

REPORTING OF VEHICLE INSPECTION DATA – FURTHER QUESTIONS AND ANSWERS

21 AUGUST 2020

Waka Kotahi NZ Transport Agency is considering applications for appointment as an inspecting organisation undertaking light used entry certification or border inspection. We expect that new appointments will take effect from 1 January 2021.

In the information requirements published in November 2019, Waka Kotahi signalled that new appointees will be required to meet additional reporting requirements for vehicle inspection data. Specifically, inspecting organisations would be required to provide Waka Kotahi with quarterly reports about inspections conducted that include:

- information about each inspection or certification decision (in the MS Excel format provided in Appendix D to the application requirements); and
- inspection error rates, the types and causes of errors.

In July 2020, we clarified these expectations. Appendix D was updated to become a new Appendix D1 for entry certification and D2 for border inspection. The update was simply for clarity and did not change the substance of the expectations. In this clarification, we explained:

The information listed in the new Appendix must be obtained for each vehicle before the inspection process can be completed. We understand that, in some cases, an inspecting organisation will rely on its customers or other third party to provide information about a vehicle. Inspecting organisations will bear the responsibility of ensuring their customers and other parties with whom they engage understand what information must be provided to enable a vehicle to be inspected and certified.

Following further questions from the industry, we are providing answers to those questions below.

What is the legal basis for Waka Kotahi requiring this information?

Waka Kotahi is tasked with regulatory oversight of border inspection and entry certification activities. Our reporting requirements are designed to support this oversight, maintaining the integrity of inspections and improving the performance of inspections and certification activities.

The Land Transport (Vehicle Standards Compliance) Rule 2002 (**Compliance Rule**) requires both border and entry inspecting organisations to record and provide to Waka Kotahi information about each vehicle inspected.

The Compliance Rule expressly requires that various types of information about an inspected vehicle are recorded.

- Waka Kotahi may require that additional information be recorded and reported to it (*Compliance Rule clauses 4.3(f) and 6.7*).
- Waka Kotahi may also impose requirements and conditions of appointment for inspecting organisations, including “recording information about the vehicle inspected” and “any other matters relevant to inspection and certification activities” (*Compliance Rule clause 2.3(2)*).

Why is Waka Kotahi requiring an inspecting organisation to identify the *importer* of a vehicle?

The identity of the *importer* of a vehicle is a category of information that is *required* to be recorded by inspectors under the Compliance Rule.

- Border inspectors are required to record the name and address of the importer of each vehicle (Compliance Rule clause 4.3(b)).
- That information, once recorded, must then be considered by entry certifiers (see clause 6.4(3)).

These are legal requirements.

We are aware that in the past there has been inconsistent compliance with these legal requirements across the industry and a variable understanding of what is meant by “importer”.

For new appointments of inspecting organisations starting 1 January 2021, we have clarified that we will be expecting consistent industry compliance with these legal requirements. To assist this, in July 2020 we have also clarified the meaning of “importer” as follows:

Importer (in NZ) of vehicle name and address	The importer is the primary New Zealand person/company who contracted to import the vehicle to New Zealand for sale/use on New Zealand roads. The importer should be either a private individual person (seeking the vehicle for their individual use) or a registered motor vehicle trader in New Zealand. It does not matter whether the importer owns/has title to the vehicle. The importer is not generally the entity that transports the vehicle to New Zealand. Border inspectors and entry certifiers will need to accurately obtain this information from their customer or third party.
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It is important to the regulatory oversight function of Waka Kotahi that the inspecting organisation knows, records and reports the importer of the inspected vehicle. The importer will usually have the most significant financial and commercial interest in the inspection decision and be the ultimate customer of the inspecting organisation (either directly or indirectly through a vehicle compliance site).

The identity of the importer needs to be *accurately* recorded, as this information will be used by Waka Kotahi to intelligently identify and assess regulatory risks, including risks to the integrity of inspections arising from the inspecting organisation’s conflicts of interest. We also expect inspecting organisations to use importer information to improve the quality and integrity of their own inspections.

Why is Waka Kotahi requiring inspecting organisations to identify the *exporter/export agent* and *type of entity* that paid for the inspection?

As noted in the application information pack, Waka Kotahi is aware of factors that could affect the effectiveness of inspections, including inspecting organisations’ management of conflicts of interest and inappropriate influences. We also consider that standards should improve in inspecting organisations’ information systems and inspector performance management.

We require this information to assist us in assessing the risk of inappropriate influences on inspection decisions and tailor our regulatory response to these (including through monitoring and auditing). The information we seek includes volume of inspections, type of vehicle, price paid for the service, any previous assessment of the vehicle and possible conflicts of interests (e.g. relationship of inspecting organisation with exporter or importer). The exporter of a vehicle sent to New Zealand and the entity that paid for the inspection will often have a significant financial and

commercial interest in the inspection decision and be relevant to the risk of inappropriate influences on the inspection decision.

Waka Kotahi already collects some of this data, but we intend to require that the data set is complete per vehicle inspected and verified by the inspecting organisation. Without a complete verified data set per vehicle inspected, neither Waka Kotahi nor the inspecting organisations are in a position to assess risk. Note that, where the data sought is difficult to obtain, we are open to reliable and transparent ways of transferring information between inspecting organisations: for example, an overseas border inspection organisation could record the known exporter of a vehicle in the paper/ electronic record for the vehicle, and the entry certification inspecting organisation in New Zealand may rely on this (noting the source) when reporting to Waka Kotahi.

In any event, each inspecting organisation should hold and be using this vehicle inspection data itself to monitor the competence, quality and integrity of its *own* inspections and business. If the inspecting organisation cannot gather this data, then we need to be advised of that, and the inspecting organisation will need to improve.

Did the July 2020 clarification change the Waka Kotahi's position on what information will be required?

No. The July 2020 clarification was simply a clarification of the expectations already set out in November 2019.

Why is Waka Kotahi asking inspectors to report information that it may already have?

Some of the information that Waka Kotahi will be requiring from inspecting organisations to provide may already be available through other means, such as LANDATA. We require that the complete information set about each inspection decision is provided by inspecting organisations for several reasons:

- We consider that collecting accurate data about vehicles inspection decisions forms an *essential* part of an inspecting organisation's systems for managing the performance and integrity of inspection decisions.
- We intend to appoint inspecting organisations that are committed to operating intelligently and making the necessary investments to improve the quality of inspections over time. Inspecting organisations will need to achieve high standards of information and performance management and provision of data to Waka Kotahi is part of that.
- Obtaining verified information directly from inspecting organisations provides an important means to check the integrity and accuracy of information in LANDATA and so identify regulatory risks. The information in LANDATA is not sufficient to enable Waka Kotahi to carry out our regulatory function of monitoring this performance.
- Obtaining information from each inspecting organisation in a separate file (rather than from LANDATA) allows us to monitor the inspecting organisation's regulatory performance while maintaining the confidentiality of that organisation's data.

Will obtaining this information generate conflicts of interest?

No. Recording information about an inspected vehicle does not *generate* any interest in the vehicle and so cannot create a conflict of interest. In fact, such information will allow an inspector or inspecting organisation to *identify* potential conflicts of interest and take appropriate steps to *manage* those conflicts.

Waka Kotahi does not consider that an inspecting organisation deliberately *not* recording an interest in a vehicle (e.g. importer, exporter) is an acceptable method of managing a potential conflict of interest, because it does not provide assurance as to whether the interest is influencing the inspection decision.

How will Waka Kotahi ensure the confidentiality of commercially sensitive information?

Waka Kotahi acknowledges that some of the data it requires for regulatory oversight is also commercially sensitive. This information will be treated as confidential, stored separately and protected from inadvertent disclosure. We can also confirm our understanding that such information can likely be withheld under the Official Information Act 1982, ss 9(2)(b)(i) and s 9(2)(b)(ii), subject to the views of the Ombudsman.

Has Waka Kotahi considered the impact on competition?

Some industry participants have expressed concerns that requiring the collection of this information will result in a reduction of competition between inspecting organisations. Waka Kotahi has considered these concerns, but we are not satisfied that requiring inspecting organisations to record and provide information about their own inspection decisions confidentially to Waka Kotahi as regulator will result in reduced competition between inspecting organisations.

If you have any further queries about the reporting requirements, please contact us through borderandentry@nzta.govt.nz.