

# Briefing for the incoming Associate Minister of Transport

Transport Accident Investigation Commission

Te Komihana Tirotiro Aitua Waka

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### A. About the Commission

#### **Purpose**

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

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

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

#### **Functions and powers**

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

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

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

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

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

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

#### Operating environment

The Commission operates alongside transport safety authorities (the regulators³), which may also investigate transport accidents and incidents. Often, the regulator's focus is to determine whether or not compliance with the regulatory regime has occurred and, if not, to establish whether regulatory action should be taken. The Commission's inquiries focus on the safety system as a whole, which can include examining the performance of regulators, or where gaps in regulation might lead to safety risk.

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

#### International context

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

# B. Corporate structure and strategy

#### Structure

As well as being a standing commission of inquiry, the Commission is an independent Crown entity under the Crown Entities Act 2004. It is totally Crown funded with an annual budget of \$5.530 million for 2017/18.<sup>4</sup> The Commission currently has five members who also act as the Commission's Board for the purposes of the Crown Entities Act. Appendix 1 has more information about the Commissioners and the Executive Management Team.

The Commission is required under statute to employ a chief executive.<sup>5</sup> The chief executive employs 27 staff to support the Commission, which comprises 16 specialist investigators (including the Chief Investigator of Accidents) and 11 staff to support the Commission's investigations and Crown entity accountability and governance functions. Some investigation support is provided free under memorandums of understanding or fee-for-service contracts by suitably qualified individuals or

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

<sup>&</sup>lt;sup>4</sup> From 2018/19 onwards, funding is \$5.520 million per year.

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

institutions, including other state resources and international colleague agencies. Some support functions are contracted from individuals or firms. These functions include information technology, human resources, medical advisory, and research.

#### Strategic direction and objectives

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

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

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

The Commission's Statement of Intent is due to be refreshed for the four-year period beginning 1 July 2018. The document's content will be based on the outcome of the Commission's next strategic planning round, which it will undertake in late 2017/early 2018. One of the main areas of focus will be the fast-developing technologies emerging within the sector, and their implications for the Commission's long-term capability. Changes in technology will affect the types of accidents we investigate as well the way we investigate them. The Commission's strategic planning will focus on how it can position itself to meet these challenges.

### C. Current matters

#### Additional funding is increasing capability

The Commission received \$1.3 million of additional funding in 2015/16, from baseline funding of \$3.96 million in the previous year. This has enabled the Commission to improve its capacity to undertake its statutory function of determining the circumstances and causes of occurrences. The Commission has strengthened its investigative capabilities, growing its investigation team by six investigators including a new data interrogation role. For the first time in its 25 years of organisational life, the Commission is to have four to five members, rather than three. This will ensure continuity of the Commission's work, particularly when vacancies arise.

The Commission is mindful of the values that guide it in ensuring that natural justice is maintained. The Commission is progressively enhancing its information and communication systems to foster understanding of the Commission and the information it is able to share during the course of its inquiries. In this regard, the Commission is paying particular attention to its inquiry stakeholders, who include government, regulatory and industry organisations, commercial transport operators,

international organisations, and those most directly affected by the accidents and incidents it investigates — the people involved and their families.

#### Maintaining investigative standards

The Commission achieves improvement in transport safety by maintaining high investigative standards. The Commission conducts self-assessments of its investigations against international standards. The Commission has also recently been audited by the International Civil Aviation Organization (ICAO). The auditors looked comprehensively at all aspects of the Commission's investigation process including policies, procedures, and investigation techniques. The Commission received ICAO's draft audit report at the end of March 2017. The final report is unlikely to be released before October 2017. The Commission expects the results of the audit with respect to accident investigation to be favourable.

The Commission recently completed a comprehensive project to develop and enhance existing investigative and inquiry guidelines. The guidelines provide consistency in approach and statutory direction, and maintain quality investigations and proper governance of inquiries. This project has further strengthened the Commission's processes to ensure its investigations are carried out in a robust, thorough and timely manner.

#### **Current inquiries**

#### Volume and timeliness

The Commission aims to close 20-25 inquiries a year, spread roughly evenly across the modes. Improving timeliness in completing inquiries has been a major organisational focus for the Commission since receiving the 2015/16 increase in baseline funding and recruitment of additional investigators. For 2017/18, a more realistic target of 60% applies while the Commission continues closing a backlog of 'aged' cases, and 're-sets' the age profile of its casebook. The target increases to 70% for 2018/19.

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

The ideal loading is 30 open domestic cases to maintain the desired throughput. As at 30 October 2017, the Commission had 29 domestic inquiries open: 13 air, 6 rail, and 10 maritime.

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

#### Current inquiries of note

Most of the Commission's investigations attract a certain level of public and media attention; however, some receive greater coverage than others. Two of the most high-profile cases the Commission is currently investigating are briefly described below.

- Fox Glacier helicopter crash inquiry AO-2015-007: On 21 November 2015 six passengers and the pilot of a Eurocopter helicopter (Squirrel) were killed when the helicopter crashed on Fox Glacier during a sightseeing tour. The passengers on board included Australian and UK nationals, and the accident received significant media attention here and abroad. The Commission is nearing the end of its analysis phase and has begun writing its draft report.
- Mount Alta helicopter snow-landing crash inquiry AO-2014-005: On 16 August 2014 a Squirrel helicopter crashed while the pilot was attempting a landing in the snow. The helicopter was on a heli-skiiing trip, and as well as the pilot, a ski-guide and five passengers were on board. One of the passengers was fatally injured and the remaining occupants received moderate to serious injuries. The inquiry is the oldest in the Commission's casebook. It is a complex inquiry, and considerable effort has been spent considering submissions.

The response to a recommendation from a recently closed inquiry shows how effective the Commission can be in influencing safety.<sup>6</sup> In the incident, a pilot taking off before dawn aligned his aircraft with the runway edge lights rather than the centre lights. One of the resulting recommendations was for the chief executives of Auckland International Airport Ltd and Airways to improve the ability of air traffic controllers to adjust the intensity of runway lighting, so that it is appropriate to the ambient light and at a level recommended by international guidelines. In implementing the recommendation, Airways found that over 90 light fittings had to be replaced. Airways has instigated regular testing of runway lights at all international airports, and the Civil Aviation Authority will include runway light intensity checks in all future applicable audits.

#### Themes occurring in current inquiries

The Commission is currently paying particular attention to accidents involving helicopters, because in recent years they have appeared relatively frequently in notified occurrences. Of the 13 open aviation inquiries as at 31 July 2017, 10 involve helicopters. Of those 10 inquiries, four relate to Robinson helicopters (see the section on the Watchlist below).

In the rail mode, worksite safety has been a theme of recent inquiries, including the failure of workers to adhere to worksite protection practices. Two of these inquiries are still open.

In the maritime mode, there has been a recent spate of occurrences involving cruise ships. Half of the open maritime inquiries (five out of 10) involve cruise ships. Safety issues related to these accidents have not yet been fully identified. The Commission is mindful of the growth in the number of cruise ships coming to New Zealand, and that the number of ships, as well as the number of passengers per ship are forecast to increase. Any common safety issues could have significant implications.

As well as the inquiries involving cruise ships, three of the helicopter accidents dealt with by the Commission over the last 12 months have been in the tourism sector. Operators in this sector are more likely to carry passengers, sometimes into inaccessible or hazardous areas of the country — and therefore accidents have potentially higher consequences of damage, injury, and death; and for the reputation of the tourism sector.

<sup>6</sup> Inquiry 13-006 Misaligned take-off at night, Airbus A340, CC-CQF, Auckland Airport, 18 May 2013

#### Watchlist

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

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

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

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

Robinson helicopters were added to the Watchlist in October 2016 as a result of accidents investigated by the Commission and the Civil Aviation Authority that involved a phenomenon known as mast bumping. Mast bumping occurs when part of the main rotor blade or rotor hub make contact with the main drive shaft (or mast). The result is often catastrophic and results in in-flight break up. The Commission has made recommendations to the manufacturer and the regulator about mast bumping. The Commission currently has four open inquires involving Robinson helicopters (not all are related to mast bumping).

Safety at railway level crossings was added to the Watchlist in October 2016. Commission inquiries have highlighted that the safety of pedestrians and vehicle users at railway level crossings is being compromised because of ambiguities in the responsibilities between road and rail authorities. This is a particular concern in metropolitan areas with growing patronage, and growing frequency of trains. Other inquiries have shown that the implications for the road-rail interface are sometimes not recognised when changes are made to rail vehicle technology and rail infrastructure. The Commission has open recommendations to the regulator, business operators, and road control authorities to reduce safety risks.

# D. Relationship with Ministers

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

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

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

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

The Commission's communications team will introduce themselves to your press secretary to brief him or her on the Commission's functions and processes.

# **Appendix 1** Commissioners and Executive Team

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

- Jane Meares (Chief Commissioner): Jane is a commercial barrister based at Clifton Chambers in Wellington. Prior to joining Clifton Chambers, Jane was the chief legal adviser at the Treasury and, before that, a commercial partner in the Wellington office of Bell Gully. At the bar, she undertakes a broad range of commercial and public sector advisory work. She is currently chair of Parliamentary Counsel's risk and audit committee, chair of the Ballet Foundation of New Zealand, on the Corporate Trust Board of Trustees Executors Ltd and a board member of ECNZ. Jane was first appointed a Commissioner in February 2015, and appointed Chief Commissioner in November 2016.
- Peter McKenzie QC (Deputy Chief Commissioner): Peter is a commercial barrister in sole practice at Capital Chambers, Wellington. He was Chair of the Securities Commission from 1990 to 1995. In addition to his Barrister's practice he has lectured in corporate, banking and finance law at Leeds University and at Victoria University of Wellington. Before becoming a barrister, he was a senior litigation partner and commercial partner with Brandon Brookfield, Solicitors. He has consulted internationally on company and securities law to numerous foreign governments, and has authored text and journal articles in his areas of expertise. Peter was appointed to the Commission in August 2015.
- Stephen Davies Howard (Commissioner): Stephen is a Wellington-based company director. Before coming to New Zealand he held leadership roles in the UK public sector, including Parliamentary Select Committee and Defence Council enquiries. He spent his early career as a fighter pilot with the Royal Air Force and also served in the Royal New Zealand Air Force, attaining the rank of Group Captain in both services. He has a wealth of strategic international experience and was an accredited Attaché to the British Embassy in Washington DC, USA. Stephen retains both a commercial pilot licence and a commercially endorsed Ocean Yachtmaster's certificate. Stephen was appointed to the Commission in August 2015.
- Richard Marchant (Commissioner): Richard is an Auckland-based barrister who has prosecuted a large number of cases on behalf of Government agencies. He was previously a partner at Meredith Connell, and Chair of the Board from 2008 to 2013. He is a member of the New Zealand Bar Association and of the Criminal Bar Association. He has served on the executive of the Criminal Bar Association, the legal assistance scheme committee of the Auckland District Law Society, and the local consultative group of the Legal Services Agency. He is a member of the performance review committee of Ministry of Justice, and on the Auckland Regional Courts Group. Richard was appointed to the Commission in November 2016.
- Paula Rose QSO (Commissioner): Paula Rose is a Canterbury-based director and safety professional. She holds a number of board positions including WorkSafe NZ, Broadcasting Standards Authority, Social Workers Registration Board and Brackenridge Estate and is a member of the NZ Parole Board. Paula was formerly National Manager, Road Policing with NZ Police, deputy Chair of the Independent Taskforce on Workplace Health and Safety and Executive Advisor to Hon Paula Bennett on the Children's Action Plan. She was appointed to the Commission in May 2017.

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

- Lois Hutchinson (Chief Executive): Lois has 30 years of senior management experience in the state sector. Lois joined the Commission as Chief Executive after executive management roles in censorship and health. Lois was the Video Recordings Authority for 6 years before being appointed Deputy Chief Censor at the then new Office of Film & Literature Classification Office, which she helped to establish. Lois held the position of Deputy Chief Censor for 5 years before taking up the position of Group Manager, Acute Surgical Services, then General Manager, Hospital Services at Mid Central District Health Board. Promoting social justice and reducing public harms are the common threads to her career. Lois has a Bachelor of Arts degree in philosophy & psychology, a Master's degree in public policy from Victoria University of Wellington and a Master of Science in organisational performance from Cranfield University, UK. Lois is also a trained nurse specialising in oncology & haematology care. Lois leads the organisation to support the Commissioners in the delivery of their statutory purpose, which is to help improve transport safety.
- Cathryn Bridge (General Manager, Business and Legal Services): Cathryn brings 20 years of
  public sector management experience in legal, regulatory, policy, operational, strategy and
  project roles. She was Chief Legal Advisor, Programme Manager Strategic Projects and
  Principal Policy Analyst at the Ministry of Fisheries. Prior to joining TAIC she managed the
  nationally significant proposal consenting process team at the EPA. She has an LLB and BA
  from Victoria University and an Executive Masters of Public Administration through the
  Australian and New Zealand School of Government, focussing on leadership, organisational
  strategy and change management.
- Peter Northcote (General Manager, Communications and Investigation Support): Peter has a background in marketing communications and management in the private and public sectors, with experience in the health, education, and electoral fields before coming on staff in 2009. However, his involvement with the Commission dates back to 1995 when, as a public relations consultant, he supported the Commission's media and stakeholder relations at a significant accident; a role for which he has been engaged since (with one five-year break). His affinity with the transport sector developed with his first public relations role, in uniform with the Royal New Zealand Air Force. Peter has a Master's degree in Public Management (VUW), and he has recently completed a Master's degree in Disaster and Emergency Management with the Commission's support.
- Tim Burfoot (Chief Investigator of Accidents, General Manager Investigation Services): Tim began employment with the Commission in January 1995. He holds the qualification of Captain (Foreign-Going) with a significant background in shipping including captaining foreign-going vessels engaged in world-wide trading with multi-national crews. After completing about 30 marine accident investigations over a period of four years, Tim was appointed as the Commission's Chief Investigator of Accidents in 1999. Tim left the Commission in 2002 to take up a position as Marine Operations Manager for the Cook Strait ferry company Interislander. In January 2007 Tim returned to the Commission in his role as Chief Investigator of Accidents.

# Appendix 2 Commission contact

Chief Executive Lois Hutchinson

Email: ceo@taic.org.nz

DDI:

Mobile:

Commission details

Telephone: 04 473 3112

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Website: www.taic.org.nz

# Appendix 3 Open inquiries as at 30 October 2017

## Aviation

Inquiry No.	Occurrence description	Date opened
14-005	Aerospatiale AS350 helicopter, snow landing accident, Mount Alta, 20 km north-west of Wanaka	16/8/2014
15-003	Robinson R44, Main rotor blade failure, Waikaia	25/2/2015
15-005	Loss of air traffic control services, nationwide	23/6/2015
15-007	AS350BA Eurocopter, ZK-HKU, collision with terrain, Fox Glacier	21/11/2015
15-009	Break down of traffic separation, Hamilton control zone	17/12/2015
16-006	AS350 Squirrel helicopter, crash landing, North of Arrowtown	12/9/2016
16-007	Robinson R44, impact with terrain, Glenbervie Forest, Northland	1/11/2016
16-008	Robinson R66, impact with ground, Hokonui Hills, Southland	14/11/2016
17-001	Squirrel AS320BA, impact with terrain, Port Hills, Christchurch	14/2/2017
17-002	Robinson R22, Reefton	27/3/2017
17-003	ATR aircraft, landing gear, Nelson	10/4/2017
17-004	BK117 Pauatahanui, Wellington	2/5/2017
17-007	AO-2017-007 Jetstar Airbus A320, descent below published minima, Christchurch	14/8/2017
Internation	al assist	
14-001	Boeing 737-3B7 Freighter, right-hand undercarriage collapse during landing roll, Honiara, Solomon Islands	29/1/2014
15-004	Australian-registered B737 VH-VOP, Landing event, Christchurch	11/5/2015
16-003	PAC 750 XL, forced landing Nepal	26/2/2016
17-005	Australian-registered Fletcher aeroplane, impact with terrain, Bathurst, Australia	20/6/2017
17-006	Royal New Zealand Air Force C130, authorised descent below minima, Dubai	6/7/2017
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# Rail

Inquiry No.	Occurrence description	Date opened
16-101	Near Collision, between passenger trains, Wellington	31/5/2016
17-101	Freight train, unauthorised entry to work site, Pongakawa	7/2/2017
17-102	Signalling Irregularity, 42 & 43 signals, Wellington	3/4/2017
17-103	Near Collision, between passenger trains, Wellington	17/5/2017
17-104	Passenger train, unauthorised immobilisation of train at station platform, Baldwin Avenue Station, Auckland	19/9/2017
17-105	Fatal accident, Lambert Rd level crossing	6/10/2017

# Maritime

Inquiry No.	Occurrence description	Date opened
16-201	Passenger vessel Pee Jay V, fire and abandonment, Whakatane	18/1/2016
16-202	Passenger ship Azamara Quest, struck Wheki Rock, Tory Channel	27/1/2016
16-204	Moly Manx grounding, Otago Harbour	19/8/2016
16-205	Panama-registered bulk carrier New Legend Pearl, crew fatality, Northland	4/11/2016
16-206	Fishing charter vessel <i>Franci</i> e, capsize, entrance to Kaipara Harbour	28/11/2016
17-201	Passenger vessel, L'Austral, contact with submerged object, Snares Island	13/1/2017
17-202	L'Austral, contact with rock, Milford Sound	9/2/2017
17-203	Passenger vessel <i>Emerald Princess</i> , explosion resulting in crew fatality, Port Chalmers, Dunedin	9/2/2017
17-204	Seabourn Encore, contact with cement carrier, Timaru	12/2/2017
17-205	Cargo ship Kokopo Chief, fire on-board, Port of Tauranga	24/9/2017

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### **Transport Accident Investigation Commission**

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