The New Zealand Transport Agency Rail Safety Regulator Funding Review

10 October 2018

NZ TRANSPORT AGENCY
WAKA KOTAHI

New Zealand Government

Process for consultation and making submissions

If you wish to make a submission on the proposed changes please read the information below.

Before making your submission

Please include the following information in your submission:

- the title of this document
- your name, and title if applicable
- your organisation's name if applicable
- your address – postal, and email if applicable

Sending your submission

If possible, send your submission by using the online submission form or by email to fundingconsult@nzta.govt.nz and, if you wish, follow this up with a signed copy. The online submission form is available at https://www.nzta.govt.nz/about-us/consultations/rail-safety-regulator-funding-review/

If posting your submission, address it to:

Rail Safety Regulator Funding Review
New Zealand Transport Agency
Private Bag 6995
WELLINGTON 6141

Please note that the deadline for submissions is **5pm on Wednesday, 21 November 2018.**

Your submission is public information

Please note that your submission may become publicly available and the New Zealand Transport Agency (the Transport Agency) may publish any information that you submit, and may identify you as the submitter if it publishes your submission or provides it to a third party.

Please indicate clearly, therefore, any comments in your submission that are commercially sensitive, or if, for some other reason, they should not be disclosed, or if you wish not be identified as the submitter. Any request for non-disclosure will be considered in terms of the Official Information Act 1982 and can only be withheld under that legislation.

For more information contact

The New Zealand Transport Agency Customer Service Centre on 0800 699 000.

EXECUTIVE SUMMARY

The New Zealand Transport Agency (the Transport Agency), as rail safety regulator (the 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.

The rail safety regulatory function is funded by third-party fees set under the Railways Regulations 2008. The fees set in 2008 were set below the revenue required for the regulator to break even and have remained at this rate. The current income from fees and levies approximates $1.2 million per annum. This is insufficient to cover the costs of providing the rail function and the rail function is in deficit. In July 2017 the Board of the Transport Agency wrote off the deficit of $5 million accrued since 2008.

Independent reviews in 2013 identified the regulator as “passive” and underperforming its duties as a regulator, following a reactive process-based approach to its responsibilities.

This consultation is to consider how the Transport Agency can resolve the funding constraint. An annual income of $4.15 million is needed to ensure the regulator becomes a more effective regulator, recovers its current deficit, and reaches break even by 2023/24. This consultation document proposes an option to meet these costs by amending the current fees and levies for rail safety regulatory activity.

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PURPOSE

This document informs the rail sector of the current capability constraints within the Transport Agency's rail safety role. It sets out a proposed approach for addressing the funding challenges that have contributed to these constraints. The proposal also provides the basis for the Transport Agency to be a modern intelligence-led regulator, enabling a more proactive approach in regulating the rail sector.

THE TRANSPORT AGENCY

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.

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).

The purpose of the Act is to ensure the safe operation of rail transport services across New Zealand. The intent of the Act is that the industry develop, 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. WorkSafe New Zealand's statutory responsibility in this area is focused on the health and safety of the work activity. Both agencies also act in the interests of public safety around railway activity and infrastructure. 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 regulator.

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

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 levy (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.

Current income from existing fees and levies is approximately $1.2 million with operating costs averaging $2.4 million (in 2016/17 these fees and levies 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

New Zealand's national rail system is made up of national and non-national rail system lines and currently has 87 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.

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.

In 2016/17 34.5 million passengers were carried, and 18.5 tonnes of freight were transported across the rail network.

The following table shows the different groups of rail participants and their operation.

Table 1: Breakdown of participants and their type of operation in the national rail system

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. Taieri Gorge 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

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.

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 passenger transport
- increasing rail vehicle movements, especially in Wellington and Auckland metro areas leading to increased maintenance standards and requirements.

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.

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.

Table 2 provides an insight to the 2016/17 rail vehicle traffic across the rail system.

Table 2: Rail vehicle activity 2016/17

ACTIVITY		AMOUNT	COMMENT
Train distance	Total train kms traveled	22,015,533 km	
	Passenger trains - KiwiRail	490,000 km	Long distance passenger services Revenue services only
	Passenger trains – Metro NRS	7,350,000 km	Includes only revenue services – not shunting

	Passenger trains – Tourism and Heritage NRS	141,000 km	Includes only revenue services – not shunting
	Passenger trains – Off-NRS	288,000 km	Includes only revenue services – not shunting
	Freight trains – NRS	13,600,000 km	Includes only revenue services – not shunting
	Freight Trains - Industrial	165,000 km	Shunting only
Passengers	Total passenger numbers (based on SPR reports)	34,500,000	
	KiwiRail	290,000	
	Metro NRS	32,400,000	
	Tourism and Heritage NRS	100,000	
	Passenger trains – Off-NRS	1,640,000	
Freight		18,500,000 T	KiwiRail is the only freight transporter
Track	NRS	3,350km	
	Other Rail Systems	500 km	

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.

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 demonstrates a complex layer of people activity to be managed by rail participants.

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 practice.

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

A critical juncture between rail and road transport is at level crossings where the level of crash risk is high. Table 4 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
Fatal	1	2	6	5	5	3	7
Serious	0	0	2	7	6	1	3
Total	**1**	**1**	**8**	**12**	**11**	**4**	**10**

The high rate of death and serious injury at rail crossings has persisted since 2012 despite efforts to reduce these. There has been a significant increase in level crossing events and, in particular vehicle collisions, albeit the number of heavy vehicle collisions has remained relatively consistent.

Incident reports demonstrate 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 not leading to any recorded deaths and serious injuries over the last 5 years, represent a significant potential for a catastrophic event.

WHY ARE WE CONSULTING?

There are two significant challenges.

A. The regulator has been operating under a deficit for the last ten years. This is not sustainable.

B. The regulator has been recognised, through independent reviews, as not being resourced to deliver to the expectations of a modern proactive risk-based regulator.

FUNDING – BUILDING AND SUSTAINING AN EFFECTIVE REGULATOR

Income versus costs – catch-up

The rail safety regulatory function is funded by third-party fees and levies set under the Railways Regulations 2008. The fee and levy rates took account of the economic pressures on the rail sector at that time and were set at a rate below the level required for the regulator to break even. The rates have remained the same since 2008.

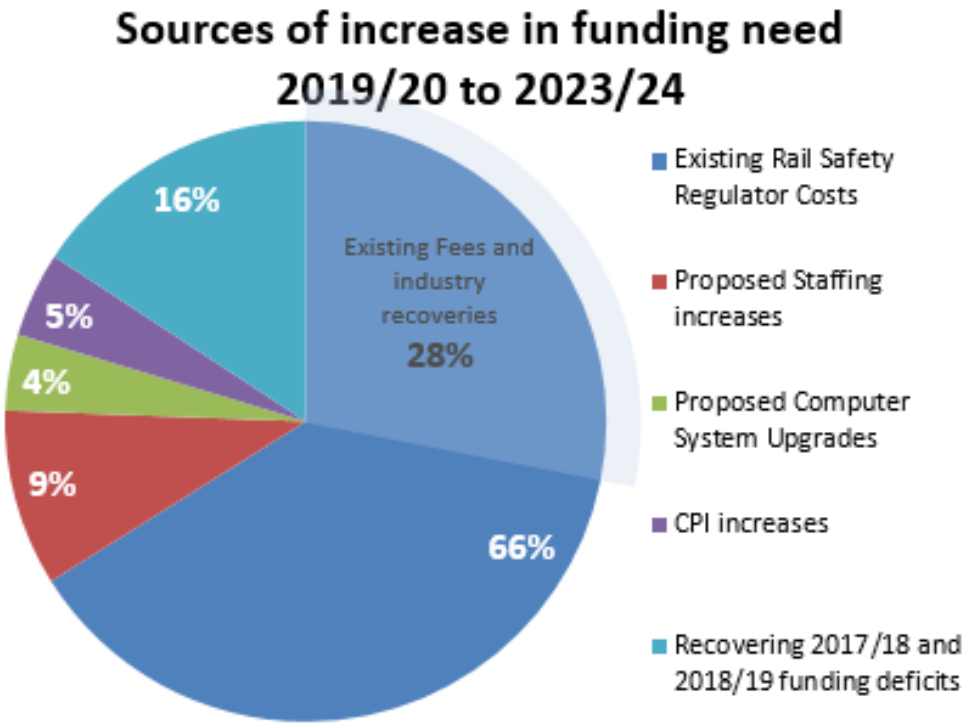
Additional revenue is required to break the deficit operating cycle for the regulator. An annual income of $4.15 million is needed to ensure the regulator operates effectively and would take the regulator through to a break-even point by 2023/24. This investment will provide for a rail safety team of 21 staff with the income made up of the following components:

- $2.25 million staff salaries
- $0.925 million direct overheads - training, travel, specialised advice
- $0.365 million indirect overheads – new IT system and support, depreciation and annual CPI adjustments
- $0.61 million provision to meet the current under recovery (2017/18 and 2018/19 years).

The expectation is that before 2023/24 the Transport Agency (along with the Ministry of Transport) will review its rail safety costs and propose a new set of fees and levies. Adopting this approach should prevent the potential for sharp increases in fees and levies in the future.

Sources of the Funding Increase

The following graph demonstrates the components that make up the proposed increase in funding needs, compared to current charges, including recovery of any deficit accrued during implementation.



Consultation questions

1. Do you agree with the overall goal of this review (to fund a proactive, intelligence-led, risk-based regulator)? Why or why not?

2. Can you identify any risks if the proposed resourcing for the regulator does not go ahead?

Where will this income come from?

The Transport Agency has applied government guidelines and principles for setting fees and levies (refer to Appendix 1) and evaluated a range of potential funding sources against these principles. The proposed funding approach also takes account of the following assumptions.

- The rail safety regulatory function will continue to sit with the Transport Agency.
- Alternative options for funding the regulator will continue to be limited.

The Transport Agency is proposing that the required $4.15 million be sourced in the following manner.

Table 5: Funding sources

FUNDING SOURCE	AMOUNT PROPOSED TO BE RAISED	PORTION OF TOTAL FUNDING
National Land Transport Programme	$743,600	18 per cent
Fees (hourly rate and expenses)	$250,000	6 per cent
Annual levy	$3,156,400	76 per cent

A combination of National Land Transport Programme funding and levy/fees funding is proposed. This is consistent with the cost recovery parameters and policy underpinning the Act. Cost recovery from the industry and road users reflects the fact that:

- the rail industry, by providing services which have the potential for significant harm, drives the need for the cost of independent oversight and assurance of safety management.
- the primary beneficiary are rail users whose safety is promoted, and it is expected that the rail industry will pass costs on to its customers, supporting beneficiary-pays principles and economically efficient outcomes.
- road users, in their interactions with the rail network (e.g. level crossings), are a significant source of risk to the rail industry that the industry and regulator must manage.

National Land Transport Programme (NLTP) Funding

The regulator undertakes a number of activities in relation to the interaction between pedestrians, road users and trains, for example assuring level crossing and pedestrian hazards are adequately managed. Therefore, the Transport Agency considers that funding from road user taxes is an appropriate funding source for the regulator activities related to pedestrian and road user safety in the rail corridor. This would be a new funding stream for the regulator.

Appendix 2 shows the use of NLTP revenue by function.

Annual levy

A levy on the rail industry is currently used to collect most of the regulator funding. The Transport Agency considers that an industry levy is the most appropriate way to recover the costs of the rail safety functions that are linked, or beneficial, to a group of rail participants rather than a single licence holder. A levy is also considered appropriate to cover tasks where the transactional costs from charging a fee would be disproportionate to the cost of the activity, e.g. reporting safety incidents. Appendix 3 shows the use of levy revenue by function.

Currently annual levies are calculated using historical data about activity levels, rather than current data, and are submitted through the annual Safety Performance Report (SPR) in October each year. This means that the annual levy is calculated using rail activity data from two years previously. For example, the fees for 2018/19 are based on actual rail activity in 2016/17. The levy is collected over four instalments.[1]

Fees

Fees have been elected where there is a strong link to the reason for the cost, to provide appropriate price signals, promote efficiency, and allow for up/down scaling where the level of required activity is variable. Hourly rates ensure that the costs of activities can be passed on to those who require the activity. The hourly rate has been set at $120.00 excluding GST.[2] The Transport Agency will recover directly for the actual time spent (applying the hourly rate) on licence applications, assessments of Safety Cases (and practice), Safety Case variations and replacements, follow-up work when non-compliance is to be resolved, and major project applications.

The Act (section 60) allows for ‘actual and reasonable’ fees to be charged for other expenses such as travel, accommodation, and consultants for major projects. The Transport Agency’s Chief Executive may require payment of actual and reasonable costs for travelling time, accommodation, consultants, and associated costs incurred in connection with any matter for which an hourly rate is payable.

Consultation questions

3. Do you agree with the proposed sources of funding (levies, fees and funding from the National Land Transport Programme)?
4. How would you like the rail activity data to be collected and the annual levy process managed?

[1] The assessment and calculations informing this funding revenue are based on the data reported by licensed rail participants. It is important that the data supplied is accurate to ensure that annual levies are calculated correctly.
[2] The hourly rate has been calculated based on the cost of a full-time rail safety officer divided by the approximate total working hours per annum.

- Is there an advantage or disadvantage, to you, of collecting passenger train journeys and/or network rail activity quarterly instead of yearly and being charged on these actuals?

Funding options

Nine funding options were examined for setting an annual charge: the status quo, a CPI-adjusted status quo, and seven other options. These options are outlined in more detail in the following table.

Table 6: Funding options considered for determining levies

OPTION	DESCRIPTION
Current levy (status quo)	The Railways Regulations 2008 require all rail licence-holders to 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 levy	The levy is based on the existing 'annual licence fee', adjusted for the Consumer Price Index changes since 2008.
Current levy, scaled up to meet funding needs (modified status quo)	The levy is based on the current 'annual licence fee' for all rail licence-holders, uniformly scaled to meet funding needs.
Revenue-based levy	The levy is apportioned according to each rail licence-holder's revenue.
Activity-based levy	The levy is apportioned according to the amount of time the Transport Agency forecasts it will spend on each sector (each rail licence-holder is placed into a sector reflecting its type of activity).
Demand-based levy	The levy is apportioned according to the "regulatory demand" – the contribution of each sector to accidents.
Simplified demand-based levy	The levy is apportioned according to the "regulatory demand" – the contribution of each sector to accidents. Sectors with a similar level of risk are grouped together (thereby reducing the number of sectors).
Passenger-based levy	The levy is a base level plus an amount apportioned according to passenger volume. Participants with no direct passengers pay only the base amount.

Licence-class levy	The levy is a base level plus an amount apportioned according to the passenger train journeys operated and/or the total traffic on an access provider's network. Participants not directly operating services or providing access to a network pay only the base amount.

The Transport Agency considered all nine options and produced a shortlist of five that would deliver the required funding; these were the modified status quo, demand-based levy, simplified demand-based levy, the passenger-based levy and licence-class levy.

The shortlist was assessed against the following criteria:

- alignment – how aligned is the option with a risk-based regulatory approach
- robustness – how reliable is the data gathered to apportion the charge (how easy is it to provide and verify)
- simplicity – how easily can a licence-holder understand what levy class they belong to and what their charge will be
- affordability – how does the levy allocated to licence-holders compare with their perceived ability to pay
- flexibility – how well does the option adjust the changes in the level of activity or scope of regulation

Applying these criteria, the licence-class levy was deemed to be the best fit with the assessment criteria, in particular for affordability as costs to participants relate directly to income-earning activity. This option is simple to apply with the use of fixed and variable safety levies, enabling rail participants to budget by using previous years' activity rates. Refer to Appendix 3 for the funding allocation evaluations.

Consultation questions

5. Do you agree with the Transport Agency's preferred option of a licence-class levy? Why or why not?
6. Are there any aspects missing from this option that you were expecting? Explain your view.

Transport Agency's preferred option

The rail industry will directly contribute around $3.4 million of the $4.15 million total annual funding requirement for the regulator.

The preferred funding option is made up of:

- an annual fixed safety levy of $500.00 (exclusive of GST) for each class (access provider and/or operator) of licence held (licence holders that carry out both functions will pay a fee for each function – a total of $1,000)
- an annual variable safety levy

    - for any train operator, 16.11 cents for every passenger train kilometre (for example, if a train on the NRS travels 20 km from one station to another, the cost for the operator would be $3.22)
    - for any access provider, 8.05 cents for each train kilometre operated on its network (in the above example, KiwiRail as the NRS access provider would be charged $1.61).
- an hourly charge of $120.00 (exclusive of GST per hour) for fee-based work actual and reasonable costs for staff expenses and, if required, independent contractors for fee-based work.

The levy rates reflect the following:

- The risk exposure of a train is related to the train itself, whether it carries passengers, and the distance it travels. Events, especially catastrophic ones, tend to be related to the train (derailments, collisions, fires).
- The key responsibility of an access provider is to maintain the infrastructure and manage train movements to avoid the risk of collision. The levy reflects increasing risk per train kilometre they need to manage.
- Significantly more responsibility for risk sits with rail operators. This is reflected in the difference in the two variable levies.
- The levy rates have been calculated based on the most up-to-date activity information currently available to the Transport Agency (data for the 16/17 year). It is intended the rates will be re-calculated prior to finalisation of the proposal, based on activity data for the 17/18 year (currently being collected).
- While we expect passenger numbers and freight volumes to increase it is difficult to factor these in since our variable safety levy is determined by train kilometres not passenger numbers or freight. Accordingly, it is possible for a substantial increase in passenger numbers to be met through better utilisation of existing trains – meaning no change to passenger train kilometres travelled. On this basis we have assumed a static amount of train travel.

Fee-based work, where actual time and expenses incurred by the regulator staff will be directly recovered, includes licence applications, assessments of Safety Cases (and practice), Safety Case variations and replacements, follow-up work when non-compliance is to be resolved, and major rail project applications.

Appendix 4 provides a comparison between current fee and levy rates and the proposed fee and levy rates.

Table 7: Data source for levy calculations (2016/17)

ACTIVITY		AMOUNT
Train distance	Total train kms traveled	22,015,533 km
	Passenger trains – KiwiRail	490,000 km
	Passenger trains – Metro NRS	7,350,000 km
	Passenger trains – Tourism and Heritage NRS	141,000 km

	Passenger trains – Off-NRS	288,000 km
	Freight trains – NRS	13,600,000 km
	Freight Trains - Industrial	165,000 km
	Non-KiwiRail Work Trains	No data

Applying the preferred option to charitable and volunteer rail participant operations

There would be considerable difference in the variable annual levy that individual rail participants would be expected to pay under the Transport Agency's preferred option. This is a reflection of the different levels of rail activity, and therefore risk potential, between rail participants.

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 profit, the Transport Agency proposes to exempt registered charitable or volunteer (not-for-profit and no paid staff) rail participants (approximately 25 rail participants) from the annual variable safety levy, where their income is less than $30,000 per annum.

This acknowledges this group's non-commerciality and inability to reasonably recover costs through on-charging. Effectively the annual fixed safety levy for this group would be capped to a maximum of $1,000 (where the licensee is both operator and access provider). These rail participants would continue to be subject to fees in relation to services delivered to them by the regulator (refer to Appendix 4).

Defining a train, and a service, for funding purposes

Passenger services – kilometres run in-service

A 'service' is a journey available for passengers, regardless of whether passengers are on board. A 'service' is a single physically or electronically coupled group of rail vehicles.

A single service
Six-car electric multiple unit
Two cable cars sharing a cable

If not recorded directly, e.g. via odometer readings, kilometres run in-service may be estimated (as accurately as possible). Sources for estimating kilometres run in-service may include for example:

- maintenance service records, or
  a standard journey length x number of journeys per day x days operating per year.

Freight or Non-KiwiRail work trains – kilometres run

A 'train' is a single physically or electronically coupled group of rail vehicles. Any distance travelled, regardless of whether the train is loaded or not, or its purpose for travel, is counted.

A single train	Multiple trains
A tractor shunting a wagon with a chain connection	A tractor making multiple shunts with individual wagons to assemble a multi-wagon
A work train towing a goods wagon	Two work trains travelling in convoy without automated collision-avoidance systems (this is two trains)

Regulator contribution to major rail projects

Significant infrastructure or operations projects in the rail industry, e.g. Auckland's City Rail Link, require early engagement by the regulator. It is the most cost-effective and beneficial approach if safety controls are considered early in a design process.

The regulator expects to be involved in one to three major projects (rail infrastructure and/or a rail operation) at any point in time for the foreseeable future. There is currently no ability to charge for this service. The ability to charge actual costs for staff time and expenses and, if required, independent contractors contributing to project development and implementation is considered to be fair and reasonable.

Consultation questions

7. Do you agree with the following elements of the Transport Agency's preferred funding option:
    a. hourly rate and expenses for fee-based work
    b. fixed safety levy
    c. variable safety levy
    d. exemption from variable levies for charities and volunteer participants.

    If not, explain your views including your recommendation. Include the outcomes on the rail sector or individual rail participants from your recommendation.
8. Do you agree that the regulator should charge for contributing to major rail projects?
9. How would you expect that your organisation would manage the financial changes proposed in this review?
10. For the purposes of calculating the proposed levy, have we got the definition of a single service and a train right?

11. Is the passenger train, freight train and/or work train distance recorded in your FY17/18 Safety Performance Report indicative of your forecast activity for the next five years? If not, what is the difference?

INVESTMENT VALUE FOR MONEY

Regulator's performance

Some key rail participants and regulatory partners have expressed concern at the regulator's performance, in particular its reliance on rail participants to drive its approach to safety performance.

Investment is needed to meet self-funding expectations but also to significantly improve the capability and performance of the regulator.

Since 2008 the regulator's ability to fully implement the Act has been influenced by budget constraints and has focused on basic regulatory functions, e.g. issuing licences and assessment functions. Despite having the power to apply statutory interventions (such as mandatory conditions or prosecution), resourcing limitations have meant that the regulator has not exercised these functions. Further, compliance tools and techniques to address safety issues have been under-utilised.

The 2013 Australian Transport Risk Solutions international comparative review of the rail safety and regulatory operational policy and activity described the regulator as "passive" under under performing. The review found that the regulator lacked presence and impact with the rail industry participants and the requisite competencies and capacity to regulate at the (international) standards of industry best practice.

Following this review the Transport Agency did allocate discretionary funding to increase the regulator's resources from 10.5 to 15 full time staff. However, performance still remains less than what is expected of an effective regulator.

Consultation questions

12. How do you think the regulator could improve its performance?
13. What would you need to see demonstrated in the performance of the regulator that will assure you that rail safety objectives are achieved and value for money is being delivered?

Investment benefits

An additional resource of six full-time staff members has been calculated as necessary to transition the regulator from a process-driven regulator to an intelligence-led, modern, risk-based regulator prepared to implement the Act fully. The regulator recently revised the Rail Safety Regulatory Operating Model, the additional resourcing will enable the regulator to

effectively implement this model and proactively respond to the increased demands placed on the rail industry as it delivers on government policy.

Additional critical reasoning and thinking skills, and tools, are needed to equip the rail safety regulator to systematically look at risks across the entire rail system, make accountabilities clear, focus on critical risks and intervene where appropriate and at a level proximate to the risk.

A work programme is underway to build resources to support rail participants to self-regulate e.g. safety case refinement and to strengthen existing staff capability as a responsive regulator. The Transport Agency has also taken the lead, and is facilitating a collaborative approach across multiple agencies e.g. WorkSafe, Rail and Maritime Transport Union, commercial Rail Industry, KiwiRail - to rule making, something that has been 'on hold' for some years.

As the Transport Agency continues to transition to a modern intelligence–led, risk-based responsive regulator, as specified in the 2017 "Government Expectations for Good Regulatory Practice" it is imperative that the regulator has the capacity and capability to deliver:

- safety leadership across the rail sector
- oversight of the whole rail sector, rather than just those who seek licences
- thorough analysis of safety intelligence to make evidence-based decisions
- comprehensive and proactive management of critical risks in the rail environment
- responsive and flexible use of the regulatory toolkit to ensure the optimal compliance outcome
- meaningful and lasting safety improvements in the rail industry.

Without the proposed investment the Transport Agency will not have the required capability to provide effective regulatory oversight of the rail industry. The absence of a robust, well-resourced regulator could increase the potential for a catastrophic event through a lack of effective monitoring and response by the regulator.

Long term outcomes

The long term outcomes, in terms of improved rail safety outcomes, are expected to emerge gradually and will not be immediately measurable. This is mainly because serious injuries and fatalities on the rail system (excluding level-crossing crashes or unauthorised persons on the track) are so infrequent that trends emerge only by looking at longer data series, such as 10-15 year rolling averages.

The expected benefits will be fewer deaths and serious injuries and fewer safety critical incidents that are known precursors to catastrophic accidents. While the outcomes of further investment may take time to be fully evident, the increased monitoring and robust analysis will be evident through early reporting of risk and proportional interventions.

Consultation question

14. Is there anything else you would like to comment on or tell us?

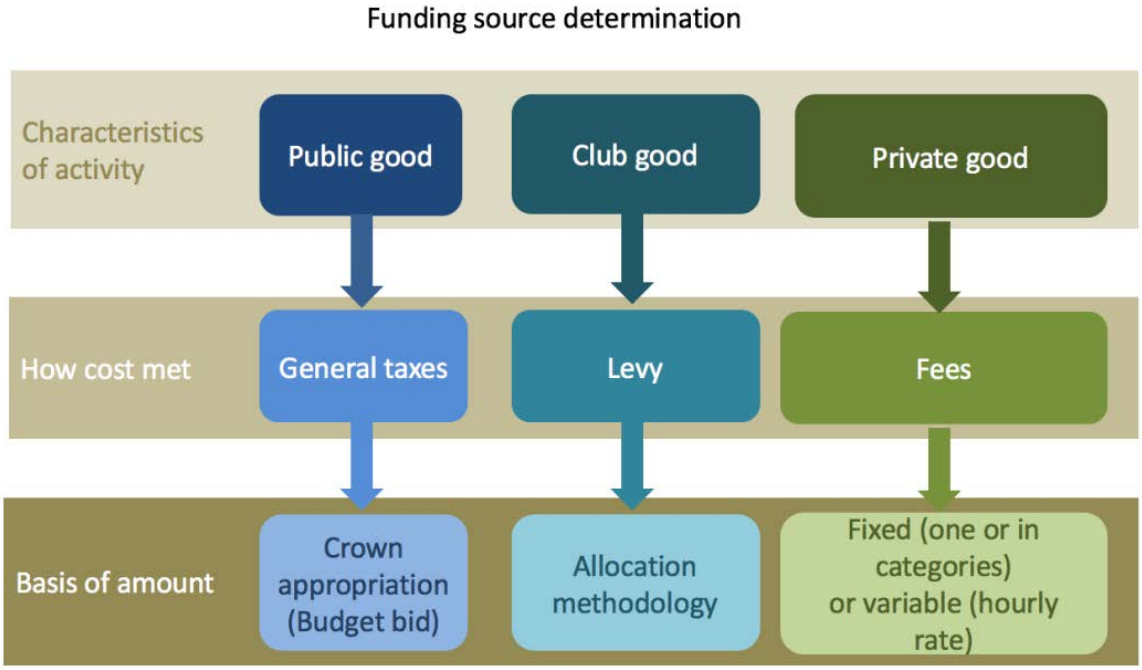
Appendix 1 – Government guidelines for setting fees and levies

The Transport Agency's rail safety function operates within a cost recovery funding arrangement, where all its funding comes from fees for particular activities or from an industry levy (in the form of an annual charge). 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 in the performance or exercise of functions, powers or duties or in the provision of services.

Section 60 of the Act 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.

This funding review has applied the New Zealand Treasury Guidelines for 'Setting Charges in the Public Sector' and the Office of the Auditor-General Good Practice Guidance 'Charging Fees for Public Sector Goods and Services' to identify the funding source options for each of the activities undertaken by the Transport Agency rail safety regulator.[3]

Table 1: High-level view of Treasury and the Office of the Auditor-General guidelines



[3] www.treasury.govt.nz/publications/guidance/planning/charges; www.oag.govt.nz/2008/charging-fees/docs/charging-fees.pdf

Appendix 2 - Breakdown of revenue by function

FUNCTION	PROPOSED SOURCE
1.1 & 1.2 National Priority Co-ordination	100% Levy
1.3 Level Crossing and Trespassing Hazards	100% NLTP
2.1 New Licences 2.2 Licence Modifications	50% Fee / 50% Levy
2.3 Safety Case Variations	80% Fee / 20% Levy
2.4 Major Projects	90% Fee / 10% Levy
2.5 Ordinary Safety Assessments 2.6 Special Safety Assessments	50% Fee / 40% Levy/10% NLTP
2.7 Information and Outreach	75% Levy/25% NLTP
3.1 Monitoring Performance	50% Levy / 50% NLTP
3.2 Investigations 3.3 Rail System Oversight	75% Levy / 25% NLTP
3.4 Interventions	75% Fee / 25% Levy/10% NLTP
3.5 Monitoring Compliance	90% Levy/10% NLTP
4.1 Stakeholder relationships 4.5 Ministerial Servicing	70% Levy/30%NLTP
4.4 Systems Improvement	80% Levy/20% NLTP

Appendix 3 – Funding allocation evaluations

The following criteria were chosen:

Alignment	How aligned the method used to apportion the levy (assigning sectors, activities and metrics) is to a risk-based regulatory approach? This is how strongly it can be demonstrated that those methods are based on objective measures and classifications (regardless of the quality of the data used).
Robustness	How reliable the data used to apportion the levy (demand from each activity or sector, metrics) is, and that no participant's levy is unduly affected by known uncertainties.
Simplicity	How easily can a participant understand what activity/class they are or will be in, and what levy they will pay?
Affordability	How do levy payments compare to the (perceived) ability of participants to pay them?
Flexibility	How well does the proposal adjust to changes in the level of rail activity and/or the scope of regulation (e.g. increasing oversight of new groups of participants)?

'Cost of implementation' was considered but not evaluated. All the options on the short list use tools, systems, and metrics already in use by the Transport Agency. Therefore, implementation costs were considered immaterial.

	Alignment	Robustness	Simplicity	Affordability	Flexibility	Score	Comment
Weighting	*2*	*3*	*1*	*1*	*2*		
Scaled current levy	1	3	3	5	1	**21**	Not preferred due to very poor justification for how the levy is apportioned
Demand-based levy	4	1	1	1	3	**19**	Not preferred due to unacceptably high dependence on unreliable data
Simplified demand-based levy	4	2	2	2	3	**24**	Not preferred due to unacceptably high dependence on unreliable data
Passenger levy	2	4	4	4	4	**32**	Not preferred as only focused on 'people-based' activity
Licence class levy	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 |

Appendix 4 - Comparison of current fees and levies and proposed fee and levy rates

(All amounts are GST exclusive)

CURRENT				PROPOSED		
Annual fixed safety levy	Per licensed organisation	$347.80		Rail operator licence	$500	
				Rail access provider licence	$500	
	To hold either or both classes of licence			Most licence-holders require both these classes of licence		
Annual variable safety levy	Access provider (network)	$152.60	Per km track	Charitable or voluntary organisations	None	
	Access provider (other)	$4.72	Per km track	All other operators	16.1 cents	Per passenger train km
	Passenger operator (metro)	$12.61	Per 1000 pax	All other access providers	8.05 cents	Per train km on their network
	Passenger operator (cable car)	$0.89	Per 1000 pax			
	Passenger operator (heritage and small tourist business)	$1.55	Per 1000 pax			
	Passenger operator (long distance)	$18.53	Per 1000 pax			
	Freight operator	$83.70	Per $mill of freight revenue			
Fees (fixed)	Licence application	$104.00		None		
Fees (hourly rate)	Ordinary or special safety assessment	$156.00	Per hour	Licence application Safety case variation or replacement Ordinary or special safety assessment Compliance intervention Major project	$120	Per hour
Fees (other costs)	None			Any other expense incurred by the Agency	Actual and reasonable	