

Consideration of waivers on hardship grounds

This policy outlines Waka Kotahi NZ Transport Agency's approach to considering, on the grounds of excessive financial hardship, relief on fees and/or charges incurred in carrying out regulatory functions under the [Railways Act 2005](#).

Intended audience

Rail participants suffering hardship that limits their ability to pay statutory fees and/or charges for rail safety regulatory activity.

This policy applies only to debts incurred by rail groups or organisations. It doesn't apply to individuals.

It applies only when a licence holder responds to an invoice being issued.

It doesn't apply to debts incurred in any other functions carried out by Waka Kotahi.

Legislative framework

All licence holders must pay an annual safety charge (see Regulation 5 of the Railways Regulations 2019).

The annual charge is payable in four equal instalments over the year (see Regulation 8 of the Railways Regulations 2019).

We may charge fees and all reasonable expenses incurred while carrying out specified functions (see Regulations 10, 11, 12 and 13 of the Railways Regulations 2019).

We may waive or refund the whole or any part of a charge or fee if we deem it would be inappropriate to require the charge or fee to be paid (see Regulation 15 of the Railways Regulations 2019).

We must consider applications by a debtor (if they are an individual rather than an organisation) seeking reasonable changes to their debt on the grounds of unforeseen hardship (see Section 57B of the Credit Contracts and Consumer Finance Act 2003).

[Railways Regulations 2019](#)

[Credit Contracts and Consumer Finance Act 2003](#)

Principles

In the operation of its fees and charges framework, we apply the following principles:

1 Transparency

- Our administrative practices are easy to understand so participants can easily understand our costs.
- We notify participants of fees or charges as early as possible, ideally before beginning any activity that incurs recoverable costs.
- We advise participants on how they can improve their practices to minimise their fees and charges.

2 Efficiency

- We minimise administrative costs.

3 Fairness

- Each participant pays costs representative of its demands on the regulator.
- All participants are treated consistently.

4 Effectiveness

- We ensure the application of fees and charges supports the role, purpose and objectives of the rail safety regulatory system.

Considering financial hardship

We act reasonably and ethically when problems in a rail participant's operations result in financial hardship. A participant may be experiencing hardship when they meet the following:

- The participant has suffered hardship they couldn't reasonably have foreseen.
- As a result of that hardship, the participant cannot reasonably meet their fees and charges under present payment arrangements.

Situations where payments may be made in instalments

We may consider allowing a participant to pay a fee in instalments if the participant believes they would be able to meet the payments. This is the preferred approach to offering fee relief when addressing financial hardship concerns.

The preferred arrangement would be:

- The participant makes a written request for fees relief, identifying the fees to be considered and the reason for the relief.
- The participant makes this request before the invoice(s) becomes overdue.
- If we decide to defer payment, all outstanding fees are to be paid in a period no longer than 24 months, in accordance with an agreed instalment plan - eg if 24 months, in eight equal sums with the first payment due 3 months after the original due date, and subsequent payments due at 3-month intervals.
- Payment will be required by direct debit, weekly on a Wednesday or on the 20th of the month. A missed payment nullifies the instalment plan, and the remainder of the fee is due immediately.

We may make arrangements outside this preferred arrangement. In particular, we may consider offering payment in instalments even if an invoice is overdue, provided it's reasonable to do so.

We're under no requirement to offer this relief. We may consider the payment, administrative and safety compliance history of the participant when considering this relief.

The arrangement to consider an instalment plan is only applicable to fees. The payment timing of the annual charge is specified under the Regulation 8 - four quarterly instalments spread over a year.

Situations where a hardship waiver may apply

In exceptional circumstances, we may consider waiving or refunding part of fees or charges where a participant is able to demonstrate they are suffering from financial hardship and payment in instalments would not relieve the hardship.

The preferred arrangement would be:

- The participant makes a written request for relief:
 - identifying the fee(s) and/or charge(s) to be considered

- demonstrating that payment would cause hardship (eg bank account statements, revenue information, proof of other debt(s), an official letter from a budget advisor, lawyer or accountant)
- providing assurance that the participant has sufficient funds to maintain safety standards and practices and its approved safety case.
- The participant makes this request before the invoice(s) becomes overdue.
- If we decide to apply a partial waiver, we'll advise the date the remaining amount is due.

We may make arrangements outside this preferred arrangement.

We're under no requirement to offer this relief. We may consider the payment, administrative and safety compliance history of the participant when considering this relief.

In general, we wouldn't consider refunding fees or charges already paid.

We must consider, when making a decision under this policy, the impact of any waiver/refund on our ability to continue to provide rail safety.

Conditions of a waiver

A waiver means the participant isn't required to pay that part of the fee or charges specified in the waiver. It can only be approved in writing and by the person exercising the correct delegation.

There's no limit on the number of waivers we may choose to grant a participant if they're consistent with this or any other policy we issue.