Ministry of Transport
TE MANATŪ WAKA

TRANSPORT SYSTEM REGULATORY STEWARDSHIP PLAN

2019 - 2022

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EXECUTIVE SUMMARY

Stewardship, including of regulatory systems, is a statutory obligation for government departments including the Ministry of Transport (the Ministry).

Regulatory stewardship involves the robust development of quality regulation, that reflects considered choices about the right type of regulation (performance-based or prescriptive), appropriate regulatory tools to use, and who is best placed to operate them. It is also about adopting a whole-of-system, lifecycle view of regulation and requires a proactive, collaborative approach to the monitoring and care of regulatory systems.

This transport regulatory stewardship plan (the Plan) outlines how the transport sector is working together to ensure effective stewardship of the transport regulatory system.

It provides information on the transport system and outlines the processes which the Ministry, the New Zealand Transport Agency, Maritime New Zealand and the Civil Aviation Authority either have put, or are putting, in place to:

- Ensure the development of robust regulation.
- Review and assess the health of regulatory frameworks.
- Ensure that the transport regulatory system remains up-to-date and fit for purpose.

This Plan for 2019 to 2022:

- Explains regulatory systems and regulatory stewardship in general terms.
- Describes the transport regulatory system.
- Sets out the achievements to date and the approach being used by the transport sector towards regulatory stewardship.
- Provides the transport sector's action plans for regulatory stewardship for 2019, and for 2020 and beyond.

The Ministry and the transport agencies are on a continuous learning journey; we are working together to measure the health of, and improve the effectiveness of, the transport regulatory system. This Plan is a step along that path.

The Plan has been jointly developed by the Ministry, the New Zealand Transport Agency, the Civil Aviation Authority and Maritime New Zealand.

SECTION 1: PURPOSE

This document explains how the Ministry, together with the transport Crown entities, are working towards good regulatory stewardship.

SECTION 2: BACKGROUND

What is a regulatory system?

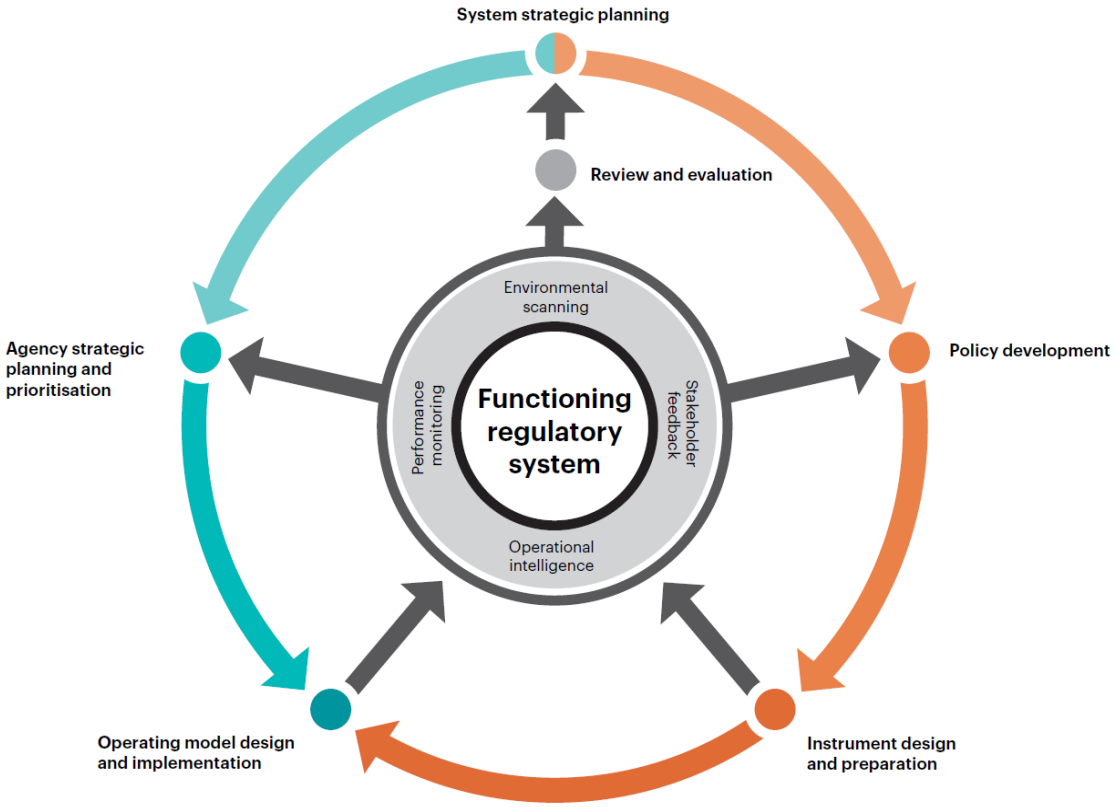
A regulatory system is a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, which work together to shape people's behaviour or interactions in pursuit of broad goals or outcomes.

Appendix 1 illustrates this in the context of the transport regulatory system.

The maintenance of a regulatory system involves:

1. Identification of the regulatory outcomes and objectives.
2. Monitoring of the achievement of those outcomes and objectives.
3. Actions to encourage the achievement of the outcomes and objectives.
4. Amendments or replacement to enable the regulators and governments to achieve their goals and desired outcomes.

The following diagram illustrates how a functioning regulatory system operates as an *overarching* cycle of planning, designing, implementing, monitoring, assessing and action to respond to/address issues.[1]



[1] New Zealand Treasury. *Building Effective Regulatory Institutions and Practices*. 2019.

Regulatory systems utilise a range of instruments such as statutes, regulations, rules, bylaws, standards, guidance, self-regulation, co-regulation and more, as mechanisms to establish regulatory outcomes, monitor their achievement, and enforce any non-compliance.

What is regulatory stewardship?

Regulatory stewardship is a proactive, collaborative approach to the design, monitoring and care of regulatory systems. It involves treating a regulatory system as an asset that requires ongoing repairs, maintenance and sometimes replacement.

In April 2017, the government released a set of updated expectations for regulatory stewardship by government agencies. These expectations (which can be found on Treasury's website, here: Government Expectations for Good Regulatory Practice) include responsibilities for:

- Monitoring, review and reporting on regulatory systems.
- Robust analysis and implementation support for changes to regulatory systems.
- Good regulator practice.

Why do regulatory stewardship?

The purpose of regulatory stewardship is to:

- Develop regulatory frameworks that provide a clear rationale for regulatory intervention, use the right mix of regulatory levers, and demonstrate a good understanding of implementation.
- Reduce the chance of regulatory failure.
- Ensure that where a regulatory intervention creates unforeseen outcomes, perverse incentives, or unnecessary costs, that these are addressed quickly.
- Keep the regulatory system up to date, fit for purpose, and relevant.
- Address regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation.
- Support effective implementation of the regime by assisting regulators to have the tools, resources and capability necessary to deliver on their role.

SECTION 2: THE TRANSPORT SECTOR

The 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 that acts as the main regulator in relation to that mode:

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

The relationship between each of the modes is illustrated in Appendix 1.

In addition to the three main regulators, other parties help implement the transport regulatory system and support the achievement of its objectives and outcomes such as the New Zealand Police (the Police) and Territorial Authorities (regional, district and city councils). The Transport Accident Investigation Commission (TAIC) also has a role in the transport regulatory system.

Regulatory stewardship of the transport regulatory system

The Ministry of Transport is a steward of the transport regulatory system. Stewardship, including of regulatory systems, is a statutory obligation under section 32 of the State Sector Act 1988.

Regulatory stewardship is also a Ministerial expectation for the transport Crown entities.

System-wide stewardship of transport regulation aims to ensure that regulatory systems deliver on their purpose and outcomes. In doing this, where possible we also look to further the achievement of the transport outcomes (the Transport Regulatory System Mapping in Appendix 1 refers). Transport outcomes are also critical in relation to the design of new regulation.

The transport outcomes (which support Treasury's Living Standard's Framework) include:

- Environmental sustainability.
- Healthy and safe people.
- Resilience and security.
- Economic prosperity.
- Inclusive access (including urban growth).

Applying a regulatory stewardship approach to the transport regulatory system

Section 2 of this Plan describes the types of instruments or levers that can be utilised to ensure a fit for purpose regulatory system. Appendix 2:

1. Tables the key instruments or levers we can pull in the transport regulatory system.
2. Notes the themes emerging across the transport regulatory system.
3. Summarises what the transport sector is doing to ensure each of these instruments or levers are fit for purpose in the context of those emerging themes.
4. Lists the work streams through which the various instruments are being updated to address the emerging issues.

Health of the regulatory system

The Minister of Transport is currently undertaking a review of NZTA's regulatory functions under section 132 of the Crown Entities Act 2004 to respond to the issues identified by the NZTA Board relating to the agency's performance and, specifically, the backlog of regulatory compliance cases that had not been appropriately managed.

The objectives of the review, as outlined in the publically released Terms of Reference, are to:

1. Form a clear assessment of whether there are systemic deficiencies within NZTA's regulatory capability and function and, if so, to what extent they contributed to the recent performance issues.
2. Make recommendations on the improvements in capability required to address any deficiency in the NZTA's regulatory capability and function, and appropriate accountability.
3. Provide the public with confidence that any regulatory deficiencies in the NZTA are appropriately identified and addressed, with safety of the public being the overriding priority.

The review is expected to report by the end of March 2019 and any lessons learned from the review will be woven into the regulatory stewardship programme of work and into the design of both the in-systems and system-wide assessment tools.

SECTION 3: QUALITY POLICY AND REGULATORY THINKING - CURRENT STATE

We (the Ministry, NZTA, MNZ and CAA) have progressed quality policy and regulatory thinking to ensure the foundations are in place to design, deliver and implement effective regulatory policy and continually improve our regulatory system.

Aspects we have progressed, and are continuing to progress, include:

a. Our capability and capacity.

b. Policy prioritisation and development.

c. Interagency working and governance arrangements.

d. Active participation in cross-Government forums.

e. Guidance and information.

f. International influences and opportunities in relation to policy development.

a. Capability and capacity

Across the three modes, the Ministry, NZTA, MNZ and CAA together carry out the functions essential to the operation of a regulatory system:

- Policy and strategy advice.
- Operational policy/service design.
- Service delivery.
- Compliance and enforcement.
- Monitoring and evaluation.
- Advice/information/education.
- Standard setting.
- Alternative resolution.

Appendix 3 provides a schedule of capability and capacity improvements progressed during 2018.

b. Policy prioritisation and development

The Ministry and its Crown entity partners take a rigorous approach to determining policy priorities arising from Ministerial and Government expectations, Government commitments, and the identification of regulator (and stakeholder) concerns and issues. The priorities are approved by Ministers and published. One example is the Government Policy Statement on Land Transport.

Regulatory stewardship aims to support transport outcomes and Ministerial priorities.

The Ministry's analysis of policy proposals with regulatory implications, before policies are approved by Cabinet, involves:

- Co-design of regulation with the regulators to ensure we understand implementation issues and impacts.

- Quality assessments of regulatory impacts of policy proposals through a Regulatory Impact Assessment (RIA) panel (including representation on the panel from the regulators).
- Ensuring that RIAs are embedded with cost benefit analyses, environmental and social impact assessments, and deliver on the Transport outcomes and measures (this includes consideration of alignment to the Living Standards Framework) and Government priorities. The *Transport Regulatory Funding Principles* are also used in relation to funding reviews. The aim is to develop evidence-based, risk-based, and proportionate regulatory responses.

To ensure that continuous improvement is embedded in the development of policy and regulation, the Ministry:

- Engages with Treasury and other agencies in developing regulatory impact assessment and stewardship design.
- Manages an internal process to assess the quality of policy papers.

The Ministry has commissioned a programme of independent assessments and QA of policy papers, briefings and Cabinet papers to identify where we could improve.

In addition it is:

- Developing an evaluation strategy and an evaluation programme to inform better policy design and regulation.
- Monitoring the effectiveness of policies through the capture of a broad range of data and information.
- Improving the way we assess and appraise policy implications and how they deliver outcomes through our work programme on developing a new assessment and appraisal framework.
- Extending our evidence base through our research and domain strategies.

- Lifts understanding and use of policy project development across the Ministry.

A Ministry-wide project has been established to lift understanding and use of policy project development, planning and evaluation processes across the policy cycle. The aim is to identify champions within the business for taking a robust approach to developing and evaluating regulatory policy.

All of these processes and measures promote evidence-based, risk-focussed and proportionate regulatory responses.

c. Interagency working and governance arrangements

Mechanisms have been established to provide structured opportunities for collaboration, learning and governance across the transport regulatory system, as below:

• Transport Sector Leaders Group: Chief Executives from the Ministry, NZTA, CAA, MNZ, KiwiRail, Airways, Metservice, TAIC.	6-8 weekly
• Regulatory Stewardship Governance group: Deputy Chief Executives from the Ministry, NZTA, CAA and MNZ.	Quarterly
• Regulatory Stewardship Working Group: the Ministry, NZTA, CAA and MNZ.	Monthly
• Land transport regulatory stewardship group: the Ministry, NZTA and the Police.	Monthly

d. Active participation in cross-Government regulatory forums

Each regulator and the Ministry are also involved in different ways in regulatory stewardship groups that span Government to ensure we can learn from, influence, and share experiences, in regulatory design and implementation. Examples include:

- Involvement of the regulators in the G-Reg working and governance groups.
- The Ministry in the Treasury-led Regulatory Stewardship Steering Group.
- The Director of Maritime NZ is the Chair of the Victoria University Advisory Board that supports the Chair in Regulatory Practice at the University
- A Ministry Director who chairs the Legislation Design and Advisory Committee.

e. Guidance and information

Guidance and information is provided to regulated parties by regulators through a range of mechanisms, as below:

- Consultation documents and processes (including reference groups and workshops) on all policy and regulatory change proposals.
- Regulator guidance and circulars about what the Rules mean.
- Guidance documents such as NZTA's Speed Management Guide.
- Participation in regular industry forums, formal and informal stakeholder meetings (including territorial authorities), and ad hoc issues-based engagements.
- Use of websites for information sharing purposes including:
    - Open data and the publication of regulatory impact assessments and Cabinet papers.
    - Details of regulator compliance operating models e.g. regulatory decision making frameworks and prosecution policies.
- Use of social media by the regulators to share information about regulatory initiatives and safety messages.

f. Influences and opportunities in relation to policy development

International settings and context

Our export economy and the effective operation of the maritime and aviation sectors is heavily influenced by, and reliant on, compliance with international standards. It is critical that New Zealand is able to contribute to and influence the adoption of standards which might have a significant impact on New Zealand interests.

The transport agencies make strategic decisions on what issues to participate in, with respect to international forums such as the International Maritime Organisation and the International Civil Aviation Organisation.

They also choose how best to utilise scarce capability and capacity to influence key standards that could support or impede New Zealand desired outcomes. How transport agencies prioritise this work is outlined by international strategies that are already in place (such as MNZ's International Engagement Strategy 2018 – 2023 which can be found here), or are either under development or are being updated in the case of CAA and the Ministry.

We work with other regulators, policy agencies and research bodies, and attend key international forums to assist us in the robust and innovative design and operation of regulatory systems.

Across all transport modes there are areas of international policy and regulatory development which can provide insights into the design of effective regulatory interventions, and how to enable and respond to emerging technologies and transport developments.

Innovation

Innovation is a key issue for the transport sector. New and emerging disruptive technologies have the ability to further transport outcomes, but they also present challenges in how to regulate in order to both enable these technologies and to manage their integration, including how to manage unintended consequences.

The Ministry is currently leading, with support from a cross-agency group, a regulatory work programme around the integration of drones into New Zealand's aviation system. This will provide useful learnings on how to develop a regulatory framework and regulator capability to deal with an emergent and nascent technology.

Case Study: Drones

Effective drone regulation is vital for fostering and supporting effective integration, creating social licence, and enabling innovative operators to participate in New Zealand's aviation system. On the other side, poorly designed or unresponsive regulation could create potential barriers to the integration of beneficial activities.

For New Zealand to fully realise the benefits of drone operations, our regulatory system needs to be flexible, enforceable, proportionate, equitable, consistent with relevant international standards and practices, and have scope to evolve to respond to changing circumstances or new information on the regulatory system's performance.

Regulation should be designed to support the integration of drones into the aviation system, and be regularly reviewed and adjusted to ensure this. As with all aviation regulation, restrictions in activity will be continue to be necessary to ensure safety and security is maintained.

SECTION 4: OUR REGULATORY STEWARDSHIP APPROACH TO DATE

In taking an all-of-system approach to regulatory stewardship, the transport sector has jointly:

a. Established a Transport Rules Framework and progresses an annual Transport Rules Programme so that a system-wide and regulatory stewardship approach can be taken to modernising and improving the fitness-for-purpose of the transport Rules.

b. Undertaken a regular programme of funding and fee reviews to ensure that the transport regulators have what they need to deliver effective regulatory systems.

c. Developed a strategic approach to the Ministry's monitoring of the transport Crown entities.

d. Identified the key lessons from previous assessments of the transport regulatory system as well as from Transport Accident Investigation Commission inquiries and from data we have gathered to monitor the health of the system.

e. Conducted an overview of regulatory impact assessments and the legislative programme.

f. Cross-agency engagement to achieve system outcomes.

a. Transport Rules framework & programme

The Ministry, NZTA, MNZ and CAA have agreed a Rules Development Framework (a set of processes, procedures and tools) for:

- Investigating and undertaking policy analysis for a transport-related issue that may require regulatory intervention.
- Deciding whether regulatory intervention is warranted, and if a Rule (or amended Rule) is the best option.
- Developing (or amending), getting approval for, and implementing a transport Rule and, if required, consequential regulation.

The Rules Development Framework can be found on the www.transport.govt.nz website through the Regulatory Stewardship web page.

The 2018/19 Transport System Rules Programme was agreed by Cabinet in August 2018 and can be found on the Regulatory Stewardship web page.

The Ministry and regulators monitor and track the progress of amendments to Rules. The Police is consulted in relation to land transport Rules. The Ministry also maintains oversight and stewardship of the progress of the Rules programme across the three regulators as well as their own amendments to Rules. Rule amendments are consulted on widely, with submitters subsequently advised how their submissions have contributed to the final proposals.

b. Funding/fee reviews

Funding/fee reviews are a key component of regulatory stewardship as they ensure regulators have the capability and capacity they need, and also test that regulators are operating as efficiently and effectively as possible.

The Ministry works with the CAA, MNZ, NZTA, TAIC and the MetService to develop and deliver a programme of a regular funding reviews.

All funding reviews aim to have early, transparent and comprehensive engagement throughout the process.

c. Monitoring function

The Ministry is working closely with the regulators to establish a new strategic approach to the monitoring of the regulators, as part of the Ministry's monitoring responsibilities.

The Ministry is focusing on key areas across the regulators that could result in significant service failures or delivery risks to the agency and/or the Crown. Examples include (but are not limited to) health and safety; service delivery; data and information security; asset integrity and performance; procurement and probity; risk and assurance.

The monitoring plans include strategic lines of inquiry to ensure:

- The activity of the regulators is aligned with the delivery of regulatory outcomes and the monitoring of risks.
- Regulators are performing well against Government Expectations of Good Regulatory Practice and broader principles of good regulatory practice
- Insights are taken to the relevant Board and to Ministers.
- That leadership and oversight is demonstrated.
- Organisational health and results are demonstrated.

d. Previous assessments

Preliminary assessments of the transport regulatory system took place in 2014 and 2015.[2] These used a mixture of assessment frameworks covering regulatory best practice principles and broader approaches, as below:

- Efficiency.
- Effectiveness.
- Durability and resilience.
- Fairness and accountability.

[2] Mehrtens. S. July 2014. *Regulatory Framework Design: Land and Maritime Project Identifying Concerns with the Regulatory Frameworks*. NZTA.

NZIER. March 2015. *Transport Regulation: Identifying Opportunities for Improving the Regulatory Environment*. https://www.transport.govt.nz/assets/Uploads/Research/Documents/nzier-transport-regulation.pdf.

- Materiality of the regulations, and risks of not being fit for purpose, in the context of the size of the sector and its connectedness to other parts of the economy.
- Potential gains from reform and their order of magnitude.
- Contribution to desired transport and Government outcomes.
- The testing of findings with experts.

The recommendations from those assessments were that the transport regulatory system should consider:

- Taking more of a risk-based approach in its primary legislation.
- Enabling more delegated decision-making with respect to Rules amendments.
- Establishing regulatory powers and instruments to support system responsiveness to fast-paced changes in international practice, technology and innovation.
- Whether the balance of prescription vs performance-based regulation is optimal to avoid the potential for regulatory failure. Performance-based approaches are enabling but can be ineffective if they are not supported by operational standards. On the other hand, over-prescription on its own can create inefficiencies if there is not the opportunity to adapt procedures depending on the context.
- Conducting systematic, regular reviews of information and data gleaned from Commission inquiries, which would help inform the health of the transport system overall. For example, results of Transport Accident Investigation Commission inquiries, which can be found here.

e. Regulatory impact assessments and legislative programmes

Good regulation can achieve transport outcomes and Ministerial priorities such as safety, mode neutrality, environmental sustainability and economic growth. Through our regulatory impact assessment process we keep an overview of the quantum and magnitude of proposed regulatory impacts on people, families, businesses and the Crown.

The Ministry of Business, Innovation and Employment (MBIE) has a particular interest in the impacts on businesses. We provide MBIE with information about the anticipated regulatory impacts on businesses.

f. Cross-agency engagement to achieve system outcomes

Transport regulators have taken a proactive system view of regulatory systems by working across agencies outside of the transport system, to achieve transport system outcomes. Examples include the environmental protection and the health and safety regulatory regimes.

SECTION 5: PRIORITIES FOR 2019: ACTION PLAN

We continue to ensure our regulatory regimes move with changing contexts and technology, support innovation and maintain up to date rules. But we also aim, through this Plan, to:

a. Progress a regulatory stewardship project resulting in a package of policy proposals, a *Regulatory System (Transport) Amendment Bill* and other regulatory amendments.

b. Develop and utilise a tool which enables us to assess whether regulatory regimes are delivering the outcomes intended (i.e. are 'healthy').

c. Develop a mechanism through which regulatory issues can be identified, stored, triaged and prioritised for action.

d. Rules Programme for 2019/20 and beyond.

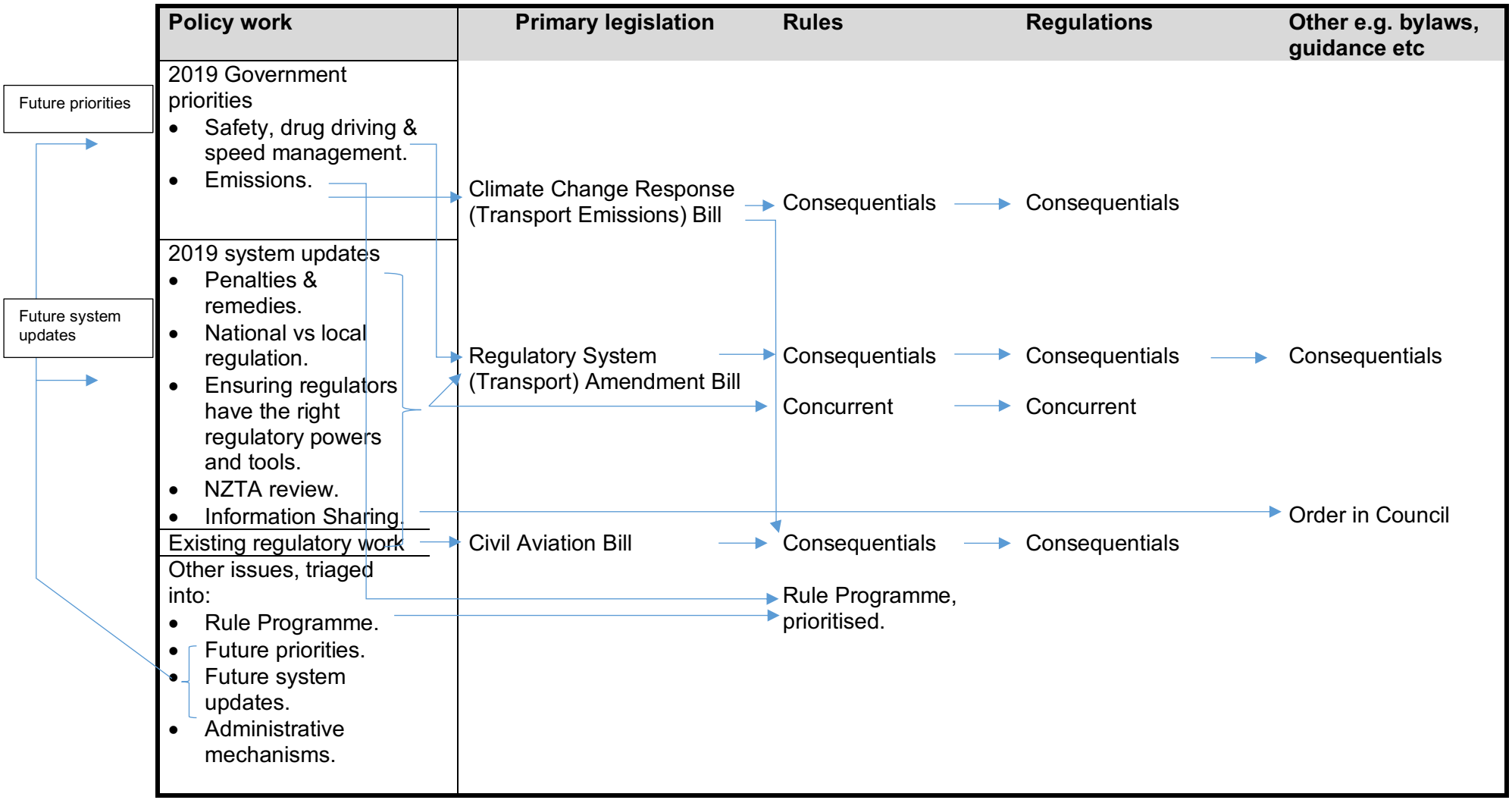
e. Reporting on, and refreshment of, this Plan.

We already have a regular programme of Rules design and maintenance (discussed above), and have trialled a regulatory stewardship (modernising and making fit-for-purpose) approach in our review of the Civil Aviation Act and the resulting Civil Aviation Bill.

Off the back of proposed feedback mechanisms and system assessments, we plan to have a regular programme of across-transport legislation and regulation updates which will complement the Rules programme. This will ensure that where regulatory issues emerge, we are considering where it may be appropriate to update legislation, and/or regulations as well as rules, rather than overly focussing on the annual Rules programme.

The diagram overpage provides an overview of the policy work programme leading to a transport regulatory work programme in 2019.

2019 transport policy and regulatory work programme



a. Regulatory system (transport) amendment project and bill

The Legislative Programme for 2019 includes a *Regulatory System (Transport) Amendment Bill* which aims to pilot the approach of a regular programme of across-transport legislation and regulation updates to complement the Rules programme.

Policy proposals are being developed which may contribute to that Bill or alternatively amend transport Rules, Regulations and other legislative instruments. Three main sets of proposals are being considered for regulatory amendment through this Bill:

1. Penalties and remedies including:
    - Lack of coherence in the regime governing infringement fees and maximum fines in front of a court.
    - Towage and storage fees which currently do not cover the vehicle recovery operators' costs when they do business for the NZ Police and territorial authorities.
    - Proposals arising from the Speed and Drug Driving work streams.
2. The interaction of national and local regulation, which is currently confusing and can be difficult to enforce e.g. parking on berms, enforcement of signs, and speed restrictions.
3. The toolkit of transport regulator powers including:
    - Recommendations from the NZTA review.
    - The interaction between the Health and Safety at Work Act and land, rail, aviation and maritime legislation.
    - Regulatory and administrative roles and powers including the use of transport instruments.

Appendix 2 includes the issues being addressed through this and other transport policy and regulatory projects.

b. How we assess the health of the transport regulatory system

Regular assessment of the health of the transport regulatory system would help to:

- Identify situations where regulatory failure might be possible.
- Identify if the regulatory system is providing the regulators what they need in order to do their jobs.
- Be clear about the fitness-for-purpose of the transport regulatory system.

In developing a Transport Regulatory System Assessment Tool we will take into account the regulatory principles identified by Treasury. These are:

1. **Effectiveness**: To what extent does the system deliver the intended outcomes and impacts? This may include looking at elements such as:
    - The nature, incidence and significance of the impacts, intended and otherwise (who it impacts, how and to what extent).

- The extent of compliance/non-compliance with the system (overall and for different groups).
- The internal coherence and completeness of the system. Gaps, overlaps or inconsistencies that impact effectiveness.
- How the system intersects with related regulatory systems and how this impacts effectiveness.

2. **Efficiency**: To what extent does the system minimise unintended consequences and undue costs and burdens? This may include looking at elements such as*:*
   - The proportionality of the system; i.e. how well the burden of rules and their enforcement matches the risks to be mitigated/benefits expected. Burden includes restrictions on rights and freedoms, resource and capability requirements, and ease of administration/use/compliance.
   - How easy or difficult the regulators and the regulated parties find the system to administer/use/comply with.
   - The extent to which the system provides predictability and certainty for regulated parties.
   - The degree to which actual outcomes justify the overall economic, administrative and legislative (rights) costs, including unintended consequences.
3. **Durability and resilience**: How well does the system cope with variation, change and pressures? This may include looking at elements such as*:*
   - The responsiveness of the system to changing context and circumstances, e.g. changes in the regulated community/technology/wider society, changes in demand (increase or decrease).
   - How well the system enables innovation/takes account of different circumstances where appropriate.
   - The continued relevance of the system objectives, the regulatory or market failure, whether it is still the best way to address the failure/opportunity.
4. **Fairness and accountability**: How well does the system respect rights and deliver good process? This may include looking at elements such as:
   - How system respects and delivers on the principles of natural justice, i.e. accountability, fair and impartial decision-making, opportunities for those affected by decisions to be heard, and opportunities for review or appeal.
   - The clarity and certainty of the regulatory instruments that underpin the system, and the accessibility and transparency of the requirements.
   - How the system supports public and/or stakeholder participation in system design and improvements.

In developing a Transport Regulatory System Assessment Tool, we will consider the quality of regulatory design and clarity of mandate, roles, functions and duties; resourcing and funding; workforce capability; accountability mechanisms; governance, decision-rights and discretion; performance measurement, evaluation, review and reporting; external; monitoring; approach to risk management and

innovation; and the approach to consultation and engagement with stakeholders.

We will take into account any learnings from regulatory system reviews, including the 2019 review of NZTA and the Ministry's monitoring function.

The ways in which we will gather intelligence and understanding about the health of our regulatory system, as illustrated in Appendix 4, include:

1. Policy development; research and evaluation; environmental scans; and cost benefit, social impact and environmental impacts assessments.
2. Monitoring the capacity and capability of our regulators.
3. In-system and system-wide tools assessments of the regulatory system.
4. Determining each year which Rules require updating.
5. Sector engagement.
6. Intelligence gathered though Performance Improvement Framework (PIF) review, G-REG assessment, TAIC reviews, and any other specific reviews.

During 2019, the transport agencies will consider the usefulness of developing indicators of regulatory system success as an addendum to developing a tool to assess regulatory system health.

c. Identify, store, triage, prioritise and respond to regulatory issues

The Ministry and its regulators will continue to collect and triage transport regulatory issues raised by stakeholders and regulated parties, but will do so in a more structured way. This will bring together information from all the routes identified in Appendix 4 and will underpin the ability of the Ministry and its regulators to assess the health of the transport regulatory system.

As a result, a rolling annual programme of assessment and regulatory amendments can be progressed.

Issues identified through one or more of the routes illustrated in Appendix 4 (including contributions from stakeholders, monitoring, evidence, reviews, surveys policy analysis etc.) can end up being addressed through:

- EITHER: the annual Rules Programme.
- OR: the next regulatory stewardship project/ regulatory system update.
- OR: a separate policy process and legislative process.
- OR: through an administrative mechanism.

The fit of the various into one of these routes will need to be considered on a case by case basis.

As issues come to light, the Crown entities use a triaging process to work through the problem definition stage with the sector.

One example is the Aviation Community Advisory Group (ACAG): a representative industry body providing advice to the CAA on issues affecting aviation safety and the aviation operating environment. ACAG functions include:

- Identification of regulatory issues that need to be addressed

- Advice on issue priorities
- Technical expertise and input during the issue assessment process
- Advice on implementation of both regulatory and non-regulatory options and solutions to issues.

The ACAG membership reflects the range of interests in the aviation community and includes both permanent members provided by representative organisations and elected members from the aviation community.

d. Rules Programme for 2019/20

The Rules Programme 2019/20 will be determined on the basis of the criteria below (following the process summarised in the previous section), focusing on:

- Strategic fit, effectiveness and efficiency; and
- Where delivery is possible and appropriate (given resource, cost benefits etc).

The criteria can be passed over each of the modes and domains illustrated in Appendix 1 (e.g. People; Vehicles; Network Management and so on).

Criteria for prioritising issues for the Rules Programme:

1. Regulatory amendment would contribute to the achievement of one or more of the transport outcomes, or other Government or organisational priorities; **AND**
2. Amendment is necessary or urgent to avoid risks of regulatory failure (system or service delivery); **OR**
3. Amendment is necessary to make the system fit for purpose by updating to reflect contextual or environmental change or innovation; **OR**
4. Amendment would implement a new policy proposal.

All the changes assessed are ranked within each Crown entity (by the entity) and then across the entities (the Crown entities together, in conjunction with the Ministry of Transport).

e. Reporting on, and refreshment of, the Plan

The Government has indicated that each year the major regulatory departments will publish information on their regulatory management strategy, information on the state of their regulatory stock and their regulatory priorities for the year ahead (their regulatory stewardship strategy). In compliance with the Government's expectations, the Ministry, in partnership with the transport Crown entities, will:

1. Publish a Report in December 2019, outlining the state of the Ministry's regulatory system.
2. Publish an updated and refreshed transport regulatory stewardship plan by 31 March 2020.

SECTION 6: 2020 AND BEYOND: ACTION PLAN

Based on many of the outputs from the 2019 work programme, the transport agencies intend to:

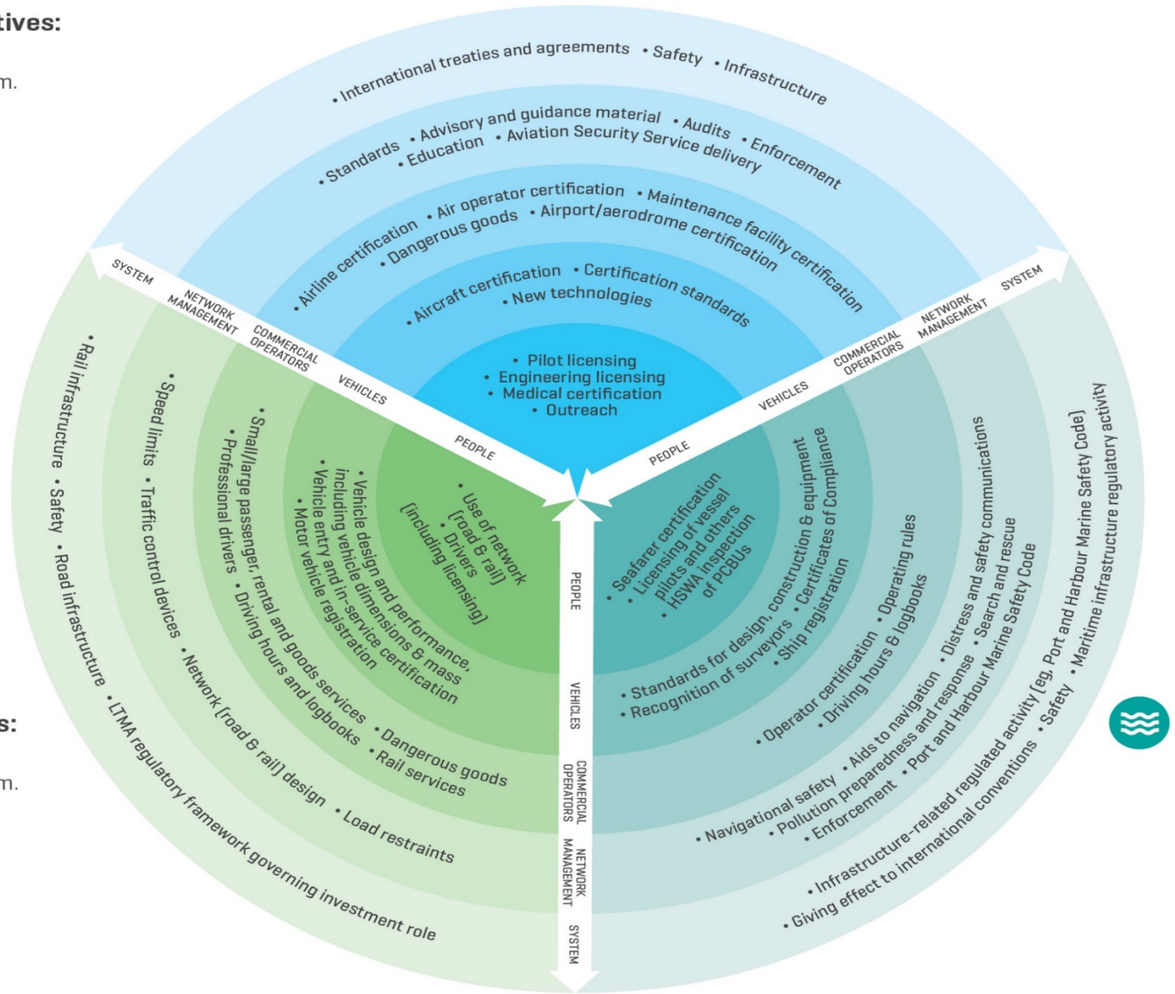
1. Take a broader and on-going approach to regular assessment of the overall health of the transport regulatory system and strategic monitoring of the transport agencies, making use of the assessment tools developed.
2. Develop a more regular and efficient cycle of not just Rules changes, but also of primary legislation and Regulations.
3. Improve the quality of our regulatory policy design, our use of regulatory tools and our understanding of which form of regulation is appropriate for which circumstance.
4. Better prepare the transport regulatory system for innovation and emerging transport technologies.
5. Ongoing annual regulatory stewardship reporting and planning.

The transport regulatory system works to achieve the transport outcomes:	Economic prosperity.	Inclusive access.	Healthy and safe people.	Environmental Sustainability.	Resilience and Security.

TRANSPORT REGULATORY SYSTEM MAPPING

AVIATION – transport objectives:

- Integrated, safe, responsive, and sustainable transport system.
- Obligations under international agreements are implemented.



LAND – transport objectives:

- Integrated, safe, responsive, and sustainable transport system.
- Obligations under international agreements are implemented.

MARITIME – transport objectives:

- Safe, clean, secure.
- Integrated, safe, responsive, and sustainable transport system.
- Obligations under international conventions are implemented.
- Protection of marine environment. Preparedness for and ability to respond to marine oil pollution spills.

Regulatory transport system funding model/principles.

Each of the transport modes interacts with other regulatory systems e.g.:	International regulatory regimes (e.g. in the Pacific) with MFAT.	Space regulatory regime, with MBIE.	Workplace health & safety regime, with Worksafe.	Environmental regulatory regimes, with MfE and others.	National security.

Applying a regulatory stewardship approach to the transport regulatory system

Instruments utilised in the transport regulatory system	Emerging themes across transport regulatory system	What we are doing 2019-2022	How we are doing this
Primary legislation	We are behind on regulatory stewardship which means that some of transport's regulatory settings are creaky. Our regulatory framework might not be: • Providing incentives for operators to act safely and responsively with respect to safety and environmental objectives. • Keeping up, or positioned to keep up, with technological innovation. The transport regulators might not have the full suite of powers to enable them to do their jobs to support compliance (compared with the fuller suite of powers in the workplace health and safety regime). This is particularly the case where there is the potential for catastrophic harm. The transport regulatory system has a messy interface between national and local regulation (particularly bylaws). There are no clear principles underpinning this national/local interface. There are risks of gaps or ineffective overlaps between regulators at the interface between the transport and the workplace health and safety regulatory systems. There are overlaps between the transport regulatory system and other systems such as security, international, and environmental regulation, which may not be well understood or well managed. Rules are reasonably unique to the transport regulatory system and they risk coming outmoded, overly prescriptive and inefficient. The current licensing regimes used in the transport regulatory system, which are based on fit and proper person tests, may not be achieving the intended outcomes. Increasing expectations from local authorities to rely on rules instead of bylaws	Progressing the Civil Aviation Bill to make aviation regulation fit for purpose in a changing technological and security environment e.g. drones.	Civil Aviation Bill
		Considering the need for additional regulator powers across transport modes to support all compliance levers.	Regulatory System (Transport) Amendment Bill
		Redesigning the penalties and remedies regime to: • Be principled, outcomes and risk-based (risks to self, others or the environment) and designed to promote compliance. • Be coherent within and across transport modes.	
		Developing a principled approach to when traffic and other regulatory requirements should be set nationally, regionally or locally, to reduce confusion.	
Regulations		Ensuring offences (e.g. in the maritime space) are fit for purpose. Applying the principles for a new penalties and remedies regime and developing schedules of offences with associated penalties, by level of risk.	Amendments to the regulations and notice as the Bill is progressing or following its enactment.
		Bringing up to date the Regulations covering towage and storage fees in relation to Police seizure powers. Bringing up to date the Notice covering Towage fees in relation to territorial authority parking offences.	
Rules		Ensuring Rules, where they remain useful, are fit for purpose in the context of priorities such as safety, environmental protection, modern views about shared transport spaces, changing technology and vehicle design, and so on.	Annual Rules Programme. Cabinet will be asked to agree to the 2019/20 Rules Programme before 1 July 2019.
			Amendments following the enactment of the Bill.
Other legislative instruments such as notices or (proposed) transport instruments		Introducing transport instruments to enable regulators to be more responsive and flexible to emerging technical issues and to rely less on Rules.	Civil Aviation Bill. Regulatory System (Transport) Amendment Bill.
Bylaws			Consequential amendments arising from the Regulatory System (Transport) Amendment Bill.
Other legislative tools e.g. GPS, standards, guidance		Considering how to give regulators the authority to use more administrative instruments in some cases, to improve flexibility and ability to keep up to date.	Regulatory System (Transport) Amendment Bill and any consequential amendments.
Self or co-regulation			

Appendix 3

Capability and capacity

The Ministry

- Following a review of the Ministry's own capability and capacity, we have established a team of six dedicated to transport regulatory policy and stewardship. This team focuses on the development and delivery of the regulatory strategy, assessment and maintenance of regulatory systems, growing policy and regulatory capability, and delivery of key priority regulatory projects and programmes.
- The Ministry also continues to build and embed its evaluation, analytics and appraisal functions which support it to assess, monitor and evaluate regulatory change.
- The legal and regulatory policy teams of the Ministry, NZTA, CAA and MNZ work closely together including when developing proposals to amend the Rule and Regulations.

New Zealand Transport Agency

- NZTA has adopted its first Regulatory Management Strategy 2018-23 entitled *Influencing Behaviour in a Changing World* which is focused on enhancing NZTA's regulatory performance. A companion *Regulatory Work Programme 2019-23* is under development and should be completed in early 2019.
- NZTA has recently adopted a new Regulatory Position Statement that *as the land transport regulator our systems should be intuitive to ensure people can make good transport choices, while harmful behaviour is swiftly dealt with*. It is now working on developing a regulator performance framework with regulatory performance Key Performance Indicators to be incorporated into Board reporting.
- NZTA has a second tranche of staff working through the L3 Core Knowledge Programme (over 100 staff will have completed this by the end of 2018).
- Following a 2018-19 Meredith Connell review of regulatory non-compliance issues the NZTA is developing a future state blueprint for a new compliance and enforcement group structure, with improved business and decision-making processes and an increase in the number of staff allocated to compliance activity. A new specialised regulatory compliance group has been established and a new General Manager will govern the blueprint design and implementation. The NZTA has also reviewed and clarified its regulatory delegations and lines of accountability, and is centralising and strengthening it capability to support the development and implementation of regulatory policy.

Maritime New Zealand

- MNZ published a *Compliance Strategy* and a *Compliance Operating Model* in 2014. Part of MNZ's recent reorganisation has been to explicitly strengthen its ability to operate under this Strategy.
- All MNZ staff have completed qualifications developed under the Government

Regulatory Initiative (G-REG) certification level 1. Specialist staff are doing higher level G-REG qualifications.

- MNZ chairs and participates in a G-REG regulatory stewardship working group that has developed good practice guidelines on how regulators can contribute to policy and is currently trialing a framework for conducting peer learning discussions involving regulators. The objective of the framework is to enable regulators to share knowledge and regulatory approaches, assisted by experienced people from other regulators (the 'peers') and a ready-made peer learning process and some key documents.

Civil Aviation Authority

- CAA has initiated an internal Regulatory Craft Programme (RCP). The RCP is a multi-faceted programme designed to transform CAA's regulatory practice and capability. As regulation becomes increasingly performance and risk-based, the challenges for regulators are to support their staff to work effectively within a new regulatory paradigm and the aviation sector to adapt to new and different regulatory requirements.
- The CAA is focussed on three inter-dependent streams of activity, all of which are focussed on it becoming an effective performance-based regulator. Those three streams focus on: people (capability); guidance (operational policy and procedures); and business processes and systems (supporting and enabling).
    - The people aspect has focussed heavily to date on defining the required competencies for regulators and transforming "people practices" to ensure that staff are professionally developed appropriately, and to ensure that people with the right mix of competencies and other attributes are recruited into the CAA.
    - The guidance stream is focussed on revising operational policies and procedures to help regulatory staff make effective regulatory decisions.
    - The business processes/systems stream is about ensuring that business systems fit and support a new and different way of working.
- The CAA has committed to the Government Regulatory Practice Initiative (G-REG) through funding G-REG and ensuring as many of its people as practicable sign-up to undertake components of the G-REG qualification. To cement the learnings from G-REG, the CAA holds regular internal workshops to reinforce the application of G-REG learnings within the CAA's operational environment.

Taking into account *(the NZ Productivity Commission 2014 refers)*:

The institutional form and independence of each regulatory in the transport system; the quality of regulatory design and clarity of mandate, roles, functions and duties; resourcing and funding; workforce capability; accountability mechanisms; governance, decision-rights and discretion; performance measurement, evaluation, review and reporting; external; monitoring; approach to risk management and innovation; and the approach to consultation and engagement with stakeholders.

1. DEVELOPING	2. MONITORING	3. ASSESSMENT TOOLS	4. UPDATING
POLICY DEVELOPMENT **GOOD COMMISSIOING** **COST BENEFIT, SOCIAL IMPACT & ENVIRONMENTAL ANALYSIS FRAMEWORKS** **REGULATORY IMPACT ASSESSMENTS** **RESEARCH & EVALUATION** **MEASUREMENT OF OUTCOMES** **BUDGET PRIORITIES**	**MONITORING and DATA COLLECTION** **STRATEGIC MONITORING AND LINES OF INQUIRY to ensure:** • The activity of the regulators is aligned with the delivery of regulatory outcomes and the monitoring of risks. • Regulators are performing well against Treasury expectations and broader principles of good regulatory practice • Insights are taken to the relevant Board and to Ministers. • That leadership and oversight is demonstrated. • Organisational health and results are demonstrated. **FUNDING & FEE REVIEWS**	**REGULATORY SYSTEM ASSESSMENTS** • Identify where: (a) Parts of systems may need to be evaluated to determine whether they are operating as intended; OR (b) Feedback from monitoring, stakeholders or regulators or other mechanisms highlights that there might be issues with a regulatory system that needs exploring. • Then undertake an assessment in these areas using good regulatory design principles, and involving key players in the system.	**ANNUAL RULES PROGRAMME** **CONSEQUENTIAL AMENDMENTS TO REGULATIONS** **REGULATORY SYSTEM (TRANSPORT) AMENDMENTS TO PRIMARY LEGISLATION**

Intelligence gathered (e.g. collection tool, data, surveys).

Outcomes of Commission (TAIC) inquiries

G-REG assessments.

PIF Reviews.

Outcomes of other reviews.

Results from all strands of work, above.

INTERNATIONAL STRATEGIES/STANDARDS

TREATY OF WAITANGI

SECTOR& STAKEHOLDER ENGAGEMENT