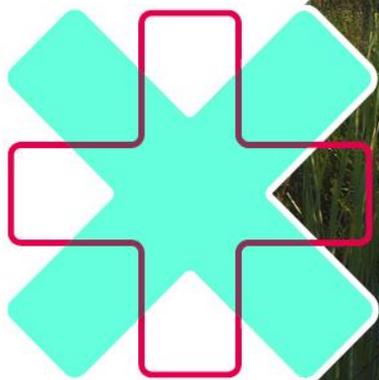


# PROGRESS ASSESSMENT AGAINST REGULATORY FUNCTIONS

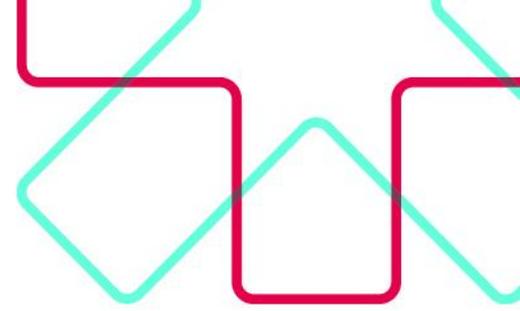
## Final Report

Waka Kotahi  
New Zealand Transport Agency

8 December 2021







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# PREFACE

This report has been prepared for Waka Kotahi New Zealand Transport Agency by Tom Gott from MartinJenkins (Martin, Jenkins & Associates Limited).

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# SUMMARY

## Key messages

### Summary

The MartinJenkins Review of NZTA Regulatory Capability and Performance (2019) has had a significant impact for change within Waka Kotahi for improving regulatory capability and performance.

In summary significant progress has been made in a number of areas over the past two years, and particularly in clarifying direction, roles and responsibilities, key shifts that are required to be made and the pathway forward. The regulatory function is on a defined and understood journey, with a clear pathway forward. In the words of one of those interviewed:

*'We are still on the journey, and not there yet, but the way ahead is clear.'*

### Progress made since the MartinJenkins Review of NZTA Regulatory Capability and Performance (2019)

Some significant progress has been made since the 2019 Review, including:

- Regulatory strategy Tū ake, tū māia 2020-2025 to provide direction to regulatory activity developed and communicated well within the organisation and externally.
- Regulatory practice frameworks for compliance response and risk management have been developed.
- Processes are in place to support more flexibility of response within the existing prescriptive legislative framework in road transport.
- A performance measurement framework to that aligns with the regulatory strategy is under initial development.

- An intelligence capability has been established that is producing robust evidence-based insights on safety and sector trends to support the work of Waka Kotahi, NZ Police and the sector for reporting on and achieving safety outcomes.
- There is increased regulatory capability at governance and leadership levels and this has significantly improved the focus and profile of regulatory activity within the organisation.
- A Board Regulatory Committee has been established to oversee regulatory performance and regulatory risk.
- The regulatory function is seen as a key part of Waka Kotahi's activity, and is given voice and profile at leadership level.
- Relationships with industry and sector stakeholders are markedly better than earlier, with proactive engagement from Waka Kotahi, improved access to decision-makers and responsiveness with decision-making.
- The new Director of Land Transport (recently created under statute, independent but reporting for pay and rations to the Chief Executive) has added to the increased profile of regulatory matters both internally and externally.
- Structural changes with the establishment of the Regulatory Services Group, leadership roles and the establishment of a Chief Operating Officer have improved the focus of leadership and activity within the regulatory function.
- By contrast with 2019, there are processes in place for escalation of issues and risks and staff feel they have the mandate to raise risks and receive timely responses.



- We note that many of these improvements have taken place under the pressures of also managing responses to sector needs and changes from the effects of the COVID 19 pandemic.

### **Progress still to be made since the 2019 Review**

Progress still to be made includes:

- Under the regulatory strategy, develop a roadmap to ensure that the regulatory framework supports a more outcomes, systems and risk-based orientation.
- Continue improvements to information management, analysis and insight through technology and processes, and communicate progress on this both internally and externally.
- Link the work of the Intelligence Team within Systems Integrity to the wider Waka Kotahi research and analysis capability to strengthen the systems lens of this work and vice versa.
- Continue steps being taken to change mindsets and behaviours of some from a prescriptive, risk-averse, compliance orientation to a more outcomes, systems and risk-based orientation.
- Complete the work commenced on the Regulatory Performance Measurement Framework to support the cultural changes required and enable more effective delivery on regulatory strategy.
- Look to working more collaboratively with sector stakeholder groups to encourage them to take more responsibility and play a greater role for achieving safety outcomes – work with and through them.
- Address the challenges in the rail area for capability and resourcing (and particular technical capability) to enable more proactive and informed regulatory activity to support the intent of the Railways Act.
- Regarding the opportunity for HSWA designation, develop a strategy (together with WorkSafe and sector stakeholders) and build more

capability to enable effective implementation in the rail and road areas.

- Ensure there is adequate funding applied to investment in people, technical and systems capability to support the ongoing strengthening of Waka Kotahi's regulatory role within the land transport system.



# INTRODUCTION

## Context

In January 2019, an independent review (carried out by Kristy McDonald QC) into the regulation of the vehicle certification sector identified gaps in Waka Kotahi's regulatory performance.

Following that review, the Ministry of Transport commissioned a wider review into Waka Kotahi's regulatory performance (the MartinJenkins' Review), that was released in August 2019. That review identified a number of contributing factors of poor regulatory performance, including:

- a lack of strong regulatory leadership and advocacy
- no clear regulatory purpose, strategy, and approach that aligned to our statutory obligations
- under-investment in building and maintaining regulatory capability and systems
- inadequate resourcing (in fact in some areas a decline in resourcing over time)
- the absence of a constructive culture, including people not feeling they had the freedom and autonomy to make decisions or speak out
- lack of accountability for delivering regulatory compliance monitoring
- inadequate risk and assurance management practices (including reporting) to ensure we identify and manage risks and drive continuous improvement.

In the Minister of Transport's Letter of Expectations 2021/22, the Minister requested the Waka Kotahi Board carry out an assessment of progress in

improving regulatory performance since the MartinJenkins' review was completed in August 2019.

## Scope of the assessment

The scope of the assessment is to address key questions:

- Is Waka Kotahi meeting its obligations to ensure its regulatory functions are being overseen and managed at a board and management level?
- What progress has been made since the MartinJenkins' review in 2019?
- Is Waka Kotahi on track to implement the Tū ake, tū māia Regulatory Strategy road map given our anticipated course and speed?
- What insights can be obtained to inform the next stage of progress and to inform the refresh of the regulatory strategy, Tū ake, tū māia?
- What is the readiness for accepting a designation to complete work under the Health and Safety at Work Act (HSWA)?

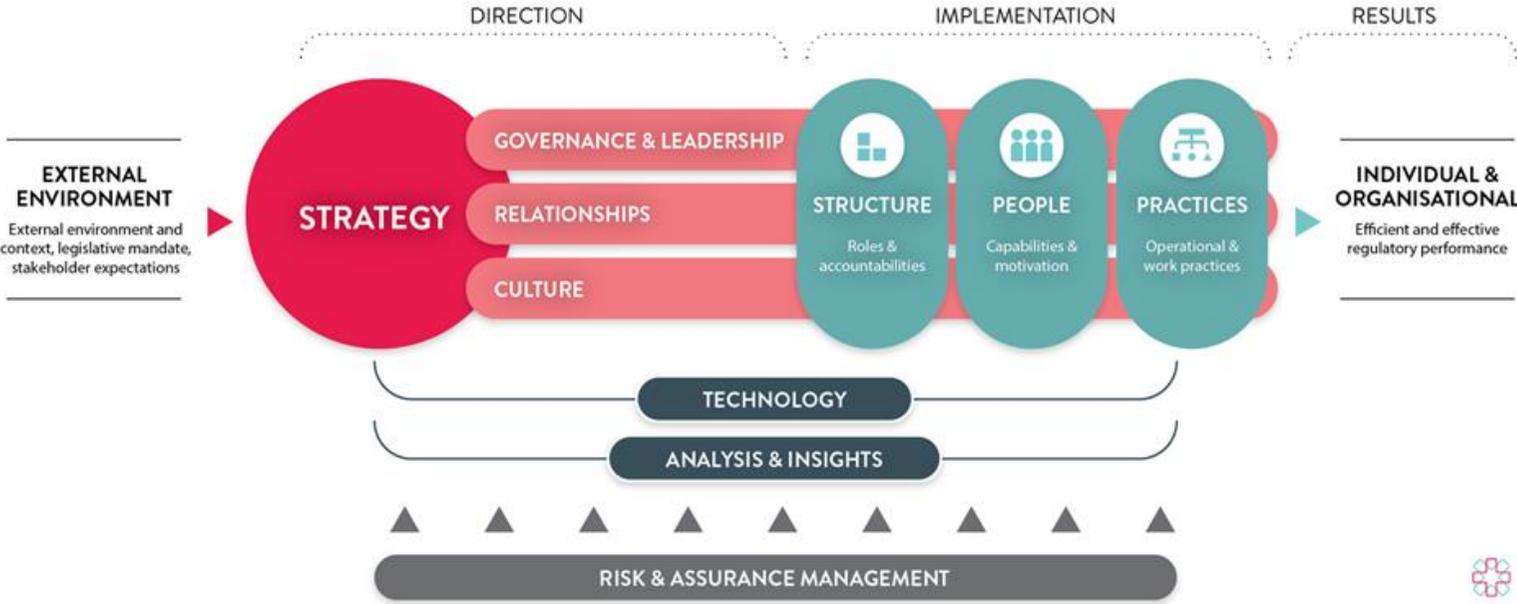
## Approach

The assessment involved a review of Waka Kotahi regulatory board papers, regulatory committee papers, and other documentation and interviews with a range of Waka Kotahi managers and staff from the Board through management to the frontline. Interviews were also held with a number of industry stakeholders including from MTA, MIA, LVVTA, VTNZ, VINZ, KiwiRail, National Road Carriers, and Ia Ara Aotearoa Transporting NZ.



The framework for the original review was used as a point of reference for developing lines of enquiry for the assessment. This framework is reproduced in the following diagram.

**Figure 1: Framework for the 2019 MartinJenkins Review of NZTA Regulatory Capability and Performance**



The assessment lines of enquiry were tested in structured interviews with all parties.



# FINDINGS

## External environment

### Changes in the external environment

Since 2019 there have been some significant changes in the external environment and context for Waka Kotahi, and which have implications for regulatory strategy and practice. These include:

- Legislative change through amendments to the Land Transport Management Act 2003 through the Land Transport (NZTA) Legislation Amendment Act 2020 has established the role of the Director of Land Transport.
- This provides for leadership and independence of regulatory activity under statute, and expands this to include powers for monitoring adherence of the land transport system to regulatory requirements in other legislation relating to safety and security, including personal security; or access and mobility; or public health; or environmental sustainability. It also provides for powers for the Director for monitoring and evaluating the performance of any person who carries out functions within the land transport system in a regulatory capacity.
- Significant technology changes through advances in digital technology and the opportunities from this for supporting efficient and effective approaches to regulation. Technology changes in the vehicles for road and rail transport mean new standards for people and vehicles. They also mean potential for vehicles to 'self-regulate' through the use of telemetry tools for managing technical performance in real time.
- This has potential for significantly reducing the transactional, labour intensive regulatory interactions within agencies such as Waka Kotahi

and NZ Police for such things as monitoring compliance and enforcement.

- Climate change impacts through effects for vehicle emissions, decarbonisation and environment impacts have significant implications for the transport sector, and the role and activities of regulators within this.
- Changes to approaches to social license and the implications for regulating driver and other regulated parties within the land transport system.
- Workforce challenges from the effects of the COVID 19 pandemic both within New Zealand and globally mean issues for resourcing and require new approaches for capability retention and development.

## Strategy and focus

### Key conclusions from 2019

- There was no coherent strategy for the regulatory function and its role in the land transport system.
- Regulatory focus was overshadowed by preoccupations with other NZTA functions of infrastructure and investment.
- It was not clear that NZTA was able to adequately manage the potential conflicts of interest and trade-offs amongst the three functions of regulator, infrastructure deliverer and investor.
- There was an overwhelming focus on a customer service approach that adversely influenced regulatory decision-making and activity.
- The main focus of measuring performance was outputs. There was little consideration of outcomes for measuring the effectiveness of regulatory activity.

## Situation in 2021

### **A regulatory strategy has been developed which defines outcomes, key shifts to achieve these and reflects good regulatory practice**

In 2020 Waka Kotahi developed its regulatory strategy Tū ake, tū māia (2020-2025) which articulates Waka Kotahi's regulatory functions as a firm and fair 'real-world regulator', applying the principles of good regulatory practice while also being grounded in Te Ao Māori. The scope of the strategy included core regulatory functions, a recognition of the land transport landscape and system within which Waka Kotahi operates and key shifts required to take the agency forward with operationalising the strategy. The development process was collaborative and inclusive of internal and some external parties, and was peer reviewed through the G-REG process.

### **The earlier customer service focus has been replaced with a focus on regulatory effectiveness as the goal**

The regulatory strategy of Tū ake, tū māia recognises the issues of earlier customer service focus and promotes a focus on regulatory effectiveness.

The establishment of the role for Director Land Transport through the Land Transport (NZTA) Legislation Amendment Act 2020 reporting to the Chief Executive with responsibilities for leadership of regulatory matters within Waka Kotahi and an oversight role over other agencies and parties within the land transport system enables the voice of the regulator within the agency and the system.

This is further strengthened by a number of statutorily independent powers conferred upon the Director Land Transport under the Act whereby 'the Minister, the Agency, or the Secretary may not give directions to the Director in relation to performing that function.' The functions under the Act provide the opportunity for management of the potential conflicts of interest and trade-offs that previously existed.

### **The regulatory function is now seen as a core part of the land transport system with a particular lens on safety**

Senior management now see the regulatory function as a key enabler and change lever for achieving outcomes across the system. This has increased the profile of the regulatory function within the organisation and significantly reduces the risk of it being overshadowed by other functions within Waka Kotahi.

### **There is an awareness at leadership levels of the need to develop a regulatory framework that is fit-for-purpose to support modern regulatory approaches.**

This means working with policy agencies to shift legislation and regulations from the current highly prescriptive mode (especially for road transport) to a mode that encourages and supports risk-oriented, safety-outcomes-focused behaviour in both the regulator and regulated parties.

### **A Regulatory Performance Measurement Framework is being developed to support strategic intent through defining outcomes and how to measure them**

Performance measurement remains an issue, with measures still reflecting an output orientation rather than an outcomes focus. Current measures don't provide a meaningful picture of regulatory effectiveness. To address this, work has begun on a performance measurement framework that will reflect activity and measures that are more relevant for outcomes achievement.

This framework is at the early stages of defining desired outcomes, impacts and outputs.



# Governance and leadership

## Key conclusions from 2019

- Regulatory experience at senior leadership levels was weak at governance and senior leadership levels.
- There was a lack of visibility of regulatory issues and risks at Board and ELT levels.
- There was a lack of proactive challenge and questioning around regulatory performance at Board level.
- There was little insight as to what was really required for supporting an effective, modern regulatory function within the organisation as a whole and within the regulatory function itself.

## Situation in 2021

### Governance level capability has been strengthened

The deficit of regulatory capability at governance level has been addressed through the appointment of a Board member with previous practical experience in a regulatory agency. This has meant a voice to probe, challenge and endorse on regulatory matters at this level. For an organisation with the wide scope of responsibilities such as Waka Kotahi there is a need to ensure that the Board has, as far as is practical, a balanced mix of skills and capabilities to govern effectively across all functions. Deep regulatory experience is a core competency that the appointment process should continue to ensure exists at Board level.

The Chief Executive brings regulatory experience from previous roles to governance and leadership.

### A Board Regulatory Committee has been established to provide line of sight and scrutiny over regulatory matters

Following the 2019 Review a Board Regulatory Committee was established to support the Board with regulatory governance, chaired by the Board member with regulatory experience. This subcommittee of the Board provides a forum for reporting from management on regulatory matters and opportunity for the Board to explore regulatory issues and initiatives and challenge where appropriate. The Committee Members are able to ask the questions needed particularly when the regulatory function is still developing and needing direction at governance level.

The Chair and Committee Members are in the process of developing effective informal and formal working relationships with the Director Land Transport, to ensure alignment of expectations and understandings.

### The establishment of a regulatory sub-committee reporting to the ELT provides a forum for regular discussion of regulatory matters and performance

Over the past year Waka Kotahi has established a number of sub-committees reporting to senior leadership over programmes and functions as a means for increased integration of

### There has been a significant shift in understanding of what good looks like for effective, modern regulatory practice at both governance and leadership levels

From our discussions people are aware of what is needed to be in place and are putting in the foundations for this.

Since 2019 there is a conscious approach by leadership to take the regulatory function on a journey from dealing with the non-compliance issues that led to regulatory failure (2019) through a programme of 'back to basics' for regulatory activity (2020) to the current situation of establishing the foundations for an effective modern regulator (2021), and aspirations to achieve excellence in the future. This progression has included the regulatory strategy Tū ake, tū māia, strategy and activity for



enforcing RUC payments, fees and funding review to support current and future aspirations, reviews of operational practices (e.g. standards development, maintenance and dissemination), and the development of frameworks for risk management and compliance intervention decision-making.

## Relationships

### Key conclusions from 2019

- NZTA had neglected many of its key relationships.
- We heard strong feedback from the large parties that they have had insufficient engagement with NZTA, particularly over the last two to three years. We were told that NZTA needs to focus on getting the main agents back on board and engaging directly with them, and as a group.
- Sector interest groups did not feel listened to by NZTA, and they felt that their concerns about the transport network had not been adequately addressed by NZTA.
- People also found it challenging to get a consistent NZTA view.
- Many relationships were dependent on specific individuals. This was evident with many interviewees indicating they still ring the previous NZTA person with queries or for support. In some cases, this was simply because they did not know who the new replacement was, or found it too difficult to find out.
- We also heard that NZTA hadn't created certainty around contract tenure (rolled over contracts), which led to a lack of investment in systems by those parties acting on its behalf.

### Situation in 2021

#### **Relationships with industry and sector stakeholders are significantly better than was the case in 2019**

Interviews with sector stakeholders for the current review indicate a significant change in the nature and frequency of engagement with Waka Kotahi from the situation in 2019, and particularly over the past 6 months in 2021.

People generally felt that they had good access to the Director Land Transport and other regulatory managers within the organisation. They spoke of 'genuine' relationships where they were listened to, decisions were made and action was taken.

In contrast to 2019, Waka Kotahi now participated regularly in industry forums, technical meetings and with good representation and interactions. There was also respect for the fact that where necessary there would be robust interchanges, with the regulator holding industry to account. In the words of one industry stakeholder: 'Waka Kotahi is back to being a regulator again.'

#### **The regulatory function is becoming more stable, with more clarity on who to contact within the organisation**

A common observation was that the regulatory function within Waka Kotahi was beginning to settle and people within the organisation better understood their roles and positions.

Notwithstanding, there are still challenges with staff changes in some areas for maintaining continuity of relationships.

#### **There is now an expectation for engagement to be followed up with decisive action from Waka Kotahi**

While engagement levels have increased markedly, stakeholders commented that they now need to see action and results. This was yet to be seen, and in some cases there were frustrations with lack of action.



### **Lack of responsiveness to requests for action in interactions below management level leads to frustrations for some stakeholders**

There were mixed views on interactions below the level of manager.

In some cases there was regular positive contact (sometimes daily) between Waka Kotahi staff and industry stakeholders in both road and rail areas.

In other cases there were frustrations with the length of time it took to get a response or even a decision at all. In these cases, the perception was that people seemed quite risk averse and unwilling to make a decision, making things more difficult than they needed to be.

### **Stakeholders are willing for Waka Kotahi to work with and through them**

Industry stakeholders expressed a strong willingness to play an active part in ensuring end-user perspectives are taken into account in decision-making and to assist Waka Kotahi in achieving regulatory objectives

### **The contract backlog has been addressed**

The backlog of unconfirmed contracts has been addressed and agreements and contracts with industry have been updated. This has created certainty for industry of accountabilities and reporting requirements.

## **Risk and assurance management**

### **Key conclusions from 2019**

- There were critical flaws in NZTA's internal audit approach which influenced the type, focus and messaging of risk and assurance reporting.

- There was no clear and continuous risk management strategy in place for the regulatory functions.
- There was insufficient attention to regulatory risk management at governance and leadership levels.

### **Situation in 2021**

#### **The establishment of the Board Regulatory Committee provides a forum for assessing regulatory risks at governance level**

The Board Regulatory Committee discusses issues and risks to achievement of outcomes and regulatory performance.

This committee has identified clear regulatory levers to be addressed and provides challenge to the regulatory function for managing risks and delivery of effective regulatory performance.

#### **There are established processes for escalating issues and risks**

Discussions with managers and staff indicate there is no issue with raising risks and escalating these through the organisation for consideration of further action.

The attention given to regulatory failure and its root causes in the 2019 Review has had a significant effect for changing the culture and management of risks within the regulatory function. Processes, roles and responsibilities are clear, and reporting provides assurance and opportunities for discussion at leadership and governance levels.

#### **There are guidelines for supporting decisions on responses to address risks to transport safety**

A risk decision-making framework has been developed to assist with assessing presenting risk and with the appropriate choices for responses



across the range for awareness/ education, engagement through to enforcement actions such as suspension notices.

## Roles and accountabilities

### Key conclusions from 2019

- Structure and structural change were an ongoing challenge for achieving and supporting a consistent regulatory approach.
- The establishment of a separate Regulatory Group in late 2018 with a focus for end-to-end regulatory management, and with General Manager reporting to the Chief Executive provided for greater visibility and emphasis on the NZTA's regulatory functions and responsibilities within the organisation.

### Situation in 2021

#### **Structural changes and regulatory strategy has meant increased clarity of roles and responsibilities**

The establishment of the Regulatory Services Group with a largely new leadership team reporting to a General Manager and the collaborative development of a regulatory strategy by this team has led to increased clarity of regulatory roles and responsibilities.

Some transactional regulatory activity that resided in the Safety, Health and Environment Group in 2019 was migrated across to Regulatory Services (e.g. teams with road safety and road rule accountability) which clarified the regulatory accountability of these functions.

More recent developments such as the establishment of the Director Land Transport, Deputy Director Land Transport and Chief Operating Officer Regulatory Services have strengthened the leadership roles in the regulatory function.

Below this is a leadership team with discrete responsibilities for vehicle and driver licensing, safer vehicles, commercial licensing and road user charges, safer commercial transport, safer rail, and systems integrity (comprising operational policy and standards, risk and assurance, intelligence and planning and reporting). This group works as one leadership team under Chief Operations Officer who in turn reports to the Director Land Transport.

#### **Development of one operating model across the organisation provides opportunity for integrated approaches to achieving regulatory outcomes**

Within the wider organisation work that is being done to achieve increased integration of functions and activity through development of a more integrated operating model for the whole of Waka Kotahi, and which recognises the importance of the regulatory function to the organisation provides opportunities for further optimising roles and accountabilities for achieving regulatory outcomes.

## Culture and orientation

### Key conclusions from 2019

- The collective leadership and empowered culture that are the hallmarks of an effective regulator were missing at NZTA.
- Leadership were focused on developing a strong customer service ethos that frustrated many on the frontline in compliance roles.
- Many staff who were in compliance roles felt disempowered unable to make the decisions they needed to make to encourage and enforce compliance
- A pervasive culture of bad news being unacceptable influenced the ways messages were communicated to managers and the Board.



## Situation in 2021

### **Staff interviewed were clear on their roles and felt empowered and supported in their decision-making**

Following the recent restructure (under the Chief Operating Officer) there is now greater clarity on roles and responsibilities. Position descriptions have been updated to align with the intent and orientation of the regulatory strategy Tū ake, tū māia.

Staff we spoke with confirmed that Tū ake, tū māia is very much a living thing which guides their thinking. People commented that the strategy gives them the mandate to take a risk-oriented approach and they aim to align their actions with it.

They also commented that they feel empowered and safe to make decisions, and that their leaders are accessible for support in their roles.

### **On the other hand, industry comments indicate that there is some way to go with some staff to take on a less prescriptive, risk-oriented approach**

A number of industry stakeholders we interviewed were frustrated by risk averse approaches that led to a lack of timely and decisive responses.

This dynamic was perceived as putting a brake on the aspirations expressed to them by leadership and through the intent of the strategy. Comments were made that as a result a lot of the regulatory focus appears 'driven from the bottom, rather than the top'.

### **There is still some way to go to fully embed the systems and outcomes orientation of the regulatory strategy into the regulatory culture**

Tū ake, tū māia has had an impact for influencing some ways of thinking and working towards a more outcomes and systems orientation.

However, leaders recognise that there is a remaining challenge to move people from the heavily compliance orientation that the prescriptive

legislative framework for road transport has encouraged. The approach and activity at operational levels can be very transactional, oriented towards rules and compliance with these.

The intense focus on compliance activity to address hundreds of non-compliance files following the regulatory failure incident in 2018 will have reinforced the strong attitudes towards a compliance orientation within the regulatory function.

We note that in the rail area, the Railways Act 2005 adopts a safe systems approach, requiring operators to develop safety cases to demonstrate how they will identify and management rail safety risk. As a result rail regulation has always had more of systems orientation than on the road side. The rail challenge has been more one of resourcing and capability to operate as regulator under this different legislative framework.

### **Steps are being taken to address the cultural change required across the regulatory function**

This change challenge is recognised at both governance and leadership levels and efforts are being made to address this through the communication of the regulatory strategy and the development of risk management and regulatory decision making tools (e.g. the Compliance Response Framework) that encourage a more flexible orientation for regulatory responses.

Other initiatives being considered are the development of regulatory instruments below legislation that provide for more flexible approaches to support an outcomes orientation and which can be amended when necessary with much less effort and time than changes to legislation.

There is now an operational policy group that tests whether specific operational issues can be dealt with within the existing framework rather than needing to wait for substantial policy or legislative change.



## People now feel they can escalate issues and risks

There are clear and safer pathways whereby Issues and risks can be readily escalated. People now consider it very easy to escalate risks and to get action to address these.

As a part of strengthening the regulatory decision-making Waka Kotahi is currently reviewing the delegations framework which will further support staff with the effectiveness of regulatory decision-making.

## People and capability

### Key conclusions from 2019

- There were regulatory operational capability challenges.
- There has been under-investment in the regulatory capability and resourcing needed to do the regulatory job well.
- There was a loss of capability and capacity through various restructurings, with the exit of a lot of technical and regulatory institutional knowledge.
- This affected both the road and rail regulatory function areas.
- A 2013 independent review of the NZTA Rail Safety Team found ‘that the team was perceived by some sectors of the rail industry and other related Government Agencies as a soft regulator. The review attributed this perception to a number of factors, including:
  - the low status of the role within the agency
  - inadequate resourcing
  - outsourcing of the compliance assessment task.

## Situation in 2021

### Regulatory capability is being developed, and is a work in progress

The move to a more systems and outcomes orientation presents a capability and capacity challenge as it requires the development of a broader set of regulatory skills than those of compliance monitoring and enforcement.

The regulatory strategy Tū ake, tū māia has helped lift the focus of staff to be less focused on the transactional side and take a more outcomes orientation.

Having said that, there is opportunity for frontline capability to be used more to inform management decisions by bringing in their considerable technical regulatory experience.

Waka Kotahi is enabling staff to participate in G-REG training and seminar opportunities to upskill and reinforce modern regulatory practice.

Challenges with attracting and retaining staff with regulatory capability and skills remain. These skills are a scarce resource for all regulatory agencies at the best of times, and the effects of lockdown due to the COVID 19 pandemic response have exacerbated resourcing issues both within New Zealand and internationally.

### There is an increased leadership focus on strengthening the capability and regulatory orientation in the rail area, but progress still to be made

There is a current management focus on developing the rail team for more effectively regulating under the Railways Act, and taking a firm but fair position with regulated parties. This is happening to a degree but there is still some way to go for getting a consistent orientation across the team.

External stakeholders commented that they are wanting a strong rail regulator. They commented on some inconsistencies they perceive in the



softer treatment of large industry players from smaller operators, particularly in regards to safety cases.

Increased technical capability is seen as needed in the rail team to enable independent investigations and decisions that would challenge the regulated parties with discharging their responsibilities for adopting a safe systems approach.

Given the current employment situation and market after COVID 19, there will be challenges with building and rebuilding technical capability in both the road and rail areas.

**Building the people, technical and systems capability to deliver on regulatory effectiveness in the land transport system will require funding and resourcing**

Addressing capability challenges will take time and appropriate investment by Waka Kotahi to enable it to 'do the regulatory job well'. This means ensuring continuity of funding that is aligned to the implementation roadmap of the regulatory strategy.

## HSWA designation

**A HSWA designation is seen by both internal and external stakeholders as bringing real benefits for the system and for Waka Kotahi, but will need careful management of the transition from initiation to being fully effective**

HSWA 2015 sheets home the responsibility for health and safety to the operators and organisations with the requirement that they develop systems and processes for identifying and managing risk, engaging and ensuring worker participation, adopting a duty of care approach, and putting in place systems to achieve this.

There are varying views on the readiness of Waka Kotahi for taking on a designation under the Health and Safety at Work Act 2015 (HSWA 2015) for regulating health and safety in the road and rail areas.

Some are not certain that the organisation is ready for this. It was commented that there is a need to build much stronger capability in the health and safety systems and risk management approach before taking on the designation.

Others expressed the view that the designation would be a benefit and a powerful way to stimulate a change in regulatory orientation and capability towards a systems/ outcomes approach, particularly at the front line. In this scenario there would be a gradual building towards full delivery of the HSWA designation.

Some external stakeholders also saw a HSWA designation as a positive step, and particularly in the rail area, where it was thought that a designation would help remove the current confusion that exists when both Waka Kotahi and WorkSafe either offer inconsistent advice or act independently on the same issue.

## Analysis and insights/ technology

### Key conclusions from 2019

**Intelligence capability was limited and under-resourced**

- Intelligence capacity and capability within the organisation was limited and under-resourced. The analytics and insights needed to support regulatory strategy and decision-making were under-developed at NZTA.
- The organisation mainly relied on intelligence from the sector and staff, and other independent sources (such as reviews) for its insights, rather than supporting a dedicated function to analyse and interpret data. Staff described the organisation as 'data rich but intel poor'.



### **Technology improvements had not been funded for supporting the regulatory function**

- Technology was identified as a weak area for NZTA's regulatory function, and had not been funded for supporting the function as it evolved:
  - Registers to give effect to the regulatory area were based on needs in the 1990s and are not integrated for information sharing or analysis.
  - As a result, there was a lack of data integrity in the systems.
  - Technology enhancements tended to focus on the technology for facilitating an improved customer experience (access and efficiency tools) rather than provide the tools for improved regulatory effectiveness.

## **Situation in 2021**

### **Organisational IT systems still struggle to support day-to-day operational activity**

There is a recognition of the need to use technology to support regulatory effectiveness. Waka Kotahi is investing in digital technology to support regulated party self-management in low risk functions. It is early days for this to take the organisation from its traditional face-to-face transactional approach to being able to harness the benefits from digital technology.

Organisational IT systems struggle to support day to day operational activity, and staff are often dealing with work-arounds to achieve results.

Spreadsheets are still a main tool for information analysis at operational levels, resulting in non-integrated information, and siloed datasets.

Interactions with customers on licensing still use physical mail rather than digital communication channels such as email.

A regulatory tools project has been initiated to look at more effective approaches and the technology required to support these. It is early days and this is yet to realise benefits across the regulatory function.

### **Progress has been made for analysis and insights of sector and safety trends, but awareness of this needs strengthening**

Progress has been made to develop the data and evidence for understanding trends in road safety performance. An intelligence capability has been established within the Systems Integrity Group that is producing robust evidence-based insights on safety and sector trends to support the work of Waka Kotahi, NZ Police and the sector for reporting on and achieving safety outcomes. This team is using intelligence good practice, guided by the DPMC maturity model for intelligence.

This has provided for more meaningful reporting internally and to external parties. However, we did note there was little reference to this in interviews, suggesting that awareness of this capability and how it might really inform regulatory decision-making needs to be increased within Waka Kotahi and with industry stakeholders.

There is opportunity for increasing the connections between this capability and that other analysis work within the organisation.

In other areas, there is still some way to go to substantially shift the focus from data to insights, and to automate the ability for trends and insights analysis from business information.

For example, there is a significant amount of manual intervention required to manipulate data from the motor vehicle register data that is supplied to industry.



# Processes and practices

## Key conclusions from 2019

- Guidance documents are mainly described as process heavy and often 'tick box' in nature. Operational and management staff expressed a desire for a more outcome-focused approach.
- There was little evidence of guidance on good regulatory practice or approaches for NZTA. There was no equivalent of a good practice framework to support consistent regulatory decision-making and activity.
- Staff did not always have a full understanding of all of the response options that were available to them.

## Situation in 2021

### **Practice guidelines have been developed to support a systems, risk-based regulatory orientation**

There has been a recent focus on developing practice guidelines to support the intelligence-led, risk-based and harm prevention orientation of the regulatory strategy Tū ake, tū māia. One initiative has been a Compliance Response Framework that prompts regulatory staff to make considered informed decisions for choices of regulatory interventions from education through to strong enforcement action.

Another is a Risk Decision-making Framework that supports the proactive, harm preventive approach.

These initiatives are providing practice guidelines that are prompting regulatory decisions that would differ from earlier approaches in 2019.

It is early days, and interviews with individuals at governance and leadership levels indicate there are no illusions of the significant

challenge they face to move the regulatory orientation and practice from a prescriptive approach to a more outcomes and systems orientation.

### **Initiatives are being taken to for strengthening regulatory capability and practice in the rail area**

In contrast with the prescriptive legislation and regulations in roading, the Railways Act 2005 adopts a safety systems approach, reflecting the later period of the development of the Act.

Despite this less prescriptive legislation, in the past rail regulatory activity comprised mainly of an audit process against safety case requirements, with a scorecard approach. Activity and practices were not delivering on the focus under the Railways Act for a broader systems orientation to regulatory activity.

This function is currently undergoing a shift in orientation and capability to enable it to perform in alignment with the requirements of the Act, and adopt a more systems approach.

An investigations framework that supports making informed decisions based on presenting information and risks is being developed/promulgated. The group is also looking at the guidance and tools that might best be used to meet safety outcomes in the rail co-regulatory environment.

It is early days, and there are capability and capacity challenges to meet to achieve this shift.

### **Some decision-making processes and practices can be made more efficient**

Industry stakeholder comments on the excessive time taken to get a decision suggests some unwieldiness of practice and process that needs addressing. We note our earlier comment on the potential contribution of risk averseness to this dynamic.



## Considerations for the refresh of Tū ake, tū māia

The assessment of Waka Kotahi progress against the findings of the 2019 review of regulatory capability and performance has provided some insights for what might be considered for the process and content of the proposed refresh of Tū ake, tū māia. These include:

- Front end the strategy with foresight over future trends and risks that must be addressed – strategy to include means to maintain this foresight perspective
  - The strategy to recognise that Waka Kotahi performs its regulatory activity within a wider land transport system, and has roles for influencing the shape of legislation (the regulatory framework) through working with the Ministry of Transport, and for working with and through others in the sector
  - The strategy to address the significant opportunities from digital technology for innovating approaches to regulating for outcomes e.g. through telemetry in vehicles that automate transactional activity for monitoring and enforcement
  - Clarify and communicate the responsibilities that the sector and regulated parties have for ownership of developing safe systems and practices with Waka Kotahi in a facilitating role
  - This would include a focus as much on the driver/ operator behaviour as on the vehicle safety
  - Focus on operationalising the strategy through aligned operational plans and activity
  - Scope and powers of the Director role to be included in the strategy
  - A focus on shifting to a consistent culture for a systems and outcomes orientation complemented by technical expertise rather than the other way around
- Bring up the focus on a systems approach for road and rail
  - Include workforce planning considerations i.e. the capabilities required and ways of acquiring, developing and maintaining capability
  - Include the views of external industry stakeholders in the process for informing thinking in the strategy refresh
  - Include approaches for using third parties/ sector stakeholders to support delivery of regulatory communications and activity
  - Include outcomes and impacts measures in the refreshed strategy
  - Ensure that the strategy 'closes the loop' with a place for measuring the effectiveness of interventions and quality assurance over activity
  - Ensure that rail has a clear position in the strategy and a focus on the issues and risks facing the sector

