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# Briefing for the incoming Associate Minister of Transport

Transport Accident Investigation Commission  
*Te Komihana Tirotiro Aitua Waka*

May 2017

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## A. About the Commission

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### Purpose

The Transport Accident Investigation Commission (the Commission) is a standing commission of inquiry. Its mandate is to undertake independent investigations into certain accidents and incidents in air, rail and maritime transport, and to report its findings and recommendations.

The Commission's enabling legislation is the Transport Accident Investigation Commission Act 1990 (the Act). The Commission was established to achieve greater compliance by New Zealand with the Convention on International Civil Aviation (ICAO Convention), particularly Annex 13 which relates to safety-focused accident investigations. It was given the power to inquire into rail accidents in 1992, and three years later its mandate was further extended to inquire into maritime accidents to support New Zealand's obligations as a member of the International Maritime Organization and the International Convention for the Safety of Life at Sea (SOLAS). The International Maritime Organization developed a Maritime Casualty Investigation Code, which requires maritime accidents and incidents to be investigated by an independent investigative agency for the purpose of preventing further accidents and incidents rather than for apportioning blame or liability.

The Act prescribes the Commission's purpose, which is **'to determine the circumstances and causes of accidents and incidents with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person'**.<sup>1</sup>

### Functions and powers

The Commission's principal function is to investigate aviation, rail and maritime accidents and incidents (occurrences).<sup>2</sup> To that end, it must in the case of each occurrence:

- decide whether to investigate. The Commission must do so if it believes that an occurrence has (or is likely to have) significant implications for transport safety or would allow it to make recommendations that would improve transport safety
- co-ordinate and direct the investigations it initiates and decide which other parties (if any) should be involved in its investigations
- consider evidence gathered by investigators, advice from experts, and the submissions of consulted people and organisations; and hold private or public hearings
- publish its findings and recommendations – the Commission has recommendatory powers only.

The Commission has broad investigative powers under the Act, including the power of entry and inspection, and the power to seize, remove and protect evidence. It also has powers under the Commissions of Inquiry Act, including the power to require a person to produce any papers, documents, records or things or to summons any person to appear before the Commission. The

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<sup>1</sup> Section 4 of the Transport Accident Investigation Commission Act.

<sup>2</sup> Sections 2 and 8 of the Transport Accident Investigation Commission Act.

evidence the Commission gathers (including witness interviews) is protected from general disclosure, except for the purposes of the investigation.

### Operating environment

The Commission operates alongside transport safety authorities (the regulators<sup>3</sup>), which may also investigate transport accidents and incidents. Often, the regulator's focus is to determine whether or not compliance with the regulatory regime has occurred and, if not, to establish whether regulatory action should be taken. The Commission's inquiries focus on the safety system as a whole, which can include examining the performance of regulators, or where gaps in regulation might lead to safety risk.

Coroners have an interest in transport accidents that result in fatalities. The New Zealand Police investigate on behalf of the Coroner, and may also pursue a criminal inquiry. It is therefore possible that multiple parties may pursue an investigation for differing purposes following a transport occurrence. The Coroners Amendment Act 2016 clarified the roles of Coroners and other authorities that investigate deaths and accidents.

### International context

The Commission is part of a global network of transport accident investigation bodies prepared to meet their States' obligations to conduct investigations consistent with international requirements. This includes investigating qualifying accidents or incidents occurring within New Zealand's 12 nautical mile limit, as well as in or above international waters in the case of a New Zealand registered aircraft or ship. The Commission may also support an international agency's investigation of an event with a New Zealand connection.

## B. Corporate structure and strategy

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### Structure

As well as being a standing commission of inquiry, the Commission is an independent Crown entity under the Crown Entities Act 2004. It is totally Crown funded with an annual budget of \$5.639 million for 2016/17.<sup>4</sup> The Commission currently has four members who also act as the Commission's Board for the purposes of the Crown Entities Act. Appendix 1 has more information about the Commissioners and the Executive Management Team.

The Commission is required under statute to employ a chief executive.<sup>5</sup> The chief executive employs 29 staff to support the Commission, which comprises 17 specialist investigators (including the Chief Investigator of Accidents) and 12 staff to support the Commission's investigations and Crown entity accountability and governance functions. Some investigation support is provided free under memorandums of understanding or fee-for-service contracts by suitably qualified individuals or institutions, including other state resources and international colleague agencies. Some support

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<sup>3</sup> Maritime New Zealand, the Civil Aviation Authority, and the New Zealand Transport Agency.

<sup>4</sup> The funding for 2017/18 reduces to \$5.530m. From 2018/19 onwards it remains at \$5.520m per year.

<sup>5</sup> Transport Accident Investigation Act 1990, Schedule, Clause 21.

functions are contracted from individuals or firms. These functions include information technology, human resources, medical advisory, and research.

### Strategic direction and objectives

The Commission's strategic direction is focused on achieving a specific outcome expressed as a visionary statement: **No repeat accidents—ever!** The Commission achieves this goal through its investigations and findings, and, where appropriate, the making of recommendations to relevant parties. The Commission is mindful of its business model as an independent Crown entity, and its obligations to operate effectively and efficiently.

As described in the Commission's Statement of Intent 2015-2019 (Attachment 1), the Commission has set five strategic objectives to ensure it contributes to a safer transport system and meets its statutory obligations. These objectives are to:

- Deliver sound, cost effective Crown entity performance
- Develop and maintain responsive reciprocal stakeholder relationships
- Share inquiry and entity information
- Develop and maintain capable staff
- Properly conduct investigations

## C. Current matters

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### Additional funding is increasing capability

The Commission received \$1.4 million of additional funding in 2015/16, from baseline funding of \$3.96 million in the previous year. This has enabled the Commission to improve its capacity to undertake its statutory function of determining the circumstances and causes of occurrences. The Commission has strengthened its investigative capabilities, growing its investigation team by six investigators including a new forensic data role. For the first time in its 25 years of organisational life, the Commission is to have four to five members, rather than three. This will ensure continuity of the Commission's work, particularly when vacancies arise.

The Commission is mindful of the values that guide it in ensuring that natural justice is maintained. The Commission is progressively enhancing its information and communication systems to support accessibility to the Commission and the information it is able to share during the course of its inquiries. In this regard the Commission is paying particular attention to its inquiry stakeholders, who include government, regulatory and industry organisations, commercial transport operators, international organisations and those most directly affected by the accidents and incidents it investigates – the people involved and their families.

### Maintaining investigative standards

The Commission achieves improvement in transport safety by maintaining high investigative standards. The Commission conducts self-assessments of its investigations against international standards. The Commission has also recently been audited by the International Civil Aviation

Organization (ICAO), as part of what was intended to be a wider review of how compliant New Zealand is with its international aviation obligations. However, the visit was confined to accident investigation due to the temporary impact of the 14 November 2016 earthquake on the Civil Aviation Authority. The Commission is awaiting the final report, having commented on a confidential draft.

The Commission is nearing completion of a comprehensive project to develop and enhance existing guidelines designed to maintain quality investigations and proper governance of inquiries. This project will further strengthen the Commission's processes to ensure its investigations are carried out in a robust, thorough and timely manner.

### Current inquiries

The Commission aims to close 20-25 inquiries a year, spread roughly evenly across the modes. Improving timeliness in completing inquiries is a major organisational focus for the Commission in 2016/17. It is working towards completing 70% of its inquiries within two years, an achievable target since the 2015/16 increase in baseline funding and the recruitment of additional investigative staff. For 2016/17, a more realistic target of 50% applies while the Commission clears a backlog of 'aged' cases. This target increases to 60% for 2017/18.

The 70% target recognises that there are always some inquiries on the Commission's casebook that are complex. Complexities arise for various reasons, including technical aspects of the occurrence, and the number or depth of the submissions that the Commission must consider as part of its inquiry. In recent years, the Commission has been working to better meet its legislative purpose by increasing the use of hearings, and by taking a more systemic view of safety issues. In some cases, inquiries have been combined where there are common themes.

The ideal loading is 30 open domestic cases to maintain the desired throughput. As at 27 April 2017, the Commission had 34 domestic inquiries open: 16 air, 7 rail, and 11 maritime.

***A full list of current inquiries is included at Appendix 3.***

### Current inquiries of note

Most of the Commission's investigations attract a certain level of public and media attention; however, some receive greater coverage than others. Outlined below are three of the higher-profile cases the Commission is currently investigating:

- **Queenstown Robinson helicopter crash – inquiry AO-2015-002:** In September 2016, the Commission resumed an inquiry into an accident that occurred in February 2015, and for which a report was published in August 2016. After publication, the Commission was provided with new and potentially significant evidence that it had not previously considered. On this basis the Commission has resumed its inquiries into potential further safety issues raised by the new evidence.
- **Fox Glacier helicopter crash – inquiry AO-2015-007:** On 21 November 2015 six passengers and the pilot of a Eurocopter helicopter (Squirrel) were killed when the helicopter crashed on Fox Glacier during a sightseeing tour. The passengers on board included Australian and UK nationals, and the accident received significant media attention here and abroad. The Commission is nearing the end of its analysis phase and has begun writing its draft report. The final report is anticipated to be published in May or June 2017.

- **Kaipara Harbour Francie fishing boat capsized – inquiry MO-2016-206:** on 26 November 2016 the fishing charter boat Francie capsized while crossing the bar at the Kaipara Harbour entrance. Seven passengers and the skipper died, and three passengers survived. The investigation is in its early evidence-gathering phase, but has already received significant media coverage.

## Watchlist

Communications about findings and recommendations is a critical way of influencing the sector to enhance safety. In January 2015 the Commission published its first “Watchlist” of safety issues that it believes need greater attention. The purpose of the Watchlist is to highlight emerging issues of concern to the Commission, as well as safety issues or recommendations that it has highlighted previously but which it believes require further action. The following issues are on the Commission’s Watchlist:

**Recreational boat users: essential skills and knowledge** was added to the Watchlist in January 2015. The Commission’s view is that the current system is flawed because it relies on users knowing relevant maritime rules, regulations and bylaws, but does not require them to demonstrate such knowledge before taking craft on the water. In 2009 the Commission recommended that the Secretary for Transport address this issue; the recommendation remains open.

**Substance use: regulatory environment for preventing performance impairment** was added to the Watchlist in January 2015. International research suggests the likelihood and severity of accidents increase if people responsible for performing safety-critical tasks use drugs or alcohol. In the New Zealand air, rail, and marine accidents investigated by the Commission, the consumption of alcohol or use of other performance impairing substances recurs as a contributing factor or a potential impediment to survival. Legislation currently before Parliament goes some way to meeting the recommendations the Commission has made in relation to this matter.

**Technologies to track and to locate** was added to the Watchlist in January 2015. Commission inquiries in all three modes have suggested opportunities exist for New Zealanders to get greater benefit from the life-saving technologies available to them. The Commission encourages transport regulators to educate operators of the significant safety advantages of using the most technologically advanced tracking and locating devices that are reasonable and affordable, and to regulate for this in some circumstances.

**Robinson helicopters** were added to the Watchlist in October 2016 as a result of accidents investigated by the Commission and the Civil Aviation Authority that involved a phenomenon known as mast bumping. Mast bumping occurs when part of the main rotor blade or rotor hub make contact with the main drive shaft (or mast). The result is often catastrophic and results in in-flight break up. The Commission has made recommendations to the manufacturer and the regulator about mast bumping. The Commission currently has five open inquiries involving Robinson helicopters.

**Safety at railway level crossings** was added to the Watchlist in October 2016. Several Commission investigations have highlighted that the safety of pedestrians and vehicle users at railway level crossings is being compromised because of ambiguities in the responsibilities between road and rail authorities, and because the implications for the road-rail interface are sometimes not recognised when changes are made to rail vehicle technology and rail infrastructure. The Commission has open

recommendations to the regulator, business operators, and road control authorities to reduce safety risks.

## D. Relationship with Ministers

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The Commission maintains a 'no surprises' relationship with the Ministers of Transport consistent with its statutory independence. Standard elements of the relationship include the:

- receipt of an annual letter of expectations from the Minister, Statement of Intent and Statement of Performance Expectations preparation. Reporting occurs six-monthly against the Statement of Performance Expectations and annually (through you to Parliament) against the Statement of Intent and the Statement of Performance Expectations
- meetings of the Chief Commissioner with the Minister or delegated Associated Minister, every two months or as required
- briefings of the Ministers about significant recent or forthcoming activity.

The Chief Investigator of Accidents notifies stakeholders, including your office, by email when an inquiry has been opened. The notice provides a general indication of the nature of the inquiry, but any opening advice is tentative. In most circumstances, the Commission does not contact your office again until the inquiry report is released (unless the Commission is consulting with the regulator or Ministry on a matter). Your office receives early advice of the release of a report (including all materials) and is briefed on the release process. Usually the release of a report involves publication on the Commission's website. Where inquiries have generated public interest, the Commission may hold a press conference.

For the most part, the Commission deals with media inquiries about investigations. It is usual for the Minister to maintain an arm's length from the Commission's inquiries, and respond to any media inquiries by noting that an independent body, the Commission, is undertaking the investigation.

The Commission's General Manager, Communications and Investigation Support, will introduce himself to your press secretary to brief him or her on the Commission's functions and processes.

## Appendix 1 Commissioners and Executive Team

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Commissioners are appointed by the Governor-General on recommendation of the Minister of Transport for fixed, renewable terms. Under the Transport Accident Investigation Act 1990, up to five Commissioners may be appointed. There are currently four Commissioners:

- **Jane Meares (Chief Commissioner):** Jane is a commercial barrister based at Clifton Chambers in Wellington. Prior to joining Clifton Chambers, Jane was the chief legal adviser at the Treasury and, before that, a commercial partner in the Wellington office of Bell Gully. At the bar, she undertakes a broad range of commercial and public sector advisory work. She is currently chair of Parliamentary Counsel's risk and audit committee, chair of the Ballet Foundation of New Zealand, on the Corporate Trust Board of Trustees Executors Ltd and a board member of ECNZ. Jane was first appointed a Commissioner in February 2015, and appointed Chief Commissioner in November 2016.
- **Peter McKenzie QC (Deputy Chief Commissioner):** Peter is a commercial barrister in sole practice at Capital Chambers, Wellington. He was Chair of the Securities Commission from 1990 to 1995. In addition to his Barrister's practice he has lectured in corporate, banking and finance law at Leeds University and at Victoria University of Wellington. Before becoming a barrister, he was a senior litigation partner and commercial partner with Brandon Brookfield, Solicitors. He has consulted internationally on company and securities law to numerous foreign governments, and has authored text and journal articles in his areas of expertise. Peter was appointed to the Commission in August 2015.
- **Stephen Davies Howard (Commissioner):** Stephen is a Wellington based company director. Prior to coming to New Zealand he held leadership roles in the UK public sector, including Parliamentary Select Committee and Defence Council enquiries. He spent his early career as a fighter pilot with the Royal Air Force and also served in the Royal New Zealand Air Force, attaining the rank of Group Captain in both services. He has a wealth of strategic international experience and was an accredited Attaché to the British Embassy in Washington DC, USA. Stephen retains both a commercial pilot licence and a commercially endorsed Ocean Yachtmaster's certificate. Stephen was appointed to the Commission in August 2015.
- **Richard Marchant (Commissioner):** Richard is an Auckland-based barrister who has prosecuted a large number of cases on behalf of Government agencies. He was previously a partner at Meredith Connell, and Chair of the Board from 2008 to 2013. He is a member of the New Zealand Bar Association and of the Criminal Bar Association. He has served on the executive of the Criminal Bar Association, the legal assistance scheme committee of the Auckland District Law Society, and the local consultative group of the Legal Services Agency. He is a member of the performance review committee of Ministry of Justice, and on the Auckland Regional Courts Group. Richard was appointed to the Commission in November 2016.

The Executive Management Team comprises a Chief Executive and three general managers:

- **Lois Hutchinson (Chief Executive):** Lois joined the Commission as Chief Executive after senior roles in censorship and health administration. Promoting social justice and reducing public harms are the common threads to her career, which began in nursing. Lois has a Master's degree in public policy from Victoria University of Wellington and a Master of Science in organisational performance from Cranfield University, UK. Lois leads the organisation to support the Commissioners in the delivery of their statutory purpose, which is to help improve transport safety.
- **Cathryn Bridge (General Manager– Business and Legal Services):** Cathryn brings 20 years of public sector management experience in legal, regulatory, policy, operational, strategy and project roles. She was Chief Legal Advisor, Programme Manager Strategic Projects and Principal Policy Analyst at the Ministry of Fisheries. Prior to joining TAIC she managed the nationally significant proposal consenting process team at the EPA. She has an LLB and BA from Victoria University and an Executive Masters of Public Administration through the Australian and New Zealand School of Government, focussing on leadership, organisational strategy and change management.
- **Peter Northcote (General Manager– Communications and Investigation Support):** Peter has a background in marketing communications and management in the private and public sectors, with experience in the health, education, and electoral fields before coming on staff in 2009. However, his involvement with the Commission dates back to 1995 when, as a public relations consultant, he supported the Commission's media and stakeholder relations at a significant accident; a role for which he has been engaged since (with one five-year break). His affinity with the transport sector developed with his first public relations role, in uniform with the Royal New Zealand Air Force. Peter has a Master's degree in Public Management (VUW), and he has recently completed a Master's degree in Disaster and Emergency Management with the Commission's support.
- **Tim Burfoot (Chief Investigator of Accidents, General Manager Investigation Services):** Tim began employment with the Commission in January 1995. He holds the qualification of Captain (Foreign-Going) with a significant background in shipping including captaining foreign-going vessels engaged in world-wide trading with multi-national crews. After completing about 30 marine accident investigations over a period of four years, Tim was appointed as the Commission's Chief Investigator of Accidents in 1999. Tim left the Commission in 2002 to take up a position as Marine Operations Manager for the Cook Strait ferry company Interislander. In January 2007 Tim returned to the Commission in his role as Chief Investigator of Accidents.

## Appendix 2 Commission contact

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**Chief Executive** Lois Hutchinson

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### Commission details

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## Appendix 3 Open inquiries as at 10 May 2017

### Aviation

Inquiry No.	Occurrence description	Date opened
13-010	Aerospatiale AS350 B2 ZK-IMJ, collision with second helicopter, Tyndall Glaciers	29/10/2013
14-005	Aerospatiale AS350 helicopter, snow landing accident, Mount Alta, 20 km north-west of Wanaka	16/8/2014
15-001	Pacific Aerospace Ltd 750XL, engine failure, Lake Taupo	7/1/2015
15-003	Robinson R44, Main rotor blade failure, Waikaia	25/2/2015
15-005	Loss of air traffic control services, nationwide	23/6/2015
15-007	AS350BA Eurocopter, ZK-HKU, collision with terrain, Fox Glacier	21/11/2015
15-009	Break down of traffic separation, Hamilton control zone	17/12/2015
16-004	Guimbal Cabri light helicopter, in-flight fire, Rotorua	16/4/2016
16-006	AS350 Squirrel helicopter, crash landing, North of Arrowtown	12/9/2016
15-002R	Robinson R44, impact with terrain, Queenstown	28/9/2016
16-007	Robinson R44, impact with terrain, Glenbervie Forest, Northland	1/11/2016
16-008	Robinson R66, impact with ground, Hokonui Hills, Southland	14/11/2016
17-001	Squirrel AS320BA, impact with terrain, Port Hills, Christchurch	14/2/2017
17-002	Robinson R44, Reefton	28/3/2017
17-003	ATR Nelson landing gear	9/4/2017
17-004	BK117 Pauatahanui, Wellington	2/5/2017
<b>International assist</b>		
14-001	Boeing 737-3B7 Freighter, right-hand undercarriage collapse during landing roll, Honiara, Solomon Islands	29/1/2014
15-004	Australian-registered B737 VH-VOP, Landing event, Christchurch	11/5/2015
15-008	PAC 750 XL, forced landing after engine shut-down, North Carolina, USA	10/12/2015
16-002	PAC 750 XL aeroplane, runway excursion, Molinella, Italy	6/3/2016
16-003	PAC 750 XL aeroplane, forced landing, Nepal	9/3/2016

## Rail

Inquiry No.	Occurrence description	Date opened
13-101	Freight Train 345, Derailment, Mission Bush Branch	14/1/2013
14-105	Empty passenger train and excavator, near collision, between Featherston and Dalefield	11/8/2014
15-103	Track occupation irregularity, Taumarunui	15/12/2015
16-101	Near Collision, between passenger trains, Wellington	31/5/2016
16-102	Freight train, passing a signal at danger, Paerata	26/10/2016
17-101	Freight train, unauthorised entry to work site, Pongakawa	7/2/2017
17-102	Signalling Irregularity, 42 & 43 signals, Wellington	3/4/2017

## Maritime

Inquiry No.	Occurrence description	Date opened
15-201	Passenger ferry Kea, collision with wharf, Devonport wharf, Auckland	17/2/2015
15-203	F.V. Jubilee, loss of vessel, Canterbury Bight	19/10/2015
16-201	Passenger vessel Pee Jay V, fire and abandonment, Whakatane	18/1/2016
16-202	Passenger ship Azamara Quest, struck Wheki Rock, Tory Channel	27/1/2016
16-204	Moly Manx grounding, Otago Harbour	19/8/2016
16-205	Panama-registered bulk carrier New Legend Pearl, crew fatality, Northland	4/11/2016
16-206	Fishing charter vessel Francie, capsize, entrance to Kaipara Harbour	28/11/2016
17-201	Passenger vessel, L'Austral, contact with submerged object, Snares Island	13/1/2017
17-202	L'Austral, contact with rock, Milford Sound	9/2/2017
17-203	Passenger vessel Emerald Princess, explosion resulting in crew fatality, Port Chalmers, Dunedin	9/2/2017
17-204	Seabourn Encore, contact with cement carrier, Timaru	12/2/2017

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**Transport Accident Investigation Commission**  
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