

Terms of Reference

Review of the Ministry of Transport's monitoring of NZ Transport Agency's regulatory performance

Purpose

The purpose of the review is to provide independent advice to the Secretary of Transport, the State Service Commissioner, and the Minister of Transport, on whether the Ministry, in performing its crown entity monitoring function, should have:

- identified significant performance issues within the New Zealand Transport Agency's regulatory function earlier; and
- provided advice to Ministers about these issues earlier, or in stronger terms.

The review will consider the Ministry's performance of its monitoring function against its own expectations and best practice monitoring expectations in the public service. The intent of the review is to provide advice and make recommendations so the Ministry's monitoring function can be as effective as possible.

Background

In late September 2018, the Agency's Board raised concerns that the Agency's regulatory function was not performing optimally. The concerns principally related to a backlog of regulatory compliance cases that had not been appropriately managed.

Cases within the backlog were across the Agency's regulatory function, including vehicle certifiers, training course providers, licensing agents, road transport operators and drivers. The scale of businesses and people affected by the performance issues is significant given the nature of the agency's regulatory function.

On 16 October 2018, the Minister of Transport, with the Agency's chair and chief executive, made a public announcement about these performance issues.

The Minister subsequently commenced a review into the operation and performance of the agency's regulatory function under section 132 of the Crown Entities Act 2004. The review is being led by the Ministry of Transport for the Minister.

The Ministry is the monitoring department in relation to the Agency. This monitoring role is recognised in section 27A of the Crown Entities Act 2004 and includes administering appropriations and legislation and tendering advice to Ministers.

The operating expectations for departments monitoring crown entities are set out in *It takes three: Operating expectations framework for Statutory Crown Entities* published in June 2014 by the State Services Commission.¹ The expectations recognise that it takes all three parts of the system, Ministers, entities and monitoring departments, working together effectively to deliver the services that New Zealand deserves.

¹ <https://www.ssc.govt.nz/sites/all/files/it-takes-three-operating-expectations-framework.pdf>

The Ministry's *Monitoring arrangements for transport sector Crown entities* published in December 2016² identifies states that:

The Ministry seeks to engage with the entities as a 'critical friend' (at times acting as an advisor or sector leader) but at the same time it must not undermine the boards' direct line of accountability to the Minister and must not prejudice its primary role as agent and trusted advisor to the Minister.

During 2018 Ministry has revised its approach to monitoring for Crown entities, and is in the process of implementing it in relation to the Crown entities it monitors, including the Agency.

Topics for consideration by the reviewers will include:

- should the Ministry have identified significant performance issues within the New Zealand Transport Agency's regulatory function earlier
- should the Ministry have provided advice to Ministers about these issues earlier, or in stronger terms
- did the Agency's management and Board make available, in a timely and accessible way, relevant information to support the Ministry to perform its monitoring role
- if the Agency was not providing the information, did the Ministry make the standard enquiries appropriate for a monitoring agency
- is the Ministry's past, and revised approach, to monitoring Crown entity performance fit-for-purpose
- is the Ministry's monitoring function adequately resourced to perform its role.

The time period for the review is from the establishment of the Agency to the public announcement of the performance issues.

The review should take into consideration public sector crown entity practice over the period from the creation of the NZTA to public announcement of the performance issues.

The reviewers and their role

The reviewers are Martin Jenkins.

The reviewers will exercise independent judgement regarding the process they follow as part of the Review, the nature and depth of their investigation, and the communication of their findings and advice.

The reviewers will have access to all relevant Ministry of Transport documentation, personnel, and internal and external communications that they deem to be relevant. They will engage with Ministry and Agency staff, and key stakeholders, and are expected to seek a range of perspectives and views on the Ministry's monitoring role to enable it to deliver on the purpose.

The reviewers will arrange for suitable mechanisms to keep the Secretary, the Minister and the Commission up to date on the progress of the Review.

² <https://www.transport.govt.nz/assets/Uploads/About/Documents/Monitoring-arrangements-for-transport-sector-Crown-entities-December-2016.pdf>

Deliverable and timing

The reviewers will produce their final report with its findings and recommendations by March 2019. The report will be provided to the Secretary, the Minister and the Commissioner. The final report will be publicly released on the Ministry of Transport website as soon as practicable.