AUSTRALASIAN RAILWAY ASSOCIATION

ARA Submission

ONRSR Cost Recovery Model – Consultation Paper

5 February 2021

ABN 64 217 302 489

The Industry

The Australasian Railway Association (ARA) is a not-for-profit member-based association that represents rail throughout Australia and New Zealand. Our members include rail operators, track owners and managers, manufacturers, construction companies and other firms contributing to the rail sector. We contribute to the development of industry and government policies in an effort to ensure Australia's passenger and freight transport systems are well represented and will continue to provide improved services for Australia's growing population.

The ARA and its members thank the Office of the National Rail Safety Regulator (ONRSR) for the opportunity to provide a submission on its Cost Recovery Model Consultation Paper.

This submission has been developed is consultation with ARA member organisations.

Any questions regarding this submission should be directed to Simon Bourke, General Manager – Policy and Government Relations via sbourke@ara.net.au or 0437 176 308.

General Comments

The ARA has reviewed the Consultation Paper and sought feedback from its members across the rail industry, including Rolling Stock Operators (RSOs) for heavy rail, light rail, and freight, as well as rail infrastructure mangers (RIMs). The following outlines some general comments on the proposed cost recovery model for consideration by the ONRSR.

- The ARA acknowledges the decision of Infrastructure and Transport Ministers for the ONRSR to develop a new national cost recovery model based on risk and regulatory effort. However, the proposed model of full cost recovery from industry is a significant shift from current arrangements, with approximately $13 million of existing government contributions to be removed entirely.
- As noted in the consultation paper, the new cost recovery model needs to reflect the three key principles of the Australian Government Cost Recovery Guidelines, focussing on efficiency and effectiveness, transparency, and stakeholder engagement.
    - While the consultation paper provides detailed information on the proposed cost recovery model, the industry would benefit from more detailed information and transparency on the discrepancies between the cost of regulation between jurisdictions. Notably the cost of regulation in NSW is double that of Victoria, more than triple that of Queensland and more than four times as much as Western Australia. Noting this is based primarily on track and train kilometres and variable fee rates, it would be useful to have more granular detail to better understand how current arrangements stand to vary under the new model.
    - Given that regulatory effort is one of the two determining factors of the cost recovery model, it would be useful to better understand the effectiveness and efficiency of the ONRSR's current operations. The ARA recommends that consideration be given to assessing the ONRSR's effectiveness and efficiency, with a view to determine opportunities for more streamlined

processes that could stand to reduce the regulatory effort required. The review would also provide industry with a better understanding of the ONRSR's performance against the cost recovery principles and whether any changes are required prior to implementing a new cost recovery model.

- Several members have also raised concerns regarding the timing of the cost recovery proposal, noting the significant economic uncertainty resulting from the impacts of the COVID-19 pandemic. The decision to move to a full industry cost recovery model was made by Infrastructure and Transport Ministers several years ago, in what was a vastly different economic environment. While the ARA supports consideration being given to developing a full cost recovery model, the timing of its implementation must be given careful consideration. This will be important to avoid any sudden cost increases and allow sufficient time for the new model to be agreed to with industry and appropriate transition processes put in place.
- The overall complexity of the proposed cost recovery model has also been raised as an issue of concern by the industry and requires further discussion and refinement. As outlined as in the guiding principles, the new cost recovery model is intended to be simple to administer. However, with over 45 pages of detailed templates, directions, and definitions to be reviewed and completed by industry for just 'Management and Control' factors to be assessed, would indicate that the model is quite complex. This is in addition to the 22 sub factors that need to be determined and assessed for RIMs and RSOs to determine 'Inherent Risk' and 'Safety Performance'. Concerns have also been raised regarding the subjective nature of some of the inputs, particularly those used for the assessment of 'Safety Maturity' and 'Use of appropriate safety technology'.
    - It is recommended that further consultation be undertaken with industry to explore ways to simplify the proposed cost recovery model, view a view to removing elements of subjectivity as much as possible and minimise the administrative and resource burden on both industry and the ONRSR.
- The ARA acknowledges that the proposed cost recovery model based on both risk and regulatory effort appears to be a world first, which provides some unique opportunities for innovation, as well as several significant challenges. Given the unique nature of the proposed model and the fact that it is essentially untested, it will be important to undertake detailed assessment of how the model will impact industry and allow opportunities for further refinement before it is fully adopted. This could include a 12 month 'testing' phase where RTOs apply the model to their organisations and determine the outputs in consultation with the ONRSR, followed by discussions on refining and improving the model.
- Several members have suggested that the weightings assigned to the cost recovery factors (Inherent Risk, Management and Control, Safety Performance) need to be reconsidered with the guiding principles of the cost recovery model in mind. The proposed model suggests that 'Inherent Risk' form 60 per cent of the cost recovery model, with 'Management and Control' and 'Safety Performance' at 20 per cent each, forming the remaining 40 per cent. It has been suggested that higher weightings should be applied to 'Management and Control' and 'Safety Performance' to ensure RTOs have a greater ability to reduce their risk classification through better safety management, control, and performance. This may result in better alignment with the guiding principles by more closely reflecting a proportionate risk classification and the commensurate regulatory effort.

- It is recommended that further consultation be undertaken on this point, noting that an alternative weighting could be 'Inherent Risk' at 50 per cent, with 'Management and Control' and 'Safety Performance' at 25 per cent each. This would create an equal balance between the largely built-in and unchanging inherent risk of an RTO, with the safety management, control and performance which are able to be positively influenced.

- As part of the cost recovery development and transition process, it will be important to provide RTOs some indication of the likely nature of the change in fees as soon as it is practical to do so. The first step in this process may be providing early estimated fee amounts for each tier to provide industry with some indication of how their fees stand to change depending on their tier allocation.
- It has been noted that the proposed new model may make it more difficult to calculate or budget for future fees with any certainty, as the model does not stipulate any absolute or base amounts from which a fee estimate can be derived. This may be a difficult adjustment for some members that rely on the certainty provided through the current model which is based primarily on track and train journey kilometres.
- It is recommended that further information be provided to industry on the dispute mechanism that operators could utilise in the event a RIM or RSO objects to an aspect of their scoring or tier allocation.

Specific Comments

Consultation questions: Inherent risk

1. *Do you consider that the sub-factors for RIMs and RSO appropriate?*

Some members have questioned whether the use of raw data such as train kilometres for passenger and freight services, as well as track length, could potentially disadvantage regional operators and infrastructure managers where those figures would be higher. Moving passengers or freight over large distances does not necessarily result in an inherently higher risk profile, particularly when factors such as asset management are not considered.

Some concerns have also been raised in relation to light rail and the 'Interfaces' sub factors for RIMs and RSOs. The RIM section references level crossings, which are not present on most light rail networks. It is suggested that the description be amended to account for light rail by including a descriptor such as council/road manager interface.

Light rail operators are also concerned that the sub-factors appear to be more applicable to heavy rail and does not capture some of the complexities of light rail, which shares interfaces directly with motor vehicles and pedestrians. There is also the issue of the light rail network being operated exclusively by the RSO in many instances. The ARA believes further consultation with the light rail sector is required to ensure the sub-factors are applicable to their operations.

2. *Do you consider that the sub-factor weightings are appropriate?*

As noted in the general comments, the ARA believes consideration should be given to lowering the weighting provided to 'Inherent Risk', with the sub-factor weightings also adjusted accordingly.

Some members have queried why the 'Inherent Risk' sub-factors have been assigned different weightings, depending on whether they are applied to a RIM or RSO. It is recommended that further clarification be provided on the rationale for this decision.

3. *If the collection of data is challenging to provide or not available for any of the sub-factor, can you identify these sub-factors and provide alternative measures that would reflect the risk input for this sub-factor measure?*

The only sub-factor that members advised would be very difficult to collect would be 'passenger kilometres'.

4. *If you undertake passenger operations, are you able to provide passenger kilometres?*

As noted above, members advised that they would be unable to accurately provide 'passenger kilometres'. For many operators, particularly those in light rail, it is not currently possible to determine where a person enters and alights from the carriage nor how far an individual passenger has travelled.

5. *If passenger kilometres are unable to be provided, an alternative measure being considered is passenger train kilometres (10%) and passenger journeys (5%).*
   (a) Do you consider this as an appropriate alternative?
   (b) What measurer(s) would you consider appropriate to reflect the risk input for this measure?

For those operators that are unable to provide passenger kilometres, the proposed alternative of 'passenger train kilometres' and 'passenger journeys' is considered suitable. Members have advised that they would be able to provide this information.

Consultation questions: Management and control

6. *Do you consider the sub-factors to be appropriate? If not, please provide further information and alternative options.*

In relation to the 'Use of appropriate technology' sub-factor, the ARA believes that consideration needs to be given to accommodating engineering solutions, rather than technology alone. In some instances, control measures may be engineered into a network or operation to improve the safety outcome. Therefore, the template should be able to accommodate other solutions that improve safety beyond just technology.

Members have also raised concerns around the somewhat subjective nature of the technology templates, as well as the process for coming an agreement between the RSO/RIM and the ONRSR on the respective

scores. It is also unclear how operations with a mix of old and new technologies will be accommodated and how the percentages should be allocated. It is recommended that some further guidance be developed to explain how these issues will be resolved.

Some members have also questioned the reasoning behind having the 'Management and Control' sub-factors combined for both RIMs and RSOs, whereas they are separated out for 'Inherent Risk' and 'Safety Performance' with different weighting for each sub-factor depending on whether it is a RIM or RSO. It is recommended that further clarification be provided on the rationale for this decision.

7. *Do you consider the sub-factor weightings to be appropriate? If not, please provide further information and alternative options.*

As noted in the general comment, the ARA believes consideration should be given to increasing the weighting provided to 'Management and Control' and adjusting the sub-factor weighting accordingly. By providing a higher weighting to 'Management and Control' there is a greater incentive to invest, innovate and improve control systems to mitigate the inherent risk of the organisation. By further encouraging industry to examine the way it manages its safety risks and identify opportunities for improvement, this will likely have a beneficial safety performance outcome and in turn reduce the entity's risk and the commensurate regulatory effort required by the ONRSR.

8. *Do you consider the hazardous events in the technology maturity assessment to be representative and appropriate? If not, please provide further information and alternative options.*

The hazardous events outlined in the technology maturity assessment appear to be appropriate.

9. *Do you consider the questions in the safety maturity questionnaire to be appropriate? If not, please provide further information and any alternative options.*

While the ARA generally supports the identified six key elements of safety maturity, concerns have been raised around the subjective nature of the questionnaire and the difficulties that could arise in being able to accurately measure/rate each factor. It is recommended that further guidance be developed (in consultation with industry) on what evidence would be required to achieve each score against each question.

It is also important to recognise that there are many different models and frameworks available to assess safety maturity and safety culture. The framework used by the ONRSR for the purposes of this cost recovery model may not be appropriate for all organisations. Depending on the nature of the organisation there may be a stronger 'command and control' focus on safety that is centred on ensuring existing systems are systematic, repeatable, effective, and reliable.

Under the proposed model, organisations such as this may score lower than another organisation that has a more innovative or dynamic approach to managing safety. This does not necessarily mean one organisation is safer or more mature than the other, and this variability needs to be considered when assessing safety maturity within each organisation.

Consultation questions: Safety performance

10. *Do you consider the sub-factor weightings to be appropriate? If not, please provide further information and alternative options.*

As noted in the general comments, the ARA believes that consideration should be given to increasing the weighting provided to 'Safety Performance' and adjusting the sub-factor weightings accordingly. A higher weighting for 'Safety Performance' will assist in incentivising continual improvement in safety outcomes and result in a safer national rail network.

11. *Do you consider the sub-factors for RIMs and RSO to be appropriate? If not, please provide further information and alternative options.*

The ARA believes that the sub-factors for RIMs and RSOs appear to be appropriate, however some members have questioned how safety incidents will be treated for entities that are both a RIM and RSO. It is recommended that there not be duplication of safety incidents in the assessment of safety performance and that further clarification be provided on the process for dual RIM/RSO entities.

It is also suggested that further consideration be given to identifying causal factors within the 'Safety Performance' sub-factors to determine when the RIM or RSO did not contribute to a safety incident. This should also extend to the sub-factor exclusions recognising where natural disaster events (e.g. bushfire, floods, etc.) may have caused a safety incident.

It is also recommended that the existing the ONRSR Reporting Requirements for Notifiable Occurrences guideline be referenced and applied consistently against each of the sub-factors as the basis of assessing safety performance.

The ARA notes that consideration should also be given to the work currently underway within the National Rail Safety Data Strategy to ensure consistency in the data underpinning these sub-factors and how they are categorised.

12. *Do you consider the normalisers for RIMs to be appropriate? If not, please provide further information and alternative options.*

The ARA believes that the normalisers for RIMs appear to be appropriate.

13. *Are you aware of any issues / impacts with providing the RIM normaliser data?*

Some members have questioned the rationale around using normaliser data, noting that it could be argued that the regulatory effort would be proportional to the raw count of incidents, rather than the ratio of incidents to track or train kilometres. It is recommended that some further clarification on the rationale for the use of normalisers be provided to industry, particularly for those that could not participate in the stakeholder workshops where this was discussed.

14. *Do you consider the normalisers for RSOs appropriate? If not, please provide further information and alternative options.*

The ARA believes that the normalisers for RSOs appear to be appropriate.

Consultation questions: Risk profiling tool

15. *Do you consider the risk profiling tool approach appropriate for cost recovery purposes?*

The ARA believes that the risk profiling tool approach appears to be appropriate, noting that further consideration needs to be given to the recommendations regarding weightings and sub-factor adjustments for each element of the model as outlined previously. This will be important to ensure that a RIM or RSO's risk profile score accurately reflects their operational environment and unique circumstances, including ensuring that RIMs and RSOs are not penalised for safety incidents that are beyond their organisation's control.

16. *Have you identified any limitations or opportunities that have not been addressed?*

The ARA notes that there does not appear to be any explicit consideration of rewarding or recognising any pro-active risk management activities that a RIM or RSO may undertake. This may be worth further discussion with industry on how these initiatives could be captured.

Discussion points: Risk and regulatory effort model: tiered approach

17. *Do you consider that the proposed method of ascribing regulatory effort to a tier is appropriate for cost recovery purposes? If not, please provide further information and alternative options.*

In principle, the ARA believes ascribing regulatory effort to a tier is appropriate for cost recovery purposes, however it is recommended that further refinement is required.

It is recommended that further information be provided to RIMs and RSOs to enable a more detailed understanding on where they will likely sit within the scale of a particular tier, and whether there is any scope to move between tiers as safety systems and process evolve.

While the ARA recognises that by assigning all operators within a particular tier the same fee provides a degree of financial and budgeting certainty, some members have queried this approach. It has been questioned why an operator would not just be allocated a position on the 0-100 spectrum, with the fee calculated accordingly. It could be argued that this would assist with the objective of reducing cross-subsidisation, because even within the tiered approach the best performer in the tier would essentially be subsiding the worst performer.

18. *Do you consider that this approach has achieved the intent of developing a cost recovery model based on risk and regulatory effort? If not, please explain the limitations and suggest improvements.*

The ARA believes that significant progress has been made towards achieving the intent of the proposed cost recovery model, however further consultation and refinement with industry is required. This will be essential to ensure that risk, management and control, and safety performance are appropriately balanced and provide enough flexibility to account for individual operators' circumstances and operating conditions. The model also needs be flexible enough to adapt to disruptions to market conditions, such as those experienced last year as a result of the pandemic.

The ARA also notes that while the proposed model provides incentive for operators to improve their safety performance and reduce their risk profile and the required regulatory effort, there does not appear to be any incentive for the ONRSR to improve its practices and processes in order to reduce its cost of regulation. It is recommended that consideration be given to the ONRSR improving transparency with industry on the efforts it intends to make to minimise the cost of regulation under a full cost recovery model, including consideration of efficiency targets.

Discussion points: Other opportunities to reduce cross-subsidisation

19. *Do you consider the proposed revised and withdrawn fees to be appropriate?*

The ARA supports the fees being commensurate with the level of regulatory effort required to process applications and registrations. However, in the interests of transparency, it is recommended that some further information be provided to industry on the methodology used for determining the revised application and registration fees.

20. *If not, please explain the limitations and suggest alternatives for cross-subsidisation be addressed.*

No further comment.