



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Concerns about Police enforcement of heavy vehicle towing regulations and Auckland Motorway contract

## Summary

1. Company X is a tow truck company that specialises in heavy vehicle recovery and has contracts with Police for vehicle recovery. Company Y is in effect a consortium of eight companies and has the contract with Police to remove disabled motor vehicles, including heavy vehicles and machinery, from Auckland's motorway. Company X has previously made complaints to Police about a number of issues relating to Company Y and is not satisfied that they were appropriately resolved. It also believes that its own operations have been unfairly targeted by Police. Company X complained to the Authority about Company Y's dealings with Police over a number of years and the allegedly unfair treatment by Police.
2. Due to demand from many industry sectors there is an increasing number of very large vehicles on New Zealand roads. These range from trucks to High Productivity Motor Vehicles (heavy vehicles).<sup>1</sup> Because heavy vehicles exceed the maximum weight and/or length allowed for standard vehicles, they operate under a route-specific permit (overweight permit) on roads and bridges capable of handling their additional weight.<sup>2</sup> Waka Kotahi New Zealand Transport Agency (Waka Kotahi) can issue those permits for State Highways. Local road controlling authorities do the same for local roads. Overweight permits are issued to cover a specified period of time, such as two years.
3. When these often very large vehicles break down or are otherwise disabled, they need to be removed quickly and safely to minimise disruption to other road users. This is done by heavy recovery motor vehicle (HRMV) operators, of which Companies X and Y are two. These operators must have the appropriate operating licences, permits and sufficiently rated vehicles to recover

<sup>1</sup> A High Productivity Motor Vehicle exceeds a mass of 44,000 kg and/or the maximum length dimensions allowed for standard vehicles.

<sup>2</sup> Waka Kotahi have a weight limitation on HPMVs of 62,000kg.

the broken-down vehicles safely and lawfully. Depending on the load the heavy recovery motor vehicle needs to tow and how far it needs to tow it, the operator may need both an overweight permit and an over-dimension permit. In some circumstances the operator may split the load and/or use the exemption explained at paragraph 77.

4. Waka Kotahi manage the regulatory requirements for road transport using the framework of legislation including the Land Transport Act 1998 and the Land Transport Rule: Vehicle Dimensions and Mass 2016 (the VDAM Rule). Its work includes issuing permits and licences to HRMV operators and ensuring they are compliant operators. Waka Kotahi holds the data that records the legal operating capacity for each of the heavy recovery vehicles.
5. Police are responsible for enforcing the legislation and the VDAM Rule. The Police and Waka Kotahi work in partnership. The Police Commercial Vehicle Safety Team's (CVST) role is to monitor all areas of the commercial vehicle industry. CVST used to be called the Commercial Vehicle Inspection Unit (CVIU).
6. Company X has been working with Police and conducting heavy vehicle recoveries for many years. In 2012, the company was unsuccessful in winning a tender for the recovery of vehicles from the Auckland motorway. The company raised a number of issues with Police about the tender process and the suitability of the successful tender.
7. Over the following years Company X has raised issues and complaints with the way Police have interpreted and applied the Land Transport Act and the VDAM Rule. These include Police's interpretation of the VDAM Rule and the extent to which Police should be able to determine who should recover vehicles.
8. Company X has also complained about the quality of Police investigations into their complaints about Company Y. Indeed, they say that a Police investigation into their complaints was undertaken by an officer who was implicated in the matters complained about and therefore lacked impartiality.
9. Company X say they have tried to work through the issues with Police and they have not been able to get to a satisfactory outcome. They therefore made a complaint to us that covered a wide range of Police actions including:
  - the Auckland Motorway tender process;
  - the fact that Company Y is not a compliant operator or fit for purpose for the contract;
  - the fact that Police unjustifiably limit the circumstances in which an owner can choose the tow operator;
  - Police interpretation of the VDAM Rule; and
  - the quality of Police prosecution matters and investigations into complaints.
10. During our investigation issues came to light about the Police interpretation and exercise of their powers under section 113 of the Land Transport Act 1998.

## Issues examined by the Authority

- Issue 1:** Was the Auckland Motorway heavy vehicle recovery tender process and contract formation conducted appropriately?
- Issue 2:** Did Police take appropriate steps to ensure Company Y was complying with the contract and New Zealand regulations?
- Issue 3:** Do Police unjustifiably limit the owner's choice of recovery operator?
- Issue 4:** Do Police correctly interpret VDAM Rule 3.14.(11)?
- Issue 5:** Did Police prosecutions of Company X demonstrate bias and unfair targeting of them?
- Issue 6:** Did Officer A have a conflict of interest when investigating Company X in November 2015?
- Issue 7:** Have Police unfairly influenced Waka Kotahi in respect of the latter's dealings with Company X?
- Issue 8:** Do Police interpret section 113 of the Land Transport Act 1998 correctly in relation to directing tow operators when making a recovery?

## The Authority's Findings

11. The Authority found that the Police National Tenders Board approval of Company Y as the service provider was conditional upon inspections that, on the evidence, did not occur. At the time of entering into the contract Police had no knowledge of whether Company Y's sites, facilities, vehicles, and drivers complied with this fundamental requirement of the tender process. As the inspection condition had not been fulfilled, Police should not have entered into the contract.
12. We also concluded that:
  - 1) The offer of a donation should have been removed from Company Y's tender document and their application resubmitted.
  - 2) At the time of the complaint, Company Y did not have sufficient vehicles with the necessary towing capacity and permits to remove vehicles weighing 46,000kg and over from Auckland's motorway, and was in breach of its obligations under the Auckland Motorway contract.
  - 3) Police have been aware of the non-compliance issues but taken no or limited action.
  - 4) Police were sometimes incorrectly overruling the driver's or owner's choice of recovery operator.

- 5) Police have since developed appropriate guidelines to deal with the driver's or owner's choice of recovery operator.
- 6) The appropriate interpretation of VDAM Rule 3.14(11) is a matter for the Courts to decide.
- 7) While there have been some deficiencies in the way these matters have been investigated, there is no evidence of bias in the handling of these prosecutions.
- 8) Officer A had a conflict of interest that he should have declared.
- 9) Officer A did not complete the Independence of Investigation Conflict of Interest form.
- 10) Officer A conducted an inadequate investigation into Company X's complaint.
- 11) Of the examples provided to the Authority, the last two show Police have exerted unfair influence on permitting agencies to cancel permits and change permit conditions.
- 12) Police have been interpreting and exercising their powers under section 113(2)(c) and (2) (d) of the Land Transport Act 1998 incorrectly.

## Analysis of the Issues

### ISSUE 1: WAS THE AUCKLAND MOTORWAY HEAVY VEHICLE RECOVERY TENDER PROCESS AND CONTRACT FORMATION CONDUCTED APPROPRIATELY?

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13. In 2012 Police went to public tender seeking a supplier or suppliers for the provision of all towing, storage and associated services relating to the boundaries of the Auckland motorway system. The expectation was for either one solution for all seven zones or a series of individual solutions for each zone. The services to be provided under the contract included towing of all vehicles, including heavy vehicles.
14. The Police 'Request for Proposal' said they were:

*"Seeking proactive, prompt, professional, innovative, legally compliant, fit-for-purpose, transparent, accountable and value for money services, which positively impact congestion management on this important arterial route. We believe that significant improvements can be made to substantially improve this industry's contribution to congestion management on the Auckland motorway."*<sup>3</sup>
15. It also specified that *"tow trucks and recovery equipment cannot exceed the vehicle manufacturer or equipment manufacturer ratings at any time."*
16. Police followed the All-of-Government procurement process. They reviewed the applications and of the nine tenders received, three met the mandatory criteria.

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<sup>3</sup> Requests for proposal Tender ref: TN/13/01.

17. A panel then reviewed the three tenders against scoring criteria to determine a preferred tender.
18. The panel found the Company X proposal *“conveyed compliance but lacks credible substantiation with concerns over the lack of finalisation of full zone coverage.”* In contrast, it found that Company Y had *“full zone coverage, excellent facilities and an extensive range of response units.”*<sup>4</sup>
19. The panel selected Company Y as the preferred tender. This recommendation was considered by the Police National Tenders Board, which reviews and approves all Police panel procurement decisions. The Board *“approved the recommendation subject to validation and/or rectification of site and facilities to be conducted by 5<sup>th</sup> February 2013.”*<sup>5</sup> This pre-condition appears to have been a safeguard designed to ensure Company Y had the capability to safely perform the contract.
20. Police have not been able to produce a report or other evidence of the required inspection having been done by 5 February 2013, or at all. It therefore appears the Panel’s pre-condition was never met. Since the pre-condition for the letting of the contract was never satisfied the Authority has concluded that there was a clear lack of due diligence before the contract was entered into. As a result, those areas in which Company Y was non-compliant were not identified at the outset and should have been. Therefore, Police had no knowledge of whether Company Y’s sites, facilities, vehicles, and drivers complied with the requirements of the contract. Police should therefore not have entered into the contract.

### Company Y’s offer of donation in their tender proposal

21. Company X complains that Company Y’s tender proposal included a monetary offer to Police.
22. The Police Request for Proposal document (RFP) stated Police wanted to:

*“Work with suppliers to see how they can play an active role, in one form or another, in pursuit of our operational priority outcomes.... Many suppliers may already be contributing towards community related programs ... we are keen to understand what this may be and your level of commitment to ongoing development or expansion of such support.”*
23. Within Company Y’s written summary in its tender proposal, it stated that it *“will donate a stated portion of each recovery value to NZ Police road crash program.”* The tender proposal identified a number of other community initiatives that they were involved with.
24. The tender panel did not identify any issue with the donation offer.
25. Police say the offered donation formed part of Company Y’s response to one of the criteria listed in the RFP, and that each tender was awarded a score based on the overall response rather than

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<sup>4</sup> New Zealand Police Tender Evaluation Report.

<sup>5</sup> Minutes of the New Zealand Police National Tenders Board meeting 29 January 2013.

individual components of it. They therefore say that, while the donation was a contributing factor to the overall score awarded, it was not the sole determinant of the score awarded.

26. The Police National Tenders Board removed the offer of the donation from the contract. They said the perception of money coming directly to Police was not one to be approved and carried great risk to Police. However, no re-evaluation of Company Y's tender proposal was carried out.
27. In response to the Authority's investigation of this issue, Police have stated they believe the offer was not material in the overall process because if Company Y's score had been adjusted down to the other applicants or scored zero, their overall score would still have been significantly higher than the next ranked application.
28. The Authority acknowledges that but does not think that this validates the tender process. The offer of a donation was material in the sense that it was factored into the scoring matrix and therefore included in the ranking that went to the National Tenders Board. When the offer was first noticed, the tenderer should have been asked to resubmit the tender with the reference to the offer removed. Consideration might also have been given to whether the other applicants should have received notice of this and also given an opportunity to resubmit their tender applications.
29. This offer of money in response to the RFP left the Police wide open to criticism and even to allegations of corruption. They should have either spoken to Company Y to remove the offer before the tender was considered or not considered the tender at all.

#### FINDINGS ON ISSUE 1

The Police National Tenders Board approval of Company Y as the service provider was conditional upon inspections that, on the evidence, did not occur.

At the time of entering into the contract, Police had no knowledge of whether Company Y's sites, facilities, vehicles, and drivers complied with this fundamental requirement of the tender process.

As the inspection condition had not been fulfilled, Police should not have entered into the contract.

The offer of a donation should have been removed from Company Y's tender document and their application resubmitted.

#### ISSUE 2: DID POLICE TAKE APPROPRIATE STEPS TO ENSURE COMPANY Y WAS COMPLYING WITH THE CONTRACT AND NEW ZEALAND REGULATIONS?

30. Company X alleges that:
  - Company Y has not been compliant since the start of the Auckland Motorway contract;
  - Company Y's heavy recovery vehicles were not rated to recover weights sufficient to tow heavy vehicles; and
  - Police have not taken the required steps to ensure compliance.

31. In order for a heavy recovery motor vehicle operator to comply with New Zealand regulations, it must meet a number of requirements.<sup>6</sup> These include:

- holding the necessary licences and endorsements to operate the vehicles;
- operating recovery vehicles that do not tow vehicles with a mass greater than the recovery vehicle's maximum tow rating;<sup>7</sup> and
- obtaining the necessary permits for travelling on State Highways and local roads, described at paragraph 2. These permits include an:
  - overweight permit;<sup>8</sup>
  - BESS certificate<sup>9</sup>; and
  - Kiwirail permit.<sup>10</sup>

32. An overweight permit is required whenever the combined weight of the recovery vehicle and the vehicle it is towing is greater than the limit of 46,000kg. Given the defined weight of a high productivity motor vehicle<sup>11</sup> exceeds 44,000kg; it follows that when such a vehicle is being towed an overweight permit will always be required, along with a BESS certificate. A Kiwirail permit will also be required if the total tow movement exceeds 25 metres and travels over a level crossing.

## Police inspections of Company Y's vehicles

### July 2014 Inspection

33. The first inspection of Company Y's operation was conducted on 21 July 2014. The inspection was carried out by a senior sergeant who was relieving as officer in charge of Auckland Motorway Road Policing team. In his report he said that *"the mandatory requirement of the contract is that Company Y supply a legally compliant service...towage will be carried out by fully trained, legally compliant operators ... a large fleet of fit for purpose recovery vehicles."*

34. He said that each of the eight companies in the Company Y consortium had a *"fit for purpose vehicle recovery fleet."* There was no evidence of what, if any, form of inspection of the heavy recovery vehicles was conducted or any recorded details. We would have expected that criteria such as operator licences, permits, vehicle signage and tow weight limits (see paragraph 31) would have been recorded or viewed. To ensure compliance, the maximum tow rating should have also been compared with Waka Kotahi data holdings.

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<sup>6</sup> Waka Kotahi has provided us with information about what an operator must do to be compliant.

<sup>7</sup> The maximum tow rating, or the size of a load that a recovery vehicle is legally allowed to tow, is calculated using a range of factors set out at paragraph 46.

<sup>8</sup> This is described in paragraph 167.

<sup>9</sup> Bridge Engineering Self Supervision certificate is explained at paragraph 166.

<sup>10</sup> A Kiwirail permit is required to move over-dimensional loads across rail corridors, see paragraph 168.

<sup>11</sup> This is described in paragraph 165.

35. The inspection by the senior sergeant was therefore inadequate to ensure Company Y was a fully compliant operator, particularly given there is no evidence of an inspection on 5 February 2013 before the contract commenced.
36. If this inspection had been carried out appropriately, Police would have determined whether Company Y was capable of meeting its obligations under the Auckland Motorway contract the terms of which were directed at the safety of road users.

#### *August 2014 Inspection*

37. On 5 August 2014, a CVIU sergeant reported on the inspection of the vehicles of three companies within Company Y. These inspections were conducted by a Police vehicle safety officer. The sergeant was tasked to inspect heavy vehicle units used in the Motorway contract. He reported back to the National Manager CVIU.
38. The report stated that if the inspection had been conducted roadside, a number of the vehicles would have been deemed unroadworthy until mechanical issues were fixed. It said that although faults had been found that were unacceptable, those issues had since been rectified. It noted the need for a more robust emphasis on vehicle standards and the monitoring of them. Specifically, it recommended that:
  - six monthly random inspections be carried out by CVIU vehicle safety officers;
  - inspection criteria be added into the Auckland Motorway contract; and
  - a record be kept of all inspections, including photographs, which would form part of the review.
39. The Auckland Motorway contract was updated on 24 November 2014 to include a clause to allow Police to inspect the heavy recovery vehicle fleet. There is no record that the six-monthly inspections have been done, and Police have been unable to say whether they were. We are satisfied that inspections did not take place.
40. Police need to conduct regular inspections of Company Y's recovery fleet to ensure they are meeting their contractual obligations and to ensure the safety of road users.

#### **Company Y's ability to perform under the Auckland Motorway Contract**

41. Tow ratings and permit limits serve different purposes. The tow rating for the vehicle is the limit which the vehicle can safely tow. Exceeding a tow rating is a public safety risk.
42. Overweight permits are an authorisation for a heavy vehicle to use specific roads where the vehicle exceeds the general access weights, although the existence of the permit does not allow an operator to exceed the tow rating and design limits of the vehicle. Exceeding a permit limit risks damage to roads.



43. We made enquiries with Waka Kotahi to establish the maximum towed ratings for all of the heavy recovery vehicles of the eight companies that make up Company Y. Fundamentally we wanted to understand whether Company Y had any tow trucks that were capable of recovering heavy vehicles (over 46,000 kg) from Auckland’s motorway.
44. All the tow trucks have been modified by the addition of a tow unit to a second hand truck. Certain ratings require certification by a heavy vehicle certifier against specific Australian standards. These ratings are recorded in an “LT400,” with the ratings then entered into the NZTA database. Waka Kotahi do not retain copies of the LT400 or check their accuracy. The manufacturer’s lifting capacity is not recorded in the Waka Kotahi database, but must be written on the rear of the vehicle.<sup>12</sup>
45. Waka Kotahi could only provide us data as at the time of the request in 2018, and not historical data back to when the Auckland Motorway contract commenced in 2013. Even the data they could provide was insufficient to establish the towing capacity of Company Y’s vehicles. Waka Kotahi has acknowledged there are deficiencies in their system for recording data of heavy recovery vehicles and have advised us that they are in the process of developing a better system.
46. For example, in order to establish the maximum tow rating of a recovery vehicle, several pieces of information are required:
- the tare weight of the recovery vehicle;
  - the gross vehicle mass of the recovery vehicle;
  - the gross combined mass, or the total allowable weight of the recovery vehicle and the disabled vehicle it is towing;
  - the maximum tow mass rating; and
  - the type of recovery equipment fitted to the recovery vehicle, and what weight it is rated to be able to tow.
47. The Waka Kotahi database contains the first four pieces of information, although Waka Kotahi have advised us that the database does not always contain the most current data. More significantly, it does not hold data on the type and rating of recovery equipment for most trucks and, without this, it is impossible for us to establish the towing capacity of Company Y’s vehicles with any level of certainty.
48. The fact that Waka Kotahi does not hold copies of LT400 certificates is an example of problems with the quality of their data which has made it difficult to determine the maximum tow rating of Company Y’s vehicles.

We drew this to the attention of Waka Kotahi, who agreed to undertake an audit of vehicle capability. Upon completion of that audit in March 2021, they reported quite a few examples

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<sup>12</sup> Waka Kotahi is developing a system where LT400s, photos and calculations are uploaded by vehicle certifiers.

of where Landata information was not accurate and under-represented the capability of the vehicles. Most of these trucks were initially used in other industries and then modified/upgraded to work as tow vehicles.<sup>13</sup>

49. We also asked Waka Kotahi for details of the overweight permits issued to these vehicles. Waka Kotahi have advised us that the overweight permits are focused on protecting infrastructure and are issued without considering the design limits or tow rating of the vehicles. The permit limits may be above the tow rating of the vehicle. Operators are required to comply with the design limits of their vehicle at all times under the Land Transport Act and Rule 2 of the VDAM Rules.

50. In relation to the two companies within Company Y that manage the recovery of vehicles 46,000kg and over, compliance over time was as follows:

In 2013:

- There was only one vehicle with the required rating (up to 50,000kg via a tow pole), but it did not have the required overweight permit to conduct any tows.<sup>14</sup>

In 2015:

- a vehicle was rated to 50,000kg via a tow pole but no overweight permit;
- a vehicle was rated to only 36,250kg and had an overweight permit up to 44,000kg<sup>15</sup>;
- a vehicle was rated to 35,000kg but had no overweight permit; and
- a vehicle was rated to 50,000kg and had an overweight permit up to 50,000kg.

In 2017:

- a vehicle was rated to 50,000kg via a tow pole but had no overweight permit;
- a vehicle was rated to 36,250kg and had an overweight permit up to 50,000kg;
- a vehicle was rated to 35,000kg and had an overweight permit up to 50,000kg; and
- the vehicle that was rated to 50,000kg in 2015 was updated to 59,800kg and had an overweight permit to tow to 59,800kg.

In 2020:

- a vehicle was rated to 50,000kg via a tow pole but had no overweight permit;
- a vehicle was rated to 36,200kg and had an overweight permit up to 50,000kg; and

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<sup>13</sup> Landata is the Waka Kotahi database that hosts the motor vehicle register, road user charges and warrant of fitness/certificates of fitness and includes information on heavy recovery vehicles.

<sup>14</sup> A tow pole is an inflexible bar with a coupling at each end that can be connected to the coupling fitted to the rear of a vehicle recovery service vehicle and to the coupling fitted to the front of a vehicle to be recovered without lifting that vehicle.

<sup>15</sup> A vehicle cannot tow above what it is rated to (in this case 36,250kg), regardless of the limit of the overweight permit.

- a vehicle was rated to 35,000kg and had an overweight permit to 50,000kg, but its permit had a condition that the weight of the towed vehicle was limited to 35,000kg (although the vehicle has since been uprated to 65,000kg). Waka Kotahi reduced the limit of this vehicle in the permit while they investigated what the tow rating for this vehicle was.
51. In March 2021 Waka Kotahi advised that the vehicle rated to 35,000kg in 2015 had been incorrectly rated from that date. They advised that the vehicle was actually rated to 65,000kg and that they had amended their records accordingly. Waka Kotahi made this assessment following assurance from the installer of the modified towing equipment that the equipment had been installed and tested according to the required Australian standard. The vehicle was also assessed by a Heavy Vehicle Certifier in New Zealand who issued a LT400 and provided their calculations to Waka Kotahi.
  52. Notwithstanding this advice from Waka Kotahi, the US-based manufacturer of the under-lift system has advised us that it was correctly rated to 35,000kg, and that the company which modified the vehicle (and the under-lift) is a distributor rather than an agent and therefore does not have the authority to approve the uprating to 65,000kg. Given that information and apparent conflict between the manufacturer and certifier our view is that it is incumbent on Police as the contracting party to make further enquiries about the safety of the vehicle to be able to rely on the rating. In any event, the Authority notes that this vehicle for most of the period since 2015 has had either no overweight permit at all or an overweight permit at a lower level than required for heavy vehicle towing.
  53. It should also be noted that Waka Kotahi confirm that no operators in Company Y have recorded permits for railway level crossings. Level crossing permits are required if operators cross lines loaded and over 25 metres long. If there are no railway line crossings on their route, then a rail permit is not required.
  54. We have drawn two conclusions from this overall analysis, with which Waka Kotahi agree.
  55. First, there have been a number of discrepancies and inconsistencies in Waka Kotahi records between the rating of trucks and their permits, and a number of trucks in operation without any overweight permits at all. The discrepancy between permit limits and tow ratings has led to some confusion among operators and Police.
  56. Secondly, given that the minimum tow rating required in order for Company Y trucks to fulfil the terms of the contract with Police is 46,000kg, Company Y has never had sufficient trucks with the required capability for the whole of the term of the contract: none in 2013; one in 2015; one in 2017; and none in 2020.
  57. In June 2021, after discussion with the Authority, Police conducted an audit of the Company Y vehicles currently capable of recovering vehicles of 46,000kg and over. They confirmed that there was only one vehicle in this category.<sup>16</sup>

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<sup>16</sup> This is the vehicle uprated from 35,000kg to 65,000kg which the manufacture does not authorise.

58. It is clear that Police have undertaken minimal oversight of Company Y's performance of the contract. There have been no inspections of any quality; there have been no formal contractual reviews of performance; and when concerns have been raised, Police have not understood the implications or risks to road safety.
59. It is imperative that Police take action to ensure that recoveries are undertaken with compliant vehicles to ensure road safety and minimise damage to the roading network.

### **Police knowledge of Company Y's non-compliance with its obligations under the Auckland Motorway contract and with regulations governing recovery vehicles**

60. Company X has made numerous complaints to Police about Company Y and its individual companies from as early as March 2013. They have provided documentary, photographic and video evidence to support their complaints. Some of these complaints, and Police's response, are as follows:
- On 26 March 2013, Company X met with Officer A in Wellington. They raised their concerns about Company Y's lack of compliance with regulations governing recovery vehicles. Officer A told them to make an official complaint to the Road Policing National Manager, because he was reluctant to get involved and declined to action the complaint directly.
  - On 7 May 2014, Company X submitted a complaint. The Auckland Road Policing Manager advised Company X that warnings to Company Y were a sufficient response to the complaint and asked them to refrain from gathering more information.
  - On 11 May 2015, Company X wanted to meet with the supervisor of CVIU in Auckland to discuss Company Y's non-compliance. The supervisor declined to meet with Company X.
61. Company X was concerned that Police had not adequately responded to the issues they had highlighted previously, so in late 2015 it wrote two letters of complaint to the Commissioner of Police. These were dated 4 September and 16 November 2015 and expressed concern about the inherently dangerous towing practice of operators in Company Y.
62. In response to the 4 September letter, the manager of CVIU wrote to Company X's lawyer on 1 December 2015 and said:
- "Not all [Company Y] members have vehicles capable of recovering [heavy vehicles] so have no requirement for a permit. One member has applied for a [Bridge Engineering Self Supervision] certificate and will then apply for the necessary permits. The [Company Y] Directors were advised that should they be required to undertake a tow that raised axle weights above legal limits, they would need to arrange for a tow operator who operates vehicles with the correct permits to undertake the tow on their behalf."*
63. This letter was an acknowledgement by Police that a company within the Company Y consortium did not have the required permits and BESS certificate to operate in accordance with the Auckland Motorway contract and to be a compliant operator. The letter also stated that if

Company Y could not undertake a tow then they should arrange for a tow operator with the correct permits. It should therefore have been clear to Police that Company Y was not fit for purpose in terms of its Auckland Motorway contract.

64. Officer A, who worked in a technical advisory role in CVIU at Police National Headquarters, admitted to Company X and us that Company Y did not get its Waka Kotahi permits until August 2015 and Auckland Transport permits until December 2015. These permits still did not allow the recovery of vehicles over 46,000kg.
65. The 16 November letter led to an investigation by Officer A, which we cover in Issue 6.
66. During this same time period Company X also sent two letters to Officer A with concerns about Company Y's operations.
67. This demonstrates that in 2015 alone, Company X raised concerns regarding Company Y's operations with Police on numerous occasions. Officer A said he inspected Company Y's vehicles at several yards and found certification plates attached to the vehicles. Despite this, it appears that at no stage did Police examine all Company Y's heavy recovery vehicles and compare the data relating to modifications and towing capacity with that held by Waka Kotahi to determine if the heavy recovery vehicles were compliant.
68. It is evident from Police's inadequate responses to Company X's complaints that they inadvisedly believed that Company X was motivated by its disappointment at not being awarded the Auckland Motorway contract, rather than out of a well-founded concern about Company Y's compliance.
69. If Police had handled Company X's concerns appropriately, they would have done a thorough inspection to determine if the Company Y consortium was compliant and compared the results with data held by Waka Kotahi.
70. It appears to us that Police have entered into a contract with an operator who is unable to meet its obligations under that contract, which has real safety and congestion-management implications for the New Zealand public, and potential liability concerns for Police in the event of any harm that may come from recovery vehicles operating beyond their towing capacity. It is incumbent on Police not only for contractual reasons but also for the safety of road users that they ensure Company Y is a compliant operator under the contract.
71. Waka Kotahi acknowledged to us that they have not been adequately regulating the industry and have advised us that they intend to conduct a review of heavy recovery vehicle operators to address the issue of maximum towed ratings and the adequacy of Waka Kotahi data.
72. Waka Kotahi are also currently reviewing the permitting process and the VDAM rules for the industry as a whole.

## FINDINGS ON ISSUE 2

At the time of the complaint, Company Y did not have sufficient vehicles with the necessary towing capacity and permits to remove vehicles weighing 46,000kg and over from Auckland's motorway, and was in breach of its obligations under the Auckland Motorway contract.

Police have been aware of the non-compliance issues but taken no or limited action.

## ISSUE 3: DO POLICE UNJUSTIFIABLY LIMIT THE OWNER'S CHOICE OF RECOVERY OPERATOR?

73. When a heavy vehicle is disabled and blocking the road or required for forensic examination, Police use the approved operator from their roster to recover the vehicle, in accordance with standard operating procedures. The roster is a list of approved recovery operators that can be used by Police. Company X and the individual companies within Company Y are on the rosters in Auckland. Company Y is the exclusive approved operator for the motorway because it has the contract.
74. If the vehicle is not blocking the road or required for forensic examination, the driver or owner can choose which operator they want to do the recovery. Company X has made numerous complaints to Police about instances in this category where Police have overruled the driver or owner choice and used the Police roster to get the recovery operator.
75. Some recovery operators have contracts with clients to recover their disabled heavy motor vehicles. These operators lose commercial business when Police over-ride the driver or owner choice.
76. The complaints led us to identify that within Police there was some uncertainty about, and inadequate understanding of, their role. As a result, we met with Auckland Road Policing staff to discuss the recovery of disabled heavy motor vehicles in certain situations, including on the Auckland motorway. Police then developed guidelines in May 2019, which was the subject of consultation with the Authority and Company X. Company X and Police agree they reflect best practice. Police have incorporated them into induction material for Auckland Road Policing staff and provided them to staff for roadside reference. We believe this addresses the issue.

## FINDINGS ON ISSUE 3

Police were sometimes incorrectly overruling the driver or owner's choice of recovery operator.

Police have since developed appropriate guidelines to deal with the driver's or owner's choice of recovery operator.

## ISSUE 4: DO THE POLICE CORRECTLY INTERPRET THE RULE REGARDING TOWING OF HEAVY MOTOR VEHICLES?

77. VDAM Rule 3.14(11) states that:

*"A heavy vehicle recovery vehicle may tow a heavy motor vehicle that has become disabled while on a roadway, and any attached trailers, to the nearest safe area, taking account of traffic volume, vehicle load, and the ability to*

*undertake repair safely at the roadside, off the roadway (that is accessible without contravening any bridge weight limit including posted limits) and does not have to:*

- a) comply with the dimension requirements in Schedule 2; or*
- b) comply with the mass ratio of towed and towing vehicles in 4.5; or*
- c) be operated under an over-dimension permit.”*

78. One of the exemptions this clause provides is from the need to apply for an over-dimension permit when towing heavy loads in certain situations. Company X, Police and Waka Kotahi cannot agree on the interpretation and application of the clause and the word “safe” is not defined in the Land Transport Act or Regulations. Company X interprets the phrase “nearest safe area” in the Rule to mean that they should be able to tow the combination to the place they subjectively determine is safe to undertake repairs. This is generally to the end point of where the combination was heading to unload its cargo or to the repair shop.
79. In contrast, Police interpret the clause as requiring the driver to tow the combination to the nearest safe area that they themselves identify, taking into account the traffic volume, vehicle load and the ability to undertake repairs safely at the roadside. Their view is that, taking into account those three factors, the “nearest safe area” is generally not the end destination or the repair shop as Company X prefer.
80. The key issue in dispute is whether the Police or the owner/driver has the expertise to identify the nearest safe area and is responsible for doing so.
81. Company X sought a statutory declaration at the Wellington High Court on the meaning of VDAM Rule 3.14(11). The Court declined to make the declaration of the nature sought by Company X stating: “it would be preferable for its correct interpretation to be determined in a particular factual setting, where the Court will no doubt be made fully aware of any potential risks involved in allowing drivers to make subjective decisions as to what ‘the nearest safe area’ is.” Company X has appealed this decision in the Court of Appeal.
82. Company X is the subject of several prosecutions before the District Court for alleged breaches of the VDAM Rule, and which concern the meaning of “nearest safe area.”
83. The outcomes of these matters will settle the interpretation of VDAM Rule 3.14(11) and clarify the law for both Police and the heavy haulage recovery operators.

#### FINDING ON ISSUE 4

The appropriate interpretation of VDAM Rule 3.14(11) is a matter for the Courts to decide.

## ISSUE 5: DID POLICE PROSECUTIONS OF COMPANY X DEMONSTRATE BIAS AND UNFAIR TARGETING OF THEM?

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84. Company X complains that it is unfairly targeted by Police. It alleges that Police National Headquarters CVIU staff have influenced proceedings to ensure prosecutions proceeded.
85. While it is not our function to review prosecution decisions, Company X's allegation is essentially one of bad faith and we have considered the prosecutions on that basis.
86. Company X has provided evidence of two prosecutions for us to review.

### 2015 Napier Prosecution

87. The prosecution arose from a complaint by a competitor of Company X. Company X recovered a laden BP fuel tanker from State Highway 2 near Wairoa to Gisborne. There were three charges relating to the company's failure to comply with the conditions of its permit, specifically that its driver:
  - departed from the permitted travel route;
  - failed to travel to the nearest safe area; and
  - exceeded the permitted speed of 70kph.
88. Company X complains that Police did not adequately investigate this matter and that the basis for the prosecution was flawed from the start because Police identified the wrong heavy recovery vehicle and the wrong permit. Police created an enquiry file to be sent to Auckland to interview the driver, but this did not appear to be actioned. Police obtained the GPS data from the disabled tanker and used this to support the charges.
89. Company X's defence counsel requested the matter be withdrawn. Defence counsel advised Police that:
  - Police had identified the wrong heavy recovery vehicle;
  - Police had identified the wrong permit, and that the correct permit allowed a speed of 90kph; and
  - the nearest safe place was Gisborne, as there was no place to defuel in Wairoa.
90. Police declined to withdraw the matter.
91. The prosecution file was reviewed by the District Prosecution Manager. He also liaised with Company X's lawyer about the technical issues of the case. Police believed that the permits did not allow Company X to travel on some of the roads they did. Company X's lawyer stated the terms of the permit were unclear in some respects and should be decided in their favour and they would be relying on the 'nearest safe place' provision which is discussed above in Issue 4.



92. The charges were ultimately withdrawn in February 2016, just before the trial was set down in March.

#### *Our investigation*

93. We spoke to the Napier Police CVIU Supervisor, who told us that he spoke with Officer A at Police National Headquarters during the investigation but was never influenced or pressured to prosecute.
94. The Napier CVIU Supervisor said he spoke with Company X's lawyer but denied pressuring Company X to plead guilty. The supervisor said that after the conversation with the lawyer he went back and reviewed the prosecution file, which led to the charges being withdrawn.
95. Officer A said he was spoken to about the issues relating to the investigation and gave advice. He denied influencing the prosecutor or saying that the prosecution must be kept going.
96. Company X's lawyer told us that he could not find any references in his file to suggest Police were being inappropriately influenced by anyone from Wellington.
97. A search of staff emails was completed. It revealed no emails from Police National Headquarters attempting to influence the decision to prosecute.
98. There is no evidence supporting the allegation that undue influence or pressure was put on the Napier CVIU staff to prosecute. We therefore find that there was no misconduct on the part of Police in prosecuting this matter, although their failure to realise that the wrong heavy recovery vehicle and the wrong permit had been identified, as well as their failure to interview the driver, suggest it was poorly investigated.

#### **2016 Taupo Prosecution**

99. An officer stopped a Company X heavy recovery vehicle while it was towing a disabled truck-trailer combination on State Highway 1 between Tūrangi and Taupō. Police allege that the vehicle had passed safe areas where they could have stopped and dealt with the disabled combination. An infringement fine was issued, and Company X defended the matter at trial.
100. The District Court Judge dismissed the case after hearing the prosecution evidence. He stated that there was no evidence of where the journey commenced, which was a key ingredient to be able to determine if safe areas had been passed.

#### *Our investigation*

101. The officer who dealt with the case admitted to us that he made a mistake in not calling the informant to give evidence. The informant was an off duty CVIU constable.
102. The officer in charge of the case said he spoke with Officer A for advice on appropriate charges. He said Officer A did not pressure or influence him to ensure the prosecution went ahead. Officer A likewise admitted he had a phone conversation with the officer but denied influencing

or pressuring the officer. He did tell us that in his view, if the vehicle had gone past Tūrangi, there were several safe areas at which it could have stopped.

103. Company X's lawyer told us that she had file notes on which she had recorded "*Wellington are driving this – CVIU.*" She could not be sure who made this comment to her or when it was made to her.
104. This file note is the only evidence of pressure put on officers to continue the prosecution. Without knowledge of the context of the comment, specifically who made it and when, there is insufficient evidence to enable us to conclude that undue pressure applied.
105. A search of staff emails was completed. It revealed no emails from Police National Headquarters attempting to influence the decision to prosecute.

## FINDING ON ISSUE 5

While there have been some deficiencies in the way these matters have been investigated, there is no evidence of bias in the handling of these prosecutions.

## ISSUE 6: DID OFFICER A HAVE A CONFLICT OF INTEREST WHEN INVESTIGATING A COMPANY X COMPLAINT IN NOVEMBER 2015 AND WAS HIS INVESTIGATION ADEQUATE?

### Conflict of interest

106. Company X's complaint to the Commissioner of Police in November 2015 (referred to in paragraph 61) was forwarded to Officer B. He tasked this to the Manager CVIU for Officer A to investigate.
107. Company X has complained to us that Officer A had a conflict of interest when he investigated that complaint.
108. Company X alleges that the conflict of interest arose because:
  - its November 2015 complaint related to Company Y's non-compliance under the Auckland Motorway contract;
  - Officer A worked in CVIU which managed the Auckland Motorway contract; and
  - Officer A was effectively investigating his own work and work unit, making it in his best interests to conclude that the investigation into Company Y's compliance was sound.
109. In fact, CVIU did not manage the Auckland Motorway contract. The contract is managed by the Auckland Motorway Road Policing team.
110. However, Officer A did have previous dealings with Company X in 2015. These included:
  - being involved in email correspondence with Waka Kotahi to influence the cancelling of a clause in Company X's permit, described at paragraph 143; and

- meeting with Company X and Waka Kotahi staff in July and August 2015 when Company X made complaints about the non-compliance of Company Y, although he was not responsible for the action taken to respond to those complaints.
111. Officer B told us that he was not aware of the previous dealings Officer A had with Company X. He said: *“if I’d known that at the time there is no way I’d have assigned him that.”*
  112. Officer A told us that he was acting in good faith and never thought he had a conflict of interest and that what he had done before did not influence his conclusions. He said his immediate manager was aware of the previous conversations with Company X and he discussed the file with this manager.
  113. Police policy requires Police employees to identify potential and actual conflicts of interest and manage them appropriately to ensure that the integrity of an investigation is maintained and able to withstand public scrutiny.
  114. A perceived conflict of interest arises where a fair-minded observer might reasonably form the view that an individual might not bring an impartial mind to the exercise of his or her duties or responsibilities.
  115. The existence of a conflict of interest does not necessarily mean that someone has in fact acted with bias, or that the interests of the entity concerned have suffered. The perception of the conflict is enough in itself to undermine confidence in the integrity of Police.
  116. Prior to undertaking the investigation, the Police employee must declare an actual or perceived conflict of interest to their supervisor and complete the Independence of Investigation Conflict of Interest form. The supervisor should ensure that the declaration has been completed, consider how the actual or perceived conflict can best be managed, and document their decision-making process. The supervisor may choose to assign a different individual to the task to maintain the perception of objectivity.
  117. Officer A did not turn his mind to any actual or potential conflicts of interest. He did not complete the declaration form.
  118. We recognise the operational difficulty when dealing with the specialist areas of CVIU and heavy recovery vehicles. There are few specialists who can deal with this work and we acknowledge that Officer A did have the required subject matter knowledge. However, Officer A had a perceived conflict of interest and should have declared this. Police should have assigned the complaint to a senior CVIU staff member in another area to investigate.

### Adequacy of Officer A’s investigation

119. Our review of Officer A’s investigation into the 16 November 2015 complaint by Company X identified some deficiencies. Officer A:
  - failed to follow best practice and speak with Company X to get a full understanding of the written complaint, photos, video and documentary evidence it provided;

- found that he could only consider a warning for one aspect of the complaint because he did not have details of the time, date or place of Company Y's behaviour. This is not an acceptable investigation response. If he had contacted Company X he could easily have got the information he needed;
- did not formally interview the drivers of the vehicles. He did not ask certain evidential questions like the route they took, what they were towing and what their load weighed. He did not challenge the drivers on any issues they raised. He did not show the video and photos to the drivers and ask for any comment;
- did not take the opportunity to speak with the Police officer who acted as a pilot during the tow, to gain a better understanding of the circumstances; and
- did not appear to check the data supplied by Company Y with Waka Kotahi to establish its veracity.

120. Officer A says that due to his inability to weigh or measure the vehicles and other technical difficulties he decided not to prosecute Company Y but to work with them to get them compliant.

121. The fact that Officer A, as discussed above, had a conflict of interest that he failed to declare aggravated the inadequacy of this investigation because it increased the perception of predetermination and bias. While Officer A was faced with some investigation difficulties, he did not conduct an adequate investigation. He adopted a compliance approach but did not follow this up to ensure Company Y was compliant. He did write to Company X with his findings.

## FINDINGS ON ISSUE 6

Officer A had a conflict of interest that he should have declared.

Officer A did not complete the Independence of Investigation Conflict of Interest form.

Officer A conducted an inadequate investigation into Company X's complaint.

## ISSUE 7: HAVE POLICE UNFAIRLY INFLUENCED WAKA KOTAHI IN RESPECT OF THE LATTER'S DEALINGS WITH COMPANY X?

122. Company X alleges that the New Zealand Police exercises an influence over Waka Kotahi that impacts unfairly on it. We have investigated the four examples that Company X provided.

### Company X Facebook posting

123. In 2019 a CVST sergeant was advised of a Facebook posting by Company X which said *"we have the permits, correctly rated equipment and trained operators to tow loaded combinations, HPMV, 50 max etc safely and lawfully NZ wide. Towing the combinations (rather than separating truck & trailer) is more cost effective and provides the truck operator/owner lower down time..."* We understand this was a reference to Company X's interpretation of "nearest safe area" under the VDAM Rule which we explain in paragraph 78. The CVST sergeant is involved in several District Court prosecutions that turn on this issue.

124. On 22 January 2019 the sergeant sent an email to a Waka Kotahi Regional Manager saying: *“Hi [name] FYI, I expect you may already have seen this. Just like to confirm that X do not hold any such permits as bragged about in their FB post. Must be time to look at revoking any permits they hold as they are falsely using to claim lawful right to tow such”*. He said that Company X was breaching the rules which created a *“huge safety issue”* and wanted to see what action could be taken against the company.
125. The Waka Kotahi Manager sent the email to a Waka Kotahi Permitting Manager saying:
- “Can we re-issue [Company X]’s permits with a critical condition that they are not allowed to tow a divisible load after the ‘place of safety’ and divisible loads includes trucks towing trailer(s) ... and they have pieces on FB and coming out in truck and driver magazines boasting that they are still doing this. What I want to be in a position of, is when they get caught by Police it’s a critical breach and we can revoke the permit.”*
126. The Permitting Manager’s response was: *“I will find out when they expire, it must be sometime this year. I agree we should look to add this piece into the conditions of a permit.”*
127. While the correspondence was poorly expressed, we cannot go as far as to say the sergeant was trying to usurp Waka Kotahi decision-making authority. He was certainly trying to influence it, but Police as the enforcement body have a genuine interest in any concerns or risks they identify and are entitled to raise them with Waka Kotahi to ensure safe practices are applied on the roads. Waka Kotahi are the regulators and make the final decision, not Police.

### Change of Company X’s permit conditions

128. Company X applied to Auckland Transport for overweight permits for the roads within the Auckland Transport boundary (excluding State Highways, which are Waka Kotahi’s responsibility). Company X spent time working with Auckland Road Engineers to show that their vehicles were compliant and to show how they would recovery heavy vehicles.
129. Auckland Transport issued overweight permits to Company X with a clause that allowed the operator to determine the safe place to which vehicles could be towed. This differed from the wording of VDAM Rule 3.14(11), set out at paragraph 77, but was in accordance with Company X’s interpretation of that Rule.
130. The Auckland Transport staff member who was responsible for conducting the inspection process for Company X’s permit said the reason this clause was included was to facilitate the removal of disabled heavy vehicles from Auckland Transport roads as quickly, efficiently and as safely as possible. They said that having inspected Company X’s operation and capability, they were happy to issue the permits in this form because they deemed Company X to be a compliant operator.
131. On 16 February 2015, a sergeant at Auckland CVIU emailed the Auckland Transport permit-issuing authority. Officer A was copied into the email. In the email, the sergeant expressed concern that the *“safe area”* clause in Company X’s permit may allow an operator to take a

recovered vehicle for an excessive distance, given the large load such vehicles could be carrying. In the email he said he had liaised with Officer A and “*we would request that clause 3.13 be removed.*” He also said that there had been discussions between CVIU at PNHQ and Waka Kotahi about this issue.

132. We spoke with Officer A. While he could not recall the specific matter, he agreed with the sentiment. His concern was that the clause allowed operators to tow a recovered vehicle further than they reasonably needed to in order to safely recover it, and that the clause was a breach of VDAM Rule 3.14(11). Officer A acknowledged that he probably did not look at any other companies’ permits to check whether they contained the same clause, but said the target of his concern was Auckland Transport’s issuance of the permit, not Company X.
133. The Auckland Transport permit issuing authority emailed Company X on 2 April 2015 saying that after discussions between Police and Waka Kotahi, Police had requested the clause be removed from the permits. It said that although the clause was removed, the permits remained valid and allowed vehicles to be towed to the nearest safe area rather to a place determined by the operator.
134. Company X believed that this severely restricted their operations and unnecessarily impacted on their customers. It said that no other operator in Auckland had done the work with Auckland Transport to have this clause in their permits, so it had given them an operational (and therefore a commercial) advantage over its competitors. Company X believed that Police were biased against them and therefore targeted them.
135. In November 2016, on Company X’s request, a different Auckland Transport staff member subsequently reissued the Auckland Transport permits with the clause reinstated, allowing the Company X operator to determine the safe place.
136. In the Authority’s view, it is appropriate for Police to raise genuine road safety concerns with Waka Kotahi and other permitting agencies, provided that the decision making about permits continues to sit with the issuing agency. In this case, we are satisfied that it did, and that the Police intervention with Auckland Transport did not exceed the limits of their legitimate function.

### North Island overweight permits

137. On 17 March 2016 Waka Kotahi reissued Company X with all of its North Island overweight permits except for the Napier region. Waka Kotahi advised Company X that CVIU had told him that permits should not be issued, because they had previously carried out an illegal recovery of a BP fuel tanker from Wairoa. That recovery was the subject of the prosecution, which was withdrawn for lack of evidence in February 2016, discussed in paragraphs 87-98.
138. Company X lodged new permit applications for the Napier region which were subsequently issued.
139. We are satisfied this demonstrates unfair Police influence over Waka Kotahi processes. At the request of Police, Waka Kotahi refused to issue a permit, even though there was no legal basis

for the refusal given that the relevant charge had been withdrawn. Even if the charge had not been withdrawn the Authority doubts that it was appropriate for Police to have the applications declined, at least without providing an evidential basis for that. Their request simply on the basis of a prosecution (without the accompanying evidence) appears to usurp Waka Kotahi's decision-making function.

### Police influence in the cancellation of a permit issued by Waka Kotahi

140. On 18 February 2019 an eight-car truck carrier was disabled on State Highway 1 near Cambridge. Police CVST attended and told the driver that the combination was divisible and that the recovery operator must take it to the nearest safe area.
141. The driver advised Company X that the hydraulics were disabled, which meant he could not separate the truck from the trailer.
142. Based on this information, Company X rang Waka Kotahi and obtained an over-dimension permit to transport the disabled combination to Hamilton without separating it. They applied for the permit because they were aware that Waka Kotahi and Police disagreed with their interpretation of the scope of the VDAM Rule exemption for such a permit, explained at Issue 4.
143. Company X commenced the recovery before the over-dimension permit had been issued. Therefore, there was a period during which Company X's driver was driving without a permit in reliance on Company X's interpretation of VDAM Rule 3.14(11). Police believed that the driver had passed the nearest safe place and was therefore in breach of the VDAM. Police stopped Company X at about 2pm. Enquiries with Waka Kotahi show the permit was issued at 2.29pm. When the officer saw the permit, he allowed the recovery to continue.
144. However, the officer contacted the CVST senior sergeant and told him that Company X had not gone to the nearest safe area. The senior sergeant rang Waka Kotahi and told them this disabled combination was a divisible load. In response, Waka Kotahi cancelled the over-dimension permit, the rationale being that Company X did not need to tow such a long load because they could have separated it.
145. Police were entitled to ring Waka Kotahi to discuss the permit. We have no issue with that; it is a legitimate function to communicate their view to the regulatory agency. We have spoken with Waka Kotahi management who told us that Police do influence the way they deal with these types of matters. Our view is that in this instance the influence was not unfair, but Police need to be accurate and sure of the facts when they talk to Waka Kotahi.
146. The Police enforcement action is not about the driving after the permit was revoked, it is about the driving before the permit was issued. That is a matter for the Courts to determine.

### FINDING ON ISSUE 7

Of the examples covered the last two show Police have exerted unfair influence on permitting agencies to cancel permits and change permit conditions.

## ISSUE 8: DO POLICE INTERPRET SECTION 113 OF THE LAND TRANSPORT ACT 1998 CORRECTLY IN RELATION TO DIRECTING TOW OPERATORS WHEN MAKING A RECOVERY?

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147. During our investigation Company X made several complaints against how Police had interpreted section 113 of the Land Transport Act 1998. Police were using section 113 (2)(c) and (d) to direct Company X to move disabled truck and trailers and directing them how to move it and where to move it to. If the operator did not comply with the direction, Police would regularly threaten them with arrest.
148. Subsections 2(c) and 2(d) empower Police to direct a person to remove a vehicle from a road if it is causing an obstruction and its removal is desirable in the interests of public safety or for the convenience or in the interests of the public.
149. Company X complained that the law does not allow Police to tell recovery operators how to conduct the recovery and where to take the disabled truck and trailer to. Police have given such directions to Company X on numerous occasions.
150. For example, Police attended an incident where a disabled truck and trailer was being recovered on a weekday at 5.30pm in Auckland City. Police directed the operator to a location on a residential street and threatened to arrest the driver if he did not comply. The tow operator did what the Police directed to avoid being arrested.
151. Police have recently conceded to the Authority that, while they can direct the removal of a vehicle for safety purposes under section 113 of the Land Transport Act 1998, it is up to the tow operator to determine how to do this. They *“are not the experts in vehicle recovery and should not be advising the tow operator how to do his job.”* The VDAM Rule 3.14(11) is clear that the operator can tow the whole unit to the nearest safe place for the ability to undertake repair safely at the roadside. The tow operator must consider objectively the three requirements of the Rule (which relate to traffic volume, vehicle load and the ability to undertake repairs safely at the roadside).<sup>17</sup> Police believe they should certainly discuss with the operator how they are going to achieve this and come to an agreement where the nearest safe place is, but the Act does not allow Police to direct the operator to a location, as that is effectively the operator’s decision.
152. We agree that Police can direct a tow operator to remove a disabled vehicle that is blocking the road for safety purposes, but that Police do not have the power to direct the operator how to conduct the recovery and where to move the vehicle to. However, we accept that Police should be able to discuss with recovery operators how the recovery is to be effected in order to ensure the safety of road users.
153. It is clear that Police have been interpreting section 113(2)(c) and (d) powers incorrectly and giving illegal directions to tow operators and unlawfully threatening to arrest operators if they do not comply with Police directions.

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<sup>17</sup> This has been discussed at Issue 4 above. There is a difference in interpretation between Company X and Police on the nearest safe place issue.




154. Police have subsequently developed and disseminated guidelines concerning the interpretation and application of powers under section 113 of the Land Transport Act 1998.

#### FINDING ON ISSUE 8

Police have been interpreting and exercising their powers under section 113(2)(c) and (d) of the Land Transport Act 1998 incorrectly.

### Subsequent Police Action

155. The Police audit will inform Police as to the capability of Company Y to tow heavy vehicles of 46,000kg and over. Police acknowledge that there is one vehicle capable of performing heavy vehicle recoveries of 46,000kg and over. It is incumbent on Police as the contracting party to make further enquiries about the safety of this vehicle to be able to rely on the rating. Police have engaged an independent engineer to assess Company Y's capability to tow in excess of 36,000kg.
156. Police will complete a review of all towing contracts in respect of heavy motor vehicles to ensure nationwide compliance.
157. Standard operating procedures are to be created for Communication Centres nationally, in relation to attendance by Police at heavy motor vehicle breakdowns/crashes. Information is to be sought from attending Police about the weight of tows, so that this information can be passed to the tow operator in order to assist in their decision-making about whether they have capability to complete the tow.
158. Police are preparing a training presentation for CVST staff about the recovery of vehicles from the roadside and the new permitting system being developed by Waka Kotahi.
159. Police last year developed and introduced a process that involves the use of supervisors from different CVST areas, and sometimes Police Professional Conduct staff from other districts, to investigate complaints, in order to provide a fresh set of eyes over applicable investigations and further remove risks of actual or perceived bias.



**Judge Colin Doherty**

Chair

Independent Police Conduct Authority

11 August 2021

**IPCA: 18-0575**

## Appendix – Laws and Policies

### RELEVANT LAW

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#### The Land Transport Rule Vehicle Dimension and Mass 2016 Rule 41001/2016

160. VDAM Rule 3.14(11):

*“A heavy vehicle recovery vehicle may tow a heavy motor vehicle that has become disabled while on a roadway, and any attached trailers, to the nearest safe area, taking account of traffic volume, vehicle load, and the ability to undertake repair safely at the roadside, off the roadway (that is accessible without contravening any bridge weight limit including posted limits) and does not have to:*

- a) comply with the dimension requirements in Schedule 2; or*
- b) comply with the mass ratio of towed and towing vehicles in 4.5; or*
- c) be operated under an over-dimension permit.”*

#### Section 113 of the Land Transport Act 1998

161. **“Enforcement officers may enforce transport legislation**

*(1) An enforcement officer in uniform or in possession of a warrant or other evidence of his or her authority as an enforcement officer may enforce the provisions of—*

*(a) the Local Government Act 1974, the Local Government Act 2002, the Road User Charges Act 2012, the Government Rounding Powers Act 1989, the Railways Act 2005, the Land Transport Management Act 2003, and this Act:*

*(b) regulations and rules and bylaws in force under any Acts mentioned in paragraph (a).*

*(2) Without limiting any other powers conferred on an enforcement officer, an enforcement officer, in enforcing any provisions referred to in subsection (1), may at any time—*

*(a) direct a person on a road (whether or not in charge of a vehicle) to give the person’s full name, full address, date of birth, occupation, and telephone number, or such of those particulars as the enforcement officer may specify, and give any other particulars required as to the person’s identity, and (unless the person is for the time being detained or under arrest under any enactment) give such information as is within the person’s knowledge and as may lead to the identification of the driver or person in charge of a vehicle:*

*(b) inspect, test, and examine—*

*(i) the brakes or any other part of a vehicle on a road or any associated equipment; or*

*(ii) a land transport document, or a document resembling a land transport document, displayed or carried on the vehicle:*

*(c) if the enforcement officer believes on reasonable grounds that a vehicle on a road causes an obstruction in the road or to a vehicle entrance to any property or that the removal of the vehicle is desirable in the interests of road safety or for the convenience or in the interests of the public,—*

*(i) enter, or authorise another person to enter, the vehicle for the purpose of moving it or preparing it for movement; and*

*(ii) move, or authorise another person to move, the vehicle to a place where it does not constitute a traffic hazard:*

*(d) direct the driver or person in charge of a vehicle on a road to remove the vehicle from the road or a specified part of a road, if the officer believes on reasonable grounds that it causes an obstruction in the road or to a vehicle entrance to any property or its removal is desirable in the interests of road safety or for the convenience or in the interests of the public:*

*(e) forbid an unlicensed driver to drive a motor vehicle:*

*(f) forbid a person who is operating a transport service without a licence to operate that transport service.*

*(3) An enforcement officer in uniform or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, who is for the time being engaged in the regulation of traffic on a road, may—*

*(a) direct a person using a vehicle or riding or driving an animal on the road to stop the vehicle or animal, as the case may be, or to cause it to proceed in or keep to a particular line of traffic or direction:*

*(b) direct a pedestrian not to proceed across the road in contravention of a direction to stop given by the enforcement officer (whether given to pedestrians or to pedestrians and other traffic).*

*(4) In paragraphs (c) and (d) of subsection (2), **road** includes any land vested in or under the control of the Crown or any local authority.”*

## Definitions

162. Tare weight: The unladen weight. This means the weight (mass in the HVR) of the vehicle together with the fuel in its fuel system (if any) and the equipment and accessories on it that are necessary for its operation for the purpose for which it was designed. For a tow truck the towing equipment will be included.

163. Gross Vehicle Mass (GVM): The maximum safe operating mass for a vehicle (including the mass of any accessories, crew, passengers, or load) that is derived from the design, capabilities, and capacities of the vehicle’s construction, systems, and components, and that—

a) is determined by—

- i. the Agency; or
  - ii. the manufacturer of the vehicle; or
  - iii. if the vehicle is modified after manufacture, a certifier approved by the Agency; and
- b) may be recorded in kilograms on the register of motor vehicles.
164. Gross Combined Mass (GCM): For a vehicle that is permitted to tow another vehicle, the maximum permitted combined mass of the towing vehicle and any combination of attached trailers or vehicles, determined by the vehicle manufacturer, and approved by the Waka Kotahi, or determined by the Waka Kotahi.
165. High Productivity Motor Vehicle (HPMV): Exceeds 44,000kg and/or the maximum length dimensions allowed for standard vehicles and operate under a route specific HPMV permit issued by a road controlling authority and displays a 'H' sign on the front and rear as specified on the permit or if route specific.
166. Bridge Engineering Self Supervision certificate (BESS): Registration system for companies and drivers of heavy vehicles that operate under an overweight permit. BESS registration is a requirement for obtaining overweight permits that include restrictions on crossing bridges. Every HRMV operator with OW permit requires them.
167. Overweight permits (OW): Issued by the relevant road controlling authority that manages the road system. State Highways are managed by Waka Kotahi. Auckland roads are managed by Auckland Transport (AT). There are strict controls on the weight and axle loads of overweight vehicles. This is to protect the road network. If the vehicle exceeds the load limit, an overweight permit is required. The maximum weight limits are set out in the VDAM Rules.
168. Kiwi rail permit: Required for oversized (or over-dimensional) loads that need to cross railways. Oversized or overweight vehicles require extra safety measures.
169. Certificate of Loadings (CoL): Certificate issued to a vehicle that requires verification of its loading and weight limits by a certified vehicle inspector.
170. Maximum towed mass (MTM): The Heavy Vehicle Rule means the permitted mass of all vehicles that may be towed behind a vehicle as determined by the manufacturer of the towing vehicle and approved by the Agency. The Vehicle Inspection Requirements Manual (VIRM) further defines the MTM as a function of the draw beam or Tow Bar Certified to the heavy Vehicle (reference Technical Bulletin 3; Heavy Vehicle Specialist Certification Manual, Memo 57C – Chassis Re-Rating).

171. MTM is usually the limit of the tow connection, like the draw beam. The MTM is not usually a relevant measure for an under lift truck where this directly attached to the chassis (rather than via the 5<sup>th</sup> wheel). It would be unusual if the limiting factor was the limits of the under lift as a tow connection. Tow trucks will often still have an MTM if they have been used in other industries.
172. The MTM for a draw beam is plated in close proximity to it, as required by the New Zealand Standard referred to in the Heavy Vehicle Rule.

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

## THIS REPORT

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This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.

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