

## Revised funding model for the rail safety regulator following Cabinet on 22 July 2019

<b>Reason for this briefing</b>	This briefing provides a tiered approach to the annual safety charge in the proposed funding model for the rail safety regulator, to minimise the impact on the tourism and heritage sector. It also expands eligibility for the partial charge exemption for not-for-profit rail organisations.
<b>Action required</b>	Consider the proposed tiered charging approach and expanded exemption eligibility and, if satisfied, approve the proposal, consistent with the Power to Act given by Cabinet on 22 July 2019.
<b>Deadline</b>	At your earliest convenience.

### Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Erin Wynne	Director, Rail Transformation	[REDACTED]	✓
[REDACTED]	Adviser, Rail and Freight	[REDACTED]	

### MINISTER'S COMMENTS:

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<b>Date:</b>	30 July 2019	<b>Briefing number:</b>	OC190728
<b>Attention:</b>	Rt Hon Jacinda Ardern Minister for Arts, Culture and Heritage  Hon Kelvin Davis Minister of Tourism  Hon Grant Robertson Minister of Finance  Hon Phil Twyford Minister of Transport	<b>Security level:</b>	In-confidence

### Minister of Transport's office actions

- Noted*
 *Seen*
 *Approved*
- Needs change*
 *Referred to*
- Withdrawn*
 *Not seen by Minister*
 *Overtaken by events*

## Purpose of report

1. This briefing provides a tiered approach to the annual safety charge in the proposed funding model for the New Zealand Transport Agency (the NZTA) rail safety regulator (the regulator), to minimise the impact on the tourism and heritage sector. It also expands eligibility for the partial charge exemption for not-for-profit rail organisations.

## Cabinet invited the Minister of Transport to develop a tiered approach to the proposed fees and charges

2. On 22 July 2019 Cabinet:
  - **noted** the contents of the submission and supplementary information attached to CAB-19-SUB-0353
  - **invited** the Minister of Transport to develop a revised proposal with a tiered approach to the proposed fees and charges to minimise the impact on the tourism and heritage sector
  - **authorised** a group of Ministers comprising the Minister of Arts, Culture and Heritage, Minister of Tourism, Minister of Finance and Minister of Transport to have Power to Act to take final decisions on the revised proposal [CAB-19-MIN-0353 refers – attached as **Appendix 1**].

## Tiered approach for the variable annual safety charge which funds the regulator

3. The Ministry of Transport (the Ministry) has developed a tiered approach to the proposed annual charge to fund the rail safety regulator which:
  - **minimises** the impact of the proposed funding model on the rail sector, particularly the tourism and heritage sector, by placing caps on the total annual safety charge
  - **exempts** all charities or volunteer organisations from the variable safety charge, which represents a significant portion of the tourism and heritage sector
  - **recalculates** the variable safety charge rate to take into account the reduction in revenue due to the caps and extending the exemption criteria.
4. The proposed approach has four separate categories for both passenger service operators and access providers, outlined below. **Appendix 2** also provides a table which further describes the tiered approach.

### *Rail licence holders' annual safety charge*

5. The annual safety charge is made up of a fixed rate of \$400 per licence class (the annual fixed safety charge), and a variable rate (the annual variable safety charge) based on network traffic and passenger service kilometres.
6. The licence class includes access providers and rail operators. Access providers control the use of a railway line by rail licence holders. Rail operators provide or operate rail vehicles such as locomotives, railcars, trams, light rail vehicles, hi-rail vehicle, maintenance vehicles, and shunting tractors.

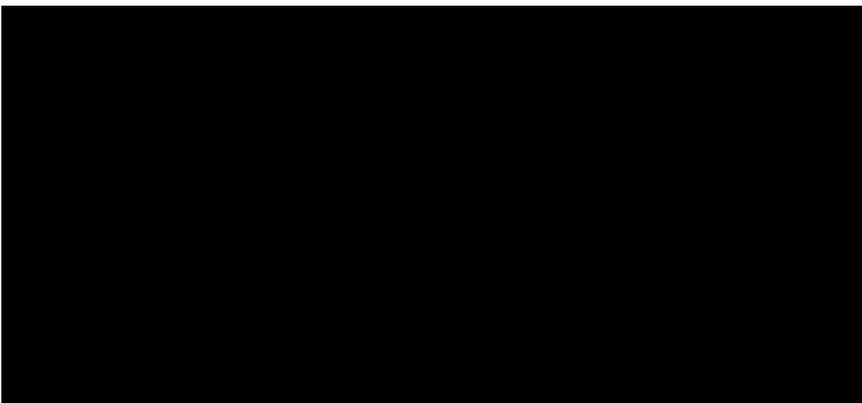
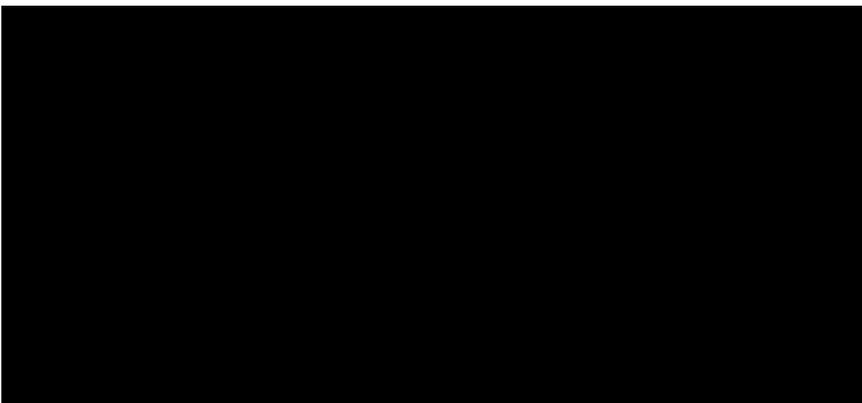
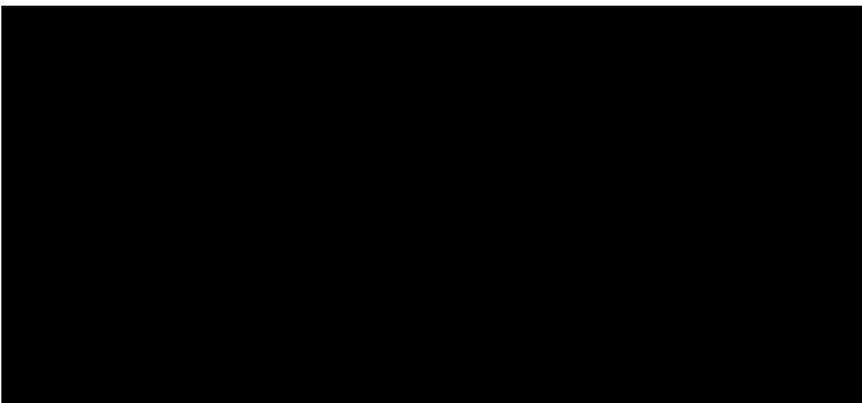
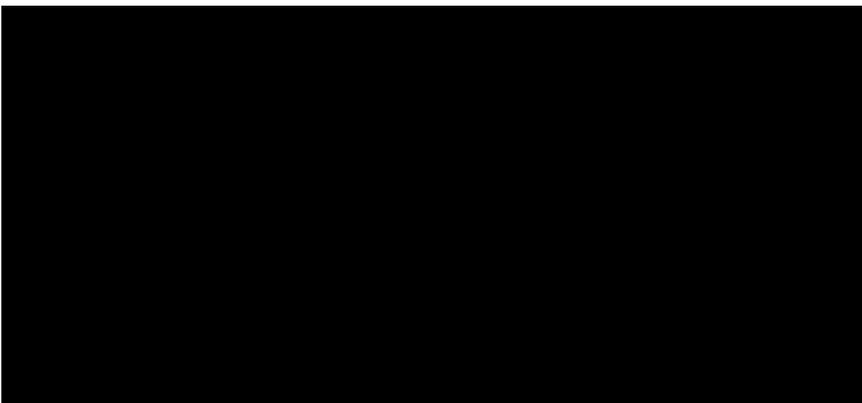
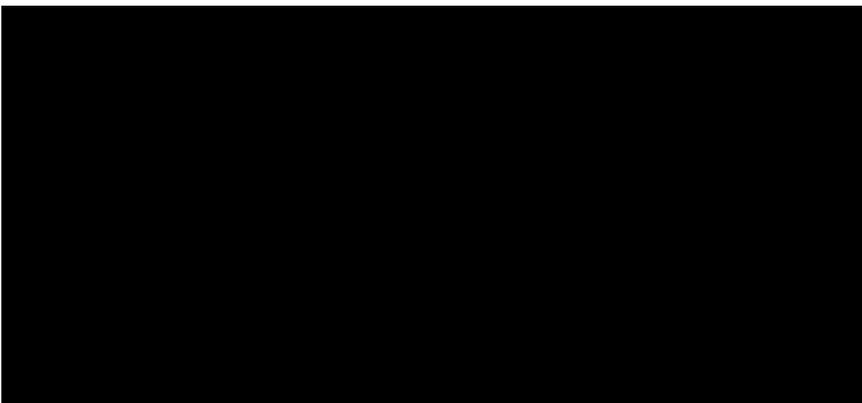
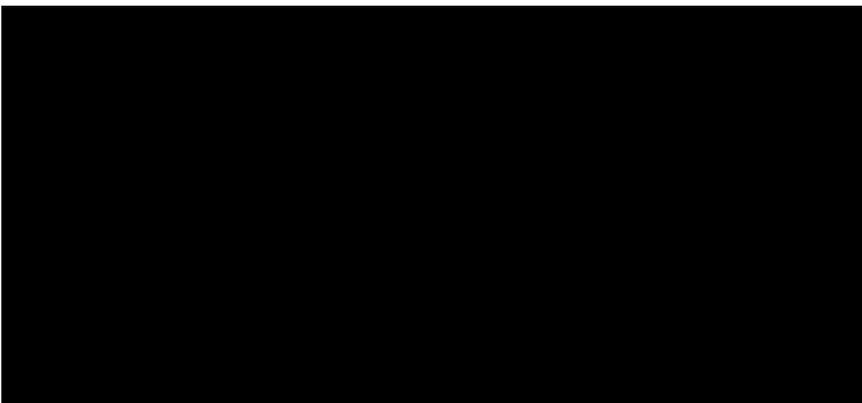
7. The proposed approach has the following categories and annual safety charge caps for **access providers**:
- for access providers with over 5,000,000 network traffic kilometres per annum, there is no cap
  - for access providers with network traffic kilometres over 500,000 but less than or equal to 5,000,000 per annum, their annual charge is capped at \$6,000
  - for access providers with network traffic kilometres over 50,000 but less than or equal to 500,000 per annum, their annual charge is capped at \$3,000
  - for access providers with network traffic kilometres less than or equal to 50,000 per annum, their annual charge is capped at \$1,500.

8. The proposed approach has the following categories and annual safety charge caps for **rail operators**:
- for rail operators with over 2,500,000 passenger service kilometres per annum, there is no cap
  - for rail operators with over 250,000 but less than or equal to 2,500,000 passenger service kilometres per annum, their annual charge is capped at \$6,000
  - for rail operators with over 25,000 but less than or equal to 250,000 passenger service kilometres per annum, their annual charge is capped at \$3,000
  - for rail operators with less than or equal to 25,000 passenger service kilometres per annum, their annual charge is capped at \$1,500.

9. All rail operators which are registered charities or volunteer operators (i.e. not-for-profit and no paid staff) will be exempt from the variable safety charge.

10. If a licence holder is both an access provider and a rail operator, the cap is applied based on the higher of the cap tiers for which they qualify. To provide an example: if an operator is both an access provider and passenger rail operator, and has reported annual activity levels of 10,000,000 network traffic kilometres as access provider, but only 2,000,000 passenger service kilometres as rail operator, the capped rate of \$6,000 for their rail operator activity does not apply, because the 10,000,000 network traffic kilometres is charged at the full rate, and is not subject to a cap or exemption.

11. A number of operators will see a material reduction in their annual safety charge between the previous proposal and the revised proposal, including:

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12. **Appendix 3** provides a full breakdown of the impact of the variable safety charge for rail operators from the proposed new tiered approach.

### Cost of the proposal

13. The NZTA estimates that the capping of rates and additional exemptions for registered charities or volunteer operators will result in approximately \$110,000 less being recovered via the variable safety charge.

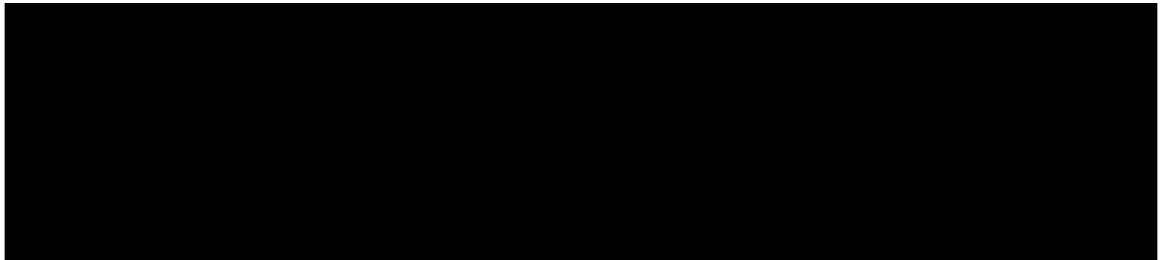
*The Ministry recommend increasing the variable safety charge rate to account for this lost revenue*

14. This will require an increase in the annual variable safety charge:
- for access providers, from 6.3 cents to 6.6 cents for each network traffic kilometre operated on their network
  - for rail operators, from 12.6 cents to 13.2 cents for every passenger service kilometre.

*This cost will largely fall on KiwiRail, Transdev Auckland and Transdev Wellington*

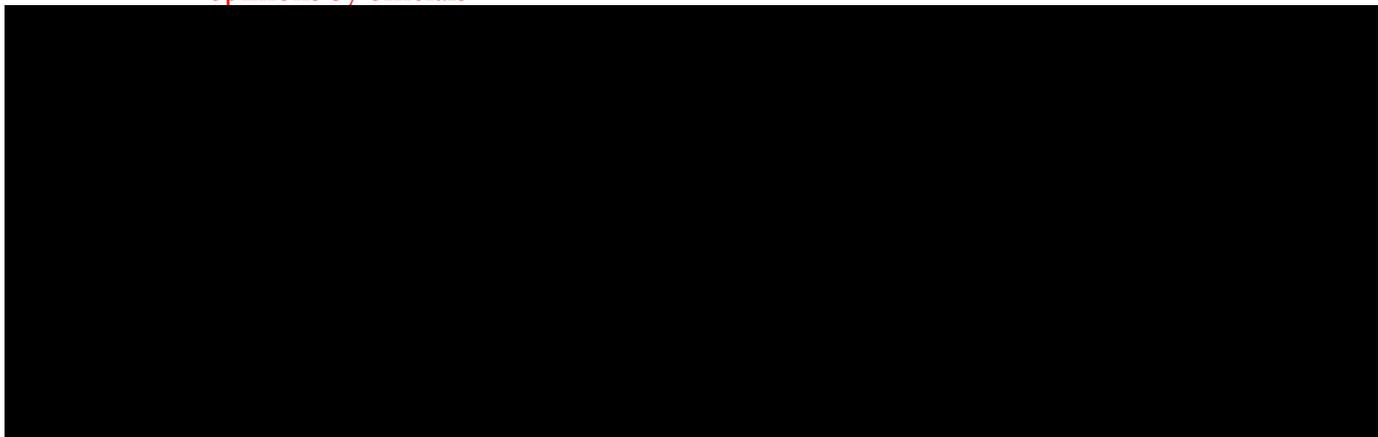
15. As the three largest operators, and with the proposed caps and exemptions, KiwiRail, Transdev Auckland and Transdev Wellington will be the only operators subject to the full variable safety charge.
16. The NZTA advises that the impact of increasing the rates for both access providers and rail operators will result in the \$110,000 in lost revenue largely being divided between the three operators, based on reported activity levels, in the approximately following manner:

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### Risks

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20. On the other hand, the proposal consulted on envisaged significantly higher charges for all rail participants, so the overall cost will likely be lower than they had anticipated. This is because the deficit of approximately \$2.8 million (as at 30 June 2019) is no longer being recovered via the fees and charges [OC190107 refers].

*Complexity of the revised funding model*

21. This revised proposal complicates the original proposal by dividing the rail sector into tiers and determining three capping levels. [REDACTED]
22. Setting caps as proposed is considered the simplest, fairest and most transparent way of addressing Cabinet's concerns, because:
- The Ministry has chosen the tiers to be consistent (with each other and the general principles in the funding review) and at levels where variations would have little or no effect on rail participants' charges
  - setting caps more transparently communicates that the intent of the measure is affordability rather than perceived differences in risks between different sectors.

**Recommendations**

23. The recommendations are that you:
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 all volunteer or charitable operators and not recovering the regulator's deficit from the rail sector
  5. **note** that Cabinet considered the paper entitled *New Zealand Transport Agency's Rail Safety Regulatory Function: Proposed Funding for 2019/20 – 2023/24* on 22 July 2019 and:
    - 5.1 **noted** the contents of the submission and supplementary information attached to CAB-19-SUB-0353
    - 5.2 **invited** the Minister of Transport to develop a revised proposal with a tiered approach to the proposed fees and charges to minimise the impact on the tourism and heritage sector
    - 5.3 **authorised** a group of Ministers comprising the Minister for Arts, Culture and Heritage, Minister of Tourism, Minister of Finance and Minister of Transport to have Power to Act to take final decisions on the revised proposal

6. **note** that the Ministry of Transport has developed a tiered approach to the proposed fees and charges which minimises the impact on the tourism and heritage sector by:
- 6.1 **exempting** registered charities and volunteer organisations and
- 6.2 **implementing** a number of caps on the variable safety charge
7. **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 or replacement, follow-up work when non-compliance is to be resolved, and any rail safety regulator involvement in major projects Yes / No
8. **agree** to setting an annual charge using the licence-class as the means of allocating the charge across all rail licensees Yes / No
9. **agree** to recovering reasonable costs, for fee-based work, of staff expenses and, if required, independent contractors Yes / No
10. **agree** to setting an annual fixed safety charge of \$400 for each access provider and rail operator noting that licensees who carry out both classes of activity will pay a fee for each licence-class Yes / No
11. **agree** to setting an annual variable safety charge using the licence-class, calculated at the rate of: Yes / No
- 11.1 13.2 cents for any rail operator for every passenger service kilometre (for example, if a passenger service on the NRS travelled 20 km from one station to another, the charge for that operator would be \$2.64)
- 11.2 6.6 cents for any access provider for each network traffic kilometre operated on their network (in the above example, KiwiRail as the NRS access provider would be charged an additional \$1.32)
12. **agree** to the following categories and annual variable safety charge caps for **rail operators**: Yes / No
- 12.1 for rail operators with over 2,500,000 passenger service kilometres per annum there is no cap
- 12.2 for rail operators with over 250,000 but less than or equal to 2,500,000 passenger service kilometres per annum, their annual charge is capped at \$6,000
- 12.3 for rail operators with over 25,000 but less than or equal to 250,000 passenger service kilometres per annum, their annual charge is capped at \$3,000

- 12.4 for rail operators with less than or equal to 25,000 passenger service kilometres per annum, their annual charge is capped at \$1,500
13. **agree** to the following categories and annual variable safety charge caps for **access providers**: Yes / No
- 13.1 for access providers with over 5,000,000 network traffic kilometres per annum there is no cap
- 13.2 for access providers with network traffic kilometres over 500,000 but less than or equal to 5,000,000 per annum, their annual charge is capped at \$6,000
- 13.3 for access providers with network traffic kilometres over 50,000 but less than or equal to 500,000 per annum, their annual charge is capped at \$3,000
- 13.4 for access providers with network traffic kilometres less than or equal to 50,000 per annum, their annual charge is capped at \$1,500
14. **agree** that all registered charities or volunteer (not-for-profit and no paid staff) rail operators and access providers are exempt from the annual variable safety charge Yes / No
15. **agree** that where a licence holder is both a rail operator and an access provider, and is liable for the full variable safety charge in either of their roles, a cap or exemption will not apply in respect of their other role, even if a cap or exemption would have otherwise applied Yes / No
16. **note** that the National Land Transport Fund will contribute \$743,600 per annum towards the costs of the rail safety regulator under the current GPS
17. **note** that all fees and charges are shown as GST exclusive
18. **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 **7, 8, 9, 10, 11, 12, 13, 14** and **15** Yes / No
19. **authorise** the Minister of Transport to make final decisions, consistent with the overall policy intent of this paper and the earlier Cabinet paper [CAB-19-MIN-0353 refers], on details (including details of transitional provisions) that arise during the drafting of the amendment regulations referred to at recommendation **18** without reference to Cabinet or the group of Ministers provided the Power to Act by Cabinet Yes / No
20. **note** that the Minister of Transport intends to make a press statement following approval of the proposed funding changes and that the Regulatory Impact Statement provided with the Cabinet paper [CAB-19-MIN-0353 refers] will then be published

21. **note** that the press statement will take into consideration the wider review of NZTA's regulatory function, as discussed in the earlier Cabinet paper [CAB-19-MIN-0353 refers]
22. **agree** to the proactive publication of this paper and the earlier Cabinet paper [CAB-19-MIN-0353 refers] on the Ministry of Transport's and NZTA's websites, consistent with the Official Information Act 1982. Yes / No

Erin Wynne  
**Director, Rail Transformation**

**Rt Hon Jacinda Ardern**  
Minister for Arts, Culture and Heritage

Date:

**Hon Kelvin Davis**  
Minister of Tourism

Date:

**Hon Grant Robertson**  
Minister of Finance

Date:

**Hon Phil Twyford**  
Minister of Transport

Date:

**Appendix 1: CAB-19-MIN-0353**

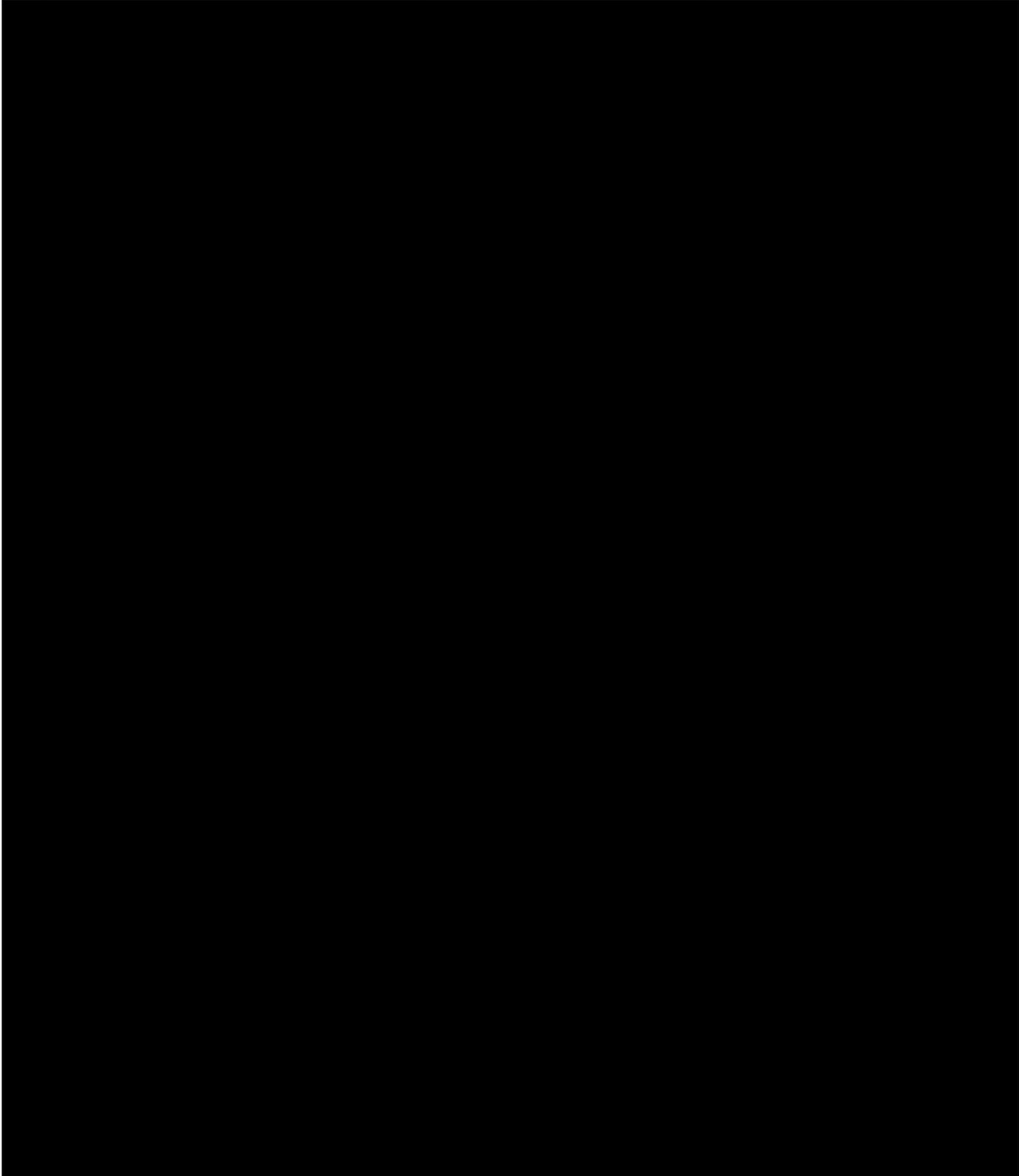
**Appendix 2:** Proposed tiered approach – variable safety charge

Variable safety charge				Maximum annual safety charge*
Access provider		Rail operator		Access Provider and/or Rail Operator
Activity level (network traffic kilometre per annum)	Access provider (per network traffic kilometre)	Activity level (passenger service kilometres per annum)	Rail operator (per passenger service kilometre)	
Activity level > 5,000,000	6.6 cents for each network traffic kilometre	Activity level > 2,500,000	13.2 cents per passenger service kilometre	No cap*
Activity level > 500,000 but ≤ 5,000,000	Capped at \$6,000*	Activity level > 250,000 but ≤ 2,500,000	Capped at \$6,000*	Capped at \$6,000*
Activity level > 50,000 but ≤ 500,000	Capped at \$3,000*	Activity level > 25,000 but ≤ 250,000	Capped at \$3,000*	Capped at \$3,000*
Activity level ≤ 50,000	Capped at \$1,500*	Activity level ≤ 25,000	Capped at \$1,500*	Capped at \$1,500*
Registered charitable or volunteer operators (not-for-profit and no paid staff)	Exempt	Registered charitable or volunteer operators (not-for-profit and no paid staff)	Exempt	An access provider <u>or</u> a rail operator - \$400
				An access provider <u>and</u> a rail operator - \$800
* The total annual safety charge includes the variable safety charge plus \$400 for each class of licence (rail operator and/or access provider) the organisation holds.				
**Note that if an licence holder is both an access provider and a rail operator, the cap is applied based on the higher of the cap tiers they qualify for.				

**Appendix 3:** Potential impact of the variable safety charge for rail operators from the proposed new tiered approach

Ful amount
Capped at \$6,000
Capped at \$3,000
Capped at \$1,500
Exempt - charitable and voluntary organisations

Organisation	Sector	Business type	2018/19 Annual licence fees	Previous proposal	Revised proposal
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Ful amount					
Capped at \$6,000					
Capped at \$3,000					
Capped at \$1,500					
Exempt - charitable and voluntary organisations					

Organisation	Sector	Business type	2018/19 Annual licence fees	Previous proposal	Revised proposal
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