

## Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

Listed below are the most commonly used grounds from the OIA.

Section	Description of ground
9(2)(a)	to protect the privacy of natural persons

**In confidence**

Office of the Minister of Transport

Cabinet Business Committee

**Regulatory Systems (Transport) Amendment Bill – Additional policy decisions to support compliance with proposed rail investigation powers**

**Proposal**

1. This paper seeks Cabinet agreement to introduce offences and penalties into the Regulatory Systems (Transport) Amendment Bill (the Bill), to support compliance with the proposed investigation powers following rail accidents or incidents, being introduced through the Bill.

**Relation to government priorities**

2. The Bill delivers on commitments made in the Government Policy Statement on Land Transport 2024. It also supports other Government priorities including improving the quality and performance of regulatory systems, the digital modernisation of services, and reducing unnecessary government spending.

**Executive Summary**

3. The Bill, being considered by the Transport and Infrastructure Select Committee (the Committee), introduces new reactive investigation powers under the Railways Act 2005. This will enable the New Zealand Transport Agency Waka Kotahi (NZTA) to investigate more effectively and efficiently, following rail accidents or incidents. Currently, NZTA relies on voluntary cooperation of parties involved in the accident or incident, or on other regulatory agencies with a broader remit.
4. Previous policy work and Cabinet decisions, however, did not include consideration of offences and penalties for non-compliance with these new investigatory powers. This policy gap was identified too late to develop advice and include any offences and penalties for these powers before introduction of the Bill.
5. A key objective of the Bill is ensuring regulators have effective tools to carry out their regulatory functions. The proposal to include offences and penalties to support compliance with the new rail investigation powers directly supports this objective.
6. Without including corresponding offences and penalties, the new investigatory powers would be difficult to enforce and not as effective as intended because there would be no penalty if they chose not to comply. This would mean that inspectors would still have to rely on voluntary participation.

IN CONFIDENCE

7. Investigatory powers introduced in the Bill are largely modelled off investigatory powers under the Civil Aviation Act 2023 (CAA), and the Health and Safety at Work Act 2015 (HSWA). These comparable regimes attach offences and penalties to these types of investigatory powers. I seek Cabinet's agreement to introduce offences and penalties that align with the CAA and HSWA, to attach to the new rail investigation powers.
8. Subject to Cabinet's agreement, attaching these offences and penalties to the rail investigatory powers in the Bill will be recommended as part of the Departmental Report to the Committee on the Bill.

**Background**

9. The Bill is an omnibus Bill that makes amendments across land transport, maritime and aviation legislation to support effective regulatory stewardship and an efficient transport system.
10. It was introduced on 14 August 2025, after receiving endorsement from the Business Committee, required under Standing Order 267(1)(c) for omnibus Bills of this nature (CAB-25-MIN-0240 refers). The Bill is currently with the Committee for consideration, with a report back date of 19 February 2026.
11. The Associate Minister of Transport is responsible for progressing this Bill through the House. However, I am the Minister responsible for policy decisions in relation to land transport matters, including policy decisions on rail.
12. The Bill gives effect to policy decisions made from 2022-2025, including introducing reactive investigation powers under the Railways Act 2005 (clauses 103 and 107-110). These powers are intended to enable NZTA to investigate more effectively and efficiently, following rail accidents or incidents. This responds to longstanding concerns that NZTA lacks core investigatory tools, resulting in gaps in its ability to act as an effective rail safety regulator.
13. Currently, NZTA relies upon the voluntary cooperation of parties or on other regulatory agencies with a broader remit (for example, WorkSafe). This leads to an inadequate information-gathering process to support an investigation or compel eventual improvements from a rail licence holder.
14. The following investigatory powers in the Bill have been modelled off the CAA, and can only be used in the course of investigating an accident or incident:
  - 14.1 obtain specific information (clause 110, new section 72C)
  - 14.2 enter and inspect a vehicle, building or place while investigating an accident or incident (clause 110, new section 72D)
  - 14.3 enter homes or marae through the consent of the occupier or under a warrant (clause 110, new section 72E)
  - 14.4 take samples, objects and things (clause 110, new section 72G)

- 14.5 enter and search a vehicle, building or place (by consent or under warrant) where the Director suspects a contravention (clause 110, new section 72H)
- 14.6 issue an improvement notice (clause 110, new sections 72K-72N), and
- 14.7 issue a non-disturbance notice (clause 110, new sections 72O-72R).

***As introduced, the Bill does not attach offences and penalties for non-compliance with new investigatory powers following a rail accident or incident***

- 15. The drafting process for the Bill highlighted that offences and penalties were not included as part of previous policy work or Cabinet decisions from 2022 on the rail investigatory powers following accidents or incidents. This policy gap was identified too late in the process to develop advice and include any offences and penalties for these powers before introduction of the Bill.
- 16. The rail industry is a high-risk industry and stringent safety systems are required to avoid the risk of catastrophic accidents. Due to the high-risk nature of the rail industry, an in-depth understanding of the precursors to accidents and incidents, and how these can be prevented, is required.
- 17. The Regulatory Impact Statement (RIS) provided in Appendix 1 provides recent data and case studies to demonstrate the need for enforceable investigatory powers following rail accidents or incidents.
- 18. An example of this is the HI-Rail Vehicle (HRV) Collision that occurred in February 2025. During the investigation of the HRV collision, multiple parties declined interview requests. NZTA had no statutory mechanism to compel their participation, stalling the investigation and leaving critical safety questions unresolved. This significantly impeded NZTA's ability to take timely regulatory action.
- 19. The investigatory powers introduced in the Bill will provide a statutory mechanism to require compliance following rail accidents or incidents. However, without offences and penalties attached to the rail investigation powers in the Bill, NZTA would still rely on voluntary cooperation and there would be no financial consequence for non-compliance.

**Analysis**

***I seek Cabinet's agreement to attach offences to support compliance with new investigatory powers following a rail accident or incident***

- 20. The investigatory powers introduced in the Bill are largely modelled off investigatory powers under the CAA (the CAA is modelled off the HSWA). Comparable regimes, such as the CAA, attach offences and penalties to these types of investigatory powers.
- 21. The Ministry of Transport (the Ministry) has developed penalties in accordance with the Ministry's Effective Transport and Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool). An overview of the Framework and Tool is provided in the RIS attached in Appendix 1.

22. I seek agreement from Cabinet to attach offences and penalties to support compliance with new investigatory powers following a rail accident or incident and align these with the CAA and HSWA, outlined in figure 1 below.
23. This will meet policy objectives to:
- 23.1 enable the effective exercise of the new powers when investigating an accident or incident,
  - 23.2 ensure safety risks and non-compliance are identified and addressed in a timely way, and
  - 23.3 provide legal certainty for what the consequences are, for breaching a requirement in the Bill.

**Figure 1**

Offence	Assessment of offence severity	Penalty amount
<b>Failure to assist or comply with a lawful requirement of an inspector</b>	Identifying the cause of an accident or incident is crucial to preventing future harm.	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000
<b>Failure to provide name, residential address and date of birth</b>	This information may be relevant to an investigation and the failure to provide it could have a safety risk if it hinders the inspector's ability to investigate the cause of an accident or incident.	<b>Any person:</b> \$10,000
<b>Impersonating an inspector</b>	Someone who is not an inspector is exercising intrusive investigatory powers. This could result in a person obtaining information that they should not have access to. The likelihood of this is low.	<b>Any person:</b> \$10,000
<b>Non-compliance with an improvement notice</b>	Non-compliance could result in a serious risk to safety as the issue identified in the notice has not been remedied.	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Non-compliance with a non-disturbance notice</b>	Non-compliance could affect the inspector's ability to investigate. A person who does not perform the obligations specified in the non-disturbance notice could also significantly hinder the investigation.	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Remove, destroy, damage, or deface a notice</b>	An inspector has chosen to display a notice because they want it to be visible (e.g. displaying a non-disturbance notice so people know a particular vehicle, building or place is to remain undisturbed).	<b>Individual:</b> \$5,000 <b>Any other person:</b> \$25,000

### Implementation

24. Offences and penalties for non-compliance with new investigatory powers following a rail accident or incident will be implemented as part of the implementation of the new investigatory powers generally, as introduced in the Bill. No additional costs are anticipated.

### Cost-of-living Implications

25. The proposals in this paper do not have material cost-of-living implications.

### Financial Implications

26. It is difficult to quantify or estimate financial implications, as prosecution is dependent on conduct occurring that amounts to an offence. There is a possibility that there may be an increase in NZTA prosecuting rail participants and/or personnel for safety failings in the rail system. However, NZTA does not anticipate serious non-compliance with the new investigatory powers and considers that the additional costs of investigating any non-compliance would be low.

### Legislative Implications

27. Proposals in this paper require amendments to the Railways Act 2005, which will be binding on the Crown.
28. Subject to Cabinet's agreement, attaching these offences and penalties to the rail investigatory powers in the Bill will be recommended as part of the Departmental Report to the Committee on the Bill. The Departmental Report is expected to be presented to the Committee mid-late November 2025.
29. If the Committee agrees to the inclusion of these offences and penalties, the Committee will issue instructions for the Parliamentary Counsel Office to include these in the revision-tracked version of the Bill. The Committee are due to report back on the Bill by 19 February 2026.

### Impact Analysis

#### Regulatory Impact Statement

30. Appendix I provides a RIS to support Cabinet's consideration of the inclusion of offences and penalties to support compliance with the proposed investigation powers following rail accidents or incidents, being introduced through the Bill.
31. The Ministry's RIS Panel have concluded that the RIS partially meets RIS requirements. Consultation has not been undertaken on the proposals, which constitutes a key gap. The RIS acknowledges this and discusses related consultation (on the investigatory powers), but this is not sufficient to overcome the gap.

32. A previous RIS was prepared in 2022 to support public consultation on the proposal to introduce reactive investigation powers under the Railways Act<sup>1</sup>. The 2022 RIS reinforced the problem definition and highlighted that NZTA's lack of investigatory power, limits its ability to prevent, detect, and respond to safety breaches, with flow-on impacts for public confidence and system integrity. The RIS also recommended aligning rail investigatory powers with other transport modes, such as aviation, to enable a modern, risk-based regulatory approach.

#### Climate Implications of Policy Assessment

33. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

#### Population Implications

34. There are no population implications arising from these proposals.

#### Human Rights

35. The Bill has been assessed by the Ministry of Justice, appearing consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.<sup>2</sup> We do not expect that the addition of these offences and penalties would change this assessment.

#### Use of external Resources

36. No external resources were used in policy development of the proposals.

#### Consultation

37. The following agencies were consulted on the contents of this paper: Department of the Prime Minister and Cabinet, Ministry of Justice (Offences and Penalties Vetting Team), Ministry for Regulation, New Zealand Police, Office of the Privacy Commissioner, Parliamentary Counsel Office, Treasury, Waka Kotahi New Zealand Transport Agency (NZTA).
38. In May 2022, the Ministry consulted the public on a discussion document on the proposal to introduce the rail investigatory powers<sup>3</sup>. The public have had the opportunity to submit on this proposal as the Bill is currently drafted through the

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<sup>1</sup> The 2022 RIS is linked in the Departmental Disclosure Statement on the Bill and is publicly available here: <https://www.transport.govt.nz/assets/Uploads/RIS-Providing-better-investigation-powers-under-the-Railways-Act-2005-REDACTED-v2.pdf>

<sup>2</sup> The report is available here: <https://www.justice.govt.nz/assets/Documents/Publications/14082025-Regulatory-Systems-Transport-Amendment-Bill-.pdf>

<sup>3</sup> May 2022 discussion document is publicly available here: [https://consult.transport.govt.nz/policy/te-whakahounga-o-te-pire-tiaki-ture-t-nuku-land/supporting\\_documents/MOT%204238%20RSTA%20Land%20Proposal\\_p8\\_v1.pdf](https://consult.transport.govt.nz/policy/te-whakahounga-o-te-pire-tiaki-ture-t-nuku-land/supporting_documents/MOT%204238%20RSTA%20Land%20Proposal_p8_v1.pdf)

submissions process (submissions on the Bill were received from 19 August – 2 October 2025).

39. No public consultation has been undertaken regarding the introduction of offences and penalties for these new reactive rail investigatory powers. Ministry officials have outlined the lack of corresponding offences and penalties with these investigatory powers with the Committee through the initial briefing on the Bill. The Committee is welcome to seek the views of submitters involved in rail activities on this policy matter through the Select Committee process, as the Committee sees necessary.
40. The Ministry engaged with the Ministry of Justice Offences and Penalty Vet Team (OPV) regarding introducing new offences and penalties. OPV is not strongly opposed to either of the options the Ministry proposed in the RIS. However, in the limited time available, OPV is more comfortable with all penalties being more closely aligned to those determined by the Ministry's Tool, rather than guided by the Tool but adjusted to align with CAA and HSWA regulatory regimes.

### Communications

41. Ministry officials have advised the Committee of the lack of corresponding offences and penalties with these investigatory powers through the initial briefing on the Bill.

### Proactive Release

42. This Cabinet paper and its corresponding minute will be proactively released within 30 business days of final policy decisions being taken by Cabinet.

### Recommendations

The Minister of Transport recommends that the Committee:

- 1 **agree** to attach offences and penalties to support compliance with new investigatory powers following a rail accident or incident in the Regulatory Systems (Transport) Amendment Bill (the Bill).
- 2 **agree** to align offences and penalties with the Civil Aviation Act 2023 and Health and Safety at Work Act 2015.
- 3 **agree** to the following duties being created for the new reactive rail investigation powers (the breaches of which will be offences):
  - 3.1 to assist and comply with lawful requirements of an inspector.
  - 3.2 to provide name, residential address and date of birth to an inspector (see clause 110 (72C) of the Bill).
  - 3.3 to comply with improvement notices and non-disturbance notices (see clause 110 (72M and 72Q) of the Bill).

- 4 **agree** to the following offences and penalties being set for new reactive rail investigation powers:
- 4.1 for failing to assist or comply with a lawful requirement of an inspector, maximum penalties on conviction of \$10,000 for an individual and \$50,000 for any other person;
  - 4.2 for failing to provide a name, residential address and date of birth, and for impersonating an inspector, maximum penalties on conviction of \$10,000;
  - 4.3 for non-compliance with improvement and non-disturbance notices, maximum penalties on conviction of \$50,000 for an individual, and \$250,000 for any other person;
  - 4.4 for removing, destroying, damaging or defacing a notice, maximum penalties on conviction of \$5,000 for an individual, and \$25,000 for any other person.
- 5 **note** that subject to Cabinet's agreement, attaching offences and penalties to the rail investigatory powers in the Bill will be recommended as part of the Departmental Report to the Transport and Infrastructure Select Committee on the Regulatory Systems (Transport) Amendment Bill.
- 6 **note** that the exact wording for these offences and duties will be drafted by the Parliamentary Counsel Office.

Authorised for lodgement

Hon Chris Bishop

Minister of Transport

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THE MINISTRY OF TRANSPORT

**Appendix One: Regulatory Impact Statement: Reactive Rail Investigation Powers – Offences and Penalties**

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THE MINISTRY OF TRANSPORT TE MANATU WAKA



# Cabinet Business Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Regulatory Systems (Transport) Amendment Bill: Policy Decisions to Support Compliance with Proposed Rail Investigation Powers

Portfolio                      Transport

On 28 October 2025, the Cabinet Business Committee:

- 1        **noted** that:
  - 1.1      the Regulatory Systems (Transport) Amendment Bill (the Bill) introduces new reactive investigation powers under the Railways Act 2005;
  - 1.2      the Bill was approved for introduction in August 2025 and is currently before the Transport and Infrastructure select committee [LEG-25-MIN-0136];
- 2        **agreed** to attach offences and penalties to support compliance with the Bill's new investigatory powers following a rail accident or incident;
- 3        **agreed** to align the proposed offences and penalties with the Civil Aviation Act 2023 and Health and Safety at Work Act 2015;
- 4        **agreed** to the following duties being created for the new reactive rail investigation powers (the breaches of which will be offences):
  - 4.1      to assist and comply with the lawful requirements of an inspector;
  - 4.2      to provide name, residential address and date of birth to an inspector (clause 110 (new section 72C) of the Bill);
  - 4.3      to comply with improvement notices and non-disturbance notices (clause 110 (new sections 72M and 72Q) of the Bill);
- 5        **agreed** to the following offences and penalties being set for the new reactive rail investigation powers:
  - 5.1      for failing to assist or comply with a lawful requirement of an inspector: maximum penalties on conviction of \$10,000 for an individual and \$50,000 for any other person;
  - 5.2      for failing to provide a name, residential address and date of birth, and for impersonating an inspector: maximum penalties on conviction of \$10,000;

- 5.3 for non-compliance with improvement and non-disturbance notices: maximum penalties on conviction of \$50,000 for an individual, and \$250,000 for any other person;
- 5.4 for removing, destroying, damaging or defacing a notice: maximum penalties on conviction of \$5,000 for an individual, and \$25,000 for any other person;
- 6 **noted** that the above changes will be recommended as part of the Departmental Report to the Transport and Infrastructure select committee on the Bill;
- 7 **noted** that the exact wording for the proposed offences and duties will be drafted by the Parliamentary Counsel Office.

Rachel Clarke  
Committee Secretary

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**Present:**

Hon David Seymour (Chair)  
Hon Nicola Willis  
Hon Chris Bishop  
Hon Simeon Brown  
Hon Brooke van Velden  
Hon Erica Stanford  
Hon Paul Goldsmith  
Hon Louise Upston  
Hon Judith Collins KC  
Hon Tama Potaka  
Hon Simon Watts

**Officials present from:**

Department of the Prime Minister and Cabinet

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# Cabinet

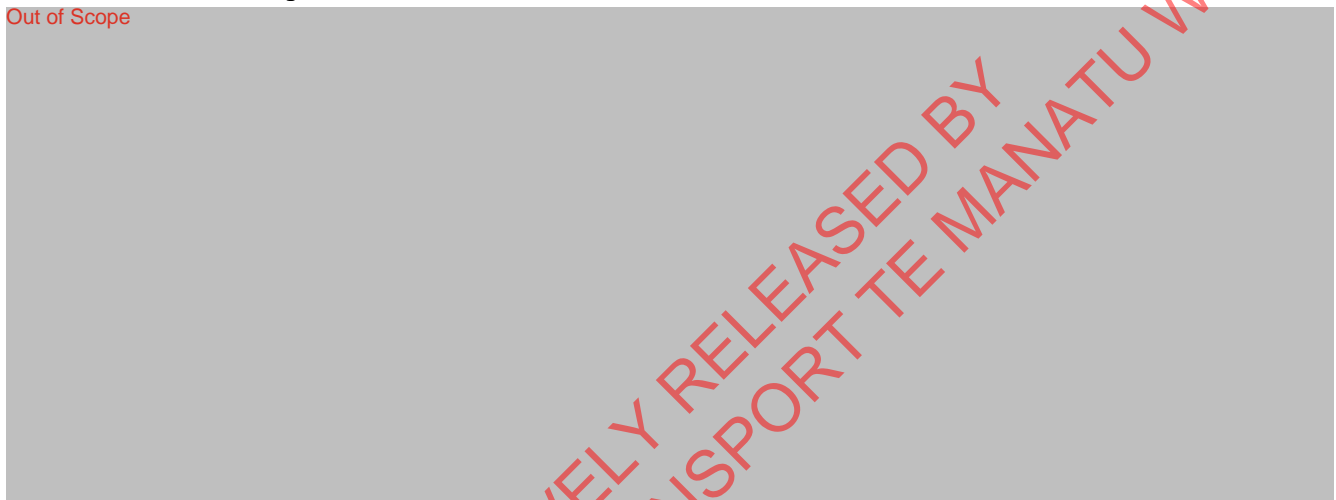
## Minute of Decision

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### Report of the Cabinet Business Committee: Period Ended 31 October 2025

On 3 November 2025, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 25 October 2025:

Out of Scope

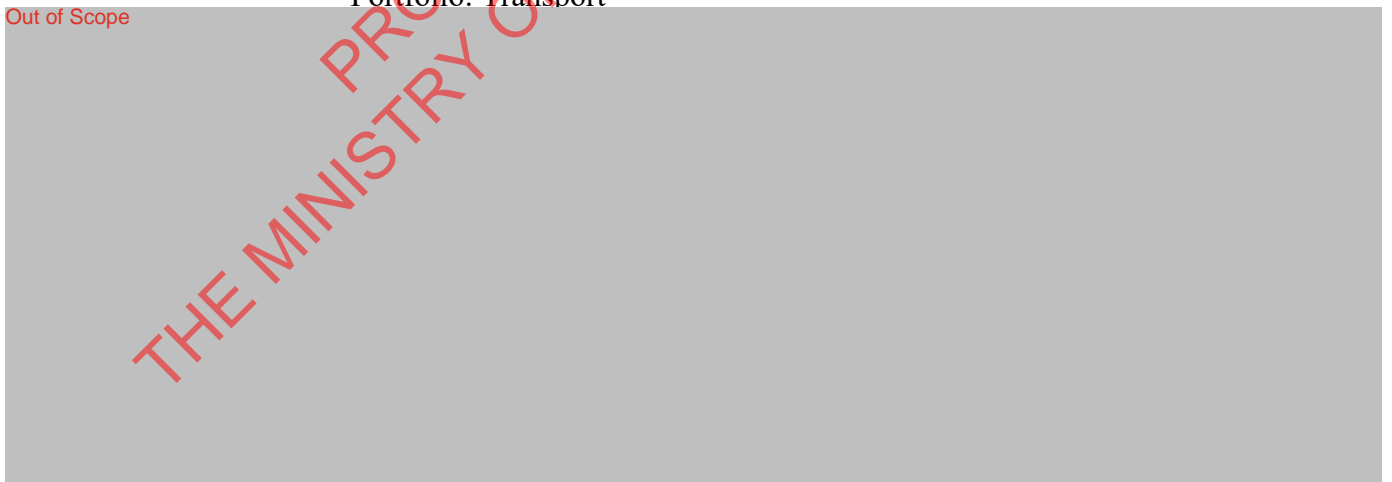


CBC-25-MIN-0057

**Regulatory Systems (Transport) Amendment Bill: Policy Decisions to Support Compliance with Proposed Rail Investigation Powers**  
Portfolio: Transport

CONFIRMED

Out of Scope



Rachel Hayward  
Secretary of the Cabinet

# Regulatory Impact Statement: Reactive Rail Investigatory Powers – Offences and Penalties

<b>Decision sought</b>	Analysis produced for the purpose of informing final Cabinet policy decisions.
<b>Agency responsible</b>	Ministry of Transport
<b>Proposing Ministers</b>	Minister of Transport (policy lead) and Associate Minister of Transport (leading the Bill)
<b>Date finalised</b>	13 October 2025

The Regulatory Systems (Transport) Amendment Bill (RSTA Bill) amends the Railways Act 2005 to introduce new reactive rail investigatory powers following an accident or incident. The Minister of Transport is proposing to include new offences and penalties in the RSTA Bill through a Departmental Report which will attach to these reactive rail investigatory powers.

## Summary: Problem definition and options

### What is the policy problem?

The RSTA Bill introduces new reactive rail investigatory powers to enable the New Zealand Transport Agency Waka Kotahi (NZTA) to investigate more effectively and efficiently following rail accidents or incidents, in order to identify and address safety risks and non-compliance with legislative requirements. These powers would allow NZTA to, for example, obtain information, enter scenes to investigate, and issue improvement notices.

However, the drafting of the RSTA Bill highlighted that previous policy work and Cabinet decisions did not include consideration of offences and penalties for compliance with these new investigatory powers. This policy gap was identified too late to develop advice and include any offences and penalties before the introduction of the RSTA Bill.

Without offences and penalties, the new investigatory powers would not be as effective as intended at identifying and addressing safety risk. This is because, without penalties for failing to comply with an investigation, parties would not have sufficient incentive to comply. For example, while the new powers would require parties to comply with a request to produce specific information, there would be no penalty if the party chose not to do so.

NZTA would remain reliant on voluntary participation from parties involved in the accident or incident (e.g. willingly providing relevant information), as they currently do, limiting their ability to properly investigate the cause of an accident or incident.

Comparable regimes, including the Civil Aviation Act 2023 (CAA) and Health and Safety at Work Act 2015 (HSWA), attach penalties for non-compliance to their investigatory powers.

### **What is the policy objective?**

The policy objectives are to:

- 1) Enable the powers being proposed in the RSTA Bill for investigating a rail accident or incident to be exercised effectively.
- 2) Ensure safety risks and non-compliance are addressed in a timely way.
- 3) Provide legal certainty about what the consequences are for not complying with the new reactive rail investigatory powers.

### **What policy options have been considered, including any alternatives to regulation?**

This Regulatory Impact Statement (RIS) considers the following options:

- 1) Introduce the reactive rail investigatory powers without any offences and penalties attached (status quo).
- 2) Introduce penalties that fully align with comparable regimes (**preferred option**).
- 3) Introduce penalties that balance alignment with comparable regimes and possible harm.

Both Options Two and Three were developed using the Ministry of Transport's (the Ministry) Effective Transport Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool). The Tool provides an initial suggested penalty level based on an assessment of possible harm. The Framework then calls for penalties to be adjusted based on a range of factors including effective deterrence, proportionality to harm, and consistency with comparable regimes.

The difference between these options is how they weight these additional considerations against each other. The initial penalty levels suggested by the Tool were lower for some offences than our comparator regimes. Option Two adjusts the penalties to fully align with our comparator regimes. Option Three splits the difference, fully aligning with comparator regimes where the suggested levels are close, and partially aligning with comparator regimes where there is a greater difference between the Tool's suggestion and comparator regimes.

We selected the investigation regimes under the CAA and HSWA as our comparator regimes. This is because the new investigatory powers proposed in the RSTA Bill are directly modelled on powers in these regimes. The CAA and HSWA also attach offences and penalties to these same powers, so they present a direct comparison.

We considered but ultimately excluded options including:

- Not adjusting the initial penalties suggested by the Tool. This is because failing to take consistency into account would not be a fair application of the Framework.
- The Transport Accident Investigation Commission 1990 and Maritime Transport Act 1994 as comparators, as the investigation powers are not as directly comparable.
- Aligning penalties with the offence of obstructing a Safety Assessor under the Railways Act, as this is the only comparable offence, and the penalty is significantly higher than suggested by the Tool or the most comparable regimes (CAA and HSWA).

### **What consultation has been undertaken?**

No public consultation has been undertaken regarding the introduction of offences and penalties for these new reactive rail investigatory powers. Officials have proactively raised this policy matter with the Transport and Infrastructure Committee through the initial briefing, presented to the Committee on 9 October 2025. The Committee may provide their own views or seek the views of submitters involved in rail activities on this matter through the hearings process.

However, while the offences and penalties have not been consulted on, full public consultation has occurred for the new investigatory powers themselves. In 2022, the Ministry publicly consulted on a discussion document proposing a suite of investigatory powers for NZTA. Seven out of eight submitters supported the introduction of the proposed reactive rail investigation powers, noting that this was appropriate to ensure that NZTA has the necessary powers to undertake investigations. Further support was received during public consultation on the RSTA Bill in late 2023.

The Ministry has engaged with the Ministry of Justice Offence and Penalty Vetting Team (OPV) regarding attaching offences and penalties to these new investigatory powers. OPV have not objected to introducing offences and penalties and are not strongly opposed to either of the options the Ministry has proposed. However, in the limited time available, OPV is more comfortable with Option Three as it is more proportional to the level of possible harm.

**Is the preferred option in the Cabinet paper the same as preferred option in the RIS?**

Yes, the preferred option is the same for both the Cabinet paper and this RIS.

## Summary: Minister's preferred option in the Cabinet paper

### Costs (Core information)

Introducing offences and penalties could result in a potential increase in NZTA prosecuting for safety failings in the rail system. However, monetary costs for additional prosecutions cannot be estimated as prosecutions are dependent on conduct occurring that amounts to an offence. NZTA also does not anticipate serious non-compliance with the new investigatory powers provided effective offences and penalties are in place, and considers that the additional costs of gathering information regarding people potentially having committed these offences would be low.

### Benefits (Core information)

Attaching offences and penalties to the reactive rail investigatory powers would increase compliance with these powers, by enabling enforcement and disincentivising non-compliance (such as hindering an investigation). This would allow the cause of the accident or incident to be investigated in a timely and effective way, to better identify and address safety risks.

Including offences and penalties provides legal certainty about the penalties for non-compliance. It also clarifies the obligations/requirements placed on parties involved in an accident or incident during an investigation (e.g. what type of information they must provide).

### Balance of benefits and costs (Core information)

The benefits of the preferred option (Option Two) are likely to outweigh the costs, as including the offences and penalties provides legal certainty and will enable the new investigatory powers to be exercised more effectively (by deterring non-compliance that could hinder the investigation). The costs for investigating potential offences and any additional prosecutions are also expected to be low.

### Implementation

**How will the proposal be implemented, who will implement it, and what are the risks?**

The Transport and Infrastructure Committee (the Committee) are currently considering the RSTA Bill. Subject to Cabinet agreement, in their departmental report, officials will advise the

Committee to direct the Parliamentary Counsel Office to include the offences and penalties in the revision-tracked version of the Bill.

If agreed by the Select Committee and incorporated in the RSTA Bill, the offences and penalties (as well as the new investigatory powers) will take effect once the Bill is passed by Parliament and has received Royal assent. This is expected to be in early 2026.

The proposals would then be implemented by the Rail Safety Regulation team within NZTA. If the team considers that a person has committed one of the new offences, then they will follow operational processes to gather evidence of offending. This will be reviewed against the Solicitor-General's prosecution guidelines and NZTA's prosecution policy to decide whether prosecution is appropriate. If appropriate, NZTA would lay charges.

The proposals would be integrated into NZTA's existing regulatory systems and performance monitoring. NZTA's implementation of the offences and penalties would include industry and external agency engagement where concerns and feedback would be invited.

The Ministry would also monitor the implementation and effect of the proposed changes as part of its wider stewardship responsibilities over the legislation it administers.

### Limitations and Constraints on Analysis

The main limitation is the lack of consultation regarding the introduction of offences and penalties for the new reactive rail investigatory powers. However, full public consultation has occurred on the investigatory powers themselves, which showed strong support for enabling NZTA to effectively investigate incidents and accidents.

Officials also have proactively raised this policy matter with the Committee through the initial briefing on the RSTA Bill, which was presented to the Committee on 9 October 2025. The Committee may provide their own views or choose to seek the views of submitters involved in rail activities on this matter through the hearings process.

**I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.**

Responsible Manager(s) signature: \_\_\_\_\_

**Katrina Quickenden**  
Manager, Regulatory Reform  
21 October 2025



### Quality Assurance Statement

**Reviewing Agency:** Ministry of Transport

**QA rating:** Partially meets

**Panel Comment:** This RIS partially meets our expectations. Consultation has not been undertaken on the proposals, which constitutes a key gap. The RIS acknowledges this and discusses related consultation (on the investigatory powers), but unfortunately this is not sufficient to overcome the gap.

## Section 1: Diagnosing the policy problem

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### What is the context behind the policy problem and how is the status quo expected to develop?

1. The Railways Act 2005 sets the overarching legislative framework for rail safety regulation. The Act establishes NZ Transport Agency Waka Kotahi (NZTA) as the rail safety regulator. It gives NZTA powers to licence certain rail participants, including rail operators and access providers. The Act provides a range of regulatory tools relating to the licencing regime, including carrying out safety assessments, requiring safety improvements and suspending or revoking licences.
2. The rail industry is a high-risk industry where complex safety systems are required to continually perform correctly to avoid the risk of catastrophic accidents. A single commuter train can carry 700 people – an accident involving such a train could result in many deaths and serious injuries.
3. Consequently, entry requirements into the rail licencing system are high, and there are ongoing requirements to remain licenced (this is known as a ‘closed system’).

#### Current state

4. NZTA is notified of approximately 2,400 notifiable incidents or accidents per year.
5. Because of the high-risk nature of the rail industry, an in-depth understanding of the precursors to accidents and incidents, and how these can be prevented, is required. Further, complex crashes are often characterised by having multiple contributing factors.
6. Under the current Railways Act, NZTA has limited investigatory powers after an accident or incident. Independent reviews, including the 2019 Regulatory Review and NZTA’s Regulatory Capability and Performance Review, identified gaps in NZTA’s ability to act as an effective rail safety regulator. These reviews found that NZTA lacked some core investigatory tools, particularly in responding to accidents and incidents in real time.
7. This lack of investigatory powers means that NZTA typically relies on the cooperation of the parties involved in the accident or incident (e.g. willingly providing relevant information) or on other regulatory agencies with a broader remit (for example, WorkSafe). These methods of investigation result in inadequate information gathering and risks potential interference by parties who may be motivated to obscure evidence or hide wrongdoings.
8. Additionally, while NZ Police and TAIC also have a mandate to investigate rail accidents and incidents alongside NZTA, their jurisdiction is very broad. Police will investigate where there is a loss of life on behalf of the Coroner, and/or where there may be criminal intent. On the other hand, TAIC will investigate accidents or incidents that have significant implications for transport safety (as a no-fault investigation). This means that they are unable to dedicate sufficient resource to thoroughly investigate every rail accident or incident.
9. A previous Regulatory Impact Statement (RIS) was prepared in 2022 to support public consultation on the proposal to introduce reactive rail investigation powers under the Railways Act.
10. The 2022 RIS reinforced the problem definition and highlighted that NZTA’s lack of investigatory power limits its ability to prevent, detect, and respond to safety breaches,

with flow-on impacts for public confidence and system integrity. The RIS also recommended aligning rail with other transport modes, like aviation, to enable a modern, risk-based regulatory approach.

#### Introduction of Reactive Rail Investigatory Powers

11. The RSTA Bill introduces new reactive rail investigatory powers into the Railways Act following an accident or incident. These powers will enable NZTA to investigate the cause of an accident or incident more effectively, without having to rely on the voluntary cooperation of the parties involved in the accident or incident or on other regulatory agencies with a broader remit.
12. The new powers have been modelled off the Civil Aviation Act 2023 (CAA) and include the power to:
  - obtain specific information (RSTA Bill clause 110, 72C)
  - enter and inspect a vehicle, building or place while investigating an accident or incident (RSTA Bill clause 110, 72D)
  - enter homes or marae through the consent of the occupier or under a warrant (RSTA Bill clause 110, 72E)
  - take samples, objects and things (RSTA Bill clause 110, 72G)
  - enter and search a vehicle, building or place (by consent or under warrant) where the Director suspects a contravention (RSTA Bill clause 110, 72H)
  - issue an improvement notice (RSTA Bill clause 110, 72K-72N), and
  - issue a non-disturbance notice (RSTA Bill clause 110, 72O-72R).

#### What is the policy problem or opportunity?

13. The RSTA Bill drafting process highlighted that offences and penalties were not included in previous policy work or Cabinet decisions regarding the inclusion of these new powers. This problem was identified too late to develop advice and include any offences and penalties before the introduction of the RSTA Bill.
14. Without offences and penalties, the new investigatory powers would not be as effective as intended at identifying and addressing safety risks. This is because, without penalties for failing to comply with an investigation, parties involved in the accident or incident would not have sufficient incentive to comply. For example, while the new powers would require compliance with a request to produce specific information, there would be no penalty if the party chose not to comply.
15. NZTA would remain reliant on voluntary participation from parties involved in the accident or incident (e.g. willingly providing relevant information), as they currently do, limiting their ability to properly investigate the cause of an accident or incident.
16. Two recent examples demonstrate the need for enforceable investigatory powers:

#### HI-Rail Vehicle (HRV) Collision (25 February 2025)

17. During the investigation of an HRV collision, multiple parties declined interview requests. NZTA had no statutory mechanism to compel their participation, stalling the investigation and leaving critical safety questions unresolved. This significantly impeded NZTA's ability to take timely regulatory action.

18. While NZTA would technically be able to compel participation under the RSTA Bill as currently drafted, without penalties applying, it would still have no recourse to take further action on its own initiative if parties refused to comply.

#### Te Huia Incident (17 June 2023)

19. A passenger train passed a stop signal at Penrose station, coming within 400 metres of another service on the Auckland metropolitan network. While NZTA ultimately prosecuted KiwiRail, it was reliant on information voluntarily provided by the operator. Had this cooperation not been forthcoming, enforcement action would have been difficult to pursue.

#### **What objectives are sought in relation to the policy problem?**

20. The policy objectives are to:
  - 1) Enable the powers being proposed in the RSTA Bill for investigating a rail accident or incident to be exercised effectively.
  - 2) Ensure safety risks and non-compliance are addressed in a timely way.
  - 3) Provide legal certainty about what the consequences are for not complying with the new reactive rail investigatory powers.

#### **What consultation has been undertaken?**

21. No public consultation has been undertaken regarding the introduction of offences and penalties for these new reactive rail investigatory powers. Officials have proactively raised this policy matter with the Transport and Infrastructure Committee through the initial briefing, presented to the Committee on 9 October 2025. The Committee may provide their own views or seek the views of submitters involved in rail activities on this matter through the hearings process.
22. However, while the offences and penalties have not been consulted on, full public consultation has occurred for the introduction of the new investigatory powers themselves. In 2022, the Ministry of Transport (the Ministry) publicly consulted on a discussion document proposing a suite of investigatory powers for NZTA. Seven out of eight submitters supported the introduction of the propose reactive rail investigation powers. Submitters noted that this was appropriate to ensure that NZTA has the necessary powers to undertake investigations.
23. The one submitter that opposed the proposal was of the view that the task was better suited to a regulator (presumably unaware that NZTA is the land transport regulator). Further support was received during public consultation on the RSTA Bill in late 2023.

#### Ministry of Justice Offence and Penalty Vetting

24. The Ministry has engaged with the Ministry of Justice Offence and Penalty Vetting Team (OPV) on introducing new offences and penalties. OPV agree that the new reactive rail investigatory powers proposed for inclusion in the Railways Act appear necessary to address a gap with how existing provisions provide for NZTA to initiate investigations.
25. OPV have not raised any objections regarding attaching offences and penalties to these new investigatory powers and are not strongly opposed to either of the options the Ministry has proposed. However, in the limited time available, OPV is more comfortable with Option Three as it is more proportional to the level of possible harm.

## Section 2: Assessing options to address the policy problem

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### What criteria will be used to compare options to the status quo?

26. The following criteria will be used to compare the options to the status quo:
- 1) **Proportionality to the offence:** will the financial penalty assigned to the offence be proportionate to the level of harm it is addressing?
  - 2) **Consistency across sectors:** are the offences and penalties consistent with other offences linked to similar levels of harm across the transport sector and in wider legislation?
  - 3) **Effective enforcement of powers by deterring non-compliance:** do the offences and penalties enable the effective exercise of the reactive rail investigatory powers? This includes whether the financial penalty is sufficiently high relative to the perceived benefits of offending, so that it is more likely people will be deterred from offending.
27. The criterion assessing consistency across sectors is focused on consistency with the aviation sector and workplace health and safety. This is because the new investigatory powers proposed in the RSTA Bill are directly modelled on powers in the CAA and HSWA. The CAA and HSWA also attach offences and penalties to these same powers, so they present a direct comparison.
28. Other regimes, such as the Transport Accident Investigation Commission Act 1990 (TAIC Act) and the Maritime Transport Act 1994 (MTA), have not formed part of the options analysis despite having similar investigatory powers. This is because those regimes and powers are not as directly comparable. For example, TAIC Act findings cannot be used in prosecutions, whereas findings from the new rail investigatory powers could be used to prosecute. Additionally, the TAIC Act and MTA do not include all the same powers as the more recent CAA and HSWA regimes.
29. We also discounted aligning penalties with the most comparable offence within the Railways Act, obstructing a Safety Assessor.
30. Under section 64 of the Railways Act, a person who obstructs a safety assessor or fails to comply with a lawful requirement of a safety assessor commits an offence and is liable on conviction to, —
- (a) in the case of an individual, a fine not exceeding \$25,000;
  - (b) in the case of a body corporate, a fine not exceeding \$250,000.
31. There are similarities between the roles of an inspector and safety assessor:
- Both positions exist to establish the extent to which a rail participant is complying with their duties under the Railways Act.
  - A safety assessment and an investigation can result in similar regulatory outcomes (for example, remedial actions under section 42 of the Railways Act in the case of a safety assessment, and an improvement notice in the case of an investigation).
  - The findings of both processes could also lead to a prosecution, although the possibility of this is stronger in the case of an investigation.
32. However, there are key differences that mean the relevant offence would not be a good comparator for penalties relating to the new investigatory powers:

- Investigations, conducted by inspectors, require a different skill set from safety assessments, which are conducted by safety assessors.
  - The powers of safety assessor are different from the new investigatory powers being introduced. For example, while a safety assessor can require information, they cannot freeze the scene. The penalty mentioned above is the only offence/penalty, so there are no penalties to compare with for the rest of the offences.
  - The penalty levels for the offence above are significantly higher than the most directly comparable regimes<sup>1</sup>, so aligning with this offence would have rated worse for both proportionality with harm and consistency with comparable regimes than the two options we have identified.
33. NZTA have advised that, in their view, having different penalties for the two offences would not change their behaviour as the regulator, and would be unlikely to change the behaviour of people subject to a safety assessment or investigation. They note that if a rail participant was willing to risk conviction for not assisting an inspector because of the lower maximum penalty, that indicates deeper issues that NZTA would be dealing with.

#### **What scope will options be considered within?**

34. Because the current RSTA Bill does not attach any offences and penalties to these new reactive rail investigatory powers, the scope of the options is limited to legislative changes within the RSTA Bill.
35. This RIS does not consider options for what types of offences are being included. Because the new investigatory powers being introduced in the RSTA Bill are modelled off the CAA (and the CAA is modelled off HSWA), both Options Two and Three adopt the same offences from those regimes – paragraph 27 provides further reasons why these have been selected as the comparator regimes.
36. This RIS also only considers options for set penalties. It does not explore options for a statutory mechanism that will enable ongoing adjustments to the penalties based on inflation, as this would require significant further analysis and would need to be considered alongside other transport penalties.

#### **Effective Transport Financial Penalties Policy Framework and Categorisation Tool**

37. Both Options Two and Three were developed using the Ministry's Effective Transport Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool).
38. The Framework and Tool are a guidance resource for transport regulatory agencies in setting financial penalty levels:
- The Tool provides an initial suggested penalty level based on an assessment of possible harm. It provides a six-step decision-making process to categorise offences, so penalties can be consistently applied (see **Appendix One** for the six-step process).
  - The Framework then calls for penalties to be adjusted based on a range of factors including effective deterrence, proportionality to harm, and consistency with comparable regimes.

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<sup>1</sup> For both the CAA and HSWA, the penalty for not providing all reasonable assistance to an inspector is a fine not exceeding \$10,000 for an individual and \$50,000 for any other person.

39. The initial penalty levels suggested by the Tool were lower for some offences than our comparator regimes. The difference between these options is how they weight these additional considerations against each other:
- Option Two prioritises consistency and adjusts the penalties to fully align with our comparator regimes (the CAA and HSWA).
  - Option Three splits the difference, fully aligning with comparator regimes where the suggested levels are close, and partially aligning where there is a greater difference between the Tool's suggestion and comparator regimes.
40. We did not consider an option where the initial penalties suggested by the Tool were not adjusted at all. This is because the Framework calls for factors such as consistency to be considered. Therefore, failing to take consistency into account would not be a fair application of the Framework.

### **What options are being considered?**

#### **Option One – Status Quo – Introduce the reactive rail investigatory powers without offences and penalties attached**

41. The RSTA Bill introduces new reactive investigatory powers to align NZTA's powers with its mandate as an independent rail safety regulator. These powers are necessary to enable NZTA to investigate serious safety incidents.
42. Under the status quo, NZTA would have access to new investigative powers to obtain information and enter scenes and vehicles to conduct investigations, but no ability to enforce these powers via attached offences and penalties.
43. Without offences and penalties attached to the new powers, NZTA would remain reliant on voluntary compliance and goodwill, which is an insufficient approach that has repeatedly proven to be ineffective in practice, and is inconsistent with the powers of a modern regulator.
44. Additionally, difficulty enforcing these powers could potentially result in harm or the risk of harm. For example, non-compliance with an improvement notice could result in future harm if the non-compliant behaviour is not addressed. If there is no penalty attached to non-compliance with an improvement notice, it may be difficult to ensure that the notice is complied with.

## Option Two – Introduce penalties that fully align with comparable regimes

45. Option Two uses the Tool to categorise an offence and produce an initial penalty level. However, where the Tool produces a penalty level inconsistent with the CAA and HSWA, Option Two adjusts the penalties to fully align with our comparator regimes, which is set out in the table below.

Offence	Assess offence's severity	Points by harm type	Initial penalty level	Consider penalty against remaining Framework principles	Refined penalty
<b>Failure to assist inspectors</b> (CAA, s 293; HSWA, s 176)	Identifying cause of an accident or incident is crucial to preventing future harm. Inability to identify the cause may increase the chance of a similar event occurring in the future.	<b>System</b> – 20 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 45 (category 5)	<b>Individual:</b> <sup>2</sup> \$5,000 <b>Special regulated individual:</b> <sup>3</sup> \$15,000 <b>Body corporate:</b> \$50,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> penalty for body corporates aligns with the CAA and HSWA but differs for individuals. However, taking the number between 'individuals' and 'special regulated individuals' would ensure consistency across sectors, and reflects the fact that these penalties apply to both individuals participating the transport system and individuals in a position of responsibility in the system.	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000
<b>Failure to provide name, residential address and date of birth</b> (CAA, s 295; HSWA, s178)	This information may be relevant and failure to provide it could have a safety risk if it hinders the inspector's ability to investigate the cause of an accident or incident.	<b>System</b> – 5 <b>Safety</b> – 5 <b>Total:</b> 10 (category 1A)	<b>Individual:</b> \$250 <b>Special regulated individual:</b> \$750	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is inconsistent with the CAA and HSWA. Given the low initial penalty, and this inconsistency, the penalty should be increased.	<b>Any person:</b> \$10,000

<sup>2</sup> A 'regular' individual participating in the transport system with no significant responsibilities or business (commercial) or undertaking interests, such as someone licensed to drive a domestic car, a recreational boat user or a passenger in a vehicle.

<sup>3</sup> An individual in a position of responsibility, usually acting in a professional capacity, with special duties such as masters of ships, aircraft pilots, commercial passenger service drivers or holders of dangerous goods endorsements.

<p><b>Impersonating an inspector</b></p> <p>(CAA, s 296; HSWA, 180)</p>	<p>Someone who is not an inspector is exercising somewhat intrusive investigatory powers. This could result in a person obtaining information that they should not have access to. However, the likelihood of this is low.</p>	<p><b>System</b> – 10  <b>Safety</b> – 5  <b>Total:</b> 15 (category 1B)</p>	<p><b>Individual:</b> \$750  <b>Special regulated individual:</b> \$2,250</p>	<p><b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending.  <b>Proportionality:</b> penalty is inconsistent with the CAA and HSWA. Given the low initial penalty, and this inconsistency, the penalty should be increased.</p>	<p><b>Any person:</b> \$10,000</p>
<p><b>Non-compliance with improvement notice</b></p> <p>(CAA, s 300, HSWA, s 103)</p>	<p>Non-compliance could result in a serious risk to safety as the issue identified in the notice has not been remedied.</p>	<p><b>System</b> – 51  <b>Safety</b> – 20  <b>Environment/property</b> – 10  <b>Total:</b> 81 (category 7)</p>	<p><b>Individual:</b> \$20,000  <b>Special regulated individual:</b> \$60,000  <b>Body corporate:</b> \$200,000</p>	<p><b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending.  <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that, to ensure consistency, the penalties should be aligned with those Acts. This also reflects the fact that these penalties apply to both individuals participating the transport system and individuals in a position of responsibility in the system.</p>	<p><b>Individual:</b> \$50,000  <b>Any other person:</b> \$250,000</p>
<p><b>Non-compliance with non-disturbance notice</b></p> <p>(CAA, s 304; HSWA, s 110)</p>	<p>Non-compliance could affect the inspector’s ability to investigate. A person who does not perform the obligations specified in the non-disturbance notice could also significantly hinder the investigation.</p>	<p><b>System</b> – 51  <b>Safety</b> – 15  <b>Environment/property</b> – 10  <b>Total:</b> 76 (category 7)</p>	<p><b>Individual:</b> \$20,000  <b>Special regulated individual:</b> \$60,000  <b>Body corporate:</b> \$200,000</p>	<p><b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending.  <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that, to ensure consistency, the penalties should be aligned with those Acts. This also reflects the fact that these penalties apply to both individuals participating the transport system and individuals in a position of responsibility in the system.</p>	<p><b>Individual:</b> \$50,000  <b>Any other person:</b> \$250,000</p>

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<p><b>Remove, destroy, damage or deface a notice</b></p> <p>(CAA, s 311; HSWA, ss 117 &amp; 118)</p>	<p>An inspector has chosen to display a notice because they want it to be visible (e.g. displaying a non-disturbance notice so people know a particular vehicle, building or place is to remain undisturbed).</p>	<p><b>System</b> – 10</p> <p><b>Safety</b> – 5</p> <p><b>Total:</b> 15 (category 1B)</p>	<p><b>Individual:</b> \$750</p> <p><b>Special regulated individual:</b> \$2,250</p> <p><b>Body corporate:</b> \$7,500</p>	<p><b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending.</p> <p><b>Proportionality:</b> penalty is inconsistent with the CAA and HSWA. Given the low initial penalty, and this inconsistency, the penalty should be increased.</p>	<p><b>Individual:</b> \$5,000</p> <p><b>Any other person:</b> \$25,000</p>
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**Option Three – Introduce penalties that partially align with comparable regimes and partially align with an assessment of possible harm**

46. Option Three splits the difference, fully aligning with comparator regimes (CAA and HSWA) where the suggested levels are close, and partially aligning where there is a greater difference between the Tool’s suggestion and comparator regimes.
47. For example, the offence of impersonating an inspector was determined to be a category 1B offence. However, the initial penalty level given to a category 1B offence is adjusted up one category after considering the remaining Framework principles.

Offence	Assess offences severity	Points	Initial penalty level	Consider penalty against remaining Framework principles	Refined penalty	Compare to CAA/HSWA
<b>Failure to assist inspectors</b>	Identifying cause of an accident or incident crucial to preventing future harm. Inability to identify the cause may increase the chance of a similar event occurring in the future.	<b>System</b> – 20 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 45 (category 5)	<b>Individual:</b> \$5,000 <b>Special regulated individual:</b> \$15,000 <b>Body corporate:</b> \$50,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that the penalties should be aligned with those Acts.	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000	<b>CAA, s 293;</b> <b>HSWA, s 176</b>  <b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000
<b>Failure to provide name, residential address and date of birth</b>	This information may be relevant to an investigation and failure to provide it could have a safety risk if it hinders the inspector’s ability to investigate the cause of an accident or incident.	<b>System</b> – 5 <b>Safety</b> – 5 <b>Total:</b> 10 (category 1A)	<b>Individual:</b> \$250 <b>Special regulated individual:</b> \$750	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is not proportionate to the offence and should be adjusted up one harm category to effectively respond to the offending and to bring the penalty closer to the CAA and HSWA levels.	<b>Any person:</b> \$2,250 (special regulated individual amount)	<b>CAA, s 295;</b> <b>HSWA, s 178</b>  <b>Any person:</b> \$10,000

<b>Impersonating an inspector</b>	<p>Someone who is not an inspector is exercising somewhat intrusive investigatory powers. This could result in a person obtaining information that they should not have access to. However, the likelihood of this is low.</p>	<p><b>System</b> – 10 <b>Safety</b> – 5 <b>Total:</b> 15 (category 1B)</p>	<p><b>Individual:</b> \$750 <b>Special regulated individual:</b> \$2,250</p>	<p><b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is not proportionate to the offence and should be adjusted up one harm category to effectively respond to the offending and to bring the penalty closer to the CAA and HSWA levels.</p>	<p><b>Any person:</b> \$5,250 (special regulated individual amount)</p>	<p><b>CAA, s 296;</b> <b>HSWA, s 180</b> <b>Any person:</b> \$10,000</p>
<b>Non-compliance with improvement notice</b>	<p>Non-compliance could result in a serious risk to safety as the issue identified in the notice has not been remedied.</p>	<p><b>System</b> – 51 <b>Safety</b> – 20 <b>Environment/property</b> – 10 <b>Total:</b> 81 (category 7)</p>	<p><b>Individual:</b> \$20,000 <b>Special regulated individual:</b> \$60,000 <b>Body corporate:</b> \$200,000</p>	<p><b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that the penalties should be aligned with those Acts.</p>	<p><b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000</p>	<p><b>CAA, s 300;</b> <b>HSWA, s 103</b> <b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000</p>
<b>Non-compliance with non-disturbance notice</b>	<p>Non-compliance could affect the inspector's ability to investigate. A person who does not perform the obligations specified in the non-disturbance notice could also significantly hinder the investigation.</p>	<p><b>System</b> – 51 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 76 (category 7)</p>	<p><b>Individual:</b> \$20,000 <b>Special regulated individual:</b> \$60,000 <b>Body corporate:</b> \$200,000</p>	<p><b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that the penalties should be aligned with those Acts.</p>	<p><b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000</p>	<p><b>CAA, s 304;</b> <b>HSWA, s 110</b> <b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000</p>

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<p><b>Remove, destroy, damage or deface a notice</b></p>	<p>An inspector has chosen to display a notice because they want it to be visible (e.g. displaying a non-disturbance notice so people know a particular vehicle, building or place is to remain undisturbed).</p>	<p><b>System</b> – 10 <b>Safety</b> – 5 <b>Total:</b> 15 (category 1B)</p>	<p><b>Individual:</b> \$750 <b>Special regulated individual:</b> \$2,250 <b>Body corporate:</b> \$7,500</p>	<p><b>Deterrence:</b> penalty for body corporates is not high enough relative to the perceived benefits of offending. The penalty for individuals is also a bit too low to effectively deter this behaviour. <b>Proportionality:</b> penalty is not proportionate to the offence and should be adjusted up one harm category to effectively respond to the offending and to bring the penalty closer to the CAA and HSWA levels.</p>	<p><b>Individual:</b> \$3,750 (special regulated individual amount) <b>Any other person:</b> \$12,500</p>	<p><b>CAA, s 311; HSWA, ss 117 &amp; 118</b> <b>Individual:</b> \$5,000 <b>Any other person:</b> \$25,000</p>
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**How do the options compare to the status quo/counterfactual?**

	<b>Option One – Status Quo</b>	<b>Option Two – Introduce penalties that fully align with comparable regimes</b>	<b>Option Three – Introduce penalties that partially align with comparable regimes and partially align with an assessment of possible harm</b>
<b>Proportionality to the offence</b>	0 Under the status quo, the new powers would be introduced with no offences and penalties attached. This is not proportionate to the offence.	+	++
<b>Consistency across sectors</b>	0 Not attaching any offences and penalties to these new powers would be inconsistent across the aviation sector and workplace health and safety, as both those regimes have offences and penalties attached to inspection/investigation powers.	++	+
<b>Effective enforcement of powers</b>	0 Not attaching offences and penalties is likely to impact the effective enforcement of these powers, as there is nothing incentivising compliance.	++	+
<b>Overall assessment</b>	0	5	4

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Difference between the refined penalty between Option Two and Option Three

48. The table below sets out the difference between the refined maximum penalty between the options. If there is a prosecution, the court would have the discretion to set the penalty not exceeding these amounts.

Offence	Option Two (preferred)	Option Three
<b>Failing to assist inspectors</b>	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000
<b>Failure to provide name, residential address and date of birth</b>	<b>Any person:</b> \$10,000	<b>Any person:</b> \$2,250
<b>Impersonating an inspector</b>	<b>Any person:</b> \$10,000	<b>Any person:</b> \$5,250
<b>Non-compliance with an improvement notice</b>	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Non-compliance with a non-disturbance notice</b>	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Remove, destroy, damage, or deface a notice</b>	<b>Individual:</b> \$5,000 <b>Any other person:</b> \$25,000	<b>Individual:</b> \$3,750 <b>Any other person:</b> \$12,500

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 49. Option Two (fully align penalties with comparable regimes) is the preferred option because of the slightly increased benefits in relation to consistency and effectiveness.
- 50. Both Option Two and Three are better than the status quo across all three of the assessment criteria. In comparison to Option Two, the refined penalties under Option Three are more proportional to the level of harm the offence is trying to address.
- 51. However, Option Two ensures that the offences and penalties are consistent across the aviation sector and workplace health and safety. While some of the penalties proposed under Option Three are consistent, there is still some inconsistency with the aviation sector and workplace health and safety.
- 52. Further, Option Two would ensure the effective enforcement of these powers to a greater extent compared to Option Three as some of the refined penalties are higher and thus have a stronger deterrent effect.

Ministry of Justice Offence and Penalty Vetting

- 53. OPV are not strongly opposed to either of the options the Ministry has proposed but, in the limited time available, OPV is more comfortable with Option Three as the penalties are more proportional to the potential level of harm. However, based on the assessment of the options against the criteria, the Ministry's preferred option is still Option Two for the reasons provided above in paragraphs 49 to 52.

**Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?**

54. Yes.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
NZTA	Potential increase in NZTA prosecuting for safety failings in the rail system.  However, NZTA does not anticipate serious non-compliance with the new investigatory powers and considers that the additional costs of investigating any non-compliance would be low.	Low	Medium
The judiciary	Potential increase in prosecutions regarding safety failings in the rail system given the introduction of new offences and penalties.	Low	Medium
<b>Total monetised costs</b>	Costs cannot be estimated as prosecution is dependent on conduct occurring that amounts to an offence.	0	0
<b>Non-monetised costs</b>		Low	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
NZTA	Enables the effective enforcement of the investigatory powers, which ensures accidents and incidents can be investigated properly.	High	High
Parties involved in an accident or incident (generally will be rail participants and rail personnel)	Provides legal certainty on what the penalties are for non-compliance. Also clarifies the obligations placed on the parties involved in an accident or incident during an investigation.	Medium	High
<b>Total monetised benefits</b>		0	0
<b>Non-monetised benefits</b>		Medium-High	High

## Section 3: Delivering an option

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### How will the proposal be implemented?

55. The Transport and Infrastructure Committee (the Committee) is currently considering the RSTA Bill. Subject to Cabinet agreement, in their departmental report, officials will advise the Committee to direct the Parliamentary Counsel Office to include the offences and penalties in the revision-tracked version of the Bill.
56. If agreed by the Select Committee and incorporated in the RSTA Bill, the offences and penalties (as well as the new investigatory powers) will take effect once the Bill is passed by Parliament and has received Royal assent. This is expected to be in early 2026.
57. The proposals will be implemented by the Rail Safety Regulation team within NZTA as part of their implementation of new investigatory powers more generally. If the team considers that a person has committed one of the new offences, then they will follow their operational processes to gather evidence of offending. This will be reviewed against the Solicitor-General's prosecution guidelines and NZTA's prosecution policy to decide whether prosecution is appropriate.
58. If appropriate, NZTA would lay charges – NZTA would be the prosecuting agency but would engage one of the external Crown solicitor law firms to act on its behalf. If an offence is prosecuted, the court would have the discretion to issue a penalty and set the fine level not exceeding the maximum amount.
59. The personnel who would investigate whether one of these new offences have been committed are the same personnel who would be using the new investigatory powers to investigate accidents and incidents under the Railways Act and therefore have the skills and experience to conduct these further investigations as necessary.
60. Any additional factors relating to the offences and penalties will be included in the general change management process for the new investigatory powers, including internal training, policy and other collateral creation/amendment, and external engagement.

### How will the proposal be monitored, evaluated, and reviewed?

61. The proposals would be integrated into NZTA's existing regulatory systems and performance monitoring.
62. NZTA's implementation of the offences and penalties would include industry and external agency engagement where concerns and feedback would be invited. The NZTA Rail Safety Regulator models leans heavily on education and engagement as core pillars of effective regulation – feedback is welcomed as a part of continuous improvement and quality assurance processes.
63. Enforcement activity would be legally reviewed through receiving external advice from one of the Crown solicitor law firms. Although general enforcement activity is reviewed by NZTA's legal team, in the context of offences and penalties where the relevant question is whether to prosecute, legal review will be undertaken via external advice.
64. The Ministry would also monitor the implementation and effect of the proposed changes as part of its wider stewardship responsibilities over the legislation it administers.

## Appendix One: Categorisation Tool's six-step process

### Section 2: Categorising offences

1. Drawing on the principles above, this Tool provides a six-step decision-making process to categorise offences, so penalties can be consistently applied.

#### Step 1: Consider the offence's design, use, and associated data

- select offences to review, considering groups of related offences together
- are the offences clearly articulated and defined?
- can we understand the specific actions and circumstances that constitute the offences?
- how has the offence been applied in the past, how often, and what harm has resulted from the offence?

#### Step 2: Assess the offence's severity

- the type(s) of harm
- the likelihood of harm should the offence occur
- how severe the consequence is or may be should the harm eventuate.

#### Step 3: Identify the type of offender the penalty would apply to

- an individual
- an individual in a position of responsibility (special regulated individual)
- a business or undertaking.

#### Step 4: Use the Tool to assign an initial penalty level

- apply the categorisation tool's suggested levels of penalties to the offences, according to the types and levels of harm and types of offenders, to set an initial penalty level.

#### Step 5: Consider the penalty against the remaining two Framework principles

- will the penalty act as a deterrent to undesirable behaviour?
- is it proportionate to harm and consistent with similar offences?

#### Step 6: Refine the financial penalty

- consider, in light of the process at step five, whether there is a need to adjust the harm category and/or add another penalty level
- does the offence need an infringement fee – that is, is it:
  - a strict or absolute liability offence; and
  - not so serious that a conviction should be recorded against the offender
- do a 'public policy contextual factors check' – are there any factors (like a particular offence's likely impact on a vulnerable population group) that make an adjustment to the penalty level appropriate
- does the financial penalty seem appropriate taking all the above steps into account?
- move the penalty up or down a harm category where necessary.



1 October 2025

OC250849

**Hon Chris Bishop**

**Action required by:**

**Minister of Transport**

Friday, 3 October 2025

cc Hon James Meager

Associate Minister of Transport

## **ADVICE ON INTRODUCING OFFENCES AND PENALTIES FOR THE NEW REACTIVE RAIL INVESTIGATORY POWERS**

### **Purpose**

This briefing seeks your agreement to seek Cabinet's approval to introduce new offences and penalties into the Regulatory Systems (Transport) Amendment Bill, attached to the reactive rail investigatory powers being introduced in the same Bill. It also seeks your agreement to the financial penalties that should apply.

### **Key points**

- The Regulatory Systems (Transport) Amendment Bill (RSTA Bill) drafting process highlighted that offences and penalties were not included in previous policy work or Cabinet decisions about the inclusion of new reactive rail investigatory powers.
- The RSTA Bill amends the Railways Act 2005 to introduce new investigatory powers following an accident or incident. These powers are intended to address gaps in NZ Transport Agency Waka Kotahi's (NZTA) ability to act as an effective rail safety regulator and have been modelled off the Civil Aviation Act 2023 (CAA).
- Currently, NZTA rely on the cooperation of parties involved in the accident or incident, or other regulatory agencies with a broader remit (for example, WorkSafe). These powers aim to enable NZTA to effectively investigate an accident or incident without having to rely on voluntary compliance and co-operative investigations.
- Not including offences and penalties may result in difficulty enforcing these powers and limit their effectiveness. Further, NZTA would have to continue relying on voluntary compliance with investigations. Comparable regimes, such as the CAA, include offences and penalties.
- Using the Ministry of Transport Effective Transport Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool), we have developed two options for setting the financial penalties:

- Option One: fully adjust the penalties suggested by the Tool to align with comparable regimes (the Health and Safety at Work Act 2015 and the Civil Aviation Act 2023) **(preferred)**.
- Option Two: partially adjust the penalties suggested by the Tool to align with comparable regimes.
- If you agree, we will send a Cabinet paper and Regulatory Impact Statement for your approval in early October. If approved by Cabinet, the Ministry's Departmental Report to the Select Committee in early November will recommend adding the offences and penalties to the RSTA Bill. If they agree, the Select Committee would then issue instructions for the Parliamentary Counsel Office to include the offences and penalties in the revision-tracked version of the RSTA Bill.
- You may wish to forward this paper to the Minister for Rail for his information.

### Recommendations

We recommend you:

- |   |  |          |
|---|--|----------|
| 1 | <b>agree</b> to seek Cabinet's approval to introduce new offences and penalties into the RSTA Bill, which will attach to the reactive rail investigatory powers being introduced in the same Bill.   | Yes / No |
| 2 | <b>agree</b> to one of the following options for how the new financial penalties should be set: <ul style="list-style-type: none"><li>● Option One: fully adjust the penalties to align with comparable regimes <b>(preferred)</b>.</li><li>● Option Two: partially adjust the penalties to align with comparable regimes.</li></ul> | Yes / No |
| 3 | <b>refer</b> this paper to the Minister for Rail for his information.  | Yes / No |



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Katrina Quickenden  
**Manager, Regulatory Reform**

1 / 10 / 2025

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Hon Chris Bishop  
**Minister of Transport**

..... / ..... / .....

**Minister's office to complete:**

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

**Comments**

**Contacts**

Name	Telephone	First contact
Andrea Simmons, Adviser, Regulatory Reform	s 9(2)(a)	
Katrina Quickenden, Manager, Regulatory Reform	s 9(2)(a)	✓

PROACTIVELY RELEASED BY  
THE MINISTRY OF TRANSPORT TE MANATU WAKA

## ADVICE ON INTRODUCING OFFENCES AND PENALTIES FOR THE NEW REACTIVE RAIL INVESTIGATORY POWERS

### Background

- 1 Clause 110 of the Regulatory Systems (Transport) Amendment Bill (RSTA Bill) amends the Railways Act 2005 to introduce new reactive rail investigatory powers following an accident or incident. This responds to longstanding concerns that NZTA lacks core investigatory tools, resulting in gaps in its ability to act as an effective rail safety regulator.
- 2 New powers have been modelled off the Civil Aviation Act 2023 (CAA) and include powers to:
  - obtain specific information (RSTA Bill clause 110, 72C)
  - enter and inspect a vehicle, building or place while investigating an accident or incident (RSTA Bill clause 110, 72D)
  - enter homes or marae through the consent of the occupier or under a warrant (RSTA Bill clause 110, 72E)
  - take samples, objects and things (RSTA Bill clause 110, 72G)
  - enter and search a vehicle, building or place (by consent or under warrant) where the Director suspects a contravention (RSTA Bill clause 110, 72H)
  - issue an improvement notice (RSTA Bill clause 110, 72K-72N), and
  - issue a non-disturbance notice (RSTA Bill clause 110, 72O-72R).

### Problem

- 3 The RSTA Bill drafting process highlighted that offences and penalties were not included in previous policy work or Cabinet decisions regarding the inclusion of these new powers. This problem was identified too late to develop advice and include any offences and penalties before the introduction of the RSTA Bill.
- 4 Not including offences and penalties means that NZTA would have to continue relying on the cooperation of parties<sup>1</sup> involved in the accident or incident, or on other regulatory agencies with a broader remit (for example, WorkSafe). This will undermine an inspector's ability to properly investigate the cause of an accident or incident, and the intent of the new powers.
- 5 Difficulty enforcing these powers could result in harm or the risk of harm. For example, non-compliance with an improvement notice could result in future harm if the non-compliant behaviour is not addressed.

### **A recent example demonstrates the need for enforceable investigatory powers**

#### *HI-Rail Vehicle (HRV) Collision (25 February 2025)*

- 6 During the investigation of a HRV collision, multiple parties declined interview requests. NZTA had no statutory mechanism to compel their participation, stalling the investigation

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<sup>1</sup> Refers to rail participants and rail personnel, as the new investigatory powers will only be enforceable against those groups.

and leaving critical safety questions unresolved. This significantly impeded NZTA's ability to take timely regulatory action.

- 7 While the new powers under the RSTA Bill would provide a statutory mechanism to compel participation, NZTA would have no recourse to take further action if parties refuse to comply.

### **We recommend attaching offences and penalties to these new investigatory powers**

- 8 To mitigate the issues with the current drafting of the reactive rail investigatory powers, we recommend attaching offences and penalties to these new powers.
- 9 Because the new investigatory powers being introduced in the RSTA Bill are modelled off the CAA (and the CAA was modelled off the Health and Safety at Work Act 2015 (HSWA)), we recommend adopting the same offences from both regimes.

### **Options for setting financial penalties**

- 10 Both Options One and Two set the proposed financial penalties in accordance with the Ministry of Transport (the Ministry) Effective Transport Financial Penalties Policy Framework (the Framework) and Categorisation Tool (the Tool).
- 11 The Framework and Tool are a guidance resource for transport regulatory agencies in setting financial penalty levels. It provides a six-step decision-making process to categorise offences, so penalties can be consistently applied (see **Annex 1** for the six-step process). Based on this approach, we have developed two options for setting the financial penalty:
- 11.1 **Option One:** fully adjust the penalties suggested by the Tool to align with comparable regimes (**preferred**). This option places greater emphasis on the assessment of proportionality by ensuring penalties for similar offences are consistent across regimes (step 5 of the Tool's six-step process). **Annex 2** sets out in detail how the financial penalties have been determined.
- 11.2 **Option Two:** partially adjust the penalties suggested by the Tool to align with comparable regimes. Under this option, if the initial penalty level is broadly consistent with the CAA and HSWA, then the final penalty has been adjusted to align with those regimes. If there is a significant difference, then the final penalty will be adjusted up by one harm category.<sup>2</sup> **Annex 3** sets out in detail how the financial penalties have been determined.

### **We recommend fully adjusting the initial penalty level to align with comparable regimes (Option One)**

- 12 Both options address the issues posed by introducing the new investigatory powers without offences and penalties attached. Because the reactive rail investigatory powers are modelled

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<sup>2</sup> The Tool sets out a penalty scale for harm and types of offenders – it assigns a recommended penalty amount depending on the overall harm category, which ranges from a scale of 1-10.

off the CAA and HSWA, we recommend fully adjusting the penalties to ensure consistency across comparable regimes.

### Consultation

- 13 No public consultation has been undertaken yet regarding the introduction of offences and penalties for these new investigatory powers. Officials intend to raise this policy matter with the Transport and Infrastructure Committee through the initial briefing, due to be presented to the Committee on 9 October 2025. The Committee may wish to seek the views of submitters involved in rail activities on this matter through the hearings process.

#### *Ministry of Justice Offences and Penalty Vet Team*

- 14 The Ministry has engaged with The Ministry of Justice Offences and Penalty Vet Team (OPV) regarding introducing new offences and penalties. OPV agree that the new reactive rail investigatory powers proposed for inclusion in the Railways Act appear necessary to address a gap with how existing provisions provide for NZTA to initiate investigations of its own initiative. OPV is not strongly opposed to either of the options the Ministry has proposed. However, in the limited time available, OPV is more comfortable with Option Two.
- 15 While we acknowledge OPV's views, the Ministry's preferred option is still Option One, as Option One will ensure consistency across comparable regimes and enable the effective enforcement of the investigatory powers to a greater extent compared to Option Two (see **Annex 4** for the differences in the refined financial penalties between Options One and Two).

### Next steps

- 16 Subject to your agreement, we will send a Cabinet paper and Regulatory Impact Statement for your approval in early October. If approved by Cabinet, the Ministry's Departmental Report to the Select Committee in early November will recommend adding the offences and penalties to the RSTA Bill. If they agree, the Select Committee would then issue instructions for the Parliamentary Counsel Office to include the offences and penalties in the revision-tracked version of the RSTA Bill.
- 17 You may also wish to forward this briefing to the Minister for Rail for his information.

## ANNEX 1: CATEGORISATION TOOL'S SIX-STEP PROCESS

### Section 2: Categorising offences

1. Drawing on the principles above, this Tool provides a six-step decision-making process to categorise offences, so penalties can be consistently applied.

#### Step 1: Consider the offence's design, use, and associated data

- select offences to review, considering groups of related offences together
- are the offences clearly articulated and defined?
- can we understand the specific actions and circumstances that constitute the offences?
- how has the offence been applied in the past, how often, and what harm has resulted from the offence?

#### Step 2: Assess the offence's severity

- the type(s) of harm
- the likelihood of harm should the offence occur
- how severe the consequence is or may be should the harm eventuate.

#### Step 3: Identify the type of offender the penalty would apply to

- an individual
- an individual in a position of responsibility (special regulated individual)
- a business or undertaking.

#### Step 4: Use the Tool to assign an initial penalty level

- apply the categorisation tool's suggested levels of penalties to the offences, according to the types and levels of harm and types of offenders, to set an initial penalty level.

#### Step 5: Consider the penalty against the remaining two Framework principles

- will the penalty act as a deterrent to undesirable behaviour?
- is it proportionate to harm and consistent with similar offences?

#### Step 6: Refine the financial penalty

- consider, in light of the process at step five, whether there is a need to adjust the harm category and/or add another penalty level
- does the offence need an infringement fee – that is, is it:
  - a strict or absolute liability offence; and
  - not so serious that a conviction should be recorded against the offender
- do a 'public policy contextual factors check' – are there any factors (like a particular offence's likely impact on a vulnerable population group) that make an adjustment to the penalty level appropriate
- does the financial penalty seem appropriate taking all the above steps into account?
- move the penalty up or down a harm category where necessary.

**ANNEX 2: OPTION ONE – FULLY ADJUST PENALTIES SUGGESTED BY THE CATEGORISATION TOOL TO ALIGN WITH COMPARABLE REGIMES**

Offence	Assess offence's severity	Points by harm type	Initial penalty level	Consider penalty against remaining Framework principles	Refined penalty
<b>Duty to assist inspectors</b> (CAA, s 293; HSWA, s 176)	Identifying cause of an accident or incident crucial to preventing future harm. Inability to identify the cause may increase the chance of a similar event occurring in the future.	<b>System</b> – 20 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 45 (category 5)	<b>Individual:</b> <sup>3</sup> \$5,000 <b>Special regulated individual:</b> <sup>4</sup> \$15,000 <b>Body corporate:</b> \$50,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> penalty for body corporates aligns with the CAA and HSWA but differs for individuals. However, taking the number between 'individuals' and 'special regulated individuals' would ensure consistency across sectors, and reflects the fact that rail personnel are not necessarily part of a regulated occupation themselves but are subject to the regulatory requirements placed on the rail participant that employs them.	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000
<b>Failure to provide name, residential address and date of birth</b> (CAA, s 295; HSWA, s178)	This information may be relevant to an investigation and failure to provide it could have a safety risk if it hinders the inspector's ability to investigate the cause of an accident or incident.	<b>System</b> – 5 <b>Safety</b> – 5 <b>Total:</b> 10 (category 1A)	<b>Individual:</b> \$250 <b>Special regulated individual:</b> \$750	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is inconsistent with the CAA and HSWA. Given the low initial penalty, and this inconsistency, the penalty should be increased.	<b>Any person:</b> \$10,000
<b>Impersonating an inspector</b> (CAA, s 296; HSWA, 180)	Someone who is not an inspector is exercising intrusive investigatory powers. This could result in a person obtaining information that they should not have access to. The likelihood of this is low.	<b>System</b> – 10 <b>Safety</b> – 5 <b>Total:</b> 15 (category 1B)	<b>Individual:</b> \$750 <b>Special regulated individual:</b> \$2,250	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is inconsistent with the CAA and HSWA. Given the low initial penalty, and this inconsistency, the penalty should be increased.	<b>Any person:</b> \$10,000
<b>Compliance with improvement notice</b> (CAA, s 300, HSWA, s 103)	Non-compliance could result in a serious risk to safety as the issue identified in the notice has not been remedied.	<b>System</b> – 51 <b>Safety</b> – 20 <b>Environment/property</b> – 10 <b>Total:</b> 81 (category 7)	<b>Individual:</b> \$20,000 <b>Special regulated individual:</b> \$60,000 <b>Body corporate:</b> \$200,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that, to ensure consistency, the penalties should be aligned with those Acts. This also reflects the fact that rail personnel are not necessarily part of a regulated occupation themselves but are subject to the regulatory requirements placed on the rail participant that employs them.	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Compliance with non-disturbance notice</b> (CAA, s 304; HSWA, s 110)	Non-compliance could affect the inspector's ability to investigate. A person who does not perform the obligations specified in the non-disturbance notice could also significantly hinder the investigation.	<b>System</b> – 51 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 76 (category 7)	<b>Individual:</b> \$20,000 <b>Special regulated individual:</b> \$60,000 <b>Body corporate:</b> \$200,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that, to ensure consistency, the penalties should be aligned with those Acts. This also reflects the fact that rail personnel are not necessarily part of a regulated occupation themselves but are subject to the regulatory requirements placed on the rail participant that employs them.	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Remove, destroy, damage or deface a notice</b> (CAA, s 311; HSWA, ss 117 & 118)	An inspector has chosen to display a notice because they want it to be visible (e.g. displaying a non-disturbance notice so people know a particular vehicle, building or place is to remain undisturbed).	<b>System</b> – 10 <b>Safety</b> – 5 <b>Total:</b> 15 (category 1B)	<b>Individual:</b> \$750 <b>Special regulated individual:</b> \$2,250 <b>Body corporate:</b> \$7,500	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is inconsistent with the CAA and HSWA. Given the low initial penalty, and this inconsistency, the penalty should be increased.	<b>Individual:</b> \$5,000 <b>Any other person:</b> \$25,000

<sup>3</sup> A 'regular' individual participating in the transport system with no significant responsibilities or business (commercial) or undertaking interests, such as someone licensed to drive a domestic car, a recreational boat user or a passenger in a vehicle.

<sup>4</sup> An individual in a position of responsibility, usually acting in a professional capacity, with special duties such as masters of ships, aircraft pilots, commercial passenger service drivers or holders of dangerous goods endorsements.

**ANNEX 3: OPTION TWO – PARTIALLY ADJUST PENALTIES SUGGESTED BY THE CATEGORISATION TOOL TO ALIGN WITH COMPARABLE REGIMES**

Offence	Assess offences severity	Points	Initial penalty level	Consider penalty against remaining Framework principles	Refined penalty	Compare to CAA/HSWA
<b>Duty to assist inspectors</b>	Identifying cause of an accident or incident crucial to preventing future harm. Inability to identify the cause may increase the chance of a similar event occurring in the future.	<b>System</b> – 20 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 45 (category 5)	<b>Individual:</b> \$5,000 <b>Special regulated individual:</b> \$15,000 <b>Body corporate:</b> \$50,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that the penalties should be aligned with those Acts.	<b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000	<b>CAA, s 293; HSWA, s 176</b> <b>Individual:</b> \$10,000 <b>Any other person:</b> \$50,000
<b>Failure to provide name, residential address and date of birth</b>	This information may be relevant to an investigation and failure to provide it could have a safety risk if it hinders the inspector’s ability to investigate the cause of an accident or incident.	<b>System</b> – 5 <b>Safety</b> – 5 <b>Total:</b> 10 (category 1A)	<b>Individual:</b> \$250 <b>Special regulated individual:</b> \$750	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is not proportionate to the offence and should be adjusted up one harm category to effectively respond to the offending and to bring the penalty closer to the CAA and HSWA levels.	<b>Any person:</b> \$2,250 (special regulated individual amount)	<b>CAA, s 295; HSWA, s 178</b> <b>Any person:</b> \$10,000
<b>Impersonating an inspector</b>	Someone who is not an inspector is exercising somewhat intrusive investigatory powers. This could result in a person obtaining information that they should not have access to. However, the likelihood of this is low.	<b>System</b> – 10 <b>Safety</b> – 5 <b>Total:</b> 15 (category 1B)	<b>Individual:</b> \$750 <b>Special regulated individual:</b> \$2,250	<b>Deterrence:</b> penalty is not high enough relative to the perceived benefits of offending. <b>Proportionality:</b> penalty is not proportionate to the offence and should be adjusted up one harm category to effectively respond to the offending and to bring the penalty closer to the CAA and HSWA levels.	<b>Any person:</b> \$5,250 (special regulated individual amount)	<b>CAA, s 296; HSWA, s 180</b> <b>Any person:</b> \$10,000
<b>Compliance with improvement notice</b>	Non-compliance could result in a serious risk to safety as the issue identified in the notice has not been remedied. However, an improvement notice is probably not appropriate where the contravention needs to be remedied immediately.	<b>System</b> – 51 <b>Safety</b> – 20 <b>Environment/property</b> – 10 <b>Total:</b> 81 (category 7)	<b>Individual:</b> \$20,000 <b>Special regulated individual:</b> \$60,000 <b>Body corporate:</b> \$200,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that the penalties should be aligned with those Acts.	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000	<b>CAA, s 300; HSWA, s 103</b> <b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Compliance with non-disturbance notice</b>	Non-compliance could affect the inspector’s ability to investigate. A person who does not perform the obligations specified in the non-disturbance notice could also significantly hinder the investigation.	<b>System</b> – 51 <b>Safety</b> – 15 <b>Environment/property</b> – 10 <b>Total:</b> 76 (category 7)	<b>Individual:</b> \$20,000 <b>Special regulated individual:</b> \$60,000 <b>Body corporate:</b> \$200,000	<b>Deterrence:</b> having a penalty attached provides an incentive for compliance, and penalties are sufficiently high relative to the perceived benefits of offending. <b>Proportionality:</b> initial penalty levels are close enough to the CAA and HSWA that the penalties should be aligned with those Acts.	<b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000	<b>CAA, s 304; HSWA, s 110</b> <b>Individual:</b> \$50,000 <b>Any other person:</b> \$250,000
<b>Remove, destroy, damage or deface a notice</b>	An inspector has chosen to display a notice because they want it to be visible (e.g. displaying a non-disturbance notice so people know a particular vehicle, building or place is to remain undisturbed).	<b>System</b> – 10 <b>Safety</b> – 5 <b>Total:</b> 15 (category 1B)	<b>Individual:</b> \$750 <b>Special regulated individual:</b> \$2,250 <b>Body corporate:</b> \$7,500	<b>Deterrence:</b> penalty for body corporates is not high enough relative to the perceived benefits of offending. The penalty for individuals is also a bit too low to effectively deter this behaviour. <b>Proportionality:</b> penalty is not proportionate to the offence and should be adjusted up one harm category to effectively respond to the offending and to bring the penalty closer to the CAA and HSWA levels.	<b>Individual:</b> \$3,750 (special regulated individual amount) <b>Any other person:</b> \$12,500	<b>CAA, s 311; HSWA, ss 117 &amp; 118</b> <b>Individual:</b> \$5,000 <b>Any other person:</b> \$25,000

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**ANNEX 4: DIFFERENCE IN THE REFINED PENALTIES BETWEEN OPTION ONE AND OPTION TWO**

Offence	Option One	Option Two
Duty to assist inspectors	Individual: \$10,000 Any other person: \$50,000	Individual: \$10,000 Any other person: \$50,000
Failure to provide name, residential address and date of birth	Any person: \$10,000	Any person: \$2,250
Impersonating an inspector	Any person: \$10,000	Any person: \$5,250
Compliance with an improvement notice	Individual: \$50,000 Any other person: \$250,000	Individual: \$50,000 Any other person: \$250,000
Compliance with a non-disturbance notice	Individual: \$50,000 Any other person: \$250,000	Individual: \$50,000 Any other person: \$250,000
Remove, destroy, damage, or deface a notice	Individual: \$5,000 Any other person: \$25,000	Individual: \$3,750 Any other person: \$12,500

PROACTIVELY RELEASED BY THE MINISTRY OF TRANSPORT AND INFRASTRUCTURE