

Briefing for the Incoming Minister of Transport

September 2005

Part A Purpose of this Briefing

The purpose of this briefing is to advise you of the key near-term and longer-term strategic issues relating to the investigation of transport accidents and incidents that the Commission considers it must address and discuss with you during its upcoming strategic planning round.

We begin by briefly describing the origins and the key features of the Commission (see Part B), and then discuss two recent reviews of New Zealand's organisational arrangements for investigating transport accidents and incidents (Part C). In Part D we identify and briefly discuss the key strategic issues now confronting the Commission.

Part B Origins and Key Features of the Commission

Origins

The Transport Accident Investigation Commission ('the Commission') was established in 1990 under the Transport Accident Investigation Act 1990 ('the Act'). The Act directs the Commission to act independently when performing its statutory functions of investigating the circumstances and causes of transport accidents and incidents (see s8(3)). The Commission has been a Crown entity since its establishment emphasizing its operational independence from the government-of-the-day.

The Commission was established to achieve greater compliance with the Convention on International Civil Aviation ('the Convention'). Unless signatory states have filed a notification of difference, they are required to comply with the standards and are expected to comply with recommended practices set out annexes to the Convention. In Annex 13 (Aircraft Accident and Incident Investigation) there is a standard that air accidents and incidents are to be investigated by an independent investigator focused on preventing further accidents and incidents and not on apportioning blame or liability. Prior to 1990 the Office of Air Accidents Investigation within the Ministry of Transport investigated air accidents and incidents; this arrangement was seen as not providing sufficient independence to the investigator.

The Commission's starting point in preparing this briefing is that the fundamental principles reflected in Annex 13 - 'independent investigations' and 'no-blame investigations' - should underpin New Zealand's arrangements for investigating transport accidents and incidents.

The Act gives the Commission the powers of a commission of inquiry per the Commissions of Inquiry Act 1908; in effect, therefore, it is a standing commission of inquiry. The precipitating factor giving rise to this status was the prolonged and expensive public inquiry into the crash of an Air New Zealand DC-10 on Mt Erebus. The Commission was established as a standing commission of inquiry in the expectation that doing so would obviate the need for similar one-off public inquiries.

The Commission's Current Legislative Mandate

The key elements of the Commission's current legislative mandate are as follows:

Purpose. The Commission's principle purpose is to determine the circumstances and causes of civil aviation, maritime and rail accidents and incidents to avoid reoccurrences and not to ascribe blame (see s4 of the Act). (N.B. All subsequent references to statutory provisions are to be read as references to the Act.)

Functions. The Commission's principal function is to investigate civil aviation, maritime and rail accidents and incidents (see s2 and s8). To that end, it must in the case of each accident or incident:

decide whether to investigate – per s13, the Commission must do so if it believes that the accident or incident has significant implications for transport safety or would allow it to make recommendations that would improve transport safety, or it is directed by the Minister to investigate having itself previously decided not to do so;

- co-ordinate and direct the investigations it initiates (see s14);
- decide which other parties (if any) should be involved in its investigations (also see s14); and
- publish its findings and recommendations – the Commission has recommendatory powers only.

Powers. The Commission has broad investigative powers under the Act including the powers of a commission of inquiry (see s11), the powers of entry and inspection (see s12), and powers relating to the seizure, removal and protection of evidence (see s12).

The Act gives the Commission the power to decide which accidents and incidents it investigates. In exercising this discretion the Commission applies criteria it has developed to allow it to make a preliminary assessment about whether any particular accident or incident has significant implications for transport safety. If the Commission decides not to investigate an accident or incident, it must advise the relevant safety authority (see s10).

The Commission's Operating Environment

The Commission operates alongside transport safety authorities that are also charged with investigating transport accidents and incidents. The focus of the safety authorities when investigating accidents and incidents in part is to determine whether there has been compliance with the regulatory regime and, if not, to establish whether sanctions should be applied. But the safety authorities also focus their investigations on establishing the circumstances and causes of accidents and incidents. They do so as follows:

- For aviation the Civil Aviation Authority will investigate where the Commission does not.
- For rail the Land Transport NZ will investigate where the Commission does not.
- For marine Maritime NZ will investigate regardless of the Commission investigating or not.

The other transport agencies, which may investigate a particular accident or incident, are the Civil Aviation Authority, Land Transport New Zealand, and the Maritime New Zealand. The New Zealand Police investigates road accidents and incidents but unless these also involve rail infrastructure or a train there is no overlap with the Commission's mandate.

Coroners also have an interest in transport accidents that result in fatalities. As a result, it is possible that upwards of three parties will pursue some sort of an investigation following a single-mode transport accident or incident. The New Zealand Police often investigate on behalf of the Coroner, and in addition Occupational Health and Safety Inspectors may also be involved in certain circumstances.

Part C Recent Reviews

New Zealand's arrangements for investigating transport accidents and incidents have been the subject of two reviews in recent years. The recommendations emerging from these reviews reflected very different visions for the future, and therefore provide important context when considering the Commission's near-term and longer-term future.

Ministry of Transport Review

In 2001 the then Minister of Transport commissioned the Ministry to undertake an accident investigation review. A fundamental premise underpinned the review, namely that safety investigations conducted by an independent agency operating consistent with the 'no blame' principle would result in better information gathering and therefore more robust safety recommendations.

The specific recommendations made by the Ministry's review team regarding the Commission's current mandate (the investigation of civil aviation, maritime and rail transport accidents and incidents) were that:

- the Commission should investigate all civil aviation, maritime and rail accidents and all serious incidents and have the discretion to investigate other incidents;
- the focus of the Commission's investigations should be to establish circumstances and causes, identify risks and develop safety recommendations;
- the focus of the regulatory authorities' investigations should be to determine whether there has been compliance with the regulatory regime and the appropriate nature of any action on non-compliance;
- the Commission should be the first recipient of all notifications of accidents and incidents except where search and rescue considerations or the risk of environmental pollution warranted an emergency services call-out; and
- the Commission should establish a voluntary and confidential accident and incident reporting system.

These recommendations accepted the duplication of the investigative function across agencies and, in that context, sought to clarify the roles of the various agencies and thereby protect the integrity of and public confidence in investigative arrangements.

The Ministry's review team also recommended a significant broadening of the Commission's mandate as follows:

that the Commission should be empowered to investigate at its discretion any road crash that it considered could have lessons for transport safety or that it judged warranted an independent investigation; and

that the Commission should be empowered to conduct 'systemic investigations' rather than being limited only to investigating specific accidents and incidents after they have occurred, i.e. that it should be transformed into a safety investigation agency.

If these proposals about the existing and broadened mandate had been accepted significant changes would have been required in organisational arrangements in the transport sector, including in the legislative frameworks under which the Commission and the safety authorities operate, and in the Commission's funding.

Transport Sector Review

In 2003 the Ministers of State Services and Transport jointly commissioned officials to conduct a broadly based review of government transport sector agencies.

Despite what it called a 'lack of analytical evidence' the sector review team accepted the fundamental premise of the Ministry's earlier review of accident and incident investigations. However, it did not support the general thrust of the thinking behind the earlier review or its specific recommendation. Most notably, the sector review team:

- was not persuaded that having the Commission undertake significant numbers of additional investigations would be cost-beneficial in part because it believed that the number of investigations conducted by the safety authorities would not reduce greatly;
- was concerned that the Ministry's proposal regarding systemic investigations would more closely integrate the Commission with the rest of the transport sector and thus possibly put its independence at risk;
- was of the opinion that the changes proposed by the Ministry challenged one of the core policy planks of the safety management system approach used by the safety authorities; and
- concluded that while a failure to implement the recommendations made by the Ministry review team could mean safety benefits were not captured, the uncertainty about the likelihood and scale of those benefits did not justify the organisational change and the additional funding required.

On the other hand the sector review team was aware of the concern to more fully comply with ICAO obligations that underpinned the Ministry's review.

The sector review team recommended that the organisational arrangements within the transport sector, including the legislative frameworks under which the Commission and the safety authorities operate, should remain fundamentally unchanged. In making that recommendation the sector review team acknowledged that doing so would leave two issues unresolved, namely:

- the duplication of investigative function between the Commission and the safety authorities regarding civil aviation, maritime and rail occurrences; and
- what it called 'the analogous roles' of the Commission and Coroners.

The broad recommendations of the sector review team were carried forward into legislation with the introduction of the Transport Legislation Bill (July 2004) which sought amendments to transport sector legislation with the view to achieve alignment of the objectives of the transport sector Crown entities with the New Zealand Transport Strategy.

Part D Looking to the Future

The Crown Entities Act 2004 requires Crown Entities to proactively focus on their strategic direction far more than they did previously, and to engage with their Ministers when doing so. During its upcoming strategic planning round the Commission will separately address both the near-term (2006 – 2009) and the longer-term (2010 and beyond).

The Near-term

At this time the Commission's judgement is that the key strategic issues confronting it in the near-term include several issues signalled by the sector review team, namely:

- clarifying and enhancing the Commission's role regarding ICAO (especially about Annex 13 and its participation in international discussions and negotiations about accident investigation);
- improving the arrangements now existing between the Commission and the safety authorities for occurrence notifications and for sharing information;
- improving arrangements for ensuring that the Commission's safety recommendations are implemented promptly.

These issues form the basis of the Commission's work programme identified in its Statement of Intent for 2005 and out years.

The Commission's approach to these key issues, and to any others that it identifies during its deliberations, will be to maximize the contribution it makes to transport safety (and, to the extent possible, other transport sector objectives) while at the same time continuing to comply with its statutory mandate.

The Longer-term

As noted above the sector review team acknowledged that its proposals did not resolve two issues. The Commission's view is that one of these issues, the duplication of the investigative function across agencies, will have to be re-considered in the longer-term.

The Commission's judgment is that the key problem with current arrangements in fact is not the duplication of investigative agencies per se. Rather it is the fact that all the investigative agencies may focus on the same thing, namely establishing the circumstances and causes of accidents and incidents. Three main risks arise if the Commission (as the independent investigator) and the regulatory authorities (and possibly also coroners) focus on establishing circumstances and causes:

- there is confusion about the roles of the different agencies;
- the regulatory authority is conflicted (or at least perceived to be conflicted) between being an investigator and being the regulator especially because its own actions as the regulator may well have contributed to an accident or incident; and
- cooperation with any investigation by witnesses (including, because of the first risk listed above, with investigations conducted by the Commission) is jeopardised because of concerns about the uses to which information could be put.

Whether these risks will be evident on a scale large enough to warrant re-consideration of organisational arrangements in the transport sector remains to be seen. Nevertheless, the Commission's view is that all agencies possibly affected by the risks should continually monitor and assess them because of the possible impact on the integrity of and public confidence in investigative arrangements.

The Commission is also of the view that in the longer-term the proposal to broaden the Commission's mandate to require it to conduct 'systemic investigations' should be re-visited. What underpins this view is the potential it sees for improving transport safety by having one agency conduct the two complementary sorts of investigation.

As noted earlier, the Ministry's review team recommended such a change in mandate in part because of practice in some overseas jurisdictions, but the sector review team did not. The sector review team's reasons for not recommending this broadening of the Commission's mandate were that:

- it would mean the Commission was more integrated with the rest of the transport sector;
- the Commission's name suggested a role only in conducting investigations into events; and
- it would be inconsistent with the Commission's recent calls for more independence.

The Commission is not persuaded by this reasoning for two reasons. First, its current name simply reflects its current mandate and does not justify a refusal to contemplate a change in that mandate. Second, while the Commission places a high value on its independence it is not clear how doing systemic reviews would integrate the Commission more fully with the rest of the sector or, even if it did, how that necessarily puts the Commission's independence at risk.

THE TRANSPORT ACCIDENT INVESTIGATION COMMISSION

Members as at 31 August 2005

Hon. Bill Jeffries, Chief Commissioner

Pauline Winter, Deputy Chief Commissioner

Bryan Wyness, Commissioner