

MINISTERIAL BRIEFING NOTE

Subject	Rail regulatory safety and cost recovery
Date	9 April 2024
Briefing number	BRI-3009

Contact(s) for telephone discussion (if required)				
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Brent Alderton	Director of Land Transport	s 9(2)(a)	s 9(2)(a)	✓
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Action taken by Office of the Minister

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 **Withdrawn**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

9 April 2024

Hon Simeon Brown – Minister of Transport

RAIL REGULATORY SAFETY AND COST RECOVERY

Purpose

1. This briefing highlights the growing safety risk on the rail network and seeks your direction to manage these risks while sustainably recovering costs.

Key Messages

2. The rail system is becoming more complex due to increased passenger train movements in Auckland and Wellington, and freight movements between Auckland, Hamilton, and Tauranga. Infrastructure is aging and some areas are not maintained at all due to the continued deferral of maintenance. New investments, such as the Auckland City Rail Link, will add to the complexity.
3. NZ Transport Agency Waka Kotahi (NZTA)'s rail safety regulatory oversight is constrained due to insufficient revenue to recover the costs of our services. NZTA is forecasting a deficit of \$528,000 in direct costs for 2023/24 and has no legitimate funding source to address this. To align regulatory activity with existing revenue, NZTA would need to reduce its rail regulatory activities.
4. NZTA and the rail industry is concerned that an increasingly complex rail sector, and regulatory oversight that has not realigned to the scale of this change, is contributing to growing safety risks across the rail network.
5. The Director of Land Transport has initiated an independent review into the rail regulatory service and cost recovery model. NZTA would like to take this evidence-based approach to assessing the actual funding requirements proportionate to the risk profile.

NZTA is the rail regulator under the Railways Act 2005 (the Act)

6. The rail regulatory model is one of co-regulation whereby the rail industry develops, implements and administers its own codes of practice and standards, and safety risk management policies and procedures. As the rail regulator, NZTA is responsible for providing assurance that the rail industry maintains compliance with the Act, and for intervening when a specific risk is not being addressed satisfactorily.
7. The rail regulatory function is primarily funded under a cost recovery model with some investment from the National Land Transport Fund (NLTF) for activities deemed to be for public good (e.g., safety at rail and road intersections). The split is approximately 77 percent cost recovered and 23 percent NLTF. Most of the revenue is collected from the three major rail industry participants: KiwiRail, Auckland One Rail and Transdev Wellington.

There is a growing risk of a major safety incident on the rail network

8. While the probability of a major safety incident on the rail network remains low, the risk is expected to grow as new investment becomes operational and activity on the network grows in response.
9. While the rail industry has not experienced a major safety incident in recent history, there have been some near misses. For example, in 2023 the Te Huia passenger train service between Hamilton and Auckland passed a red signal, risking a collision with an Auckland Transport Metro rail train operating on a converging track.
10. Four key factors contributing to increased concern over a major safety incident include:
 - **increase in rail passenger numbers principally in Auckland and Wellington** - investment over the last two decades in the metro rail networks and services has led to more people using metro rail services, with services, especially at peak times, being at capacity.
 - **growing complexity in the regulatory task** – complexity arises from multiple sources including the need to mix aging and modern infrastructure (e.g., City Rail Link), mix of freight and passenger services in Auckland and Wellington, and multiple new participants seeking access to the rail network which creates interoperability risk.
 - **deferral of maintenance of aging infrastructure** – some areas of the national rail system are not maintained at all creating safety concerns around track infrastructure throughout the national rail system.
 - **the current funding model is impeding NZTA's ability to work with the rail industry to identify and mitigate safety risks across the rail network** – this pushes NZTA towards reactive activities and remedial work.

NZTA completed a rail safety funding review in 2018

11. The key drivers underpinning this review included:
 - a. updating fees and charges (last set in 2008).
 - b. moving the rail regulatory function to cost recovery as historical fees and charges were not sufficient to meet costs, resulting in persistent budget deficits.
 - c. supporting NZTA to perform its rail regulatory function as a modern, risk-based intelligence led regulator.
12. In 2019, rail regulatory fees and charges were increased in response to the rail safety funding review. A total annual budget of \$3.52m was allocated (\$2.78m from fees and charges; \$0.74m from the National Land Transport Fund) which at the time was considered sufficient to adequately fund the rail regulatory function. However, the key underpinning assumption was that revenue would grow with increasing volume (freight movements and patronage) to match the complexity of the national rail system. This assumption has not been borne out over time.

The Director of Land Transport has initiated an independent review of the rail regulatory service and cost recovery model

12. An independent review will inform options to define the level of rail regulatory activity proportionate to the safety risks within the national rail system. This will then inform the level of cost recovery required to deliver the preferred level of rail regulatory activity.
13. NZTA and the Director of Land Transport are concerned with both the immediate funding shortfall and the sustainable cost recovery of rail regulatory services over the long-term. NZTA has identified a range of short-term options that could manage immediate funding shortfalls, including:
 - Ensuring the Government Policy Statement on land transport has sufficient scope within the rail network or safety activity classes to help co-fund the rail regulatory function if required.
 - amending the Rail Network Investment Plan to include rail regulation.
 - joint Ministers (Transport and Finance) approving a loan to NZTA while a funding review is undertaken.
 - joint Ministers (Transport and Finance) agreeing to ring-fence land transport revenue under s9(1A) of the LTMA of their own volition.
 - asking Cabinet to approve a budget bid for Crown funding, although this may be challenging given the late stage in the budget cycle.

It is recommended that you:

1. **Note** that the Director of Land Transport has initiated an independent review into the rail regulatory service and cost recovery model.
2. **Note** that NZTA would like to meet with you to discuss options to address rail regulatory risks in the national rail system and discuss cost recovery options over the immediate and long-term.

Brent Alderton

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Brent Alderton

Director of Land Transport

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Hon Simeon Brown, Minister of Transport

Date:

2024