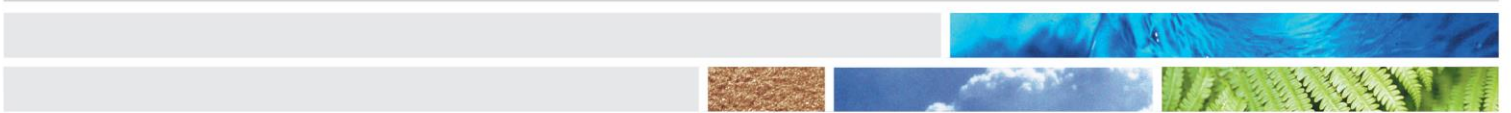




Environmental  
Protection Authority  
*Te Mana Rauhi Taiao*

# Self-review of the Environmental Protection Authority (EPA)

5 September 2014



## Review Team's Acknowledgement

This Self Review has been completed by three external contractors at the request of the Environmental Protection Authority (EPA).

The Self Review team acknowledge the generous and open spirit in which this Review has been conducted. The EPA's Executive Leadership Team (ELT) has been very generous with their time and provided unfettered access to resources, administrative support and subject matter experts and have encouraged and role modelled an open, collaborative and participatory approach to the Review.

Input into this Review has come from analysis of the EPA's corporate accountability and other key business documents, a review of the 2013-14 EPA Board and Executive Leadership Team meeting agendas and papers, research to understand the EPA operating models and business processes and systems, interviews with all members of the ELT and Operational Leadership Team (OLT), interviews with the EPA Board members and members of Ngā Kaihautū Tikanga Taiao Board, input from four staff workshops (attendees drawn from across the organisation representing approximately 10% of the total staff number), and interviews with representative external stakeholders, other government agencies in the Resource sector, applicants and other people involved with Decision-making Committees, Hazardous Substances and New Organisms (HSNO) Committee members and representatives from a broad spectrum of environmental interest and lobby groups.

There was strong support for the EPA across those interviewed and a genuine desire to provide thoughtful input. As with any review of this nature the comments made here are based on the evidence provided and the judgement of the reviewers. We thank those who provided feedback on drafts.

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5 September 2014.

## Table of Contents

Review Team’s Acknowledgement.....	2
Observations.....	5
Recommendations.....	6
What Will Success Look Like? .....	9
Organisational Context .....	11
Results Section .....	15
Part One: Delivery of Government Priorities .....	15
Government priority 1: Build a productive and competitive economy .....	15
Government priority 2: Delivering better public services within tight fiscal constraints .....	17
Part Two: Delivery of Core Business.....	19
HSNO, ozone-depleting substances and hazardous waste decision making.....	19
Resource Management Act decision making.....	21
EEZ decision making.....	24
HSNO, ozone-depleting substances and hazardous waste compliance .....	26
EEZ Compliance.....	31
Emissions Trading Scheme (ETS) and New Zealand Emission Unit Register (NZEUR) decision making and compliance.....	32
Organisational Management Section .....	34
Part One: Leadership, Direction and Delivery .....	34
Purpose, Vision and Strategy.....	34
EPA’s mission.....	36
World-leading environmental regulator .....	37
Leadership and Governance .....	37
Values, Behaviour and Culture.....	41
Structure, Roles and Responsibilities.....	42
Systems Thinking and Infrastructure .....	44
Review and Improving efficiency and effectiveness.....	46
Part Two: External Relationships .....	47
Engagement with the Minister(s).....	47
Sector Contribution.....	47
Engagement with the Regulated Community .....	49
Experiences of the Public.....	50
Part Three: People Development .....	52
Leadership and Workforce Development.....	52
Management of People Performance.....	53
Part Four: Financial and Resource Management.....	56

Asset Management.....56  
Information Management .....56  
Financial Management .....57  
Risk Management.....58  
APPENDIX A ..... 59  
List of Interviews .....59  
Definitions .....60

## Observations

This Self Review provides the Environmental Protection Authority (EPA) with an opportunity to examine and reflect on its own performance in key result areas such as: achievement of government priorities, achievement of core business objectives, how well it is positioned to meet the challenges in near and long term. It also provides a timely opportunity to check in with external stakeholders and customers on how its performance is viewed externally. The true benefit in undertaking a review of this nature is to take the learnings from it and to apply them.

The EPA is a well-led, well-functioning organisation. The EPA has a wide and complex range of legislative responsibilities. In its first three years, the EPA's primary objective has been to operationalise its functions and legislation without fault or error.

In a number of areas the EPA stands out:

- The hard work and dedication of EPA staff and their strong belief in the organisation
- The way in which third tier managers have been empowered through the Operational Leadership Team (OLT)
- Cohesive nature of the Executive Leadership Team (ELT)
- Ability for the organisation to act quickly once a need for change has been identified and accepted
- The quality of the contribution from the Māori Advisory Committee, Ngā Kaihautū Tikanga Taiao, and the support that this group provides to the EPA Board and Decision-making Committees
- With the odd exception the vast majority of stakeholders are positive about the EPA and how the organisation fulfils its responsibilities and functions.

The EPA has undergone considerable change since its inception three years ago. A business model characterised by “don't drop the ball” was put in place where the priority was the day to day operational functioning of the organisation. A feature of this model became the use of a short-term planning focus. This focus is at the expense of long-term planning. During the EPA's establishment and transition phase the business model may have been appropriate but the environment has changed and with it the organisation's maturity. The EPA now needs to move beyond that phase. It is acknowledged that the EPA itself has largely recognised that it is in phase change and some preliminary moves have been made. As with any organisation the ability and willingness to accept change varies across the EPA. The leadership group needs to challenge the status quo, look to the future, understand the need for change and position the organisation for that future.

Some of that future will involve the organisation clarifying its role and its place in the regulatory space. Functions under development will move from being implementation projects to business as usual. The organisation will develop some much needed systems (both process and IT) but these will need to be developed taking a whole of business approach. A key element to this consolidation will be setting a viable future for the EPA through a sustainable mix of Crown funding and increased cost recovery.

The near future will be a time for consolidation for the EPA; the Minister has signalled that at this time there is no intention to add new functions or responsibilities. The EPA is well placed to take its next steps on its journey. This review has identified the following matters for consideration (the list has no particular order of priority):

- Leadership – challenge your status quo
- Clarify the EPA’s mission and its role as a regulator
  - Describe how the EPA roles link to Government priorities (while maintaining clarity of the regulatory functions)
  - Create better public awareness of the EPA and its role
  - Become a world-leading regulator
- Plan for the long-term and evaluate progress and impacts
- Apply systems thinking to processes and infrastructure
- Develop the Hazardous Substances and New Organism (HSNO) compliance function to take a sector leadership role
- Get more out of the Executive Leadership Team and the Operational Leadership Team.

## Recommendations

Recommendations		Leadership	Role of the Regulator	Planning	Systems	People & Development
1	Take a leadership role to drive change in the organisation and environment sector.	✓ Pg. 30				
2	Don't use lack of funding as an excuse – prioritise and choose.	✓ Pg. 45		✓ Pg.43		
3	Agree what the end-state looks like and develop actions with timeframes to get there.	✓ Pg.34		✓ Pg.43		
4	Measure and report progress toward achieving the vision and mission.	✓ Pg.37		✓		
5	Develop the CE's KPIs earlier so that they cascade into internal accountability documents and performance plans before the start of the financial year.			✓ Pg. 44		
6	ELT to develop a long-term programme or agenda of issues to cover at its strategy sessions.			✓ Pg.39		

	<b>Recommendations</b>	<b>Leadership</b>	<b>Role of the Regulator</b>	<b>Planning</b>	<b>Systems</b>	<b>People &amp; Development</b>
7	Develop actions and impact measures aimed at achieving the Strategic Intentions success measures.			✓ Pg. 43		
8	Develop an agreed set of criteria against which programme and activities can be prioritised across the organisation.			✓ Pg.45	✓ Pg.46	
9	Describe how the EPA meets the Government's broader set of priorities and how it fits into the cross-government priorities.		✓ Pg. 16	✓		
10	Develop a new EPA Strategic Intention and measures to focus development of the compliance function		✓ Pg.30	✓		
11	Define the EPA's approach to compliance and its leadership role in the sector.	✓ Pgs. 26	✓ -32			
12	Lead the sector to develop consistent compliance standards and expectations, prioritisation of interventions across multiple agencies, and the targeting of action and sharing of resource.	✓ Pg. 49	✓			
13	Develop a cohesive programme to proactively raise the profile of the EPA ensuring it identifies and manages potential risks. Understand your objectives in raising your profile.		✓ Pg. 48-50			
14	Use systems thinking when planning or designing processes so that components across the organisation fit together.			✓ Pg. 17	✓ Pg. 45	
15	Review the organisation's risks and its approach to risk management. Some risk statements do not reflect risk.			✓ Pg. 58	✓	
16	Review existing technology infrastructure, consider business need, prioritise.			✓	✓ Pg.56	
17	Integrate across the organisation lessons learnt from specific post project reviews. Improve processes, update training and change to a learning culture.			✓ Pg. 26.	✓ Pg. 46	
18	Implement a Programme Management approach (this is not necessarily recommending a PMO).			✓ Pg.56	✓	

Recommendations		Leadership	Role of the Regulator	Planning	Systems	People & Development
19	When tasking OLT provide clear guidance around boundaries, perspectives to consider and any preliminary thoughts that ELT may have on the subject.	✓				✓ Pg.40
20	Develop and implement a workforce and succession plan including a capability option.					✓ Pg.21
21	Invest in the development of the individual General Managers.					✓ Pg.40
22	Invest in the ELT as a team.					✓ Pg.40
23	Invest in a suitable OLT development programme.					✓ Pg. 52

## What Will Success Look Like?

### **(Note the extract below is an unedited copy of preliminary work by ELT and OLT)**

This work is currently being driven by the ELT and OLT and will develop over the next few months. It is included here as a useful marker for the development of the EPA long-term vision.

- EPA will be a trusted and respected environmental regulator known for its robust, objective decisions and ensuring compliance with its rules. It will be clear about how its regulatory interventions contribute to the government and natural resource sector outcomes.
- Its core competencies of decision making, running registries and compliance will be leveraged not only to deliver its current functions but to add value across the sector.
- It will be known for making complex and contentious decisions in a timely and efficient way maximising its inclusive and transparent processes. It will be seen as an independent referee whose decisions are free from undue influence. Our decisions and compliance action will be transparent, defensible and evidence-based.
- It will continue to effectively recognise and provide for the unique relationship Māori have to the environment in its decision making.
- It will be an active contributor to the natural resources sector, and sectors dealing with business, for example, to reduce the incidence and impacts of financial crime or cybersecurity issues (ETS), by working with others it will provide cohesive regulation of activities, efficiencies and achieve good outcomes.
- It will continue to deliver its core business efficiently, effectively and in a way that meets timeframes and performance standards expected of it. While its activity will be centred on its legislative mandate it will be proactive in seeking other ways to achieve good outcomes.
- Its unique role and position within the wider environmental and economic system will be well understood internally, and clearly articulated to New Zealanders who will feel confident that it does its job efficiently, effectively and with integrity.
- Its mission to protect people and the environment closely aligns to the delivery of a competitive and productive economy through creating a regulatory environment that protects our international image of environmental integrity while carefully considering New Zealand's need to develop economically, culturally and socially.
- It will continue to have a reputation for excellence in providing fair, transparent and timely service.
- It will be internationally connected and an active member of regional and global communities, learning from similar overseas agencies and adapting or developing new and innovative approaches for New Zealand. In this way it will be a world-leading regulator.
- It will collaborate with its regulated communities to encourage compliance and not be afraid to require compliance if needed. It will communicate clearly what is required and make compliance as easy as possible.

- It will have a strong core of capable people who can respond confidently to change. It will be planned, agile and responsive in its use of additional resource to meet the variable and demand-driven nature of its work.
- The skills of its people will be a mix of highly specialised experts across a range of disciplines, competent and adaptable analytical skills and future focussed, big picture thinkers. These will combine to deliver a learning organisation whose people are observed as savvy and knowledgeable.
- It will build business capability and systems that are flexible enough for the organisation to be the right size. Investment into people, processes and technologies will be future focused and able to accommodate new or changing functions.

The EPA brand will have strong recognition with New Zealanders and be associated with trust, excellence, integrity and agility.

## Organisational Context

To ensure stronger and better coordinated central government leadership on environmental regulation the Government established a Crown entity – the Environmental Protection Authority in July 2011. *“The success of the EPA will be in it being a fair, effective and efficient regulator of our environment. We want a technically expert and professional organisation that will protect the environment while minimising compliance costs and enabling our economy to grow.”* (Minister for the Environment’s press release 30 June 2011).

As with any Crown entity the roles, functions and responsibilities are set out in statute. The statutory objective and functions for the EPA are defined in the Environmental Protection Authority Act 2011;

### *Section 12 Objective of EPA*

*(1) The objective of the EPA is to undertake its functions in a way that—*

*(a) contributes to the efficient, effective, and transparent management of New Zealand’s environment and natural and physical resources; and*

*(b) enables New Zealand to meet its international obligations.*

*(2) When undertaking its particular functions under an environmental Act, the EPA must also act in a way that furthers any objectives (or purposes) stated in respect of that Act.*

### *Section 13 The functions of the EPA are—*

*(a) to advise the Minister on any matter relating to its functions under this Act or an environmental Act:*

*(b) to exercise the powers, and carry out the functions and duties, conferred on it by or under this Act or an environmental Act:*

*(c) if requested by the Minister,—*

*(i) to provide technical advice to the Government and Crown entities on any matter related to its functions under an environmental Act:*

*(ii) to provide administrative assistance (including secretarial services) to a person or group of people appointed by the Minister to provide advice or report on any matter related to its functions under an environmental Act:*

*(iii) to contribute to and co-operate with international forums and carry out international obligations related to its functions under an environmental Act.*

The following section is an edited extract taken from the EPA’s 2014-18 Statement of Intent (SOI).

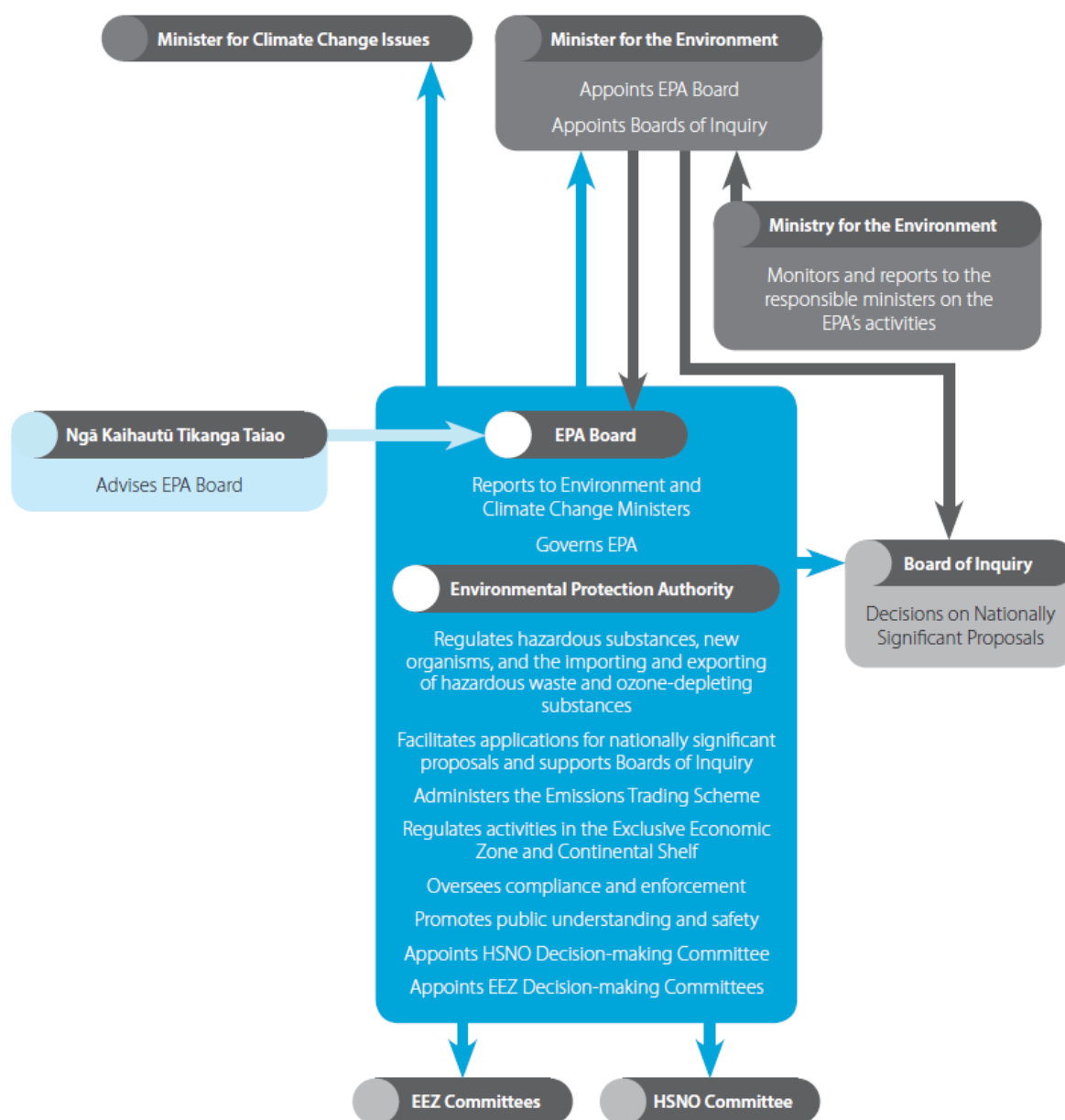
The EPA has powers, duties and functions under various environmental Acts. When undertaking those functions under an environmental Act, the EPA must act in a way that furthers any objectives (or purposes) stated in respect of that Act.

The relevant environmental Acts are:

- Resource Management Act 1991 (RMA)
- Hazardous Substances and New Organisms Act 1996 (HSNO Act)
- Ozone Layer Protection Act 1996 (OLPA)
- Climate Change Response Act 2002 (CCRA)
- Imports and Exports (Restrictions) Act 1988
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).

The EPA's main activities are:

- regulation of pesticides, dangerous goods, household chemicals and other hazardous substances, regulation of ozone-depleting substances, certain chemicals and hazardous waste controlled by international environmental agreements, regulation of new organisms including genetically modified organisms
- regulation of certain activities within the Economic Exclusion Zone (EEZ) and Continental Shelf, for example the environmental effects of oil, gas or mineral production
- administration of Nationally Significant Proposals (NSP) under the Resource Management Act (RMA)
- administration of the New Zealand Emissions Trading Scheme (ETS) and the New Zealand Emission Unit Register (NZEUR).



**Figure 1: The EPA's functions and governance relationships**

The EPA is part of a wider environmental regulation and management system in New Zealand, which is continually evolving. The EPA works with others to achieve good outcomes. It cooperates with other agencies to ensure that elements of the wider natural resources sector are aligned, and information and services are shared to support effective decision making. The EPA sees its job becoming more complex and the risks and benefits around each decision it makes must be carefully weighed, not just from its own evidence, but also that received from many other sources within the sector, including consultation with iwi and community groups.

The EPA also increasingly operates as part of the business and financial sector (through ETS) and is developing relationships that reflect that, for example with the Ministry for Business, Innovation and Employment (MBIE), the Serious Fraud Office, Inland Revenue, the Financial Markets Authority and the Department of Internal Affairs (Anti-Money Laundering). This is to ensure that threats such as cybercrime and financial crime can be managed more effectively.

The EPA works closely with independent Boards of Inquiry (BOI) appointed by the Minister for the Environment to make decisions on nationally significant proposals. While these decisions are not made by the EPA, the EPA supports each BOI to run the process. The EPA makes decisions in its own right under the EEZ and HSNO Acts.

New Zealand's environmental interests are part of the EPA's international work and to this end the EPA participates, and helps to represent New Zealand on international bodies dealing with climate change, chemicals regulation, chemicals and ozone-depleting substances governed by international conventions, and the regulation of hazardous substances, hazardous waste and new organisms.

Increasingly the EPA sees its job to deliver robust, objective decisions to ensure compliance with rules and to take enforcement action when necessary. This is happening in particular around its role in the EEZ, and will involve a greater degree of partnership with other regulatory and operational agencies, at national and local level and also at times, internationally. Future compliance roles will include a new function for the import and manufacture of chemicals under the HSNO Act.

The EPA recognises that the Government expects the EPA to provide a consistent regulatory approach across the country and over a broad range of environmental issues. The EPA also provides advice on the implementation of government policy, environmental legislation and regulations. This includes providing advice to the Ministry of Foreign Affairs and Trade on environmental impact assessments for activities in Antarctica.

## Results Section

### Part One: Delivery of Government Priorities

#### **Government priority 1: Build a productive and competitive economy**

*- the Business Growth Agenda is central to this (Minister's Letter of Expectations)*

*Better linking to the Government's priorities while maintaining clarity of regulatory independence*

The Minister's Letter of Expectations (10 Feb 2014) sets two Government priorities

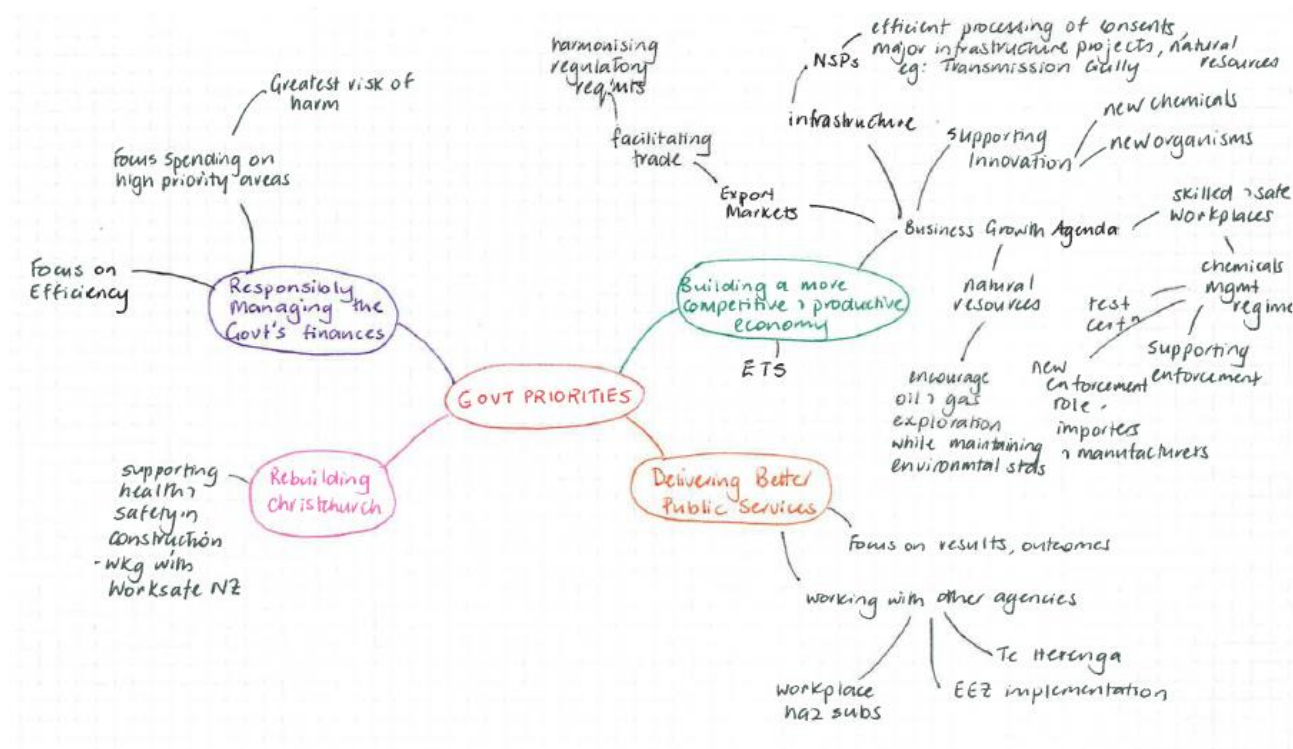
- Build a productive and competitive economy – the Business Growth Agenda is central to this.
- Delivering better public services within tight fiscal constraints – this requires Agencies to work to develop new business models, work more closely with others, and harness new technologies in order to meet emerging challenges.

These priorities are reflected in the EPA's 2014-18 Statement of Intent (page 13) and in earlier accountability documents (i.e. page 10 of the 2013-17 Statement of Intent). As part of the preparation for the Self Review the ELT agreed what it believed are Government's priorities relevant to the EPA. These priorities were identified as;

- Improve the efficiency of the regulatory framework for hazardous substances. We will simplify the controls, improve the effectiveness of hazardous substances education, compliance and enforcement, to ensure workplace harm is minimised.
- Embed the regulation of activities in the EEZ, so that the users understand their obligations and that the environment is protected, while minimising the compliance burden.
- Maximise confidence in the integrity and service delivery of the Emissions Trading Scheme and redevelop the New Zealand Emissions Unit Register.

The list of ELT's priorities is defensible in the terms of operational functions. They also reflect the more detailed list of actions and expectations that the Minister identifies in her Letter of Expectations.

There is confusion about how the EPA's objectives link with Government priorities. The diagram below was produced by a member of the ELT. This reflects the interaction between the Government's broader priorities and the EPA's functions and activities.



**Figure 2: Inter-relationships between Government priorities for the EPA and the EPA's functions and responsibilities (EPA General Manager)**

There is a risk here that by not understanding Government's priorities that the organisation's focus will be on other matters. The Government sets priorities to ensure the expenditure is coordinated in areas it believes important. The setting of priorities also reduces duplication and focuses areas for collaboration across Government agencies. Telling this story is important because it sets the EPA within a whole of Government framework and helps clarify the organisation's role and position. It also helps put into context how the EPA's work contributes to New Zealand Inc. It is also an opportunity for the EPA to explain to the public and politicians the value it adds. Internally, the value is in the organisation developing consistent language, and building an understanding of its role. **Rec 9**

## Evidence

- 2014-18 and 2013-17 SOI
- 2014-15 Statement of Performance Expectations
- Annual Report 30 June 2013
- Minister's Letter of Expectations dated 10 February 2014 and enduring Letter of Expectations dated Jul 2012
- The EPAs' response to the Minister's Letter of Expectations dated Apr 2014
- Regulatory Impact Statement
- Internal memo to ELT

- CAB Min (10) 19/9
- Environmental Protection Authority Act 2011
- Business Growth Agenda – Future Direction 2014
- Interviews

## **Government priority 2: Delivering better public services within tight fiscal constraints**

*– this requires Agencies to work to develop new business models, work more closely with others, and harness new technologies in order to meet emerging challenges (Minister’s Letter of Expectations)*

Several of the themes covered under this heading are dealt with in other parts of the report. To address this priority in part, the EPA developed a Strategic Intention “Develop improved business capability through enhanced EPA systems”. This intention is further defined as “we [the EPA] will use improved business systems and capability to make our work, interactions and communications easier and more effective”.

The 2014-18 SOI uses five success measures:

- IT projects are delivered on time and within budget
- Good information is available for management decision making
- Time and cost savings can be demonstrated
- Web usability improves
- Awareness of the EPA’s role and functions improves.

The EPA was established just over three years ago. The pressure to get the new organisation up and running quickly has meant that many systems and processes were brought over from predecessor organisations. As a result there are a number of disparate systems and processes, the majority of which are aging, no longer supported or not fit for the EPA’s purpose. It is of note that the EPA returned funds in previous years.

The main focus of Strategic Intention Four is on technology as a solution. Technology is an enabler and needs to be adopted as part of an overall business driven solution and within a prioritised package. Organisations often see technology solutions as some kind of “magic bullet” that will solve other business process issues within an organisation. This is evident from discussions with EPA staff and managers. The best solutions take a forward-looking perspective and consider business, people and system needs. This approach also helps to ensure that integration occurs across an organisation rather than in a particular business unit and ensures that the overall needs of the EPA are considered in a long term way and given appropriate perspective. **Rec 14**

### *Better Public Services*

The Better Public Services programme is a cross-government initiative that seeks to improve the public's interaction with government. The EPA does not have targets set for it under this programme however Result Areas 9 and 10 do touch on some of the activities that the EPA is currently undertaking or planning to undertake.

- Result Area 9. New Zealand businesses have a one-stop online shop for all government advice and support that they need to run and grow their business.
  - Target one: Business costs from dealing with government will reduce by 25 percent by 2017, through a year-on-year reduction in effort required to work with agencies.
- Result Area 10. New Zealanders can complete their transactions with the government easily in a digital environment.

The ETS Group has referenced the Result Areas 9 and 10 in its operational business plans since 2012 and this context was also an integral part of the business case to redevelop the NZEUR. Projects such as the Online Applications, Submissions and Payments also fully recognise the Better Public Services context.

### **Evidence**

- The EPA Statement of Intent 2014-18
- Technology Strategy Group Terms of Reference dated Sep 2013
- EPA Systems Projects Roadmap 2014-18 (Draft as at 23 Aug 14)
- Strategic IT Plan
- ETS Business Plan
- Better Public Services

## Part Two: Delivery of Core Business

This section reviews the EPA's delivery of its core business. The EPA's core business can be described as:

- Regulatory decisions – statutory decisions that the EPA is responsible for, whether made directly by the EPA or under delegation to others.
- Compliance – the areas where the EPA is responsible for ensuring compliance with environmental Acts.
- Statutory Processes – registers (NZEUR, HSNO registers) and statutory processes where the EPA is responsible for the process steps but not the decision or its conditions (e.g. NSP process).

However, within each of the core roles and responsibilities described above there are operational functions that are at different stages of maturity, sophistication and quality. Observations and recommendations vary depending on the operational functions and this report splits comments along operational lines:

- HSNO, ozone-depleting substances and hazardous waste decision making
- Resource Management Act decision making
- EEZ decision making
- HSNO, ozone-depleting substances and hazardous waste compliance
- EEZ compliance
- ETS and NZEUR decision making and compliance.

### **HSNO, ozone-depleting substances and hazardous waste decision making**

The EPA has powers of decision making under the Hazardous Substances and New Organisms Act 1996 (HSNO), Ozone Layer Protection Act 1996 (OLPA), and hazardous waste under the Import and Exports (Restrictions) Act 1988. Those powers have in part been delegated to staff within the Applications and Assessment Group and to other decision-making bodies established by the EPA Board. Some functions have been or are about to be transferred to WorkSafe New Zealand and the EPA will receive some new functions.

#### *Operation of the HSNO Committee*

The Board of the EPA has delegated the power to hear and decide applications under Part 5 and 6a of the HSNO Act to the HSNO Committee. The Committee is currently chaired by the EPA Board Deputy Chair and currently has eight members. The Committee is supported by EPA staff.

#### *Hazardous Substances (HS)*

In 2012-13, the EPA decided 725 applications under Part 5 of the HSNO Act; conducted five reassessments; assessed and decided 1403 Part 6a applications for licences; permissions; test certifications; equipment; codes of practice; import certificates and waivers. The EPA also issued 187 import or export certificates

under the OLPA and 79 import or export permits under the Import and Export Act. The EPA has established three hazardous substances teams that process applications and either decide or advise on applications. There is a variation in the quality of applications received.

It was noted that the EPA often needs to work with the applicant to ensure that the information provided is of suitable quality for decisions to be made. This contrasts to applications made under the Resource Management Act where a sufficiency test is applied to applications and if it does not meet certain tests the application is returned to the applicant for them to fix. As pre-application assistance is non-cost recoverable work the EPA needs to consider its role here and to decide if other information could be provided to applicants to improve the quality of applications.

Another consideration for the EPA is the balance it must strike between advising and assisting. As the regulator the EPA must ensure that the public benefits and risks are at the forefront of its actions. However, it was noted that there is often confusion about who benefits from the EPA's existence. There is a discussion in a later section on the role of the regulator.

A core element of the applications and assessment system is a database that contains information on substances and any controls that may apply. The database and processes for HS applications came from a predecessor organisation and the EPA System Projects Roadmap 2014-18 states that;

*...the current [HS] databases are unsustainable technology and without support arrangements. Significant data quality and useability issues exist.*

It was noted that in the future new external information interfaces are likely to be required for WorkSafe New Zealand and other parts of the EPA to allow access. A project to redevelop the HS database is being considered but at this time funding has not been allocated and it is unclear where this project sits on the organisation's funding and investment priority list. It is recommended that the HS database be placed on the EPA's risk register.

Cost recovery for HS applications is variable and is currently around 17 percent. Cost recovery is an area that will be considered in detail as part of the external Ministry for the Environment review and was not explored during the Self Review.

#### *New Organisms (NO)*

In 2012-13, the EPA made decisions on a total of 35 new organism applications under the HSNO Act (unaudited results for 2013-14 – 25 applications). The EPA also approved the release of biological control agents, reviewed and updated the containment controls, and provided non-statutory advice on the status of organisms, and answered new organism queries. The New Organisms team also monitors and provides oversight of decision making that is delegated to Institutional Biological Safety Committees at New Zealand universities.

This function has previously had a high profile and this is no longer the case. There are a number of risks to New Zealand that are managed or overseen by the NO team. The specialist nature of the work in this area would benefit from specific workforce and succession planning to deal with turnover. **Rec 20**

## Evidence

- Decision Paths for making decisions under the HSNO Act, October 2011
- EPA Annual Report 2012-13
- Hazardous Substances team Monthly Highlight Report June 2014
- New Organisms team Monthly Highlight Report June 2014
- EPA System Projects Roadmap 2014-18
- Corporate Manual Section 1.11: Decision-making Committees under the HSNO Act
- Interviews

## Resource Management Act decision making

The EPA has responsibilities defined by the Resource Management Act 1991 (RMA):

*Section 42C The functions of the Environmental Protection Authority are—*

*(aa) to make recommendations to the Minister under section 144A [to provide advice and recommendations to the Minister on a request to call in] in relation to a matter to which section 142(1) applies:*

*(a) to receive matters lodged under section 145 [an application for a resource consent a request for the preparation of a regional plan; and a request for a plan change]:*

*(b) to make recommendations to the Minister under section 146 [matters relating to s145 above] or 149ZB in respect of a matter referred to in paragraph (a):*

*(ba) to receive matters under section 149B(2) [provision of information held by a local authority]:*

*(c) to make decisions under section 139 on applications for certificates of compliance for proposals or activities that are related to proposals of national significance:*

*(d) to provide secretarial and support services to—*

*(i) a board of inquiry appointed under section 149J:*

*(ii) a special tribunal appointed under section 202:*

*(da) to provide technical advice to the Minister on the development of a national environmental standard:*

*(e) to exercise any powers or perform any functions or duties delegated to it by the Minister under section 29(4):*

(f) to exercise any other functions specified in this Act.

BOI are independent decision-making bodies appointed by the Minister for the Environment to consider proposals of national significance. The EPA provides secretarial and support services to BOI.

#### *Operation of Boards of Inquiry*

The rationale for strengthening BOI to deal with proposals under the RMA was;

- Streamlining decision making for proposals of national significance, including introducing a nine month timeframe for decisions of a BOI
- Improving the capacity for Councils and communities to have confidence and involvement in the BOI process
- Giving more guidance about what is likely to be of national significance, in particular those proposals involving key infrastructure.

There are a number of decision-making bodies involved in consenting under the RMA. The BOI deal with a very small proportion of New Zealand's overall decision-making under the RMA. Many factors impact on a decision to seek a Ministerial referral to a BOI review and some aspects are likely to weigh more heavily such as timeliness of a decision, cost, transparency of process, and consistency of decisions. If those seeking a Ministerial referral to a BOI do not accept that there is value in the process they may not seek to use the mechanism. This will then have a consequential impact on EPA resourcing requirements.

As noted above, the membership of a BOI is determined by the Minister for the Environment. The appointments process of identifying potential BOI members and making recommendations to the Minister is supported by the EPA. There are inherent challenges dealing with external people being considered for appointment to a BOI. Following contact from the EPA many candidates do not hear again until they are appointed or until an alternative appointment is announced. This uncertainty creates difficulty for BOI candidates to plan their future commitments and can unfairly reflect on the EPA's reputation. The appointments process is largely outside the EPA's control. However, explaining the complexity and uncertainty of the Ministerial appointments process and what controls the EPA has should assist potential candidates.

The Minister made particular note of the high costs and process variation across BOI. The Minister was careful to signal that the independence of BOI was not at issue, however from a public accountability perspective she was concerned that costs and some procedures need to be managed better or streamlined.

Members of BOI and staff indicated that in general, the Chairs of BOI (drawn from sitting or retired Environment Court judges or retired High Court judges) were free to establish their own procedures and to set their own expectations. Concern was expressed that the expectations of some Chairs seemed at odds with the expectations of the EPA and the Minister. Unlike a separately-funded judiciary, the EPA is a Crown entity and as such there are different transparency obligations and expectations on the expenditure of money

(noting that costs are recoverable). EPA staff have in the past engaged with BOI Chairs on this matter but have been reluctant to push the issue too hard. This reluctance was rationalised as being necessary to keep the process moving forward and to build a pool of experienced BOI Chairs.

The Minister clearly indicated that the EPA had a role in guiding BOI on prudent management of costs. A way forward would be for the Minister's letter of appointment to a BOI to explicitly cover expectations on costs and appropriate expenditure. The letter should set out the views of the Minister on the need to balance a fair process with defined timeframes. Should a Chair or member have a different view or decide to decline an appointment then the Minister has the opportunity to consider those views or consider other candidates. On a similar line the EPA should amend its practice notes to include advice on process and what it perceives is appropriate expenditure.

#### *Support for Boards of Inquiry*

The support for BOI consists of logistic and administrative support. Currently these functions are undertaken by two Resources Teams within the Assessments and Applications Group. There was considerable positive support for the quality of the work undertaken, and for the commitment demonstrated by EPA staff as they worked long hours and often away from home.

The EPA appears to have processes in place to advise EPA staff on the support of BOI. Each BOI application is considered as a project and a range of template planning documents are used to develop budgets, timelines (guided by statutory requirements) and other administrative requirements.

After each BOI, a post-action review is undertaken and lessons learnt are identified and documented. However, there was no evidence that lessons learnt are being integrated into processes. As a result the benefits are not being realised in future BOI and possibly shared across the EPA. It is recommended that lessons learnt from specific post project reviews are applied across the organisation to improve processes and update training. **Rec 17**

#### **Evidence**

- NSP Operations Manual
- Proposal Blueprint
- Lessons learnt documentation
- NSP Proposal Management Plan Template
- Nationally Significant Proposals Base Case – Outline of the EPA standard process for proposals of national significance directed to a BOI under Part 6AA of the RMA July 2013

## EEZ decision making

The EPA's role is to make decisions on applications for marine consents and rulings in the EEZ area (i.e. beyond the 12 nautical mile limit). Under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 the EPA has the following functions:

- a. To decide applications for marine consents
- b. To monitor compliance with this Act
- c. To enforce requirements of this Act and of regulations made and consents granted under it.
- d. To approve forms for the purposes of –
  - i. Subparts 2 and 3 of Part 3, which deal with marine consents:
  - ii. Sections 101 to 103, which deals with objections
  - iii. Sections 125 to 128 which deals with abatement notices
- e. To promote public awareness of the requirements of this Act
- f. To perform any other functions specified in this Act.

This section of the review only considers the EEZ decision making and support for Decision-making Committees. Responsibilities for consenting in the EEZ are relatively new functions as the legislation came into place in July 2012 and took effect in July 2013.

### *Operation of EEZ Decision-making Committees*

The EPA Board has delegated decision-making of EEZ applications to a Committee. Members of the Decision-making Committees are appointed by the EPA Board and must include at least one member of the Board. The decisions of the Committee are decisions of the EPA and this is in contrast to BOI whose decisions are independent of the EPA. The subtlety of the independent nature of the decision is lost on the public who is likely to judge the EPA's performance on BOI decisions.

Decision-making processes in the EEZ are guided by the purpose of the EEZ Act. The processes used by the Decision-making Committee provide the community with an opportunity for its views to be considered. This public engagement is a good illustration of the dual nature and natural tension between economic development and protection. The EPA has a difficult role in balancing what can at times appear to be multiple interests.

### *Section 10 Purpose*

*(1) The purpose of this Act is to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf.*

*(2) In this Act, sustainable management means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while—*

*(a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life-supporting capacity of the environment; and*

*(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

*(3) In order to achieve the purpose, decision-makers must—*

*(a) take into account decision-making criteria specified in relation to particular decisions; and*

*(b) apply the information principles to the development of regulations and the consideration of applications for marine consent.*

There is a challenge to secure appropriate individuals to sit on Decision-making Committees. Some factors influencing the pool of potential candidates are:

- Having people with the right skills
- That they are available for the full period of the process
- Can remain available despite the uncertainty of the start date
- Will accept the low fee
- Are not conflicted.

In addition, when establishing a Committee the EPA Board seeks to ensure that composition of the Committee reflects balance of iwi and gender.

This difficulty exists for the full range of technical skills due to the specialist nature of the work, the small pool of potential members and the low fee. Those able to be considered for appointment are often involved in the off-shore sector and have potential conflicts of interest. With regard to the fee, the Minister has signalled that she is willing to consider operating outside the *Cabinet Fees Framework* or consider other options in order to secure appropriately-skilled members for Decision-making Committees.

The legislation is untested by case law and as yet unsettled. The high value of many of the projects involved in the EEZ means that the opportunity cost of appealing a decision is minimal. Therefore, it is likely that over the next few years that the EPA will be involved in legal action relating to decisions.

### *Support for the EEZ Decision-making Committees*

The EPA Applications and Assessment (AAA) Group manages the application process, provides technical and evaluative advice and support to decision-making bodies. This includes liaison with submitters and applicants, the processing of applications including marine consent applications and rulings, and the provision of risk/benefit assessments.

The support to Decision-making Committees requires high-quality technical staff. Here it is noted that there are considerable challenges to recruit and retain these people. Some of the difficulties include the ability of the EPA to attract candidates with appropriate industry experience who are not conflicted, available for fixed-term engagements and who are also affordable. This has cost implications.

As the EEZ function is relatively new, the EPA has used the opportunity of post-decision reviews to capture learning from the processes. This review involved a wide range of participants. However, it is unclear how the lessons learnt have been integrated into the process going forward. This issue is similar to that observed with the post-decision reviews of BOI. **Rec 17**

### **HSNO, ozone-depleting substances and hazardous waste compliance**

This section deals only with compliance responsibilities listed in the title and for brevity they will be described under a general heading of HSNO. The focus of this section is:

- What impact does the EPA's HSNO compliance activity have on protecting people and the environment? What changes because of the EPA's activities?
- For the level of investment has there been sufficient progress in the three years since the EPA's inception (i.e. does this represent value for money)?

Questions for the future are what role could the EPA take? Could it be the sector and strategic leader? If the EPA decided that it could have a larger leadership role in HSNO compliance, how might this play out?

**Rec 11**

Table 1 below sets out the powers, functions and duties of the EPA under various pieces of legislation and how and by whom those regulatory roles of education, monitoring and enforcement are fulfilled.

## Roles and Responsibilities

Legislation	Hazardous Substances (Hazardous Substances and New Organisms Act 1996 Act)	New Organisms ((Hazardous Substances and New Organisms Act 1996 Act))	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	Ozone Layer Protection Act 1996	Imports and Exports (Restrictions) Act 1988
Powers, functions and duties of the EPA	<p><b>11 Powers, functions, and duties of Authority</b></p> <p>(1) The EPA may—</p> <p>(a) advise the Minister on any matter relating to the purpose of this Act, including, but not limited to,—</p> <p>(i) the extent to which persons are complying with the provisions of this Act;</p> <p>(ii) inconsistencies or conflicts between any controls placed on hazardous substances and new organisms under this Act and any controls placed on any hazardous substance and new organisms under any other Act;</p> <p>(iii) the consideration and investigation of the use of environmental user charges in accordance with section 96;</p> <p>(b) monitor and review—</p> <p>(i) the extent to which the Act reduces adverse effects on the environment or people from hazardous substances or new organisms;</p> <p>(ii) the enforcement of this Act including, but not limited to, the exercise of any power under section 103 by any enforcement officer;</p> <p>(c) promote awareness of the adverse effects of hazardous substances and new organisms on people or the environment and awareness of the prevention or safe management of those effects;</p> <p>(d) contribute to and co-operate with international forums and carry out international requirements as directed by the Minister;</p> <p>(e) enquire into any incident or emergency involving a hazardous substance or a new organism;</p> <p>(f) keep such registers relating to hazardous substances and new organisms as may be required by this Act or as may be necessary to administer this Act;</p> <p>(fa) approve forms for applications under Part 5;</p> <p>(fb) give directions as to the disposal of persistent organic pollutants;</p> <p>(fc) approve standards for containment facilities;</p> <p>(g) carry out any powers, functions, and duties conferred on it by or under this Act.</p>	<p><b>13 Functions of Environmental Protection Authority</b></p> <p>(1) The EPA has the following functions:</p> <p>(a) to decide applications for marine consents;</p> <p>(b) to monitor compliance with this Act;</p> <p>(c) to enforce the requirements of this Act, and of regulations made and consents granted under it;</p> <p>(d) to approve forms for the purposes of—</p> <p>(i) subparts 2 and 3 of Part 3, which deal with marine consents;</p> <p>(ii) sections 101 to 103, which deal with objections;</p> <p>(iii) sections 125 to 128, which deal with abatement notices;</p> <p>(e) to promote public awareness of the requirements of this Act;</p> <p>(f) to perform any other function specified in this Act.</p>	<p><b>8 Exemptions</b></p> <p>(1) The EPA may grant an exemption from any prohibition on the importation, exportation, manufacture, sale, or use of any substance or goods, or other obligation, imposed by this Act or any regulations made under this Act.</p> <p>(2) An exemption may be granted only in accordance with regulations made under Part 3.</p> <p><b>12A Environmental Protection Authority may approve forms</b></p> <p>The EPA may approve forms for the purposes of this Act.</p> <p><b>12B Register</b></p> <p>(1) The EPA, on behalf of the Crown, must keep a register called the Ozone Layer Protection Register.</p> <p><b>12D EPA to allow New Zealand Customs Service access to register</b></p> <p>The EPA must allow the New Zealand Customs Service to have access to the register.</p>	<p><b>3BA General requirements for permits</b></p> <p>(1) This section and <a href="#">sections 3BB</a> and <a href="#">3BC</a> apply if an Order in Council made under <a href="#">section 3</a> or <a href="#">3A</a> allows the importation or exportation of goods under the authority of a permit granted by the EPA.</p> <p>(4) The EPA may revoke a permit.</p> <p><b>3BB Conditions on permits</b></p> <p>(1) The EPA may impose conditions on a permit allowing the importation of goods:</p> <p><b>3BC Refusal of permits</b></p> <p>The EPA may refuse to grant a permit.</p> <p><b>3BD Register</b></p> <p>(1) The EPA, on behalf of the Crown, must keep a register called the Imports and Exports (Restrictions) Register.</p> <p><b>3BF Environmental Protection Authority to allow New Zealand Customs Service access to register</b></p> <p>The EPA must provide the New Zealand Customs Service with access to the register.</p>	
	<b>Hazardous Substances (HSNO Act)</b>	<b>New Organisms (HSNO Act)</b>	<b>EEZ Act</b>	<b>OLP Act</b>	<b>Imports and Exports Act</b>
<b>Education</b>	Discretionary EPA/Enforcement Agencies (s99 HSNO Act)	Discretionary EPA/MPI (s99 HSNO Act)	EPA	EPA	EPA
<b>Incident Monitoring</b>	Receipt of complaints EPA (reported via EPA Annual Report)	EPA (reported via EPA Annual Report)	EPA		
<b>Monitoring compliance</b>	see s97 HSNO Act	MPI (see s97a HSNO Act)	EPA	EPI	Customs
<b>Enforcement</b>	<p>Enforcement agencies as defined in s97 HSNO Act</p> <p><b>WorkSafe must</b> in any place of work, distribution system, gas installation, or gas appliance:</p> <p><b>NZTA may</b> in or on any motor vehicle, road, rail vehicle, or railway line:</p> <p><b>Police may</b> in or on any motor vehicle, on any road, in or on any rail vehicle, or on any railway line:</p> <p><b>CAA shall</b> in or on any aircraft:</p> <p><b>MINZ shall</b> in or on any ship:</p> <p><b>MoH shall</b> where it is necessary to protect public health:</p> <p>any Territorial Authority <b>shall</b> in or on any premises and <b>may</b> in premises where the TA is in or on those premises enforcing the <a href="#">RMA</a>:</p> <p><b>shall</b> in or on premises where the function, power, or duty is transferred to the TA.</p> <p>A Regional Council <b>may</b> in or on premises if the RC is in or on those premises enforcing the <a href="#">RMA and if the</a> function, power, or duty is transferred to the RC</p> <p><b>NEW</b> Enforcement agency for labelling, safety data sheets, product content controls, approvals</p>	MPI (see s97a HSNO Act)	EPA	EPA	EPA/Customs

**Table 1: The EPA's roles, responsibilities and powers under various statutes and the regulatory intervention under various statutes (excluding Climate Change Response Act 2002)**

There are currently a number of reforms being undertaken in the HSNO regime. It was reported in HSNO Reform Regulatory Impact Statement that ....

*“The problem is that the regime for managing hazardous substances is complex and performing poorly. Evidence suggests that HSNO controls generally cover the right types of hazards and have the appropriate protections. However, there is significant non-compliance, with 75 percent of a sample of New Zealand businesses not fully complying with HSNO’s key risk management controls. Low compliance is likely to be due to:*

- *the complexity of the HSNO regime, its slowness to adapt legislation to reflect changes in best practice, and difficulty for duty holders in understanding how it interfaces with the HSE regime*
- *a lack of adequate education and guidance for end users*
- *a general lack of capability at all levels (the regulator, firms, workers’ representatives, workers)*
- *low frequency of inspections and monitoring*
- *a lack of adequate and graduated enforcement tools*
- *a lack of targeted prevention activities and incentives.”*

The list above and a similar list contained in the EPA’s submission to the Independent Taskforce on Workplace Health and Safety outlines a problem definition at a “systems” level. The EPA’s submission states that “No agency has a clear mandate for strategic leadership for HSNO Act compliance and enforcement activities” (para 27). This begs the question of how does coordination and oversight of the HSNO Act occur; what are the consequences where an enforcement agency does not fulfil its functions and what might the EPA’s role be in this? **Rec 11**

Under the HSNO Act the EPA has a responsibility to supervise HSNO inspection:

*Section 99 Supervision of Inspection*

*(1) The Authority [the EPA] shall ensure that the provisions of this Act are enforced in all premises likely to contain a hazardous substance or new organism and shall advise the persons specified in section 97 or section 97A and the Minister when the Authority considers that there is insufficient or unnecessary inspection and enforcement.*

The first part of section 99(1) relates to “...shall ensure that the provisions of the Act are enforced...”. In this case “ensuring” is about ensuring that other agencies are doing their job. The heading of section 99 “Supervision of Inspection” also supports this position. No other agency has a supervisory or oversight role in the HSNO Act. The second part of section 99(1) relates to advising the enforcement agency and the Minister of where the EPA considers there are deficiencies in the activities of enforcement agencies. The EPA has prioritised the second part of section 99(1) by reporting to Ministers. The scale and type of the EPA’s intervention and what its supervisory role is, and might be, has been a topic of debate both internally and externally.

The activities, intentions and impact of HSNO compliance activity are outlined in two documents. The EPA reports on historic activity and forward looking intentions information from enforcement agencies and compiles this into a report entitled Hazardous Substances and New Organisms Enforcement Agency Activities and Intentions (most recently released December 2013). Another report covers the Monitoring the Effectiveness of the Hazardous Substances and New Organisms Act 1996 (most recently published report dated June 2013 and unpublished report dated June 2014). This second report is also prepared for the Minister for the Environment and contains considerable detail and metrics on the effectiveness of the HSNO Act.

The Monitoring Report provides information on how well the HSNO Act is reducing adverse effects on people and the environment. It therefore has potential value in helping to set system-wide priorities and future work programmes. The Activities and Intentions report measures and assesses actual activity. Together these reports provide a powerful tool in guiding the EPA's actions as the "system supervisor".

In August 2012 the EPA wrote, as the system supervisor, to the Minister for the Environment to express frustration about the state of the HSNO compliance regime and the potential risks to people and the environment. The EPA saw as a solution to fully resource the existing compliance regime or alternatively to adjust the regime so that small and medium-sized enterprises have more simple requirements in line with their low-risk profile. The EPA Board considered a combination of both pathways would deliver the best outcomes. In addition, the EPA board approved the funding of an education programme.

The Minister responded to the August letter seeking a work programme from Ministry for the Environment (MfE), the EPA and the Ministry for Business, Innovation and Employment. She received a copy of the work programme in October 2012 and formally responded (22 November 2012) to the EPA signalling that she was not satisfied that the work programme suggested by officials was adequate. The Minister instructed MfE to investigate a broader range of options. EPA management subsequently briefed the Board outlining MfE and EPA actions and activities in response to the Minister's 22 November letter. However, the response was focused primarily backward on what had been done and was light on future strategic activities that could influence the sector and improve coordination of enforcement agencies.



**Figure 3: Compliance risk management approach (New Zealand Productivity Commission 2014; Regulatory Institutions and Practices Report diagram adapted from OECD Guidance Note: Compliance Risk Management 2004)**

The EPA's letter to the Minister outlined that it had on numerous occasions written outlining problems with enforcement agencies and that this had not impacted on enforcement performance. Figure 3 from the New Zealand Productivity Commission's recently released report on *Regulatory Institutions and Practices Report* is helpful in that it provides a model whereby if an action is unsuccessful and does not achieve the desired outcome that the issue should be re-evaluated and new intervention strategies developed. The EPA should examine how its current interpretation of its role and possible interventions addresses the system issues identified earlier. This could include the EPA considering whether to take a wide or narrow interpretation of supervisor in the HSNO legislation. At a systems level the EPA needs to reach agreement with MfE and the enforcement agencies on how it fulfils any "supervisor" role.

This theme of system leadership also aligns with the Minister's Letter of Expectations... *EPA to consider how effectively hazardous substances education, compliance and enforcement is being carried out by others and what role EPA might play to improve these in order to reduce harm (para 9).*

Whatever the EPA decides on its role as strategic leader in HSNO compliance the decision will have to be consistent with its mission and stated objective of raising its profile. This must also be agreed with HSNO enforcement agencies and the sector. Creating a new Strategic Intention on strengthening the EPA's compliance responsibilities would ensure a sharper focus and higher priority for the area. **Rec 1, 10 & 11**

## Evidence

- Various internal management and EPA Board papers
- HSNO reforms Regulatory Impact Statement
- Various Departmental Reports and Select Committee reports from the development of the HSNO Bill, dated 1995

- HSNO Enforcement Agencies – Roles and responsibilities: identifying a lead agency following a hazardous substance non-compliance or incident dated May 2012
- Letter to Minister Adams re Concerns with Hazardous Substances Compliance 9 Aug 2012
- Minister's letter of response – Improving Compliance with Hazardous Substances Requirements dated 22 Nov 2012
- EPA Submission to the Independent Taskforce on Workplace Health and Safety dated 23 Nov 2012
- Monitoring the Effectiveness of the Hazardous Substances and New Organisms Act 1996 report dated Jun 2013
- Research New Zealand report on EPA Service Satisfaction – Compliance Group dated 12 Jul 2013
- EPA Minute to HSNO Project Board – Supervising HSNO Enforcement dated 12 Nov 2013
- EPA Compliance: Our Approach, dated May 2014
- Hazardous Substances Transition Programme Plan dated June 2014
- Compliance Service Satisfaction Findings dated 12 Aug 2014
- Internal EPA paper – EPA's Enforcement Role Following Commencement of HSNO Amendments dated 14 Aug 2014
- Compliance Group Plan 2013-14
- Annual Reports 2012-13, 2013-14
- Statements of Intent 2012-13, 2013-14, 2014-15
- Vote Environment Appropriations 2012-13, 2013-14, 2014-15
- EPA Compliance Group [High Level] Business Plan – 2014-15

## EEZ Compliance

Table 1 in the HSNO Compliance section above outlines the EEZ Act responsibilities of the EPA. The EPA is the decision maker, sets the controls and then monitors and enforces compliance. EEZ compliance is a relatively new function for the EPA with the responsibilities under the Act coming into force 28 June 2013. The EPA reports that by that time all necessary systems and processes were written, tested and in place to receive marine consent and to monitor permitted activities (2013 EPA Annual Report). As with any new function it will take time to fully bed in the new systems and processes and ensure ongoing monitoring of effectiveness and efficiency.

At this time no consents have been approved and current compliance work relates to “grandfathered” operations. New Zealand has a limited number of operations based in the EEZ and a smaller number of potential operations that may seek consents or modifications to existing consents. While volume would not appear to be an issue here the complexity of the monitoring is likely to be. The location of activities beyond the 12 nautical mile limit also poses some challenges.

There are a number of other agencies that provide oversight of various activities in the EEZ, i.e. High Hazards Unit of WorkSafe New Zealand and Maritime New Zealand for pollution response. The compliance burden on operators is potentially high because of the number of agencies. The challenge is to not unduly

burden operators while still being able to gain assurance that operations conform to requirements. There is a balance between joint inspections resulting in a large number of regulators simultaneously attending an operation versus multiple individual inspections. The EPA could expand its existing leadership role to engage across the regulatory agencies and with operators to develop an agreed approach. **Rec 11**

Looking forward, the characteristics of a high performing EEZ compliance agency should be:

- Intelligence-led monitoring that develops accurate risk-based assessments that inform appropriate levels of compliance and enforcement
- Regulators in the EEZ space are joined up and sharing knowledge, resources and overall approach
- Operators view the EPA as efficient, knowledgeable and pragmatic
- The public are assured that its interests are being met and protected
- The Government is satisfied that economic development is being facilitated while New Zealand's interests are also protected.

### **Emissions Trading Scheme (ETS) and New Zealand Emission Unit Register (NZEUR) decision making and compliance**

This area is a key Ministerial priority and has been defined as one of the EPA's four strategic intentions: *"Maximise confidence in the integrity and service delivery of the Emissions Trading Scheme"* (2014-18 SOI). The EPA's function is to manage the administration of the ETS, and the operation of the New Zealand Emission Unit Register (NZEUR). The register records the holdings, transfer and surrender of emission units. The ETS decision-making and compliance function comprises about 24 FTEs structured into three teams; Scheme Operations; Registry Operations; and Business Development.

The EPA is the main compliance and enforcement agency for the Emissions Trading Scheme (ETS), responsible for verifying that participants are complying with the scheme. The ETS is a key economic intervention for addressing climate change issues in NZ. The EPA works closely with the Ministry for the Environment and the Ministry for Primary Industries (MPI) to administer the Climate Change Response Act.

Some characteristics of the ETS team include:

- A narrow scope of responsibilities
- High use of programme management disciplines
- High understanding of scheme-user needs and expectations
- Resources dedicated to continuous business improvement
- Arguably well-resourced with a separate appropriation until at least 2017-18.

Observations suggest that the ETS team has put in place strong programme management disciplines and has a focus on continuous process improvement. The good practices used, and lessons learnt by, the ETS team are not always shared across the organisation in a systematic way. **Rec 17**

In the medium term, the ETS team will finish the development of the Emissions Register (end of 2015) and the functions will be operating in a steady state. The development of any unit auction system will be decided and funding may be appropriated for its development. If the decision is made not to go ahead with any new system then the size of ETS team may need to change. The challenge for the ETS team is to share the practices, skills and knowledge developed with the rest of the EPA.

## Organisational Management Section

This section reviews the EPA's organisational management.

### Part One: Leadership, Direction and Delivery

#### **Purpose, Vision and Strategy**

*How well has the EPA defined and articulated its purpose, vision and strategy to its staff and stakeholders?*

*How well does the EPA consider and plan for possible changes in its purpose or role in the foreseeable future?*

Over the past year the EPA has worked hard to develop a simple, clear strategy. This has culminated in the release of a one page strategy (see below). This document has been widely distributed within the organisation and many staff made positive reference to it during interviews. The single page strategy is an important piece of work. The next step is for the EPA to describe and document where it will be in the medium to long term and to provide definitions for some phrases.

Earlier in this report in “What will success look like” the ELT and OLT's preliminary work describes a future state. It will be important for the EPA not to lose momentum on developing this further and to then apply it to strategic planning. **Rec 3**

# Strategy 2014-18

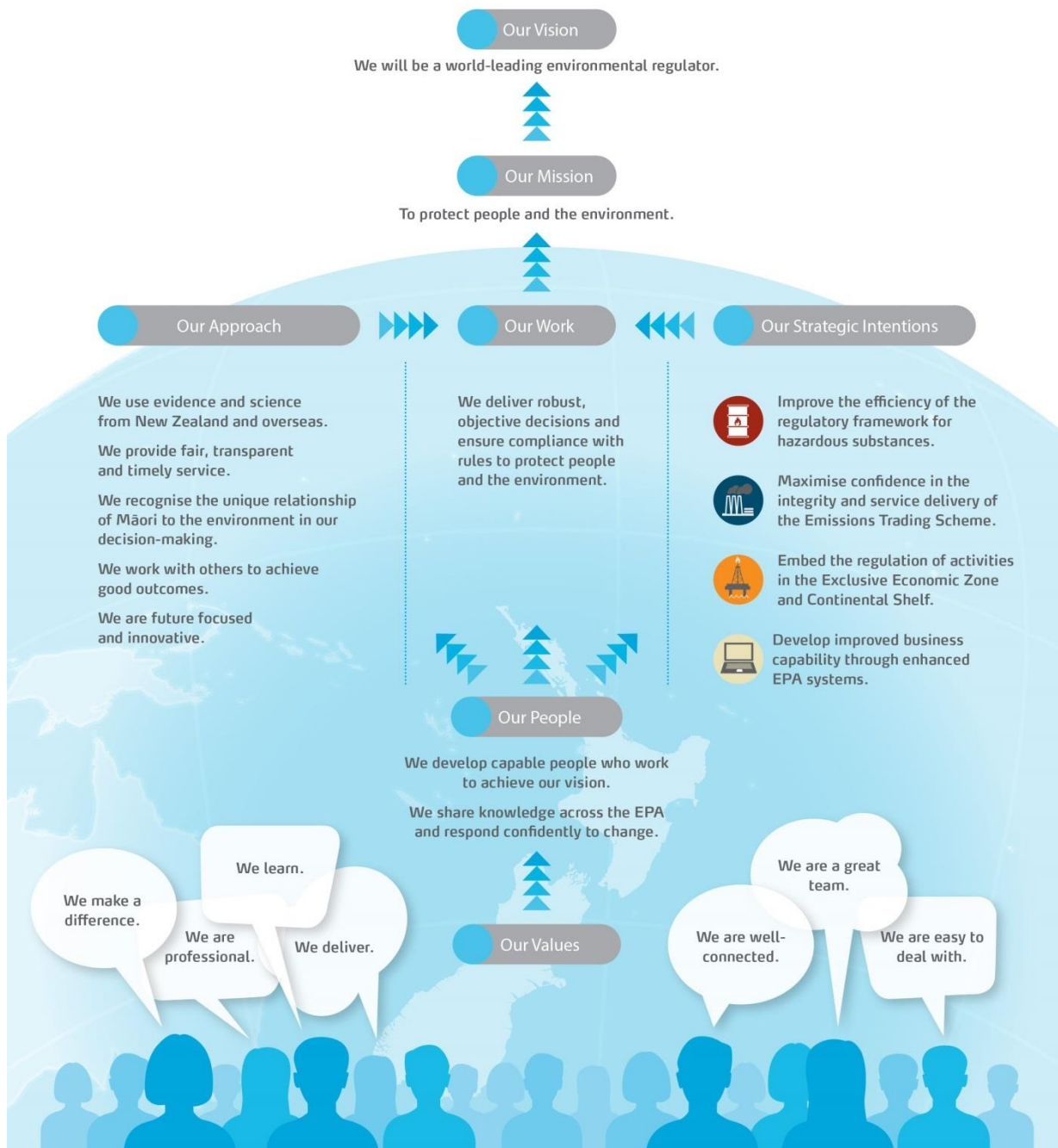


Figure 4: The EPA's Strategy 2014

## EPA's mission

The Government's objective of the EPA, as defined by statute, is;

### *Objective of EPA*

*(1) The objective of the EPA is to undertake its functions in a way that—*

*(a) contributes to the efficient, effective, and transparent management of New Zealand's environment and natural and physical resources; and*

*(b) enables New Zealand to meet its international obligations.*

*(2) When undertaking its particular functions under an environmental Act, the EPA must also act in a way that furthers any objectives (or purposes) stated in respect of that Act.*

In establishing the EPA the Government had a clear objective of balancing the protection of people and the environment with economic growth. This balance is well summed up by the EPA's mission **to protect the environment and to keep people from harm, while ensuring New Zealand can continue to develop economically, culturally and socially** (2014-18 Statement of Intent).

Both internally and externally a large number of interviewees were unable to explain the EPA's mission and were unclear about how this relates to its role. Many believed that the EPA was there to support applicants, Ministers or committees. While the EPA does have functions to support these groups of stakeholders the primary purpose of any regulator is to protect the **public** interest.

The organisation has been debating for some time the question of who its customer is. It may be useful to consider the following:

**Public** – ultimately benefits from the actions of the EPA. The EPA has their interests at the heart of what it does. The public does not have a direct "voice" and therefore expects the EPA to act in their best interests. This has been expressed in the organisation's mission.

**Taxpayer** – funds the activities of the organisation and is concerned that activities are cost effective and efficient.

**Customer** – the people or organisations that directly use and pay for services, e.g. applicants and submitters. They expect efficient, robust, timely and easy interactions with the organisation. They may at times be disappointed when the EPA acts in the broader interests of the public.

**Stakeholders** – people with an interest in the EPA's efficient running of its business e.g. Ministers, other government agencies, and submitters. There is an overlap with other groups above.

Key to any organisation is the collective understanding of why it is delivering its regulatory functions. Taking the example of a hazardous agricultural spray; the reason a substance is regulated is because it is a potential hazard to the environment and/or people. The likelihood and consequences (risk) of a hazard eventuating is what may need to be managed or mitigated. There are also other factors that need to be

considered, i.e. – the potential benefits. In the example of a hazardous substance, there are multiple potential benefits such as a financial benefit to the applicant of having the substance approved (more sales of the spray); better crop yields; prevention of disease spread; and the flow on of potentially increased economic development. In considering all these factors it is important not to lose sight of who the EPA is acting for – that is the **public**. Balance is an important part of why the regulator is independent so that it is not captured by the applicant. Instead the regulator must have a clear understanding of the hazards, risks and benefits of a proposal, so it can weigh up these factors, thus allowing for appropriate decisions to be made.

### World-leading environmental regulator

There was considerable debate within the EPA on the vision and the choice of “world-leading” environmental regulator or “world-class” environmental regulator. The choice is a matter for the EPA and no preference is expressed here. Both are equally appropriate aspirational visions. In interviews most struggled to articulate what “world-leading” meant and the range of suggestions was broad and not always appropriate or compatible with legislation or the strategy. To some extent it is not surprising that staff might struggle in this given the newness of the strategy.

The fact that the organisation debated at length the choice of phrase indicates that it is important to staff and the EPA Board. The challenge is to develop “world-leading” into a consistently understood rallying call and that this is integrated into business planning and organisational decision making. Having a single description of “world-leading” should guide the organisation’s thinking and actions. As the EPA moves toward this aspirational goal progress should be measured in a meaningful way and regularly reported on to staff and the EPA Board. **Rec 4**

## Leadership and Governance

*How well does the senior team provide collective leadership and direction to the EPA?*

This section examines how the organisation is led and governed. The EPA is a Crown Entity governed by a Board appointed by the Minister for the Environment.

### *Governance*

A full-scale governance review was not conducted as this is to be considered as part of the Ministry for the Environment’s review.

The functions of the EPA Board are to:

- Set the strategic direction for the organisation
- Employ the CE and monitor his performance implementing the organisation’s strategy

- Ensure that proper processes and capabilities are in place and used effectively
- Engage with communities of interest to understand the broader context within which the EPA operates
- Advise the CE and his team about contextual factors that could influence decision making so that the EPA is encouraged to consider the wider view
- Oversee major change initiatives
- Delegate decision-making powers where considered appropriate.

The EPA Board is guided in its operation by a detailed set of policies contained in the Corporate Manual. The manual includes the Board charter and policies on meeting arrangements, induction of new members, the management of conflicts of interest, Committees, procedure around obtaining the EPA Board's position, fees and expenses, exit procedures, indemnity, and the establishing and operation of the Māori Advisory Committee - Ngā Kaihautū.

The consensus is that the EPA Board is ably led and that the Chair has a very inclusive style which is productive and empowering. At the inception of the EPA a deliberate decision was taken to leverage the benefits of cross-Board membership and the Chair of the EPA Board is also a member of the Board of WorkSafe New Zealand. This appointment has been advantageous to the EPA and is credited with increasing the influence and reach of the EPA.

Members felt that there is a good balance of skills around the Board table and all contribute well. Members feel that the EPA Board is clear on its role and that it concentrates on appropriate governance level matters.

The EPA Board undertakes regular self reviews and has recently completed a collective review of its performance. The results of this survey were collated by the Chair and fed back to members. Individual member assessments are not conducted but the Chair indicated that she does focus closely on Board Member performance and provided coaching when needed.

The management of conflicts of interest has been an ongoing focus given the nature of the EPA Board's role and the EPA's decision-making powers. The Board Charter has advice on conflict of interest that mirrors the Crown Entities Act. An early agenda item for each meeting is *Declaration of Conflicts of Interest / Updates to the Interests Register*. The interests register is detailed and includes declarations for the Board members and ELT.

The size of the EPA's Board papers is a challenge. Board papers are well-written and clearly identified the decisions expected of the Board.

*Ngā Kaihautū Tikanga Taiao*

*Not the voice of Māori but provide Māori with a voice*

Ngā Kaihautū is a statutory advisory committee established under the EPA Act. Its function is to provide advice and assistance to the EPA on matters relating to policy, process and decisions of the EPA. The legislation requires that the advice and assistance provided must be given from a Māori perspective and come within the terms of reference of the committee set by the EPA. The terms of reference and committee procedures for Ngā Kaihautū are contained in the Corporate Manual.

Ngā Kaihautū is a well-led Committee with a broad range of skilled members who provide quality advice to the EPA Board and other Committees. Ngā Kaihautū has a sophisticated understanding of the Government's priorities for the EPA. It also has a very clear and mature understanding of the role of the Committee and the boundaries within which they operate. The workload of the Committee is high and the fee for members is modest especially given the skills required.

Ngā Kaihautū reported that it has been its practice to consider HSNO and other applications and in the first-order to assess whether a Ngā Kaihautū report is required in order to fulfil its statutory function. Members went on to describe that due to limited resources they relied heavily on EPA staff to keep them advised of applications (type, progress, statutory timeframes, consultation and engagement processes etc.). Members also noted that the quality of Ngā Kaihautū advice is significantly influenced by the advice and interaction the committee has with EPA staff. The Committee noted the high-quality of advice and support provided by Kaupapa Kura Taiao.

#### *Executive Leadership Team*

The EPA has an Executive Leadership Team (ELT) consisting of the Chief Executive and the six General Managers. The CE believes that the GMs contribute different strengths to the collective. He also acknowledged that the members are all at different stages of their personal and leadership development. The CE has expressed considerable support for his General Managers. The organisation should continue to invest in the development of the individual General Managers. However, there has been limited investment in the ELT as a team.

General Managers and the CE operate in a collaborative and supportive way. Individually, they are bright, motivated and committed to the EPA and have a good mix of skills around the ELT table. The ELT is facing the challenge of being more strategic and has made sound progress in recent times. The ELT should develop a long term programme or agenda of issues to cover at the strategy sessions. There will be value in the ELT working together to better understand each other's work preferences and how they can be applied to the collective.

The ELT can be strategic, tactical and operational at appropriate times but in trying to move to a more strategic way of working it needs to continue to work hard not to default to operational thinking or be diverted to detail that is not important to the issue. This isn't to say that detail is unimportant but rather that the value the ELT as a group can best offer is at the high level.

This group meets weekly. ELT has recently decided to change the format of these weekly meetings and now uses every second meeting to focus on strategic issues. For issues of immediate importance and high priority the ELT also holds short informal meetings. **Rec 6**

There is an issue at the ELT over debate versus conflict. Some within the team believe that the ELT has robust discussions while others felt that debates can be cut off before all issues are explored. When this happens decisions are made “offline” or relitigated outside the meeting.

It is recommended that ELT consider its training and development needs as individuals and as a team. There are numerous approaches to achieve on-going development of the ELT and the best solution will be one designed by the team to best fit its needs. It is recommended that the EPA Board makes this development possible through the provision of funds. **Rec 21 & 22**

Overall, the ELT is a cohesive, well-functioning group that understands its role and has many of the attributes of a high performing senior team. However, the ELT will face new and complex changes and will require an additional set of leadership and change skills.

#### *Operational Leadership Team – the third tier*

The third tier leadership group, the Operational Leadership Team (OLT), was formed by the CE and the ELT to help develop managers by exposing them to cross-organisation issues and lift overall organisational performance. The OLT operates with a degree of autonomy and has the opportunity to shape and influence key operational policy decisions and processes. The leadership opportunities afforded this group provides first-hand experience and levels of responsibility not common in the public service.

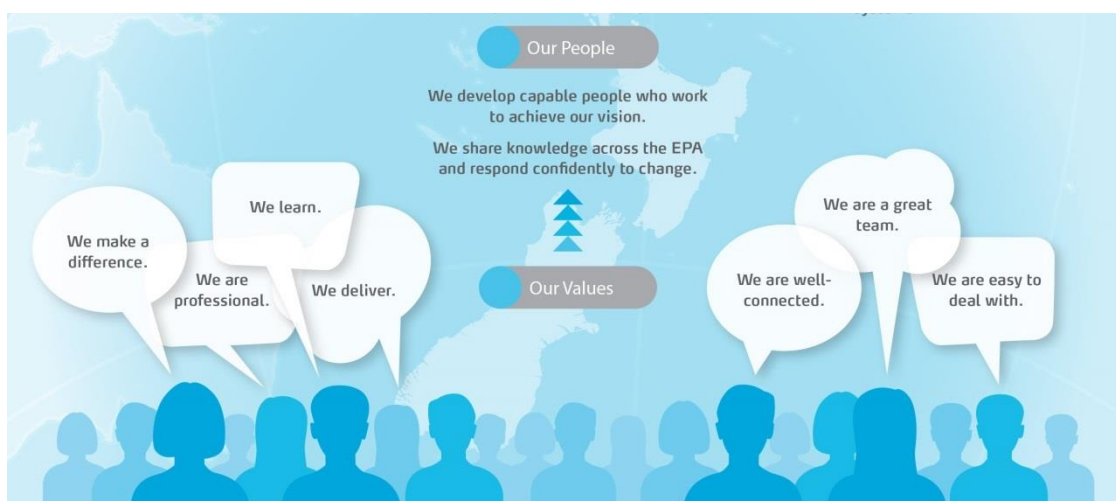
The ELT, when tasking OLT, needs to provide clear guidance around boundaries, perspectives to consider and needs to share any preliminary thoughts on the subject. Empowering OLT is a means of growing leaders and this requires the acceptance of some organisational risk. They will not always get it right the first time but this can be appropriately managed with more guidance from the ELT. This should also include coaching and mentoring. Over time this relationship will mature and develop further. **Rec 19**

The EPA’s approach to empowering its third tier is something to share across the public service as an example of best practice and commitment to the development of future leaders.

## Values, Behaviour and Culture

*How well does the EPA develop and promote the organisational values, behaviours and culture it needs to support its strategic direction?*

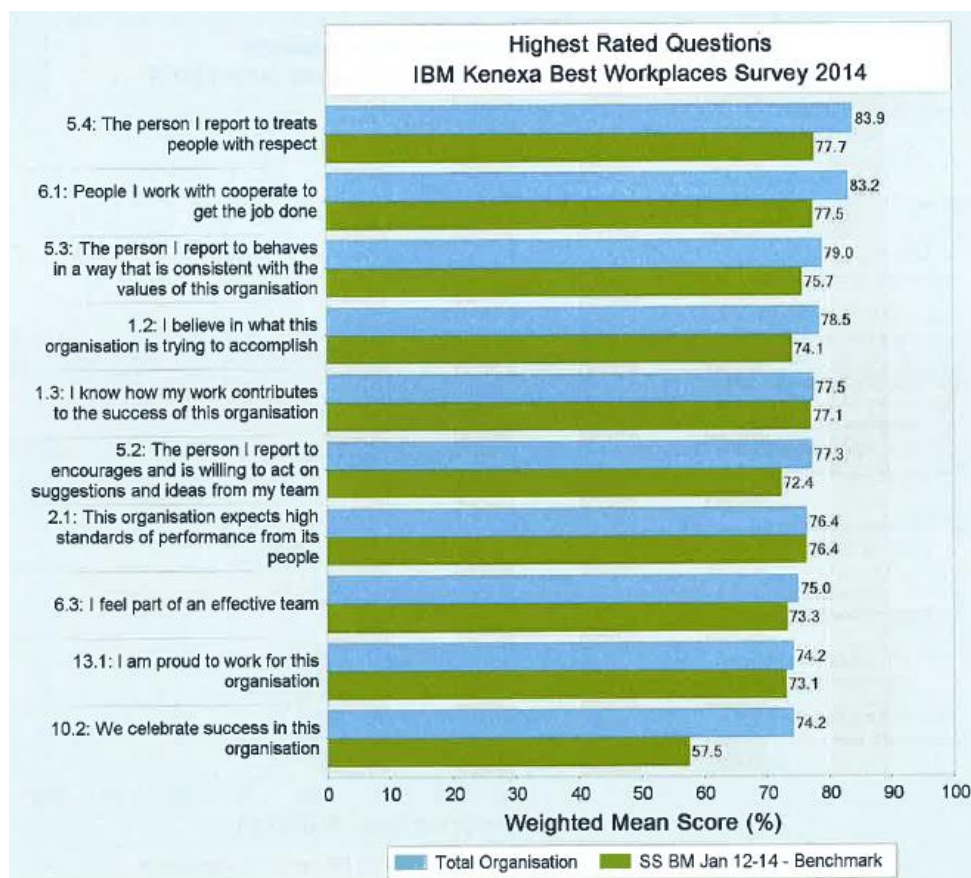
The EPA's Strategy 2014-18 defines the organisation's values as:



**Figure 5: Extract from the EPA's Strategy showing the organisation's values**

The EPA has gone through the transition period and has now developed a new and unique identity around new organisational values. The culture that has developed is positive and aligned with its values.

The EPA participates in the Best Workplaces survey conducted by IBM Kennexa. The most recently completed report for the period to July 2014 is in the process of being released at the time of this review. Results were provided across the organisation, by business unit and against the State Sector benchmark. When compared with the rest of the State Sector (see below) the EPA performs well in the majority of survey areas with particular strengths relating to culture.



**Figure 6: The EPA's 2014 results for the highest rated questions compared against the State Sector benchmark (from IBM Kenexa Best Workplaces Survey)**

### Structure, Roles and Responsibilities

*How well does the EPA ensure that its organisational planning, systems, structures and practices support delivery of government priorities and core business?*

*How well does the EPA ensure that it has clear roles, responsibilities and accountabilities throughout the EPA and sector?*

The EPA has responsibilities under a wide range of legislation. The organisation is structured along functional lines which in part reflect statutory functions. At times EPA staff exercise statutory decision-making or oversight powers delegated from the EPA Board. At other times the EPA Board has delegated those powers to committees of the Board where staff provide technical and logistic support. The EPA also provides secretarial and support services to independent BOI. This range of approaches to the exercise of powers has influenced the organisational structure and its resource allocation.

### Organisational Planning

The EPA's 2014-18 SOI lists four strategic intentions that are a combination of short and long-term objectives. At the time of the internal review the detail of how the strategic intentions will be achieved is the subject of ongoing ELT and OLT discussion. It would be expected that the result of these discussions will be documented as actions and impact measures in a forward looking strategic plan and then further developed within business unit plans. **Rec 7**

Going forward, it is recommended that the EPA agrees a common view of its desired future state, and develops a high level (strategic) plan to clearly identify the priority areas. The detail of this plan should also cascade down through the organisation into business group plans and individual staff development plans so that each staff member can see how their role contributes to the achievement of the EPA's overall goals and objectives. A good strategic plan will help explain to all staff why their job is important and how it is connected to achieving the EPA's mission and vision. **Rec 2 & 3**

A sufficiently-wide focus on alternative ways forward and the investment choices available to the EPA will allow them to be more proactive and to consider new and different ways of operating. This will be important to success in the face of reducing budgets and challenges arising from events that are beyond the EPA's immediate control. The current fiscal environment and the push to deliver government services in a joined-up cost effective manner, and achieving more with less is unlikely to change to any great degree regardless of the "colour" of the government of the day.

The EPA was established in part to provide more certainty and more timely decisions to the regulated community. In the transition period following the merger of all or part (functions) of four previous organisations, the EPA was guided by the mantra "don't drop the ball". This was driven by the need to get up and run quickly with no loss of service quality or advice during the transition and the introduction of new functions in the EEZ. As a consequence, the focus in the first three years was on the immediate or short term, arguably at the expense of long-term planning.

At the time of the review (Aug 2014) business planning at Group or team level had only just started. The quality of plans from the previous year was uneven and often lacked detail.

There was a view put forward that business planning is of limited benefit with regard to the investment of time and resources required to produce a plan. It was stated that because plans are not a useful or even necessary business tool – "... you simply plug in last year's numbers and adjust according to current funding levels".

The value of planning for the EPA will be derived in three ways: the very process of planning offers the opportunity to have a close focus on its business; planning requires cross-organisation conversations to agree what an ideal future state looks like and the various pathways available to achieve this state; the end product (the plan), if sufficiently informed and forward-looking, will help the EPA to continue to achieve good results in its current business and will ensure the EPA is better-placed and able to consider future challenges, including development and improvement opportunities as they arise. **Rec 2**

Managers and staff interviewed as part of the Review process expressed a strong desire for better annual planning to occur. They saw the lack as resulting in poor prioritisation and in core systems not being addressed and, as a consequence, they ended up working longer and harder than may be sustainable.

The CE has performance measures set for him by the EPA Board during his annual performance review. The new financial year's key performance indicators (KPI) are then cascaded in General Managers' performance plans and from there to managers and individual staff. The late setting of the CE's KPI results in the EPA's planning cycle being out of sync with the development of the CE's performance objectives. It is recommended that the CE's KPIs are developed earlier so that they cascade into accountability documents and other performance plans before the start of the financial year. **Rec 5**

## Systems Thinking and Infrastructure

*How well do the EPA's operations interrelate and how do its systems work over time and within the context of larger systems?*

Under this heading two elements are considered; systems thinking and the support infrastructure. Here "systems thinking" is defined as "a holistic approach to analysis that focuses on the way that a system's constituent parts interrelate and how systems work over time and within the context of larger systems". "Systems thinking" is differentiated from "Support Infrastructure" which provides services and supplies to sustain an organisation in its day-to-day operations such as FMIS, HRMS, IT, and communications.

### *Systems Thinking*

The EPA has finished its merger phase and the systems (process and technology) that were in place during that time are struggling with the demands being placed on them. At this time the EPA is operating successfully but without action to address system issues in the short to medium term the level of risk will increase. The quote below describes some symptoms of an organisation at risk.

*Factors in systemic failure may include confused goals, weak system-wide understanding, flawed design, individual incentives that encourage loyalty to sub-ordinate (rather than super-ordinate) goals, inadequate feedback, poor cooperation, lack of accountability, etc.*

*Whole system failure may co-exist alongside functional success. The leadership of silos may individually be successful but not be sufficiently integrated into the whole system owing to a shortcoming of systems design, management or understanding.*

*The Search for Leadership: An Organisational Perspective, William Tate (Triarchy Press, May 2009)*

Whole systems are composed of components, e.g. policies, processes, practices and people and may be broken down into further sub-systems. They can be defined at different levels and can operate alongside each other as well as hierarchically; e.g. the FMIS, the decision-making system, the planning and reporting

system. At this time within the EPA individual projects are being developed in silos with little consideration for the overall organisational linkages. The historical systems brought over into the new structure, and the creation in isolation of new systems has inhibited an integrated one-EPA system from evolving. Taking a systems thinking approach first identifies the business need within the whole of organisation and how it fits together with “people” and “process” streams. It is recommended that the EPA uses systems thinking when planning or designing processes so that components across the organisation fit together. **Rec 14**

### *Support Infrastructure*

The EPA Statement of Intent 2014-18 has as a Strategic Intention “*Develop improved business capability through enhanced EPA systems*”. This intention is further defined as “*we will use improved business systems and capability to make our work, interactions and communications easier and more effective*”. The 2014-18 SOI uses five success measures:

- IT projects are delivered on time and within budget
- Good information is available for management decision making
- Time and cost savings can be demonstrated
- Web usability improves
- Awareness of the EPA’s role and functions improves.

Three of the five success measures are focused on IT-related elements. To provide oversight of these IT-related measures a Technology Strategy Group (TSG) has been established with members drawn from the Operational Leadership Team (OLT). The TSG also provides an oversight of the Strategic IT Plan, and the development of technology planning.

There is no doubt that the EPA urgently requires modern stable platforms that are fit for purpose and that allow staff to continue doing their jobs properly into the future. The TSG is working on an “*EPA Systems Projects Roadmap 2014-18*” which identifies existing databases and processes in the operational and corporate areas that require investment to address identified risks and issues.

While the current Road Map is a tool for clarifying where specific areas of investment are required, there is a need to better understand the common capabilities and synergies between them in a whole of organisation way.

The Strategic Intention’s success measures also need to be expanded to include an agreed set of criteria against which investment choices can be weighed and organisational priorities decided to help guide ELT and Board decisions. These criteria could usefully be developed as a framework. In agreeing such criteria the EPA will need to focus on its strategic priorities and how the components fit together seamlessly.

Potential prioritisation criteria might include:

- reduced internal cost to operate
- improved cost recovery ratios

- reduced compliance burden for stakeholders (cost and administrative effort)
- improved Applicant experience, and
- improved customer awareness.

An ELT-agreed set of organisational investment criteria will help the TSG provide better prioritisation advice to the ELT which in turn allows the ELT to make better-informed decisions that are business-driven, future-oriented and justifiable. This approach ensures that investment decisions consider the overall objectives of the EPA and helps to encourage a “one-organisation” focus. **Rec 8**

### **Review and Improving efficiency and effectiveness**

*How well does the EPA monitor, measure, and review its policies, programmes and services to make sure that it is delivering its intended results?*

The EPA is an organisation that is focused on growing its capability and the value it adds. At an operational level the EPA has a process in place to capture lessons to be learnt in decision making. Following the release of decisions those involved undertake an extensive review. These events can last for half a day and can involve external people. A report is produced that outlines the lessons to be learnt. However, turning those lessons into actionable tasks or activities is weaker. Lessons do not appear to be shared across future projects or functions. By contrast, the ETS group has a dedicated business improvement team who are not involved in day-to-day business and whose sole role is to implement improvements. **Rec 17**

## Part Two: External Relationships

### Engagement with the Minister(s)

*How well does the EPA provide advice and services to its Minister(s)?*

The EPA has a positive relationship with the Ministers for the Environment and Climate Change Issues. The chair of the EPA meets with the Minister for the Environment quarterly where a wide range of issues are traversed. The CE of the EPA attends weekly meetings with the Minister for the Environment and the GM ETS attends a comparable meeting with the Minister for Climate Change Issues. These “Status” meetings also involve the Ministry for the Environment’s Executive Leadership Team. Other General Managers meet with Ministers on an “as needed” basis.

There is a free flow of information to the Minister for the Environment and her office. The Minister indicated that she valued and respected the relationship she had with the EPA. Many Crown Entities do not have this level of engagement with Ministers.

The Minister for the Environment has provided the EPA with a detailed set of both operational and strategic expectations (Letter of Expectations February 2014). The EPA has responded at a high level by outlining how it proposes to address the expectations with existing work programmes and 2014-18 Strategic Intentions.

### Sector Contribution

*How well does the EPA provide leadership to, and / or support the leadership of other agencies in the sector?*

The environment sector in New Zealand is complex because of multiple agencies with similar responsibilities, a range of judicial or quasi-judicial decision-making bodies, and devolved enforcement agencies. The diagram below is taken from the EPA’s 2014-18 SOI.



**Figure 1: The EPA's relationships (2014-18 Statement of Intent)**

The Minister's February 2014 Letter of Expectations sets out that the EPA:

- needs to move beyond building relationships to working closely with others to ensure the environmental management system is as effective and efficient as possible (para 15)
- will continue to build and nurture relationships, especially with Māori, in the future, especially with industry and other departments and agencies (para 14).

The EPA is represented and takes a lead in some cross-government roles. The majority of this engagement is undertaken by the CE, General Manager Policy and Legal and the EPA Board Chair. Feedback is that the EPA's engagement is well-received and valued. In order to maximise the benefits from engagement of this nature and to ensure that they are consistent with the organisation's mission, the EPA needs to understand the outcomes and objectives it seeks to influence. The development of an engagement strategy is often useful in these circumstances.

The EPA has a pool of technical expertise in a wide range in hazardous substances, new organisms, and environmental studies. In fact, one of the reasons for the establishment of the EPA was to create a pool of technical experts. EPA expertise supports MfE and other organisations on an "as needed" basis. The EPA's deliberate decision to take a low profile has been recognised by the organisation as no longer appropriate. In the terms of the EPA's sector contribution in the future, the EPA needs to decide how to increase its level of external engagement particularly by its technical experts. **Rec 13**

The Minister's Letter of Expectations (2014) also expects the EPA to consider how effectively hazardous substances education, compliance and enforcement is being carried out by others and what role the EPA might play to improve these in order to reduce harm (para 9). It is clear that the Minister sees that the EPA has a sector leadership responsibility in HSNO compliance (see earlier section on HSNO compliance). This could see the EPA move toward collaborative leadership of the sector and guide the development of consistent standards and expectations, prioritisation of interventions across multiple agencies, and the targeting of action and sharing of resource. **Rec 10 & 12**

## Engagement with the Regulated Community

*How well does the EPA understand the regulated community and how it operates? How effectively does the EPA communicate with the regulated community, other agencies with related regulatory roles and other interested stakeholders?*

Modified from the New Zealand Productivity Commission Report on Regulatory Institutions and Practices, 2014

The breadth of legislation for which the EPA has responsibility means that there is a diverse range of stakeholders that range from sole traders to significant multinational conglomerates. As such there is a constant challenge for the EPA to ensure that there is effective and meaningful collaboration and partnership at all levels. Extensive external engagement currently occurs at Board, management and staff levels.

Many from industry noted that the nature of the EPA's engagement had changed since its establishment. Early in its development the EPA demonstrated a higher level of partnership with industry (as opposed to just engagement). Interviewees felt that as the EPA's functions developed it has distanced itself from industry. As any regulatory agency evolves so too will its interaction with stakeholders.

The EPA has sound relationships with the regulated community but in the future a more mature communication, engagement and partnership model could be developed. This will be achieved by understanding who the regulated communities are and their needs; using multiple channels to generate two-way communications and not losing sight of the broader responsibilities of a regulator (avoiding regulatory capture).

The best regulatory outcomes tend to occur when there is strong sector partnership between the regulator, those regulated and the wider public (experiences of the public are discussed in the following section). The EPA should develop a stakeholder engagement and communications strategy and how partnership may fit into this approach.

It is recognised that there are costs and risks associated with moving toward the more mature model outlined above but that the benefits outweigh any downside. The EPA is well placed here to take the next steps in its development.

## Experiences of the Public

*How well does the EPA meet the public's expectations of service quality and trust?*

The EPA has a clear focus on its need to demonstrate high levels of trust, transparency and integrity in its processes and decisions. Members of the public do not necessarily need to have a detailed understanding of the EPA and its workings but they do need to have the assurance that someone is looking after their interests. They are also entitled to expect that decisions either made, or supported by the EPA are transparent, have followed robust, defensible processes, that those involved have acted with integrity, and that those interested have an opportunity to participate should they wish. The EPA has sound accountability processes in place to manage these issues.

The EPA has recognised that it is time to increase its profile. This will provide an opportunity for the organisation to further demonstrate the attributes above. The EPA Board has recently set a KPI for the CE that the organisation needs to lift its public profile. This forms one of the CE's 2014-15 key performance indicators. Raising the EPA's profile needs to be done within a context of achieving the EPA's mission *to protect the environment and to keep people from harm, while ensuring New Zealand can continue to develop economically, culturally and socially* (2014-18 Statement of Intent).

Raising an organisation's profile can have a number of consequences that will need to be managed. Some of the risks and issues to be managed include the loss of control of messages, changing perceptions and expectations of the role of the EPA; increased scrutiny and accountability of all parts of the business. These issues are manageable but need to be dealt with in a consistent manner in the planning phase.

The EPA is well-placed to further develop a programme of action to raise its profile. This should involve a cohesive, well-planned programme of proactive engagement. This is the opportunity for the EPA to tell widely the story of why it exists, for whom it acts and how it operates. **Rec 13**

**Evidence**

- CE's Key Performance Indicators 2014-15
- EPA SOI 2014-18
- EPA Service Satisfaction – Combined Service Satisfaction Results
- Customer Experience Analysis Project Report dated September 2013

## Part Three: People Development

### Leadership and Workforce Development

*How well does the EPA develop its workforce (including its leadership)?*

*How well does the EPA anticipate and respond to future capability requirements?*

The EPA has stated that:

*We develop capable people who work to achieve our vision (EPA Strategy 2014-18).*

The EPA has a high concentration of technical and specialist staff with highly sought after skills. The recruitment, development and retention of this group are a recognised challenge for the organisation. Developing capability across the EPA has been explored by members of the ELT and various workable solutions identified, e.g. internal and external secondments, fixed-term appointments, above establishment appointments. This work needs to be progressed in light of the forward looking work and any resulting planning activity.

In this section the systems and processes relating to leadership and workforce development are considered. The EPA historically spends between four and six percent of its personnel expenses on personnel development. The personnel development budget for 2014-15 has been set at three percent. In the public sector the training and development budgets tend to range between two and six percent of personnel expenses. The training budget is mostly allocated to managers with an amount retained centrally for some managerial training.

The EPA has recently released to staff a *Guide to Career Development and Learning Opportunities* which recognises both 'technical' and 'leadership' paths for staff. The EPA also supports annual Professional Development Awards that enable employees to take up training and development opportunities that could not otherwise be provided through group or divisional budgets. Individual learning and development plans are agreed by managers and their staff and are required to be linked directly to the needs of the business.

The Ministry for the Environment also supports the development of EPA staff by providing spaces on its resources sector management and training programmes. These programmes consist of:

- Building Capable Managers (BCM) for selected third tier managers
- Aspiring Leaders programme for two or three sub-managerial staff per annum.

As noted earlier in this report, there is an organisational objective to develop third tier (OLT) managers. In 2013, all OLT managers participated in extensive leadership training sessions that were specifically designed for the EPA. It was clear that this training benefited the EPA and managers. In the future there will need to be investment in suitable OLT development. The membership of the third tier management group

will continue to change. The EPA will need to consider the type, content and frequency of refresher sessions for existing managers and how it integrates new managers into OLT. **Rec 23**

Other training is provided to non-managerial staff on an as-required basis, e.g. project management, business writing, speed reading etc. There is also a range of on-line training programmes available, e.g. code of conduct, information security, and giving great service. These latter are required to ensure new staff are supported in their induction and that they understand key compliance requirements.

All staff training and development requirements are recorded in individual Performance Development Plans. HR collates all such training/development needs across the organisation which then leads to a learning and development programme for the EPA.

It is clear that the EPA has a strong focus on developing its staff. As an ongoing approach the EPA is encouraged to continue monitoring its capability needs and the level of training and development to ensure that it is sufficient to meet the organisation's needs. There is also a need to develop good systems for the application and transfer of knowledge throughout the organisation.

#### *Operational Leadership Team turnover*

In 2013-14 there were six resignations from OLT (out of 19 members, although two of this number elected to drop to a Principal Adviser role). In addition, there have been five further resignations or departures in the six week period July-mid August 2014. It can be a feature of small organisations to have high turnover rates in middle management. This can occur because of the small number of individuals involved; limited career opportunities to progress within the organisation; and those individuals have skills and experiences sought by other organisations.

While turnover has a cost and results in some loss of institutional knowledge it also offers an opportunity to bring fresh ideas into the organisation. Again, this is an issue that the ELT may wish to monitor.

### **Management of People Performance**

*How well does the EPA encourage high performance and continuous improvement among its workforce?*

*How well does the EPA deal with poor or inadequate performance?*

The EPA has a Performance Management Programme (Section 8.7 of Corporate Manual) in place. High performing staff are identified and can receive additional training and development opportunities. Some of the opportunities are noted above.

The recent 2014 EPA Best Workplaces survey results are currently being considered. It is recommended that a careful analysis be conducted as some of the results if taken at face value can be misleading. For example the response for 9.4 *“poor performance is dealt with effectively”* has an “all of organisation” headline

response that 49.2 percent support the proposition. A simple interpretation of this would be that 50.8 percent believe poor performance is not dealt with effectively. A breakdown of the results is shown in Table 2.

2014	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree	Do not know
9.4 Poor performance is dealt with effectively in this organisation	6.3%	18.2%	29.6%	22.0%	3.1%	20.8%

**Table 2: Results for dealing with poor performance from IBM Kennexa Best Workplaces survey 2014**

Taking the responses in Table 2 it is difficult to know how the 49.2 percent is calculated<sup>1</sup>. While it is likely that there will be a rational reason for the overall result it is not readily apparent. It is also interesting to note in Table 2 the high number of *neutral* and *do not know*. What at first glance may seem to be an issue warranting immediate action could in fact represent an artefact of the survey. There are a range of issues that underlie results such as these and a careful analysis is required before developing responses.

## Engagement with Staff

*How well does the EPA manage its employee relations?*

*How well does the EPA develop and maintain a diverse, highly-committed and engaged workforce?*

Nearly 86% of EPA staff responded to the July 2014 Best Workplaces survey (159/180 staff).

	Engaged	Ambivalent	Disengaged
2013 Survey	16.8%	58.0%	25.2%
2014 Survey	19.5%	62.9%	17.6%
Whole of State Sector 2014	19.3%	60.9%	19.8%

**Table 3: Employee engagement results 2014**

In 2014, the level of engaged staff improved to the whole of state sector average. The proportion of ambivalent staff is higher than last year and higher than the state sector average. Disengaged staff are lower than last year and the state sector average.

<sup>1</sup> It appears that the 49.2 percent result has been generated by excluding neutrals and do not know responses and calculating the percentage from the other categories.

As noted in the above section, it is hard to draw conclusions from the Table 3 results as there is a more complex set of ideas that underlies staff engagement than can be captured by one survey tool. The key is to fully analyse the results, identify linkages and understand the implications. This work needs to feed into a planned work programme. However, there is no evidence that there were any underlying organisational issues in this area that would impede the EPA developing its goals.

### **Evidence**

- EPA SOI 2014-18
- Human Resources staff turnover information
- IBM Kennexa Best Workplaces Survey 2014
- ELT paper Short-term Capability Options dated Dec 2012

## Part Four: Financial and Resource Management

### Asset Management

*How does the EPA manage its and Crown assets, and the EPA balance sheet, to support delivery and drive performance improvement over time?*

The asset base of the EPA is simple and consists primarily of IT hardware, software, furnishings and fittings, and leasehold improvements. The largest single asset held by the EPA is the NZEUR registry. Oversight of the registry is held by the ETS team.

### Information Management

*How well does the EPA utilise information and communications technologies to improve service delivery?*

In earlier sections of this report the relationship between EPA planning and infrastructure is discussed. Given the scope and scale of the IT Roadmap and the potential for future projects that may arise from the “Four-Year Success” work, a programme management approach may be useful to achieve the IT Roadmap (note this is not necessarily recommending a programme management office). **Rec 18**

The first consideration is to resolve whether the issue is best dealt with by process redesign or by the application of technology. Technology solutions need to be adopted as part of an overall solution driven by business needs and a prioritisation package. **Rec 16**

If the decision is taken that technology is at least part of the optimal solution then a further set of technology investment decision criteria is required and the thinking will need to be around the EPA’s position on:

- Commercial off the shelf (COTS) vs build
- percentage of acceptable customisation before build is a better option
- end of asset life
- sweat or burn assets, and
- use of leading edge versus “bleeding edge” technologies.

This will also help to reduce the likelihood of false expectations that these projects will solve all the organisations problems (a magic bullet). The expectations on the timing of implementation are optimistic and should be reviewed regularly against availability of resources, funding and progress of organisation priorities.

## Financial Management

*How well does the EPA plan, direct and control financial resources to drive efficient and effective output delivery?*

The EPA finance team sits within the Corporate Services Group and consists of five staff (including the Chief Financial Officer). The following extract is taken from the business case<sup>2</sup> for a new FMIS and illustrates the issues with the existing system (and reflects broader issues with many EPA technology systems):

*The EPA currently runs several financial and finance-related systems. The systems are:*

- *Microsoft Dynamics SL (FMIS)*
- *Microsoft reporter (basic ledger reporting tool)*
- *PayGlobal (Payroll)*
- *TRS (Time Recording)*
- *CRM (application and contract recording)*

*None of the above systems are fully integrated. This results in numerous spreadsheets for management reporting, budgeting and forecasting. Macros are used to update the Excel spreadsheets and the interlinks are prone to errors. Requests to analyse numbers can be time consuming without a good reporting tool.*

*The EPA currently uses Microsoft Dynamics SL 2011 as its FMIS which was first implemented in the Environmental Risk Management Authority (ERMA) in December 1997. When the EPA was established in 2011, it was decided that the FMIS could be transitioned across from ERMA to the EPA with minimal changes to the system.*

*In April 2013, Finance initiated the services of Deloitte to complete a GAP analysis for the Financial & Information Technology Systems. At the same time the Applications and Assessment group asked Deloitte to review their processes, including the contracts management process.*

*The GAP analysis identified the following:*

- *the current hardcopy reports that the cost centre manager receives are not easy to analyse and as a result cost centre managers find it hard to manage their financial responsibilities; and*
- *there is no effective way to manage contract expenditure without considerable manual data accumulation and manipulation.*

The organisation is in the process of implementing a new FMIS which is planned to come on-line early in 2015. Managers have high expectation of what the new FMIS system will deliver. While the technology that supports financial management is undergoing change many managers stated that they had no idea how the EPA's budgets were set. Managers have had to retrofit budgets and develop business plans in August. It was reported that there was a deliberate decision to use budgets developed historically and that a budget

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<sup>2</sup> FMIS Implementation Project Report dated April 2014

refresh would be considered after the sustainability and charging review had been completed. Regardless of timing the disconnect in timing and business planning does not help an organisation make progress on more strategically important decisions and also signals the value placed on planning and forward budgeting.

## Risk Management

### *How well does the EPA manage its risks and risks to the Crown?*

The EPA operates an appropriate high-level risk management policy that clearly states the organisation's objectives for and commitment to risk management. The policy sets out a process whereby new risks are reviewed by the ELT and added to the Risk Register along with proposed controls and risk ratings. The Audit and Risk Committee reviews the risk register at its quarterly meeting and approves the mitigations and ratings. The Policy also states that should risks rated as Critical or High (after controls have been put in place) be identified as risks between Audit and Risk Committee meetings the matter is escalated to the EPA Board Chair and the Chair of the Audit and Risk Committee.

A review of the risk register indicates that many of the risk statements do not capture the actual risk. Often the statement in the consequences column appeared to better reflect the actual risk. It was observed that the EPA used a process of aggregating team risks to create a single risk. Considerable care needs to be exercised using this approach as it can mask high risk areas within broader issues. It is prudent for the ELT to reconsider the organisation's risks and its approach to risk management. **Rec 15**

## APPENDIX A

### List of Interviews

This review was informed by input provided by a number of EPA staff and by representatives from the following businesses, organisations and agencies.

Agency/Organisation
ACCORD Australasia Limited
Agcarm Inc.
AgResearch Limited
Audit New Zealand
Collision Repair Association (CRA)
Department of Conservation (DoC)
Environmental Defence Society Inc. (EDS)
Fletcher Building Limited
Greater Wellington Regional Council
Kāpiti Coast District Council (KCDC)
Kiwis Against Seabed Mining (KASM)
Local Government New Zealand (LGNZ)
Maritime New Zealand (MNZ)
Media Representative
Merman Limited
Ministry of Health
Ministry for Primary Industries (MPI)
Ministry for the Environment (MfE)
Ministry of Business, Innovation and Employment (MBIE)
National Beekeepers' Association of New Zealand
New Zealand Customs Service
New Zealand Fire Service
NZ Transport Agency (NZTA)
Petroleum Exploration Association of NZ (PEPANZ)

## Agency/Organisation

PF Olsen Limited

Responsible Care ® New Zealand

Scion Research

Straterra - Natural Resource of New Zealand

Sustainability Council of New Zealand

Te Rūnanga o Ngāi Tahu

The New Zealand Public Service Association (PSA)

University of Otago

Woodnet Works Limited

WorkSafe New Zealand

## Acronyms

AAA –	Applications and Assessment Group
BCM –	Building Capable Managers
BOI –	Board of Inquiry, Boards of Inquiry
CCRA –	Climate Change Response Act 2002
COTS –	Commercial off the shelf
DCM –	Decision-making Committee
EEZ –	Exclusive Economic Zone
EEZ Act –	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
ELT –	Executive Leadership Team
EPA Board –	appointed by the Minister
EPA Board sub-committees –	HSNO Committee, Audit & Risk Committee, Performance Remuneration and Review Committee
ERMA –	Environmental Risk Management Authority
ETS / NZEUR –	Emissions Trading Scheme / NZ Emission's Unit Register
FMIS –	Financial Management Information System
HSNO –	Hazardous Substances / New Organisms

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HSNO Act –	Hazardous Substances and New Organisms Act 1996
KPI –	Key Performance Indicators
MfE –	Ministry for the Environment
NKTT –	Ngā Kaihautū Tikanga Taiao – independent Māori Advisory Committee
NSP -	Nationally Significant Proposals
OLT –	Operational Leadership Team
OLPA –	Ozone Layer Protection Act 1996
RMA –	Resource Management Act 1991
TSG –	Technology Strategy Group



Environmental  
Protection Authority  
*Te Mana Rauhi Taiao*

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