



# **Managing Integrity of Vehicle Certification Inspection and Inspection Organisations – Operational Policy**

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**DRAFT REVISED POLICY FOR CONSULTATION**

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## 2 Purpose

The purpose of this operational policy is to provide a consolidated framework that will allow the NZ Transport Agency to evaluate and appoint Inspecting Organisations and Vehicle Inspectors applying to carry out various vehicle inspection activities, and to manage the integrity of the services provided.

This guidance is intended to ensure our service delivery processes allow New Zealand customers to benefit from a competitive market without compromising vehicle safety standards.

## 3 Introduction

The NZ Transport Agency has statutory responsibility for managing the inspection and certification of vehicles entering, re-entering, or in-service, in the New Zealand fleet to ensure all vehicles meet vehicle safety standards currently recognised in New Zealand.

The Transport Agency's statutory functions include: appointing vehicle inspectors and inspecting organisations; assessing site locations for new and existing inspecting organisations; and on-going monitoring and review of the performance of inspection and certification services.

The principles for evaluation, appointment, and monitoring of Inspecting Organisations and Vehicle Inspectors covered by this operational policy apply to the following activities: Warrant of Fitness inspection; Certificate of Fitness (light and heavy vehicles); Light Vehicle Repair inspection and certification; Low Volume Vehicle Specialist Inspection and Certification; Entry Certification (new and used); Heavy Vehicle Engineering certification (including Local Manufacture and modification); Alternative Fuel Certification; and Border Inspection.

## 4 Organisational Scope

This policy is to be applied by all Transport Agency staff involved with appointment of Vehicle Inspectors and Inspecting Organisations, assessing site locations for new and existing Inspecting Organisations, and on-going review of the performance of vehicle inspection and certification services.

## 5 Legislative Compliance

The NZ Transport Agency is required to manage its operational policies within a legislative framework. The legislation directing this policy is the:

- Land Transport Act 1998 (the Act)
- Land Transport Rule: Vehicle Standards Compliance 2002 (the Rule)
- Land Transport (Ordering a Vehicle off the Road) Notice 1999

## 6 Legislative Principles

The purpose of the Act is to establish the primary responsibilities of participants in the land transport system, whilst the purpose of the Rule is to set in place a legal framework for the inspection and certification of motor vehicles by specifying:

- when a vehicle must be certified for entry into service, and
- the requirements for vehicle inspection and certification.

## 7 Summary of Legislation

Section 4 of the Act specifies that a participant in the land transport system must hold the necessary qualifications and comply with the relevant regulations and rules. If required by the rules, a person who applies to provide a service must satisfy the Transport Agency that he or she is a fit and proper person,

and must establish and follow an appropriate safety system. They must also provide training and supervision to all employees to ensure compliance with the relevant safety standards and document conditions; and provide sufficient resources to ensure such compliance.

### **7.1 Application Requirements**

Section 2 of the Rule sets out the application process, and criteria the Transport Agency must weigh up when considering an application to carry out specified activities as a Vehicle Inspector or Inspecting Organisation. The Transport Agency must give consideration, as it considers appropriate, to the following:

- the applicant's ability and competence to undertake inspection and certification activities, including the qualifications and experience of vehicle inspectors and persons who will be carrying out the activities;
- the applicant's arrangements for civil liability insurance and professional indemnity insurance;
- the applicant's degree of financial or professional interest in importing or selling vehicles or vehicle parts, or in modifying or repairing vehicles; involvement in the "operation" of any vehicle and the extent to which that interest, if any, is counterbalanced by other relevant factors;
- the arrangements considered necessary by the Transport Agency to monitor and review the applicant's performance;
- the number of Vehicle Inspectors and Inspecting Organisations already appointed and available in the relevant geographical areas;
- the applicant's quality assurance arrangements and performance management systems;
- any other information the Transport Agency considers relevant.

Section 2.5(2)(b) requires all the factors listed above to be taken into account when considering an application, and allows any other factors that the Transport Agency thinks are relevant to also be considered. The Transport Agency has discretion to decide what each factor means in practice (i.e. what the Transport Agency has to be satisfied of before it will appoint, e.g. competence standards, necessary qualifications), and also has discretion to decide how much weight to give to each factor that it takes into account.

### **7.2 Provision for Conditions of Appointment**

Once appointed, Vehicle Inspectors and Inspecting Organisations are a "Participant" in the land transport system and the 'Notice of Appointment' is a "Land Transport Document" as defined in the Act. This means Vehicle Inspectors and Inspecting Organisations must therefore conform to the requirements of the Act and the Rule, and may only carry out the inspection and certification activities for which they have been appointed to undertake within the Notice of Appointment.

Section 2.3 of the Rule authorises the Transport Agency to specify the period of appointment for a vehicle inspector or inspecting organisation, and impose requirements and conditions as to the performance of the inspection and certification activities, including the performance of those activities at individual sites.

### **7.3 Provision for Performance Monitoring and Review**

Section 3.1 of the Rule provides authority for the Transport Agency to monitor and review the performance of a Vehicle Inspector or Inspecting Organisation appointed under the Rule. Vehicle

Inspectors and Inspecting Organisations must comply with any of the Transport Agency's requirements and bear any costs charged by it for monitoring and reviewing of their performance.

Section 3.2 of the Rule sets out the Transport Agency's powers of suspension or revocation where it is satisfied that a Vehicle Inspector or Inspecting Organisation has failed to comply with any of the conditions of their appointment, or has failed to comply with the requirements of the Rule, or to provide any information the Transport Agency considers appropriate.

#### **7.4 Regulatory Limitations for Vehicle Inspectors**

Section 115 of the Act provides that where an enforcement officer believes a vehicle is not in a safe condition to be driven on the road or believes the level of exhaust noise does not comply with the rules, they may order it off the road by giving a notice to the driver or owner of the vehicle.

The Notice affixed to a defective vehicle takes the form of a 'pink' or 'green' sticker. "Pink" stickers are for unsafe vehicles, "Green" stickers are for defective vehicles and "Green 2" stickers are for minor defects that do not require issue of a new Warrant of Fitness or Certificate of Fitness. It is an offence to remove, obscure or render indistinguishable the notice before new evidence of vehicle inspection for the vehicle has been obtained and displayed on the vehicle.

One of the requirements that must be met before the vehicle is returned to the road is that it must be inspected by a Vehicle Inspector who is an employee of an authorised vehicle Inspection Organisation who does not repair vehicles (other than to replace light bulbs and windscreen wiper blades) in the course of business. This limitation is provided for in the interpretation clause under the Land Transport (Ordering a Vehicle off the Road) Notice 1999.

## **8 Policy Principles**

Legislation and organisation operating principles provide the basis, guidelines, and values an operational policy will adopt and apply to a specific activity. The Transport Agency operating principles relevant to this operational policy are that our service delivery supports the Transport Agency's vision of a safe road system increasingly free of death and serious injury as well as the Transport Agency goal of making smart choices easy by:

- using legislative tools wisely to deliver the desired transport outcomes for New Zealanders
- partnering with agents and other service providers to achieve objectives and required standards of service for a lower cost
- making it easy for customers to purchase our products and services and to meet the requirements of the regulatory framework
- delivering value for money in our products and services

The vehicle inspection and certification industry contributes to the successful achievement of our goals and purpose by ensuring that only vehicles that meet the published safety standards are certified for use on New Zealand roads.

## **9 Operational Objectives**

The Transport Agency aim is to work together with Inspecting Organisations and Vehicle Inspectors in an open and transparent way to achieve our joint goals of high standards of certification, leading to an improvement in road safety. To achieve this, a policy framework is required to provide a level playing field for all potential and existing Inspecting Organisations and Vehicle Inspectors to compete based on price and service while not compromising inspection and certification standards.

## 10 Application of Policy Principles

To achieve high standards of vehicle inspection and certification, the Transport Agency will:

- appoint Vehicle Inspectors and Inspecting Organisations to different categories of inspection and certification activities in ways that seek to ensure potential harms presented by any conflicts of interest are avoided, and
- apply requirements and conditions of appointment to different categories of inspection and certification activities to maintain the integrity of the services, and
- monitor and review Vehicle Inspectors and Inspecting Organisations to seek to ensure that risk of unnecessary and/or unwarranted variation in inspection and certification outcomes is avoided and to ensure minimum acceptable standards are met in the interests of public safety.

A conflict of interest means a situation where an applicant is or could be influenced, or could reasonably be perceived to be at risk of being influenced, by a financial, professional, or personal interest. For the avoidance of doubt, a conflict of interest includes:

- (a) an actual conflict of interest;
- (b) a potential conflict of interest; or
- (c) a situation that may give rise to the appearance of a conflict of interest.

### 10.1 Transport Agency Appointment Criteria

When considering whether to appoint an applicant under the Rule, the Transport Agency must be satisfied the applicant is 'fit and proper', and in addition will apply the following principles and requirements when weighing up the general matters that must be considered.

#### 10.1.1 Applicant's ability and competence (including qualifications and experience)

##### 10.1.1.1 Inspecting Organisations

The following prerequisite principals will apply to applicant Inspecting Organisations:

- The organisation must demonstrate a high level of competence, experience, and capability indicating they can operate effectively in the vehicle and compliance environment.
- With the exception of border inspection activities, all inspection and certification activities will be carried out in New Zealand.
- The organisation must operate and maintain an electronic data collection and transaction system that can interact with the Transport Agency systems.
- Pricing of inspections will be fair and reasonable in accordance with the requirements of the Land Transport (Certification and Other Fees) Regulations 1999.
- Premises and equipment will comply with all applicable requirements set out in the Transport Agency Vehicle Inspection Requirements Manual (VIRM).
- Premises and equipment will be presented and maintained in a good state of repair.

##### 10.1.1.2 Site Approval

- Sites must be sponsored by an employing Inspecting Organisation.

- All sites will be capable of carrying out full inspection for the classes and/or categories of vehicles for which approval is sought unless restrictions apply to the approval.
- All sites will meet full technical and administration equipment specifications (including compliance with the site specifications in the appropriate VIRM for the classes of vehicles for which approval is sought).
- Sites may be leased from another company that is not an appointed Inspecting Organisation.
- Inspection services may be provided by an Inspecting Organisation at a third party site under contract. Where this occurs the Inspecting Organisation will include a code of conduct to the satisfaction of the Transport Agency in the contractual agreement e.g. Entry certification conducted by an Inspecting Organisation at a third party site will require a 'Code of Conduct' between the Inspecting Organisation and the third party compliance site.

#### **10.1.1.3 Vehicle Inspectors**

The Transport Agency is working hard toward improving the level of competency across vehicle inspection categories. When considering Vehicle Inspector applications, the following criteria will apply:

- Aligned to the category of inspection for which approval is sought, an applicant may be required to obtain formal qualification (through the Motor Industry Training Organisation) for the class of vehicle relevant to the approval, and subsequently to successfully complete a competency assessment administered by the Transport Agency.
- All Vehicle Inspectors will be employed by an Inspecting Organisation.

#### **10.1.2 Applicant Civil Liability and Professional Indemnity Insurance**

- All Inspecting Organisations must obtain and maintain civil liability and indemnity insurance in the name of the Inspecting Organisation to the level of cover deemed satisfactory by the Transport Agency from time to time.

#### **10.1.3 Applicant Conflict of Interest Considerations**

The Rule recognises that conflicts of interest may be an important or decisive factor for determining the suitability of Inspecting Organisations and Vehicle Inspectors, and requires the Transport Agency to take these into account. The contextual factors giving rise to conflicts of interest vary between different categories of inspection, and may vary between different providers. In some situations, a conflict of interest may be sufficient grounds on its own for declining an application for certain activities.

When weighing up conflicts of interest between categories of vehicle inspection and certification services and other functions related to the importation, maintenance, service, operation and sales of vehicles, the following fundamental principles will apply:

- Transparency
- Separation
- Codes of Conduct and Monitoring.

### **10.1.3.1 Transparency**

The following applicants are subject to a continuing duty to promptly disclose any financial, professional, or personal interest in selling, or importing vehicles or vehicle parts, or repairing or modifying vehicles and specify to the satisfaction of the Transport Agency whether or how any conflicts of interest will be managed (whether avoidable or unavoidable):

- used vehicle border Inspecting Organisations and Vehicle Inspectors, and
- used vehicle entry certifiers and Vehicle Inspectors.

For the avoidance of doubt, the continuing duty to disclose referred to in this paragraph applies to an applicant:

- (a) after they have submitted an application to the Transport Agency and before the Transport Agency has told the applicant that the Transport Agency has determined the application; and
- (b) after the Transport Agency has granted the application (including in situations where the application is granted subject to any conditions).

### **10.1.3.2 Separation**

Because used vehicles, entering or re-entering the New Zealand fleet, all have their own histories relating to maintenance, usage, accident record, and component replacement, the Transport Agency requires greater assurance that any financial, personal, or professional interest in selling, or importing vehicles or vehicle parts, or repairing or modifying vehicles held by border inspectors or vehicle certifiers will not compromise standards of border inspection or entry certification.

#### **10.1.3.2.1 Separation of Border Inspection Activities**

Inspecting Organisations and Vehicle Inspectors applying to carry out border inspections will be required to demonstrate, to the satisfaction of the Transport Agency, how the border inspection functions will be separated from any other services that might otherwise be carried out by the inspection organisation related to procuring and servicing of those vehicles.

#### **10.1.3.2.2 Separation of Used Light Vehicle Entry Certification Activities**

Inspecting Organisations and Vehicle Inspectors applying to carry out used light vehicle entry certification functions will be required to demonstrate, to the satisfaction of the Transport Agency, that functional separation will exist between entry certification activities and any other vehicle inspection, repair, and maintenance activities.

#### **10.1.3.2.3 Conflicts of interest arising from used vehicle entry certification applications**

1. The Transport Agency recognises that the used vehicle entry certification process plays a critical role in promoting:
  - (a) public safety by ensuring that only safe used vehicles are certified for use in New Zealand; and
  - (b) public confidence in the used vehicle inspection and certification process as part of an effective, efficient, and safe land transport system.
2. If an applicant (including any employee or officer of the applicant), or any natural or legal person (whether incorporated or unincorporated) who has effective control of the applicant (**Person A**), has a relationship with any other person (**Person B**) which gives rise to a conflict of interest concerning the applicant's provision of any used vehicle entry certification services, the Transport Agency must either:

- (a) decline the application if the conflict of interest arises because either Person A or Person B:
    - (i) engages in or provides border inspection services; and/or
    - (ii) has any ownership interest (whether legal, beneficial or otherwise);
 in respect of any of the used vehicles that would be certified by Person A if they were to be appointed by the Transport Agency; or
  - (b) if the application does not involve a conflict or conflicts of interest described in paragraph (2)(a) above:
    - (i) give significant weight to the conflict or conflicts of interest identified at paragraph 2 when weighing factors relevant to the Transport Agency's assessment of the application under clause 2.5(2)(b)(iii) and (vii) of the Rule; and
    - (ii) decline such an application unless the applicant can satisfy the Transport Agency that:
      - (A) a key inspection service cannot reasonably be provided otherwise; and
      - (B) the applicant will reduce or mitigate any risks arising from the conflict of interest to a level that is acceptable to the Transport Agency in its sole discretion.
3. For the purpose of paragraph 2, effective control includes but is not limited to:
- (a) any shareholding in the applicant and/or Person A;
  - (b) any common directors, officers, or members of any governing body between the applicant and/or Person A and Person B;
  - (c) any ultimate holding company of the applicant or Person A;
  - (d) beneficial entitlement to or beneficial interest in an Applicant or Person A's securities (including shares);
  - (e) power to control the composition any of the applicant or Person A's governing body (including a Board of Directors);
  - (f) the right to exercise or control the exercise of any voting power at a meeting of the Applicant; or
  - (g) any close personal relationship with the applicant or a staff person or officer of the applicant, or Person A or a staff person or officer of Person A.
4. In weighing the considerations described at above in order to reach a decision about whether to decline or approve an application under paragraph 2(b)(i), Transport Agency staff may have regard to any requirements and conditions of performance of used vehicle entry certification which may be imposed in relation to any of the matters referred to in paragraph 10.2.4 below and set out in the appendix **attached** to this policy.

#### **10.1.3.3 Codes of Conduct and Monitoring**

The Transport Agency will monitor and review the performance of inspection and certification activities to ensure integrity of these activities are maintained. To support the Transport Agency Performance Monitoring and Review System, the following conditions of appointment principles will apply:

- approved Inspecting Organisations will be required to abide by the terms of a 'Notice of Appointment' setting out legally enforceable obligations, and
- approval for Vehicle Inspectors will be time bound, and they will be required to sign up to and agree to a Transport Agency 'Code of Conduct'.

#### **10.1.4 Applicant Geographical Coverage Considerations**

When considering whether to appoint an applicant, the Transport Agency will take into account the number of Vehicle Inspectors and Inspecting Organisations already appointed and available across a relevant geographical area, and will consider any other circumstances that might impact on whether it is appropriate to make a further appointment. The overall context for considering these matters will primarily be based on vehicle safety and providing a competitive market without compromising vehicle safety standards. The following fundamental principles will apply to ensure that:

- services are accessible in a timely manner, and
- services are consistently available to the necessary level of quality

Applying the above principles will mean fair competition is not discouraged, but where the Transport Agency considers there are factors of regional or national significance associated with the specialised nature of a particular category of inspection and certification service, the availability of work for existing certifiers to maintain their skill levels and economic viability will be given due consideration without inferring rights of exclusivity.

#### **10.1.5 Applicant Quality Assurance and Performance Management Systems**

When considering whether to appoint an applicant, the Transport Agency will take into account the arrangements considered necessary to monitor and review the applicant's performance. The following principles will apply:

- All Inspecting Organisations will operate and maintain a Quality Management System to the satisfaction of the Transport Agency.

### **10.2 *Operating Conditions of Appointment***

Where an application is successful and the decision is made to appoint an Inspecting Organisation or Vehicle Inspector, the following generic requirements and conditions will apply to each category of inspection.

#### **10.2.1 Warrant of Fitness Activities**

Where appointed Inspecting Organisations are also involved in repairs and maintenance of vehicles, these services may be bundled up with the Warrant of Fitness inspection services thereby providing an end-to-end inspection and repair service.

#### **10.2.2 Certificate of Fitness (Light & Heavy Vehicle) Activities**

Where appointed Inspecting Organisations are also involved in repairs and maintenance of light or heavy vehicles, these services may be bundled up with the Certificate of Fitness inspection services thereby providing an end-to-end inspection and repair service. However, Inspecting Organisations and Vehicle Inspectors may not certify vehicles from which they:

- derive a benefit (either directly or indirectly) from the operation of those vehicles, but this restriction does not include where such a vehicle is being used primarily for the purpose of delivering Inspection and Certification services.

### **10.2.3 Border Inspection**

Inspecting Organisations and Vehicle Inspectors appointed to carry out border inspections will be required to transparently demonstrate and maintain to the satisfaction of the Transport Agency, that border inspection functions are separated from any other services that might otherwise be carried out by the Inspecting Organisation related to procuring and servicing of those vehicles.

Inspecting Organisations must be an Incorporated Company registered in New Zealand and must have a person appointed to represent them in New Zealand.

### **10.2.4 Entry Certification (Used Light Vehicle) Activities**

Inspecting Organisations and Vehicle Inspectors applying to carry out used light vehicle entry certification functions will be required to demonstrate, to the satisfaction of the Transport Agency, that a high degree of functional separation will exist between entry certification activities and any other vehicle inspection, repair, and maintenance activities.

The Transport Agency may impose any other condition and requirement, including any condition which may be imposed in relation to any of the matters set out in the appendix **attached** to this policy.

### **10.2.5 Heavy Vehicle Engineering Certification**

Inspecting Organisations and Vehicle Inspectors applying to carry out heavy vehicle engineering certification functions will be required to demonstrate, to the satisfaction of the Transport Agency, that a high degree of functional separation will exist between heavy vehicle engineering certification activities and any other vehicle inspection, repair, and maintenance activities.

The Engineering Certifier (including Parent and subsidiary organisations) may not have any ownership or financial interest in the vehicles being engineering certified, unless they can demonstrate to the satisfaction of the Transport Agency that a transparent and robust system is in place to negate any conflict of interest, and to ensure accurate assessment of each vehicle is still undertaken.

### **10.2.6 Used Light Vehicle Repair Certification**

Inspecting Organisations and Vehicle Inspectors applying to carry out used light vehicle repair certification functions will be required to demonstrate, to the satisfaction of the Transport Agency, that a high degree of functional separation will exist between repair certification activities and any other vehicle inspection, repair, and maintenance activities.

The Repair Certifier (including Parent and subsidiary organisations) may not have any ownership or financial interest in the vehicles being repair certified, unless they can demonstrate to the satisfaction of the Transport Agency that a transparent and robust system is in place to negate any conflict of interest, and to ensure accurate assessment of each vehicle is still undertaken.

### **10.2.7 Alternative Fuel Certification**

Where appointed Inspecting Organisations are also involved in repairs and maintenance of vehicles, these services may be bundled up with the Warrant of Fitness inspection services thereby providing an end-to-end inspection and repair service.

## **10.3 Performance Monitoring Process Following Appointment**

The Transport Agency's goal is to improve transport for all New Zealanders by improving the integration, safety, responsiveness and sustainability of the transport system. To do this, everyone involved in vehicle certification must apply the requirements set out in law accurately and consistently. For certifiers, this

means following the requirements specified in their Vehicle Inspection Requirements Manual (VIRM) and other required documentation.

The Transport Agency will monitor and review Vehicle Inspectors' and Inspecting Organisations' performance to check on compliance with the Rule and the requirements and conditions of their appointment.

Where there is reason to believe that a Vehicle Inspector or Inspecting Organisation has failed to comply with a condition of their appointment or with the requirements of the Rule, the Agency (at its discretion) may:

- require a Vehicle Inspector or Inspecting Organisation to take remedial action, such as training,
- suspend the whole or any part of the appointment for a specified period or until specified conditions are met, or
- revoke the whole or any part of the appointment.

The Transport Agency operates a Performance Monitoring and Review System which clearly sets out:

- what is expected of certifiers
- the way the Transport Agency will assess certifiers' performance against these expectations
- a scoring system that enables vehicle entry certifiers' performance to be measured.

When certifiers fail to carry out their responsibilities appropriately, the Transport Agency will act to remove their authorisation.

This will be done in a fair and reasonable manner and decisions will be open to appeal.

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## **Appendix: Conflict of Interest Risk Control Considerations**

### **Transparency**

- Disclosure declarations, policy and responsibilities
- Reporting with pertinent data
- Ethics policy
- Conflict of interest policy with evidence of institutionalisation
- Viability declaration

### **Assurance**

- Training plan
- Audit history and result reports
- Quality measures – associations/accreditations
- Quality management System
- Risk register
- Management controls evidence
- Fit and proper records
- Capability – staff qualifications

### **Separation**

- Functional – management structure
- Physical – site advice
- Financial – records/REM policy
- Role – chain of responsibilities
- Ownership (explicit and effective) – structure
- Prohibition – voluntary declaration