



COST RECOVERY IMPLEMENTATION STATEMENT
ONRSR MAJOR RAIL PROJECTS FEE
2016/17

Cost recovery involves government entities charging individuals or non-government organisations some or all of the efficient costs of a specific government activity. This may include goods, services or regulation, or a combination of them. The Australian Government Cost Recovery Guidelines (the CRGs)¹ set out the overarching framework under which government entities design, implement and review cost recovered activities.

¹ The CRGs are available on the Department of Finance website (www.finance.gov.au).

1. INTRODUCTION

1.1 Purpose of the CRIS

This CRIS provides information on how the Office of the National Rail Safety Regulator (ONRSR) implements full cost recovery as agreed by Ministerial Council for regulatory oversight of major railway projects noting that a legislative change is necessary to enable these fees to be charged.

This will allow ONRSR to ensure no reduction in rail safety regulatory oversight of existing railway operations and that costs are recovered with limited or no cross-subsidisation.

1.2 Description of the activity

The ONRSR has the overarching function of working with rail transport operators, rail safety workers and others involved in railway operations to improve rail safety nationally, and to promote safety and safety improvement as a fundamental objective in the delivery of rail transport in Australia. To assist in achieving this, the ONRSR has a national approach for providing regulatory oversight for all railway operations including major rail projects.

Major projects usually involve significant technical or operational change, eg signalling system upgrades, introduction of new rolling stock and significant new rail infrastructure. Major projects can be characterised by their complexity, involving:

- multi-disciplinary activity
- complex contractual structures
- intricate organisation structures.

Regulatory oversight throughout the construction, installation and commissioning stages of these projects provides assurance that rail safety is built into the design, thereby reducing any safety concerns once in operation. It also increases the likelihood of the process for safety accreditation to progress without delay, thus mitigating a key risk for project proponents.

The ONRSR is funded using a cost-recovery model. Currently the ONRSR charges industry a fixed fee for applications for accreditation or variations (\$10,000 for an accreditation application or \$1,000 for a variation). There has always been a certain amount of oversight over major rail projects covered by the current cost recovery model. However, the number and complexity of major rail projects are set to increase significantly, from an estimated value of \$15.4 billion of planned works in 2012 to in excess of \$60 billion in 2016. The ONRSR is not resourced to undertake this level of additional regulatory oversight. To avoid impacting its regulatory oversight of existing rail operations, ONRSR will need to increase its resources to provide for this major project oversight. Under current arrangements, this would result in cross subsidisation within the current cost recovery model as the current fees are not commensurate with the level of regulatory oversight required in this area.

To reduce or eliminate this cross subsidisation, two types of major project fees are proposed:

1. An initial documentation assessment fee – this fee will only apply to entities who are not currently accredited and who intend to seek accreditation for all or part of the railway operations for a major project. This fee may apply to more than one party for a major project.
2. An annual major project fee (Class 1, 2, or 3 depending on the level of complexity).

This is not representative of a fee for service but attempts to be broadly reflective of the overall level of regulatory effort applied in the delivery of the necessary oversight of rail safety matters by the ONRSR during the design and construction phase prior to formal accreditation to operate, based on a benchmark major project (one for each 'Class'). The fees support the delivery of the function by the ONRSR and are not varied based on the specific time spent on individual major projects.

The fees will apply to any party who requires accreditation or a variation to accreditation for a major project.

2. POLICY AND STATUTORY AUTHORITY TO COST RECOVER

2.1 Government policy approval to cost recover the activity

In 2009 the Council of Australian Governments (COAG) agreed to implement a national rail safety regulatory system to improve safety and reduce costs and regulatory burden. As part of the agreement, COAG requested that the national regulator operate on a cost recovery basis. In August 2011, states and territories signed the *IGA on Rail Safety Regulation and Investigation Reform* (IGA) which required a nationally consistent industry charging regime be implemented and that the National Rail Safety Regulator charge and collect these fees directly from industry.

2.2 Statutory authority to charge

An amendment to the RSNL is required to allow the Regulator to charge.

3. COST RECOVERY MODEL

3.1 Outputs and business processes of the activity

Major Project Declaration

The Regulator will declare a major project via a Notice published on the ONRSR website. Typically, but not necessarily, the declaration will follow confirmation of funding commitments for the project. In order to be declared a major project, a project must meet criteria including components such type of infrastructure or rolling stock to be delivered; significance of change to the operations of the applicant; introduction of particular risks; and significant public interest. Major projects will be classified according to three classes of project to reflect the varied level of regulatory oversight required depending on the level of complexity.

All major projects will be determined to be Class 1 by default, unless they meet the criteria to be downgraded to a Class 2 or 3.

Major projects may be deemed to be Class 2 by the ONRSR if:

- If the proponent is not currently accredited; the proposed technology is already widely used throughout the Australian rail industry; and the operating environment covered by the proposal does not involve complex safety matters, but may involve new technology or the project being constructed and delivered separately to the end operator / maintainer.

Major projects may be deemed to be Class 3 by the ONRSR if:

- The proposed technology, nature of operation and operating environment are substantially the same as the Rail Transport Operator's existing operation but the project involves substantial extension of infrastructure or rolling stock modifications.

Initial Documentation Assessment (non-accredited parties only)

ONRSR will charge non-accredited parties a one-off initial fee to assess their application.

Regulatory oversight of the major project

ONRSR is involved throughout the delivery of a major project, from design through to commissioning. However fees will only apply once railway operations commence in accordance with section 4(1) of the RSNL. The primary focus of the ONRSR work over these stages is to provide for safe operations to commence at the end of the project. During the delivery of a major project ONRSR may typically undertake the following:

- assess applications and issue relevant statutory notices
- liaise with project team and monitor project activities including:
 - accreditation planning
 - safety assurance planning
 - reviewing the safety risk register
 - liaising with safety assessors
 - reviewing safety arguments and key risk assessments
 - reviewing safety verification and validation processes
- site and safety management system inspection activities

Application of fees

Fees will apply once railway operations commence. Typically this will be when construction commences, new technology is installed or rolling stock is constructed. If a project ceases, the ONRSR may at its discretion offer a refund for any major project fee paid for the current year. Should the project be suspended, the ONRSR may at its discretion hold such major project fee paid for a period and apply a portion of this fee to the major project fees due on recommencement of the project. The ONRSR is to be notified when a project recommences,

Other accreditation fees will not apply while the major project fees apply. However, where an operator has other railway operations accreditation fees continue to apply for those other operations.

Once final commissioning of a project is completed, the major project fee will no longer apply and the default accreditation fees will apply (under section 76 of the RSNL).

3.2 Costs of the activity

Through recent experience, the ONRSR has determined that the time expended by ONRSR rail safety staff on project management, meeting with the project proponent and assessing documentation is as follows:

	Class 1	Class 2	Class 3
Assessing the initial accreditation for non-accredited parties	80 days	80 days	N/A
Regulatory oversight for all project stages	176 days per annum	124 days per annum	83 days per annum

The time invested by the ONRSR in the assessment of a major project will be sourced from a combination of ONRSR employees and contracted staff. This allows for flexibility in resource allocation to meet the variable demands of managing multiple projects, while maintaining efficiency of costs.

The cost – expressed as a daily rate is based on:

- wages
- leave costs
- on costs and overheads
- IT, communications, office space and support costs
- travel and accommodation

The cost of the resourcing required has been identified in a review conducted by Elphinstone Consulting in October 2015, as follows:

Resource Option	Estimated Hourly Rate
ONRSR staff specialist	\$110 to \$120
Independent consulting engineer	\$120 to \$200
Typical Tier 1 consulting firm	\$180 to \$300

To develop the major project blended rate, the ONRSR has assumed that there will be a mix of resourcing used across the projects, and over time. Whilst it is difficult to predict what will be applied, the use of contractors and Tier 1 consulting firms is expected in order to meet the coincident demands of the delivery of major projects and it is an efficient way to deliver resourcing through the maintenance of an ONRSR resource base supported by contractors and consulting firms.

Apply a weighting to the rates estimated by Elphinstone Consulting, we support the calculation of the rate per day as follows:

ONRSR blended rate	\$/hr lower	\$/hr upper	\$/day lower	\$/day upper	\$/day mid- point	Weighting	\$/day blended
ONRSR staff	110	120	825	900	863	60%	518
Independent Consultant	120	200	900	1500	1200	20%	240
Tier 1 Consulting Engineer	180	300	1350	2250	1800	20%	360
Total							1118
Used in calculations							1125

The total cost of maintaining the resources on the major project assessment is estimated at \$1,125 per day, and subject to a CPI increase approved by Ministers each year.

3.3 Design of cost recovery charges

The annual fee option is based on the charging of a fee to a project proponent to recover an approximate cost for the ONRSR to undertake regulatory oversight through the construction and commissioning stages of a major project. It is broadly reflective of the level of regulatory effort applied in the delivery of the necessary oversight of rail safety matters by the ONRSR during the design and construction phase prior to formal accreditation to operate. The methodology is based on the recovery of costs associated with the delivery of a benchmark project rather than any specific major project that is being considered in the rail industry.

ONRSR recognises that the scale and complexity of regulatory effort could be different between projects, and this could be driven by a number of factors not necessarily related to total project cost. Therefore the annual fee option has been considered with the ability to recognise some differences in a project by charging different rates for Class 1, 2 or 3 projects. The fees for Class 1, 2 or 3 projects reflect the difference in estimated regulatory oversight effort.

The costs incurred by the ONRSR on major projects may fluctuate depending on the project. However they are generally smooth over a year except for the initial regulatory oversight for an operator not previously accredited under the Rail Safety Legislation, and so a separate initial documentation assessment fee for a new major project is applied to all parties other than those who are already accredited under the ONRSR. The charging of this initial fee under the major projects process more accurately reflects the time and effort required by ONRSR and therefore reduces the risk of cross-subsidy associated with this initial accreditation process.

Because the amount of time required by the ONRSR to resource the assessment of rail safety documentation is dependent on continuous contact and communication with the proponent of the project, the major project fee will continue for the life of the project (until finished as defined by the final commissioning date). Should the project extend beyond the initial budgeted timing for final commissioning, then it is expected that the ONRSR will still be actively engaged with the proponent on the delivery of the project and therefore the levying of a fee is still appropriate for the period up to the commissioning date in accordance with this methodology.

The costs to be recovered on major projects is set out below to approximately recover the expected time expended on the relevant category of the project:

The Fee	Class 1	Class 2	Class 3
Initial documentation assessment fee for non-accredited parties – if required	\$90,000 Once off	\$90,000 Once off	N/A
Annual fee – regulatory oversight for all project stages	\$198,000 per annum	\$140,000 per annum	\$93,000 per annum

Calculation of the average daily rate applied in the determination of the annual fee is representative of the costs of maintaining the experienced resource necessary to fulfil the obligations of the ONRSR.

The fees will increase annually by CPI.

4. RISK ASSESSMENT

Proponents may not agree with the Regulator’s declaration that their project is a major project.

Once funding is announced, the Regulator will assess the rail projects to identify if the project meets the major projects criteria. If a project is declared to be a major project, the Regulator will advise the proponent of the reason behind this declaration. Under the consequential amendments to the RNSL, the proponent will have the right to have this declaration reviewed.

5. STAKEHOLDER ENGAGEMENT

The ONRSR, in consultation with industry, has published a Major Projects Guideline which outlines a progressive approach to co-operative regulatory involvement through-out the major project lifecycle. Feedback from industry has been positive, recognising that progressive regulatory involvement in accreditation at the design and definition, development, construction and commissioning stages of major projects is essential to their efficient and effective delivery.

Concept discussions relating to cost recovery have taken place with the broader cost recovery reference group. This group consists of industry representatives for above and below rail operations, freight and passenger, large/medium commercial operations and heritage operations. There have also been concept discussions with the ONRSR’s Chief Executives Forum and with the industry Safety Managers Group.

Additionally a discussion paper was issued for the broader cost recovery review and a separate fee for major projects was supported by industry and governments.

6. KEY FORWARD DATES AND EVENTS

8-28th February 2016- Government stakeholder consultation meetings (various)

19th February and 22nd February 2016- Industry Major Project Fee Consultation workshops

29 February 2016- National Transport Commission Strategic Liaison Group

7 April 2016 – Transport and Infrastructure Senior Official’s Committee Meeting

July – August 2016 – Stakeholder consultation

16 September 2016 – Transport and Infrastructure Senior Official’s Committee Meeting

4 November 2016 - Transport and Infrastructure Council Meeting

Implementation of Major Projects Fee (subject to approval by Ministerial Council and legislation being passed through the South Australian Parliament)

On or before 30 September Annually- deliver Annual Report to Responsible Ministers

7. FINANCIAL REPORTING REQUIREMENTS AND MAJOR RAIL PROJECT PREDICTIONS

Under section 43 of the Rail Safety National Law (RSNL), the Regulator is required to deliver to the responsible Ministers, an Annual Report on ONRSR's activities for the financial year ending on the preceding 30 June.

All monies collected in relation to the Major Rail Projects Fees will be published in the ONRSR Annual Report which can be found on the ONRSR website, or requested in hard copy from the ONRSR.

As at June 2016, the current regulatory costs for major projects is estimated at \$1.12million (based on 4.5 FTEs). In order to reduce cross subsidisation, the cost of regulation each year will be reduced by the funds collected from major projects fees up to the value of \$1.12million. Additional major project fees collected above \$1.12million will be used to engage temporary resources required to undertake the regulatory oversight of these projects.

The national cost of regulation each year will be reduced by the funds collected from the major projects fees up to the value of \$1.12 million. Additional major project fees collected above \$1.12million will be used to engage temporary resources to undertake regulatory oversight of these projects.

If the proposed fee comes into effect on 1 July 2017, it is anticipated that approximately thirteen major rail projects will attract the major projects fee in the 2017/18 financial year. This will result in an estimated \$2.5 million being recovered for the regulatory oversight of major rail projects that year. However, the number of major rail projects is dependent on decisions made by external parties and could potentially be increased or decreased by up to three projects, leading to a possible fluctuation of up to \$540,000.

8. CRIS APPROVAL AND CHANGE REGISTER

Date of CRIS change	CRIS change	Approver	Basis for change
05/02/2016	For Consultation	Sue McCarrey National Rail Safety Regulator	Approved for Consultation with Stakeholders
01/08/2016	Updated following feedback from Stakeholders	Sue McCarrey National Rail Safety Regulator	Approved for Consultation as part of full Cost Recovery Model