

# REVIEW OF THE MINISTRY OF TRANSPORT'S MONITORING OF THE NEW ZEALAND TRANSPORT AGENCY'S REGULATORY PERFORMANCE

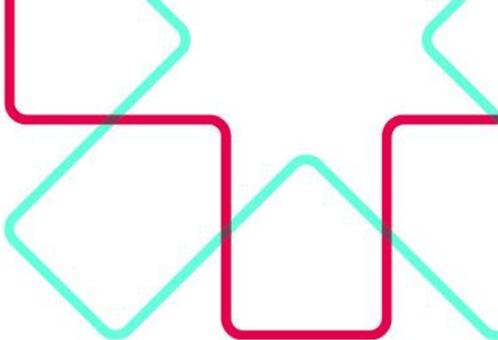
## Final Report

Report for the Secretary for Transport

9 August 2019







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# PREFACE

This report has been prepared for the Minister of Transport by Tom Gott and Doug Martin from MartinJenkins (Martin, Jenkins & Associates Limited).

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# EXECUTIVE SUMMARY

- 1 MartinJenkins was commissioned to provide independent advice to the Secretary of Transport, the State Service Commissioner, and the Minister of Transport, on whether the Ministry of Transport ('the Ministry'), in performing its crown entity monitoring function, should have:
  - a identified significant performance issues within the New Zealand Transport Agency's (NZTA) regulatory function earlier; and
  - b provided advice to Ministers about these issues earlier, or in stronger terms.
- 2 The time period for the review is from the establishment of the NZTA (2007) to the public announcement of the performance issues. We have also made some observations on the Ministry's revised approach to monitoring Crown entity performance as indicated in the Terms of Reference.
- 3 This advice is provided in the context of the evolution of Crown entity monitoring practice over the period, as expectations and common practices across the state sector at various times were a significant influence on the monitoring capability and practices in the Ministry of Transport, and in turn, developments in the Ministry's approach were noted by other agencies.
- 4 The report assesses the Ministry's monitoring activity across three broad time periods, defined by changes in the monitoring approach:
  - a an early period: 2007 – 2015
  - b a middle period: 2015 – 2017
  - c a later period: 2017 – mid 2019

## **Early period: 2007 - 2015**

- 5 The early period is characterised as one of a light touch approach to NZTA performance monitoring. This largely involved a desktop exercise, reviewing the NZTA accountability reporting and often summarising the NZTA views on its own performance. In this regard, the Ministry's approach to monitoring was not too dissimilar to that exercised elsewhere in the state sector.
- 6 Given this, it is highly unlikely that the Ministry would have identified significant performance issues within the New Zealand Transport Agency's regulatory function in this period. The NZTA itself at board and senior leadership levels had limited visibility of issues and risks with the regulatory function, and the Ministry had significantly less information than the NZTA.<sup>1</sup> The focus was more on operational issues than on those of a big picture, strategic nature or value-adding to the entity.
- 7 As a consequence the monitoring role was not held in high regard by NZTA leadership, further hampering any opportunity for it to gain insights for stronger monitoring of performance.

<sup>1</sup> See Review of NZTA regulatory capability and performance, MartinJenkins, 2019



- 8 In supporting the board's appointment process the Ministry would not have been aware of the need for in-depth regulatory experience at governance level. As a result, there was a lack of this in-depth regulatory experience on the board.<sup>2</sup>
- 9 In short, the Ministry's approach to monitoring of the NZTA performance over this time period was not fit for the purpose and would not have identified significant performance issues within the regulatory function.

**Middle period: 2015 - 2017**

- 10 This period saw a significant lift in the capability of the Ministry's monitoring team with the appointment of individuals with commercial, investment and financial management backgrounds, including Crown company monitoring experience.
- 11 Just before and around this time there was an uplift in the guidance available to monitoring departments through the work of the State Services Commission and other agencies and published on government web sites. The Ministry of Transport embarked on a programme to strengthen its approach to monitoring in the light of these developments, leading to the development of its Crown Entity Assessment Framework (CEAF) in 2016.
- 12 This was a step up from earlier less strategic, less focused approaches and aimed to add value to the NZTA through insights gained. It was still largely based on assessing NZTA reporting, but applied a more critical lens. The first assessment (2016) raised a number of performance issues including with the regulatory function. These included a number of inconsistencies in the way performance information was reported to the Board, a number of critical systems and processes were nearing the end of their working life, and a need to ensure regulatory integrity over such functions as driver licensing. The CEAF reporting was challenging the NZTA in ways that had not been experienced previously from the monitoring perspective, and it produced a strong defensive reaction, particularly at senior leadership levels. Relationships which had never been strong became fraught, and the monitoring activity was either blocked or influence brought to bear to tone down final reporting on NZTA performance. This was resisted in some cases, and in others changes were made, perhaps in the interests of improving the relationships amongst parties.
- 13 In summary, performance issues were identified in the first CEAF 2016 report and NZTA was rated as needing improvement. By 2017, however, final monitoring reporting was less strong, and less challenging to the NZTA for improving its regulatory function.
- 14 The assessment framework for monitoring was becoming more fit-for-purpose, but poor relationships between Ministry personnel and NZTA impacted significantly on the effectiveness of the monitoring approach - both for the Ministry gaining critical insights on NZTA performance and NZTA taking notice of messaging in reporting. Information was either not provided (despite requests) or provided in a deluge to make the monitoring extremely difficult.
- 15 Indeed, there was significant pushback from NZTA leadership, at times leading to a toning down of the messaging in the reporting to the Minister.

<sup>2</sup> See Review of NZTA regulatory capability and performance, MartinJenkins, 2019



16 In this regard, the opportunity to expose performance issues in the regulatory function and to provide stronger advice to the Minister was lost at this time.

**Later period: 2017 – mid 2019**

- 17 A step change in the approach to Crown entity monitoring within the Ministry commenced in early/ mid 2017 with the reorganisation of the Ministry and the focus on building and maintaining constructive, collaborative, and respectful relationships with the transport Crown entities. In respect of the NZTA, this developed through 2018, and at the present time there are effective relationships, good information sharing and more appreciation of the value that effective monitoring can bring to assisting the entity board and leadership manage critical risk.
- 18 The CEAF monitoring framework was refreshed in mid - late 2018 and tested with the NZTA. By and large, the refresh maintained the focus of the earlier framework, but significantly improved the approach to the assessments to enable more insightful analysis, more strategic focus on critical risk and trend analysis. There has been a significant improvement in the relationships with the board and leadership of the NZTA, particularly in recent times, with high levels of collaboration on the monitoring approach that will be taken, the areas to focus on, and the risks to address.
- 19 This process was started some time before the concerns with the NZTA regulatory performance came to light, and its implementation has contributed to the unearthing of a number of issues to be addressed by the NZTA.
- 20 The assessment framework is now fit-for-purpose to provide insights on risk and assurance to the Ministry, the NZTA board and leadership and the Minister. Indeed the new approach enabled identification of issues within the Connected Journeys Solutions Unit, and opportunities for strengthening the NZTA risk and assurance function.
- 21 The current approach of providing monitoring reports to the NZTA management for 'fact checking' prior to reports going to the entity board, and then on to the Minister presents an inherent risk for entity influence over the messaging and/ or tone of the reporting. This risk could be mitigated to some extent by providing reports to the board at the same time as to the chief executive. In this way, the board has the opportunity to engage with the messaging and make its own assessment of the insights. The board has the role to challenge the entity leadership for managing risks and organisational performance.
- 22 The monitoring process needs to enable the sharing of sufficient evidence to demonstrate there is sufficient oversight and management of key risks and priority areas within the agency. It is not the role of the monitor to take the role of the board of the agency. Nor is it to undertake an audit approach to the monitoring work. This is the role for others.
- 23 In this regard, the monitor needs to guard against the risk of delving into too much detail and gaining the perception and reputation for out of place 'micro-management' of the entity.
- 24 In respect of the appointment of board members, the Ministry monitoring team has added capability to the team for supporting the appointment process and advice to the Minister for NZTA board appointments. The capability matrix has been revised to reflect the range of governance and regulatory skills that are required in each of the transport Crown entities, including a focus for in depth regulatory experience on the board of the NZTA. We understand that current recruiting



for NZTA board members addresses the need to balance depth of regulatory and governance experience on the board.

- 25 We are confident that the cumulative effect of these changes will expose significant regulatory performance issues in the future and enable the Minister to be appropriately briefed.

### **Resourcing of the monitoring function**

- 26 The Ministry believes it has the capacity in terms of numbers of roles for doing the monitoring job.
- 27 For resourcing, the challenge is less in the numbers and more in attracting the skillsets and capabilities that are essential for effective monitoring, and in retaining these. Continuity of good personnel is essential where relationships and mutual respect are concerned, as these things take time to develop.
- 28 The Ministry does not just rely on its own resource to do the work. Where it is appropriate for an area of focus the Ministry monitoring team bring in a subject matter expert with the technical skills to complement their broader skillsets.
- 29 It is an ever-present challenge to attract and retain monitoring staff with the balance of technical and relationship management skills necessary for the job. The current use of subject matter experts to complement the monitoring teams in their work is a great opportunity to provide rich insights to all parties.
- 30 The increased collaboration across Ministry functional groups, and, in particular, the better linkages between steward and monitoring functions provide additional opportunities for highlighting risks and ways of communicating these to the entity board.



# INTRODUCTION

## Background

- 31 In late September 2018, the NZTA's Board raised concerns that the NZTA's regulatory function was under performing. The concerns principally related to a backlog of regulatory compliance cases that had not been appropriately managed.
- 32 On 16 October 2018, the Minister of Transport, with the NZTA's chair and chief executive, made a public announcement about these performance issues.
- 33 The Minister subsequently commenced a review into the operation and performance of the NZTA's regulatory function under section 132 of the Crown Entities Act 2004. The review has been led by the Ministry of Transport for the Minister. A second review into the exercise of its monitoring function by the Ministry of Transport was also commissioned at this time.
- 34 The Ministry is the monitoring department in relation to the NZTA. This monitoring role is recognised in section 27A of the Crown Entities Act 2004 and includes administering appropriations and legislation and tendering advice to Ministers.
- 35 The operating expectations for departments monitoring crown entities are set out in *It Takes Three: Operating Expectations Framework for Statutory Crown Entities* published in June 2014 by the State Services Commission. The expectations recognise that it takes all three parts of the system, Ministers, entities and monitoring departments, working together effectively to deliver the services that New Zealand deserves.

## Scope of the Review

### Purpose

- 36 The purpose of the review is to provide independent advice to the Secretary of Transport, the State Service Commissioner, and the Minister of Transport, on whether the Ministry, in performing its crown entity monitoring function, should have:
  - a identified significant performance issues within the New Zealand Transport Agency's regulatory function earlier; and
  - b provided advice to Ministers about these issues earlier, or in stronger terms.

### Scope

- 37 The scope of the review is a comparison of the Ministry's monitoring of the Agency's regulatory function to public sector crown entity monitoring best practice. In this context it will seek to answer the following questions:
  - a should the Ministry have identified significant performance issues within the New Zealand Transport Agency's regulatory function earlier



- b should the Ministry have provided advice to Ministers about these issues earlier, or in stronger terms
  - c did the Agency's management and Board make available, in a timely and accessible way, relevant information to support the Ministry to perform its monitoring role
  - d if the Agency was not providing the information, did the Ministry make the standard enquiries appropriate for a monitoring agency
  - e is the Ministry's past, and revised approach, to monitoring Crown entity performance fit-for-purpose
  - f is the Ministry's monitoring function adequately resourced to perform its role.
- 38 The time period for the review is from the establishment of the Agency to the public announcement of the performance issues.
- 39 The review should take into consideration public sector crown entity practice over the period from the creation of the NZTA to public announcement of the performance issues.

## Approach

- 40 The approach to the review included:
- a review of documentation on Crown entity monitoring, including reviews of practice at various times from around 2006 to the present day and published guidelines on monitoring practice
  - b review of a sampling of Ministry of Transport monitoring reports on NZTA performance over the period 2009 – 2019
  - c interviews with Ministry of Transport monitoring personnel and senior management, and
  - d insights on the monitoring experience from interviews with senior executives from transport sector agencies (including the NZTA) during the course of our Review of the NZTA's regulatory capability and performance in the first half of 2019
  - e insights on the monitoring performance from Performance Improvement Framework (PIF) reviews of the Ministry of Transport in 2013, 2014 and 2017
  - f review of the monitoring methodologies developed by the Ministry of Transport in 2015/16 and 2018/19.

The conclusions in this report are based on findings from all of the above sources.

## Structure of this Report

- 41 This report addresses the Terms of Reference and sets the scene for reviewing the monitoring capability and performance of the Ministry of Transport through first:



- a providing an overview of the state of Crown entity monitoring in the State Sector across two distinct periods in the evolution of Crown entity monitoring, being 2004 – 2009 and 2010 – 2018, and
  - b outlining a summary of good practice monitoring.
- 42 The ensuing sections of the report provide findings and conclusions on the monitoring of NZTA performance by the Ministry of Transport. It is useful to look at this performance across three time periods: 2007 – 2015; 2015 – 2017; and 2017 – mid 2019.



# CROWN ENTITY MONITORING

## Introduction

- 43 This section of the report provides an overview of Crown entity monitoring over the period from the formation of the NZTA in 2007 up until the present day. This provides background context for assessing the monitoring capability and activity of the Ministry of Transport over this period, and particularly regarding the likelihood for recognising regulatory risks and deficiencies that might have signalled the potential for the eventual regulatory failure in the NZTA.

## Monitoring in the period 2004 - 2009

### Crown Entities Act 2004

- 44 Crown Entities are part of the State Sector. The Crown Entities Act 2004 specifies the accountability regime applying to Crown entities, which are accountable to government through their Minister.<sup>3</sup> The Minister responsible for the Crown entity has a role for overseeing the Crown's ownership and purchase interests in the entity, and is supported in this by the monitoring department.
- 45 The Crown Entities Act 2004 made no statutory provision for the role of monitor and associated functions, duties and powers. This meant that monitoring departments had no explicit statutory basis establishing their role as a monitor in support of the Minister.
- 46 Instead the Minister would indicate what monitoring roles and functions the department would perform.

### Roles and responsibilities of monitoring departments

- 47 Notwithstanding the lack of statutory mandate for monitoring under the Crown Entities Act 2004, monitoring departments did have other mandated roles affecting Crown entities, principally to administer appropriations (under the Public Finance Act) and relevant legislation, and to be able to provide policy advice to the Minister (under the State Sector Act).
- 48 Monitoring has been described as a mixture of broad support for the relationship between the Minister and the Crown entity (usually focused on the relationship with the chairperson of the board), scanning for emerging issues or risks that might require response, and day-to-day work (such as monitoring an entity's performance, reviewing an entity's financial planning, and carrying out board appointment processes).<sup>4</sup>
- 49 Guidance available for departments at this time in relation to Crown entities stressed the importance of the relationship between Ministers, Crown entity boards and their senior managers and departments as essential for the department to perform its role.<sup>5</sup>

<sup>3</sup> Crown Entities Act 2004, Reprint as at 31 October 2018

<sup>4</sup> How government departments monitor Crown entities, Performance Audit Report, Office of the Controller and Auditor General, 2009 p5

<sup>5</sup> Guidance to Departments in Relation to Crown Entities, (Developed by the Treasury and the State Services Commission) June 2006 p 5.



- 50 The general practice was for departments to seek a clear mandate from their Responsible Minister as to the specific monitoring roles and functions they would perform on their Minister's behalf.
- 51 This situation worked well in some cases, but in many cases there was a lack of awareness of, and appreciation for, departments' Crown entity monitoring role, leading to down-playing of the role and monitoring activities adding little value.<sup>6</sup> The OAG Performance Audit Report 2009 of three monitoring agencies also observed a lack of clarity in information about the roles and responsibilities of monitoring departments.

### Monitoring performance

- 52 During this period monitoring performance did not extend much beyond a desktop exercise for most departments. Guidelines that existed at the time provided quite high level indications of the areas to be monitored, leaving it largely up to departments to work out the detail of how to approach their monitoring role.<sup>7</sup> The OAG report noted the desktop nature of the monitoring approach at the time, observing that departments reviewed and reported on a Crown entity's performance and results mainly by preparing a written briefing to the Responsible Minister on the entities performance reporting.<sup>8</sup>
- 53 This OAG report also found that in most cases departments did not have a full understanding of issues and risks facing agencies and did not use information about issues and risks to help with planning and prioritising monitoring work.<sup>9</sup>
- 54 The Martin Jenkins & Associates 2006 review of monitoring practice across nine departments concluded that there was too much emphasis on literal interpretation of the guidelines and low level accountability driven monitoring. While it was accepted that routine business-as-usual monitoring was an important part of the role, the review concluded that there was a need for focusing relationships at Board level and on matters of strategic importance, to change the perception of monitoring as a low value-adding activity.<sup>10</sup>
- 55 Where there were perceptions of monitoring as a low value activity, the exercise became prone to marginalisation, impacting on the effectiveness of monitoring. Crown entities were found to be not always open to monitoring, and might try to minimise or limit the reach of the monitoring activity; and/ or circumvent the monitoring process by engaging directly with the Minister.<sup>11</sup> This was also made easier by the huge information asymmetry that existed between monitoring teams and Crown entities.
- 56 Without a statutory mandate to do so, the monitoring department could be seen as lacking 'teeth' or authority when requesting a Crown entity to provide information about its operations and

<sup>6</sup> Review of Crown Entity Monitoring Policies and Practices, Overview Report, Martin Jenkins & Associates, December 2006 p 4

<sup>7</sup> Guidance to Departments in Relation to Crown Entities, June 2006. We note that updated SSC Guidelines (2014) which include *It Takes Three: Operating Expectations Framework* provides more detail on the approaches that might be taken for the monitoring role.

<sup>8</sup> How government departments monitor Crown entities, Performance Audit Report, Office of the Controller and Auditor General, 2009 p 48

<sup>9</sup> Ibid p 27

<sup>10</sup> Review of Crown Entity Monitoring Policies and Practices, Overview Report, MartinJenkins & Associates, December 2006 p 35

<sup>11</sup> Ibid



performance. Without the provision of adequate and timely information by an entity, the quality of departmental monitoring and advice to the Minister could be sub-optimal.

- 57 There was a strong process-driven component to Crown entity monitoring, dictated by regular budgetary and accountability cycles. Administering these regular cycles can impose a significant burden on both monitoring departments and Crown entities and, where monitoring resources are constrained, these routine activities often become the face of Crown entity monitoring.
- 58 Related to this was the allocation of limited resources to the monitoring function in some departments, giving the function a low profile within the department, and impacting on monitoring effectiveness.<sup>12</sup>

### **Board appointments**

- 59 Ministers have a statutory responsibility for appointing, or recommending the appointment of, board members for the Crown entities within their portfolio. Given the significant independence and flexibility that Crown entities have, the appointment of high quality boards is arguably the most important function that Ministers have in relation to Crown entities. Accordingly, monitoring departments need to provide a very high quality service to Ministers regarding management of the appointment and induction processes.
- 60 The State Service Services Commission (2006), *Board Appointment and Induction Guidelines* provided monitoring departments with a steer on how to go about their role in this area.
- 61 The MartinJenkins & Associates Review (2006) found that most Crown entities followed a rigorous appointment process, although there were weaknesses in relation to candidate identification and induction.<sup>13</sup> These areas required some attention to ensure a stronger field of candidates and more robust induction processes.

## **Monitoring in the period 2010 - 2018**

### **Crown Entities Amendment Act 2013**

- 62 The Crown Entities Amendment Act 2013 provided a statutory basis for the role of monitoring agents, with a corresponding duty on a Crown entity to collaborate in the provision of information. This role was outlined in s27A of the amended Act. A further amendment was to enable the Minister to delegate a single, necessary power to a monitoring department: the power in s133 to request information relating to an entity's operations and performance.
- 63 These two amendments strengthened the authority of the monitoring department in its role and for requiring information from the Crown entity to inform the monitoring.

### **Expectations from Crown entity monitoring**

- 64 As discussed, prior to 2013, expectations were that monitoring agencies would discharge their legal responsibilities to administer appropriations (under the Public Finance Act), administer

<sup>12</sup> Review of Crown Entity Monitoring Policies and Practices, Overview Report, MartinJenkins & Associates, December 2006 p 16

<sup>13</sup> Ibid p 37



relevant legislation, and to be able to provide policy advice to the government (under the State Sector Act). There was no statutory mandate for monitoring of performance, and little in the way of guidance for wider performance monitoring.

- 65 The OAG Report (2009) made a number of recommendations for improving the effectiveness of Crown entity monitoring, including for recording clear and accessible information about issues and risks for Crown entities, and using that to plan and inform monitoring work. Recommendations were also made for improving the way that performance information was communicated to the Responsible Minister and the timeliness of reporting.<sup>14</sup>
- 66 The earlier Martin Jenkins & Associates Review (2006) recognised that due to the context specific nature of good monitoring practice, a prescriptive approach to determining 'best practice' is not appropriate. The Review concluded that good monitoring practice is context specific and will vary depending on Ministerial preferences and entity specific considerations, such as the size, nature, importance and historical performance of the entity.
- 67 Nevertheless the Review did point to the importance for monitoring departments of clarity of roles and responsibilities, setting clearer performance expectations, providing enhanced support for Board appointments and induction processes, getting better quality performance information and achieving high quality collaborative relationships with Crown entities.<sup>15</sup>
- 68 A Productivity Commission review of regulatory institutions and practices (2014) devoted a chapter to Monitoring and Oversight, making the observation that the effectiveness of current monitoring practice varies. Interviews conducted for the Commission with regulator board members and their departmental monitors highlighted issues around:
- a insufficient support from departments for regulator Crown entities, especially around progressing legislative amendments;
  - b role confusion, where some departments attempted to influence how a Crown entity was run or "second guess" the regulator's actions;
  - c inadequate capability and high turnover in departmental monitoring staff; and
  - d too much reporting sought from departments, and insufficient focus in reporting on the regulator's performance and strategy.<sup>16</sup>

### **Crown entities - operating expectations framework**

- 69 In 2014 the State Services Commission published a principles-based operating expectations framework to help Ministers, statutory entities and monitoring departments improve the way they work together to achieve desired results.<sup>17</sup> This framework sets out in one place the roles, responsibilities and operating expectations for all three parties (Ministers, entities and monitoring departments) guided by four underpinning principles, namely:

<sup>14</sup> How government departments monitor Crown entities, Performance Audit Report, Office of the Controller and Auditor General, 2009

<sup>15</sup> Review of Crown Entity Monitoring Policies and Practices, Overview Report, MartinJenkins & Associates, December 2006 pp 36 - 39

<sup>16</sup> Productivity Commission, Review of Regulatory Institutions and Practices June 2014, p 353

<sup>17</sup> Statutory Crown Entities: *It Takes Three: Operating Expectations Framework June 2014* (note: this was originally developed by the Ministry for Culture and Heritage for the needs of the cultural sector Crown Entities, and then updated by the SSC and the Treasury)



- a clear roles and responsibilities, including a shared understanding amongst all parties
  - b strategic alignment for policies and engagement
  - c efficient and effective monitoring, with a customised approach for performance monitoring, data collection, assessing and managing risk, and resource management.
  - d trusted engagement, where relationships are trusting and productive.
- 70 The framework establishes at a high level a useful guideline of specific expectations for each party pertaining to each principle. Alongside the Crown Entities Act (Amended 2013), these guidelines provide a mandate for the monitoring department for conducting customised performance monitoring, identifying and assessing critical information, assessing and managing risks and assessing financial performance.
- 71 The framework also reinforces the importance of productive relationships amongst parties as a critical factor for effective monitoring, especially for ensuring that skilled, knowledgeable and credible departmental staff manage and nurture relationships with the Crown entity.
- 72 The messages in the Operating Expectations Framework are reinforced in the State Services Commission *Statutory Crown Entities: Guide for Ministers, 2014*.

*'As the responsible Minister, you can expect reporting from your monitoring department that is timely, comparable over time, contains analysis and monitoring judgments on key financial and non-financial issues and performance risks, identifies future implications or trends, and provides clear information on your options if action is required.'*<sup>18</sup>

## Board appointments

- 73 The OAG report (2009) found a mix of approaches to making board appointments. The main issues were around the process, and recommendations were made for improve planning prior to starting board appointment processes, taking into account the steps and timing required for the appointment and providing clear advice to board candidates about the information they must disclose, and collect all the information needed to carry out required appointment checks.
- 74 These issues were seen to pose a risk of not meeting the required number of Board members, leading to an increased workload on existing board members in the interim, and a reduced set of competencies on the Board.<sup>19</sup>

## Good practice monitoring

### Monitoring performance

- 75 In its 2009 review, the Office of the Auditor-General (OAG) identified three 'critical success factors' for effective entity monitoring:

<sup>18</sup> Statutory Crown Entities: A Guide for Ministers, June 2014 p42

<sup>19</sup> How government departments monitor Crown entities, Performance Audit Report, Office of the Controller and Auditor General, 2009



- a strong working relationships enabling department communication with the Minister, board and management – free and frank where necessary. Effective monitoring is built on a foundation of good and productive relationships and a shared understanding of each other's business.
  - b good overall sector knowledge and awareness of connections. The monitor to be independently aware of emerging issues and risks.
  - c effective mechanisms for day-to-day work (enhances ability to identify issues and risks).<sup>20</sup>
- 76 These factors are inherent in the recommendations of the Productivity Commission Review (2014) in recommending:
- a stronger links between monitoring staff and policy staff who provide advice on the relevant regime,
  - b adopting a more risk-based monitoring approach, and
  - c re-focusing departmental and ministerial engagement on the boards of regulatory Crown entities.
- 77 The Commission also recommended for greater stability in monitoring staff, which presumably would assist with maintaining knowledge of the entity and environment, and in maintaining effective relationships.<sup>21</sup>
- 78 The State Services Commission provides guidelines for good practice monitoring on its website.<sup>22</sup> Key factors to consider for effective monitoring are:
- a recognising the role of the board as the governing body of the entity, and not attempting to be a substitute for the board or management.
  - b providing Ministers with an independent view of the performance of the entity.
  - c making informed judgements about the nature and depth of engagement and analysis required to provide the advice required.
  - d not monitoring everything, but focusing monitoring activity on major opportunities and risks, both across the portfolio, and for individual entities.
  - e maintaining a quality relationship as a 'friendly critic' without prejudicing their primary role as the agent of and adviser to the Minister.
- 79 In addition to the SSC Guidelines, there is further guidance on the Public Sector Intranet on the Monitoring, Appointments, and Governance Network (MAGnet) site. This is an intranet site to support and improve the performance of managers and advisors involved in performance advice, appointments and governance work.<sup>23</sup>

<sup>20</sup> How government departments monitor Crown entities, Performance Audit Report, Office of the Controller and Auditor General, 2009

<sup>21</sup> Productivity Commission, Review of Regulatory Institutions and Practices June 2014, p 353

<sup>22</sup> <http://www.ssc.govt.nz/ceqd3d> Guide for Departments: Monitoring Performance

<sup>23</sup> See <https://psi.govt.nz/magnet/default.aspx>



## Supporting board appointments

- 80 Having a cohesive board with the right mix of skills, experience and knowledge is a fundamental requirement for achieving good performance from a Crown entity.
- 81 An effective monitoring approach to supporting board appointments will assist this, through the selection process for competencies and associated induction training on expectations from the role.
- 82 This means a good understanding of the business of the Crown entity, the wider context, and the specific competencies that will be necessary at board level, so that the right questions are asked of the entity's performance, the right challenges are made, and the entity strategy reflects its legislative mandate of the entity.

## In summary

- 83 Monitoring of Crown entities by departments should add value to Ministers. Crown entity monitoring is not something that is done for its own sake. The quality of the relationship between the Crown entity and the monitoring department (particularly at governance and management levels) is a significant factor in enabling the sharing of relevant information to inform monitoring assessments, and in ensuring that the entity engages constructively with the findings of the monitoring activity.
- 84 In this regard, the Crown entity board is a key stakeholder for the monitoring department to engage with, in order that key messages are conveyed, received constructively and actioned where necessary.
- 85 We have noted that due to the context specific nature of good monitoring practice, a prescriptive approach to determining 'best practice' is not appropriate. Good monitoring practice is context specific and will vary depending on Ministerial preferences and entity specific considerations, such as the size, nature, importance and historical performance of the entity, and the context within which it operates.
- 86 For consistency and quality there needs to be a good practice framework to guide the focus of the monitoring, but which allows for flexibility to focus on those areas relevant to the entity's situation and performance.
- 87 As observed in the State Services Commission monitoring guidelines, 'monitoring is an art, not a science, and what is good practice is still emerging. Departments are experimenting with various monitoring approaches, including more formal risk assessment tools, relationship assessment tools, monitoring plans, periodic reviews and other evaluations.'<sup>24</sup>
- 88 Ultimately, key to monitoring success is having effective, constructive relationships between the monitor and the leadership of the entity, and in particular the entity board. The Crown entity board has the ultimate accountability for the entity's performance, and the monitor has a role for supporting this through the constructive provision of insights regarding opportunities and risks.

<sup>24</sup> <http://www.ssc.govt.nz/cegd3d> Guide for Departments: Monitoring Performance



- 89 Fostering a dynamic of working together in an environment of honesty and openness between the agency and their monitor at all levels is the ideal for identifying, managing and mitigating risks for all parties.



# MINISTRY OF TRANSPORT MONITORING OF NZTA

## Introduction

- 90 The Ministry of Transport is the monitoring department in relation to the NZTA. This monitoring role is recognised in section 27A of the Crown Entities Act 2004 and includes administering appropriations and legislation and tendering advice to Ministers.
- 91 This section of the report looks at the role and performance of the Ministry of Transport's monitoring role over the NZTA from 2007 up to the present, looking particularly at the way the role was discharged and the possibility (or otherwise) of the Ministry of Transport gaining and communicating insights into regulatory performance deficiencies within the organisation leading to regulatory failure at different times.

## Ministry of Transport monitoring of NZTA 2007 – 2015

### Monitoring of NZTA performance

- 92 In the period of the early years of the NZTA (2007 – 2015) the approach to monitoring by the Ministry of Transport was mainly a review of NZTA accountability documentation, and with no formal methodology to guide this analysis. Individuals used their own approaches to the monitoring assessments. This was in keeping with the general approach to Crown entity monitoring as described in the previous section of this report.
- 93 A PIF Review of the Ministry of Transport conducted in mid 2013 rated the Ministry's role in monitoring the various Crown entities it has accountability for as 'needing development' for both efficiency and effectiveness. The Review observed that the focus of the Ministry monitoring was often on more operational issues than on those of a more strategic nature about goals, performance requirements and how to meet them.<sup>25</sup>
- 94 In addition to comments on the focus of the monitoring, the PIF Review noted that Ministry relationships with its associated Crown entities and SOEs varied from very good to needing urgent attention. There was a need to invest in lifting these relationships to be 'more anticipatory, more skilled in some technical areas, more reflective of and focused on the most important priorities'.<sup>26</sup>

<sup>25</sup> Performance Improvement Framework, Review of the Ministry of Transport August 2013 p 27.

<sup>26</sup> Ibid p 8



- 95 In particular, there was a need to reframe relationships with its major stakeholders, the NZTA and Auckland Transport. A PIF Follow Up Review a year later in 2014 noted some improvements in relationships but still challenges with these major stakeholders.<sup>27</sup> Relationships were seen as not being as strong and effective as they needed to be to ensure high levels of confidence in the Ministry.
- 96 Feedback from interviews with managers in NZTA and other transport Crown entities during the current review supports these observations in the 2013, 2014 PIF Reviews. The Ministry's monitoring focus was seen as very much on transactional operational matters, rather than on things that really matter, and the monitoring activity was perceived as being at too low a level to make a constructive contribution to the efforts of the entity.
- 97 The Ministry of Transport was a small department, with limited resources and capability. The PIF Reviews noted the challenges with lifting policy capability and performance.
- 98 We note that the general approach of the Ministry to reporting to the Minister on NZTA performance at this time was on an exceptions basis.<sup>28</sup> And in turn the NZTA reported to the Ministry also on an exceptions basis.

*'In accordance with previous reports, the NZ Transport Agency reports its service delivery performance on an exceptions basis. That is, the NZ Transport Agency only reports on those areas where its performance is falling short of expectations.'*<sup>29</sup>

- 99 This indicates a high level of information asymmetry that existed between the Ministry and the NZTA, and suggests that the agency had a strong say over what was communicated to the Ministry monitoring team (or otherwise). Perhaps as a result, the tone of the monitoring reporting that we looked at during the current review appears quite benign, with little challenge to NZTA performance.
- 100 There appears small reference to regulatory matters in the quarterly monitoring reports to the Minister; the focus of reporting being on progress with financial performance and the larger infrastructure projects.<sup>30</sup>
- 101 The NZTA itself saw the regulatory function as low risk, and there was poor visibility at board and senior leadership levels of potential issues and risks in this area.<sup>31</sup> The agency was therefore unlikely to be reporting anything significant to the Ministry as monitor.
- 102 In addition, the under-developed nature of relationships between the NZTA and the Ministry as highlighted in the PIF Reviews would not have encouraged effective sharing of information (either from the requesting or providing perspectives) upon which to base robust judgements around regulatory effectiveness. There is no evidence of any conscious attempt by the NZTA board or

<sup>27</sup> Performance Improvement Framework, Follow up Review of the Ministry of Transport, August 2014 p 9

<sup>28</sup> See NZ Transport Agency – Quarterly Report for the Period Ended 30 September 2013 para 4 'Format of the Report' p 2.

<sup>29</sup> Ibid para 15 p 3.

<sup>30</sup> From review of Briefings to the Minister on NZTA performance

<sup>31</sup> See conclusions in the Review of the NZTA's regulatory capability and performance, MartinJenkins, June 2019 p 28



senior leadership to withhold information from the Ministry at this time; rather the monitoring process did not encourage challenge for provision of information.

## Board appointments

- 103 The MartinJenkins *Review of the NZTA's regulatory capability and performance (June 2019)* observed that from early days there were highly capable individuals on the NZTA board, some of whom had awareness of regulatory matters though their experience or training. However, generally there was not any in-depth regulatory experience among board members at this time.<sup>32</sup> This lack of experience was a significant contributing factor to the issues with effective regulation of land transport in the NZTA.
- 104 It would seem that the focus of the support for the board appointment approach was to ensure that individuals had strong governance competencies and were individuals who could govern across the significant areas of infrastructure and investment.
- 105 The observations we have made on the low level approach of the Ministry to its monitoring of performance, the lack of prominence of the regulatory function in reporting, and the general perception of this area as low risk (particularly in the NZTA) support a conclusion that there was not a strong focus for ensuring in-depth regulatory experience on the NZTA board.

## Conclusions

- 106 During this period, the Ministry's approach to NZTA monitoring could be typified as 'light touch'. It was primarily a desktop exercise, reviewing NZTA accountability reporting and often summarising the NZTA views on its own performance.
- 107 In this regard, as illustrated in the previous section of this report, the Ministry's approach to monitoring was not too dissimilar to that exercised elsewhere.
- 108 The focus of the monitoring reporting and insights was more on operational issues than those of a more big picture, strategic nature. This low level focus was not seen to be adding value to the NZTA, and as a result the monitoring role was not held in high regard.
- 109 This had an impact on the strength of the relationships between the Ministry monitoring team and the NZTA board and leadership team, which really needed to be stronger than they were.
- 110 Issues in relationships at senior levels in this period would be exacerbated over the next few years when the Ministry's monitoring capability and approach eventually strengthened to a point of providing more challenging insights to the NZTA.
- 111 Given the state of monitoring at this time in terms of approach and capability applied, the Ministry monitoring would not identify significant issues within the regulatory function of the NZTA. Certainly there was not the challenge to the organisation through reporting and identifying risks and opportunities for improvement in the regulatory area.
- 112 In addition, this dynamic would have contributed to a lack of awareness of a need for in-depth regulatory experience on the board in the Ministry's role for supporting board appointments.

<sup>32</sup> See MartinJenkins *Review of the NZTA's regulatory capability and performance (June 2019)* p 25



# Ministry of Transport monitoring of NZTA 2015 – 2017

## Monitoring of NZTA performance

- 113 There was an uplift in the Ministry's approach to Crown entity monitoring from around 2015. Following the PIF Reviews there was a Ministry commitment to build capability to more effectively support its strategy, and there was a focus on building the capability in the Ministry's governance and monitoring area.
- 114 This manifested itself through building a stronger more experienced monitoring team and through strengthening the approach to monitoring with the development of the Crown Entity Assessment Framework (CEAF) specifically tailored to the monitoring of the transport Crown entities. The CEAF provided a more rigorous framework that could be used to guide the specific approaches by individuals within the Ministry's monitoring team. It addressed roles, tools to use and aspects of performance across four key dimensions:
- a Alignment (to legislation and government priorities)
  - b Leadership (Board accountability)
  - c Organisation (right capability and capacity across a range of aspects including risk management)
  - d Results (performing to expectations).
- 115 The CEAF was informed in part by the State Service Commission's *It Takes Three* guidance, and was developed over the period 2015-2016. The intention was to anchor monitoring advice on entity performance around the four dimensions from the start of the 2016/ 17 financial year. Underpinning the CEAF there would be detailed monitoring plans for each entity, including an assessment of opportunities and risks, current Ministerial priorities and expectations, success criteria for monitoring, internal and external engagement plans, and a timetable of key deliverables and events.<sup>33</sup>
- 116 This new framework enabled the monitoring team to take more of a 'big picture' view and encouraged consistency of judgement and analysis approaches when assessing the Crown entity performance.<sup>34</sup> In this regard, it addressed the earlier charge of monitoring being too low level operational and supported a more strategic approach to monitoring. This framework was well socialised with Crown Entities at board and senior leadership levels both prior to and during its first implementation.
- 117 The CEAF framework was supported by some rudimentary tools, but still relied on the individual judgement of the Ministry monitoring personnel as to how they went about their monitoring approach, and the conclusions they drew. The Ministry team now comprised individuals with

<sup>33</sup> Briefing to the Minister on Crown Entity Monitoring 26 February 2016.

<sup>34</sup> Published as *Monitoring arrangements for transport sector Crown entities, December 2016*



commercial, investment and financial management expertise, including Crown company monitoring experience. Budget constraints at the time also stretched Ministry resourcing of the monitoring function. This was addressed through bringing in more experienced contractors to assist at times.<sup>35</sup>

- 118 The framework brought a new rigour to the monitoring analysis, and as a result enabled some testing conclusions to be drawn on the NZTA's performance, which were proactively reported to the NZTA. This was a step up from the earlier approaches and reporting on NZTA performance, and would have been a change from previous exceptions based reporting, where the NZTA had far greater say in what was reported or otherwise to the Ministry of Transport.
- 119 The first CEAF monitoring report in 2016 assessed the NZTA as between 'meeting expectations in some areas but needs improving in others' and 'consistently meets expectations'. The CEAF findings were presented to both the NZTA board and senior leadership.
- 120 While the 2016 CEAF report did not identify significant regulatory deficiencies, there were some signals in the reporting that indicated potential for issues, namely:<sup>36</sup>
- a The report identified a number of inconsistencies in the way performance information was reported to the Board, and in external accountability documents, leading to a recommendation for improving the transparency and consistency in the use of data and indicators.
  - b A number of critical systems and processes were assessed as being close to the end of their working lives (e.g. the Crash Analysis System, information systems)
  - c A need to ensure regulatory integrity, maintaining consistent and high integrity regulatory processes such as driver licensing
  - d Meeting the challenge of maintaining core regulatory and operational delivery during the next period as the expectations of Ministers and stakeholders continue to increase.
- 121 The 2017 CEAF monitoring report on NZTA reiterated some of these issues, and, in addition, noted a concern of a mismatch between the delivery of services and the achievement of results in some areas. For example, it was noted that the NZTA was reporting good results for reducing accidents from campaigns for drink driving, mistakes and roading improvements, yet at the same time death and serious injuries increased by more than the percentage increase in vehicle kilometres travelled. It was recognised that this was a system issue involving a range of agencies (Police, the Ministry and local government) and that NZTA needed to work more closely with these agencies.<sup>37</sup>
- 122 In this regard, the CEAF reporting was challenging the NZTA in ways that had not been experienced previously from the monitoring perspective, and it produced a reaction, particularly at senior leadership levels.

<sup>35</sup> Comment from interview with Ministry personnel

<sup>36</sup> New Zealand Transport Agency (NZTA) CEAF Report, Ministry of Transport 2016

<sup>37</sup> New Zealand Transport Agency (NZTA) CEAF Report, Ministry of Transport, 2017 p 5.



- 123 From interviews with Ministry personnel we understand that the NZTA at this time (2016-2017) was particularly defensive in the face of CEAF Report findings especially at senior management levels, which even actively tried to manage the monitoring role away. This is not inconsistent with the observations from the *Review of the NZTA's regulatory capability and performance* that bad news was unacceptable to the leadership team at this time.<sup>38</sup>
- 124 In response to discovering that previous monitoring reports sent to management had not been passed onto the board, we understand that the Ministry communicated the 2016 CEAF to the board, copied to the chief executive.
- 125 While the monitoring methodology was now more robust, the relationships between the Ministry monitoring team and the NZTA leadership became quite fraught, which in turn had a significant negative effect on the effectiveness of the monitoring role. The NZTA was perceived as engaging in obstructive tactics which included withholding information, or the opposite, burying the monitor with a deluge of information, and vigorously challenging any assessments for detailed proof of evidence. There were perceived attempts on the part of the NZTA leadership to 'stifle and manage the monitoring role'.<sup>39</sup>
- 126 We have been told that the resistance from the NZTA to the monitoring reporting in 2016 and particularly in 2017 extended even to attempts to tone down some of the messaging in the Ministry's assessment reports. This was resisted by the Ministry at the highest levels.<sup>40</sup>
- 127 Nevertheless, we observe that there does appear to have been some redrafting of reports, perhaps in the face of the NZTA resistance. We are also informed that the Ministry saw that the poor relationship between the monitor and NZTA leadership needed to be addressed if any progress was to be made for influencing NZTA behaviour. A decision was taken to adopt a less confronting tone in the final CEAF reporting in 2017, but maintain the key messages nonetheless.<sup>41</sup>
- 128 For example, the rating of NZTA performance is missing from the 2017 report. A review of a draft of this report shows that an earlier draft contained a rating similar to that given in 2016.<sup>42</sup> This is gone in the final report. When issues are raised in the 2017 CEAF report they are generally accompanied by an assurance of some kind of the remedial action that the NZTA is taking. For example, against the issue of ageing critical systems and processes, there is the assurance that *'The NZTA is developing a strategy for addressing its mature systems'*; and against the issue of the integrity of the driver licensing regime *'The NZTA has taken steps to address the issues of fraud [...] identified in 2016. This is expected to lead to an improvement in the effectiveness of the delivery of NZTA's regulatory activities over time.'*<sup>43</sup>

<sup>38</sup> See conclusions in the Review of the NZTA's regulatory capability and performance, MartinJenkins, June 2019 p 28

<sup>39</sup> Comments from interviews with Ministry personnel

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> See New Zealand Transport Agency Crown Entity Assessment [2017] – Draft for comment

<sup>43</sup> See New Zealand Transport Agency Crown Entity Assessment [2017]



129 In 2017, the process for CEAF reporting changed again following discussions with the Crown entities to want to see material before it was provided to boards.<sup>44</sup> This was in line with the new approach to work collaboratively with entities under the organisational restructuring, so the Ministry agreed to provide drafts to the Crown entities before the assessments were sent to the Crown entity boards.

## Board appointments

130 The focus for improvement in the Ministry's monitoring function was predominantly on the monitoring of NZTA performance through the development of the CEAF.

131 The Ministry's own guidelines for monitoring arrangements for transport sector Crown entities (2016) did provide guidance for appointing and maintaining effective boards. These were largely process oriented and covered areas such as induction, self-evaluation, exit interviews and interaction with boards. During the appointment process the Ministry works with the chair to identify skills required of new members and advises the Minister accordingly. It is the Minister's decision on board appointments.<sup>45</sup>

132 By this time (2016) the Ministry monitoring team had developed a skills matrix for board members to support their advice. This covered a number of general competencies, including some regulatory experience.

133 However, when opportunity presented itself, there continued to not be anyone with in-depth regulatory skills appointed on the NZTA board.

## Conclusions

134 The Ministry of Transport's new approach to Crown entity monitoring (the CEAF) was a step up from earlier less strategic, less focused approaches and aimed to add value to the NZTA through insights gained.

135 The Ministry's 2016 CEAF report identified some indications of specific performance issues within the NZTA and rated the performance as 'meets expectations in some areas, but needs improvement in others'. This assessment met with some resistance from the NZTA, particularly at senior leadership levels.

136 As discussed in the first part of this report, effective relationships at senior leadership and board levels are a critical success factor for effective monitoring.

137 The fractious nature of the relationships between the Ministry's monitoring team and NZTA leadership acted against the effective and timely provision of information to the Ministry to enable it to be more categorical in its assessments, and did not encourage the NZTA to take seriously the results of the Ministry's assessment.

<sup>44</sup> Feedback from Ministry personnel

<sup>45</sup> Monitoring arrangements for transport sector Crown entities, Governance and Accountability Team, Ministry of Transport, December 2016 p 8 and Annex 2



- 138 An overall conclusion is that the Ministry’s monitoring framework at this time was a step up from previous monitoring, and reflected the kinds of approaches that were emerging in guidelines from central agencies as good practices.<sup>46</sup> We understand that other public sector agencies had seen the Ministry’s published guidelines (December 2016) and were making contact with the Ministry to learn more.<sup>47</sup> Ministry personnel in the monitoring role had the capability to use the CEAF framework to provide more critical insights to the NZTA and the Minister at this time than had previously been the case.
- 139 The main (and critical) area of challenge for the effectiveness of the Ministry’s monitoring at this time was in the relationships with the Board and the NZTA leadership team. The challenges with the relationships meant that the monitoring role was constrained in gaining deeper insights on NZTA performance than it did, and which would have been necessary for a really robust assessment of risks to the exercise of the NZTA regulatory function.
- 140 Challenges with the relationships also militated against success for getting the agency to ‘listen’ effectively to those issues it was raising in reporting, and taking stronger action. Indeed, there was significant pushback, at times leading to a toning down of the messaging in the reporting to the Minister. Reporting to the agency leadership prior to communicating with the board opened the door to further pushback on Ministry monitoring insights.
- 141 In this regard the opportunity to expose performance issues in the regulatory function and to provide stronger advice to the Minister was lost at this time.
- 142 As for the previous period, this dynamic of challenges in highlighting issues with the regulatory function at board level possibly also contributed to the ongoing lack of in-depth regulatory experience in appointments to the board – insofar as significant issues in the regulatory function had low visibility at this time.

## Ministry of Transport monitoring of NZTA 2017 – mid 2019

### Monitoring of NZTA performance

- 143 The current Chief Executive was appointed to the role in the Ministry of Transport in July 2016. From early 2017 the new Chief Executive instigated changes to the organisation and the ways of working within the Ministry. A fundamental aim was to build capability and reassert the Ministry’s leadership in the sector in a collaborative way. This meant looking hard at the way that the Ministry worked in its various capacities, and bringing up the focus on the quality of relationships with the transport Crown entities.
- 144 For the role of monitoring, this meant moving from a largely mechanical application of the monitoring framework to working constructively, proactively and collaboratively with the board and

<sup>46</sup> See earlier section on *Good practice monitoring* in this report

<sup>47</sup> From comments in interviews with Ministry personnel.



leadership of Crown entities. This would enable the monitor to more usefully support the entities to manage risk and be successful in their endeavours. Constructive relationships were seen as important for enabling information flows to support assessments and engendering a greater willingness to listen to insights from the monitoring role.<sup>48</sup> At times this might naturally lead to a healthy tension between parties, but with constructive intent.

- 145 A new Deputy Chief Executive was appointed over the monitoring role in October 2017 with the mandate to reform the monitoring function in this way, and in particular strengthen the dialogue with the chairs of the Crown entity boards and reset the relationships with the boards.
- 146 Under the reorganisation of the Ministry (from early 2017) there is greater coordination of working across and within the Ministry itself. This has led to increased sharing of insights from the monitoring team in the *Governance & Engagement* group to support the work of the other Ministry policy groups of *Regulatory & Data* and *Strategy & Investment*, and vice versa. For example, discussions between the regulatory stewardship and monitoring functions in the Ministry in late 2017/ beginning of 2018 enabled sharing of concerns from the stewardship work around the lack of focus in NZTA on the regulatory function, including by the board and potential issues.
- 147 Given the issues with gaining leadership engagement with monitoring reports as outlined above, it was decided to draw the board's attention to looking more closely at the regulatory function through including specific reference to this in the 2018/19 Letter of Expectations (26 March 2018) for:
- ‘the NZTA [to] progressively review the existing systems and processes that it uses to support its regulatory and other operations to ensure they are robust and able to support improvements in service delivery’ and ‘to deliver its **regulatory functions efficiently and effectively**’.<sup>49</sup>
- 148 While there was at times robust discussion at Board level regarding the findings of the CEAF reporting, the relationship with the Board was perceived as positive and generally constructive.
- 149 In January 2018, the published PIF Review of the Ministry of Transport also observed a need for the monitoring advice to be more proactive than reactive, and recognising the intent of the Chief Executive (Secretary for Transport) to move the engagement across the Government's transport sector agencies from operational to strategic, including for how the Ministry undertakes its monitoring role.<sup>50</sup>
- 150 Work was commenced on refreshing the Crown Entity Assessment Framework (CEAF) in March 2018. The intent was to develop a more sophisticated assessment of entity capability and performance, informed by a broader evidence base through better relationships and access to information and the refresh of the CEAF.<sup>51</sup>

<sup>48</sup> From discussion in interview

<sup>49</sup> From discussions with Ministry personnel and see 2018/19 Letter of Expectations for the New Zealand Transport Agency (26 March 2018) (bolding as per the original)

<sup>50</sup> Performance Improvement Framework, Review of the Ministry of Transport Te Manatū Waka, January 2018

<sup>51</sup> These intentions are set out in a memo to the Ministry of Transport Board 18 September 2018.



- 151 This process was started some time before the concerns with the NZTA regulatory performance came to light, and its implementation has contributed to the unearthing of a number of issues to be addressed by the NZTA.
- 152 The issue with the initial iteration of the CEAF (2016/17) was more in its implementation and embedding than the intent and focus. Key elements of the 2018 'refresh' included:
- a maintaining the original 2016/17 areas of focus, though through a refreshed lens
  - b revising the existing focus on performance indicators to one on 'lines of enquiry' which would provide an evidential basis to identify opportunities to improve capability and performance – and a more strategic focus on significant issues and opportunities
  - c providing clear guidance to lead monitors using the revised framework to enable a more tailored and proportionate approach to assessments
  - d engaging with Crown entities (at all levels) to ensure there is appropriate buy-in to the framework and the how the Ministry will use it, and
  - e embedding the key focus areas of the CEAF into the structure of the advice given, supporting more well-rounded advice on entity capability and performance.
- 153 The refreshed approach to Ministry monitoring is outlined in a draft document '*New Zealand Transport Agency – Monitoring approach, December 2018*' which is currently being road tested with the NZTA.
- 154 This document reflects key elements of monitoring best practice, through:
- a defining the Ministry's governance and monitoring role  
  
(including: statutory requirements and emphasising the role of 'critical friend' supporting entities to improve performance and succeed; and providing evidence-based advice on Crown entities' strategic direction, capability and performance)
  - b outlining principles informing how the monitoring team works  
  
(including: addressing need for partnering with NZTA; enhancing the engagement with NZTA on all levels; operating in a transparent, no surprises basis, recognising and respecting differing perspectives; being proactive and solutions focused; and engaging in free and frank discussions where there are concerns or risks impacting performance or progress against the Government's priorities)
  - c outlining components of the monitoring approach comprehensively  
  
(including: agency context to provide robust evidence for assessment; government intent and priorities for direction; immediate monitoring priorities to address presenting risks; strategic priorities for longer term improvements ; and structured, clear process for implementing and embedding the approach, including 'deep dives' on key areas where deemed necessary for both the Ministry and the entity).



- 155 The draft framework has been communicated and discussed with the NZTA board and senior leadership to ensure clear understandings of the refreshed monitoring intent, roles and process. For each area to be assessed there is communication in advance to the board of the scoping document with draft lines of enquiry that will be followed, and the key questions for which answers are sought. This provides transparency and also enables the board to augment the lines of enquiry for areas of their own particular interest.
- 156 Where the monitoring area of focus work has left some significant concerns, the Ministry might consider the need for a 'deep dive'. This would be first discussed with the board with encourage for the NZTA to undertake a 'deep dive' of their own volition. If this were not forthcoming or no good rationale for not doing so were provided, the Ministry would recommend to the Minister that a 'deep dive' be undertaken (and commission the work).
- 157 In establishing immediate priorities for attention and the approach to these, the Ministry recognises that 'the intention is not to undertake an audit approach to form views across each of the priorities'. It is not the role of the monitor to take the role of the board of the agency. However, the monitoring process needs to enable the sharing of 'sufficient evidence to demonstrate there is sufficient oversight and management of these priorities across the agency.'<sup>52</sup>
- 158 Two immediate priority focus areas for NZTA that have been assessed to date are *Risk management and assurance* and *Procurement*. *Risk management and assurance* is a good logical choice as this is the NZTA's means to provide its board with assurance over key areas of endeavour within the organisation. Arguably, if there is a robust *Risk management and assurance function* within the organisation covering key areas of organisational endeavour, then the monitoring agency can take assurance from this, and focus on other areas to support the board and the organisation.
- 159 We understand that both these recent assessments have provided useful insights to the NZTA board and management to assist with risk management and performance improvement. The refreshed process has identified some key risks to be addressed and opportunities for improvement which have led to action taken by the NZTA board and leadership. For example, it was the Ministry monitoring work that first raised operating and financial management issues with the NZTA *Connected Journeys Solutions* unit, which then led to more scrutiny from the NZTA for remedial action.<sup>53</sup>
- 160 In addition to the insights gained at any point in time, Ministry personnel are maintaining records of observations, and monitoring these for trends, which in turn informs the forward focus of the monitoring work.<sup>54</sup>
- 161 We are told that there is general agreement from the board with the approach proposed in priority area scoping documents for assessments. The Ministry Principal Advisor for NZTA monitoring

<sup>52</sup> NZ Transport Agency – Monitoring approach, December 2018

<sup>53</sup> This resulted in Deloitte being called in to audit current and historical issues around activities of the unit, and verifying issues for action

<sup>54</sup> Comments from Ministry personnel in interviews



now has open access to the NZTA premises and personnel as well, facilitating improved sharing of information.<sup>55</sup>

- 162 However, we understand that the approach of supplying draft monitoring reports to the NZTA staff/executive prior to them being provided to the board continues.<sup>56</sup> The aim is to enable 'fact checking' of the content of the reporting before it goes to the board (and then subsequently to the Minister). 'Fact checking' makes sense where there is considerable information asymmetry between the monitoring agency and the entity. However, it does present the risk of reporting being shaped by the entity to suit its own ends, and in the past there has been significant pressure to change the advice.
- 163 This could be mitigated through reverting to the practice that existed in 2016, where the board received the monitoring report at the same time as the chief executive. This at least gives the board a heads up on potential issues.
- 164 Enhanced relationships and better communication amongst all parties will also mitigate risk in this regard, through earlier and greater transparency of insights back and forth and better information flows to support analysis and conclusions.

## Board appointments

- 165 Regarding the appointment of board members, the Ministry monitoring team has added capability to the team for supporting the appointment process and advice to the Minister for NZTA board appointments.
- 166 The capability matrix has been revised to reflect the range of governance and regulatory skills that are required in each of the transport Crown entities.
- 167 The MartinJenkins *Review of NZTA regulatory capability and performance 2019* concluded that there was not enough depth of regulatory experience on the NZTA board. This message has been taken on board by the Ministry team responsible for supporting board appointments. We understand that current recruiting for NZTA board members addresses the need to balance depth of regulatory and governance experience on the board.

## Resourcing of the monitoring function

- 168 Prior to the reorganisation of the Ministry in mid-2017, and reflecting the lighter touch approach to monitoring at this time, Ministry resources for the monitoring function were capable individuals but 'light on the ground'.<sup>57</sup> When some staff left, the Ministry resorted to contract resource to fill the gap while recruiting new staff.
- 169 The emphasis in recruiting new staff was to attract individuals with the technical ability to do the job (i.e. capability and understandings of organisational governance, management and operational elements) and also well-developed relationship management skills (i.e. people skills, effective emotional quotient (EQ)) to be able to relate well with people in the Crown entities.

<sup>55</sup> Comment from Ministry staff in interviews

<sup>56</sup> Feedback from Ministry personnel

<sup>57</sup> Ibid and as noted earlier in this report



- 170 Regarding the NZTA monitoring role, this has been successful as commented above in this report. There is more maturity around the balance between constructive relationships and the ability to have the hard conversations when needed, where parties respect each other.
- 171 The Governance and Commercial team has nine people when fully staffed including the Manager, with monitoring being one of the team's functions.<sup>58</sup> We estimate that around six personnel are involved in monitoring work. We understand that this is considered an effective number to support roles for monitoring performance, monitoring accountability documentation, advising on legislative and ministerial requirements, and supporting the board appointment process.<sup>59</sup> The focus is to ensure the sustainability of the team that is place now.
- 172 The challenge is less in the numbers and more in attracting the skillsets and capabilities that are essential for effective monitoring, and in retaining these. Continuity of good personnel is essential where relationships and mutual respect are concerned, as these things take time to develop.
- 173 The monitoring function must have adequate resource who can build very solid relationships and have the ability to 'go toe-to-toe' with senior / executive staff at the agencies (if needed) to ensure that they can build respect and maintain credibility. There is a remuneration and career development challenge to attract and retain staff with the required technical, experience and relationship management competencies to do the job as needed.
- 174 The Ministry does not just rely on its own resource to do the work. Where it is appropriate for an area of focus the Ministry monitoring team bring in a subject matter expert with the technical skills to complement their broader skillsets. This was done to good effect in the recent assessment of *Procurement* within the NZTA. All parties benefited from valuable insights from the technical expert.<sup>60</sup>

## Conclusions

- 175 The current approach to Crown entity monitoring in the Ministry of Transport is another step up from earlier approaches.
- 176 It recognises the importance of effective relationships at all levels, and in particular with the board and entity leadership. The assessment framework for monitoring performance with lines of enquiry in priority areas is already delivering valuable insights to the NZTA board and management on risks and opportunities for improvement.
- 177 This provides an additional layer of assurance for the board and the Minister.
- 178 The approach explicitly recognises that the board has the accountability for the entity's performance and that the monitoring role is not to usurp the role of the board, nor to get into detailed analysis (as an audit) but to flag risk through bringing a more strategic lens to the assessments.

<sup>58</sup> Other functions include providing commercial advice, representing the Crown's interest in the City Rail Link project, supporting Crown entity funding reviews, representing the Crown's interest Five Joint Venture Airports, and overseeing the Ministry's contract with Metservice.

<sup>59</sup> Comments from Ministry personnel in interviews

<sup>60</sup> Ibid



- 179 While the current approach brings more depth and rigour to the assessment, it is at times quite detailed. In this regard, there is the risk of it being misinterpreted. From what we can tell, current personnel deploying this methodology with NZTA have the well-developed relationship management skills to generally navigate and land the approach without significant issue. However, there has been a little pushback at times from some (not all) personnel within the NZTA to providing information, which might be a response to a perception of too detailed an assessment approach.
- 180 In light of this, the lines of enquiry and the probing questions beneath them need to be carefully managed so that no impression is given of 'micro-management', nor of going beyond the remit of the 'critical friend' and actually doing the job of the board or leadership. It also highlights the importance of the relationships that need to exist between the Ministry and the NZTA at board, leadership and management levels.
- 181 Where relationships amongst parties are constructive there should always be the opportunity to discuss in a mature fashion the monitoring approach, how it is working for mutual benefit and make any adjustments if appropriate. At times this might naturally lead to a healthy tension between parties, but with constructive intent.
- 182 We believe that as the refreshed approach to both relationship management and the assessment framework become more familiar to all parties, there will be opportunity to streamline the approach. In this regard, a focus on improving the risk management and assurance approaches within the entity, will potentially mean that many of the broader monitoring questions might be answered by the organisation itself, and the monitor need focus mainly on assessing the integrity of the entity's risk management and assurance processes.
- 183 The current approach of providing monitoring reports to the NZTA management for 'fact checking' prior to reports going to the entity board, and then on to the Minister presents an inherent risk for entity influence over the messaging and/ or tone of the reporting. This risk could be mitigated to some extent by providing reports to the board at the same time as to the chief executive. In this way, the board has the opportunity to engage with the messaging and make its own assessment of the insights.
- 184 The increased collaboration across Ministry functional groups, and, in particular, the better linkages between steward and monitoring functions provide additional opportunities for highlighting risks and ways of communicating these to the entity board.
- 185 Finally, the challenge with resourcing is not so much a capacity issue, but a capability one. It is an ever-present challenge to attract and retain monitoring staff with the balance of technical and relationship management skills necessary for the job. The current use of subject matter experts to complement the monitoring teams in their work is a great opportunity to provide rich insights to all parties.
- 186 We are confident that the cumulative effect of these changes will expose significant regulatory performance issues in the future and enable the Minister to be appropriately briefed.

