

In Confidence

Office of the Minister of Transport

Chair, Cabinet Economic Development Committee

Proposed funding for the New Zealand Transport Agency Rail Safety Regulator for 2019/20 – 2023/24

1. I propose amendments to the Railways Regulations 2008, set under the Railways Act 2005 (the Act), to reflect the outcomes from the New Zealand Transport Agency's (NZTA) Rail Safety Regulator Funding Review.
2. The objectives of these amendments are to ensure New Zealand has a modern, effective, well-resourced regulator that achieves appropriate safety standards. The cost compliance is based on a philosophy of:
 - 2.1. a modern, risk-based intelligence-led regulator
 - 2.2. user pays.

Executive summary

3. The proposals in this paper will amend the annual fees and charges that fund the NZTA's rail safety regulatory functions. These changes will see an increase in the level of funding for this function from \$1.2 million to \$3.5 million in the form of increased fees and charges. This will support an increase in the number of full time equivalent employees (FTE's) undertaking the function from 15 to 21. The amendments are necessary to:
 - 3.1. address the historical under-recovery of the costs from the rail industry to pay for the regulatory services required to be performed by the NZTA
 - 3.2. ensure that the NZTA has sufficient funding to provide independent assurance to the government and the public that those who provide rail services in New Zealand effectively manage risks to staff, other rail operators, and the general public.

Relationship between funding changes for the NZTA's regulatory role and the wider review of NZTA's regulatory functions

4. I considered whether to delay funding changes for the NZTA's rail regulatory safety function, pending the outcome of the wider review of the NZTA's regulatory functions. However, funding review changes for the rail safety regulator need to proceed now. Whatever the outcome of the broader review, on any reasonable assessment, the NZTA's rail safety regulatory function is under-resourced in terms of the capability and capacity it needs.

5. In my view, it would send a wrong signal to delay the increase in the level of funding for this function, in the form of increased fees and charges that the NZTA needs. Delay would hinder the NZTA's ability to implement the change programme underway to ensure that it is an active, intelligence-led, and risk based rail regulator.
6. I have asked officials to ensure that ongoing implementation of the funding takes into account any findings from the wider review. Officials will prepare suitable messaging for rail industry participants and the public regarding the relationship between the changes to the fees and charges and the wider review.

Funding changes informed by consultation with the rail industry

7. Consultation with rail industry participants took place between 10 October 2018 and 21 November 2018. Thirty-six submissions were received from a range of rail industry participants, including KiwiRail, metropolitan operators, and tourist and heritage operators. The following key themes emerged during the consultation: broad support for the role played by the regulator; opposition to the proposed increase in costs; and opposition to the proposed recovery of the 2017/18 and 2018/19 deficits.

Opposition to the proposed increase in costs

8. There was broad support for the role played by the regulator. However, a number of submitters:
 - 8.1. questioned the need for the regulator to increase its staffing numbers from 15 to 21 FTEs. [REDACTED]
 - 8.2. stated that the regulator and the fees and charges set needed to better recognise the submitters' perceptions of the differences between commercial operators and heritage operators (in relation to risk).
9. A range of benefits from the proposals have been identified, including benefits to the rail system, rail operators and New Zealand (including reduced risk of catastrophic failure). The NZTA has developed a maturity model to direct its capability growth and set goals for the long-term performance of its rail safety regulator functions. I have asked officials to provide me with regular updates on progress, and develop appropriate performance metrics to measure the benefits to the industry, the public and NZ Inc.
10. Some submitters believed the degree of regulatory oversight on the heritage sector is unwarranted, and therefore the proposed costs do not reflect risk. The preferred charge option has been recommended as it reflects the different levels of rail activity, and therefore risk potential, and places a smaller financial burden on heritage operators.
11. I also recognise the different motives for rail participants and propose a reduction in charges for not-for-profit participants. Registered charitable or volunteer rail participants, where their income is less than \$100,000 per annum, will be exempted from paying some charges.

Opposition to the proposed deficit recovery

12. The NZTA recognised that the full recovery of the \$8 million deficit from the rail industry only, including those incurred prior to 2017, would have had a significant impact on rail participants. In response, the NZTA wrote off \$5.2 million of the deficit incurred between 2008 and 30 June 2017, which equated to 65 per cent of the \$8 million deficit.
13. The consultation proposal included the recovery of the remaining deficit from the sector. Significant opposition was raised to this proposal during consultation. It is also noted that the NZTA did not consult on the proposed increase in resources for the function, which accelerated the build-up of the deficit.
14. While I commend the NZTA for committing additional resources to the regulator, I agree with submitters and do not support the recovery of this deficit. Recovery of this deficit would also be inconsistent with transparency and accountability principles.
15. Therefore deficit recovery will be excluded from the fees and charges. This will result in a 20 percent reduction in all fees and charges that the NZTA consulted on.

Recommendations following consultation

16. Following consultation, I propose the following annual charges and fees:
 - 16.1. an hourly fee of \$120, charged for the actual time spent by the rail safety regulatory staff dealing with any new licence application (including reviewing and approving its safety case), assessment of practice against safety cases (including ordinary and special safety assessments), consideration of any safety case variation, follow-up work when non-compliance is to be resolved, and any rail safety regulator involvement in major projects.
 - 16.2. recovery of reasonable costs, for fee-based work, of staff expenses and, if required, independent contractors.
 - 16.3. a new annual charge using the licence-class as the means of allocating the charge across all rail licensees, comprising:
 - 16.3.1. an annual fixed safety charge of \$400 for each access provider and operator (licensees who carry out both functions will pay a fee for each function)
 - 16.3.2. an annual variable safety charge using the licence-class, calculated at the rate of:
 - a) 12.6 cents for any rail operator for every passenger service kilometre (for example, if a passenger train on the National Rail System (NRS) travelled 20 km from one station to another, the charge for that operator would be \$2.52)

- b) 6.3 cents for any access provider for each service kilometre operated on their network (in the above example, KiwiRail as the NRS access provider would be charged an additional \$1.26).

17. The charge rates reflect the fact that the risk exposure of a rail operator is strongly related to the distance its services travel and whether it carries passengers. Events, including catastrophic ones (derailments, collisions, fires etc.), tend to be more strongly related to the number and distance of journeys, rather than the size of the service.

Impact of the proposed changes on the rail sector

18. Analysis undertaken by the NZTA, using current activity rates but limited to the publicly available information from rail participants, indicates the quantum of the impact of the change in annual charge rates as a proportion of advertised ticket prices to be between 0.1 percent and nine percent. The NZTA estimates the majority of operators will see an increase below five percent of their advertised ticket price.

Background

19. On 26 September 2018, this Committee noted that the NZTA's rail safety regulatory function has been underfunded for the last 10 years. This is preventing it from properly resourcing this regulatory function and leading to a deficit of \$8 million, of which \$5.2 million has been written off and \$2.8 million remains as deficit.

20. This Committee also:

20.1. noted that NZTA considers that it needs to recover at least \$4.15 million per annum over the next five years to 2023/24, and that this would be funded via a mix of National Land Transport Fund (NLTF) funding and fees and charges

20.2. agreed to release a consultation document proposing changes to the fees and charges which fund the rail safety regulator [DEV-18-MIN-0214 refers].

21. This paper seeks Cabinet approval to change the charges and fees which fund the rail safety regulator, following consultation with rail operators. These changes are necessary to address year-on-year deficits and to ensure that the regulator has the resources it needs to do its job and address previous review findings.

The rail safety regulator is incurring increasing annual deficits

22. Rail safety fee and charge rates were last set in 2008 through the Railways Regulations 2008. Due to economic pressures at that time in the rail sector, the fee and charge rates were implemented at a level well below even then known costs and have not been changed since.

23. In 2016/17, fees and charges generated around \$1.2 million in income, whereas costs for this role were \$2.026 million, resulting in a build-up of deficits. The NZTA Board wrote off a cumulative deficit of \$5.2 million (Table 1 below) at the end of the 2016/17

financial year, but this is expected to grow to \$2.8 million in deficit by the end of the current financial year.

Table 1: Annual rail memorandum account deficits (note 2018/19 year current as at 30 November 2018)

Financial year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Balance (000)	-2,959	-3,300	-4,044	0	-1,123	-2,195

A number of reviews conducted since 2013 have identified under resourcing as an issue

24. On 26 September 2018, the Committee noted that a number of reviews commissioned by the NZTA into its rail safety role since 2013 concluded that the NZTA rail safety role was:

24.1. too passive

24.2. focused on the licensing function

24.3. not aligned to best international practice in rail safety regulation.

The NZTA has made significant changes to address these issues

25. The NZTA is implementing a change programme that includes increasing staff resources in critical investigation areas, improving its intelligence capability, and preparing and implementing a new regulatory operating model to govern its safety activities. The NZTA also identified the necessary minimum critical mass for its rail safety role as 21 dedicated staff, up from 10.5 FTEs, coupled with a new computerised rail intelligence system. The NZTA has since increased the number of FTE's in its rail safety function to 15.

Rail safety regulatory arrangements

26. There is an established rail safety system set out under the Act. This positions the NZTA as the key rail safety regulator – licensing rail participants and approving and maintaining their rail safety cases, investigating accidents and incidents and being a recognised source of safety advice and information. The NZTA works alongside WorkSafe, New Zealand Police, the Transport Accident Investigation Commission, and rail licensees, all of which have statutory roles to establish and maintain a safe rail system.

27. A capable, competent regulator is essential, given the role of rail. Rail has an increasing and important role to play in land transport by moving more freight and alleviating traffic congestion. Rail also plays an important role in making our cities more liveable and sustainable, which will contribute to our goal of a low emissions and export focused economy. Rail also supports the tourism sector with scenic tourism focused journeys, heritage experiences and adventure activities. This has been signalled in a range of government policies to date, reflected in the current Government Policy Statement on land transport (GPS), the outcomes from the Future of Rail review, and the Provincial Growth Fund.

Consultation with and feedback from the rail sector

Consultation process

28. The NZTA tested the funding proposals through a consultation process with the rail industry. It provided a six-week consultation period, with consultation running from 10 October 2018 to 21 November 2018. At the beginning of the consultation process, all licensed rail participants and key stakeholders were advised of the consultation paper being published, and were invited to make a submission.
29. The consultation document also posed 13 questions to prompt submitters' views on crucial aspects of the proposal. This did not restrict submitters from providing feedback on any other aspects they wished. An online survey form and an editable question form were also developed to assist submitters in making a submission.
30. Each individual licensed rail participant was also contacted directly by phone to confirm that they had received the email notification about the open consultation and were encouraged to submit feedback. A detailed comparison of the proposals, issues raised during consultation, and changes made to the proposal as a result are presented in Appendix 1.

Key consultation themes

31. During the consultation period, 36 submissions were received by the NZTA. Analysis of the submissions revealed seven main themes:

- 31.1. Size of the regulator (proposal is to increase from 15 to 21 FTEs)

- 31.1.1. There was some support for the proposed resourcing model, as long as performance monitoring is in place. Other submitters believed the rail industry is over-regulated and/or the NZTA needs to focus more on reducing costs rather than increasing fees. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Free and frank advice withheld

- 31.1.2. In response, officials advise that two previous reviews (undertaken in 2013 and 2015) by Australasian Transport Risk Solutions (ATRS) and Navigatus Consulting) concluded that additional resourcing is required to ensure the role is fulfilled.

- 31.2. Regulatory oversight of the heritage sector

- 31.2.1. Submitters believed the degree of oversight on the heritage sector, in particular tram operations, was unwarranted. The NZTA is, however, compelled by the Act to apply the same regulatory model to all licensees and this issue is outside the scope of this funding review. The NZTA is seeking to respond by improving its processes to better serve smaller and/or lower risk operators, within the framework set out in the Act. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Withheld to protect the confidentiality of advice tendered by Ministers of the Crown and officials

31.3. Increasing National Land Transport Fund (NLTF) and/or Crown funding

31.3.1. A number of submitters considered that more NLTF and/or Crown funding was required. They also argued that a safe and reliable rail system provides benefits for road users and the general public. Officials note, however, that those who create the risk (rail participants) are the main beneficiaries from an increased rail safety regulatory oversight. Therefore, no additional NLTF or Crown funding is proposed at this time. This is consistent with the Ministry of Transport Funding Principles,¹ where costs are primarily allocated according to who creates and exacerbates risks in the system, and receives benefit from participation in it. I note that further NLTF funding could also be considered when the next GPS is released in 2021.

31.4. Distribution of annual variable charge

31.4.1. A number of submissions asserted that other sectors were a higher risk and should pay more. However, no new information was provided to suggest the criteria, or that the charge assessment is incorrect.

31.5. Introducing a transition period for the new charges

31.5.1. Submitters suggested transition arrangements should be used given the average 183 per cent increase in charges proposed under this review. The NZTA considered a transition period but delaying introduction of the full charges would require even larger charges eventually.

31.6. Size of the charge increase impact on ticket prices/freight costs

31.6.1. Submitters were concerned with the scale of the proposed increases, and several were concerned about how this could negatively impact on ticket sales, particularly given those submitters are having difficulty filling current excursion trains. The NZTA estimated how the charge could impact on the cost of a passenger ticket on a range of operations.

The maximum effect would be a possible increase of no more than nine per cent and most are in the range of one to two per cent or lower. On this basis, no change to the proposal is considered necessary. I acknowledge that there will be an impact. However, these proposed charges and fees are necessary to support the resource requirements for the NZTA to fulfil its rail safety regulatory functions.

31.7. Recovery of the 2017/18 – 2018/19 deficit

31.7.1. Submitters believed that, as the deficit was an intentional decision, participants should not have to pay for this decision to be retrospectively changed. The NZTA recognised that the full recovery of the deficit from

¹ Transport regulatory system – Funding principles, Ministry of Transport, September 2018.

the rail industry, including that incurred prior to 2017, would have had a significant impact on rail participants.

31.7.2. The NZTA therefore took the step of writing off the \$5.2 million deficit incurred between 2008 and 30 June 2017. While I commend the NZTA for committing additional resources to the regulator, I agree with submitters and do not support the recovery of this deficit. The rail sector was not consulted on the additional resourcing for the regulator, which accelerated the build up of the deficit.

31.7.3. Recovery of this deficit would also be inconsistent with transparency and accountability principles in the Transport sector, Treasury and Office of the Auditor-General guidelines for setting fees and charges, as well as Legislation Design and Advisory Committee Guidelines. Following consultation, deficit recovery has been removed from the fees and charges.

Consultation on the resources required to support a modern, risk based rail safety regulator

32. The consultation document sought an annual income of \$4.15 million to ensure that the regulator operates effectively and would take the regulator through to a break-even point by 2023/24. The investment would provide for a rail safety team of 21 staff with income made up of the following components:
 - 32.1. \$2.25 million staff salaries
 - 32.2. \$0.925 million direct overheads – training, travel, specialised advice and new computerised rail intelligence system
 - 32.3. \$0.365 million indirect overheads – new IT system and support, depreciation and annual CPI adjustments
 - 32.4. \$0.61 million provision to meet the current under recovery (2017/18 and 2018/19 years).
33. The expectation is that before 2023/24 the NZTA and the Ministry of Transport would review the NZTA's rail safety costs and propose a new set of fees and charges. This would prevent the potential for sharp increases in fees and charges in the future. Table 2 below provides a comparison of the fees and charges consulted on and the proposed fees and charges following consultation. Following consultation, recovery of the deficit has been removed from the proposed fees and charges. This has resulted in all fees and charges reducing by approximately 20 percent.

Table 2: Consultation proposal fee and charge rates vs post-consultation fee and charge rates

Proposed fees/charges	Consultation proposal fees and charges (with deficit recovery)	Proposed fees and charges (without deficit recovery)
Per access provider licence	\$500	\$400
Per operator licence	\$500	\$400
Access provider (per service km)	\$0.0785	\$0.0630
Rail operator (per pax service journey km)	\$0.1570	\$0.1260

Changes made as a result of consultation

34. The NZTA has refined the proposal to reflect feedback received during consultation. The NZTA agreed with submitters that the proposed charity and voluntary organisation threshold should be increased from \$30,000 to \$100,000, excluding the GST. It is expected that this amendment will exempt a further four licensees and will provide clarity about how the threshold is determined.
35. I agree with KiwiRail's submission, that the regulations will also need to define the term train, and specifically exclude work trains and shunts. The operation of these vehicles is distinct from other trains, and measuring and recording the distances travelled for these vehicles would be a significant cost.
36. I also consider that recovery of the deficit is inconsistent with transparency and accountability principles. Deficit recovery has therefore been excluded from the fees and charges.

Proposed new funding arrangement

37. I am proposing new funding arrangements to improve the way the regulator recovers the cost of its regulatory activities. The proposed changes are summarised below in Table 3 and take into account the changes as a result of consultation.

Table 3: Current, consultation proposal, and post-consultation proposed funding sources

Funding source	Current funding	Consultation proposal	Post-consultation proposal
National Land Transport Fund	n/a	\$743,600	\$743,600
Fees (hourly rate and expenses)	\$1.2 million	\$250,000	\$250,000
Annual variable charge		\$3,150,000	\$2,527,000
Total	\$1.2 million	\$4.14 million	\$3.52 million

Level of funding proposed

38. There are three sources of funding under these proposals –the NLTF, sector fees and charges. The changes to the hourly fee and annual charges following consultation are outlined below in Table 4.

Table 4: Funding sources – pre and post-consultation

Funding source	Consultation proposal	Post-consultation proposal
NLTF funding	\$743,600	\$743,600
Hourly fee	\$120	\$120
Annual fixed safety charge for access providers and operators	\$500	\$400
Access provider (per service km)	\$0.0785	\$0.0630
Rail operator (per pax service journey km)	\$0.1570	\$0.1260

- 38.1. NLTF funding of \$743,600 for regulatory activity where the road and rail interface - for example, pedestrian and road interaction with the rail network
- 38.2. an hourly fee of \$120, charged for the actual time spent by the rail safety regulator staff dealing with any new licence application (including reviewing and approving its safety case), assessment of practice against safety cases (including ordinary and special safety assessments), consideration of any safety case variation, follow-up work when non-compliance is to be resolved, and any rail safety regulator involvement in major projects
- 38.3. Recovery of reasonable costs, for fee-based work, of staff expenses and, if required, independent contractors
- 38.4. an annual charge, using the licence-class charge as the means of allocating the charge across all rail licensees, comprising:
- 38.4.1. an annual fixed safety charge of \$400 for each access provider and operator (licensees who carry out both functions will pay a fee for each function)
- 38.4.2. an annual variable safety charge using the licence-class, calculated at the rate of:
- (a) 12.6 cents for any rail operator for every passenger service kilometre (for example, if a passenger train on the NRS travelled 20 km from one station to another, the charge for that operator for that trip would be \$2.52)
 - (b) 6.3 cents for any access provider for each service kilometre operated on their network (in the above example, KiwiRail as the NRS access provider would be charged an additional \$1.26)

38.5. note that registered charitable or volunteer (not-for-profit and no paid staff) rail participants, which have an annual income of less than \$100,000 per annum, are exempt from the annual variable safety charge

38.6. fees and charges are shown as GST exclusive.

These fees and charges are consistent with the Ministry of Transport, the Treasury and the Office of the Auditor General (OAG) funding principles

39. The charge rates and fees presented above are consistent with the Ministry of Transport funding principles for the transport regulatory system.²

39.1. NLTF funding reflects the fact that road users, in their interactions with the rail network (e.g. level crossings), are a significant source of risk to the rail industry that the industry and regulator must manage.

39.2. An hourly fee and an annual fixed safety charge will fund licencing applications. This reflects the fact that rail operator licencing is a private good, and therefore should be user funded. Licensees are the primary beneficiaries of licencing, as they cannot operate within the rail system without a licence.

39.3. The annual variable safety charges recognise that train operators and access providers are the primary risk exacerbators. Therefore, costs should be allocated primarily according to those who create and exacerbate risks in the system and receive benefit from participating in a well regulated system.

Sector impacts

40. The main impact on the sector will be an increase in charges and fees. All operators will see an increase in costs due to the proposed changes. The magnitude of the annual charge increase will depend on the level of activity reported by the operator.

Potential financial impact on freight rates and passenger tickets

41. No submitters provided specific information on the cost impact of the proposed charge on their ticket prices. However, the NZTA undertook an indicative analysis based on publicly available information on common excursions and existing ticket prices to estimate the impact of the charge at a passenger level.

42. It is important to note that the analysis provides the total charge impact, not the net increase beyond the current charge. In most cases, licence holders' annual charge under the proposal is two to three times what it is currently.

43. Six heritage operators move fewer than 1000 passengers per year and as such the charge, if broken down to a per passenger basis, could be of a similar magnitude to their ticket price. However, for these operators, the NZTA does not have sufficient information to calculate the impact accurately.

² Transport regulatory system – Funding principles, Ministry of Transport, September 2018.

- 44. The amount of charge payable for each operator is calculated based on reported levels of rail activity (kilometres travelled) during the preceding financial year.
- 45. Table 5 below also provides a comparison of the current charge payable and the proposed charge for different parts of the sector and several outliers. Note that a number of rail operators will see a significant increase in annual charge payments under the proposed funding regime.
- 46. As well as being driven by the increases in the charge rates, this is also driven by, in some instances, increased activities reported by rail operators.

Table 5: Charge payments – average and outliers Withheld to protect commercial positions of others

Rail industry participant	Current charge	Proposed charge
[Redacted content]		

- 47. A more detailed comparison of the current fees and charges and proposed fees and charges for a number of rail participants is provided in Appendix 2.

Benefits of the proposals

- 48. The expected benefits of the NZTA’s preferred option will be a safer rail system with benefits to the rail system, rail operators and to New Zealand.

Benefits to the rail system

- 48.1. The NZTA will be in a position to provide:
 - a) better regulatory safety leadership and coordination of safety outcomes across the transport sector; for example, road-rail issues
 - b) better oversight of the whole rail sector, rather than its current focus which is largely just on those who seek licences or schedule safety assessments.
- 48.2. The NZTA will be more responsive to industry concerns and will be in a position to adopt a flexible use of its regulatory toolkit to optimise compliance outcomes, including:
 - a) securing industry behaviours that are encouraged
 - b) deterring and denouncing non-compliance in the public interest.

Benefits to rail participants

- 48.3. The NZTA will proactively assist in identifying emerging safety issues for an operator through analysis of safety intelligence
- 48.4. Assistance from the NZTA will ensure the operator's safety case and management system remain relevant and resilient in the face of emerging safety risks.

Benefits to New Zealand

- 48.5. Meaningful and lasting safety improvements in the rail industry will be achieved, including a reduction in safety incidents, which will, in return:
 - a) minimise network disruptions for passengers and freight – improving mode neutrality by increasing rail's attractiveness as a transport option
 - b) protect the travelling public and others who use the rail network from exposure to harm, particularly arising from a catastrophic harm incident.

Performance and monitoring

- 49. I have also directed the NZTA to continue to develop its maturity model, and to come back to me within three months with a set of performance measures and a programme of regular reporting to the Ministry of Transport on these metrics. A copy of the maturity model is attached in Appendix 4.

National Rail Industry Advisory Forum

- 50. The NZTA has also convened a National Rail Industry Advisory Forum (the Forum), which aims to identify, discuss, resolve and implement solutions to rail industry matters, including, among other things:
 - 50.1. rail standards and the role of international standards frameworks
 - 50.2. priorities in rail safety, especially existing, new, and emerging critical cross organisational risks
 - 50.3. common safety goals/approaches/development groups/interests.

Link between the funding review and the Ministry of Transport operational and performance review of NZTA's regulatory functions

- 51. In November 2018, I announced that the Ministry of Transport would undertake a review on my behalf into the operation and performance of NZTA's regulatory functions.
- 52. The primary focus of the review was the NZTA's regulatory performance in relation to road transport, but the scope includes all of its regulatory functions. As a result, the recommendations arising from the review will also relate to the NZTA's rail safety regulatory function.

53. I considered whether to delay the consideration of funding changes for the NZTA's rail regulatory safety function pending the outcome of the wider review. I recommend that this review proceed now, because, whatever the outcome of the broader review, any reasonable assessment the NZTA's rail safety regulatory function is under-resourced in terms of the capability it is looking to build.
54. In my view, it would send a wrong signal to delay the step-up in resources required to perform the regulatory functions pending the outcome of the broader review. I have also asked officials to ensure that the ongoing implementation of the changes in fees and charges takes into account any findings from the wider review. Officials will also prepare suitable messaging for rail industry participants and the public regarding the relationship between changes to the fees and charges and the wider review.

Departmental Consultation

55. The following departments and agencies have been consulted on this Cabinet paper: State Services Commission, Ministry of Business, Innovation and Employment, Ministry for the Environment, Ministry for Primary Industries, Ministry of Health, Ministry for Culture and Heritage, New Zealand Police, WorkSafe New Zealand, Fire and Emergency New Zealand, New Zealand Transport Agency, and the Treasury.
56. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

57. The paper's proposals have no financial implications for the Crown.

Human rights, gender and disability perspective implications

58. There are no human rights, gender, or disability perspective implications associated with this paper.

Legislative implications

59. Amendments to the Railways Regulations 2008 will be necessary to implement the proposals.

Regulatory Impact Statement

60. A Regulatory Impact Statement is required with respect to proposals covered in this paper. A Regulatory Impact Statement has been prepared by the NZTA and is attached to this Cabinet paper.
61. The Regulatory Impact Statement and associated supporting material has been assessed by the Ministry of Transport Regulatory Impact Statement Panel as meeting the quality assurance criteria. The paper justifies the need for the increased funding. However, the impact of increased charges on specific operators can only be estimated.

Publicity

62. The amendments to the Railways Regulations 2008 will be notified in the New Zealand Gazette.
63. I propose, following Cabinet's decision on this paper, making a press statement on the changed funding arrangements. The full text of the attached Regulatory Impact Statement and this Cabinet paper will also be published in accordance with Cabinet's directions.
64. The press statement will also be mindful of the wider Ministry of Transport review, on my behalf into the operation and performance of NZTA's regulatory functions.

Recommendations

I recommend that the Committee:

1. **note** that independent reviews in 2013 and 2015 found that the rail safety regulator was under-resourced and taking a 'passive' approach to regulation
2. **note** that the proposed changes to the fees and charges set under the Railways Regulations 2008 and funding from the National Land Transport Fund, will fund a proactive, risk-based regulator, with increased resources
3. **note** that all stakeholders subject to the fees and charges set under the Railways Regulations 2008 have been provided with an opportunity to voice concerns about the proposed changes
4. **note** that, as a result of consultation, changes were made to the proposal to reflect feedback, including reducing the liability for smaller volunteer and charitable operators and not recovering the regulator's deficit from the rail sector
5. **agree** to setting an hourly fee of \$120, charged for the actual time spent by the rail safety regulator staff dealing with any new licence application (including reviewing and approving its safety case), assessment of practice against safety cases (including ordinary and special safety assessments), consideration of any safety case variation, follow-up work when non-compliance is to be resolved, and any rail safety regulator involvement in major projects
6. **agree** to setting an annual charge using the licence-class as the means of allocating the charge across all rail licensees
7. **agree** to recovering reasonable costs, for fee-based work, of staff expenses and, if required, independent contractors
8. **agree** to setting an annual fixed safety charge of \$400 for each access provider and operator (licensees who carry out both functions will pay a fee for each function)
9. **agree** to setting an annual variable safety charge using the licence-class, calculated at the rate of:

- 9.1. 12.6 cents for any rail operator for every passenger train kilometre (for example, if a passenger train on the NRS travelled 20 km from one station to another, the charge for that operator would be \$2.52)
- 9.2. 6.3 cents for any access provider for each train kilometre operated on their network (in the above example, KiwiRail as the NRS access provider would be charged an additional \$1.26)
10. **agree** that registered charitable or volunteer (not-for-profit and no paid staff) rail participants, which have an annual income of less than \$100,000 per annum, are exempt from the annual variable safety charge
11. **note** that the National Land Transport Fund will contribute \$743,600 towards the costs of the rail safety regulator
12. **note** that I have directed the NZTA to continue to develop its maturity model, and come back to me within three months with a set of performance measures, and a programme of regular reporting to the Ministry of Transport on these metrics
13. **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to amend the Railways Regulations 2008 to give effect to recommendations **5, 6, 7, 8, 9** and **10**
14. **authorise** the Minister of Transport to make final decisions, consistent with the overall policy intent, on details (including details of transitional provisions) that arise during the drafting of the amendment regulations referred to at recommendation **13** without reference to Cabinet
15. **note** that the Minister of Transport intends to make a press statement following Cabinet approval of the proposed funding changes and that the attached Regulatory Impact Statement will then be published
16. **note** that the press statement will take into consideration the wider review of NZTA's regulatory function
17. **agree** to the proactive publication of this Cabinet paper on the Ministry of Transport's and NZTA's websites, consistent with the Official Information Act 1982.

Authorised for lodgement

Hon Phil Twyford
Minister of Transport

Appendix 1: Summary of submissions and changes made as a result of consultation

No.	Question	Issues raised by submitters	Changes made as a result of consultation
1 & 2	<p>Do you agree with the overall goal of this review (to fund a proactive, intelligence-led, risk-based regulator)?</p> <p>Can you identify any risks if the proposed resourcing for the regulator does not go ahead?</p>	<p>Most submitters accepted the goal of the review The majority of submitters felt the goal of the review was acceptable and necessary. The need to retain a safety culture and for continuous improvement of safety across the rail industry was acknowledged by the majority of submitters.</p> <p>Differentiation of risk between commercial and heritage sectors Some submitters agreed with the goal for the commercial rail industry, but believed it needed to better recognise the differences (particularly in risk) between the commercial and the heritage sector.</p> <p>Overlap between the regulator and other agencies A number of submitters were concerned with the overlap between the regulator and other agencies roles, particularly the role of TAIC and WorkSafe.</p>	<p>The NZTA is confident that the resource model is appropriate. Value for money of the in-place resourcing model will also be evaluated as part of the next funding review (currently anticipated to start in 2020).</p> <p>It is acknowledged that the regulators investigative role overlaps with other agencies and notes that the Civil Aviation Authority and Maritime New Zealand have similar legislative situations. The overlapping jurisdictions of NZTA and WorkSafe is acknowledged in the Railways Act, and the two agencies have agreed a Memorandum of Understanding to assist in minimising duplication from this overlap.</p> <p>The NZTA has primary regulatory responsibility for rail safety in New Zealand. This role includes: reviewing and approving rail safety cases, issuing rail licences for operating rail vehicles or managing rail networks, checking licensees' compliance with approved safety cases through assessments, reviewing and approving variations to approved safety cases, receiving notifications of accidents or incidents and monitoring trends, and investigating serious incidents when they occur.</p> <p>The Transport Accident Investigation Commission's purpose is to investigate any serious transport accident, with the sole intent of discovering the causes of accidents. As opposed to the powers of the Transport Agency, an organisation cannot be compelled to act or prosecuted on the basis of its findings. Changes to the Railways Act are outside the scope of this review.</p> <p>Changes made as a result of consultation None</p>
3	<p>Do you agree with the proposed sources of funding (levies, fees and funding from the NLTP)?</p>	<p>Funding sources Submitters strongly supported the use of funding from the National Land Transport Fund (NLTF). In particular, a number of submitters argued that NLTF funding would also reflect the benefits for pedestrians and road users of a safe and reliable rail system.</p>	<p>To be funded through the NLTP, the activity must be in scope of an activity class in the Government Policy Statement (GPS). All activities carried out by the Rail Safety Regulator in scope of the current GPS will be funded by the NLTP.</p>

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		<p>Rail safety public good Many submitters argued that rail safety was a public good, and therefore should be funded through general taxation. Some submitters also questioned whether other sources of funding had been examined.</p> <p>Some heritage operators also suggested that funding should be sought for these operators from the Ministry of Culture and Heritage or Tourism New Zealand.</p> <p>Full cost recovery Some submitters, particularly metropolitan operators, questioned the principle of full-cost recovery underpinning the review, and believed that partial cost-recovery was envisioned by the Railways Act and so should remain an option.</p> <p>Funding the deficit Requiring only rail licence holders to pay back the deficit was considered inappropriate by a number of submitters, and many considered that future charges should only apply to paying for future activities, not historic.</p> <p>Other submitters believed that as the deficit was an intentional decision, participants should not have to pay for this decision to be retrospectively charged. Others believed that NLTP funding should contribute to recovery of the deficit.</p>	<p>The indirect benefits for road users and pedestrians from regulatory activity that contributes to a safer and more reliable public rail system is not in scope under the current GPS.</p> <p>However, an update of the GPS will be released in 2020/21, for which the wider benefits of the rail safety regulatory function could be considered.</p> <p>Although rail safety regulation benefits the general public, it is not considered a “Public Good” as the users (i.e. those who create the risks) are the rail industry and road users, rather than the general public.</p> <p>The review was limited to considering the oversight of safety in the rail industry, issues such as tourist and cultural benefits are not in scope.</p> <p>Any recovery of the deficit should be consistent with user pays principles. Recovering the \$2.8 million deficit forecast to be accrued for the two years from 30 June 2017 is justified as there is relatively little movement in the group of licenced rail participants in New Zealand.</p> <p>The NZTA also recognised that the full recovery of the deficit from the rail industry only, including that incurred prior to 2017, would have a significant impact on rail industry participants and took the step of writing off \$5.2 million accrued between 2008 and 30 June 2017 (65 percent of the total deficit).</p> <p>Changes made as a result of consultation Following consultation, I agree that recovery of the deficit is inappropriate, and that the NZTA should fund this deficit from existing reserves. The fees and charges have been reduced to reflect this, which has resulted in an approximately 20 percent reduction in the overall fees and charges.</p>
4	How would you like the rail activity data to be collected and the	The majority of submitters wished to keep the current arrangements, which include the charge being determined from rail activity data collected annually through a Safety	There is a need to balance accurate information for fiscal purposes and minimising compliance burden. In addition, while most operations are relatively stable, strong growth is being experienced

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	annual levy process managed?	Performance Report (SPR), after which rail participants are invoiced quarterly. The amount charged is based on the rail participant's activity for the period 1 July to 30 June from two years prior.	<p>in some areas and the impact of unexpected events have demonstrated that relying on historical rather than actual rail activity levels can under or overestimate the regulatory oversight applied to a licence holder.</p> <p>It is proposed that the annual charge calculation process be:</p> <p>The annual charge is:</p> <ul style="list-style-type: none"> • to cover 1 July to 30 June of each year a participant is licensed (as presently) • calculated from levels of rail activity of the immediately preceding year 1 July – 30 June • due on 10 September of each year (this aligns with the current regulations that allow for 20 calendar days between invoicing and first payment) • payable in four equal instalments on or before 1 October, 1 January, 1 March and 1 July. <p>Where a rail participant:</p> <ul style="list-style-type: none"> • is licensed for only a part of the year, the levy instalment will not be owed if the participant was not holding a licence at any point since the last instalment date; • changes the classes of licence (rail operator or access provider) it holds during the year, the levy will be recalculated and owed based on the class of the licence the participant holds on the instalment date; • is unable or unwilling to provide the levels of rail activity to the Transport Agency by 1 September, the Agency may make an estimate of the required levy based on historical levels of activity and any other relevant information it has. <p>Changes made as a result of consultation None</p>
5 & 6	Do you agree with the Transport Agency's preferred option of a licence-class levy?	<p>Choice of charge</p> <p>A number of submitters supported the preferred charge option in whole or in part. A number of submitters also considered that the</p>	<p>NZTA noted that the preferred charge option places a smaller financial burden on heritage operators than a purely risk-based model would. This was based on the results of independent analysis undertaken for NZTA.</p>

No.	Question	Issues raised by submitters	Changes made as a result of consultation
	Are there any aspects missing from this option that you were expecting?	<p>charge should be more strongly focused on risk.</p> <p>Greater differentiation in the charge rates A number of heritage operators did not support the charge option as they considered it wrongly grouped them in with larger commercial operators.</p>	<p>NZTA considered that charge rates for operators could be tiered to provide an additional level of adjustment beyond the scaling effect of the kilometres travelled. However, this would require determining the appropriate rate for up to 12 different categories of operator services. There is insufficient evidence base to perform this objectively.</p> <p>Changes made as a result of consultation None.</p>
7	Do you agree with the Transport Agency's preferred funding option?	<p>Fee-based work A number of submitters supported charging fees to new entrants to the sector and for non-compliance. Most submitters who did not support fee-based charging were concerned that it could lead to excessive costs on licence holders, difficulty budgeting, and dissuade licence holders from improving safety.</p> <p>Several submitters also misinterpreted the fees based system and were concerned that the fees for investigation of a single accident could drive them out of operation.</p> <p>Fixed-based charge A number of submitters supported a greater portion of funding coming from the fixed charge, to enable funding for a stable regulator and assist licence holders to budget.</p> <p>Exemptions Many submitters who supported the exemption for voluntary operators felt the exemption should be more widely applied, in particular that the threshold should be raised from \$30,000 to at least \$100,000 turnover.</p>	<p>NZTA noted that a number of submitters were mistaken in assuming that licence holders will be charged fees for investigations of accidents. NZTA intends to provide guidance prior to implementation of the new funding proposal as to the scope of work covered under the fees and ways in which licence holders can budget for and minimise their fees.</p> <p>Changes made as a result of consultation</p> <p>NZTA agreed with submitters concerns with the threshold for exemption being too small and proposes that the exemption threshold:</p> <ul style="list-style-type: none"> • be raised to \$100,000 • for simplicity and auditability, remain applied to all revenue streams the organisation receives; • be based on the revenue of the immediately preceding year.

No.	Question	Issues raised by submitters	Changes made as a result of consultation
8	Do you agree that the rail safety regulator should charge for contributing to major projects?	<p>The majority of submitters did not provide a response to this question or did not have strong views. All those who submitted supported the NZTA being involved in this work and considered it important to ensure the eventual safety impact of these projects on the rail system was managed.</p> <p>KR was concerned that, if the proposal went ahead, the engagement with major projects needed to involve not just the organisation carrying out the work, but “Interoperability factors [with other licence holders] should also remain a key consideration throughout major project development and delivery”.</p>	<p>The low level of response to this question is to be expected, given “major projects” would be beyond the scale of nearly all operations outside of the NRS.</p> <p>Whilst the NZTA recognised that these projects are often in the national interest where investment is provided by the Crown, it believed direct charging for the engagement helps to emphasise the responsibilities of the organisation performing the development and offers an opportunity to clarify (for the regulator, for the development organisation and for other affected rail participants) the nature of the engagement and safety expectations from the start.</p> <p>Changes made as a result of consultation None.</p>
9	How would you expect that your organisation would manage the financial changes proposed in this funding review?	<p>The majority of submitters were concerned with their ability to absorb any increased charges. Other submitters suggested that they may fund any increased charges by reducing expenditure on operators, maintenance and/or safety.</p> <p>A number of heritage operators were also concerned that the proposed increase could result in ceasing to operate.</p> <p>Several submitters also stated that their ability to pass-on costs to submitters was limited. Others were also concerned with the speed and magnitude of the increase in costs.</p>	<p>The Review Team recognises the increase in charges is substantial relative to the low charges presently. The proposed exemption for charitable or volunteer operators, for instance, recognises that non-commercial operators are particularly limited in their ability to pass on costs to the customer or funders. It is also noted that the accrued deficit from 2008 to 2017 was written off by the Transport Agency.</p> <p>Transitional arrangements were examined. However, the objective of this funding review is for the Rail Safety Regulator to break-even by 2024, it cannot further delay becoming financially sustainable. Any reduction in charges at the start of this funding period (ie from 2019) would need to be compensated for by significantly higher charges at the end of the funding period, placing even more burden on rail participants.</p> <p>The NZTA noted the potential consequential impacts raised to maintenance and safety investments. This funding proposal places the Agency in a strong position to ensure these impacts are monitored and any intervention necessary is put in place to ensure that all risks are managed so far as is reasonably practicable.</p> <p>Changes made as a result of consultation</p>

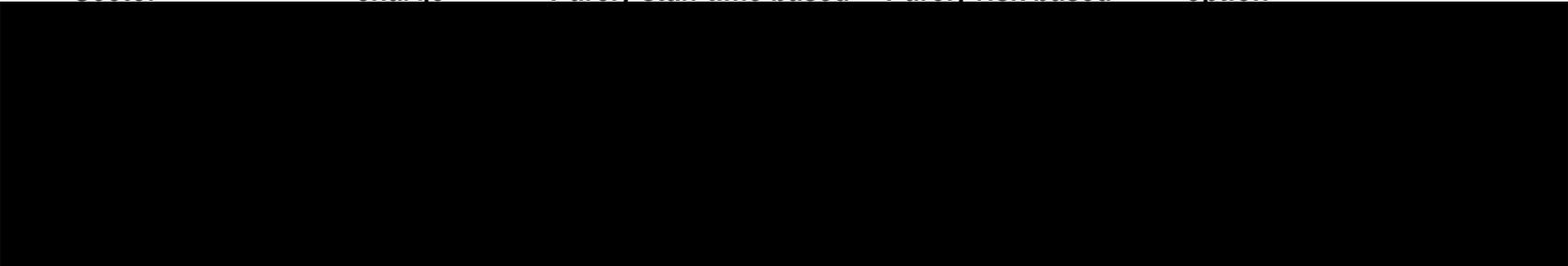
No.	Question	Issues raised by submitters	Changes made as a result of consultation
			None.
10	For the purposes of calculating the proposed levy, have we got the definition of a single service and a train right?	<p>The Agency's preferred charge model bases the charge on two measures: passenger service kilometres (for rail operators) and train kilometres (for access providers).</p> <p>A number of submitters were concerned that the consultation definition would require them to monitor shunting and/or work/maintenance rail vehicle movement, which they presently had no way of monitoring and was not the purpose of their operation. Others also requested clear descriptions to avoid ambiguity as to what was meant by each term and help licence holders easily understand it.</p>	<p>As noted by submitters, requiring shunting, and/or work/maintenance rail vehicle movements to be reported and invoiced has little value compared to the monitoring cost, and in some cases may discourage safety activity.</p> <p>For approximately half of licence holders, however, this is the core rail activity (the 'industrial' sector) and so it cannot be exempted completely.</p> <p>Changes made as a result of consultation The definitions of "train" will be modified to exclude non-core activities of the licence holder.</p> <p>To enable clarity, the definition for access providers will also be examined to ensure it is clear that any types of rail vehicle (e.g. including light rail vehicles such as trams) are in-scope if carrying out a core activity.</p>
11	Is the passenger train, freight train and/or work train distance recorded in your FY17/18 Safety Performance Report indicative of your forecast activity for the next five years?	<p>Most submitters stated that their rail activity over the next five years would be stable or only subject to negligible change. Others who identified significant change, were unable to provide reliable forecasts of activity over the next five years.</p>	<p>Without accurate forecasts, the NZTA will base charge rates on the latest available activity data (from the 2017/18 season).</p> <p>It is probable that, overall, rail activity will increase in the next five years. This may or may not result in an increase in service / rail vehicle kilometres (operators may respond by increasing passenger/tonnage per vehicle).</p> <p>The NZTA will ensure over-collection is controlled by utilising the ability of the director to refund the charge.</p> <p>Changes made as a result of consultation None.</p>
12 & 13	How do you think the rail safety regulator could improve its performance?	<p>A number of submitters believed the regulator needed more specific industry knowledge, while others sought improved guidance, information and engagement with the regulator. Others were also concerned that the regulator need to be more transparent and</p>	<p>The NZTA is confident that the additional resourcing through the maturity model will allow it to finish the transition from a process-driven regulator to an intelligence-led, modern, risk-based regulator prepared to implement the requirements of the Railways Act fully.</p>

No.	Question	Issues raised by submitters	Changes made as a result of consultation
	<p>What would you need to see demonstrated in the performance of the regulator that will assure you that rail safety objectives are achieved and value for money is being delivered?</p>	<p>proactive, and following modern safety practices.</p>	<p>The NZTA's resourcing model is based on the assumption that a balanced and accessible team is needed to deliver the operating model. Rail industry knowledge is critical to the team, but along with other key skills such as safety systems, risk management, regulatory practice, operations management and investigations.</p> <p>The NZTA also acknowledged that it had not, in the past, provided the level of direction necessary to the industry, and its actively addressing this, including releasing new guidance, spreading safety learnings faster, more efficient assessments, and the initiation of a cross-industry forum that will facilitate the development of standards for the sector to apply.</p> <p>The NZTA is also committed to increasing the rail safety regulator's transparency and demonstrating the safety outcomes that this proposed capability will deliver.</p> <p>Changes made as a result of consultation The feedback from the industry has reinforced the need for greater engagement and leadership, and the Agency will release its maturity model to allow the industry to challenge it on progress.</p>

Appendix 2: Comparison of rail regulator current fees and charges and proposed fees and charge rates

CURRENT				PROPOSED		
Annual fixed safety charge	Per licensed organisation	\$347.80		Rail operator licence	\$400	
				Rail access provider licence	\$400	
	To hold either or both types of licences			Most licence-holders require both these licences		
Annual variable safety charge	Access provider (network)	\$152.60	Per km track	Charitable or voluntary organisations	None	
	Access provider (other)	\$4.72	Per km track	All other operators	12.6 cents	Per passenger train km
	Passenger operator (metro)	\$12.61	Per 1000 pax	All other access providers	6.3 cents	Per train km on their network
	Passenger operator (cable car)	\$0.89	Per 1000 pax			
	Passenger operator (heritage and small tourist business)	\$1.55	Per 1000 pax			
	Passenger operator (long distance)	\$18.53	Per 1000 pax			
	Freight operator	\$83.70	Per \$mill of freight revenue			
Fees (fixed)	Licence application	\$104.00		None		
Fees (hourly rate)	Ordinary or special safety assessment	\$156.00	Per hour	Licence application Safety case variation or replacement Ordinary or special safety assessment Compliance intervention Major project	\$120	Per hour
Fees (other costs)	None			Any other expense incurred by the Agency	Actual and reasonable	

Appendix 3: Share of charge by sector

Sector	Current charge	Purely staff time based	Purely risk based	Preferred charge option
				

Withheld to protect commercial position of others

Appendix 4: Maturity model for the rail safety regulator

The NZTA has developed a proposal to enhance the capability and long-term performance of the rail safety regulator. The proposal seeks additional investment to:

1. Fully fund the current regulatory function (running annual deficits at present); and
2. Enable the NZTA to start building the key foundation capabilities of a high performing rail regulator.

It is intended that the NZTA will build the capability of the regulator over a 5 year period (2019 – 2024). The step change in performance will occur in the 2019 - 2024 funding period. Over this period, the regulator will apply improved approaches and additional resourcing to transition to a modern, proactive, intelligence-led, risk-based regulator. The underpinning legislative framework may also need to be addressed to make this leap.

The investment aims to create a credible, influential and well-resourced regulator that is able to effect systemic improvements in rail safety through regulatory leadership. The intention is that the regulator will work at a system level, using a combination of intelligence, engagement, education, proactive and reactive investigation, and enforcement to realise these improvements.

Evolution of capability in the rail safety regulator						
Core capabilities	Investment & delivery	Short-term shifts (Years 1 - 2)	Medium-term shifts (Years 3 - 4)	Future state (Years 5+)	What are the benefits to New Zealand	What are the benefits to Rail Participants
Data analysis, risk and intelligence	\$0.43m	<p>Publication of safety intelligence to support sector decision-making.</p> <p>Part of agency-wide work to develop an integrated intelligence capability for front-line and management support.</p> <p>Identification of critical risks to improve resource targeting.</p>	<p>Safety benchmarking to enable continuous outcome monitoring.</p> <p>Risk-based, intelligence-led planning and case management to get ahead of issues and target harms across our functions in a systematic way, linked to outcomes.</p> <p>Identification of existing, and emerging, critical risks to strengthen understanding and mitigation of the contributors of catastrophic accidents.</p>	<p>Relevant, timely and robust intelligence is core to informing all regulatory functions.</p> <p>Catastrophic risks are understood and managed to provide true assurance of safety.</p>	<p>Risks with the potential to result in catastrophic harm are effectively managed through more proactive regulatory oversight.</p> <p>Reduced safety risks and harm to the public resulting from increased field inspection, assessment and enforcement capability.</p> <p>Improved transport system resilience by ensuring a more robust regulatory model minimises network disruptions from safety incidents.</p>	<p>Enhanced public confidence and usage of rail as a transport mode, through a more visible, proactive and capable rail regulator.</p> <p>Cultural shift in industry to safe culture and ownership of safety individually and jointly.</p>
Strategy, research and evaluation	\$0.48m	<p>Understand how future shifts in the industry will impact demands on safety and the regulator.</p>	<p>Understand legislative bottlenecks to effective regulation at minimal compliance cost.</p> <p>Clarification of safety accountabilities between rail participants, the national rail provider and the regulator.</p> <p>Practical and supported industry safety strategy that provides clear direction.</p>	<p>NZTA/MOT strategy that delivers the type of regulator the sector needs, underpinned by potential structural or legislative improvements.</p>		
System leadership and sector engagement, communication	\$0.31m	<p>Clear regulator role in driving safety and continuous improvement in the industry through establishment of Rail Industry Advisory Forum.</p> <p>Wide-spread engagement with the sector at a strategic level around accountabilities, co-regulatory engagement, safety expectations and future industry shifts.</p>	<p>Rail Industry Advisory Forum running as collaborative, industry-wide think-tank to share intelligence, identify issues and develop solutions.</p> <p>Establishment of industry bodies to develop critical standards and best practice.</p> <p>Standards locked into rule or regulatory frameworks by regulator as required.</p>	<p>Maintain role as expectations setter for rail safety, but leadership of risk management and co-ordination transfers back to the sector.</p>		
Guidance and education	\$0.29m	<p>Publication of guidance on critical skills (eg risk management, governance, assurance).</p>	<p>Development of a fuller suite of guidance – more targeted and including toolkits.</p> <p>Improved capability and capacity to assist participants directly.</p>	<p>Maintain role as provider of regulatory guidance, but safety and technical guidance provided more through cross-industry peer support and technical groups.</p>		
Licence management and assessments	\$0.92m	<p>More proactive approach to licencing and exemptions to ensure oversight of rail participants not currently licensed.</p>	<p>Linked with intelligence capability to ensure that licence management and assessments drive consistent expectations across the sector.</p>	<p>Root-cause assessment capability ensures system failures never turn into accidents.</p>		

		Enhance assessment approach to improve engagement and oversight, and better detect systemic issues.	Move from “one size fits all” assessment regime to tailored compliance monitoring interventions to suit scale and risk of operations. Rail participants understand regulatory expectations upon them.			
Investigations	\$0.38m	Formalise and implement investigations model. Investigations deliver a dual purpose: 1. Resolve safety failings 2. Hold participants to account for their actions (or inactions). Increase number of investigations.	Improved transfer of findings from investigations to better address systemic failings across multiple participants. More robust investigations to support fair and proportionate interventions, including prosecution when necessary.	Risk-based, intelligence-led investigation capability ensures incidents never re-occur as accidents.		
Monitoring, enforcement and compliance	\$0.79m	Safety performance is consistently and efficiently collected. Rail participants understand compliance expectations upon them. Enforcement decision framework integrated within wider organisation.	Strong prosecutorial capability ensures safety is a key governance conversation.	Legislative amendment delivering improved enforcement tools for minor or administrative infractions.		
Overall assessment of capability	\$3.6m	Defining and starting to embed new operating model. Core education, engagement and enforcement capabilities embed. Regulator increasing its sector engagement and visibility, and re-setting accountabilities. Key regulatory operating systems and processes in place, including information management and people capability.	Risk-based, intelligence-led regulatory operating model starting to embed. Emerging signs of the regulator starting to build a credible position as a system leader within the rail safety system.	An effective, well-rounded, proportionate and credible regulator providing clear and visible system leadership, supported by fully embedded regulatory operating model.		