Stage 2 Cost Recovery Impact Statement

Sustainable funding for the rail safety regulator

Agency Disclosure Statement

This Cost Recovery Impact Statement (CRIS) has been prepared by the New Zealand Transport Agency (the Transport Agency) and assessed as meeting the criteria by the Ministry of Transport's regulatory impact statement assessment panel.

The Statement describes and identifies the estimated costs of providing the Transport Agency's rail safety function, including providing additional resources for the function to enhance its capability and capacity. This will ensure the function is operating at a minimum acceptable level for a safety regulator and contributing to ensure New Zealand's rail system is operating at a safe level with the risks of any catastrophic incident being effectively managed.

This CRIS then provides an analysis of options to meet the estimated costs, on a sustainable basis, of the Transport Agency's rail safety function costs. The preferred funding option from this analysis is a mix of direct fees and a fixed and variable annual safety charges, both charged on rail licence holders, and an annual contribution from the National Land Transport Programme (NLTP). The CRIS then outlines the results of public consultation, particularly with the rail industry, on the preferred option.

The analysis is based on three significant assumptions. The first is that while the safety regulator wishes to see a reduction in all deaths and injuries associated with the rail network, its main efforts will be geared towards the prevention of a catastrophic incident on the rail network – for example a high-speed passenger train derailment. Economic costs from a goods train derailment, provided no staff or network users are injured, are of a lesser concern to the rail safety regulator than an incident leading to, or potentially causing, death or serious injury. The second assumption is that direct crown funding is not a funding option, meaning, as far as practicable, costs will be recovered from licensees. This is consistent with Government policy in this area, where industry and its customers are, as principal beneficiaries of safety regulation, expected to meet the costs of that safety regulation through fees and charges. The need for a licence is set out in the Railways Act 2005, and a review of this legislation was out of scope for the rail safety regulatory review. This means we were unable to widen the scope of who would be levied, nor could we try and reduce costs for specific parts of the industry (for example Tram operators) by providing a lesser level of regulatory requirements. This is the third assumption.

The analysis considered the funding requirements for the rail safety regulator over a five-year period (financial years 2019/20 to 2023/24) assuming an average change in the consumer price index of 2 percent per annum, and that there would be no significant change in the total train kilometres travelled. The total funding requirement was then 'converted' into current values and divided across each of the five years, to arrive at an annual funding need of $3.5 million. This would slightly over-recover in the first few years then under-recover in the final years but result in a break-even situation at the end of 2023/24. This is dependent upon a further assumption – that there is continued agreement

for the National Land Transport Fund to support rail safety, and projected fees' income of $250,000 per year is achieved. It is considered that all these assumptions are plausible and appropriate. What is unclear in this analysis is the impact of fee and charge increases on the number of licensees. Current licence holders cover a wide variation in size – from major businesses like Kiwirail through to voluntary organisations as interested in preserving New Zealand's steam heritage as in carrying passengers. The latter may have a limited ability to pass on or recover increased costs. While the review has sought to mitigate the negative financial impacts on smaller licensees through proposing a charge exemption for charity and voluntary organisations, it is still unclear whether this will be broad enough to cover smaller licensees and prevent the migration of operators from the industry. This aside, the analysis is considered sufficiently robust and may be depended on for the setting of fees and charges for the rail industry to ensure a viable rail safety regulator.

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Christchurch, 14 December 2018

Executive summary

1. Since 2009, 134 people have died on the rail system, and there is the potential for catastrophic accidents involving hundreds of people. The New Zealand Transport Agency provides regulatory oversight of the safety of the rail sector, which consists of 87 licenced participants and hundreds of other organisations. The funding proposal has two key objectives, which are to:

    1.1 deliver adequate, sustained funding to support a risk-based, intelligence-led responsive safety regulator contributing to a safe rail industry and rail operators who own and manage their safety risks

    1.2 accurately describe what the safety regulator is delivering, and at what cost, to enable timely and regular funding reviews in the future, to prevent the rail safety regulator incurring sizable operating deficits and provide operators with less demanding funding increases.

2. The New Zealand Transport Agency (the Transport Agency), as rail safety regulator (the safety regulator), is responsible for the implementation of the Railways Act 2005. The regulator provides independent assurance to government and the public that those who provide rail services in New Zealand effectively manage any safety risks to staff, other rail operators, and the general public. This greatly contributes to making New Zealand's rail system safe and, in turn, enables our rail system to positively contribute as a sustainable part of our transport network.

3. The key safety legislation is the Railways Act 2005 (the Act) which established a licensing regime to ensure rail participants assess and control their safety risks and provide assurance of this to the Transport Agency.

4. The safety regulator function is funded by third-party fees and charges charged of rail system participants. The current fees and charges were set in 2008 under the Railways Regulations 2008. The fees and charges set in 2008 were, even then, below the revenue required for the regulator to break even, and the fee and charge rates have remained unchanged since then. The current income from fees and charges is around $1.2 million per annum. This is insufficient to cover the costs of providing the regulator function and the regulator function has been in deficit. In July 2017 the Board of the Transport Agency wrote off a deficit of $5 million, accrued since 2008. The problem of this continued deficit was that it dictated the level of the regulator's activities rather than the regulator delivering activities which it felt were required.

5. This was highlighted by independent reviews in 2013 which identified the regulator as "passive" and underperforming its duties as a regulator, following a reactive process-based approach to its responsibilities.

6. The Transport Agency considers it requires an annual income of $3.5 million for each of the five years between 2019/20 to 2023/24. This amount is needed to ensure the regulator becomes a more effective regulator, recovers its current deficit, and reaches break even by 2023/24. This document concludes the $3.5 million annual income should be obtained through the National Land Transport Fund, and through fees and charges charged on rail licensees. Charges would be allocated on a simple licence class basis, and the amount of activity (measured by travel by passenger and goods trains).

Background

7. The Transport Agency is responsible for overseeing regulatory compliance in the land transport system. The independent statutory functions enabling this are conferred on the Transport Agency in the Land Transport Management Act 2008 (LTMA). Under the LTMA, the Transport Agency's objective is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.

8. The Transport Agency, provides independent assurance to government and the public that those who provide rail services in New Zealand effectively manage safety risks to staff, other rail operators, and the general public. The safe operation of rail transport services across New Zealand is achieved through regulation of the rail industry in accordance with the Railways Act 2005 (the Act).

9. The Act's purpose is to ensure the safe operation of rail transport services across New Zealand. The intent of the Act is that the industry develops, implement, administer, and continuously improve its own codes of practice and standards and safety risk management policies and procedures. The Transport Agency is responsible for administering and enforcing the Act. The Act empowers the Transport Agency to intervene when a specific safety risk is not being addressed acceptably. In regard to the safety of railway operations, the Transport Agency's statutory responsibility is focused on the adequacy of the systems and operations. This is in conjunction with WorkSafe New Zealand whose statutory responsibility in this area is focused on the health and safety of the work activity. The Transport Agency's oversight includes activities of volunteer rail organisations, which are not under the jurisdiction of WorkSafe. WorkSafe's oversight includes non-rail activity carried out by rail organisations, which are not under the jurisdiction of the Transport Agency.

10. Under the Act, rail participants operating a rail vehicle or providing access to a rail network must be licensed, which requires submitting a safety case to the safety regulator for approval and adhering to it when carrying out their rail activities. Licenses do not expire, but safety cases must be maintained and updated, with any changes approved by the safety regulator. The safety case explains how the rail participant will:

    - ensure it properly identifies, assesses and controls the safety risks of its operations
    - consult and/or communicate safety risks as appropriate with its rail personnel, representatives of rail personnel and any rail participants it may interact with
    - continuously review and improve how it manages risk
    - provide assurance to the regulator that it is compliant with its safety case.

11. The approval of licenses, safety cases, and variations to them requires the Transport Agency to:
    - work with pre-application licence holders to ensure they are fully aware, and prepared for, the obligations and requirements
    - process licence forms
    - review and consider safety cases
    - consult with WorkSafe
    - work through amendments with rail operators to ensure a satisfactory safety case is produced before a licence is granted
    - decline or grant approval

- implement a monitoring programme to confirm compliance of operations with safety case.

12. The Transport Agency also works closely with other regulatory agencies including the Police, the Coroner, and the Transport Accident Investigation Commission.

13. The rail safety regulatory function operates within a cost-recovery funding arrangement, where all its funding comes from fees for particular activities, or from an industry charge (in the form of an annual charge). The Railways Regulations 2008 charges were set at a level below that required for the regulator to break even. These charges have been adjusted for GST but, otherwise, have remained the same since 2008.

14. The funding review had two key objectives, which are to:

    14.1 deliver adequate, sustained funding to support a risk-based, intelligence-led responsive safety regulator contributing to a safe rail industry and rail operators who own and manage their safety risks, and

    14.2 accurately describe the safety regulator's functions being delivered, and at what cost, to enable timely and regular future funding reviews, this would assist the safety regulator and provide operators with frequent and less demanding funding increases, where required.

15. Current income from existing fees and charges is approximately $1.2 million with operating costs averaging $2.4 million (in 2016/17 these fees and charges generated $1.2 million in income whereas costs for the regulator function were $2.026 million). An operating deficit of $5 million has accumulated since 2008 resulting in the Board of the Transport Agency writing off this deficit in July 2017.

The New Zealand Rail System

16. New Zealand's national rail system is made up of national and non-national rail system lines and currently has 87 active licensed rail participants. A rail participant is any organisation that owns, maintains, controls, or operates railway infrastructure or rail vehicles. There are two types of licensed rail participants:

    - Operator - runs rail vehicles on the rail system
    - Access provider – maintains and controls railway infrastructure.

17. The rail system is dominated by three large operators, KiwiRail and two urban passenger operators in Wellington and Auckland, and comprises around 3,850 km of track:

    - the National Rail System (NRS), 3,350 km of publicly owned rail line administered by KiwiRail
    - non-NRS, 500 km privately owned rail line, much of which is linked to the NRS, such as industrial rail sidings, while other parts are separate to the NRS such as heritage operations like Christchurch's Tourist Tramway.

18. In 2017/18 35.8 million passengers were carried, and 16.2 tonnes of freight were transported across the rail network. The following table shows the different rail participant types.

Table 1: Breakdown of rail participants (extends beyond licensees)

RAIL PARTICIPANT	NUMBER	COMMENT
KiwiRail	1	Is also access provider for the NRS
Metro passenger providers	2	Transdev Auckland, and Transdev Wellington
NRS tourist and heritage operators	5	E.g. Dunedin Railways, Steam Incorporated
Off-NRS tourist and heritage operators	42	Full-sized locomotives, trams (Christchurch Tramway), cable cars (excluding residential access), railcars, rail golf carts
Industrials	34	Shunting wagons in industrial sites for KiwiRail to collect Servicing industrial infrastructure (e.g. power networks)
Vehicle providers	3	Provide and maintain rail vehicles for other operators
Non-licensed participants	>200	E.g.: Funders - Auckland Transport, Greater Wellington Regional Council Rail infrastructure maintenance providers, minor access and vehicle providers

Rail safety operating environment

19. As a risk-based regulator, the regulator needs to proactively monitor risk trends including identifying and monitoring what could be precursors to a catastrophic event such as signals passed at danger and derailments.

20. Analysis of precursor safety incidents enables the regulator to make robust evidence-based decisions about safety engagement and interventions. A strong driver for resourcing a proactive regulator is the increasing rail traffic and the diversity of rail operations that is changing the safety risk profile within the rail sector. In particular there is:

    - an increasing number of operators on the mainline (industrial sidings, tourism, public transport, freight, heritage)
    - increasing issues of interoperability – operators needing to interact with each other to avoid collisions and to ensure a safe operating environment
    - increasing government focus on rail as a mode of transport for freight and passengers
    - increasing rail vehicle movements, especially in Wellington and Auckland metro areas leading to increased maintenance standards and requirements.

21. Current safety priorities for the regulator such as level crossings and tunnels are expanding as the risk profile grows. For example, more analysis of what constitutes an effective maintenance programme, and what standards of maintenance must be met to ensure safety, is an outstanding concern to be resolved.

22. As growth in the rail sector occurs so will the need for a shared understanding of performance standards relating to safety practices. The current limited use of standards may be considered a risk in the future as more operators seek assurance that what they implement, on an increasingly busy rail network, will be effective.

23. Table 2, below, provides an overview of rail system activity for the most recent return June 2017 to June 2018.

Table 2: Rail system activity 2017/18

ACTIVITY		AMOUNT	COMMENT
Train distance	Total train kilometers traveled	21,529,366 km	
	Passenger trains - KiwiRail	437,877 km	Long distance passenger services Revenue services only
	Passenger trains – Metro NRS	7,607,655 km	Includes only revenue services – not shunting
	Passenger trains – Tourism and Heritage NRS	339,964 km	Includes only revenue services – not shunting
	Passenger trains – Off-NRS	397,897 km	Includes only revenue services – not shunting
	Freight trains – NRS	12,745,813 km	Includes only revenue services – not shunting
	Freight Trains - Industrial	62,924 km	Shunting only
Passengers	Total passenger numbers	35,833,500	
	KiwiRail	321,141	
	Metro NRS	33,585,977	
	Tourism and Heritage NRS	99,509	
	Tourism and Heritage off-NRS	1,826,873	
Freight		16,165,000 tonnes	KiwiRail is the only NRS freight transporter

24. To achieve meaningful and lasting safety improvements in the rail industry the regulator needs to have oversight of the whole rail sector. Amidst the rail vehicle activity there is the 'people activity': rail workers and the general public who interact with the rail system as part of their daily travel. The regulator has a role to ensure that rail participants are effectively managing safety risks with the potential to harm workers and the public.

25. Comprehensive management of critical risks is a priority for the regulator. The number of reported accidents and events in 2016/17 shown in Table 3, following, demonstrates a complex layer of people activity to be managed.

26. Rail staff incidents and public 'risk' events may require thorough investigation by the regulator before an effective sustainable solution can be decided. A responsive regulator is solution-focused and uses evidence to support rail participants in solving their own safety issues. However, there may be times when an investigation of an event reveals a more pervasive issue that requires all rail participants to change practices and the regulator has the key role in following this through.

Table 3: People exposure to risk across the rail system in 2016/17

TYPES OF ACCIDENTS AND EVENTS	REPORTED ACCIDENTS AND EVENTS
Collisions and near collisions with members of the public (pedestrians, cyclists, and motor vehicles) at level crossings	422
Collisions and near collisions with rail personnel, vehicles, equipment	77
Rail personnel accidents and incidents	406
Trespassing in the rail corridor	557
Public (on platform only) and passenger accidents and incidents	113

27. A critical juncture between rail and road transport is at level crossings where the level of crash risk is high. Table 4, below, shows the number of deaths and serious injuries at rail level crossings since 2010.

Table 4: Level crossing deaths and serious injuries (2010-2016)

	2010	2011	2012	2013	2014	2015	2016
Fatalities	1	2	6	5	5	3	7
Serious injury	0	0	2	7	6	1	3
Total	**1**	**1**	**8**	**12**	**11**	**4**	**10**

28. The numbers of deaths and serious injuries at rail crossings has remained constant since 2012 despite efforts to reduce these. As illustrated in table 3, there remains a significant level of crossing events and, in particular, vehicle collisions, albeit the number of heavy vehicle collisions has remained relatively consistent.

29. Incident reports demonstrate that the precursors (or “near-misses”) for catastrophic accidents are present. For instance, of significance for rail passenger safety risk, is the level of mainline derailments. While fortunately not leading to any recorded deaths and serious injuries over the last 5 years, the 77 recorded rail vehicle collisions or near-collisions in table 3, represent a significant potential for a catastrophic derailment event.

Legal authority for charging, scope and rationale

30. Under sections 59 and 60 of the Act, fees and charges can be set by regulation for the purposes of meeting, or assisting in meeting, the costs and expenses incurred by the Transport Agency or the Crown in the performance or exercise of functions, powers or duties or in the provision of services, under the Act or any other enactment relating to rail transport. Section 60 also allows for different rates of fees or charges, or both, for different classes of

persons, rail vehicles, railway infrastructure, or railway premises, or on the basis of different times of use, or on any other differential basis.

31. The fees and charges are to recover the cost of operating and maintaining the regulatory system for the safe operation of rail transport services across New Zealand that is achieved through regulation of the rail industry under the Act.

32. The funding review has applied the New Zealand Treasury *Guidelines for Setting Public Sector Charges* and the Office of the Auditor-General *Good Practice Guidance on Charging Public Sector Fees for Goods and Services* to identify the funding source options for each of the activities undertaken by the Transport Agency as the rail safety regulator. A high level view of the process followed follows.

33. The funding review has categorised the type of funding activities undertaken by the safety regulator by applying the following model in accordance with Treasury guidelines. A high level explanation of this follows as table 5.

Funding source determination

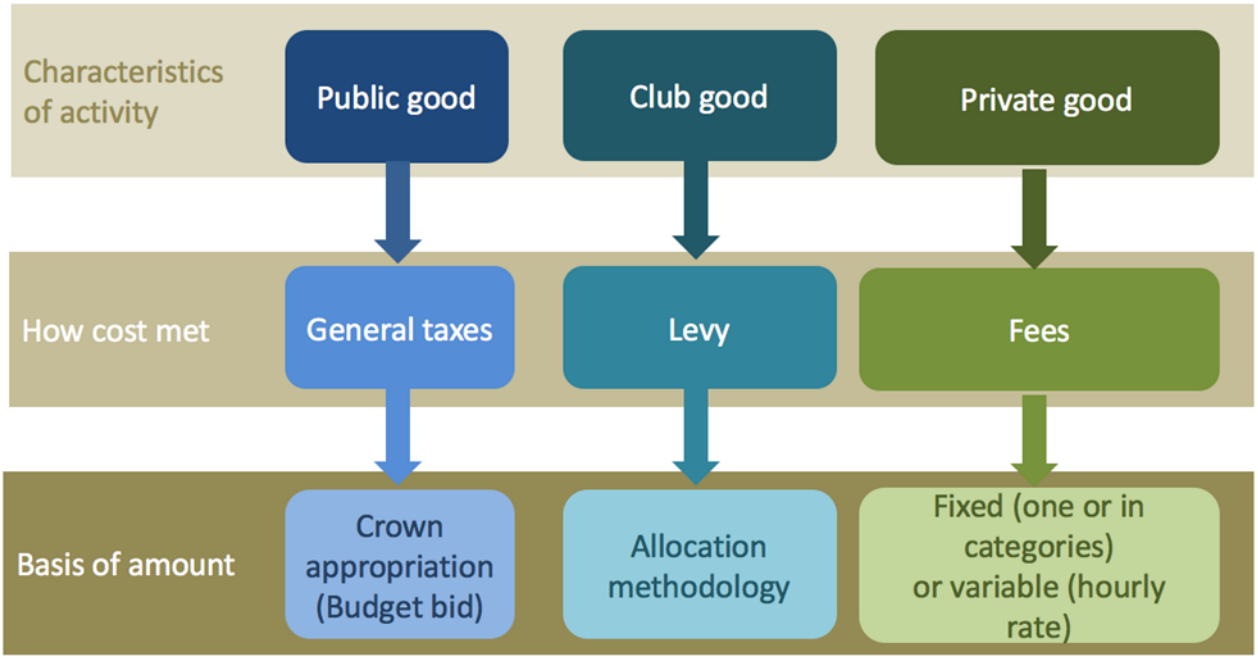
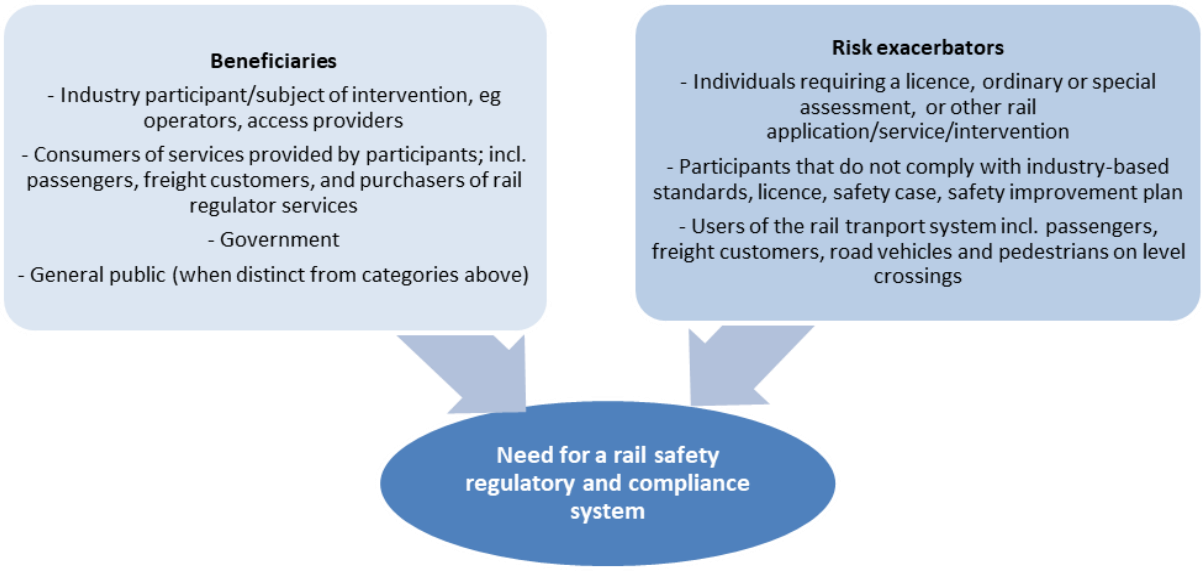


Table 5 High-level description of funding activities

Crown funding (for public goods)	**Charge** (for club goods)	**Fees** (for private goods)
General taxation applied to an area of activity • Covers cost of an area of activity • Indirect benefits to, or risks exacerbated by, the wider public • Non-excludable - Excluding people from the activity benefits/risks exacerbated by, is difficult, costly or undesirable • Non-rival – use by one person does not detract from use by another	**Payments by a group for a specific Purpose** • Cost recovery payment for the activity • By a *group* • For a *specific purpose (often for the costs of a regulatory and compliance system)* • *Indirect* benefits to, or risks exacerbated by, the *group* • Partially-excludable – activity relates to the group and excluding group members is difficult, costly or undesirable • Partially- rival – if the activity is used by one member of the group this *can* reduce available resources for that activity used for other members of the group • Activity may not be used by the individual payer • Payment amounts within the group may differ	**Payment by an individual for a service** • Cost recovery payment for the activity • By an *individual* • For a *service* • *Direct* benefits to, or risks exacerbated by, the *individual* • Excludable – others can be excluded from use of the activity • Rival – use of the activity by one person reduces available resources for use by others • Payment amount related to effort in delivering the service

34. In terms of the Treasury guidelines, beneficiaries and risk exacerbators can include the following people and organisations for a rail safety regulator.



35. In regard to potential funding sources the review identified the National Land Transport Programme (NLTP) as a further potential funding source. The NLTP is funded through the National Land Transport Fund which is collected from road users via fuel excise, road user charges and annual licence fees. The NLTP was considered a possible funding source in respect to risks created by, or exacerbated, by road users and level crossings was considered as a significant manifestation of this.

36. In determining the costs of providing the rail safety regulatory role, the following key function elements were identified, and the review team allocated to each element the function characteristics and then allocated potential funding sources from table 5 and the NLTP option and the relative weighing for each funding source was also identified. These are shown in table 6 below. In this model, NLTP is only being used to meet direct costs imposed, not any co-benefits that may accrue to road users – for example less road freight due to more freight being carried on trains.

Table 6: Summary of rail safety function, characteristics and funding source

Function	Characteristics and funding Source	Portion of total funding	Mechanism/Justification
National Priority Co-ordination	Club Good 100% Charge	8.5% 1.79FTE	***Charge Justification*** This work focuses across the entire industry in respect of critical risks, which is the same basis the charge is allocated
Level Crossing and Trespassing	Public Good 100% NLTP	3.5% 0.74FTE	***NLTP Justification*** Exacerbators and beneficiaries are road users and pedestrians. Most work in this space is

Hazards			how to best influence their behaviour. ***Forecast Basis*** Presently level crossings are 1 of 3 National Priorities Includes $50,000 sponsorship to TrackSafe
New Licences & modifications	Club Good/Private Good 50% Fee 50% Charge	2.1% 0.44FTE	***Fee Mechanism*** Hourly rate and 'Actual and reasonable' expenses for licence application, including those declined. Care will need to be taken to not accrue too much work prior to invoicing/payment to avoid time-wasters defaulting. ***Fee Justification*** Receiving a licence is a private good – benefits only accrue to the licensee. Require ability to charge time to avoid perverse behaviour where people avoid Major Projects or SCV fee by submitting as a licence. ***Charge Justification*** Charge recognises that some inquiries never proceed as an application (regardless of whether they are accepted or declined). It supports the overall safety of the industry that these inquiries come to us rather than people attempt to enter the system below the radar. ***Forecast Basis*** Time forecast assumes moderate quality applications without excessive rework required. This is based on the current work to improve guidance. Poor quality applications will result in higher fee recovery than forecast.
Safety Case Variations (SCV) *Note a SCV involves, in practice, the same considerations as a licence application*	Club Good/Private Good 80% Fee 20% Charge	3.4% 0.71FTE	***Fee Mechanism*** Hourly rate and 'actual and reasonable' expenses for all variation applications (including those mandated by the Agency under s.34 of the Act), including those declined. Given that it involves existing licence holders, there is less risk of time-wasters. In practice, due to the wish to encourage licence holders to identify changes to us, and the minor nature of most applications, an operational policy will be proposed that any applications that are processed in under eight hours are at no charge. This would account for most applications and about 50% of the

			income stream. A small number of applications take considerably more time (greater than 20hrs).z An operational policy solution will be developed to give the Agency discretion to consolidate multiple SCV into one in cases where people artificially split an application to remain under the threshold. ***Fee Justification*** Receiving a SCV is a private good – benefits only accrue to the licensee. Require ability to charge time to avoid perverse behaviour where people avoid Major Projects or Licence fee by submitting those as a SCV. ***Charge Justification*** The 20% charge recognises the advice provided to licence holders on operational changes that don't meet the threshold for a SCV or are advised would be unlikely to be successful due to safety concerns. It supports the overall safety of the industry that licence holders are upfront with these queries, rather than attempting to operate below the radar. ***Forecast Basis*** Time forecast assumes moderate quality applications without excessive rework required. This is based on the current work to improve guidance. Poor quality applications will result in higher fee recovery than forecast.
Major Projects	Private Good 90% Fee 10% Charge	2.5% 0.53FTE	Note – these may be new licence applications or safety case variations that are significant enough that substantial pre-engagement (greater than one year) is required for efficient regulatory intervention. ***Fee Mechanism*** Hourly rate and 'Actual and reasonable' expenses is charged for all work associated with providing advice on compliance of major proposals with regulations. Project owners (who may or may not be rail participants) voluntarily agree a scope of engagement to identify Agency effort and expertise required. Although the rate is set by regulation, the tasks to be completed would be

			contractually agreed. ***Fee Justification*** This assistance can be for currently unlicensed persons (i.e. not paying the charge) so shouldn't be subsidised by the charge. It is also highly variable and so difficult to forecast effort accurately. ***Charge Justification*** Charge recognises that some inquiries never proceed as an application. It supports the overall safety of the industry that these inquiries come to us rather than people attempt to enter the system below the radar. Charge allocation also recognises that the outcome from most major projects will interact with multiple existing licence holders (e.g. improvements to the NRS will affect all operators) so there are some wider benefits from a proactive and robust engagement. ***Forecast Basis*** High uncertainty but likely to be 1 to 3 ongoing at any one time. It is expected the longer timespan of the engagement means FTE/expertise can be adjusted (to a degree) in response to demand.
Ordinary Safety Assessments Special Safety Assessments	Club Good/Private Good 50% Fee 40% Charge 10% NLTP	17.5% 3.68FTE	***Fee Mechanism*** Hourly rate and 'Actual and reasonable' expenses are charged for all work associated with performing the assessment by assessors, licence managers and SME. • Planning • Assessment • Assessment Report • Considering findings and determining interventions Time for travel is not to be recovered. Work associated with developing the overall assessment programme or management-level compliance discussions (e.g. the Compliance Intervention Panel) will not be recovered. Ordinary and special safety assessments are charged in the same manner. ***Fee Justification*** Time taken to plan and perform assessments is reduced if licence holders are proactive and organised, so charging a fee encourages this. Assessment frequency is partially in response

			to compliance behaviour, so fees reduced poor performance being subsidised by good performers ***Charge Justification*** Assessments are a mixture of club and private goods. They represent a key oversight tool and are integral to the functioning of the regulator. Assessments verify the safety of the industry, and many assessments directly benefit other licence holders (e.g. operators interacting) In additional, much of the work not charged is not directly attributed to an individual assessment. As a risk-based regulator, areas of assessment focus and management discussion of on interventions, for instance, will reflect overall industry concerns as much as the particular licence holder. ***NLTP Justification*** Assessments focus on reviewing the ability of the rail participant to adequately manage their major risks. A major risk for any participants will be if they have a rail interface with a road or pedestrian way. Road users and pedestrians will be exacerbators of this risk, and beneficiaries of improved management of it. ***Forecast Basis*** Assessments numbers are based on the Rail Safety Assessment Programme tool. Effort per assessment assumes licence holders are well-organised. If this is not the case, fees per assessment will increase, but it is likely the response would be fewer assessments, so the overall effort expended would be constant. Many significant licence holders have one or more road-rail interfaces. As well, most industrial licence holders operate in shared rail vehicle/ road vehicle environments. Assessment resource may be increased or decreased in response to other needs (e.g. internal improvement, safety needs). This would affect revenue (although minimised through 50% charge).
Information and Outreach	Club Good 75% Charge 25% NLTP	8% 1.68FTE	***Charge Justification*** This work focuses across the entire industry in respect of critical risks, which is the same basis the charge is allocated. We want to encourage use of this material, rather than

			charge for it. ***NLTP Justification*** Presently, level crossings are 1 of 3 National Priorities and so would form a considerable amount of this activity. It has not been apportioned to 33% because some outreach activity occurs outside of National Priorities.
Monitoring Performance	Club Good/Public Good 50% Charge 50% NLTP	9% 1.89FTE	***Charge Justification*** We want to encourage the reporting of incidents, and high reporting rates can indicate a good (i.e. aware) operation. ***NLTP Justification*** A large proportion of incidents and nearly all deaths and serious injuries are from level crossing and trespassing incidents.
Investigations Rail System Oversight	Club Good/Public Good 75% Charge 25% NLTP	14.0% 2.94FTE	***Charge Justification*** As a systems regulator, the decision for the Agency or TAIC to investigate an incident can reflect a concern regarding a trend of incidents, than the specific incident being investigated. In addition, charging fees for an investigation is potentially problematic if a prosecution results. Oversight of the national forums (e.g. the NRSS-E) provide direct benefits for licence holders who provide the bulk of the charge, and indirect benefits (e.g. through development of best practice) for all. ***NLTP Justification*** A large proportion of incidents and nearly all deaths and serious injuries are from level crossing and trespassing incidents. However, the level of support is lower as investigations are more likely to focus on rail system rather than road system failures.
Interventions	Private Good/Club Good/Public Good 75% Fee 15% Charge 10% NLTP	3.0% 0.63FTE	***Fee Mechanism*** Hourly rate and 'Actual and reasonable' expenses for all staff and management time associated with considering a non-compliance with a statutory notice and developing and implementing the response. If a result is an extension of the notice (i.e. it is determined there were extenuating circumstances) no fee is charged. ***Fee Justification*** Costs of regulating non-compliant behaviour should fall on the non-compliant party ***Charge Justification***

			Understanding legitimate reasons for non-compliance is of value to the entire industry. ***NLTP Justification*** A portion of compliance notices are associated with risks exacerbated by road users and pedestrians. In addition, the Rail Safety Regulator will be investigating more direct methods of influencing safe behaviour in road users and pedestrians. ***Forecast Basis*** Time forecast assumes high compliance with notices, due to a generally willingly compliant industry and improved processes and communication from the regulator. Poor compliance will result in higher fee recovery than forecast.
Monitoring Compliance actions	Club Good/Public Good 90% Charge 10% NLTP	10.0% 2.10FTE	***Charge Justification*** Monitoring required interventions is a core role of a regulator. In addition, recovering costs is administratively inefficient due to it being a frequent but short activity involving people across the team. ***NLTP Justification*** A portion of compliance notices are associated with risks exacerbated by road users and pedestrians. In addition, the Rail Safety Regulator will be investigating more direct methods of influencing safe behaviour in road users and pedestrians.
Stakeholder relationships and Ministerial Servicing	Club Good/Public Good 70% Charge 30% NLTP	7.3% 1.53FTE	***Charge Justification*** The Rail Safety Regulator needs to work with a wide variety of stakeholders to best achieve its regulatory outcomes and meet the needs of the Minister. In most cases this activity is not centred on a particular participant, but on matters effecting multiple participants. It would not be possible to allocate costs directly back to a particular participant. ***NLTP Justification*** Risks involving road users and pedestrians typically involve interfacing with many diverse stakeholders and place a disproportionate load on our stakeholder work.
Systems Improvement	Club Good/Public Good 80% Charge 20% NLTP	11.2% 2.35FTE	***Charge Justification*** The process and technology systems the Rail Safety Regulator uses are not focused on any particular participants. These systems are used for each participant broadly according to risk and thus the charge is the most

			appropriate means to fairly distribute the cost among participants. ***NLTP Justification*** The process and technology systems the Rail Safety Regulator uses are not focused on any particular issues. These systems are used for each issue broadly according to risk & complexity - there is a high rate of road user and pedestrian incidents, and potential for catastrophic accidents, although the complexity is somewhat lower than other risks.

Note: General fee mechanisms

Expenses include travel, accommodation and consultants in connection with any matter for which an hourly rate is payable.

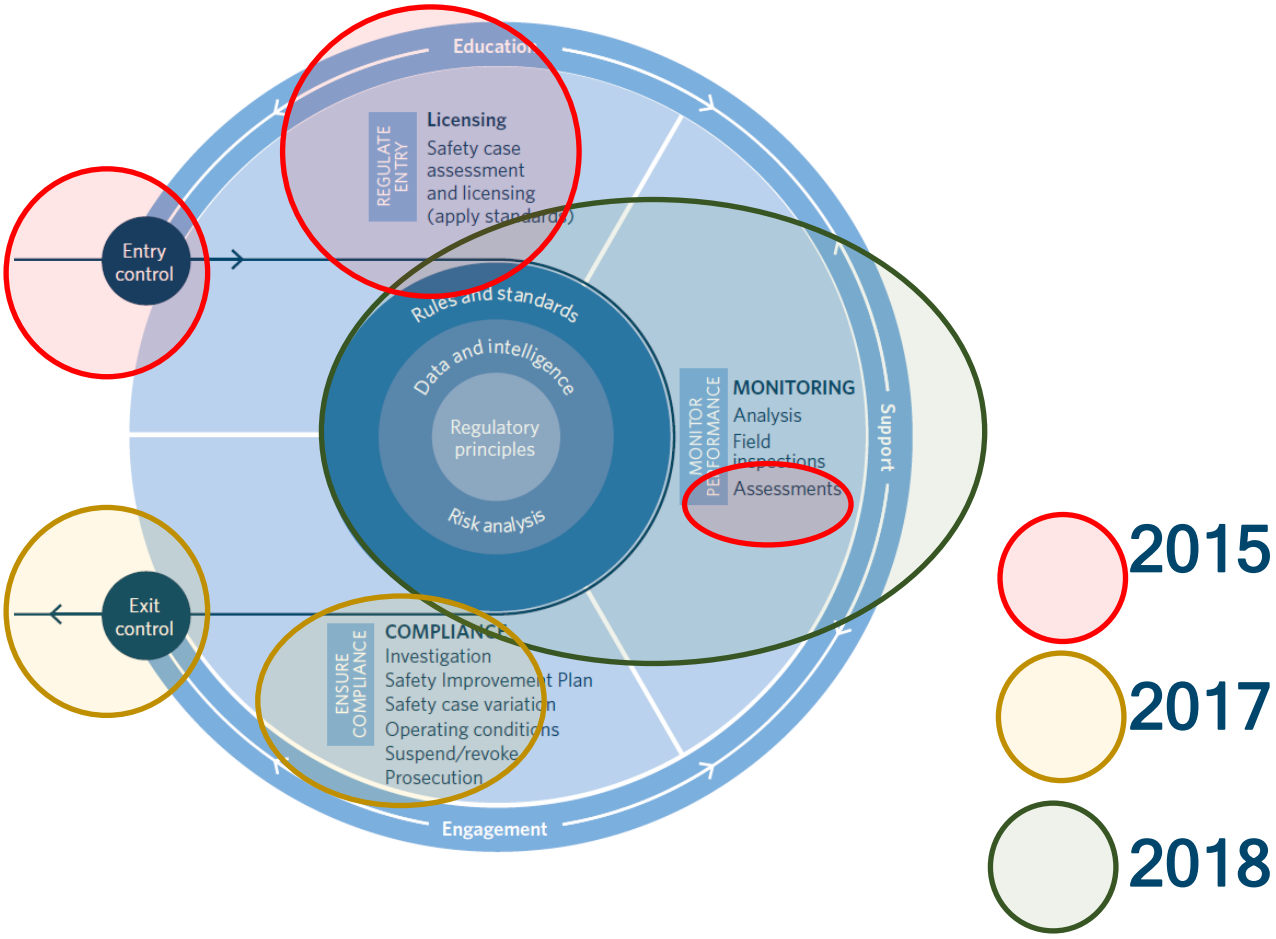
Travel expenses will most likely be charged on a hypothetical basis were the staff based in the closet Transport Agency. This means that a licence holder is not disadvantaged due to Agency resourcing choices.

Unpaid debts will be pursued as a civil debt. It is a condition of all rail licences that any charges are paid, so a licence can be suspended to encourage payment (this is obviously not applicable to non-licensed participants).

37. To provide an effective rail safety regulator, the Transport Agency has planned on a total of 21 staff. Twenty-one staff was decided on using a ground-up model and starting from the basis that internationally a successful rail safety regulator must deliver several core functions. Diagram 1, below, sets out these core functions which have been introduced over the period 2015-2017 and staffing levels were developed based on what was considered the minimum to properly resource each function. This model was independently reviewed and found to an appropriate staffing level for the intended safety outcomes.

38. Diagram 1 shows the form and functions of a properly performing rail safety regulator and how many of these functions are considered are being met by the Transport Agency under resourcing levels as at July 2015 (funding for 10.5 FTEs), July 2017 (funding for 15 FTEs) and by December 2018 (with the proposed 21 FTEs in place). Table 6 shows the how the 21 FTEs will be allocated across the Rail Safety functions. As at December 2018, the six additional FTEs have yet to be appointed so the final functions expected in 2018 will not occur until mid-2019. The status quo is accordingly as at July 2017.

Diagram 1 New Zealand Rail safety functions delivery 2015-2017



Assessing costs

39. To meet the costs of a rail safety team of 21 staff, the Transport Agency estimates it will require an annual income of $3.5 million for the five-year period commencing financial year 2019/20 and concluding at the end of 2023/24. This will meet the following annual cost components:

    - $2.25 million staff salaries
    - $0.925 million direct overheads - training, travel, specialised advice and new systems
    - $0.365 million indirect overheads – NZ Transport Agency overheads

40. Collecting the current under recovery was carefully considered. It is agreed that this should be consistent with user pays principles. The Transport Agency considers that recovering the $2.8 million under recovery forecast to be accrued between 2017 and 2019 was justified as

there is relatively little movement in the group of licensed rail participants in New Zealand. Therefore, the users who would be paying the charge in the future to meet the under recovery will be mostly those who benefitted in the past from the under recovery of Rail Safety Regulator operating costs.

41. However, the Transport Agency is also cognisant of the impact the original funding arrangement and other users (e.g. road users) had towards this under recovery, and the response in 2017 to write-off the $5.2 million deficit accrued between 2008 and 2017 (65 percent of the total deficit).

42. The publicly consulted proposal also included recovery of the 2017/18 and 2018/19 deficit via fees and charges, which was estimated to grow to $2.8 million by the end of the current financial year.

43. However, the Ministry of Transport does not, however, consider that recovery of the deficit from fees and charges is appropriate as:

    43.1 the rail sector was not consulted on the proposed increase in resources for the regulator (which resulted in the build-up of the deficit). This is inconsistent with transparency and accountability principles in the Transport Sector, Treasury and Office of the Auditor-General guidelines for setting fees and charges

    43.2 fees should not be used to offset costs of future users or attempt to recover any deficit that may have occurred as a result of previous under-recovery.

44. The Minister of Transport subsequently decided in February 2019 not to include recovery of the deficit in the fees and charges. This has reduced the overall fees and charges, when compared to the proposal consulted on, by 20 percent.

45. At the heart of this issue is chronic under recovery of costs. Current funding is only meeting 43 percent of the existing costs. Of the $3.5 million sought, 79 percent ($2.78 million) would be used to meet existing costs, while only 11 percent ($0.373 million) would be for new staff required to meet the enhanced risk-based safety regulator operating model. Trying to maintain the status quo is not, therefore, an acceptable option.

46. The Transport Agency has considered a range of funding sources. Based on the allocation and recovery model set out in table 6, the required $3.5 million would be recovered on the following basis (refer table 7 below).

Table 7: Funding source requirements based on table 6

Funding source	Amount proposed to be raised	Portion of total funding
National Land Transport Programme	$ 743,600	19 percent
Fees (set hourly rate)	$ 602,700	17 percent
Annual charges	$2,233,000	66 percent

47. The Agency was concerned that the above funding source approach overemphasised the collection of fees. This could lead to perverse incentives with rail safety staff being deployed to fee revenue generating activity to meet the fee targets rather than areas of higher risk. A higher dependence on fees income was also considered to lessen the beneficial impacts of the proposed charge cap for charity operations. The Agency did not wish to dispense with fees entirely. It is recognised that fees will incentivise operators to be properly prepared for safety assessments reducing potential costs. For these reasons, the Agency decided to adjust the funding source proportions to decrease the dependence on fees (and in so doing move the projected fee level back closer to the current fee amounts) and increase the amount collected by the annual charge.

48. Table 8 which follows outlines the final amended proposed funding sources, for the required $3.5 million. Please note the NLTP funding amount decreased due to final roundings:

Table 8: proposed funding sources (amended)

Funding source	Amount proposed to be raised	Portion of total funding
National Land Transport Programme	$ 743,600	21 percent
Fees (set hourly rate)	$ 250,000	7 percent
Annual charges	$2,541,000	72 percent

49. Because 21 FTEs was considered the minimum number to operate a viable and effective rail safety regulator, and the safety regulator was running continuing deficits, alternative funding options including meeting the funding requirements through savings were not further considered. Dependence on a charge is considered a good option as increased rail activity is a good proxy for greater risk exposure, while generally also leading to a higher rail income which improved the operator's ability to meet these costs.

National Land Transport Programme

50. The use of the National Land Transport Programme (NLTP) to part-fund the rail regulator role is new. It reflects the benefit accruing to all road users arising from improvements in the investigation and analysis of level crossing risks. A business case for NLTP funding has been considered under its particular requirements and has been approved. This payment will be separate from currently allocated NLTP funding to improve the physical characteristics of higher-risk crossing, and education campaigns.

Fees

51. Fees, set at an hourly rate, will be charged for actual time spent by the rail safety regulator staff dealing with any new licence application (including reviewing and approving the licensee's safety cases), consideration of any safety case variation or replacement of existing licence holders, and any rail safety regulator involvement in major projects, such as Auckland's city rail link (CRL) or compliance interventions relating to non-compliance by a licensee with a statutory notice. In addition, licensees will be responsible for all actual and reasonable expenses involved with this work (for example, travel and accommodation).

52. The Transport Agency is proposing to reduce the hourly rate from the current $175 per hour to $120 per hour. This reflects the savings gained from bringing previously externally contracted functions (assessments) in-house. Consultants may still occasionally be used, but on an exceptions basis, and directly engaged by or charged to the licensee.

Annual charges

53. The NZ Transport Agency developed nine options for setting an annual variable safety charge – the status quo, a CPI-adjusted status quo and seven other options. These are outlined in more detail in the following table:

Table 9: Annual variable safety charge options

Option	Description
Current charge (status quo)	The Railways Regulations 2008 require all rail licence holders pay an "annual licence fee" calculated from a base rate plus an amount apportioned according to freight revenue, passenger numbers and/or track length.
CPI-adjusted charge	The charge is based on the existing "annual licence fee", adjusted for the Consumer Price Index changes since 2008
Current charge, scaled up to meet funding needs (modified status quo)	Current 'annual licence fee" for all rail licence holders uniformly scaled to meet funding needs ($1.2 million to $3.156 million)
Revenue-based charge	Charge is apportioned according to each rail licence holder's revenue.
Activity-based charge	Charge is apportioned according to the amount of time the Agency forecasts it will spend on each sector (each rail licence holder is placed into a sector)
Demand-based charge	Charge is apportioned according to the "regulatory demand" – the assessed contribution of each sector to accidents.
Simplified demand-based charge	Charge is apportioned according to the "regulatory demand" – the contribution of each sector to accidents. Sectors with similar level of risk are grouped together (thereby reducing the name of sectors).
Passenger-based charge	Charge is a base level plus an amount apportioned according to passenger volume. Participants with no direct passengers pay only the base amount.
Licence-class charge	Charge is a base level plus an amount apportioned according to the train journeys operated and/or the total traffic on an access provider's network. Participants not directly operating services, or a network pay only the base amount.

54. The NZ Transport Agency considered all nine options and produced a shortlist of the five most viable options:

    a. status quo scaled for CPI changes since 2008 (as a counterfactual comparison)

    b. demand-based charge

    c. simplified demand-based charge

    d. passenger-based charge

    e. licence-class charge.

55. All the shortlist were assessed using a multi-criteria ordinal scoring approach against the following criteria:

    a. Alignment – how aligned was the option with a risk-based regularly approach

    b. Robustness – how reliable is the data gathered to apportion the charge (how easy is it to provide and verify)

    c. Simplicity – how easily can a licence holder understand what charge class they belong to and what their charge will be

    d. Affordability – how does the charge amount allocated to licence holders compare with their perceived ability to pay

    e. Flexibility – how well does the option adjust charge rates to the level of activity or scope of regulation.

56. Applying these criteria, the five charge options outlined in paragraph 43 were assessed against the above criteria. The results of this analysis is summarised in table 10 which follows. The licence-class was the best fit with the assessment criteria. Accordingly, this became the NZ Transport Agency's preferred funding option.

Table 10: Assessment of five viable charge options (including scaled-up current charge)

	Alignment	Robustness	Simplicity	Affordability	Flexibility	Score	Comment
Weighting	*2*	*3*	*1*	*1*	*2*		
Scaled current charge	1	3	3	5	1	**21**	Not preferred due to very poor justification for how the charge is apportioned
Demand-based charge	4	1	1	1	3	**19**	Not preferred due to unacceptably high dependence on unreliable data

Simplified demand-based charge	4	2	2	2	3	**24**	Not preferred due to unacceptably high dependence on unreliable data
Passenger charge	2	4	4	4	4	**32**	Not preferred as only focused on 'people- based' activity
Licence class charge	3	4	4	4	5	**36**	Preferred option

Scale:

1: Performs poorly on this attribute	3: Meets just adequately	5: Strong performer on this attribute

57. The Transport Agency considered the impact of the five viable options on various sections of the rail industry. Table 11, below, shows how each sector would have been impacted by each of the five viable options. The licence-class charge was considered to be the best fit for the assessment criteria and the least disruptive in terms of allocating charges across the sectors.

Table 11: financial impact (percent of total income obtained from each rail sector) of five charge options on various rail sectors

Sector	Current charge scaled for CPI changes Activity based	Demand-based charge Risk based	Simplified demand-based charge Risk based	Passenger-based charge Activity based	Licence-class charge Activity based
KiwiRail	[redacted]				
Metro					
NRS Tourist & Heritage					
Off-NRS Tourist & Heritage					
Industrial					
Vehicle Providers					

Note: these figures do not add up to 100 percent due to rounding

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NZ Transport Agency preferred option

58. The rail industry will directly contribute around $2.8 million of the $3.5 million total annual funding requirement for the rail safety regulator. This will comprise:

58.1 An hourly fee of $120, charged for actual time spent by the rail safety regulator staff dealing with any new licence application (including reviewing and approving its safety case), consideration of any safety case variation, and any rail safety regulator involvement in special projects. In addition, licensees would be responsible for all actual and reasonable travel and accommodation expenses involved with this work.

58.2 An annual charge using the licence-class as the means of allocating the charge across all 87 rail licensees and based on 2017/18 activity data will comprise:

58.2.1 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)

58.2.2 *An annual variable safety charge* using the licence-class, calculated at the rate of:

58.2.2.1 for any rail operator,12.6 *cents 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 $2.52)

58.2.2.2 for any access provider, *6.3 cents for each rail vehicle kilometre* operated on their network (in the above example, Kiwi Rail as the NRS access provider and would be charged an added $1.26)

58.2.2.3 licensees who are a rail operator and access provider would pay both.

59. In the financial year 2017/18, existing fees and the annual charge brought in around $1.2 million, so the proposed new level of fees and charges bringing in $2.8 million would represent around a 131 percent increase in fees and charges collected from the industry.

Recognising charitable and volunteer rail operations by capping the annual charge

60. Reflecting different levels of rail activity between individual rail licensees, there would be considerable differences as to the amount of annual charge individual licensees would be expected to pay under the Transport Agency's preferred position.

61. The Transport Agency recognises the significant difference in the motivation for rail participants operating a service on the rail network. With a view to containing the costs of compliance for participants who are not in the rail sector to make a profit, the Transport Agency proposed to exempt registered charitable, and volunteer rail participants (currently assessed to 25 rail licensees) from the annual variable safety charge, where their earnings are less than $30,000 (GST exclusive and only for income form rail operations).

62. This acknowledges these group's non-commerciality and inability to reasonably recover costs through on charging, and effectively caps the annual charge cost for this group to a maximum of $1,000.00, or $500 depending on whether they hold one or both licence types. This approach will save this group around $10,000 from the annual variable safety charge, which will be reallocated across the remaining licensees.

Benefits of the Transport Agency's preferred option

63. The expected benefits of the Transport Agency's preferred option will be a sustainable funding level allowing the 21 FTE safety model to fully function which will support a safer rail system, with more specific benefits being:

63.1 Benefits to rail system

63.1.1 The Transport Agency will be in a position to better provide:

63.1.1.1 regulatory safety leadership and coordinate safety outcomes across the industry, for example, road-rail issues

63.1.1.2 oversight of the whole rail sector, rather than its current focus which is largely just on those who seek licences or safety case variations

63.1.1.3 the Transport Agency will be more responsive to industry concerns and will be in a position to adopt a flexible use of its regulatory toolkit provided to ensure optimal compliance outcomes, this is about

63.1.1.4 securing industry behaviours that are encouraged

63.1.1.5 deterring and denouncing non-compliance in the public interest

63.2 Benefits to rail operators

63.2.1 the Transport Agency will be able to proactively assist in identifying emerging safety issues for an operator through analysis of safety intelligence

63.2.2 assistance from the Transport Agency to ensure the operator's safety case and management system remain relevant and resilient in the face of emerging safety risks

63.2.3 greater future certainty as to the charge to be paid and more regular fees reviews reducing the likelihood of significant and unexpected fee and charge increases

63.3 Benefits to New Zealand

63.3.1 meaningful and lasting safety improvements in the rail industry, including a reduction in safety incidents which will, in turn:

63.3.1.1 minimise network disruptions for passengers and freight (improving mode neutrality from increasing rail's attractiveness as a transport option)

63.3.1.2 protect the travelling public and others who use the rail network from exposure to harm, particularly arising from a catastrophic harm incident

Effect of NZ Transport Agency preferred option on rail industry sector

64. Table 12, which follows, compares the current charges payable by rail licence holders, and the charges which would be payable under the Transport Agency's preferred option. All licensees will pay more (which would occur under any of the options outlined in table 9).

Table 12: current charge amounts compared with proposed fixed and variable safety charge

Rail licensee/sector	*Current charge amount*	*Proposed fixed and variable safety charge*
Kiwi Rail Metro - average Tourist and Heritage (operating on NRS) Tourist and Heritage (operating on own track) Industrial operator Vehicle provider only (counted as an operator)	[redacted]	

Note: this includes impact of charitable and voluntary organisation 'exemption', refer paras 49-51

65. Reflecting different levels of rail activity between individual rail licensees, there would be considerable differences as to the amount of annual charge individual licensees would be expected to pay under the Transport Agency's preferred position.

Consultation

66. Consultation on funding requirements and proposals occurred between 10 October 2018 and 21 November 2018. All 87 rail licensees were advised of the consultation and provided with the consultation document which contained 14 questions. Some licensees were personally contacted, but all received an initial email and follow-up contact (phone call or email) in mid-November 2018.

67. The 14 consultation questions were also able to be answered using the on-line "survey monkey" platform. The links to this were provided with the consultation document and were also available on a dedicated rail safety consultation webpage on the Transport Agency's website.

68. In addition, to the 87 rail licensees, stakeholders specifically involved in the rail sector were also directly advised of the consultation and provided with consultation documentation. These stakeholders included rail funders, rail equipment providers, significant contractors and the main rail workers Union.

69. Thirty-six submissions were received and considered.

Increase threshold for charity/voluntary organisation exemption supported

70. The review team considered and agreed with submitters that the proposed charities and voluntary organisation threshold should be raised from an annual income of $30,000 to $100,000, excluding GST and including all forms of income. It is expected this amendment will exempt at most a further four licensees and will provide clarity about how the threshold will be determined.

71. The exemption will be applied for using a self-declaration signed under the Oaths and Declarations Act 1957. It is not expected this requirement would create any additional compliance costs as the form will be downloadable from the Transport Agency website and can be witnessed by a number of authorised people, including a solicitor, or Justice of the Peace. Any false representation in the declaration could be considered under the existing Crimes Act offence provisions (specifically section 111 of the Crimes Act 1961).

Key consultation themes

72. Size of the regulator (proposal is to increase to 21 FTEs)

    72.1 some support for proposed resourcing model provided performance monitoring in place

    72.2 other submitters believed industry is over-regulated and/or the Transport Agency needs to focus more on reducing costs rather than increasing fees

    72.3 the Transport Agency is confident the resourcing proposal is appropriate and well-justified and suitable performance monitoring is proposed.

73. Regulatory oversight of heritage sector

    73.1 submitters believed degree of oversight on the heritage sector, in particular tram operators, was unwarranted

    73.2 the Transport Agency 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

    73.3 the Transport Agency 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

    73.4 this can potentially be addressed as part of any future review of the Act and the Transport Agency will formally advise the Ministry of Transport as to this expectation.

74. Increasing NLTP and/or Crown funding

    74.1 a safe and reliable rail system provides benefits for road users and the general public (so is a public good)

    74.2 benefits for rail from safety regulation, is not eligible for Crown or further NLTP funding

    74.3 the next GPS will be released in 2021, at which point further NLTP funding could be considered.

75. Distribution of variable charge

    75.1 various submissions asserting other sectors were a higher risk and should pay more

    75.2 no new information provided to suggest the criteria, or the charge assessment is incorrect.

76. Introducing a transition period for the new charges

    76.1 submitters suggested transition arrangements should be used given the average 183 percent increase in charges proposed under this review

    76.2 transition period had been considered by review team but delaying introduction of the full charges would require even larger charges eventually.

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

    77.1 submitters were concerned with the scale of the proposed increases and several were concerned how this could negatively impact on ticket sales, particularly given those submitters are having difficulty filling current excursion trains.

    77.2 Table 12 outlines the Transport Agency's estimate of 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 3 percent and most are in the range of 1 to 2 percent or lower.

    77.3 on this basis the Transport Agency does not consider any change in the proposal is necessary.

Conclusions and recommendations

78. After considering all submissions the Transport Agency recommends the following funding model to recover $3.5 million each year from 2019/20 to 2023/24 to sustainably fund the rail safety regulatory function.

79. This will meet the following annual cost components:

- $2.25 million staff salaries
- $0.925 million direct overheads - training, travel, specialised advice and new systems
- $0.365 million indirect overheads – NZ Transport Agency overheads

80. And will be funded in the following manner:

Funding source	Amount proposed to be raised	Portion of total funding
National Land Transport Programme	$ 743,600	21 percent
Fees (set hourly rate)	$ 250,000	7 percent
Annual charges	$2,541,000	72 percent

81. Fees and charges will be collected through –

An hourly fee of $120, charged for actual time spent by the rail safety regulator staff dealing with any new licence application (including reviewing and approving its safety case), consideration of any safety case variation, and any rail safety regulator involvement in major rail infrastructure and vehicle projects or compliance interventions relating to non-compliance by a licensee with a statutory notice. In addition, licensees would be responsible for all actual and reasonable travel and accommodation expenses involved with this work.

An annual charge using the licence-class as the means of allocating the charge across all 87 rail licensees comprising:

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)

An annual variable safety charge using the licence-class, calculated at the rate of:

for any rail operator,*12.6 cents 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 $2.52)

for any access provider, *6.3 cents for each rail vehicle kilometre* operated on their network (in the above example, Kiwi Rail as the NRS access provider and would be charged an added $1.26)

Note:

- licensees who are an operator and access provider would pay both variable charges
- Charities and voluntary organisations with a total income of less than $100,000 per financial year (excluding GST, but including any community grants or donations) will be exempt from paying any annual charge
- Fees and charges are shown as GST exclusive.

82. Train will need to be a defined term. It will exclude work trains and shunts, as the operations of these vehicles is quite distinct from other trains and it is accepted that measuring and recording the distances travelled for each would be a significant cost.

Potential financial impact on freight rates and passenger tickets

83. No submitters provided specific information on the cost impact of the proposed charge on their ticket prices. Instead, the Agency has undertaken 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.

84. This analysis provides the total charge impact, not the net increase beyond the current charge. In most case, licence holders' annual charge under the proposal is twice to three times what it is currently. The calculations include any pass-through of costs from the organisation providing them access to the network. The analysis is shown in the following table.

Table 13: estimated fiscal impacts of charge changes on freight rates and passenger ticket prices

Licence holder	Type of licence holder	Example Journey	Advertised Ticket Price	Estimated charge cost per passenger	Total charge as a portion of advertised ticket price
[redacted]					

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[redacted]

85. While the Transport Agency has tried to perform this analysis as accurately as possible, it is affected by such things as the type of tickets purchased (e.g. one-trip or monthly) and the train loading, and has not been able to be verified with licence holders. In addition, sufficient data was available for some operators.

86. Six heritage operators (not included in the above) move less 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 we do not have sufficient information to calculate this impact accurately. Also note that the current charge would similarly have a substantial impact (they are paying about $400 per year now, compared to about $1000 per year under the proposal) and therefore it may not be relevant for these types of operation to consider the charge impact in terms of ticket price.

Implementation plan

Calculating Charges

87. The Transport Agency proposes to minimise any additional compliance costs by grafting the new charges onto the existing process for assessing and collecting the charge. The current Railways Regulations 2008 provide that each licensee's fees for the following 12-months are notified on the 30th of June of that year but are payable in four equal instalments on or before 20 July, 20 October, 20 January and 20 April of that 12-month period.

88. It is intended that this general form be retained but with amendments. This approach should provide licensees with an improved process and retain their certainty as to what the amount of their safety charge is and when it is due. The amendments would provide the following procedure:

    a. fees would be due as they are incurred

    b. charges would be calculated for each financial year (1 July to 30 June) during which a participant is licensed (as presently), a licensee will receive an invoice setting out their charge amount

    c. charges will be calculated from reported levels of rail activity (train kilometres travelled) of the immediately preceding financial year 1 July – 30 June

    d. charges calculated for a financial year will be invoiced and due for payment on or before the 10 September of that year (this aligns with the current regulations that allow for 20 calendar days between invoicing and first instalment payment)

    e. as at present, licenses can opt to pay their charge amount four equal instalments on or before 1 October, 1 January, 1 March and 1 July of that financial year.

89. Where a rail participant:

    a. is licensed for only a part of the year, the charge will be paid on a pro rata rate up to the point where the licensee ceases being licensed, this could be achieved by refunding part of the charge paid

    b. changes their classes of licence (rail operator or access provider) they hold during the year, the charge will be reassessed and paid on a pro rata rate

    c. is unable or unwilling to provide the levels of rail activity to the Transport Agency by 1 September of that financial year, the Director may make an estimate of the required charge based on historical levels of activity by that licensee or other similar operations. The charge determined under this process is liable for payment in the same manner as a charge calculated under 70, above.

90. Where a rail participant is a new licensee and has not performed rail activity previously, the charge payable for the 1 July – 30 June financial year (or part thereof) will be due on 10 September in the following financial year, based on actual activity levels. It must be paid on or before 1 October of that financial year. This means a new licensee must carefully budget to meet their upcoming charge contributions.

91. At the beginning of each financial year a licensee can also apply for the voluntary or charity exemption. If this is accepted by the Transport Agency, then the charge calculation will be amended to take into account the exemption. It is intended that an exemption request will be applied for using a self-declaration (via a statutory declaration), with the possibility of random audits by rail safety staff. To prevent intentional misuse existing offence and penalty provisions of the Crimes Act governing false statutory declarations could be applied.

92. The new fees are proposed to come into effect from 1 July 2019 and will be assessed using the most recent year's rail safety performance returns.

Monitoring and evaluation

93. The main monitoring will be of the rail safety memorandum account to ensure it is sufficiently funded to meet rail safety costs and reaches 2023/24 in a break-even situation.

94. The Ministry of Transport will also be involved in assessing the Transport Agency's delivery against the rail safety regulator maturity model.

Review

95. The Transport Agency does not wish to again find itself in the situation where it is proposing to the rail industry safety charge cost increases of around 183 percent. To this end, a review of the current funding model and cost requirements will commence in 2020. This allows for an orderly review process and prepares for the 2024/25 financial year. It should not be assumed that the review will result in further cost increases – again like the current review the objective is to sustainably fund the rail safety regulator.

96. The review will update the current framework and also assess whether the projected 21 FTE rail safety team has been effective in promoting rail safety. A 2020 review should also align with the next Government Policy Statement on Transport (GPS2021), which provides an opportunity to reconsider any on-going or increased role of NLTP funding of the rail safety function.