

MEMORANDUM OF UNDERSTANDING BETWEEN

THE AUSTRALIAN TRANSPORT SAFETY BUREAU

AND

COMCARE

FOR THE INVESTIGATION OF

TRANSPORT SAFETY MATTERS

1 PARTIES

- 1.1 The AUSTRALIAN TRANSPORT SAFETY BUREAU (the Bureau) is an operationally independent body within the Federal Department of Transport and Regional Services and is Australia's prime agency for transport safety investigations. The Bureau performs its functions in accordance with the provisions of the *Transport Safety Investigation Act 2003* (the TSI Act). Section 7 of the TSI Act indicates that the object of the Act is to improve transport safety through, among other things, the making of safety action statements and recommendations that draw on the results of transport safety investigations in order to prevent similar accidents or incidents from occurring in the future. It is not the purpose of Bureau investigations to lay blame or provide a means of determining liability.
- 1.2 COMCARE is established by the *Safety, Rehabilitation and Compensation Act 1988* (the SCR Act) and administers the occupational health and safety worker's compensation schemes established for employees of the Commonwealth and Commonwealth Authorities by the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the OHS(CE) Act) and the SCR Act.

2 PURPOSE

- 2.1 This Memorandum of Understanding is intended to guide cooperation and mutual assistance between the Bureau and Comcare in relation to safety investigations of transport safety matters, and safety promotion and research.
- 2.2 The Bureau and Comcare acknowledge that this MoU is not legally binding and that nothing in this MoU can legally restrict the statutory discretion and powers under relevant legislation.

3 BACKGROUND

- 3.1 The Bureau is strictly separate from transport regulators. The Bureau's objective is safe transport. Its mission is to maintain and improve transport safety and public confidence through excellence in:
 - independent transport accident and incident investigation;
 - safety data analysis and research;
 - safety communication and education.

4 NOTIFICATION

- 4.1 If it appears to the Bureau that an Immediately Reportable Matter (accident or serious incident) as prescribed by the *Transport Safety Investigation Regulations 2003* (the TSI Regulations) involved the death of, or serious injury to, any employee of the Commonwealth or a Commonwealth Authority whilst working, the Bureau will notify Comcare of the occurrence and the name and contact details of the investigator in charge of the Bureau's investigation.
- 4.2 If it appears to the Bureau that an 'immediately reportable matter' (accident or serious incident) as prescribed by the *Transport Safety Investigation Regulations 2003* (the TSI Regulations) involved the death of, or serious injury to, any person travelling in a transport vehicle owned, hired or leased by the Commonwealth or

Commonwealth Authority, the Bureau will notify Comcare of the occurrence and the name and contact details of the investigator in charge of the Bureau's investigation.

- 4.3 If, having received the notification under 3.1 or 3.2, Comcare decides to investigate the occurrence, Comcare will notify the Bureau accordingly, together with the name and contact details of the investigator who will investigate the occurrence on behalf of Comcare.
- 4.4 If it appears to Comcare that an 'accident' or 'dangerous occurrence' notified to Comcare arose out of or in connection with the operation of an aircraft or ship (not being an Australian Defence Force or foreign customs, military or police aircraft or ship) or a rail vehicle (where the 'accident' or 'dangerous occurrence' occurred on the Defined Interstate Rail Network), Comcare will notify the Bureau of the occurrence and of the name and contact details of the investigator who will investigate the occurrence on behalf of Comcare.
- 4.5 If, having received notification under 4.4, the Bureau decides to investigate the occurrence, the Bureau will notify Comcare accordingly, together with the name and contact details of the investigator in charge of the Bureau's investigation.

5 COOPERATION AND SHARING OF INFORMATION

- 5.1 Where both the Bureau and Comcare notify they have decided to investigate the same occurrence, the Bureau and Comcare will:
 - (a) recognise each other as a 'party with an interest' and, upon request, provide each other with a copy of the final investigation report¹ of the respective investigations; and
 - (b) whilst recognising the independent legislative discretions, duties and powers of investigators under the TSI Act and the OHS(CE) Act – encourage their respective investigators to
 - consult with each other;
 - provide each other with the names and contact details of persons who may be able to provide relevant information (including documents)²; and
 - consider the conclusions and opinions expressed by each other's investigators on matters within their particular expertise.
- 5.2 The Bureau and Comcare agree;
 - (a) that any investigation conducted by the Bureau under the TSI Act and any investigation conducted by Comcare under the OHS(CE) Act will be clearly identified and distinguished from each other by the Bureau and Comcare and their respective investigators; and

¹ Under section 27 of the TSI Act, final investigation reports are not admissible as evidence in civil or criminal proceedings except for the purpose of a coronial inquiry.

² Note that names and contact details of persons involved in an occurrence and which were obtained by the ATSB for the purpose of a transport safety investigation is Restricted Information and is thus subject to protection under Part 6 of the TSI Act. Release of such information is only permitted under section 61 of the TSI Act if it is 'necessary or desirable for the purposes of transport safety'. Release may also be subject to further restrictions under r.5.8(2) of the TSI Regulations.

- (b) where an occurrence is only investigated by one organisation, to consider any request, resources permitting, for technical assistance from the other³ provided this is not likely to lead to any perceptions of lack of independence or confusion between blame and no-blame inquiries.

6 SAFETY EDUCATION, PROMOTION AND RESEARCH

- 6.1 The Bureau and Comcare share an interest in educating on, promotion of and research into transport safety and agree to:
 - (a) where appropriate and practicable, seek to develop complementary safety education and promotion programs; and
 - (b) where requested, assist safety research by providing safety information that does not identify the individuals concerned to each other.

7 POINT OF CONTACT

- 7.1 The ATSB's Executive Director and Comcare's Chief Executive Officer may communicate with each other at any time regarding matters considered to be of mutual interest.
- 7.2 Where an issue arises between the ATSB and Comcare regarding either party's ability to meet the intent of this MoU, the ATSB's Director, Safety Investigations and Comcare's Manager, Safety Operations will, as soon as possible, discuss the matter. If the matter is not able to be resolved at that level, the ATSB's Executive Director and Comcare's Chief Executive Officer will, as soon as possible, discuss the matter. The parties will seek to reach consensus.
- 7.3 The Bureau will direct correspondence to Comcare to:
 - Manager, Safety Operations
 - GPO Box 9905
 - Canberra ACT 2601
 - Tel: [REDACTED]
 - Fax: [REDACTED]
- 7.4 Comcare will direct correspondence to the Bureau to:
 - Director, Safety Investigations
 - PO Box 967
 - Civil Square ACT 2608
 - Tel [REDACTED]
 - Fax [REDACTED]

³ For example, the Bureau may be able to provide technical expertise of transport vehicle operations to assist a Comcare inquiry into an occurrence involving an Australian Defence Force (ADF) aircraft or ship, and the Bureau's involvement would be in accordance with the OHS(CE) Act in such a case, or Comcare may be able to provide medical expertise to assist an occurrence being investigated by the Bureau, and Comcare's involvement would be in accordance with the TSI Act in such a case.

8 DURATION OF AND VARIATIONS TO THIS MEMORANDUM

8.1 This Memorandum will apply for three years from the date of signing and may be extended, varied or terminated by exchange of letters between the Bureau and Comcare.

Dated at Canberra this

3rd

day of June 2003



KYM BILLS
Executive Director
Australian Transport Safety Bureau



BARRY LEAHY
Chief Executive Officer
Comcare