Attachment 1:

Rail Regulation at a glance

Waka Kotahi Board Briefing: pre-reading pack

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Meeting date: 12 December 2023

WAKA KOTAHI
NZ TRANSPORT AGENCY

Te Kāwanatanga o Aotearoa
New Zealand Government

The Railways Act 2005 provides the primary regulatory authority for rail safety in New Zealand

- It is principles-based legislation, more like the Health Safety & Work Act (HSWA) than the Land Transport Act, and like other critical risk industries like oil, gas or mining, requires the regulated parties to show maturity and take a high level of responsibility.
- Rail participants are responsible for identifying, managing and mitigating the risks for which they are accountable ***So Far As Is Reasonably Practicable***.
- As the Rail Safety Regulator, we provide assurance to stakeholders that rail participants are meeting their responsibilities and will intervene where necessary.
- This is often described as ‘co-regulation’.

The rail participants in New Zealand range in size and scale

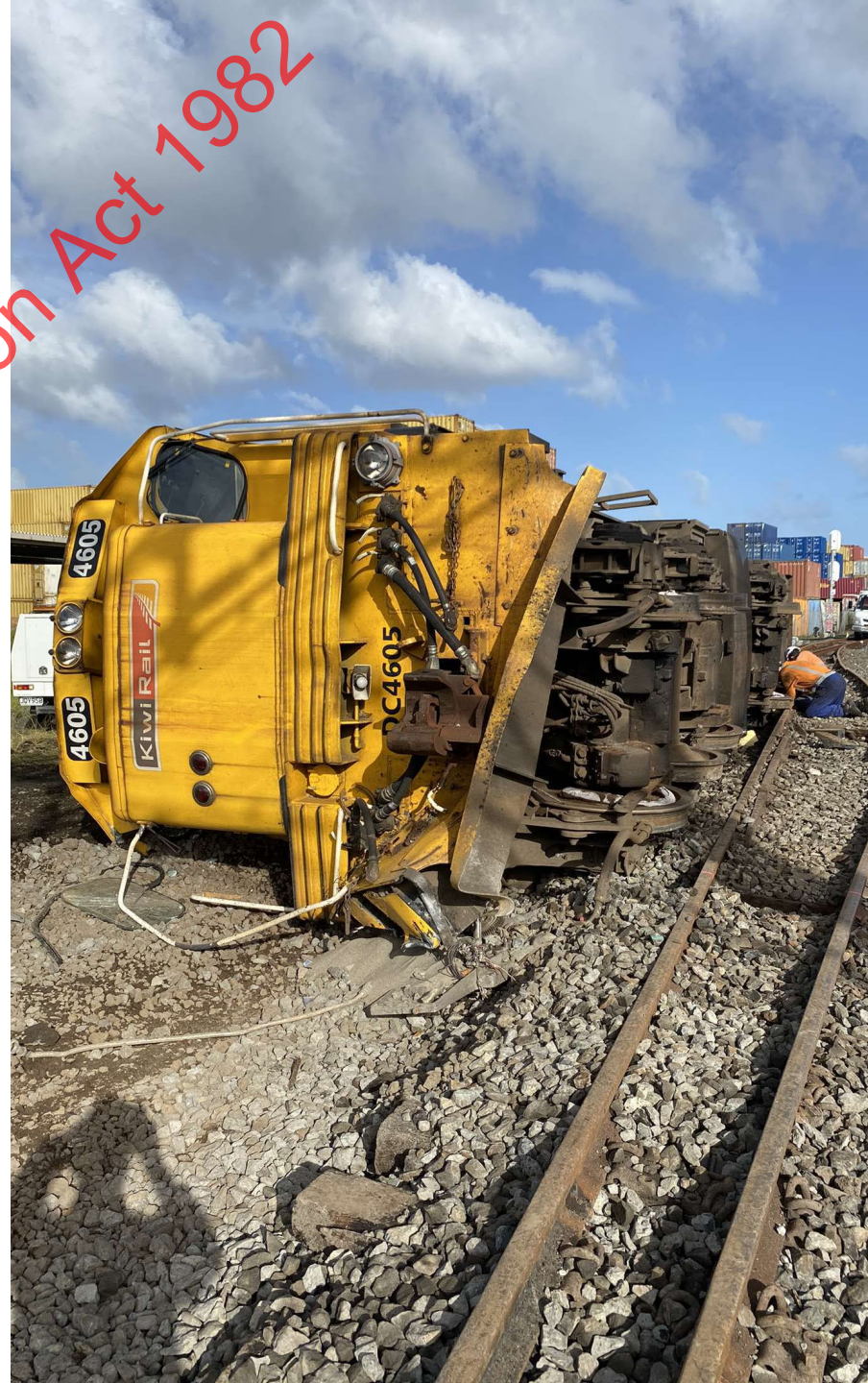
- There are approximately 300 participants in the rail system, of which 77 are licenced, and many of those 77 hold two licenses (Access Provider and Railway Operator).
- Participant types are defined as: Infrastructure Owner; Maintenance Provider; Network Controller; Rail Vehicle Owner; Railway Premises Owner; Railway Premises Manager; Access Provider; Rail Operator.
- Of those, only Access Providers and Railway Operators are required to hold a licence and are subject to regulation under the Railways Act.
- The licensed participants range from very large and influential; KiwiRail, Transdev, Auckland One Rail, Fonterra, to smaller tourist and heritage organisations; Glenbrook Vintage Railway, Steam Inc.
- The non-licensed participants also range from bodies such as Auckland Transport and Greater Wellington Regional Council through to large maintenance providers and individual contractors. For the most part, activities of non-licenced participants are covered by the licence holder with or to whom they are contracted.
- s 9(2)(g)(i)

Harm in the rail system

- Deaths and serious injuries happen in the rail system for three main reasons in New Zealand:
  - Road vehicle drivers or pedestrians fail to give way to trains at level crossings,
  - People use the railway to self-harm, and
  - Workers are injured whilst working in the environment.
- We track and monitor all of these and work with the industry to raise awareness and search for solutions. However, we are limited in the influence we can have. This is because the Railways Act does not extend to road users and pedestrians; and we do not have powers to regulate under the Health and Safety at Work Act.
- We have acted and will continue to act when we can and with what powers we have.

The Rail Safety Regulator monitors leading indicators of catastrophic harm

- We are particularly interested in, and report on, the leading indicators of catastrophic risk, they are all notifiable and are:
  - **Signals Passed at Danger** (SPAD): a SPAD occurs when a train passes a signal showing anything other than 'proceed'. Not all SPADs are the same – they range from minor (eg, a train movement of less than a metre beyond a signal) through to critical (eg, passing a stop signal by a significant distance and/or a conflict or potential conflict with another train or rail vehicle (where a train hits something or has potential to hit something)).
  - **Derailments**: a derailment is when a rail vehicle of any type leaves the track for any reason. Please note, if there are passengers on board, this is a collision.
  - **Safe working irregularities**: a safe working irregularity is when there is a deviation from an agreed safe work protocol such operating outside of defined blocking (isolated safe section of track controlled by signals or stop boards) or failing to comply with signalling.
  - **Train partings**: a train parting is when two separate parts of a train, such as two carriages, or a carriage and a locomotive, unintentionally separate during operation. An example of this is the Te Huia decoupling of July 2021.



There are improvements to be made

- We have been working with the industry leaders on how effective the regulatory framework is for New Zealand, and there is work to be done.
- Recommendations for us from workshops include increasing guidance for the industry; increasing the oversight of non-licensed participants; and a targeted review of the legislation – all of which require an increase in team capacity.
- The co-regulatory model means that generally, we do not directly instruct participants on what they need to do. However, there are times when it is necessary such as when the actions or inactions by a participant pose what we believe to be an unacceptable and unmanaged risk to safety. R3F will provide the platform to be proactive and structured in setting expectations of safety, and of holding the participants to account for meeting those expectations.
- We have identified that we must grow our capability and capacity to continue the transformation of regulatory approach to become a more active regulator. We have prepared a briefing for the incoming Minister regarding securing sustainable funding.

s 9(2)(g)(i)

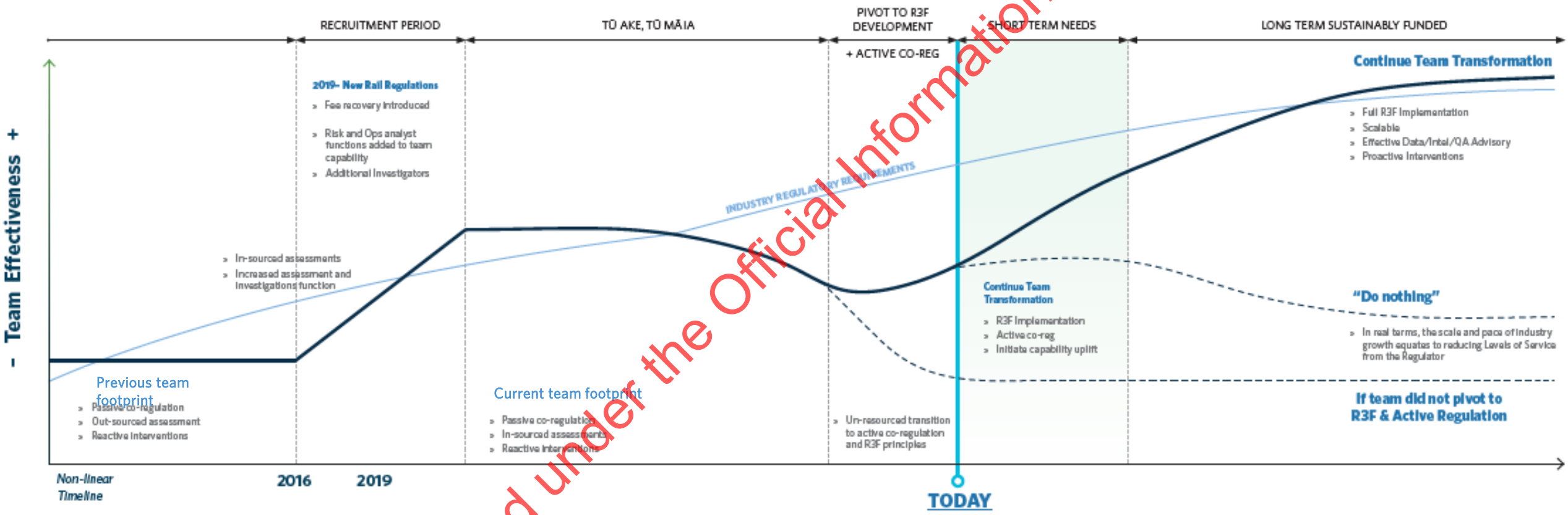
Strengths that the regulator can draw on

- R3F has the potential to be world-class, and is a repeatable and transparent assessment tool
- We make evidence-based decisions that are targeted to risk and proportional to the harm
- We are a team of highly motivated people who are committed to successfully changing the regulatory approach from legacy passive regulation, to active evidence-based regulation
- There is a real desire to collaborate to improve rail system safety through proper governance and industry body involvement
- Rail matters; people care about rail and people need to be safe
- There are pockets of excellent people working throughout the New Zealand Rail System across all organisations who are passionate about the industry and safety

Appendices

- Rail Safety Regulator effectiveness journey
- Rail Regulatory Risk Framework (R3F) on a page
- Rail Safety Regulator proposed future Operating Model

Rail Safety Regulator Effectiveness Journey



Rail Safety Regulator Proposed Future Operating Model