
Rail Safety Regulator Funding Review

Summary of submissions

Public consultation 10 October–21 November 2018

June 2019

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OVERVIEW

On 10 October 2018, the Transport Agency publicly consulted on 'The NZ Transport Agency Rail Safety Regulator Funding Review'. This document described the current capability constraints within the Transport Agency's rail safety role. It set out a proposed approach for addressing the funding challenges that have contributed to these constraints. The proposal also provided the basis for the Transport Agency to be a proactive, intelligence-led, risk-based regulator, enabling a best-practice approach in regulating the rail sector.

The consultation ran for six weeks of public consultation, 10 October to 21 November 2018.

Profile of submitters

Submitter group	Submissions
KiwiRail	1
Metro passenger providers	2
NRS Tourist and Heritage organisations	4
Non-NRS Tourist and Heritage organisations	22
Industrials	1
Rail stakeholders	6
Total	36

A full list of submitters is provided in Appendix 1.

Key themes from submissions

- **Strengthening the regulator** – there was broad support for the goal of the review (to fund a proactive, intelligence-led, risk-based regulator). However, some submitters believed the industry is over-regulated and/or the Transport Agency needs to focus on reducing costs.
- **Supervision of heritage sector** – some of the submitters from the heritage and tourism sector believed the intensity of supervision on their sector is unwarranted, and therefore the proposed costs do not reflect risk.
- **Increasing National Land Transport Programme (NLTP) and/or Crown funding** – many submitters believed the public benefits provided by a safe and reliable rail system should be reflected in higher funding from non-rail sources, such as the NLTP, cultural or tourism funds.
- **Recovery of the current deficit** – some submitters felt it was improper to expect future rail participants to pay back the historic funding shortfall.
- **Distribution of the levy** – there was considerable discussion on how costs should be split within the rail industry, with most submitters asserting their levy was excessive compared to the other sectors in the industry.
- **Charity and Volunteer exemption** – many submitters from the heritage and tourism sector suggested the threshold for this should be raised.
- **Impact of the changes** – most submitters highlighted the difficulty in passing the proposed cost increases on, and the potential operational impacts as a result. Some suggested a transition period.

BACKGROUND

Context for the review

The Transport Agency provides independent assurance to the government and general public that those who provide rail services in New Zealand effectively manage safety risks to staff, other rail operators, and the 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.

The rail safety regulatory function operates within a cost-recovery funding arrangement, where 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 have otherwise remained the same since 2008.

In 2013 the rail safety function was carried out by 10.5 FTE, applying a largely passive regulatory approach. At this time the Australian Transport Risk Solutions international comparative review of the Rail Safety Regulator advised the Transport Agency that the regulator lacked impact and the requisite competencies and capacity to regulate at the (international) standards of industry best practice.

In response, the Transport Agency increased the function to 15 FTE. To enable full development into a proactive, intelligence-led, risk-based regulator, the key investment will be to build the regulatory function to 21 FTE. This is considered the minimum complement required to discharge the rail safety regulatory role.

Consultation process

The Transport Agency Rail Safety Regulator Funding Review proposals were released for consultation on 10 October 2018 for six weeks with the end date of 21 November 2018.

The purpose of the consultation was to get feedback on a proposed funding model for the Transport Agency Rail Safety Regulator. In particular, the review proposals sought to:

- address the Rail Safety Regulator's ongoing financial risks
- provide funding for a fully resourced, intelligence-led, risk-based Rail Safety Regulator to meet rail safety outcomes
- recommend a sustainable funding model that is consistent with best practice for cost recovery in the public sector
- update and apportion costs to all users of rail safety services in an equitable and transparent way
- identify actions the Transport Agency could take to demonstrate to stakeholders it was providing a value-for-money regulatory function.

Consultation was run in the following way:

- The consultation documents, response templates, background documents and a set of Frequently Asked Questions were published on the Transport Agency website on 10 October, the day of the consultation launch.
- On the same day, all licensed rail participants and key stakeholders were advised.
- The consultation document posed 13 questions to prompt submitters' views on crucial aspects of the proposal. This did not restrict submitters from providing feedback on any other aspects they wished. It was made clear that submissions would be published.
- An online survey form and an editable question form were developed to assist submitters in making a submission. However, submissions were accepted in any written form.
- During week two and three of the consultation period each licensed rail participant was phoned directly to confirm they had received the email notification about the consultation and encouraged to submit.
- Queries were received from some submitters throughout the consultation period. Where the response provided the submitter with information not previously released, new FAQ were published to ensure all submitters had access to the same information.

SUMMARY OF SUBMISSIONS TO QUESTIONS

This document presents the views of submitters. These views should not be considered to be endorsed or verified by the review team, the Ministry of Transport or the Transport Agency.

Submitters' responses have been collated according to the question structure in the consultation document. Some questions have been combined due to the interconnection of responses on these questions.

The review team has attempted to accurately interpret and collate submitters' comments to present overall themes of support and concerns. We apologise for any errors in our interpretation. Where we thought it would clarify submitters' concerns, we have included quotes directly from submissions. The inclusion (or exclusion) of specific submitter statements is not intended to indicate the review team's support for or disagreement with that statement.

At the end of each question the review team has responded to major concerns and either identified where it recommends the proposal be modified or explained why the proposal should remain as is. It has not been possible to respond to every detailed concern raised.

Submitters have all been assigned an identification code, which can be linked back to the submitter in Appendix 1. The code consists of a prefix indicating the submitter's sector, and a number. 'Rail stakeholders' represent those submitters whose activities don't require a rail licence (and don't operate under another organisation's licence) and therefore wouldn't pay a levy but may pay fees under the current arrangements or this proposal.

Sector	Prefix
KiwiRail	KR
Metro passenger providers	M
NRS tourist and heritage organisations	N
Non-NRS tourist and heritage organisations	H
Industrials	I
Rail stakeholders	S

Q1: Do you agree with the overall goal of this review (to fund a proactive, intelligence-led, risk-based regulator)?

Q2: Can you identify any risks if the proposed resourcing for the regulator does not go ahead?

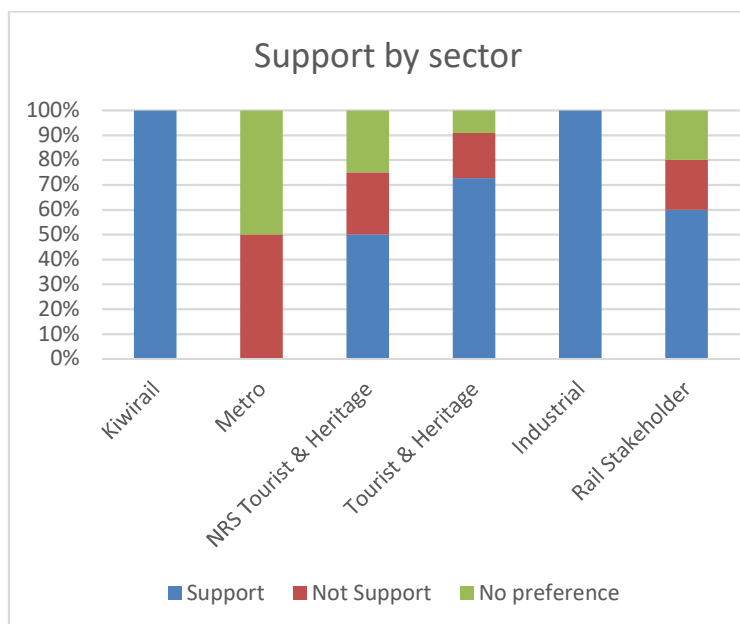
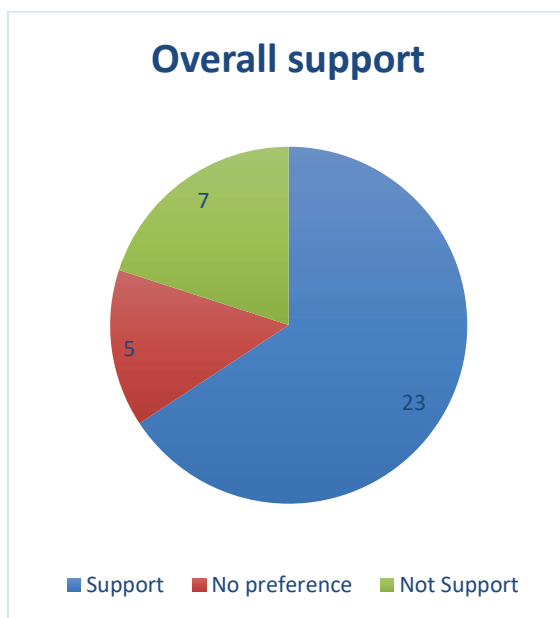
Context

The Transport Agency provides regulatory oversight of the safety of the rail sector, which consists of 91 licensed participants and hundreds of other organisations. From 2009 to 2018, 134 people died on the rail system, and there is the potential for catastrophic accidents involving hundreds of people.

The Transport Agency has approval to build a team of 21 full time staff in order to operate an intelligence-led, risk-based modern regulatory service response for rail safety. The Rail Safety Regulator Funding Business outlined this to be the minimum necessary to deliver on the Rail Safety Regulatory Operating Model, released in 2016.

There is significant diversity in the New Zealand rail industry, with licence holders ranging from the national rail provider and large metropolitan commuter operators, to small tourist and heritage organisations.

Submission responses



Submission themes

Need for the regulator

- The majority of submitters (S1, H1, H2, S2, N1, N2, S4, KR, I1, H9, H10, H14, H15, H16, H17, H19, H20) on this question felt the goal of the review was necessary. The need to retain a safety culture and for continuous improvement of safety across the rail industry was acknowledged by the majority of submitters.
 - Submitter S1 stated *“We support the strengthening of the transport regulator so that it has the necessary competence, expertise and independence to regulate the rail sector effectively”*.
 - Submitter S2 stated *“A well funded regulator is key to create a modern and safe rail industry”*.
 - Submitter H17 stated *“This will lead to better safety and risk management”*.
- Some submitters (H3, H4, H8, H13 and H18) agreed with the goal for the commercial rail industry, but believed it needed to better recognise the differences (particularly in risk) between the commercial and the heritage sector.
 - Submitter H3 stated *“...the heritage sector whose activities do not typically operate with overly significant input from the regulator and whose risks are typically less significant than those of the national network operators.”*
 - Submitter H13 stated *“The overall goal ... seems appropriate for the metro passenger rail participants due to their scale and issues with growth, diversity and significant risks such as road level crossings. This goal ... has little or no alignment with volunteer heritage rail participants who are seeking real help and clear guidance from the rail safety regulator...”*
- Submitters S1, S2, N1, I1, H9 and H17 believed not achieving the goal would decrease safety in the sector.
 - Submitter I1 stated *“No focus will cause neglect”*.
 - Submitter N1 stated *“If the goal is not reached there will be an increased risk of excessive reliance on self-regulation”*.
- Submitters N3 and H4 did not agree with the review goal and believe there would be no increased risk to the industry with keeping the status quo.
 - Submitter N4 stated *“The goal of the review has little or no alignment with the volunteer heritage rail participants”*.
- Submitter N2 felt the rail industry already has a *“good safety record and safety culture”*.

Cost of the regulator

- The need to increase staffing numbers to 21 FTE was questioned by some submitters.
 - Submitter S4 believed the goal must be achieved at reasonable cost.
 - Submitter H4 believed there was little evidence that current staffing was inadequate, the regulator should cut costs and operate a *“lean regulator team”*.
 - Submitters M1, M2 and KR felt the review hadn’t demonstrated sufficient evidence of the benefits to the rail industry.
 - Submitter H13 believed the previous operating model of a small team and use of contractors for assessments had worked sufficiently.

Overlap with other agencies

- Submitters M1 and KR questioned the need to include resourcing for an investigation function, given two other agencies (Transport Accident Investigation Commission and WorkSafe) can also investigate rail accidents.
 - Submitter M1 stated they were *“seeking to understand where safety investigations fit within the ambit of the Transport Agency”*.
 - Submitter KR believed *“there is a wider efficiency and effectiveness argument to be considered”*.
- Submitter H5 believed that tram activities, particularly in respect of the Access Provider role, was already adequately regulated by roading authorities.

Review team comment

The Transport Agency and Ministry of Transport have reviewed the resource model in depth and are confident that 21 FTE is appropriate. The business case outlines the evidence base providing this confidence. The business case was independently reviewed¹ and the reviewer acknowledged the resource model as appropriately sized for the work of a modern risk-based regulator when benchmarked across international rail standards. The Transport Agency also undertook some benchmarking.

However, the review team acknowledges submitters' concerns and the need for the Transport Agency to validate its resource model once the full team is operational. The value for money of the in-place resource model will be evaluated as part of the next funding review (currently anticipated to start in 2020).

The Transport Agency acknowledges its investigatory responsibility overlaps with other agencies. It notes the Civil Aviation Authority and Maritime New Zealand have a similar legislative situation. The overlapping jurisdictions of the Transport Agency and WorkSafe NZ was discussed in the consultation document. The overlap is acknowledged in the Railways Act, and the two agencies have agreed a Memorandum of Understanding to assist in minimising duplication from this overlap.

The Transport Accident Investigation Commission's (TAIC) purpose is to *“determine the circumstances and causes of [selected aviation, marine, and rail] accidents and incidents with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person”*. Its involvement is incident-driven, and its powers are used to generate safety recommendations for agencies and the industry, but an organisation cannot be compelled to act or prosecuted on the basis of TAIC's findings. The Transport Agency's oversight, in contrast, is balanced between regular monitoring across the sector and incident-driven. On the basis of its findings, it can compel organisations to act, prosecute breaches of the Act, and/or remove a licence to operate.

Changes to the Railways Acts are outside the scope of this review. A constraint of the Regulatory Operating Model has been that the Transport Agency is required to apply the same regulatory framework to all rail participants. However the Ministry of Transport is the responsible agency to consider this and the Transport Agency will refer these concerns to the Ministry for it to address at the next opportunity.

¹ Navigatus Consulting, 2018, 'A review of the NZTA Indicative Business Case to increase resources for New Zealand's Rail Safety Regulator'.

Q3: Do you agree with the proposed sources of funding (levies, fees and funding from the NLTP)?

Context

The objective of the funding proposal is to fully fund the rail safety regulator for the period from 1 July 2019 to 30 June 2024. Annual revenue of \$4.15million is required to achieve this, made up of:

- \$2.25 million for staff salaries
- \$0.925 million for direct overheads
- \$0.365 million for indirect overheads
- \$0.61 million for deficit recovery (the underfunding from 1 July 2017 – 30 June 2019).

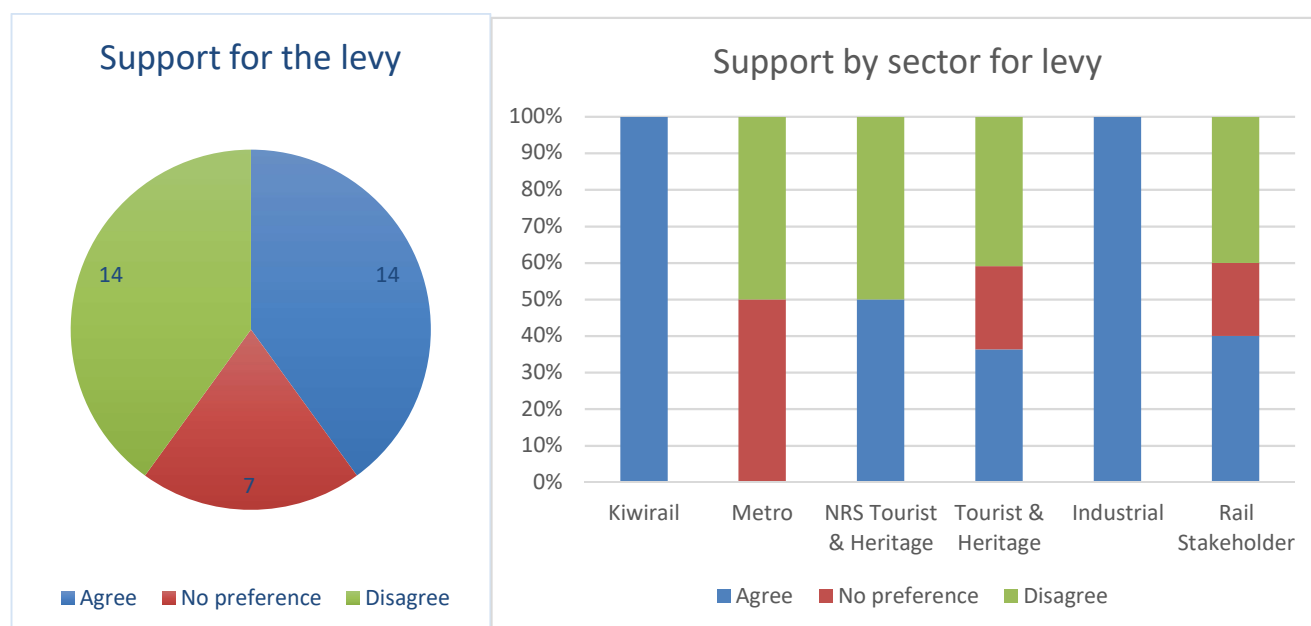
A user-pays model was proposed to fund the Rail Safety Regulator. This is consistent with Treasury (*Guidelines for Setting Charges in the Public Sector, 2017*) and Ministry of Transport (*Transport Regulatory System – Funding Principles, 2018*) guidelines. The ‘users’ are identified as:

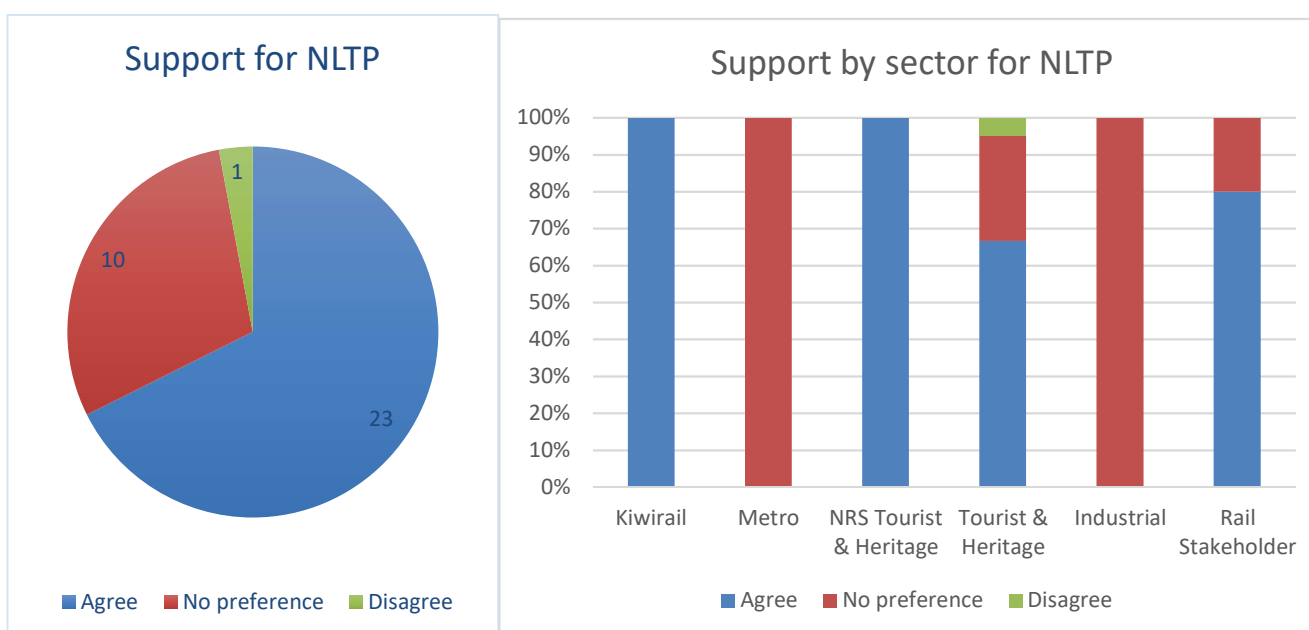
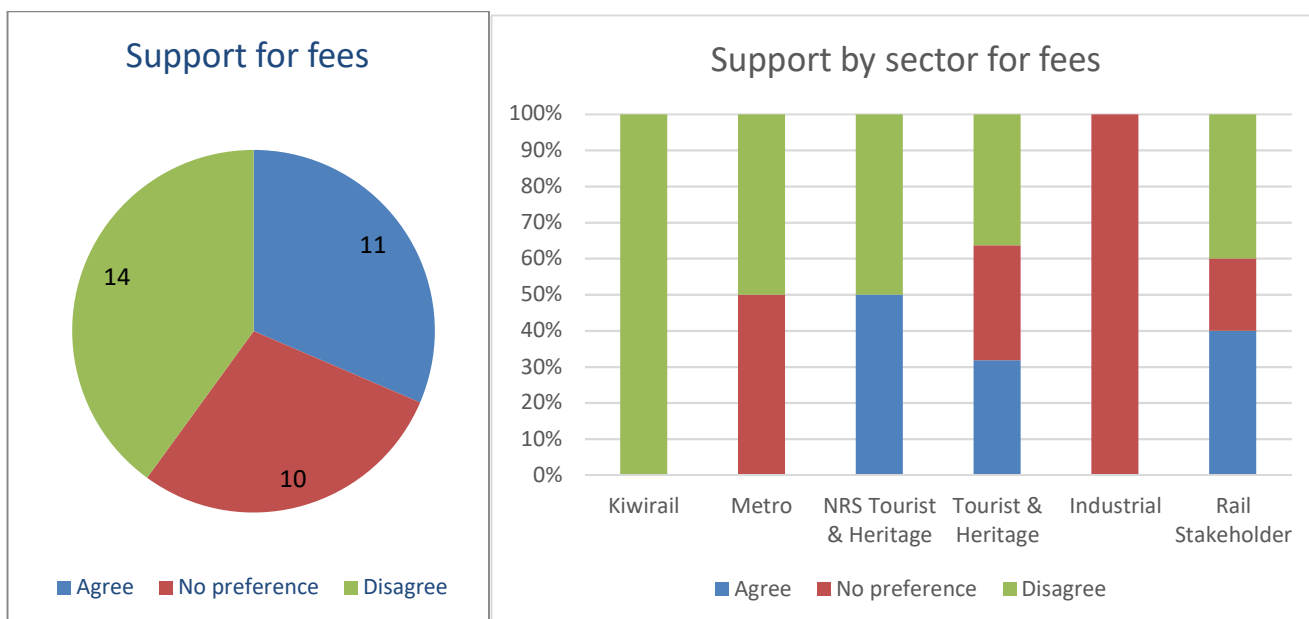
- Rail participants: by providing services that have the potential for serious harm, rail participants drive the need for oversight and assurance of their safety management systems.
- Road users: by creating a source of risk in their interactions with the rail network (eg level crossings) that the regulator must manage.

Three funding sources were identified to reflect this:

1. Funding from the NLTP: 18 percent of total funding, based on those regulatory services with a direct link to the risks created by road users.
2. Fees: 6 percent of total funding, based on the costs of those regulatory services where there is direct service being provided to a specific participant.
3. Annual levies: 76 percent of total funding, based on the cost of those regulatory services that are linked or beneficial to all or a significant portion of rail licence holders.

Submission responses





Submission themes

Funding sources

- Submitters strongly supported the use of funding from the NLTP (H4, S2, N2, N3, H9, H10, H14, H15, H19 and S5).
 - In particular, submitters S1, S2 and KR argued that NLTP funding should also reflect the benefits for pedestrians and road users of a safe and reliable rail system.
- Many submitters (M1, S2, S4, H13 and H16) argued that safe rail was a “public good”, and therefore should be funded through general taxation.
 - Submitter S2 stated “As the public is the end customer of the regulator, its services should be paid for solely by the public”.
- Some submitters questioned whether other sources of funding had been examined.

- Submitters M1 and H18 suggested funding could be obtained if the regulator engaged in commercial services. Submitter M1 suggested “*private consulting fees, expert opinion reports, publications etc*”.
- Submitters H2, H13 commented on the value of the heritage sector to New Zealand’s culture and tourist economy. They question whether funding could be sought from either the Ministry for Culture and Heritage, or through the tourism portfolio at the Ministry of Business, Innovation and Employment. Submitter H2 stated “*Many heritage railways contribute to the NZ economy in providing tourist attractions for NZ and overseas tourists. One could suggest that Government Tourism funding being applied to freedom camper facilities, toilets and car parks, could also be given to subsidise the necessary NZTA fees*”.

Full cost recovery

- Some submitters challenged the principle of full-cost recovery underpinning this review.
 - Submitters S4, M1, M2 and H20, believed that this principle should be dismissed on affordability reasons. Submitter S4 stated “*Heritage groups simply cannot afford to pay for the real overhead costs of a full-scale regulator role*”.
 - Submitters H20, S4 and M1 asserted partial-cost recovery was envisioned by the Railways Act and so should remain an option. Submitter H20 observes “*The legislation ... makes it clear that fees and charges ... to provide for the purpose of meeting, or assisting in meeting, the costs*”.

Funding of the deficit

- Requiring only rail licence holders to pay back the deficit was considered inappropriate by a number of submitters:
 - Submitter S1 believed that future levies should only apply to paying for future activities, not historic ones.
 - Submitter S1 stated “*We do not support the NZ Transport Agency seeking to recover past deficits through increased levies. Any new levies should relate to the new structure when it is in place*”.
 - Submitters (S1, S3, S4, H11, H12, H13, H16 and N2) believed that, as the deficit was an intentional decision, participants should not have to pay for this decision to be retrospectively changed.
 - Submitter S4 stated “*It is inequitable for organisations to have to meet past deficits from current charges when the levels were purposely set in 2008 to be less than full cost recovery*”.
 - Submitter H11 stated “*We should not be made to pay for the past mistakes and an error in judgement, or lack of planning, is the responsibility of the Transport Agency*”.
 - Submitter KR believed that the NLTP funding should also contribute to recovering the deficit.

Review team comment

To be funded through the NLTP, the activity must be in scope of an activity class in the Government Policy Statement (GPS). All activities carried out by the Rail Safety Regulator in scope of the current GPS will be funded by the NLTP. The indirect benefits for road users and pedestrians from regulatory activity that contributes to a safer and more reliable public rail system is not in scope of the current GPS. However, an update of the GPS will be released in 2020/21, for which the wider benefits of the rail safety regulatory function could be considered.

Recovery of a deficit is ineligible for funding by the NLTP.

Although rail safety regulation benefits the general public, it is not considered a “public good” as the users (ie those who create the risks) are the rail industry and road users, rather than the general public. The review team notes the policy regarding “user pays” is not derived from an interpretation of the Railways Act, but wider Treasury and Ministry of Transport policy, as is appropriate for an operational matter.

If the Rail Safety Regulator were able to engage in commercial activity, this work would not be able to cross-subsidise other (eg regulatory) activities. As the work would require additional resources to carry out those activities, the funding need for the regulatory activities would remain unchanged.

This review is limited to considering the oversight of safety in the rail industry, and issues such as tourist and cultural benefits are not in scope. The Transport Agency will pass on the views of submitters regarding the benefits of the heritage rail industry to the Ministry for Culture and Heritage and the Ministry of Business, Innovation and Employment for their consideration.

Following strong views expressed by submitters, the Transport Agency and the Ministry have reconsidered recovering \$2.8 million in deficit through the proposed levy. Recovery of this deficit accounted for \$0.615 million of the \$3.156 million per year the levy needed to collect. It has been decided not to recover the deficit through the fees and levy. It is anticipated this will reduce levy payments by approximately 20 percent for all licence holders.

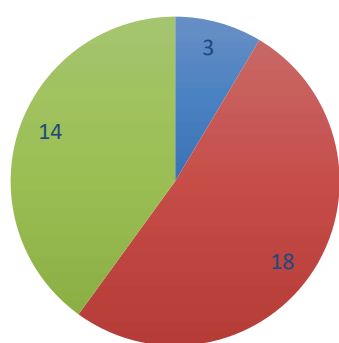
Q4: How would you like the rail activity data to be collected and the annual levy process managed?

Context

Currently, the levy is determined from rail activity data collected annually through a Safety Performance Report (SPR). Rail participants are invoiced quarterly. The amount charged is based on the rail participant's activity for the period 1 July to 30 June from two years ago (ie the 2018/19 levy is based on rail activity in 2016/17).

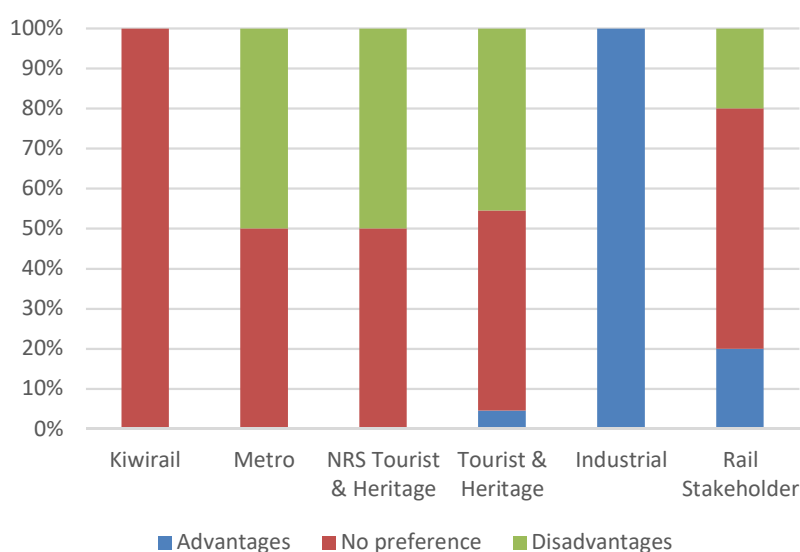
Submission responses

Support for collecting data quarterly

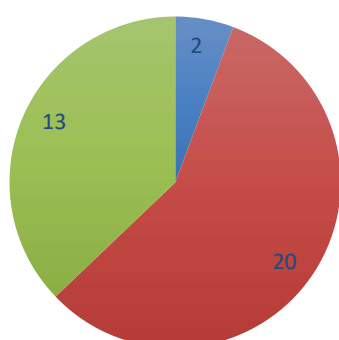


■ Advantages ■ No preference
■ Disadvantages

Support for collecting data quarterly

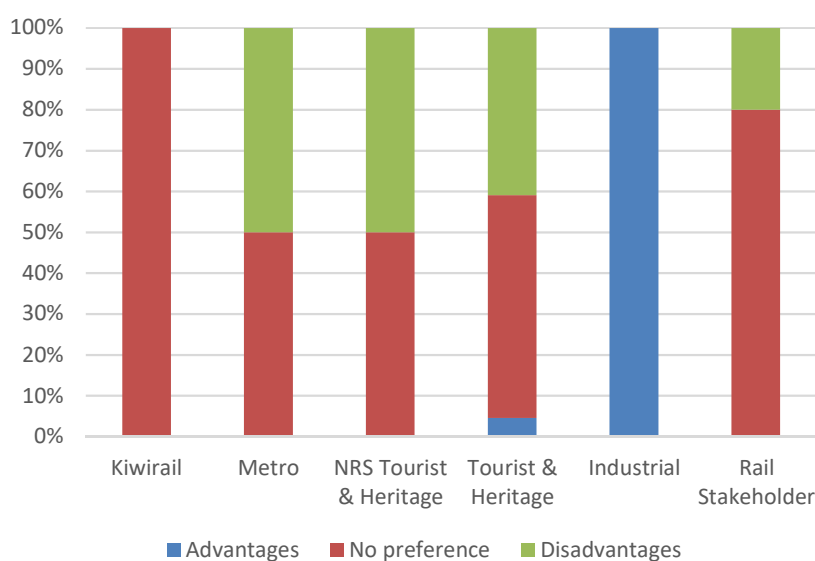


Support for being charged on actuals



■ Advantages ■ No preference
■ Disadvantages

Support for being charged on actuals



Submission themes

- The bulk of submitters (H3, H5, H6, H7, S4, N4, H9, H11, H14, H15, H16, H18 and H20) on this question wish to keep to the same arrangements as at present. Submitter H11 stated “*Annual makes sense due to the relative consistency year over year. Also it makes budgeting for the expense predictable for small voluntary groups such as ours.*” Reasons given were:
 - reduced administrative effort (H5, S4 and H9)
 - their activity levels were seasonal (S4 and H15) and they wanted to spread payment
 - their activity levels were constant and there was no benefit to reporting quarterly (H5 and H11)
 - budget certainty – it gave them the opportunity to know their full year’s levy (H6, S4, H11, H16 and H20). Submitter H20 requested the levy “*should ideally be advised by the 31 October so that Heritage Groups can budget for the following calendar or tax year*”.
- A smaller portion of submitters (S1, I1 and H12) saw an advantage to collecting quarterly based on actual activity level. Reasons given were because:
 - submitters S1 and I1 advised they already collected the information and so that was easier
 - submitter H12 advised their activity levels were seasonal and so it would allow them to better manage cash flow (ie match income with expenses).
- In general, minimising administrative overhead was a strong theme. Submitter H4 preferred to not collect it at all but, if so, “*... by a method that does not impinge on the day to day running (volunteers) of the organisation*”.
- Some submitters (N1, N3, N4, H10 and H12) stated they would prefer an online system for simplicity.

Review team comment

The review team recognises the need for balance between accurate information for fiscal purposes (and safety statistics) versus minimising compliance burden. While most operations are relatively stable, strong growth in some areas (such as in the Auckland Metro) and the impact of unexpected events (such as the Kaikoura earthquake) have demonstrated that relying on historical rather than actual rail activity levels can significantly under or overestimate the regulatory oversight applied to a licence holder.

However, the varying needs of submitters makes it impossible to develop an approach that meets every licence holder’s needs.

The review proposes the following annual levy calculation and collection process. This is based on the principles used to assess the preferred levy option – in particular robustness, simplicity and flexibility – and assumes the preferred option of the licence–class levy is implemented.

- The annual levy is:
 - to cover 1 July to 30 June of each year a participant is licensed (as presently)
 - calculated from levels of rail activity of the immediately preceding year 1 July–30 June
 - due on 10 September of each year (this aligns with the current regulations that allow for 20 calendar days between invoicing and first payment)
 - payable in four equal instalments on or before 1 October, 1 January, 1 April and 1 July.
- Where a rail participant:
 - is licensed for only a part of the year, the levy instalment will not be owed if the participant was not holding a licence at any point since the last instalment date;
 - changes the classes of licence (rail operator or access provider) it holds during the year, the levy will be recalculated and owed based on the class of the licence the participant holds on the instalment date;

- is unable or unwilling to provide the levels of rail activity to the Transport Agency by 1 September, the Transport Agency may make an estimate of the required levy based on historical levels of activity and any other relevant information it has.
- Where a rail participant has not performed rail activity previously, the levy over the 1 July–30 June period will be due on 10 September following, based on actual activity levels. It must be paid on or before 1 October.

In addition, for helping licence holders budget, the Transport Agency will undertake to advise what the estimated levy payable is for the next financial year, for any licence holder who provides forecast levels of activity.

As part of its continuous improvement programme, the Transport Agency is currently investigating how to simplify and bring more of its reporting online, particularly the SPR. As part of this process, it will also undertake to investigate whether more frequent and online reporting could be enabled if this better suited licence holders.

Q5: Do you agree with the Transport Agency’s preferred option of a licence–class levy?

Q6: Are there any aspects missing from this option that you were expecting?

Context

Under the licence–class levy, licence holders pay a fixed amount (based on the licence classes held) and a variable amount (based on their level of rail activity).

There are two classes of rail licence – a rail operator and an access provider. Most licence holders are both.

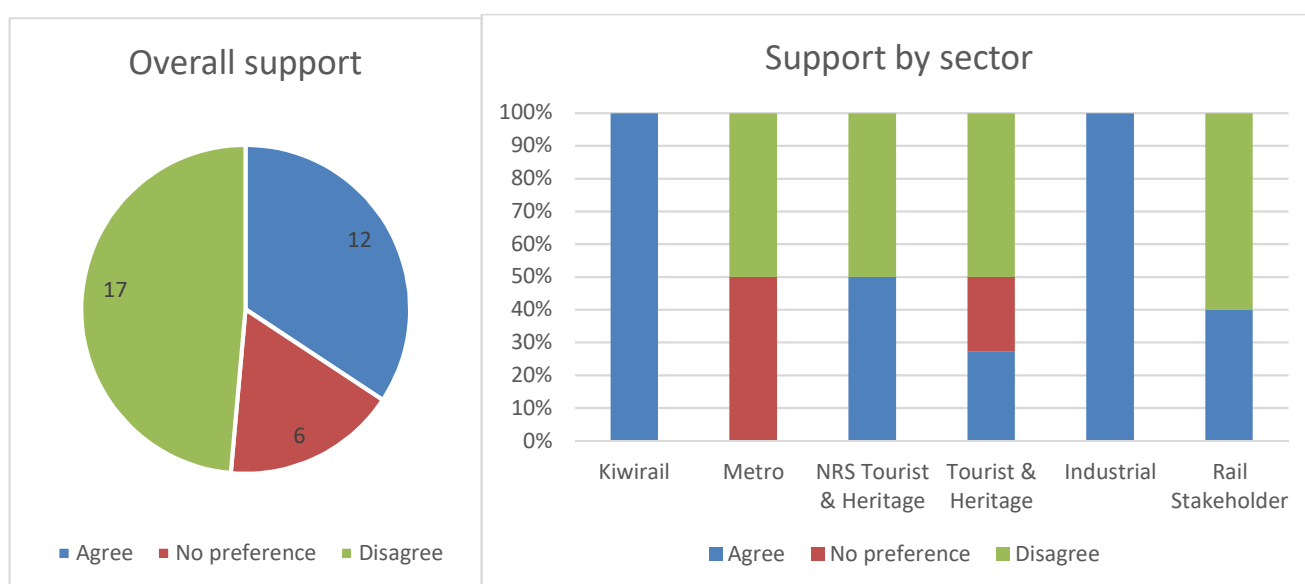
- For Rail Operators, the level of activity is measured by passenger service kilometres travelled under their operations.
- For Access Providers, the level of activity is measured by all rail vehicle kilometres travelled on their network.

Licence holders who do not directly operate services or provide access to a network (eg vehicle providers) pay only the fixed levy for rail operators.

Nine options were presented in the consultation document for determining levies. They can be categorised in two different ways:

- Levies based on the level of activity carried out by the rail participant (the current levy, the CPI–adjusted levy, revenue–based levy, the activity–based levy, the passenger–based levy and the licence class levy).
- Levies based on the direct level of risk present by the rail participant (the demand–based levy and the simplified demand–based levy).

Submission responses



Submission themes

There was a significant amount of feedback from submitters on how the levy would be distributed. A number of submitters reiterated they did not feel the rail industry should pay such a sizable levy and these comments are incorporated into the comments on Question 3.

Choice of levy

- Submitters S1, S4, H5, N1, H7, KR, I1, N4, H10, H15, H19 and S5 supported the preferred levy option in whole or in part (modifications commented on below).
 - Submitter KR stated *“If catastrophic risk is a key focus for the rail safety regulator, then the metro environments should be a clear priority in the proposed levy structure.”*
 - Submitter I1 stated *“user pays - the bigger the user the higher the levies”*.
 - Submitter H11 stated *“Passenger count metrics are best since as passenger numbers go up, so does our income.”*
- Submitter S1 did not support “ability to pay” as a criteria for allocating levy. Submitter S1 stated *“We do not agree that a rail participant should incur levies just because they are able to pay them”*.
- Submitters H2, S4, H11 and S5 supported “ability to pay” as a criteria for allocating levy, and in general wished for it to be considered more heavily. H2 noted *“We do not believe it to be fair to spread the cost equally to all Heritage Railway members, due to the wide range of incomes and abilities to pay.”*
- Submitters S1, N2, S4, M1 and M2 would prefer the levy to be more strongly based on risk.
 - Submitter M1 stated *“under this option passenger rail operators are carrying a disproportionate cost burden compared to other rail participants such as rail freight operators, rail owners, rail maintainers, small rail operators and other parties such as motor vehicle owners and the general public who also interact with the rail system and also benefit from improved rail safety.”*
- Submitter H3 would prefer the levy to be more strongly based on use of the regulator’s services.

Greater differentiation in the levy rates

- Submitters H4, N2, H8, H12, H14 and H18 did not support the preferred levy option as they felt it wrongly grouped heritage operators in with larger/commercial operators. There should be a lower rate for heritage.
 - Submitter H18 asked *“is the small operator to be considered in an equal footing with the large commercial operations?”*
- Submitters H5, H6, S4, H16 and H20 felt that the distinction between trams and trains should be recognised more strongly. In particular, submitters observed that as trams typically carry fewer passengers than trains, the impact of the levy per passenger was not the same.
 - According to H20, heritage trams have an *“inherently safer risk profile than trains”*.
- Submitter S4 stated that there are 12 categories of rail operators in the New Zealand industry.
- Submitter H20 stated there are four different categories of trams to cover the six tramways in New Zealand.
- Submitter S4, M1, M2 felt freight service distance should also be included in the rail operator levy.
 - Submitter M1 said *“This ... ignores the potential for freight trains to collide with passenger trains, motor vehicles and people.”*
- Several submitters (particularly H4, H5, S3 and S4) think the heritage sector, especially trams, should not be in the same regulatory framework as mainline heavy rail.

Access Provider Levy

- Submitter H6 did not think the level of network traffic was relevant to regulating access providers, and it should be more about infrastructure.
- Submitter M1, M2 said that the access provider variable per-km-rate should be equivalent or higher to the rail operator per-km-rate.
 - Submitter M1 said “*Given the age of significant portions of the existing infrastructure, we believe ownership of risk for the mainline access provider is equal to or greater for the mainline access provider compared to the passenger operators*”.

Further comments

- Submitter S1 suggested the Transport Agency should recognise (through either levy allocation or rebates) those adopting safer technology, such as European Train Control Systems or automatic level crossing gates.
- Submitter S1 noted a side-effect of the preferred levy option was that it could expose the regulator to funding uncertainty if activity levels significantly drop.
- Submitter S1 noted that non-licensed participants paid no levies, and there should be an ability to recover a levy from them as part of better recognising and providing oversight of the rail safety duties on them.

Review team comment

The review team notes that, in contrast to most submitters’ assertions, the preferred levy option places a smaller financial burden on heritage operators than a purely risk-based model would. This was based on the results of independent analysis done for the Transport Agency. The below table describes the portion of annual levy paid by each sector for the levy options considered.

Sector	Current / CPI / Scaled levy	Demand-based levy	Simplified demand-based levy	Passenger-based levy	Licence-class levy
	Activity based	Risk based	Risk based	Activity based	Activity based
KiwiRail	61%	67%	67%	1%	57.4%
Metro	36%	15%	17%	90%	37.5%
NRS Tourist & Heritage	0.4%	3.0%	0.6%	0.5%	0.9%
Off-NRS Tourist & Heritage	1.7%	13.0%	8.9%	6.6%	2.8%
Industrial	1.1%	2.0%	6.1%	1.5%	1.4%
Vehicle Providers	0.10%	0.05%	0.14%	0.14%	0.05%

While a more sophisticated set of proxies and tier of rates could be used (in particular, as per the Activity-based and Demand-based options reviewed), the Transport Agency is mindful of comments from submitters in this question regarding disagreement in determining what rates should be used, and in Question 4 regarding the burden of reporting even a single proxy.

The levy rate for operators could be tiered to provide an additional level of adjustment beyond the scaling effect of the kilometres travelled. However, this would require determining the appropriate rate for up to 12 different categories of operator services. There is an insufficient evidence base to perform this objectively.

Given the diversity of the New Zealand rail industry, there is no single measure of activity (eg passenger numbers, journey distance, track distance, passenger/cargo distance, journey numbers, passenger/freight capacity, vehicle speed, type of infrastructure) that allows a perfect comparison between all operations.

The review team acknowledges that freight trains operating on the National Rail System (NRS) have the potential for accidents. However, catastrophic accidents present the major risk on the NRS, for which the presence of passenger trains is driving the regulatory challenge.

It is also acknowledged that infrastructural risks present similar level of risk as vehicle risks on a rail network. The differential rate between rail operators and access providers in the variable levy is to recognise, however, that access providers are levied on all rail traffic, not just passenger services, and that, ultimately, it is the rail operator placing passengers into the rail system and its safety systems must be sufficiently sophisticated to not only assure the safety of its own operation, but also the operation of the network it relies upon.

In conclusion, the review team notes the strong concerns regarding the allocation of the levy, but no new evidence or analysis has been presented by submitters to suggest the assessment criteria chosen or the evaluation of levy options against them are incorrect.

Changes to the Railways Acts are outside the scope of this review. A constraint of the allocation of costs has been that the Transport Agency is required to apply the same regulatory framework to all rail participants. However the Ministry of Transport is the responsible agency to consider this and the Transport Agency will refer these concerns to the Ministry for it to address at the next opportunity.

Q7: Do you agree with the Transport Agency’s preferred funding option?

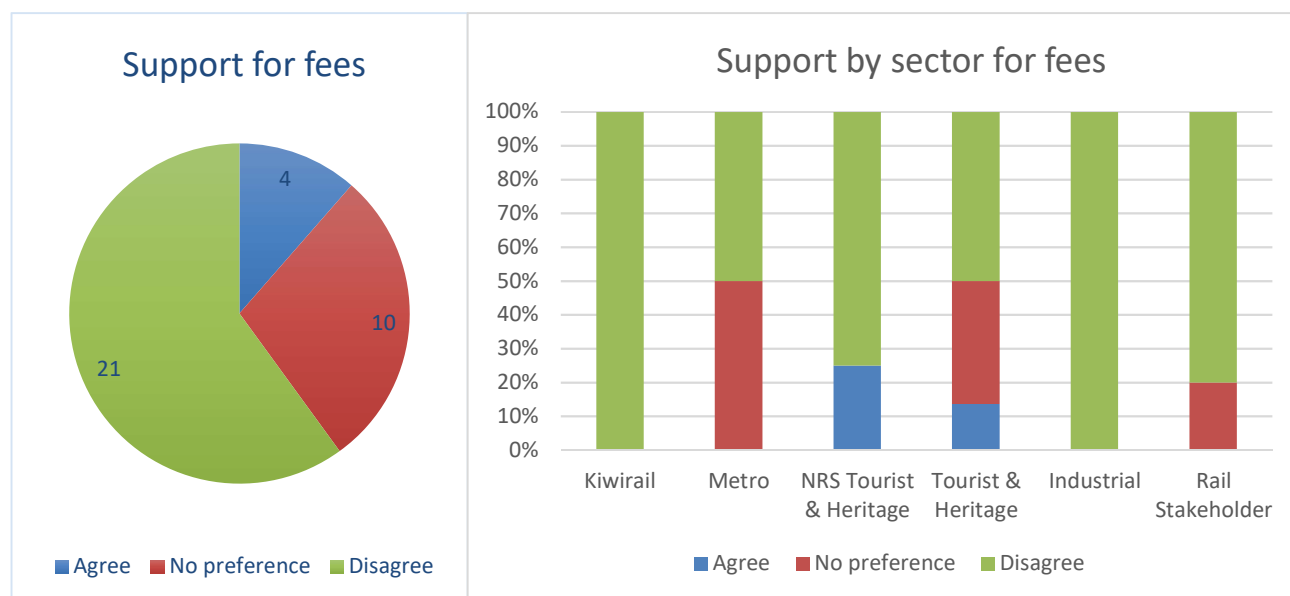
Context

Submitters were asked their opinion on the mix of funding sources in the preferred funding option:

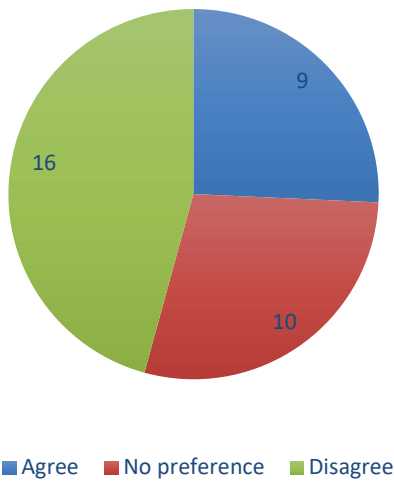
- hourly rate of \$120 (excl GST) and expenses for fee-based work
- fixed levy rate of \$500 for each licence class – Rail Operator or Access Provider
- variable levy relating to rail activity:
 - for any rail operator, 16.11 cents for every passenger service kilometre
 - for any access provider, 8.05 cents for each rail vehicle kilometre operated on its network
- exemption from variable levies for:
 - charities with revenue under \$30,000 per year
 - voluntary organisations (no paid staff) with revenue under \$30,000 per year.

The \$30,000 revenue threshold was based on the threshold Inland Revenue applies to determine when a company does not need to prepare financial accounts.

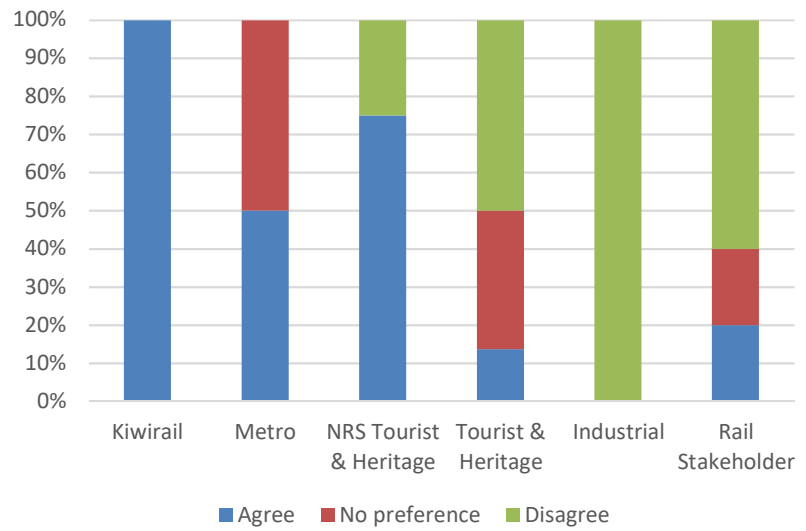
Submission responses



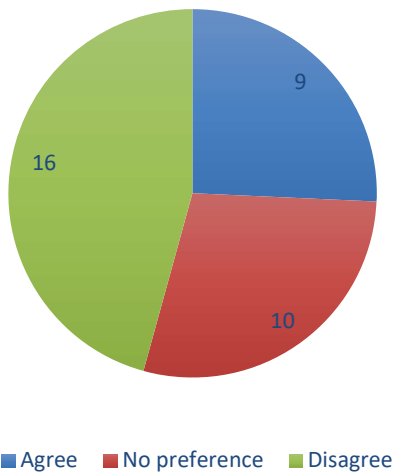
Support for fixed levy



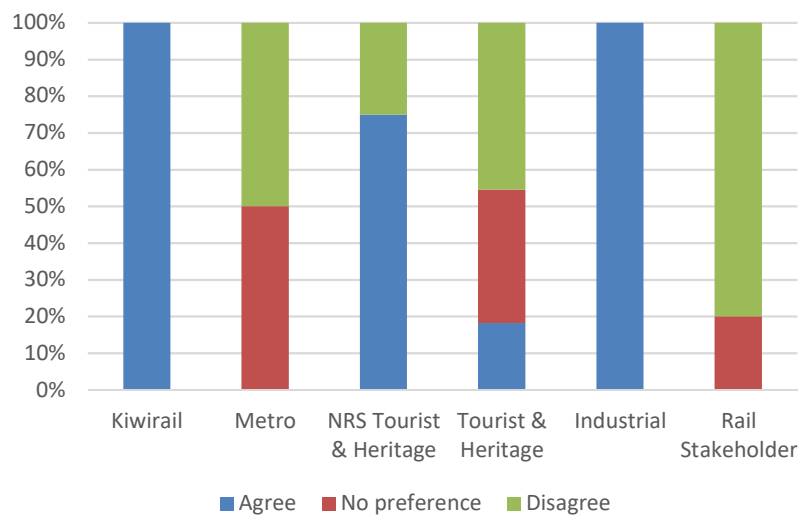
Support by sector for fixed levy

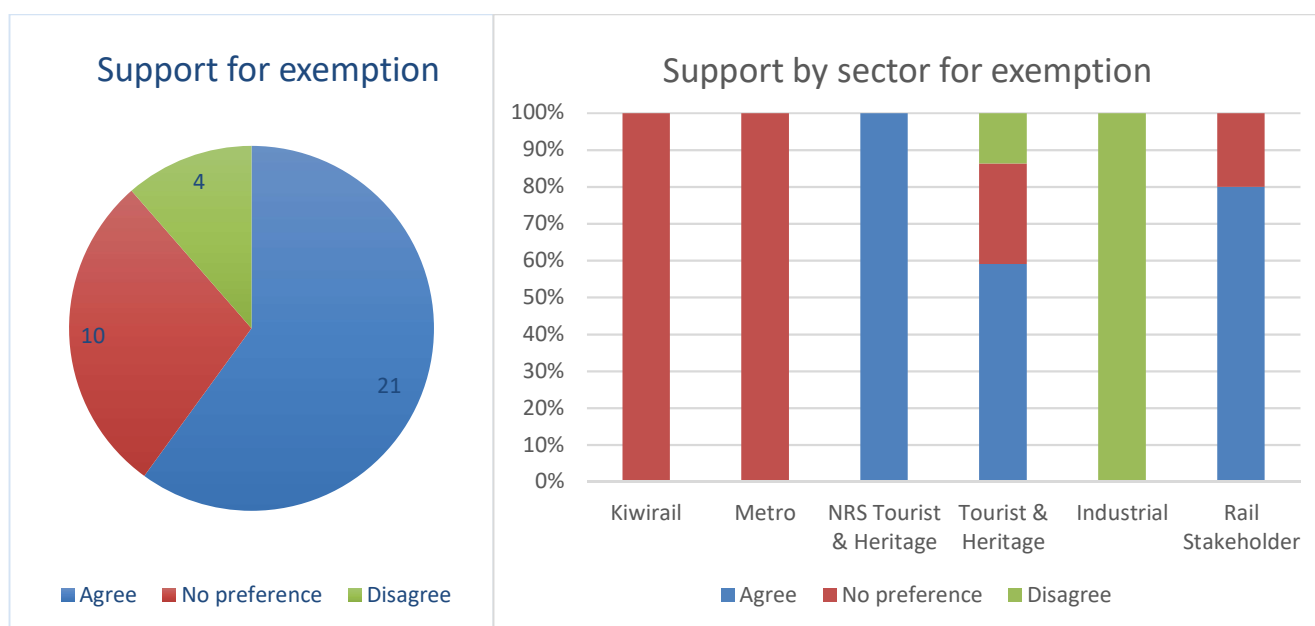


Support for variable levy



Support by sector for variable levy





Submission themes

A number of comments related to the detail of the fixed and variable levy. These comments have been considered as part of the responses to Question 5 and 6. The views of those who commented that no charges should be recovered from the rail industry have been considered as part of the responses to Question 1 and 3.

In general, the majority of submitters disagreed with the fee and levy proposal. This reflects the preference of many submitters in Question 3 for funding to be obtained outside of the rail industry and only nominal payments be required from the bulk of the rail industry.

Fees-based work

- Submitter H13 supported charging fees to new entrants into the sector and for non-compliance.
- Several submitters (S1, H5, H6, S4 and H13) wanted more clarity as to what tasks within the fee-charging functions the hourly rate would apply to.
 - Submitter H5 requested that the Transport Agency allow more input from the licence holder into planning fee-based activity.
 - Submitters H5, H13 requested assistance for licence holders to calculate their likely fees to support budgeting.
- Most submitters (H3, N2, KR, H9, H12, H17, H18, H20) who did not support fee-based charging were concerned that it could lead to:
 - excessive costs on licence holders
 - difficulty budgeting
 - dissuading licence holders from improving safety – submitter KR stated “*we do not support the potential for the dis-benefit that this may enable over time, which could dissuade existing licence holders from undertaking health review of safety cases...[to] undermine the positive safety outcomes that NZTA is looking to deliver*”.
- Several submitters (S4, H11 and H12) were concerned that the fees for investigation of a single accident (that may or may not be fully in their control) could drive them out of operation.

Fixed levy

- Submitters S1, N2, S4 and H8 supported a greater portion of funding coming from the fixed levy. The reasons given were:
 - to ensure funding for a stable and independent regulator (S1)
 - to assist licence holders to budget (N2, S4).
- Submitters S3, H11, H16, H20, and H21 believed all charges for certain organisations should be replaced by a single nominal annual fee.
 - Submitter S3 stated any charges *“should be measurably justified so that ‘not for profit’ organisations in particular are not put under undue financial stress”*.
 - Submitter H11 stated *“We suggest that voluntary organisations don’t necessarily ride for free, but are asked to pay an amount that they can afford. We would prefer a fixed charge paid quarterly which would allow us to budget for the expense. The fixed charge should include the annual audit charge and it should be reasonable (affordable).”*
 - Submitter H16 stated *“museum organisations like ours should only pay an affordable nominal annual fee which covers all regulatory charges”*.
- Submitter H3 and I1 did not support a fixed levy. Submitter I1 stated *“user pays - the bigger the user the higher the levies”*.

Exemptions

- Many submitters who supported the exemption felt that it should be more widely applied, in particular:
 - the threshold should be raised from \$30,000 to at least \$100,000 turnover (submitters S3, S4, H13, H20)
 - the threshold should apply to only rail operational revenue, excluding such things as grants, membership fees, donations and revenue from non-rail activity (many operations may be part of a larger heritage experience) (submitters S3 and H20)
 - submitter H20 believes tram operators should be exempt because they are “inherently safer”, regardless of their volunteer or charity status
 - submitter S3 believed the turnover threshold should be annually adjusted by the Consumer Price Index.
- Submitter N4 stated *“As a registered charity an exemption is good but understand user pays system”*.
- Submitter S1 did not support the exemption, noting *“voluntary organisations run trains that they charge the public for, and that these services are run on the rail network shared with other operators (e.g. steam train excursions), which may create additional safety risks for other users. Therefore, even for voluntary organisations, there should be a fee levied to the organisations”*

Review team comment

The review team notes a number of submitters are under the mistaken impression that licence holders will be charged fees for investigations into accidents. The Consultation Document stated that fees are proposed for “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 review team recognises that charging fees can provide a powerful incentive for compliance. It also recognises that charging fees should not have an overall detrimental impact on safety. In particular, a scenario where the cost of applying for a Safety Case Variation disincentivises a licence holder’s continuous improvement of its systems. This particular risk has been mitigated to a degree

in that the Transport Agency recently set up a notification process, where changes to an operation that remain within the scope of the Safety Case (such as adding to the stock of rail vehicles) that may still be of interest to the Transport Agency, can be formally registered without having to treat it as though it was a Safety Case Variation.

The review team agrees with submitters' concerns that perverse safety outcomes could still exist. It proposes that regulations be developed to provide the Transport Agency discretion to refund all or part of any fees charged. This could be on the basis of, for instance, perverse safety outcomes or unjustified administration burden.

The Transport Agency intends to provide guidance prior to implementation of the new funding proposal as to the scope of work covered under the fees and ways in which licence holders can budget for and minimise their fees. It is not possible to provide estimates of how much fee a licence holder might pay as historic records of time and expenses for tasks not presently under a fee regime are not available.

The review team agrees with submitters' concerns regarding the threshold for exemption to the variable safety levy being too small, given some licence holders operate as part of a larger operation and/or the impact grants and donations would have. It also recognises the undesirability of an organisation retrospectively owing levy as a result of an unanticipated breach of the threshold during a year. It proposes that the exemption threshold:

- be raised to \$100,000;
- for simplicity and auditability, remain applied to all revenue streams the organisation receives;
- be based on the revenue of the immediately preceding year (given the unpredictable nature of donations and grants).

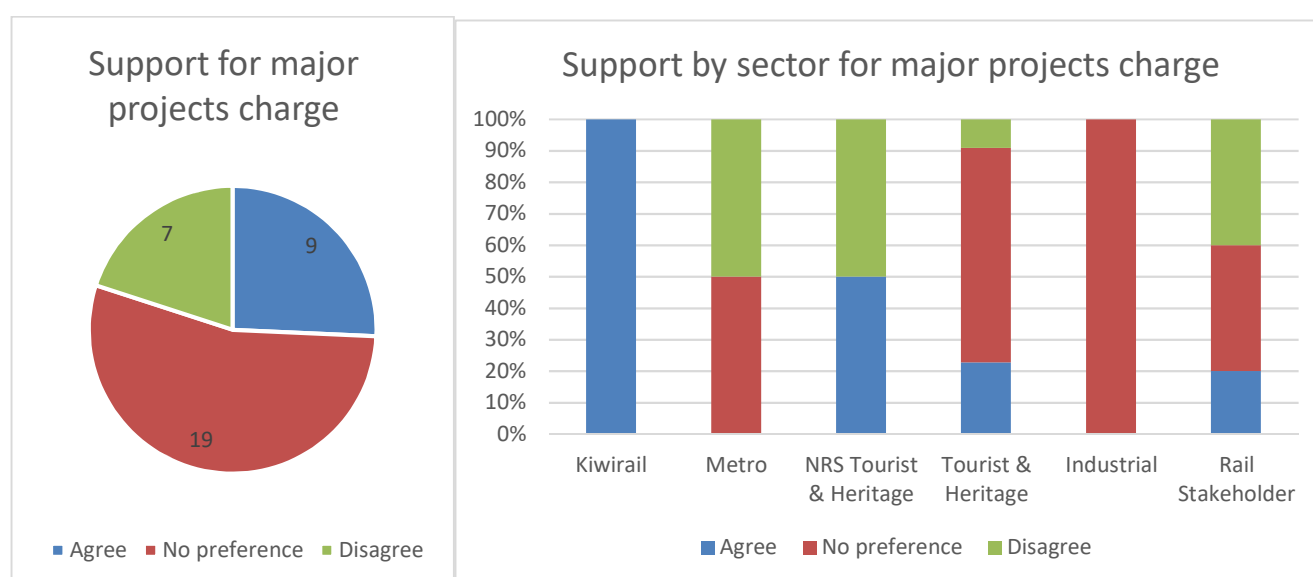
Q8: Do you agree that the rail safety regulator should charge for contributing to major projects?

Context

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

The regulator expects to be involved in one to three major projects (new rail infrastructure and/or rail vehicles) 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.

Submission responses



Submission themes

- The majority of submissions did not provide a response to this question or did not have strong views.
- All those who commented supported the Transport Agency’s involvement in this work as being important to ensure the eventual safety impact of these projects on the rail system was managed.
 - KR stated “Major rail projects are critical infrastructure developments which ultimately impact on the national rail system.”
 - KR also recognised the necessity to engage on these projects early in the lifecycle even though it is not an area well supported by the licensing approach in the Railways Act, stating “Even though the Railways Act does not ... enable the licensing ... oversight is key throughout the lifecycle of such major developments, not only at the point of operation.”
- The support or disagreement with the proposal centred more on how it would be funded, and views did not align to sectors or size of operations.
- Submitters who agreed with the proposal generally did so because they felt it was consistent with the user-pays approach elsewhere (KR, S1, H20, N1, H15, H3, H5, N2 and S4).

- S1 stated *“Yes, subject to not compromising the regulator’s independence, and recognising that some activities are ‘club’ activities that produce common benefits to rail participants”*.
- H20 stated it was *“appropriate for NZTA to charge for their actual and reasonable input”*.
- N1 stated it was *“the regulator’s costs should be borne by the project, not the wider rail community”*.
- Submitters who disagreed with the funding proposal (S2, S5, N3, N4, H10, M2 and H11) did so for a variety of reasons:
 - S2 stated it should not be charged to the project as the cost *“would simply be passed through to their government sponsors/National Land Transport Fund/Treasury.”*
 - N3 commented that *“major rail work is already too expensive.”*
 - H11 stated that *“costs should be planned and covered by levy”*.
- KR was concerned that, if the proposal went ahead, the engagement with major projects needed to involve not just the organisation carrying out the work, but *“Interoperability factors [with other licence holders] should also remain a key consideration throughout major project development and delivery”*.

Review team comment

The low level of response to this question is to be expected, given “major projects” would be beyond the scale of nearly all operations outside of the NRS.

While the review team recognises these projects are often in the national interest and/or costs will be passed onto government, it believes direct charging for the engagement helps to emphasise the responsibilities of the organisation performing the development and offers an opportunity to clarify (for the regulator, for the development organisation and for other affected rail participants) the nature of the engagement and safety expectations from the start.

The review team acknowledges the need to include potential end–users in any engagement, given they will need to accept the final product into their safety system. The review team recommends that these rail participants be consulted on regulator engagement agreements for major projects prior to approval.

Q9: How would you expect that your organisation would manage the financial changes proposed in this funding review?

Context

It is proposed that the rail industry will directly contribute around \$3.4 million of the \$4.15 million total annual funding requirement for the rail safety regulator. The fees set in 2008 were set below the revenue required for the regulator to break even and have remained at this rate. The financial changes proposed in this funding review would be the first change to this funding model in 10 years, and could see large (as a proportion) increases in charges for some participants.

Submission themes

- The majority of submitters (N1, N3, N4, H1, H2, H3, H4, H8, H9, H10, H11, H12, H13, H14, H17, H18, H21, H20, S2, S3, S4, S5, S6 and M1) were concerned with their ability to absorb any increased charges.
 - Submitter H3 stated *“The proposal only results in a possible fare increase of 5 percent... However, our ability to pass on the costs may be limited.”*
 - Submitter S3 stated *“Any increase in compliance costs means that the voluntary/charitable organisations have a lesser ability to put their limited income back into the reason why they were established in the first instance; that is to restore, maintain and operate Heritage tramcars that are part of New Zealand’s historic fabric.”*
- Submitters H1, H9, M1, S3, N4 and H21 suggested they may fund any increased charges by reducing expenditure on operations, maintenance and/or safety.
 - Submitter H1 stated *“Any income we generate through our fundraising or train operations are ploughed back directly into the maintenance of our rolling stock and infrastructure”.*
 - Submitter M1 stated *“ultimately the inability to recover this significant cost increase from rail passengers will impact on the rail operators’ ability to invest in safety initiatives”.*
 - Submitter H12 stated *“...we will be forced to meet it to the detriment of something else”.*
 - Submitter H21 stated *“...a massive hike in fees for a small organisation such as ours ... would just impact on some other part of our operation and may lead to deferred maintenance - always a recipe for trouble”.*
- Some submitters (H2, H4) thought there could be a reduction in volunteering because of the increased charges.
 - Submitter H2 stated *“if the NZTA fee increases significantly, there is a danger of volunteer burn-out, with a negative reaction to working hard to pay increasing costs.”*
- Six submissions (H8, H11, H14, H16, S5, N3, S6) indicated that the proposed increase could result in the need to cease operations:
 - Submitter H14 stated *“Over the last few years [the assessment fee] already jumped from \$600 to nearing \$2000. [The proposed charges] may mean the club would have to fold up.”*
 - Submitter H16 stated *“The increase in cost resulting from the current proposal may well be insurmountable”.*
 - Submitter N3 stated *“We are struggling to sell our trips and increase the price will mean those trips to the public are not profitable and we will then cease to operate”.*
 - Submitter H8 stated *“Due to a number of visitor preferences (i.e including reducing interest in rail rides) it is probable that we will be unable to sustain any future costs increases.”*

- Submitter M1 stated that *“fare setting is set by the relevant Regional Authority and there is no ability for metro rail operators to pass on to rail passengers the proposed increased costs”*.
- Submitters S1, S2, N2, I1, H6, H19 and KR submitted that they will be looking to pass on the costs of the increases:
 - Submitter S1, involved in providing public transport, stated it *“would expect to be able to recover any additional costs from the NZ Transport Agency operational funding stream”*.
 - Submitter S2 stated *“CRLI would request additional funding from its Sponsors (Treasury and Auckland Council) for any cost that has not been part of the original cost base of the project”*.
 - Submitter KR stated *“we will require a compelling benefit argument for us to be able to relay to customers why there is a proposed increase in costs to customers.”*
- Submitters M1 and S6 were concerned at the speed the new charges were being implemented:
 - Submitter M1 stated *“any increase in fees (particularly in the realms of 200 percent) should be introduced in a staged manner over a number of years, to allow businesses to budget for increased costs”*.
 - Submitter S6 stated that all heritage railways *“will be adversely impacted by the speed and scale of the proposed changes to levies and fees”*.

Review team comment

The review team recognises the increase in charges is substantial relative to the low charges presently. The proposed exemption, for instance, recognises that non-commercial operators are particularly limited in their ability to pass on costs to the customer or funders. The accrued deficit from 2008 to 2017 was written off by the Transport Agency.

Transitional arrangements were examined. However, the objective of this funding review is for the Rail Safety Regulator to break even by 2024, so it cannot further delay becoming financially sustainable. Any reduction in charges at the start of this funding period (ie from 2019) would need to be compensated for by significantly higher levies at the end of the funding period, placing even more burden on rail participants.

The review team notes the potential consequential impacts raised to maintenance and safety investments. This funding proposal places the Transport Agency in a strong position to ensure these impacts are monitored and any intervention necessary is put in place to ensure that all risks are managed so far as is reasonably practicable.

Q10: For the purposes of calculating the proposed levy, have we got the definition of a single service and a train right?

Context

The Transport Agency's preferred levy model bases the levy on two measures: passenger service kilometres (for rail operators) and train kilometres (for access providers).

- 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 '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.

Submission themes

- Submitter H7 supported the terminology of "electronically coupled" in the definition of a "Service".
- Submitters H3, S2, KR, H16 and H20 were concerned that the existing definition would require them to monitor shunting and/or work/maintenance rail vehicle movement, which they presently had no way of monitoring and was not the purpose of their operation.
 - Submitter KR commented "*The application of the proposed levy structure for all train movements is not supported given that movements such as shunting, for example, is captured within the Safety Management System (SMS) of the operator and is unlikely to yield a levy benefit... To administer a monitoring regime of this nature would create an onerous compliance cost when balanced with the overall intent*".
- Submitter S1, H5, S4, I1, and H15 requested clearer descriptions to avoid ambiguity as to what was meant by each term and help licence holders easily understand it.
- Submitter S2 suggested clarification of the definition of service to include "*any unit (or composition of units) that has a service number allocated*".

Review team comment

The intention of the definitions is to measure the core rail activity of a licence holder. The present terminology used for rail operators ("service") appears to achieve this well. However, the definition applying to access providers ("train") has the potential to include non-core activity for their network. While for some access providers, shunting (eg industrial sidings) or operation of a work train (eg railways servicing other infrastructure) may be the purpose their railway exists. However, for others (eg the National Rail System) this is supplementary to the purpose. As noted by submitters, requiring these non-core activities to be reported and invoiced has little value compared to the monitoring cost, and in some cases may discourage safety activity. The review team recommends the definition to reflect access provider activity should be modified to exclude these non-core activities.

The review team notes earlier comments from some submitters regarding the applicability of the Railways Act to trams, and the terminology being "rail vehicle" to encompass all vehicles covered under the Act. Trams are clearly in-scope of these funding regulations and, as such, it is recommended the access provider activity should refer to a different term than "train", if possible, to avoid any confusion.

The Review team does not propose altering the definition of "service" to include "*any unit (or composition of units) that has a service number allocated*". The purpose of the present definition of "service" is to describe a group of rail vehicles that act as a single unit. The act of allocating a

common service number to otherwise disconnected units does not achieve this. The term “physically or electronically coupled” was used to denote rail vehicles that, without human or external intervention, are permanently prevented from colliding with each other and act in tandem. Engineering interventions such as these are recognised in the risk hierarchy as superior² over administrative controls.

However, the review team supports the submitter’s observation that the definition of “coupled” should be clarified – that the intent of referring to “coupled” is denoting vehicles that act as a contiguous group from the perspective of management and safety risks.

² For instance, Regulation 6(3) of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

Q11: 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?

Context

The total number of service and rail vehicle kilometres travelled over the funding period must be known to establish the appropriate levy rates. Errors in this forecast will result in over or under collection of money.

Submission themes

- Most submitters (H6, N1, H7, H9, H11, H15, H20 and S5) stated their rail activity over the next five years would be stable or only subject to negligible change.
- A few submitters identified significant change might be possible (H3, H5, N3, M2 and H18) but were unable to provide accurate forecasts of their rail activity over the next five years.
- Some submitters (N2, KR and H4) stated they were unable to provide any forecast over the next five years.
- Submitter H12 stated that they were targeting increasing passenger numbers by >15 percent over the next 15 years.

Review team comment

Without accurate forecasts, the Transport Agency will base levy rates on the latest available activity data (from the 2017/18 season).

It is probable that, overall, rail activity will increase in the next five years. This may or may not result in an increase in service/rail vehicle kilometres (operators may respond by increasing passenger/tonnage per vehicle). The review team proposes that regulations be developed to provide the Transport Agency discretion to refund all or part of any levy paid to ensure over-collection is controlled.

Q12: How do you think the rail safety regulator could improve its performance?

Q13: 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?

Context

The resourcing proposal provides the potential for the Rail Safety Regulator to substantially improve its performance in a number of areas to demonstrate value for money and deliver a safer rail system for New Zealand. The Maturity Model in Appendix 2 outlines the Transport Agency's intent as to whether the improvements will be sought, but the Transport Agency is also continually interested to hear from rail participants where their needs lie.

The Transport Agency also wishes the industry to be confident that these improvements have been delivered and so is interested to understand the activities, products and behaviours the industry would be expecting to see.

Submission themes

- Submitters S4, S5, N2, H11, H13, H17 and H20 believed the regulator needs more specific industry knowledge.
 - Submitter S4 stated *"Inspectors need to know rail industry and be appropriately trained. While documentation is important focus should not be lost on actual safety practices."*
 - Submitter N2 stated *"Based in one location and have greater rail knowledge"*.
 - Submitter H20 stated *"officials who understand well the characteristics of street tramway operation in respect to main line rail operations"*.
- Submitters KR, S1, N4, H3, H4, H5, H7, H10 and H15 sought improved information, guidance and engagement.
 - Submitter N4 stated *"Continue regular engagement and be a strong regulator. Clear directions and standards"*.
 - Submitter H17 stated *"Better on-line resources to explain NZTA's processes and expectations"*.
 - Submitter S1 stated *"Foster greater co-operation, in particular: a national forum, disseminate safety info, enable sharing of safety info between participants, and needs a field office in Auckland"*.
- Submitters N1, S1, H4, H18 and S2 were looking for proactive or modern practices.
 - Submitter S1 stated *"The Regulator needs to have greater (and independent) oversight of all Licence Holders and participants and a proactive rather than reactive approach to regulating rail safety."*
 - Submitter S2 stated *"... there needs to be a clear setting of standards, lowering of risk, and 'lifting the bar' within the industry. This needs to be led by the regulator otherwise it will not happen."*
- Submitters S1, S2, H12, KR believed there needs to be more transparency and reporting.
 - Submitter S2 stated *"should have full visibility into those risks and how they are managed by the industry - overseen by a capable and resourced regulator."*

- Submitter KR stated it is *“important that we are able to understand and measure the benefits of the proposed rail safety function at 21 FTE as a capability... A more transparent view of the safety outcomes that the proposed capability will deliver for the rail industry should be expressed further in this consultation period.”*

Review team comment

The review team is appreciative of the suggestions and involvement of the industry in contributing to safer rail sector.

The Transport Agency is confident the resourcing will allow it to finish the transition from a process-driven regulator to an intelligence-led, modern, risk-based regulator prepared to implement the Railways Act 2005 fully.

The Transport Agency’s resourcing model is based on the assumption that a balanced and accessible team is needed to deliver the Operating Model. Rail industry knowledge is critical in this team, but along with other key skills such as safety systems, risk management, assurance monitoring, regulatory practice, operations management and investigations. The onus is on the Transport Agency, however, to ensure the team remains connected so that this range of expertise is delivered as a package and rail participants get excellent all-round service.

The Transport Agency acknowledges that it has not provided the level of direction necessary to the industry in recent years, and it is actively addressing that, including the release of new guidance, spreading safety learnings faster, more efficient assessments, and the initiation of a cross-industry forum that will facilitate the development of standards by the sector.

New recruitment is also aiming to provide a stronger presence around Auckland and in the South Island, enabling more frequent and rapid face-to-face contact with licence holders.

The Transport Agency is committed to increasing the rail safety regulator’s transparency and demonstrating the safety outcomes that this proposed capability will deliver. The ‘Maturity Model’ attached sets out our roadmap for improvement, and the Transport Agency will be providing new performance measures for the regulator to assist the industry and the Ministry of Transport in keeping it accountable.

APPENDIX 1: TABLE OF SUBMITTERS

For the purposes of analysis, any vehicle providers who submitted were grouped with the rail participants they provided vehicles to.

Submitter	Type of Organisation	Submission ID
Auckland Transport	Rail Stakeholder	S1
Bay of Islands Vintage Railway (BOIVRT)	Tourist & Heritage	H1
Blenheim Riverside Rail Society	Tourist & Heritage	H2
Canterbury Railway Society Inc. – Ferrymead	Tourist & Heritage	H3
Canterbury Steam Preservation Society	Tourist & Heritage	H4
Christchurch City Council	Tourist & Heritage	H5
Christchurch Tramway Ltd	Tourist & Heritage	H6
City Rail Link Ltd	Rail Stakeholder	S2
Council of Tramway Museums of Australasia (COTMA)	Rail Stakeholder	S3
Diesel Traction Group Inc	NRS Tourist & Heritage	N1
Driving Creek Railway and Rail Riders	Tourist & Heritage	H7
Dunedin Railways Ltd	NRS Tourist & Heritage	N2
Federation of Rail Organisations NZ (FRONZ)	Rail Stakeholder	S4
Feilding & District Steam Rail Society Inc	NRS Tourist & Heritage	N3
Higgins Heritage Park Railway	Tourist & Heritage	H8
KiwiRail Holdings Ltd	KiwiRail	KR
Mainfreight Mt Maunganui (Tauranga)	Industrial	I1
Mainline Steam Heritage Trust	NRS Tourist & Heritage	N4
Nelson Railway Society Inc	Tourist & Heritage	H9
Norwest Adventures Ltd	Tourist & Heritage	H10
Oamaru Steam & Rail Restoration Society Inc.	Tourist & Heritage	H11
Pleasant Point Railway & Historical Soc. Inc.	Tourist & Heritage	H22
Shantytown Railway	Tourist & Heritage	H12
Silver Stream Railway	Tourist & Heritage	H13

Steamrail Wanganui Incorporated	Tourist & Heritage	H14
The Bush Tramway Club Inc	Tourist & Heritage	H15
Tramways Wanganui Trust	Tourist & Heritage	H16
Transdev Auckland & Transdev Wellington	Metro	M1
Transdev Wellington Ltd	Metro	M2
Victoria Battery Tramway Society	Tourist & Heritage	H17
Waimea Plains Railway Trust	Tourist & Heritage	H18
Waitakere Tramline Society Inc.	Tourist & Heritage	H19
Wellington Tramway Museum	Tourist & Heritage	H20
Whangarei Steam & Model Railway Club Inc.	Tourist & Heritage	H21
John Hansen	Rail Stakeholder	S5
Hon Jacqui Dean	Rail Stakeholder	S6

APPENDIX 2: MATURITY MODEL FOR THE RAIL SAFETY REGULATOR

The Transport Agency has developed a proposal to enhance the capability and long-term performance of the rail safety regulator. The proposal seeks additional investment to:

1. fully fund the current regulatory function (running annual deficits at present); and
2. enable the Transport Agency to start building the key foundation capabilities of a high performing rail regulator.

It is intended that the Transport Agency will build the capability of the regulator over a 5 year period (2019–2024). The step change in performance will occur in the 2019–2024 funding period. Over this period, the regulator will apply improved approaches and additional resourcing to achieve critical improvements to transition to a modern, proactive, intelligence-led, risk-based regulator. The underpinning legislative framework may also need to be addressed to make this leap.

The investment aims to create a credible, influential and well-resourced regulator that is able to effect systemic improvements in rail safety through regulatory leadership. The intention is that the regulator will work at a system level, using a combination of intelligence, engagement, education, proactive and reactive investigation, and enforcement to realise these improvements.

Evolution of capability in the rail safety regulator						
Core capabilities	Investment and delivery	Short-term shifts (Years 1-2)	Medium-term shifts (Years 3-4)	Future state (Years 5+)	What are the benefits to New Zealand	What are the benefits to Rail Participants
Data analysis, risk and intelligence	\$0.43m	<p>Publication of safety intelligence to support sector decision-making.</p> <p>Part of agency-wide work to develop an integrated intelligence capability for front-line and management support.</p> <p>Identification of critical risks to improve resource targeting.</p>	<p>Safety benchmarking to enable continuous outcome monitoring.</p> <p>Risk-based, intelligence-led planning and case management to get ahead of issues and target harms across our functions in a systematic way, linked to outcomes.</p> <p>Identification of existing, and emerging, critical risks to strengthen understanding and mitigation of the contributors of catastrophic accidents.</p>	<p>Relevant, timely and robust intelligence is core to informing all regulatory functions.</p> <p>Catastrophic risks are understood and managed to provide true assurance of safety.</p>	<p>Risks with the potential to result in catastrophic harm are effectively managed through more proactive regulatory oversight.</p>	
Strategy, research and evaluation	\$0.48m	<p>Understand how future shifts in the industry will impact demands on safety and the regulator.</p>	<p>Understand legislative bottlenecks to effective regulation at minimal compliance cost.</p> <p>Clarification of safety accountabilities between rail participants, the national rail provider and the regulator.</p> <p>Practical and supported industry safety strategy that provides clear direction.</p>	<p>Transport Agency/MOT strategy that delivers the type of regulator the sector needs, underpinned by potential structural or legislative improvements.</p>	<p>Reduced safety risks and harm to the public resulting from increased field inspection, assessment and enforcement capability.</p>	<p>Enhanced public confidence and usage of rail as a transport mode, through a more visible, proactive and capable rail regulator.</p>
System leadership and sector engagement, communication	\$0.31m	<p>Clear regulator role in driving safety and continuous improvement in the industry through establishment of Rail Industry Advisory Forum.</p> <p>Widespread engagement with the sector at a strategic level around accountabilities, co-regulatory engagement, safety expectations and future industry shifts.</p>	<p>Rail Industry Advisory Forum running as collaborative, industry-wide think-tank to share intelligence, identify issues and develop solutions.</p> <p>Establishment of industry bodies to develop critical standards and best practice.</p> <p>Standards locked into rule or regulatory frameworks by regulator as required.</p>	<p>Maintain role as expectations setter for rail safety, but leadership of risk management and co-ordination transfers back to the sector.</p>	<p>Improved transport system resilience by ensuring a more robust regulatory model minimises network disruptions from safety incidents.</p>	<p>Cultural shift in industry to safe culture and ownership of safety individually and jointly.</p>
Guidance and education	\$0.29m	<p>Publication of guidance on critical skills (eg risk management, governance, assurance).</p>	<p>Development of a fuller suite of guidance – more targeted and including toolkits.</p> <p>Improved capability and capacity to assist participants directly.</p>	<p>Maintain role as provider of regulatory guidance, but safety and technical guidance provided more through cross-industry peer support and technical groups.</p>		

Licence management and assessments	\$0.92m	<p>More proactive approach to licensing and exemptions to ensure oversight of rail participants not currently licensed.</p> <p>Enhance assessment approach to improve engagement and oversight, and better detect systemic issues.</p>	<p>Linked with intelligence capability to ensure that licence management and assessments drive consistent expectations across the sector.</p> <p>Move from “one size fits all” assessment regime to tailored compliance monitoring interventions to suit scale and risk of operations.</p> <p>Rail participants understand regulatory expectations upon them.</p>	<p>Root-cause assessment capability ensures system failures never turn into accidents.</p>		
Investigations	\$0.38m	<p>Formalise and implement investigations model.</p> <p>Investigations deliver a dual purpose:</p> <ol style="list-style-type: none"> 1. Resolve safety failings 2. Hold participants to account for their actions (or inactions). <p>Increase number of investigations.</p>	<p>Improved transfer of findings from investigations to better address systemic failings across multiple participants.</p> <p>More robust investigations to support fair and proportionate interventions, including prosecution when necessary.</p>	<p>Risk-based, intelligence-led investigation capability ensures incidents never re-occur as accidents.</p>		
Monitoring, enforcement and compliance	\$0.79m	<p>Safety performance is consistently and efficiently collected.</p> <p>Rail participants understand compliance expectations upon them.</p> <p>Enforcement decision framework integrated with wider Transport Agency.</p>	<p>Strong prosecutorial capability ensures safety is a key governance conversation.</p>	<p>Legislative amendment (or other pathways) delivering improved enforcement tools for minor or administrative infractions.</p>		
Overall assessment of capability	\$3.6m	<p>Defining and starting to embed new operating model.</p> <p>Core education, engagement and enforcement capabilities embed.</p> <p>Regulator increasing its sector engagement and visibility, and re-setting accountabilities.</p> <p>Key regulatory operating systems and processes in place, including information management and people capability.</p>	<p>Risk-based, intelligence-led regulatory operating model starting to embed.</p> <p>Emerging signs of the regulator starting to build a credible position as a system leader within the rail safety system.</p>	<p>An effective, well-rounded, proportionate and credible regulator providing clear and visible system leadership, supported by fully embedded regulatory operating model.</p>		