



564 Staff reported they have been unable to provide 'local' intelligence in some cases. This is inconsistent with a Consultation document in 2014 that said:

Ensuring the insight and expertise of regional team members is used to shape the change agenda and change projects is also important. It is anticipated that gathering insight to inform the change agenda will occur through the enhanced relationship with the Operations Performance team, and that involvement in projects will continue to occur through advisory groups and short-term involvement in project teams.¹¹¹

Risk and assurance management

Expected good practice: Risk and assurance management

565 Risk and assurance management is a key part of effective governance. It gives assurance to governors that they know and understand the key issues and that appropriate management strategies are in place to mitigate or manage them.

566 Effective risk management by public organisations involves identifying, analysing, mitigating, monitoring, and communicating risks. The Office of the Auditor General would expect to see a risk management framework and register that is formally defined, widely understood, and aligned with the organisation 's strategy, risk appetite, objectives, business plan, and stakeholder expectations.¹¹²

567 Organisations rarely have the capacity to address all issues, but if all the key issues are identified, deliberate choices can be made about what to focus on at any given time.

568 In a regulatory agency we would expect to see either a dedicated risk management framework for the regulatory function or a regulatory strand within a wider risk management framework. Risks identified within the regulatory areas would be reported up or escalated to senior executives for them to consider. We would also expect the auditing and assurance functions to have some independence from the rest of the business.

569 Assurance management refers to the systems and mechanisms in place to 'assure' the entity that it has appropriate oversight and management over its functions. These systems and mechanisms provide assurance to governors and leaders that across core functions and roles work is being done to meet objectives and the work meets the quality standards required.

570 In a regulatory agency we would expect to see assurance management of the regulatory areas. This may manifest in many ways, such as deep dives in certain areas, internal and external auditing, and system-wide reporting across multiple activities.

571 We would expect to see risk and assurance being done both internally and externally. Internal risk and assurance would operate at all levels, from governance (such as Audit and Risk Committees) right down to individual projects. At each level of the organisation there would be ownership of risk and assurance.

¹¹¹ Consultation Proposal: Regional Review, Version 1 Final 30 October 2014.

¹¹² <https://oag.govt.nz/good-practice/governance/organisation>



572 For risk and assurance, it is important that the organisation has the 'right' capability and capacity to undertake tasks at each level. We would expect to see people who have a strong understanding of regulatory theory and practice or, at the least, people who are able to draw on that understanding from another source. Otherwise there is always a danger that they will not see the key regulatory risks and signals because they will simply not be attuned to them.

What we observed: Risk and assurance management

573 We would describe NZTA as immature in internal regulatory risk and assurance management. The focus on risk and assurance has been intermittent and reactive, with internal audits generally occurring when key issues are signalled. The approach has been light on strategy and ongoing monitoring. We suspect this has been the case since NZTA was established.

574 While some of the approach can be explained by the structures and processes in place, we also observed a culture of bad news not being acceptable at senior management levels. We found no evidence that bad news was not acceptable at the Board level.

575 In July 2018, PwC was asked to assess the risk and assurance functions and activities, their level of maturity, and to what extent they support NZTA in delivering on its objectives and build confidence and trust in NZTA as a key infrastructure partner of the New Zealand government. PwC found that NZTA's risk management maturity is at or above 'Basic', moving to 'Established'¹¹³.

576 In other words, the methodology still has some room for improvement to provide a robust and mature function for the organisation.

Structures

577 The Board's oversight of the risk and assurance areas of NZTA's regulatory function is covered by two committees:

- a The Audit, Risk and Assurance Board Committee
- b The Investment and Operations Committee – Its role is described as being 'to assist [the Board] to fulfil its legislative and regulatory responsibilities relating to investment and operational matters by providing a sounding board (that may involve providing recommendations, guidance and perspective) in respect of significant investment and operational matters and policy and project development, including but not limited to consideration of:
 - c the NZ Transport Agency's investment criteria
 - d the potential impact on the Transport Agency's reputation

¹¹³ PwC Strategy Assessment of NZTA Risk and Assurance functions July 2018.pdf. Note PwC were asked to perform this review because the Institute of Internal Auditors (IIA) requires an internal audit function to be externally reviewed at least once every five years to evaluate conformance with the IIA Standards and the Code of Ethics.



- e the potential environmental, social and cultural impacts of the Transport Agency's activities and/or decisions'.

578 As noted earlier in this report, there was a Regulatory Subcommittee operating in 2008 when NZTA was formed, but it was merged with the Investments Subcommittee in 2010 to form the Investment and Operations Committee.¹¹⁴ In our view this was a critical decision point. While the intention was to ensure a more streamlined, fit-for-purpose and integrated Board committee structure, the danger was that the investment side would dominate any regulatory considerations at the Committee if the balance between the two areas was not well managed.

Risk management

579 Based on our interviews and the documents we received we did not observe a clear and continuous risk management strategy in place for the regulatory functions. For example, the Board did not reset its strategic risks from March 2017 until December 2018, whereas we would expect risks to be reset more frequently than this.

580 In 2010 the development of a risk management plan was delegated to the Chief Executive (after consultation with the Board).¹¹⁵

581 In 2016 an independent review by EY found that 'risk management, particularly around large risks (delivery, property programme, ERP) are managed within silos, with little evidence of this occurring cross-Agency'.¹¹⁶

582 The consideration of regulatory risk management appears to have been intermittent but with a much stronger focus from 2017–18. From key documents from that more recent period we saw the following:

- a In December 2018 the Board were informed that the current registers lack critical functionality to achieve regulatory outcomes, including in the area of risk management and compliance tools (along with case management, and intelligence collection and analysis).
- b In August 2018 the Audit, Risk and Assurance (ARA) Board Committee received a summary of assurance activity over NZTA's regulatory systems. This included an overview of the health checks completed on four of the regulatory systems; a summary of internal audits conducted since April 2016; an update on the current status of the systems, after implementing actions; and future planned assurance activity.
- c Over 2017 and 2018, NZTA developed thinking around establishing a risk and intelligence team for the regulatory function, which would cover emerging issues and indicators of potential harms. The purpose would be to reduce harms in NZTA regulatory systems by increasing understanding of their underlying causes and reducing the risk of regulatory failure. The ARA received an update on this in March 2018.
- d In June 2017, two of NZTA's identified strategic risks related to its regulatory function. One was the risk of significant reputational damage due to internal control, system and/or

¹¹⁴ 2010 03 24 Board meeting 0356 NZTA Board Committees(vB1386054)

¹¹⁵ 2010 04 29 Board meeting 0359 NZTA Board committees and delegations(vB1385850)

¹¹⁶ New Zealand Transport Agency Summary Report, 27 May 2016, prepared by EY



regulatory failure. This was therefore mainly a risk to reputation, rather than 'regulatory failure' being seen as a risk in itself. The second was risk of a significant health and safety incident, due to poor processes or behaviours within NZTA or third-party providers, resulting in deaths and/or serious injuries and consequential reputational damage. Again, this risk was linked to consequential reputational damage.

Reporting

- 583 Reporting to the Board on regulatory risks was generally light. In our view there were only weak signals going to the Board in reporting, and no-one on the Board had regulatory antennae sensitive enough to pick up these signals.
- 584 That conclusion was reinforced by interviewees: generally, people at Board or Executive could not recall any significant discussion on regulatory risks, or could recall only one or two small matters being raised. When prompted there was a retrospective reflection that perhaps the 'regulatory part was not getting enough attention'. Reflecting on why they did not know about the regulatory failure in the system, Board members commented that 'there was something wrong in our reporting'.
- 585 We saw a tendency for regulatory papers to the Board to provide updates on process, rather than on substantive findings or impact.

Internal Audits

- 586 Internal audits are an important part of risk and assurance management, as the organisation can build subject-matter expertise to assess risk and promote assurance. However, in order for the audits to provide critical insights it is important that the function retains independence.
- 587 NZTA has internal audit capacity of approximately 15 FTE covering risk, assurance and post-implementation/benefit resolution reviews. The approach of the risk and assurance areas is to create an annual plan for the financial year, informed and sponsored by key senior executives, around 'what keeps you awake at night'.
- 588 The approach to each audit is to agree on terms of reference and scope, to gather information and do testing, and then to prepare a report.
- 589 Since the KPMG driver licensing review the internal risk and assurance team has completed about 11 reviews of regulatory functions. This highlights that NZTA was aware it was important to undertake a wider scan of the organisation at this point.
- 590 In our view there are some critical flaws in the NZTA internal audit process. In particular:
- a The near-final reports go for sign-off to the Sponsor who is responsible for the area. This compromises the independence of the review, because the sponsor is not limited to fact-checking only. We were made aware of at least one case where the Sponsor had amended the risk rating from 'not effective' to 'partially effective', so that this audit would effectively fly under the radar. This was described as the 'watermeloning' effect – green on the outside but still red in the middle.
 - b Only a short summary of the internal audit is presented to the ARA Committee. Typically, the Committee receives only a couple of paragraphs and an overall risk rating, which reduces



the Committee's ability to fully understand the issues and conclusions. The Board then receives its reporting from the Audit and Risk Committee – effectively a summary of the summary.

- c Business units have a culture of conducting their own pre-audit before the audit. On the face of it this approach has merits, but we were told that often negative information identified in the pre-audit is not disclosed or hidden from the auditors.

591 We understand that most recently in April/ May 2019 the processes for scrutiny and management of internal risk and assurance reports has been tightened for increased oversight and integrity. As a result:

- a the Audit and Risk Assurance Board Committee now receives full audit reports
- b the Chief Executive reviews all audit reports, and meets quarterly with the General Manager Corporate Services and Senior Manager Audit and Risk to discuss the reports, and

592 General Managers are now required to accept the actions from audit reports and sign to confirm that they will be implemented in accordance with the agreed management response.

External audits

OAG reports are unlikely to detect regulatory failure

593 The external audits by OAG (via KPMG) have not given rise to regulatory concerns. This is partly because their scope is deliberately narrow, as they mainly focus on whether the money appropriated by Parliament has been used as intended, and also because they focus only on whether the performance assessment is reasonable, not whether the agency should be concerned about the assessment.

594 One of the ways that performance failures can be identified is through public complaints or requests for enquiries to the OAG. The OAG reported to us that they have only received one complaint about the regulatory part of NZTA over five years.

Ministry of Transport

595 This report does not address in detail the Ministry of Transport's monitoring of the NZTA as that is a focus of a separate report to the Ministry. However, we do make the following observations:

- a The factors at play in the relationship between the NZTA and the Ministry of Transport as monitor are complex, and therefore warrant a separate assessment.
- b The experience of monitoring was one where there seemed to be issues and challenges on both sides.
- c From the Ministry's perspective the NZTA was at times quite resistant to the monitoring role, becoming quite defensive when issues were raised. They were slow or resistant to providing information requested to support an assessment or provided a mass of information that was difficult to navigate.
- d From the NZTA perspective, views were expressed in a number of interviews that at times it was hard to see the value that the Ministry's monitoring role was providing where they were perceived as focusing more on costs and inputs rather than outcomes.



Going forward

596 NZTA has acknowledged that there are gaps in its risk and assurance function and is taking action to improve it.¹¹⁷

597 More recently we have seen changes in the risk and assurance focus of the NZTA Board and the organisation. The Protected Disclosures policy was also recently updated to encourage whistleblowing within the organisation and by members of the public. Informal feedback is that the policy is starting to operate as a successful channel to the Board and executive.

- a The OAG and Ministry of Transport are also much more aware of the regulatory issues within NZTA, and we think it is likely that both will make changes to the focus areas for their next reviews. For example, audits may focus more deeply on the performance measures chosen for regulatory functions.
- b MoT has recently developed a new approach and is currently using this approach in its monitoring role.¹¹⁸

¹¹⁷ Summary of findings – Risk and assurance, draft as at 11 February 2019 (Ministry of Transport document).

¹¹⁸ NZ Transport Agency – Monitoring approach, December 2018 (draft)



APPENDIX 1: GOVERNING LEGISLATION

There are many acts, regulations and rules that govern what NZTA does and how it does it. Main pieces of legislation include:

Acts

- 1 Land Transport Management Act 2003
- 2 Land Transport Act 1998
- 3 Railways Act 2005
- 4 Government Roothing Powers Act 1989
- 5 Road User Charges Act 2012.

Regulations

- 1 Land Transport Management (Apportionment and Refund of Excise Duty and Excise-Equivalent duty) Regulations 2004
- 2 Land Transport Management (Road Tolling Scheme for ALPURT B2) Order 2005
- 3 Land Transport (Offences and Penalties) Regulations 1999
- 4 Traffic Regulations 1976
- 5 Transport Services Licensing Regulations 1989
- 6 Heavy Motor Vehicle Regulations 1974
- 7 Land Transport (Infringement and Reminder Notices) Regulations 1998
- 8 Land Transport (Administration Fees for Recovery of Unpaid Tolls) Regulations 2008
- 9 Land Transport (Certification and Other Fees) Regulations 1999
- 10 Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011
- 11 Land Transport (Ordering a Vehicle off the Road) Notice 1999
- 12 Railways Regulations 2008
- 13 Road User Charges Regulations 2012

Rules

Land transport rules are a form of delegated legislation similar to regulations. There is a long list of rules. These can be found at the following address on the NZTA website:

<https://www.nzta.govt.nz/resources/rules/>



APPENDIX 2: INTERVIEW QUESTIONS (SAMPLE)

Questions for Staff

GENERAL QUESTIONS

- Tell us a bit about your role, what it involves etc?
- What regulatory experience do you bring to this role?
- What do you see as the main focus of your role? What are the key things that are important to get right?
- What support and training are you given to deliver your regulatory role? Induction training? Ongoing?
- Have you received any directions or instruction about the use of compliance and enforcement actions?
- What are some of the issues and challenges you face in doing your role? Causes?
- Do you have any views on the overall regulatory capability and performance of NZTA?
- Where do you see there are opportunities for improvement?

NZTA REGULATORY APPROACH

- What do you think are the key things that NZTA needs to focus on as a transport regulator?
- Do you have any views on the way the regulatory function is currently organised and operated within NZTA?
- How is the regulatory role of NZTA communicated internally and externally? Key messages?
- Has the regulatory focus and approach changed overtime?
- In your view, how are regulatory risks identified, and mitigated/managed by NZTA? Staff levels? Management levels?
- In your view, how well does the regulatory role of NZTA intersect with other organisations, such as the Ministry of Transport and NZ Police? Are responsibilities and accountabilities clear and transparent?

CONCLUSION

- Is there anything on the horizon that you think is a regulatory risk for NZTA?
- Is there anything that you think we have missed in this conversation today?



APPENDIX 3: KEY FINDINGS AND RECOMMENDATIONS FROM REVIEWS

Inquiry into the performance of the New Zealand Transport Agency in relation to Dargaville Diesel Specialists (2019) by Kristy McDonald QC

This inquiry was commissioned in 2018 following the death of William Ball on 1 February 2018. William Ball was involved in an accident, and due to a fraying seatbelt, he hit his head on the windscreen. The vehicle had recently passed a warrant of fitness check.

The purpose of the inquiry was to:

- 1 Identify what information NZTA obtained about DDS and its vehicle inspectors, Mr Rodney Wilson and Mr Brent Nurse, and when it obtained that information.
- 2 Identify what NZTA did in response to the information it obtained.
- 3 Identify what NZTA should have done differently, if anything, based on the information it obtained, in the light of NZTA's regulatory functions and responsibilities.
- 4 Make recommendations as I see fit on the steps NZTA should take:
 - a In relation to this case.
 - b In relation to the performance of its regulatory functions generally to ensure that any failures identified in the performance by NZTA of its regulatory functions in this case are not repeated in the future.

The inquiry found that NZTA had failed to **prioritise public safety**, with the result that appropriate regulatory action was not taken in a timely or responsive manner. This was identified as an example of **wider systemic failures within NZTA's regulatory function** that had existed for some time.

The inquiry found that:

- NZTA appeared to have regarded inspecting organisations (IO's) and vehicle inspectors (VI's) primarily as its clients and only secondarily as regulated entities
- Despite having broad regulatory powers, NZTA's approach to compliance was to inform, educator and deter. This had resulted in not taking regulatory action when necessary.
- The processes for NZTA compliance staff to monitor the performance of IO's and VI's are inadequate.
- NZTA's culture does not prioritise rigorous regulatory action and does not support staff to take robust enforcement when it is patently needed.
- The 2014 reforms and customer focus exacerbated fundamental problems within NZTA's regulatory function.



The recommendations were to:

- 1 That NZTA should return to its core regulatory purpose to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest work towards a culture that facilitate and encourages rigorous regulatory oversight.
- 2 Refocus NZTA's regulatory strategy on public safety, ensuring the customer focus model does not compromise robust enforcement when appropriate
- 3 Ensure NZTA's processes and systems follow its overarching regulatory strategy
- 4 Enable NZTA to operate as an agile, responsive, and reasonable regulator
- 5 Ensure that NZTA's compliance staff are appropriately supported in a way that enables them to recommend robust regulatory action where appropriate, and to follow that recommendation through to a decision.

Inquiry into the use of external security consultants by Government agencies (2018) by Doug Martin and Simon Mount (QC)

This inquiry was commissioned by the State Services Commissioner following public questions about whether Southern Response Earthquake Services Ltd, a government-owned company, had used Thompson and Clark Investigations Ltd to conduct surveillance of individual insurance claimants.

The focus of the inquiry was to focus on whether surveillance had taken place and whether there had been any breaches of the Code of Conduct for the State Services.

The Inquiry focused on two key questions:

- 1 How and why have government agencies used external security consultants, and in particular have external consultants been used to carry out surveillance?
- 2 What relationship have government employees and agencies had with Thompson and Clark?

In relation to NZTA the inquiry found that:

- NZTA's systems were not sufficiently robust to ensure access to the motor vehicle register was for proper purposes, and the available evidence suggested there were instances of improper access.
- The failure to manage access to information in 2011 was a breach of the Code of Conduct by NZTA. An NZTA employee in 2011 supplied personal information to a MAF employee who, unknown to NZTA, passed it on to Thompson and Clark and this was an improper access to personal information.

At the time NZTA had no effective procedures in place to ensure that information shared through the Combined Law Agency Group was managed appropriately. That has since improved, with NZTA implementing a protocol in April 2018 to govern this information sharing.

The inquiry did not make recommendations.

In response to the inquiry the State Services Commissioner issued new Model Standards setting out minimum expectations around how public servants should gather information for regulatory



compliance and law enforcement. Crown Entity Board Chairs must ensure that their agencies are fully compliant with these standards by 30 April 2019.

Independent Review of Driver Licensing End-to-End System Integrity (2016) by KPMG

This independent review was commissioned in 2016 as part of the NZTA response to identify fraud activity at a driver licensing site in Auckland.

The objectives of the end-to-end review were to:

- 1 Assess controls in place, or that should be in place, to protect the integrity of the Driver Licensing system and detect breaches to the integrity of the system
- 2 Make recommendations on the types of controls that should be in place or improvements that can be made to existing controls to make them more robust.

The review found that the control environment over the end-to-end driver licensing system was **'not effective'**.

The review found a:

- Poor contract structure and weak contract management processes not fit for purpose
- Lack of effective and robust controls which in some instances have been reduced in favour of a greater focus on customer service
- Lack of automation between various IT systems and limited use of system controls (to prevent errors occurring) and data analytics (to proactively detect errors or suspicious transactions)
- Lack of robust, formal quality assurance processes to monitor and manage performance.

53 recommendations were made covering the above issues identified.

A high-level plan for developing the New Zealand Transport Agency's rail safety regulatory function – Report 1 (2015) by Graeme Aitken

This report was commissioned in response to concerns that the rail safety regulatory function was not operating optimally.

The purpose of the report was to:

- 1 Identify issues to be addressed for the Rail Safety Team to become a highly effective rail safety regulator.
- 2 Make recommendations for addressing those issues, along with an indication of priorities and timing.

The review found that the Rail Safety Team and NZTA had **significant shortcomings** in relation to all areas, including operational activities, interventions, intelligence, capability and culture, relationships, strategies, plans, policies and processes and the system more generally.

A considerable number of recommendations were made but the immediate actions were to:



- 1 Address KiwiRail's role as a de facto regulator – Kiwirail had a considerable degree of regulatory type responsibility but this was not recognised or mandated, and safeguards were not in place.
- 2 Ensure that the Rail Safety Team can be effective within the wider NZTA environment – the organisational trust and messaging is not sufficiently 'regulatory' to support the approach required for a rail safety regulator.
- 3 Increase capacity to provide regional investigative support, legal support and provide learning and development support for capability.

