

**MINISTERIAL BRIEFING NOTE**

<b>Subject</b>	Sustainable Funding of Rail Regulatory Capability to Manage Safety
<b>Date</b>	XX October 2023
<b>Briefing number</b>	<b>BRI-XXXX</b>

Contact(s) for telephone discussion (if required)				
Name	Position	Direct line	Cell phone	1 <sup>st</sup> contact
Gini Welch	National Manager Rail Regulation		section 9(2)(a)	✓
Brent Alderton	Director of Land Transport			

**Action taken by Office of the Minister**

- Noted
- Seen by Minister
- Agreed
- Feedback provided
- Forwarded to
- Needs change [please specify]
- Withdrawn
- Overtaken by events

Released under the Official Information Act 1982

[XX Oct 2023]

Hon XXX XXX – Minister of Transport

## Sustainable Funding of Rail Regulatory Capability to Manage Safety

### Purpose

1. This is a proactive briefing prepared for the Minister of Transport. The briefing provides you with a brief overview of funding constraints on the rail regulatory function performed by Waka Kotahi NZ Transport Agency (Waka Kotahi) and the increasing risk as a result of those constraints. Waka Kotahi is unable to solve these funding constraints by itself.
2. In short, rail regulation funding has not kept pace with forecast activity levels associated with increased Government investment in rail services and this is creating increasing risk in the rail system.
3. The briefing informs you that Waka Kotahi will, with the Ministry of Transport, be developing for your consideration options for a short-term funding solution that addresses immediate risk, as well as options for future sustainable funding of the rail regulator.
4. The paper does not seek to justify at a detailed level the proposed future funding requirement at this time. That is what the funding options paper will determine; we will be working with the Ministry of Transport on these aspects.

### Background and context

5. Waka Kotahi is the rail regulator under the Railways Act 2005 (the Act). The Act establishes a co-regulatory environment whereby industry participants and the regulator work together to ensure safety and compliance.
6. Investment in rail has significantly increased, and passenger numbers in particular are forecast to increase significantly as City Rail Link and other investments lift patronage.
7. Whilst Government's investment has significantly increased, a commensurate increase in revenue to support required capability and capacity of the rail regulatory function has not occurred and will not occur under the current funding model. Consequently, the rail regulatory function cannot perform at a level we consider commensurate with the increasing risk in the system.

### Rail Risk

8. Passenger rail carries the risk of a catastrophic high impact low probability event. The increased patronage and increased freight tonnage bring with them increased safety risk stemming from the greater scale, complexity and activity of the rail network. One of the

most obvious areas of increased risk is at level crossings, of which there are approximately 3000 nationwide.

9. New risks arising from operating on a mix of aging and state-of-the-art infrastructure, increasing complexities of the system such as City Rail Link, and multiple new participants in the system cannot currently be matched by an effective regulatory capability because funding of the regulator is not keeping pace.
10. The regulatory operating model needs to evolve alongside these new risks by becoming more active, better identifying risks to safety and investment outcomes, and deploying more expert resources to combat these risks. The level of uplift required is driven by increased audit, analysis and intelligence functions required to effectively deploy a risk-based operating model applied to multiple parties in the system. In practical terms, the required uplift would enable Waka Kotahi to focus on safety assurance throughout the system, which better addresses systemic risk, rather than dealing with each licence holder on a one-to-one basis.
11. Industry acknowledges that the adoption of a more *active* model of co-regulation will provide stronger and more effective regulation and is considered the appropriate way to meet the increased scale and complexity that rail system investment is bringing.

## Funding

*Regulatory funding does not meet current costs and will not support an uplift in capability*

12. Current regulatory funding comes from four principal sources, approximately 20% is from the National Land Transport Fund (NLTF) for road/rail intersections, with the majority of the balance coming from the three largest operators (i.e. KiwiRail, One Rail and Transdev). A further 30 tourism and heritage participants (comprising small businesses and not for profit organisations with very limited ability to pay) contribute less than 2%. Unlicensed participants<sup>1</sup> in the system do not contribute any revenue. It is common for regulated network operators in a range of sectors to fund regulatory activity.
13. NLTF funding is only available for the road and rail intersections. Under current settings we cannot use the NLTF for any other rail regulation activity. There is currently no short-term legitimate funding source available to Waka Kotahi that would allow increased regulatory capability to keep pace with the increasing risk associated with a growing rail sector. This will increasingly limit our ability to regulate the system as required by the Railways Act 2005.
14. For the long term this means a funding review or similar is required; however, such reviews typically take at least two years, but could be expedited if this were a Ministerial priority. s 9(2)(g)(i)

Other options are advised below.

---

<sup>1</sup> E.g. Infrastructure, rail vehicle or railway premises owners; maintenance providers; network controllers; railway premise managers.

### Near-term increase in funding

15. Waka Kotahi is preparing a proposal for funding additional frontline rail regulatory staff.<sup>2</sup> The additional cost estimates are yet to be finalised, but are expected to be in the order of \$6m per annum. The additional frontline positions will assist in addressing areas of immediate safety concern; allowing time for Waka Kotahi and the Ministry of Transport to explore options for the most appropriate balance of funding level, funding source, and the associated risk profile.
16. There are several options that could meet the short-term funding shortfall and enable capability uplift to continue while longer term funding solutions are developed. These include:

section 9(2)(g)(i)



17. Waka Kotahi will work closely with the Ministry of Transport to develop a short-term funding solution out of these options for you to consider. As well as mitigating the risk of regulatory failure in the short term, this would 'buy time' for the development of longer term and more sustainable funding solutions that meet the level of risk Government is willing to see in the system.

### Next steps

18. We will need to confirm your support for the development of short- and long-term funding solutions that meet the needs arising from increased Government investment and user activity in the rail system. As noted, we are preparing a separate paper for you on this.
19. We would appreciate the opportunity to then meet with you and discuss this in person to further explain the context and consider your ideas and preferences for moving this forward.

---

<sup>2</sup> Fully funded, including overheads