

Coversheet: Strengthening NZTA’s regulatory capability and performance

Advising agencies	Ministry of Transport
Decision sought	Proposed legislative change to address the New Zealand Transport Agency’s regulatory effectiveness
Proposing Ministers	Minister of Transport

Summary: Problem and Proposed Approach

Problem Definition
What problem or opportunity does this proposal seek to address? Why is Government intervention required?

A 2019 review by the Ministry of Transport (the Ministry) of the New Zealand Transport Agency’s (NZTA) regulatory performance identified that the NZTA needs significant, sustained support to build its capability and performance as the land transport regulator. The Ministry’s review was informed by a systematic analysis from an associated review by MartinJenkins consultants.

The review concluded that since the NZTA’s establishment, significant deficiencies in its regulatory capability have developed over time, resulting in regulatory failure. The absence of a single and clear point of accountability for regulatory decision-making in the NZTA (contrary to many other regulatory agencies), and lack of established principles of good governance, have been significant contributors to the regulatory failure. Further, the review found the NZTA’s focus on delivering its overall regulatory function had eroded over time. Without intervention, the critical issues and capability gaps identified in the NZTA’s regulatory function will not be resolved.

Proposed Approach
How will Government intervention work to bring about the desired change? How is this the best option?

The objective is to restore an effective and efficient land transport regulatory system, by taking steps expected to rapidly improve the NZTA’s regulatory performance.

The Ministry recommends three changes in legislation to respond to the capability and performance issues identified in the NZTA and meet the above objective.

- I. Establish more formalised decision-making through a statutory Director of Land Transport (Director) role. This will ensure a single point of responsibility for regulatory decision-making and exercising the NZTA’s regulatory functions and powers.

- II. Strengthen and clarify the NZTA's objectives, functions and powers to encourage greater focus on how the NZTA exercises its regulatory role.
- III. Establish a new charging mechanism to enable a portion of both the NZTA's regulatory activities and the Ministry's monitoring function, to be funded from land transport revenue.

The Ministry anticipates that these legislative changes will increase the NZTA's accountability for, and effectiveness in, its regulatory role and improve the quality of its regulatory decision making. The changes will also provide a sustainable and equitable funding pathway for the NZTA's regulatory activities, and support strengthened monitoring of the NZTA. Further, the changes will mitigate the risk of future regulatory failure and ensure the NZTA takes a proportionate approach to regulatory compliance. Implementing the proposed changes will provide an enduring model for regulatory decision making in statute, which will help ensure that the NZTA does not lose its regulatory focus again.

Outside the legislative changes listed above, the Ministry has also recommended a suite of other interventions to strengthen the NZTA's performance. These include setting expectations that the NZTA Board establish a new regulatory strategy and operating model. The Ministry envisages that these other interventions, which are already underway, will complement the changes proposed in this Regulatory Impact Assessment (RIA).

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The Ministry expects that the NZTA will enforce regulatory standards more consistently once the legislative changes are made. The majority of problems within the NZTA's current structure have arisen from a lack of focus in the NZTA on its regulatory role and the lack of a single regulatory 'voice' in the agency.

Establishing the Director role and clarifying the NZTA's regulatory functions and objectives in legislation, will provide the NZTA with a clearer regulatory foundation and accountabilities. This will help balance decision-making in the NZTA between its roles of land transport regulator, infrastructure deliverer, and investor, and better manage potential conflicts of interest across these roles.

The refresh of the regulatory functions and powers in the Land Transport Management Act 2003 will ensure they are fit-for-purpose and consistent within the wider transport regulatory system. For example, the imposition of conditions on a transport services license holder will allow a proportionate response to non-compliance. Currently should the NZTA find grounds to suspend a transport services operator's license, the license can only be suspended. However, in practice, there may only be parts of the business that are non-compliant. This disproportionate response has not been supported by the courts, which have at times been reluctant to uphold the suspension when these have been challenged.

The Ministry expects that the following groups will benefit from the changes:

Group	Benefits
Public	Increased confidence in the land transport system and safe use of the land transport system. Creating a stronger and more confident regulator, better able to manage risk to public safety.
Industry/Sector bodies	A more 'level playing field' and increased compliance. The industry wants the regulator to drive consistent standards across regulated parties and the legislative changes will support this.
NZTA	Stronger mandate, focus and delivery of regulatory role and increased quality of decision making. A stronger reputation as an effective modern regulator equipped with a responsive set of powers to more effectively perform its functions.
Government	Increased confidence that the NZTA will perform its regulatory role effectively through a stronger mandate. That the changes will support the NZTA to effectively deliver, through its regulatory role, better safety outcomes and confidence as the land transport regulator.

Where do the costs fall?

In response to the Ministry's review and findings, the NZTA is undertaking a funding review to ensure it has the necessary capability and capacity to carry out its regulatory role.

There will be a cost to the NZTA to strengthen the gaps identified in the Ministry's review, including the addition of a new role (the Director). Some of these costs may need to be met by the industry through third party fees and charges, which is a consistent approach across the transport sector.

There will also be a cost to the broader land transport sector participants. For instance, to regulated parties such as certification agents, vehicle inspecting organisations and commercial operators. These parties may need to invest in their businesses to lift performance, practices, and standards to reach the required standards.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

Operationalising the proposed changes

There is a risk the legislative changes proposed do not go far enough to support and enable the NZTA to carry out its regulatory function effectively. The NZTA's capacity and capability to operationalise the proposed changes could be a barrier to strengthening its regulatory focus. For example:

- There may be difficulty in finding a person with the appropriate skills to fill the director role, and uncertainty that the NZTA Board and the Director will be clear about their differing roles. We propose that this risk is mitigated through the Minister setting expectations that the NZTA Board develop a clear regulatory strategy and operating model. The Ministry's monitoring function will also continue to assess the NZTA Board's performance in building capability across the NZTA's regulatory function.
- Concerns about the adequacy of funding and staffing capacity and capability to implement the proposed changes. This will be mitigated through a funding review expected to be presented to Cabinet in 2020. The review is looking at the adequacy of the regulator's funding, including impact on staffing capacity and capability. The Ministry's option proposing to establish a new funding mechanism from land transport revenue for a portion of the NZTA's regulatory activities and the Ministry's monitoring function to be funded from land transport revenue, is also a direct response to mitigate this risk.

Power to impose temporary conditions on transport services licences holders and accept enforceable undertakings

- There is a risk that the power to impose temporary conditions on transport service license holders is misunderstood and used instead of suspending the license. This risk is considered small and can be mitigated by operational design procedures. Using the refreshed power relies on the use of appropriate enforcement discretion. This use of discretion is well developed and understood by enforcement agencies and will be supported by putting in place procedures to inform the imposition of conditions. The refreshed power is an expansion of the power to suspend transport services licenses under section 30U Land Transport Act 1998. The NZTA already has a power to impose temporary conditions for license holders in the rail sector (section 23 Railways Act 2005). The power is, as such, well-established in transport legislation and the risk of misuse is minimal.

There is a risk that the power to accept enforceable undertakings is used too liberally instead of the (more onerous) power to prosecute breaches. This risk is considered small and can be mitigated by operational design procedures. The enforceable undertakings are accepted by the Director of Land Transport and are published in the New Zealand Gazette. This requirement allows transparency for the public over the content and nature of the enforceable undertakings. The introduction of the power to accept enforceable undertakings is new for the NZTA. However, it is already well-established in the transport sector. Both Maritime New Zealand and the Civil Aviation Authority (the maritime and aviation transport regulators respectively) have been designated under the Health and Safety at Work Act 2015, allowing these agencies to accept enforceable undertakings.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The three legislative changes proposed generally comply with the Government Expectations for Good Regulatory Practice¹, and consequently expectations for the design of regulatory systems. For example, the proposals will provide clear and achievable regulatory objectives, and predictable and consistent outcomes (see section 5.4 for a full list of the relevant principles informing this analysis).

Following the Ministry's comprehensive review of the NZTA's regulatory performance (which included the MartinJenkins review), the analysis is clear on the nature and underlying causes of the NZTA's issues.

However, due to the confidentiality of the review process, the nature of the changes, and the necessary urgency of government intervention, interested parties outside government have not been able to be consulted on the proposed options.

¹ Treasury (2017). *Government Expectations for Good Regulatory Practice*. New Zealand Government, Wellington. Available at: <https://treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Foundations of a modern regulator

The proposals in this paper are generally consistent with the foundations of modern regulatory practice and good governance, which are set out in a combination of established evidence, practices, and guidance².

For example, the Productivity Commission has indicated that clear regulatory roles, duties, and objectives are important for regulatory regimes to operate effectively and efficiently. The Commission notes that a clear legislative mandate can help promote accountability, compliance, focus, legitimacy, and predictability. This has helped inform the recommendation in this proposal to strengthen and clarify the NZTA’s objectives, functions and powers in the legislation.

The OECD (Best Practice Principles for Regulatory Policy – The Governance of Regulators (2014)) notes that where large numbers of operational regulatory decisions are undertaken, these are normally undertaken via a statutory role or are clearly delegated to the chief executive or another role in an organisation. This recognises that these decisions are often regulatory operational decisions, rather than those typically undertaken by a board, and require understanding of investigative and enforcement decision-making. This guidance supports the Ministry’s proposal for a Director role.

We have referenced recognised institutions, regulatory practices, and guidance to inform the development of proposals in this paper and test their validity. However, the guidance considered was not specific to the particular circumstances relating to the issues with the NZTA. Therefore, we cannot have full certainty about the impact the changes proposed in this paper will have to respond to the problems identified in the Ministry’s review of the NZTA. It will take time to identify whether the proposed legislative changes, together with the broader responses proposed, are sufficient to address these problems.

Ministry review

The Ministry’s review into the NZTA’s regulatory performance has been informed by work undertaken by MartinJenkins consultants. MartinJenkins undertook a systemic analysis of the underlying factors contributing to the performance issues identified in the NZTA’s regulatory function since its establishment in 2008. MartinJenkins’ report states that the NZTA’s regulatory capability and performance has been lacking over several years and this has been occurring at different points in the regulatory cycle.

MartinJenkins conducted an extensive assessment of documentation and correspondence provided by the NZTA and interested persons, alongside interviews with industry

² Government Expectations for Good Regulatory Practice; Operating Expectations Framework for Statutory Crown Entities; OECD Best Practice Principles for Regulatory Policy; the Productivity Commission Regulatory Institutions and Practices report; the Government Regulatory Practice Initiative (G-REG); and, other internationally recognised commentators on regulatory practice (such as Malcolm Sparrow’s regulatory craft work).

stakeholders, regulated parties, the NZTA Board members, senior leaders and staff (both current and former). Through this process, MartinJenkins interviewed around 70 people and evaluated around 250 documents.

In its report MartinJenkins also outlined the characteristics of an effective regulator, including that regulators should have the ability to fulfil their regulatory objectives within constitutional and statutory requirements. This helped inform the Ministry's position that the changes proposed to improve the NZTA's performance needed to have a legislative mandate.

Powers of a modern regulator

The available evidence for refreshing the regulatory powers comes from the practical enforcement powers under current land transport legislation – as well as a comparison with powers in other transport regimes. NZTA has provided the Ministry with evidence of practical cases where NZTA have had to rely on informal 'notices of improvement' in the absence of explicit powers in the Land Transport Act 1998. There were four recent examples that highlighted the benefits of the proposed refinement and addition of powers.

Enabling temporary conditions on transport services licences holders

This power has been used successfully by regulators in other transport sectors. It also more closely aligns the Director's powers with those under the 'sister' powers in civil aviation and maritime transport. In essence, temporary conditions are a form of limited suspension.

Enabling enforceable undertakings

This power has been used successfully by WorkSafe NZ under the Health and Safety at Work Act 2015. The provisions providing for enforceable undertakings in the Bill are closely modelled on the equivalent provisions in the Health and Safety at Work Act 2015, which have been used successfully by WorkSafe NZ as part of its compliance and enforcement strategy.

Adding these modern regulatory powers reflects a growing trend in the literature and practice away from command-and-control regulation to models of more risk-based and reflexive regulation (these models were developed by Ian Ayres & John Braithwaite, Malcolm Sparrow, Robert Baldwin & Julia Black et al). This more modern approach takes into account preventing certain types of harm and mitigating specific risks, as opposed to sanctioning non-compliant ex-post. A number of regulatory bodies internationally have adopted this more modern approach to induce compliance, such as New South Wales' and Queensland's mining regulators (cf. for further references: Mary Ivec/Valerie Braithwaite/ Charlotte Wood/Jenny Job, *Applications of Responsive Regulatory Theory in Australia and Overseas*, Occasional Paper 23, March 25, Australian National University).

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Transport Sector Regulatory Impact Statement Quality Assurance Panel.

Quality Assurance Assessment:

The Transport Sector Regulatory Impact Statement Quality Assurance Panel considers the information and analysis summarised **partially meets** the quality assurance criteria.

Reviewer Comments and Recommendations:

We assess the consulted criterion as 'partially meets' as the impact framework anticipates broader engagement with stakeholders ahead of regulation, government and funding changes of this nature.

Impact Statement: Strengthening NZTA’s regulatory capability and performance

Section 1: General information

1.1 Purpose

The Ministry of Transport is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment (RIA), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

1.2 Key Limitations or Constraints on Analysis

There have been limitations around the breadth of consultation on the proposed changes and on testing the findings of the Ministry’s review of the NZTA’s regulatory performance. This is due to the sensitivity of the review process and the fact that the Ministry has not been in a position to take the findings of the review to the transport sector due to confidentiality issues.

This RIA relates to specific issues around the NZTA’s regulatory focus and decision making. This includes addressing the lack of a sustainable funding pathway for regulatory functions to support this activity, and ensuring the Ministry has the resources to effectively monitor the NZTA.

The Ministry has drawn on evidence of good international and domestic regulatory practice, and considered the current context in the NZTA. There is evidence from the OECD that the presence of both a statutory director and strong regulatory focus in the NZTA will contribute to better regulatory outcomes³. However, these factors alone will not ensure an effective regulator; there are other factors that need consideration (for example, regulatory strategy and approach, operational policy and practice, regulatory intelligence, education and guidance, and assurance capability). Nevertheless, the Ministry is confident that the changes proposed in this RIA will positively impact the NZTA and land transport regulatory system overall.

Another limitation is that the issues considered in this RIA are part of broader response to regulatory issues in the NZTA. There are a suite of interventions being considered as part of

³OECD (2014). *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*. OECD Publishing. Available at: https://www.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en.

the Ministry's review, which are intended to work in synergy to support the NZTA and build its capability. These include:

- setting expectations that the NZTA Board develop a new strategy to strengthen the NZTA's regulatory approach and delivery
- setting expectations that the NZTA Board establish a new regulatory operating model that defines the capability, processes, and systems to implement the NZTA's enhanced regulatory strategy and approach
- strengthening the presence of regulatory expertise and capability on the NZTA Board
- the Ministry, the NZTA, and the New Zealand Police undertaking work to identify whether there are opportunities to enhance the way commercial vehicle enforcement functions are delivered
- seeking advice from the Ministry and the Ministry of Business, Innovation and Employment to explore the merits of designating the NZTA as a health and safety regulator under the Health and Safety at Work Act 2015.

Alongside these responses, the NZTA is undertaking a funding review to ensure it has the necessary capability and capacity to carry out its regulatory role. Work on the funding review will continue into 2020 and will include recommendations on potential changes to the NZTA's funding settings.

Together, the Ministry considers that the above responses and proposed legislative changes outlined in this RIA, will respond to the key issues impacting the capability and performance of the NZTA's regulatory function.

Responsible Manager (signature and date):

Bev Driscoll

Manager, Regulatory Policy

Ministry of Transport

Date: 13 September 2019 / 12 November 2019

Section 2: Problem definition and objectives

2.1 What regulatory system, or systems, are already in place

Transport regulatory system

The transport regulatory system encompasses three main modes of transport: land, aviation and maritime. Each of the three transport modes has a Crown entity acting as the main regulator for that mode:

1. Land – the NZTA.
2. Maritime – Maritime New Zealand (MNZ).
3. Aviation – the Civil Aviation Authority (CAA).

The placement of independent regulatory powers in the transport agencies (controlling entry to/exit from the system, and regulatory enforcement action) vary across the transport modes. While independent powers reside with individual office holders (directors) in aviation and maritime, independent powers rest with the NZTA Board in the land transport sector.

The NZTA’s regulatory function is an important role supporting the land transport system. The scope of the NZTA regulatory function includes safety, operations and revenue. This gives the NZTA control over the entry and exit of people into and out of the system. It also helps to regulate the risks created by people who want to enter and operate in the system.

The regulatory role of the NZTA extends to the regulation of roading design and implementation for road safety, alongside speed limit setting and traffic control devices. Given this, there is interaction with local government and other Road Controlling Authorities (RCAs).

Third party involvement

Under section 97 of the Land Transport Management Act 2003 (LTMA), the NZTA has delegated various functions to third parties (individuals and organisations) operating as regulators on behalf of NZTA (for example, for issuing warrants of fitness, certificates of fitness, driver licences). In this regard, the NZTA has a regulatory role for monitoring and evaluating the performance of these third parties.

Overall fitness-for-purpose of the transport regulatory system

The transport regulatory system is a large and complex ‘machine’, which requires constant care and maintenance, and periodically replacement ‘parts’, to maintain its performance. The Ministry has not undertaken a current fit for purpose assessment of the entire transport regulatory system. Under the Ministry’s 2019-21 regulatory stewardship plan⁴, the Ministry’s focus in 2019 is to build an assessment tool, and process for prioritisation, and begin to assess prioritised parts of the system.

⁴ Transport System Regulatory System Stewardship Plan. Ministry of Transport: Wellington. Available at: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/057470b303/Transport-System-Regulatory-Stewardship-Plan-2019-to-2022.pdf>.

Legislative regulatory framework and the NZTA's powers, functions and objectives

The land transport system has multiple agencies, roles, legislative frameworks and requirements. The regulatory framework for land transport sits primarily in the LTMA, the Land Transport Act 1998 (LTA), and the Railways Act 2005. These acts are supported by a series of land transport regulations and rules.

The LTMA generally defines the NZTA's scope, objectives and functions. Both the LTMA and LTA generally set out the powers of the regulator.

The Railways Act 2005 sets out parts of the NZTA's role as the rail regulator.

2.2 What is the context within which action is proposed?

Establishment of the NZTA

The NZTA was established on 1 August 2008 as a Crown entity under the LTMA. When the NZTA was established, it combined the expertise and functions of Land Transport New Zealand (created in 2004) and Transit New Zealand. This merger combined three core functions into the NZTA: land transport regulator, infrastructure deliverer (state highway network) and investor. At this point the Director of Land Transport Safety⁵ was repealed and, instead, a Board of the NZTA (the Board) was established.

The NZTA Board's role is focused on ensuring effective governance in the NZTA to support the delivery of its core functions. This includes setting the strategic direction and goals of the NZTA and providing a benchmark to monitor progress and measure performance across its three core functions, including its regulatory function.

The NZTA's Regulatory Function

As the land transport regulator, the NZTA has transport responsibilities under:

- a) five main Acts – the LTMA, the LTA, 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.

The scope of the NZTA regulatory function involves a range of matters including safety-related aspects of motor vehicle registration and certification, driver licensing and road user rules.

The regulatory scope of the agency covers a range of participants, including:

- Transport Services License holders: drivers and operators of freight, vehicle recovery and passenger transport service industries must comply with various rules

⁵ The role of the Director of Land Transport Safety had statutory independence for undertaking the relevant functions of Land Transport New Zealand. This statutory function is similar to that of the directors of CAA and MNZ (which still have these roles).

and regulations. In most cases, this includes holding an appropriate transport service licence approved by the NZTA.

- Driver licence course providers: the NZTA approves the course provider before they can offer licence endorsements.
- Vehicle inspectors and certifiers: the inspection and certification of a vehicle for entry into service must be carried out according to requirements and conditions imposed by the NZTA.
- Rail operators: the NZTA has primary regulatory responsibility for rail safety, including issuing, checking and reviewing rail licences.

The NZTA regulates the activity of a large number of participants across the regulatory system. As at 13 June 2019, there were 5,288,649 vehicles registered in New Zealand. The total number of parties in each regulatory area are listed in the table below (definitions for regulatory areas and licence types are provided in Appendix 1):

Regulatory Area	Key Numbers	
Transport Services Licensing	38,239 active ⁶ transport licence holders	
	Individual licence type	Active
	Goods service	25,259
	Rental service	1,003
	Vehicle recovery	507
	Large Passenger service	2,256
	Small passenger service	10,670
	Total individual licences held⁷	38,239
Driver Licence Course Providers	535 providers of 14 course types	
Driver Licence Testing Officers	193 operational testing officers	
Vehicle Inspectors/ Inspecting Organisation	8,147 inspectors (including Warrant of Fitness and Certificate of Fitness inspectors)	
	3,174 inspecting organisations	

⁶ Any licence holder who has completed a Certificate of Fitness in the previous two years.

⁷ Licence holders can be licenced for more than one type of activity - for example, goods services and large passenger services.

Entry Vehicle Certifiers	541 providers
Heavy Vehicle Certifiers	180
Low Volume Vehicle Certifiers	49
Repair Certifiers	44
Rail	92 rail licence holders, carrying 35,800,000 passengers and 16,170,000 tonnes of freight per year
	60 rail assessments and investigations per year
	3,212 rail safety occurrence reports received and triaged per year
	55 license and license variation applications processed per year
	NZTA regulate 4,998 kilometres of track, including the National Rail System of 4,442km

2.3 What is the policy problem?

In October 2018, the NZTA Board raised concerns that the NZTA was not effectively performing its regulatory functions. These concerns related to a backlog of around 850 regulatory compliance cases. In November 2018, the NZTA confirmed that William Bell of Dargaville was killed in a vehicle certified by an inspecting organisation that the NZTA had significant concerns with over several years, but had failed to take appropriate action on.

It is evident there is significant non-compliance with regulation in the land transport system. Since October 2018, 73,017 vehicles have been affected by non-compliance. This means that the vehicles have been warranted or certified by operators who were found to be non-compliant with regulation, and who then had their ability to certify/issue Warrants of Fitness either suspended or revoked.

In response to the original concerns arising from the backlog of regulatory compliance cases and death of William Bell, the Minister of Transport instructed the Ministry to conduct a review into the operation and performance of the NZTA's regulatory function. The Ministry commissioned MartinJenkins consultants to help conduct the review.

The review found that there has been regulatory failure in the NZTA over several years, occurring at different points in the regulatory cycle and system. This had resulted from a series of underlying factors that over time eroded the NZTA's regulatory focus, delivery and performance.

These factors included:

- overshadowing of regulatory responsibilities by higher-priority roles and conflicts of

interest between the NZTA's functions as regulator, infrastructure deliverer and investor

- structural constraints, with the NZTA's three separate functions (regulation, infrastructure delivery, investment) bolted together when the NZTA was established, resulting in disparate functions with different ways of working and cultures
- weak regulatory leadership and expertise and a lack of awareness of regulatory issues at senior leadership and board levels
- lack of a clear, end-to-end regulatory strategy and operating model to enable the NZTA to effectively discharge its regulatory roles and functions
- underinvestment in regulatory capability and resourcing
- absence of a regulatory culture, with the taking of regulatory action seen as a failure and a pervasive culture of bad news being unacceptable
- no single accountability for regulatory decision-making as in many other regulatory agencies and a lack of robust, practical guidance for frontline staff to make effective regulatory decisions
- flaws in the internal audit process and a lack of continuous risk management across the regulatory function.

The most significant issues with the NZTA's performance and capability have been its failure to:

- provide oversight and leadership over the regulatory system
- effectively perform its role and functions in this system.

The Ministry is proposing a broad package of non-legislative interventions to respond to the issues listed above. However, outside the issues that package is designed to address, there remain three specific problems flowing from the Ministry's review and the broad problems listed above. These problems need to be addressed and are the focus of this RIA:

1. No clear line of accountability for regulatory delivery and decision making in the NZTA.
2. A lack of clarity in the NZTA's regulatory objectives and functions and a consequent lack of clear focus on undertaking these effectively.
3. An imbalance of funding sources, leading to a lack of sustainable funding for the NZTA's regulatory function.

What is the counterfactual?

Without intervention to address the identified problems, we are likely to see further regulatory failure by the NZTA. This is because:

- the NZTA may be unable to regulate properly due to a lack of internal focus on its

regulatory role

- the NZTA will continue to lack clarity, focus and direction without a clear line of regulatory accountability or clarifying and strengthening its objectives and functions
- stakeholders will continue to lose trust and confidence in the NZTA if there is no incentive to lift their capability and performance
- the NZTA's regulatory function may erode over time again if its functions are not more clearly defined
- NZTA's regulatory powers will not keep up to date with the requirements and expectations of a modern regulator
- there will continue to be some actual or perceived conflicts between the NZTA's regulatory function and its roles as a significant infrastructure deliverer and investor across the transport system
- operators may not lift their capability and performance because there is not an effective deterrent against poor performance in the system
- the NZTA will lack the capacity and capability to build and maintain its regulatory effectiveness, due to lack of a sustainable funding pathway for its regulatory functions – costs of funding regulatory activity will also continue to be inequitably sourced.

Evidence basis for identifying the problem

The MartinJenkins review formed a significant part of the Ministry's review into the NZTA's regulatory performance. The MartinJenkins review was based on an extensive assessment of documentation and correspondence provided by the NZTA and interested persons. This occurred alongside interviews with industry stakeholders, regulated parties, NZTA Board members, senior leaders and staff (both current and former). Through this process, MartinJenkins interviewed around 70 people and evaluated around 250 documents.

In terms of methodology, the focus for MartinJenkins' review was to form a clear assessment of whether there were systemic deficiencies in the NZTA's regulatory capability and function, and, if so, to what extent they contributed to its recent performance issues. The review's purpose was to understand and assess the underlying causes contributing to the recent performance issues in NZTA's regulatory function, via systematic analysis.

This required taking a backward look at the NZTA's performance at different points in time. MartinJenkins looked at the NZTA regulatory function from its formation in 2007, until mid/late 2018 when the backlog of non-compliance cases emerged and was being addressed.

The terms of reference for MartinJenkins' review included considering the overall performance of the NZTA's regulatory services function, and in particular:

- 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 - covering governance; leadership; operational policy and practice; regulatory intelligence; people capability and capacity; and the balance of education, engagement and enforcement
- how the 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.

MartinJenkins noted that the review methodology used a proven organisational capability and performance framework to guide analysis. 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 several dimensions, including:

- strategy, governance and leadership
- culture, structure and relationships
- technology
- analytics and insights
- people capabilities
- operational and work practices
- feedback loops via risk and assurance management activity.

The framework recognises that 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.

Using the framework, MartinJenkins assessed the NZTA's regulatory capability and the way it was performing at different times, against both expected good practice and as intended by the outcomes and provisions of the relevant legislation. MartinJenkins' report confirmed that NZTA's regulatory capability and performance has been lacking over several years and that this has occurred at different points in the regulatory cycle.

2.4 What is the objective and what criteria have been used to assess the likely impacts of options to address problems identified?

Objective

The objective is to restore an effective and efficient system of land transport regulation by

taking steps expected to rapidly improve the NZTA's regulatory performance.

Criteria

In line with the above objective, the following criteria have been identified to assess possible options:

1. **Decision making quality:** decisions are effective, timely, consistent and appropriate across all regulated parties.
2. **Accountability and independence:** extent to which the regulator is able to be held accountable, hold regulated parties to account, and make strong decisions without undue influence internally or externally.
3. **Public trust and confidence:** the option contributes to assuring the public that the regulator is overseeing a safe and effective land transport sector.
4. **Regulatory focus and enduring outcomes:** extent to which the NZTA maintains strong attention on end-to-end regulation by implementing its regulatory strategy, without this conflicting with, or being diluted by, a focus on other roles, ultimately leading to enduring positive regulatory outcomes
5. **System leadership and regulatory 'voice':** the regulator's ability to lead regulated parties to function in ways supporting a safe and effective land transport system and champion best regulatory practice.

An additional criteria has also been added to analysis for Problem 3: An imbalance of funding sources, leading to a lack of sustainable funding for NZTA's regulatory function:

6. **Costs allocated equitably across risk creators and those benefitting from a well-regulated land transport system:** costs should be allocated fairly primarily according to who creates and exacerbates the risks in the system and receives benefit from participating in the system.

2.5 Are there any constraints on the scope for decision making?

The Ministry has proposed a package of recommendations for responding to the key issues impacting the capability and performance of the NZTA's regulatory function. There is also broader work underway in the NZTA to strengthen its regulatory capability. Alongside this work, the NZTA is undertaking a funding review to ensure it has the necessary capability and capacity to carry out its regulatory role. This will be interdependent on the broader review and response.

Consultation on the proposed changes to the NZTA's regulatory fees and charges will be undertaken with the land transport sector, expected to occur over the next 18 months. The Ministry will also work with the Treasury on options to fund the NZTA's regulatory costs over the short-term.

Any changes to legislation to support the recommendations and funding arrangements depend on Ministerial decisions.

2.6 What do stakeholders think?

The Ministry has not been able to test with stakeholders the three specific proposals:

- establishing a new director role
- strengthen and clarify NZTA's objectives powers and functions
- new funding from land transport revenue for the regulatory function and monitoring.

This inability has arisen because of the sensitivity of the review process, meaning the Ministry has not been able to take the review findings to the sector.

There is a strong focus from stakeholders, including industry bodies and regulated parties, on the outcomes of the review, including the Government's response to the findings. Stakeholders and the wider public have high expectations that significant improvements in response to the review will be made quickly.

MartinJenkins found through the review process that stakeholders have been wanting the NZTA to focus more strongly on its regulatory role; this was a common and recurring theme. The proposed changes will help provide a greater level of focus and contribute to a more balanced regulatory approach to the transport sector.

However, we note that some stakeholders, or the sector more generally, may be worried about the scope and mandate of the director role. This will likely be tested through a Select Committee process if Cabinet agrees to progress the legislative changes proposed in this RIA.

Some stakeholders, particularly industry groups and regulated parties, will have an interest in how the additional costs needed to build the NZTA's regulatory function will be met. The funding impacts will become clearer once the NZTA has determined the regulatory capability it requires following their funding review of its regulatory functions, supported by the Ministry. The Ministry's proposal for funding from land transport revenue to fund regulatory functions also addresses this issue. Outside this process there will be separate consultation on the funding review and engagement with stakeholders.

The process to support a shift towards better regulatory performance will take time to achieve, based on responses to previous regulatory capability and performance improvements. This is as core functions are developed and embedded across the NZTA's regulatory function (for example, operational policy and practice, regulatory intelligence, education and engagement). The process for implementing the broader improvements will also take time and need to be undertaken in a considered and manageable way.

Section 3: Options identification

3.1 What options are available to address the problems?

The range of issues and feasible options have been identified as follows:

Problem 1: There is no clear line of accountability for regulatory delivery and decision making in the NZTA

Option 1: Status quo

Under the status quo the NZTA Board has oversight of the NZTA’s regulatory function and retains accountability. The Board currently delegates its regulatory functions, powers and associated decision-making responsibilities to the Chief Executive, and holds that individual to account for both the way they make decisions and decisions made.

Delegating to the Chief Executive is problematic, as they are responsible for multiple roles in the NZTA. A further issue is that some of these roles may from time to time conflict, which creates difficulty in managing competing tensions between the roles. The Chief Executive also has other more significant functions which have substantial focus and prioritisation by the Government. This is likely to mean challenges around the responsibility for regulatory decision-making in the NZTA.

The Ministry’s review identified that delivery of the regulatory function did not get sufficient focus from the Senior Leadership Team of the NZTA. This was due, in part, to the strong focus on infrastructure delivery and investment in the agency. The previous land transport regulator (Land Transport Safety Authority) had a statutory director role with responsibility for making and exercising the powers and functions of the regulator. When the NZTA was created, the Director of Land Transport role was removed, which appears a key contributor to the loss of focus and voice of the regulatory function.

The status quo option also assumes that the NZTA Board will delegate functions and powers sufficiently to ensure that its governance role is not adversely impacted by operational and technical decision-making. This risks blurring the separation between the Board’s governance and strategic role, and the operational and technical activities of NZTA.

Retaining the status quo would mean there would continue to be no single role in the NZTA that is accountable for leading the regulatory functions across the agency. This means there is no one individual responsible for exercising the function and providing effective oversight for the NZTA’s regulatory functions and powers. Consequently, the NZTA’s focus on its regulatory function may be lost again over time, as it competes with its other two functions. For this reason, we do not consider this option a sustainable solution.

Option 2: Establishing a statutory Director of Land Transport role (preferred)

This option would see all accountability and decision making for the regulatory role undertaken by a statutory director embedded in the land transport legislation. This would ensure a single point of responsibility for undertaking regulatory decision making and exercising NZTA’s regulatory functions and powers.

The role would have independence for executing these regulatory powers and functions. The Board would not have a direct influence in regulatory decision making or how the regulator (statutory director) undertakes its functions. The Board's role would be to set the direction and strategy for the regulator and resourcing for the regulatory approach.

The OECD⁸ provides guidance on institutional arrangements for regulators. The guidance outlines that, where large numbers of operational regulatory decisions are undertaken, these are normally:

- undertaken via a statutory role; or
- are clearly delegated to the chief executive or to another role in an organisation.

This reflects the nature of the decision-making which is often operationally focused, requiring understanding of investigative and enforcement decision-making processes, rather than the type of decision-making typically undertaken by a board. Therefore, the person exercising the role ideally needs to have substantial regulatory experience. The Director is unlikely to be the Chief Executive, but could be an individual with responsibility for managing the regulatory function.

This is the approach taken in many jurisdictions, including New Zealand, in relation to the design and governance of regulators. Regulatory operational decision-making is often found in a statutory role with an appointee with good regulatory decision-making experience. For example, this includes the Directors of CAA and of MNZ, and as evidenced in a range of other countries' land transport regulators. In some instances, the operational regulatory functions outlined in statute are delegated by the Board to a Chief Executive in a sole purpose regulator (for example WorkSafe New Zealand), or to other positions in the organisation. However, as noted earlier, the NZTA has two other significant roles apart from regulation, including infrastructure delivery and investing.

If we do not make legislative changes, the NZTA may continue to be unable to make strong decisions as:

- there will be no single person accountable for regulatory decision making
- NZTA's regulatory functions will remain unclear.

The Director, as an experienced regulator, will bridge the gap between the NZTA and its board. The Ministry considers that, while the NZTA Board would be able to establish and delegate functions to a director role, the director role needs to be backed by statute to ensure that focus and expertise is maintained over time.

Option 3: Agency delegates accountability and decision-making to non-statutory role

This option would see all accountability and decision making for the regulator, including performing the regulatory functions and powers, undertaken by an expert in an individual role

⁸ OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing. <http://dx.doi.org/10.1787/9789264209015-en>.

in the NZTA. The intention is that this option would mirror option 2 without the statutory component.

The Ministry does not consider this option is a sustainable solution. Without legislation underpinning the role, the regulatory focus may erode as new priorities and directions compete for attention, particularly as board members change. The Ministry considers that, while the board is able to establish and delegate functions to the role, it needs to be backed by statute to ensure that regulatory focus and expertise are maintained over time.

Problem 2: There is a lack of clarity in NZTA’s regulatory objectives and functions and a consequent lack of clear focus on undertaking these effectively

Option 1: Status quo

The status quo option would retain the current structure and descriptors of NZTA’s regulatory objectives, powers and functions, as set out in the LTMA, Railways Act 2005, and supporting regulations and rules.

This arrangement has meant that the NZTA’s regulatory objectives and functions are not clearly articulated in the legislative regulatory framework. There are multiple pieces of relevant legislation, with no clear consolidation of NZTA’s functions and powers in the regulatory context.

Its current powers and regulatory tools reflect a command-and-control model of regulation that emphasises detecting non-compliance and then sanctioning breaches. This model utilises financial penalties, suspension/revocation and prosecutions. There are significant limits to this model as it is inflexible, sometimes inefficient and tending toward the overly technical.

Consequently, the NZTA has lacked a clear focus on, and understanding of, its regulatory role, including:

- who and how it is regulating across the land transport system
- how it should effectively target and reduce risk in the system

The current situation has meant that the NZTA’s Board and senior management do not have the focus and incentives to regulate properly. This includes not having the right environment to design and implement a comprehensive, end-to-end regulatory approach for overseeing the delivery of the NZTA’s regulatory roles and functions.

Option 2: Strengthen and clarify NZTA’s objectives, functions, and powers in the legislation (preferred)

This option would strengthen the purpose of the NZTA’s objectives, functions and powers in the LTMA and LTA to cover the key activities and roles of the NZTA. The objectives of the NZTA (defined in the LTMA) would also need to be updated to reflect the new purpose.

This option would articulate the NZTA’s functions more clearly and list these under its three core roles – as the regulator, infrastructure deliverer and investor. The NZTA also has more

general roles which cut across these three roles, which would also be clearly defined.

The Ministry anticipates that making the functions clearer will increase understanding and compliance. It will also ultimately increase NZTA's accountability and effectiveness across its functions, particularly its regulatory function.

By refining its existing power to suspend transport service licenses to include the power to impose conditions, NZTA will have a streamlined process to enforce breaches of Part 4A of the Land Transport Act 1998 that is fit-for-purpose.

Formalising the power to accept enforceable undertakings into the Land Transport Act 1998 also brings the NZTA into line with the other aviation and maritime transport regulators that have this power as part of their health and safety designation. These changes equip the NZTA with the powers it needs to carry out the role of an effective and modern regulator.

These powers allow for a differentiated response to non-compliance and work in tandem to reduce risk to the system. The imposition of conditions allows the transport services operator to continue its business, while rectifying the cause of non-compliance. The process of fixing the non-compliance is complemented by the acceptance of enforceable undertakings, which can be agreed voluntarily, as an alternative to prosecution.

Option 3: Minister sets expectations to Board

This option would see the Minister setting expectations with the NZTA Board about what NZTA's regulatory role is and describing what the Minister wants the NZTA to focus on. The expectations and directions would be informed by the findings of the Ministry's review.

However, this option does not embed the expectations and direction in legislation. There is a risk that the Minister's expectations, or the NZTA's interpretation of these, may change over time and the NZTA would lose focus on the delivery of its regulatory function.

Problem 3: An imbalance of funding sources, leading to a lack of sustainable funding for the NZTA's regulatory function

Option 1: Status Quo

The Ministry's review highlighted that a key issue was a lack of funding and funding options available to support the NZTA's regulatory function. A well-resourced, effective land transport regulator provides wide public benefit. However, under the status quo, funding sources for NZTA's regulatory functions do not include land transport revenue, which is the main source of funding the wider public contributes to.

Under well-established transport funding principles (aligning with Treasury and Office of the Auditor General guidelines), the NZTA's regulatory activities should principally be cost recovered through levies imposed on identifiable groups of land transport system participants. This should occur according to the benefits and risks these groups contribute to the system, and be supplemented by fees for specific products and services, with some limited Crown funding.

However, under the status quo the primary funding sources available to the NZTA come only from those receiving NZTA's regulatory services. The NZTA charges fees for driver licences and testing, Transport Services Licences, vehicle registration and safety certification to cover its regulatory costs.

A key problem with the status quo is that it does not capture proportionate funding for regulatory activity from road users. This group contributes to land transport revenue under the LTMA, proportionate to their use of, and impact on, the land transport system, through Fuel Excise Duty (FED), Road User Charges (RUC) and vehicle registration. However, a proportionate amount of land transport revenue is not currently allocated to fund the NZTA's regulatory functions.

The current funding arrangements mean that the costs of operating the regulator are not fairly distributed across all road users in the land transport system who benefit from a well regulated system. Further, the status quo does not allow an additional, sustainable funding source to build and maintain the NZTA's regulatory effectiveness.

Option 2: Increase existing fees and charges to regulated parties

This option would see increased fees and charges to regulated parties in the land transport system, for regulatory services such as those noted above. This would provide some increased funding for the NZTA to apply to its regulatory functions.

However, in the Ministry's view, this would be insufficient on its own to enable a sustainable funding pathway for the NZTA's regulatory functions, given the need to:

- keep fees and charges proportionate to the regulatory service provided to regulated parties
- avoid significant increases in costs for these parties.

Further, it would not capture a proportionate amount of funding from road users to reflect the public benefit that effective regulation of the land transport system provides.

Option 3: Establish a new mechanism in legislation to enable a portion of both the NZTA's regulatory activities and the Ministry's monitoring function, to be funded from land transport revenue (preferred)

This option involves establishing a new charging mechanism in legislation to enable a portion of the NZTA's regulatory activities, and some of the costs of operating the Ministry's monitoring function, to be funded from land transport revenue. This would mean that a proportion of the costs of running the regulator and the Ministry's monitoring would be met through land transport revenue, prior to its inclusion in the National Land Transport Fund (NLTF). A proportion of funding from land transport revenue would be complemented with the existing funding that comes from fees and charges collected for services provided by the regulator. Levies may also be used to allocate costs to 'clubs' or groups who derive a specific benefit from operating in the regulatory system.

Implementing this option would require amending section 9 of the LTMA. Section 9 allows the Crown to use land transport revenue for certain activities such as search and rescue,

recreational boating and maritime safety services, and road policing. The amendment would enable a proportion of land transport revenue to be 'top sliced' to fund the NZTA's regulatory activities, similar to the regulatory and safety functions listed above, and fund the Ministry's monitoring functions.

Benefits of this option include that a fairer proportion of costs for operating the land transport regulator can be recovered from a wider group of road users that benefit from having a well resourced and effective regulator. This means the costs of operating the land transport regulator, which provides strong public benefit, would be more equitably shared by all participants in the land transport system. Further, the funding available from this pool is more substantial than from fees and charges alone, and likely to provide for a sustainable funding pathway for the NZTA's regulatory activities.

This option also supports a risk-based approach to allocating the cost of operating the regulator. Road users' contribution to the operation of the land transport regulator would be proportionate to the level of travel and therefore the risk exposure they have in the land transport system.

The amount of funding to be allocated to the NZTA's regulatory activities from land transport revenue would be determined through the NZTA's current funding review. Putting the charging mechanism in place now provides better choice through the funding review process, to ensure that the costs of operating the regulator are allocated fairly across the system.

The added benefit of this option is that it would also ensure that the Ministry has access to an appropriate level of resource to effectively perform its monitoring role of the NZTA. A well resourced monitoring function is integral to ensuring appropriate accountability and a strong focus on performance improvement in the NZTA. This funding would also support a stronger mechanism to support monitoring the NZTA's use of land transport funding and performance of its core functions.

Option 4: Fund all of NZTA's regulatory activities and a portion of the Ministry's monitoring function from land transport revenue alone

This option would involve establishing a new mechanism to fund all of the NZTA's regulatory functions and a portion of the Ministry's monitoring function from land transport revenue (as above). However, the option would remove the funding streams currently in place through fees and charges to regulated parties. This option would have the benefit of road users contributing to funding regulatory functions and monitoring, and using some of the substantial land transport revenue available.

However, this option has the key disadvantage of not adhering to established transport funding principles. This is because it would not include a mechanism (i.e. from fees and charges for regulatory services) to capture funding from specified parties creating risk or gaining benefits from the system. Road users paying FED, RUC and vehicle registration would be the only contributors, meaning an inequitable funding approach.

3.2 What other options have been ruled out of scope, or not considered, and why?

The Ministry considered a wider range of other options to respond to issues regarding the NZTA's regulatory performance, including:

- making changes to the institutional settings across the wider transport system
- creating an independent regulatory function outside the NZTA
- merging the transport regulators (land, maritime, and civil aviation).

These options were ruled out for various reasons. However, this was mainly because they were all considered major transport system changes that would take too long to implement, and without any greater certainty that they would address the issues identified by the Ministry's review. We concluded that it was not appropriate to pursue these options further. The Ministry has linked the proposed options to the issues identified from its review and considers they will provide a direct, pragmatic solution to the problems identified.

Section 4: Impact Analysis

Impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 2.4?

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Problem 1: No clear line of accountability for regulatory delivery and decision making in the NZTA

	Option 1: Status Quo – no dedicated regulatory leadership role at NZTA	Option 2 (Preferred): Establish a statutory Director of Land Transport in NZTA	Option 3: NZTA Board delegates decision making to accountable non-statutory role in NZTA
Decision making quality	0 Lack of a dedicated regulatory expert role to strengthen decision making quality	++ Much improved through a dedicated, statutorily backed role with strong expertise and focus	+ Improved, but with remaining connection of role to Board and Board's broader non-regulatory functions potentially weakening decision making quality
Accountability and independence	0 No clear single role accountable for leading regulatory functions with independence	++ Much improved through dedicated role being mandated in statute, giving clear accountability and independence	+ Improved, but compromised due to closer connection of role to Board and Board's broader non-regulatory functions

	Option 1: Status Quo – no dedicated regulatory leadership role at NZTA	Option 2 (Preferred): Establish a statutory Director of Land Transport in NZTA	Option 3: NZTA Board delegates decision making to accountable non-statutory role in NZTA
Public trust and confidence	0 Compromised due to evidence of regulatory failure and no nominated regulatory lead to address this	+ Improved due to statutory appointment lifting significance of role, but only a tangible improved regulatory approach will have a strong impact	0 Appointment at non-statutory level unlikely to markedly alter public perception of strength of regulatory approach
Regulatory focus and enduring outcomes	0 Compromised due to lack of regulatory leadership, allowing other NZTA functions to overshadow regulatory functions and regulatory focus being diluted from lack of strong leadership role	++ Ensures a statutory mandate to reduce potential for NZTA's regulatory function to be diluted or lost over time. Leadership role confirmed in statute strongly supports enduring outcomes	+ Improved, but delegated role's connection to Board risks regulatory function being weakened by Board's responsibility for wider functions, risking less enduring outcomes
System leadership and regulatory 'voice'	0 Weak, due to no dedicated regulatory leadership role to head up system leadership and communication	++ A dedicated, statutory-level role signals and facilitates strong leadership and presence in the sector	+ Improved, but Board delegated role lacking the strength of leadership and 'voice' expected from a more significant statutory role
Overall assessment	<i>Risks poor decision making and regulatory focus declining further over time</i>	<i>Provides significant benefits across all but one criteria and would support the focussed regulatory approach needed, including improved accountability for decision making and helping manage competing priorities that may distract from the regulatory function</i>	<i>Should improve regulatory function across all but one criteria, but not to the extent necessary for a strong and enduring regulatory approach</i>

Problem 2: A lack of clarity in NZTA’s regulatory objectives and functions and a consequent lack of clear focus on undertaking these effectively

	Option 1: Status Quo – NZTA’s current regulatory objectives, functions and powers in legislation remain	Option 2 (Preferred): Strengthen and clarify NZTA’s regulatory objectives, functions, and powers in legislation	Option 3: Minister sets expectations of regulatory objectives, functions, and powers to Board
Decision-making quality	0 Risk of poor quality decision making remains given lack of clarity in legislation to support strong, decisive regulatory action	++ Strong, clear, stand-alone regulatory objectives, functions, and modern powers support high quality decision-making	+ Some improvement expected due to Minister’s clear expectations guiding better decision making
Accountability and independence	0 Compromised, as current objectives, functions, and powers are not clearly linked to desired regulatory outcomes	++ Higher likelihood due to increased clarity and transparency of regulatory objectives, functions, and powers linking more strongly to desired regulatory outcomes	0 Little change as responsibility for managing regulatory objectives, functions, and powers continues to rest with Board
Public trust and confidence	0 Weak, as current regulatory objectives, functions, and powers do not express the importance of the regulatory role	+ Separating regulatory objectives, functions, and powers from other NZTA roles, and strengthening and clarifying them gives them greater importance in the public eye	0 Unlikely to change public views as public would assume Minister normally set expectations to Board
Regulatory focus and enduring outcomes	0 Lacking, as current regulatory objectives, functions, and powers are not clearly separated from other NZTA roles or best expressed, which does not support an enduring approach	++ Significantly improved, as strong, clear regulatory objectives, functions, and powers mandated in legislation will logically support a stronger, enduring regulatory focus	+ Some improvement as Minister can reinforce expectations around regulatory objectives, functions, and powers
System leadership and regulatory ‘voice’	0 Weak, as lack of clarity, strength, and focus of current regulatory objectives, functions, and powers to support this	++ Significantly better due to being backed by clearly identified and strengthened regulatory objectives, functions, and powers to support NZTA’s regulatory standing	0 Unlikely to support the change necessary to significantly strengthen NZTA’s regulatory standing

	Option 1: Status Quo – NZTA’s current regulatory objectives, functions and powers in legislation remain	Option 2 (Preferred): Strengthen and clarify NZTA’s regulatory objectives, functions, and powers in legislation	Option 3: Minister sets expectations of regulatory objectives, functions, and powers to Board
Overall assessment	<i>Weak across all criteria and does not support the strength of regulatory focus necessary to improve NZTA’s regulatory performance</i>	<i>Significantly more likely to lead to stronger and enduring regulatory focus and better decision making, due to strengthened regulatory objectives, functions, and powers being mandated in legislation</i>	<i>Improvement is only expected in decision-making quality and regulatory focus/enduring outcomes so is unlikely to provide the change necessary</i>

Problem 3: An imbalance of funding sources, leading to a lack of sustainable funding for NZTA’s regulatory function

	Option 1: Status Quo – NZTA’s regulatory activities are largely funded from fees and charges to regulated parties	Option 2: Increase existing fees and charges to regulated parties	Option 3 (Preferred): Establish a new mechanism to fund portions of NZTA’s regulatory activities and the Ministry’s monitoring function from land transport revenue	Option 4: Fund NZTA regulatory activities and a portion of the Ministry’s monitoring function, from land transport revenue alone
Decision-making quality	0 Risk of poor quality decision making remains with limited funding to increase regulatory effectiveness	+ A limited increase in funding directed to regulatory activities should support a marginal increase in decision making quality	++ Sustainable regulatory funding pathway, with significant funding increase, expected to support marked improvements by supporting better practice	0 Unlikely to have a marked impact with loss of fees and charges reducing gains
Accountability and independence	0 Remains compromised – funding for regulatory activities is not expected to significantly impact this criteria	0 No direct impact	0 No direct impact	0 No direct impact

	Option 1: Status Quo – NZTA’s regulatory activities are largely funded from fees and charges to regulated parties	Option 2: Increase existing fees and charges to regulated parties	Option 3 (Preferred): Establish a new mechanism to fund portions of NZTA’s regulatory activities and the Ministry’s monitoring function from land transport revenue	Option 4: Fund NZTA regulatory activities and a portion of the Ministry’s monitoring function, from land transport revenue alone
Public trust and confidence	0 Weak, as the public may perceive that the NZTA does not have adequate funding to be an effective regulator	+ Likely to have some positive impact given public perception that NZTA is better funded for regulatory functions and performs accordingly	++ Likely to markedly increase due to positive perceptions of a well-resourced and monitored regulator and expected increased effectiveness	- Risk that public perceives regulator is acting inequitably given regulated parties are not contributing proportionately to regulatory activities
Regulatory focus and enduring outcomes	0 Lacking, as adequate funding is not dedicated to ensure continued focus on regulatory activities, as opposed to other NZTA functions	+ Improved, given extra dedicated funding to mitigate against non-regulatory functions taking more NZTA focus	++ Substantial improvement expected due to sustained, significant funding supporting strong, enduring regulatory focus and associated outcomes	0 Unlikely to have a marked impact with loss of fees and charges reducing gains
System leadership and regulatory ‘voice’	0 Weak, as inadequate funding does not support a strong, effective presence in the land transport sector	+ Improved, with extra dedicated funding and resulting activity strengthening NZTA’s leadership ability	++ Likely to support significant improvements, given sustained, substantial funding markedly improving NZTA’s ability to lead the sector by good practice	0 Unlikely to have a marked impact with loss of fees and charges reducing gains
Costs allocated equitably across risk creators and those benefitting from a well-regulated land transport system	0 Compromised as road users not contributing proportionately to regulatory costs	0 Does not address road users not contributing proportionately to regulatory costs	++ Enables proportionate cost recovery from road users – a significant group gaining benefit and imposing risks on the land transport system	- Regulated parties no longer contribute to the costs of receiving regulatory services

	Option 1: Status Quo – NZTA's regulatory activities are largely funded from fees and charges to regulated parties	Option 2: Increase existing fees and charges to regulated parties	Option 3 (Preferred): Establish a new mechanism to fund portions of NZTA's regulatory activities and the Ministry's monitoring function from land transport revenue	Option 4: Fund NZTA regulatory activities and a portion of the Ministry's monitoring function, from land transport revenue alone
Overall assessment	<i>Likely to compromise desired outcomes across all but the 'accountability and independence' criteria and doesn't recognise wider public benefit from a well-funded regulator</i>	<i>Likely to improve outcomes to a degree against all but the 'accountability and independence' criteria but doesn't recognise wider public benefit from a well-funded regulator</i>	<i>Expected to support significantly improved outcomes against all but the 'accountability and independence' criteria and recognises the wider public benefit from a well-funded and monitored regulator</i>	<i>Unlikely to positively impact most criteria, does recognise wider public benefit from a well-funded and monitored regulator, but risk exacerbaters and beneficiaries will not contribute equitably to regulatory costs</i>

Section 5: Conclusions

5.1 What option, or combination of options, is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Problem 1: No clear line of accountability for regulatory delivery and decision making in the NZTA

The Ministry considers that Option 2 is the best solution: *A Director of Land Transport role be created in the NZTA and that this role should be established in legislation in the LTA.*

The purpose of this role would be to provide a greater level of accountability, independence and focus in how the NZTA exercises its regulatory powers, functions and decision-making.

The Ministry's analysis shows this solution provides significant benefits across all but one criteria and would support the focussed regulatory approach needed. The key benefits include:

- provides a single point of accountability for how the powers and functions of the regulator are exercised
- establishing a statutory role with accountability for exercising the NZTA's function reduces the potential for the function to be diluted or lost over time
- provides greater clarity and transparency to industry, regulated parties, and the NZTA's own workforce about where accountability for regulatory decision-making lies
- manages the actual or perceived conflict around the NZTA's competing roles
- gives the public increased confidence that a dedicated, regulatory expert will be appointed to focus on making well considered regulatory decisions in the interests of public safety.

There is an assumption that the director role will lead to better accountability, decision making, and provide the NZTA (and wider land transport sector) with a regulatory voice. However, this is only one part of the package of interventions required to successfully build the NZTA's regulatory performance and capability. For example, a new funding model, a revised operating model, and implementing an appropriate structure for regulatory functions in the NZTA are also proposed. It will also take time to see how the proposed role fits in the NZTA context, but the Ministry is confident creating a director role is an appropriate solution.

The Ministry also considers that the previous removal of the Director of Land Transport Safety role⁹ from the LTA is likely to have been a contributing factor to the shortfall in NZTA's regulatory performance to date. The Ministry considers that not providing the role in statute creates a risk that the role could further lose strength and focus over time, and

⁹ The role of the Director of land transport safety had statutory independence for undertaking the relevant functions of Land Transport New Zealand.

negatively impact the NZTA's regulatory decision making by not providing a strong enough mandate.

Problem 2: Lack of clarity in NZTA's regulatory objectives and functions and a consequent lack of clear focus on undertaking these effectively

The Ministry considers Option 2 is the best solution: Strengthening and clarifying NZTA's regulatory objectives, functions, and powers in the legislation.

The purpose of these legislative changes would be to provide clarity around NZTA's roles and strengthen its focus on the regulatory function.

The Ministry's analysis shows this option provides significant benefits across all of the assessment criteria and would provide the necessary clarification of NZTA's purpose, roles and functions. The key benefits include:

- provides for strengthened regulatory objectives, functions, and powers being mandated in legislation
- stronger and enduring regulatory focus and better decision making
- removing actual or perceived conflict or tension between NZTA's different roles.

The addition of the powers to enable the Director of Land Transport to impose conditions on transport services licenses and to accept enforceable undertakings contributes to strengthening the regulatory powers in the legislation. These streamlined and additional powers bring them into line with the expectations placed on a modern regulator. By modernising the regulatory powers, a contribution is made to the clarity of NZTA's overall function as a modern regulator.

Problem 3: An imbalance of funding sources, leading to a lack of sustainable funding for NZTA's regulatory function

The Ministry considers that option 3 is the best solution: Establish a new charging mechanism in legislation to enable portions of both the NZTA's regulatory activities and the Ministry's monitoring function, to be funded from land transport revenue.

This option would meet desired funding principles that costs should be recovered from transport system participants in proportion to the extent of risks and benefits they bestow on the system. It also has the benefit of ensuring that the Ministry's monitoring function of the NZTA is well resourced to support strong regulatory practice.

Currently, road users contribute proportionately to land transport revenue predominately through FED and RUC, but this funding does not contribute towards the cost of a well-regulated system which they benefit from. Option 3 would mean the costs of operating the land transport regulator would be more equitably shared by all participants in the land transport system.

However, we would need to model the impact of diverting a portion of funding from land transport revenue away from wider land transport activities to regulatory activities, and assess the trade offs. We would also need to consider whether additional land transport revenue would need to be raised to accommodate the range of activities needing to be funded.

A further benefit of option 3 is that a charging mechanism is already in place through the land transport revenue base. There would therefore be relatively limited administrative changes needed to implement a funding source to support the operation of the land transport regulator.

Need for intervention

The Ministry considers that there is a high risk that over time, without a stronger statutory mandate to address problems 1 and 2, and a sustainable funding pathway for regulatory activities to address problem 3, the regulatory 'voice' and focus of the land transport regulator may be eroded.

This is likely to occur due to competing demands from, and conflicts with, other roles in the NZTA. While a director role alone is likely to provide some improved accountability, the statutory basis for the associated objectives and functions is fundamental to ensuring the NZTA's regulatory focus is enduring. Further, the NZTA needs to be adequately and sustainably funded and well monitored, to strengthen and maintain its regulatory focus.

While it has not been tested with stakeholders, the Ministry is aware that there is a broad expectation in the land transport sector that the NZTA will strengthen its regulatory focus. There is likely to be strong interest in the director role and its scope and powers. The Ministry's intention is that the powers will mirror what the NZTA is currently responsible for, but be focused on a single decision maker.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: <i>nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates),</i>	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach, compared to taking no action			
Non-monetised costs			
Regulated parties e.g. Transport Services Licences holders, driver licence holders, vehicle safety certifiers, heavy vehicle certifiers, repair certifiers	<ul style="list-style-type: none"> - Extra compliance costs resulting from need to lift capability to reach expected regulatory standards - Possibility of increased fees and charges for licences and other regulatory services 	Medium ¹⁰	Medium ¹¹
NZTA	<ul style="list-style-type: none"> - Limited financial and administrative costs in establishing new role and functions - Re-allocation of proportion of land transport revenue to fund regulatory activities 	Medium	Medium
Other regulators e.g. WorkSafe, NZ Police	<ul style="list-style-type: none"> - Minor administrative costs in engaging with NZTA's new set up 	Low ¹²	Medium
Wider government	<ul style="list-style-type: none"> - Portion of funding drawn away from wider land transport activities to fund regulatory activities and Ministry monitoring 	Low	Medium
Other parties e.g. the NZ public	<ul style="list-style-type: none"> - Presence of a stronger regulator may mean regulated parties needing to take a more active and 	Medium	Low

¹⁰ Indicates a moderate (medium) expected impact on the affected parties.

¹¹ Indicates moderate (medium) certainty of the evidence of the expected impact on the affected parties.

¹² Indicates an insignificant (low) expected impact on the affected parties.

	<p>cautionary approach</p> <ul style="list-style-type: none"> - Transition to more stringent regulatory testing with identification of more non-compliance, which could result in costs - Maybe required to pay more through FED and RUC if more land transport revenue is needed to fund regulated activities 		
Expected benefits of proposed approach, compared to taking no action			
Regulated parties	<ul style="list-style-type: none"> - Better quality decision making and more consistent approach - More certainty of regulatory expectations - Increased trust and confidence in the regulator - Maintained focus on end-to-end delivery of transport outcomes 	Medium	Medium
NZTA	<ul style="list-style-type: none"> - Better quality regulatory decision making - Stronger, enduring regulatory focus - Less role conflict and tension in the NZTA and ability to manage conflicts through the director role - Higher standing of NZTA in sector 	Medium	Medium
Other regulators eg WorkSafe, NZ Police	<ul style="list-style-type: none"> - Stronger regulatory relationship and easier collaboration with NZTA 	Low	Medium
Wider government	<ul style="list-style-type: none"> - Increased accountability from the land transport regulator - Regulated parties being held to account - Increased trust and confidence in transport regulation in the public sector - Stronger monitoring of the NZTA 	Medium	Medium

Other parties – eg NZ public	<ul style="list-style-type: none"> - Increased trust and confidence that the land transport system is being well regulated and consequently in government - Ultimately a safer and more effective land transport system - Fewer prosecutions through increased use of stepped regulatory powers (using modern regulator powers) 	Medium	Medium

5.3 What other impacts is this approach likely to have?

Potential risks and uncertainties

The benefits outlined in the table above may be impacted by:

- some monetised cost to society if the cost of compliance increases in response to stronger NZTA regulatory intervention (trade-off)
- how the Director role operates in the NZTA and whether they have the necessary resourcing and capability - this relies on the NZTA developing a clear regulatory strategy
- potential for higher instances of appeal/disputes against the NZTA's decisions
- a challenge around accountability for delivery and performance and how a statutory role is held accountable - while the Board would be responsible for overall performance of the Director and the Director's decision-making approach, the Board would not be accountable for the Director's individual decision's – this would fall to the courts
- how quickly the changes can be implemented (putting in place the Director and strengthening objectives and functions) and the speed and certainty of resulting benefits materialising
- a portion of funding (proposed to be determined as part of the NZTA's funding review) would need to be diverted away from land transport revenue normally for

the NLTF (an already stretched fund) – for use to fund regulatory activities.

5.4 Is the preferred option compatible with the Government’s ‘Expectations for the design of regulatory systems’?

Principles of effective regulatory systems and application to the NZTA issue

Regulatory systems need to function as assets of value to New Zealanders, not liabilities. Overtime, a regulatory system is intended to deliver a stream of benefits for New Zealanders in excess of its costs. High net benefit, durable outcomes are more likely when a regulatory system complies with these principles.

The Ministry expects that the proposals in this paper will comply with the Government’s Expectations for Good Regulatory Practice¹³, in that the proposals:

- have clear objectives that can be achieved for the least cost, and with the least adverse impact on market competition, property rights, and individual autonomy and responsibility
- are flexible enough to allow NZTA to adapt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations
- will enable and promote processes that produce predictable and consistent outcomes for regulated parties across time and place
- will enable the NZTA to be proportionate, fair and equitable in the way it treats regulated parties (through having a clearer mandate, modern regulatory tools, and dedicated statutory Director)
- are consistent with settings in the maritime and aviation sectors, therefore supporting a consistent approach across all transport modes
- conform to established legal and constitutional principles and support compliance with New Zealand’s international and Treaty of Waitangi obligations
- set out legal obligations and regulator expectations and practices in ways that are easy to find, easy to navigate, and clear and easy to understand
- have scope to evolve in response to changing circumstances or new information on the regulatory system’s performance

The Ministry also considers that the options proposed will also have a positive impact on

¹³ Treasury (2017). *Government Expectations for Good Regulatory Practice*. New Zealand Government, Wellington. Available at: <https://treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

increasing the accountability of the NZTA to the government, regulated parties, and the wider public. This will occur through the NZTA having a single accountable role for delivering regulatory functions, supported by clearer objectives and functions, leading to more effective regulatory activity.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

NZTA will need to put in place a new regulatory strategy and supporting operational guidance. The guidance will need to articulate how it will execute its regulatory function so it is transparent to both the NZTA itself and the public.

The NZTA Board will be responsible for setting the regulatory strategy and approach. The Director will be responsible for executing the strategy. Therefore, there will need to be clear guidance on how the Director will work alongside the Board, where responsibilities lie, and how the director role will be operationalised in the NZTA.

Building capability in the NZTA is required so the revised regulatory strategy can be put into practice. This will need to be done by employing an appropriate level of staff with regulatory expertise and upskilling current staff.

There will need to be a communication plan for the land transport sector, explaining what the changes mean and how these changes will effect the sector. There is unlikely to be a significant effect on regulators other than the NZTA. However, there will still need to be a strategy developed for how the NZTA will collaborate with other regulators and communicate the changes to them.

Legislative change is required for the proposed options involving establishing a regulatory director role, strengthening and modernising the NZTA's powers and functions, and establishing a new funding mechanism for regulatory activity and monitoring. The timing of the associated bill to progress these legislative changes, and how promptly this moves through the legislative process, will influence how quickly an implementation strategy can be developed and introduced at the NZTA.

Decisions on the proportion of funding to be diverted from land transport revenue to fund regulatory functions, and increases to fees and charges to regulated parties for regulatory services, will need to be determined in conjunction with the NZTA's current funding review.

6.2 What are the implementation risks?

There is uncertainty about whether the NZTA has the capability and capacity to operationalise the changes. For example, there is an assumption that ensuring the Board and the Director are clear about their differing roles, and carrying out further 'resource and training' to mitigate the NZTA's capability issues, will help strengthen its regulatory focus. This risk would be mitigated by the NZTA setting a clear regulatory strategy and operating model. The Ministry's monitoring function would also assess the NZTA as it builds capability across its regulatory function.

There is also an assumption that the NZTA will be able to find an appropriate person to fill the Director role. With any new employee, there is a risk around whether they will have the capability to operate successfully in the role. To mitigate this, the Board will be responsible for the appointment and performance management of the Director, and for ensuring

implementation of the Board's regulatory strategy. Adequate lead-in time will also need to be afforded to the new appointee to allow them to understand their role and the NZTA's business, to enable them to become effective.

There is another risk regarding the NZTA's resourcing and whether there is adequate funding to implement the changes proposed. This will be mitigated through the funding review which will be brought to Cabinet in 2020, looking at the adequacy of funding for the regulator. The Ministry's proposal to establish a new funding mechanism enabling a portion of the NZTA's regulatory activities to be funded from land transport revenue is also a direct response to mitigate this risk.

However, there is a further risk that this may be seen as diverting funding away from necessary land transport infrastructure and road safety projects. This can be mitigated by counter-messaging that effective regulation and monitoring is essential for a safe and effective land transport system. The proposal also creates a more equitable approach to sector participants contributing to the cost of regulating the system. Further, use of the new funding will be subject to a funding review process.

Another risk is that the options proposed for change in this paper, and the other associated package of interventions, do not go far enough to support and improve capacity and capability in the NZTA. To mitigate this risk, the Ministry will monitor the implementation of its proposals and provide advice on the impact of the proposed changes to the Minister. This would be provided together with advice on any further changes necessary to support the capacity and capability of the NZTA to be an effective land transport regulator.

There are some limited implementation risks for the expanded and additional powers to impose conditions on transport services licenses and to accept enforceable undertakings. Additional training on both will be required for enforcement staff in the NZTA. The operational design and implementation into operational policy will be completed by the NZTA as the powers come into force.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Ministry expects that the NZTA will develop a comprehensive performance framework as part of its regulatory strategy. The NZTA Board would monitor performance against this framework and take action as required to address any performance issues.

The Ministry, as Crown monitor for the transport agencies, has a role in assessing the capability and performance of the NZTA Board. It is the NZTA Board's role to provide effective governance across the NZTA to ensure the NZTA effectively performs its roles and functions, and delivers on Government priorities. The NZTA Board is accountable for:

- assessing and monitoring the capability and performance of the NZTA
- setting the NZTA's strategic priorities, in the context of the Government's priorities.

The Ministry's role as Crown monitor is to assess the performance of the NZTA Board in this context. This will include specifically assessing the role and performance of the NZTA Board in overseeing the capability build within the NZTA's regulatory function. It will also include the Ministry specifically considering the impact that the new director role, strengthened objectives and functions, and new funding pathway, has had on strengthening the NZTA's regulatory performance.

7.2 When and how will the new arrangements be reviewed?

The Ministry teams responsible for monitoring and regulatory stewardship intend to conduct interim assessments of the NZTA's progress in building its regulatory capability. This will include reviewing the NZTA's practice and performance against MartinJenkins' findings and the Ministry's recommendations to help build its capability and performance. It will also include considering how the NZTA has operationalised the director role and whether the legislative amendments have helped enhance its regulatory focus.

There will be on-going review of the NZTA's funding settings and their adequacy and sustainability to support the NZTA's regulatory activity. The new funding to support the Ministry's monitoring role will also support monitoring activities to ensure that the NZTA's use of land transport funding is effective and efficient, and helps build the NZTA's core regulatory ability.

Appendix 1

Definitions of licence type and regulatory area terms

Transport Service Licence

A Transport Service Licence issued by the NZTA covers any good service, passenger service, rental service, or vehicle recovery service (it does not cover licensed rail participants). The license shows that the operator is fit to operate such a service, has the required knowledge of the legal obligations and practices related to the safe and proper operation of the service.

Goods service

A licence granted that authorises the holder to carry goods on any road, whether for hire or reward using a motor vehicle that has a gross vehicle mass of 6000kg or more.

Rental service

A licence granted that authorises the holder to carry on a rental service. In terms of a rental vehicle it means a vehicle used or available for use in in a rental service for letting on hire for the carriage of passengers or goods or both.

Vehicle recovery

A vehicle recovery service means the towing or carrying of a motor vehicle on any road.

Large Passenger service

A large passenger service uses vehicles that are designed or adapted to carry more than 12 people (including the driver) to carry passengers. A large passenger service licence is required regardless of whether a service is operated for hire or reward.

Small passenger service

A small passenger service (SPS) uses vehicles that carry 12 people or less (including the driver) to carry passengers. A small passenger service licence is required if the service carries passengers for hire or reward.

Driver Licence Course providers

The NZ Transport Agency approves individuals or organisations to deliver training courses covering advanced driving skills or endorsement related driving skills (approved course providers).

Driver Licence Testing Officers

The NZ Transport Agency approves individuals or organisations to conduct and mark practical driving tests.

Vehicle Inspectors

Individuals authorised and responsible to carry out vehicle inspection and certification activities e.g. Warrant of Fitness or Certificate of Fitness.

Inspecting Organisation

A person or organisation authorised and responsible for vehicle inspection and certification outcomes e.g. Warrant of Fitness or Certificate of Fitness.

Entry Vehicle Certifier – provider

All used vehicles entering New Zealand must be checked and certified before they can be registered for use on the road. An entry certifier checks the documents that prove the vehicle meets the necessary legal requirements and thoroughly inspects the vehicle.

Entry Vehicle Certifier – location

Location where Entry Vehicle Certification can take place.

Heavy Vehicle Certifier

Provides specialist inspection and certification of specific aspects of a heavy vehicle.

Low Volume Vehicle Certifier

Means specialist inspection and certification of a light vehicle as specified in the Low Volume Vehicle Code (i.e. a vehicle or class of vehicle manufactured, assembled, or modified uniquely in quantities of 200 or less).

Repair Certifier

If an entry certifier finds that a vehicle being imported requires, or has had, repairs to fix structural damage or deterioration, it may require repair certification before it can be registered. Repair certification may also be required when a vehicle re-registered.

Rail licence holder

All organisations that operate rail vehicles (Rail Operators) or control the use of a railway line (Access Providers) must be licensed by the NZ Transport Agency as per the Railways Act 2005. The only exception is if the organisation is carrying out its activities completely under the oversight of another organisation that is licensed. All licence holders must operate in compliance with their approved Safety Case.

Enforceable undertaking

These are voluntary agreements between a regulator and a regulated party. These are entered into following a breach or instance of non-compliance as an alternative to prosecution. They are legally binding on the regulated party.

