MEMORANDUM OF UNDERSTANDING

BETWEEN THE

AUSTRALIAN TRANSPORT SAFETY BUREAU

AND THE

OFFICE OF THE NATIONAL RAIL SAFETY REGULATOR
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INTRODUCTORY CLAUSES

1. PARTIES TO THE MOU

Australian Transport Safety Bureau

1.1. The Australian Transport Safety Bureau (ATSB) is established under the Transport Safety Investigation Act 2003 (TSI Act) as an independent Commonwealth statutory agency. The ATSB is governed by a Chief Commissioner and two or more Commissioners.

1.2. The ATSB’s function is to improve safety and public confidence in the aviation, marine and rail modes of transport through:

a) investigation of transport accidents and other safety occurrences;

b) safety data recording, analysis and research; and

c) fostering safety awareness, knowledge and action.

1.3. Under the TSI Act, it is not a function of the ATSB to apportion blame, provide the means for determining liability or allow an adverse inference to be drawn from the fact that a person was involved in a transport safety matter.

1.4. The ATSB, as one of its functions, will liaise and cooperate with the Office of the National Rail Safety Regulator (ONRSR) in respect of matters relating to rail transport safety.

Office of the National Rail Safety Regulator

1.5. The ONRSR is an independent body corporate established by the primary Rail Safety National Law (RSNL) enacted through the South Australian Parliament with enabling legislation passed by each State and Territory, except in Western Australia where mirror legislation will apply. This Law sets out the powers of the regulator and the responsibilities and obligations of all persons and companies undertaking operations that affect rail safety in Australia. The ONRSR is governed by the Chief Executive and two non-executive members.
1.6. The ONRSR, in exercising its functions under the RSNL will:

a) facilitate the safe operation of rail transport in Australia;

b) exhibit independence, rigour and transparency in carrying out its regulatory functions; and

c) promote safety and safety improvement as a fundamental objective in the delivery of rail transport in Australia.

1.7. The ONRSR, as one of its functions, will liaise and cooperate with the ATSB in respect of matters relating to rail transport safety.

2. PURPOSE OF THE MOU

2.1. The purpose of this Memorandum of Understanding (MOU) is to establish and maintain a cooperative working arrangement between the ATSB and the ONRSR.

2.2. With respect to each party’s separate but complementary safety functions and respective legislative requirements, this MOU through its provisions, addresses the following objectives:

a) maximising beneficial rail safety outcomes.

b) enhancement of public confidence in rail safety.

c) support for the adoption of systemic approaches to rail safety.

d) promotion and conduct of ATSB independent no-blame safety investigations and ONRSR regulatory activities in a manner that assures there is a clear distinction between each agency’s complementary safety-related objectives.

e) the avoidance of any impediments in the performance of each other’s legislative functions.

f) fostering strategic discussion between both parties.

2.3. The ATSB and ONRSR will seek to uphold the values of this MOU and fulfil their respective commitments. However, both parties acknowledge that this MOU is not legally binding and that nothing in this MOU can legally restrict the statutory duties, discretions and powers of either party under relevant legislation.
3. PRINCIPLES

3.1. Both parties confirm their commitment to achieving the best possible rail safety outcomes. In this respect the parties will individually and collectively seek to enhance public confidence in rail transport safety.

3.2. The parties agree that rail safety outcomes are best achieved through mutual support, cooperation, openness and professional relationships.

INTERACTIONS BETWEEN THE TWO PARTIES

4. EXECUTIVE MEETINGS AND BRIEFINGS

4.1. The Chief Commissioner (ATSB) and the Chief Executive (ONRSR), the General Manager, Surface Safety Investigations (ATSB) and Executive Director Corporate and Policy and Executive Director National Operations and/or their nominated representatives, will meet regularly to discuss matters including but not limited to:

a) each party’s strategic direction, current issues and focus;

b) relevant operating protocols of each party and any associated necessary or desirable interaction between the two parties;

c) a review of the parties’ research programs, if any;

d) ATSB identified Safety Issues and Safety Recommendations and ONRSR’s responses to these;

e) outcomes of ATSB investigations;

f) any major safety trends identified by either party;

g) mutual staff training and development opportunities; and

h) technology and data related issues or improvements.

5. COMMUNICATIONS (GENERAL PRINCIPLE)

5.1. Staff of the ATSB and ONSR are encouraged to communicate with each other at any time regarding issues considered to be of mutual interest pertaining to this MOU.
6. CONTACT POINTS

6.1. The ATSB contact for matters related to this MOU is the General Manager, Surface Safety Investigations (see the Schedule of Contacts for contact details).

6.2. The ONRSR contact for matters related to this MOU is the Executive Director, Corporate and Policy (see the Schedule of Contacts for contact details).

RESEARCH, SAFETY EDUCATION, PROMOTION AND TRAINING

7. RESEARCH

7.1. The parties acknowledge that both the ATSB and ONRSR may undertake rail safety research and agree to identify opportunities for mutual cooperation with regard to those matters.

7.2. Before either the ATSB or the ONRSR commences research and associated data analysis into major rail safety issues, the parties will endeavour to consult with each other to identify the opportunity for input and mutual cooperation.

7.3. The ATSB will provide any draft research and associated data analysis reports to the ONRSR in accordance with its normal Directly Involved Parties process or as otherwise agreed between the parties (having regard to applicable requirements and constraints).

7.4. The ONRSR will provide to the ATSB research and associated data analysis reports on major issues affecting rail safety, in accordance with this MOU and having due regard to applicable legislative requirements and constraints.

7.5. The ATSB and the ONRSR will work co-operatively in relation to progressing outcomes from research projects.

8. CONTACT POINTS

8.1. The ATSB contact for matters related to research is the Manager, Research Investigations and Data Analysis (see the Schedule of Contacts for contact details).

8.2. The ONRSR contact for matters related to research is the Manager Policy and Strategy (see the Schedule of Contacts for contact details).
9. SAFETY EDUCATION AND PROMOTION

9.1. The parties acknowledge that both the ATSB and the ONRSR have roles in rail safety promotion and education and will work co-operatively in progressing these.

10. SHARED OPPORTUNITIES FOR TRAINING

10.1. The ATSB will advise the ONRSR of its schedule of training for a calendar period and if places are available, accommodate ONRSR requests to have staff attend these training courses.

10.2. The ONRSR will advise the ATSB of its schedule of training for a calendar period and if places are available, accommodate ATSB requests to have staff attend these training courses.

10.3. All costs associated with this will be met by the respective organisation.

11. OCCURRENCE REPORTING, INFORMATION AND DATA

11.1. The ATSB and ONRSR will work in accordance with the provisions of relevant Privacy legislation and policies.

12. VERBAL NOTIFICATION OF CATEGORY A MATTERS (ATSB TO ONRSR)

12.1. Rail transport operators are required by the RSNL and the TSI Act to provide verbal notification of Category A occurrences to the ATSB.

12.2. The ATSB will immediately notify the ONRSR duty officer, and include the ONRSR’s Chief Executive, Executive Director National Operations and Executive Director Corporate and Policy in its internal text messaging, of a Category A occurrence (see the Schedule of Contacts for contact details).

12.3. In the event that the ONRSR receives a notification of a Category A occurrence from any source other than the ATSB, the ONRSR will notify the ATSB of the Category A occurrence as soon as practicable by contacting the ATSB duty officer (see the Schedule of Contacts for contact details).

12.4. As soon as possible following the initial advice of a Category A occurrence, the ONRSR or the ATSB will provide details and an indication of their intended response to the occurrence.
12.5. If at any time after the notification of a Category A occurrence to the other party, either party decides to commence, or cease, an investigation that party will advise the other of the change.

13. **WRITTEN CATEGORY A AND CATEGORY B REPORTS AND NORMALISATION DATA (ONRSR TO ATSB)**

13.1. Rail transport operators are required by the RSNL and the TSI Act to provide written notification of Category A and B occurrences within 72 hours of the occurrence, to the ONRSR.

13.2. The ONRSR will transfer the qualified data for new Category A and B occurrences (and any changes made to existing data) to the ATSB on the following business day. Transfer of data will be made electronically in accordance with the agreed format.

13.3. In the event that the ATSB receives written notification of a Category A or B occurrence from any source other than the ONRSR, the ATSB will forward the written notification via email to the ONRSR by the end of the next business day.

13.4. Where the ATSB is aware that occurrence data should be updated, the ATSB will discuss this with ONRSR’s Manager Safety Intelligence.

14. **CONFIDENTIAL REPORTING**

14.1. Subject to the provisions of the Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulations, the ATSB will discuss reports received with the ONRSR’s Manager Audit and Compliance and forward, where appropriate, de-identified rail REPCON information to the ONRSR’s Manager Audit and Compliance.

14.2. Within 28 days or as otherwise agreed, the ONRSR will advise the ATSB in writing of its response to any safety concerns formally raised by the ATSB.

14.3. The ONRSR may use information supplied in a de-identified REPCON report in appropriate educational and safety promotion materials.
15. CONTACT POINTS

15.1. The ATSB contact for matters relating to occurrence reporting, information and data is the Manager, Notifications and Confidential Reporting (see the Schedule of Contacts for contact details).

15.2. The ONRSR contact for matters relating to occurrence reporting, information and data is the Manager Safety Intelligence (see the Schedule of Contacts for contact details).

15.3. The ATSB contact for matters relating to confidential reporting is the REPCON Manager (see the Schedule of Contacts for contact details).

15.4. The ONRSR contact for matters relating to confidential reporting is the Manager Audit and Compliance (see the Schedule of Contacts for contact details).

INVESTIGATIONS

16. COMMUNICATION OF DECISION TO INVESTIGATE

16.1. As soon as reasonably practicable after either the ATSB decides to conduct an investigation or the ONRSR decides to conduct a compliance investigation in relation to a Category A or Category B occurrence each party will notify the other.

16.2. A co-ordinated approach to notifying relevant Minister/s and Department/s of an occurrence and actions to follow will be undertaken in accordance with section 26.

16.3. Discussion between the ATSB and the ONRSR on progress of investigations will occur as necessary.

16.4. The parties will cooperate to ensure that relevant Ministers and the Executive of affected agencies are kept informed of the progress of incident investigations.

16.5. In the event that either party decides to discontinue its investigation it will notify the other party as soon as is reasonably practicable.
17. ON-SITE COORDINATION AND COOPERATION

17.1. The ATSB may undertake ‘no-blame’ safety investigations in accordance with the TSI Act and the ONRSR may separately undertake compliance investigations.

17.2. The parties will cooperate, ensuring both parties comply with their legislative obligations.

Initial Coordination

17.3. In the event of concurrent investigations, the parties agree to cooperate and assist each other to the extent that is possible without compromising their own independent investigation. To this end, the parties agree to:

a) appoint an Investigator In Charge (ATSB) and a Lead Investigator (ONRSR), through whom coordination can be effected;

b) make contact to provide details of the Investigator in Charge (ATSB) and the Lead Investigator (ONRSR);

c) inform each other of protocols, processes, concerns or restrictions related to the site, evidence or investigation;

d) coordinate, where possible, actions onsite to avoid duplication and to ensure that neither party compromises the other party’s investigation;

e) discuss and negotiate the collection of physical evidence, information and material;

f) the ATSB informing the ONRSR when a protection order is issued to eliminate potential interference with evidence referred to in the protection order; and

g) the ONRSR informing the ATSB when a non-disturbance notice or prohibition notice is issued to eliminate potential interference with evidence referred to in the notice.

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1 A Protection Order may be issued under section 43 of the TSI Act by the ATSB over the site, or parts thereof, requiring that the evidence must not be removed or interfered with by any party except as provided for in subsection 43(4) or with the permission of a delegate of ATSB.

2 A Non-Disturbance Notice may be issued under section 182 of the RSNL over a site to prevent the disturbance of a site by the rail transport operator except as provided for in section 183 (4) or with permission of the rail safety officer. A Prohibition Notice may be issued under section 179 of the RSNL to prevent an activity that will involve an immediate risk to safety.
On-Site Coordination

17.4. If the parties arrive onsite at the same time, they will seek a joint briefing from the Site Controller or Rail Commander who may be present on arrival. Nothing in this MOU, however, precludes either party from seeking a briefing independently, prior to or after the arrival of the other party.

17.5. The parties will ensure that:

   a) clearance is sought from the Site Controller or Rail Commander prior to commencing any investigatory activities;

   b) the party arriving on-site first informs the Police, emergency service or other investigating bodies of the imperative of ensuring that every effort is made to prevent disturbance of evidence at the site.

   c) the ATSB will inform emergency services, Police and the ONRSR of any protection order and any such evidence protected by it; and

   d) the ONRSR will inform emergency services, Police and the ATSB of a non-disturbance or prohibition notice or any other requirement relating to this incident.

Participation in Investigations

17.6. The ATSB and ONRSR may request assistance from each other in the performance of their respective investigation functions. After consideration of any internal policies and legal requirements, as well as any conflicts of interest, each party will seek to accommodate a request from the other.

17.7. Where assistance is provided, each party will normally bear its own costs.

18. EVIDENCE AND DISCLOSURE OF INFORMATION RELATING TO INVESTIGATIONS

18.1. In order to ensure cooperation and coordination in relation to evidence at the site of the occurrence, the parties agree to:

   a) use their best endeavours to ensure the site is not disturbed and any evidence is not contaminated (unless necessary to do so to evacuate injured persons or to render the site safe); and

   b) make any physical evidence available for inspection to each other and not to move, take, dismantle, change or alter any such piece of evidence without advising the other party or until providing the other party with the opportunity to conduct a detailed inspection.
18.2. With respect to their own investigation, each party will seek to gather evidence from original sources in the first instance.

**ATSB Requests to the ONRSR**

18.3. Where the ATSB requests evidence from the ONRSR for the purpose of an investigation under the TSI Act, the ATSB will request that evidence through a ‘notice to produce’, issued under section 32 of the TSI Act.

**ONRSR Requests to the ATSB**

18.4. Any requests for evidence by ONRSR to the ATSB will be in writing and be addressed to the Investigator in Charge (ATSB).

18.5. Notwithstanding the considerations with respect to the release of information outlined in Schedule A of this MOU, the ATSB agrees that where it becomes aware of a potentially significant time-critical safety issue, it will immediately provide the necessary safety information to the ONRSR, in accordance with the release provisions of the TSI Act, so that timely safety action may be taken. This information is likely to be supplied in the form of a safety recommendation issued under section 25 of the TSI Act.

19. **RESTRICTED INFORMATION**

19.1. Nothing in this MOU requires either party to disclose information that is legally privileged, confidential or otherwise protected or prohibited by law from disclosure.

19.2. Schedule A provides guidance on the discretions that the ATSB may apply to the release of information that is categorised as Restricted Information.

20. **INITIAL INVESTIGATION ADVICE**

20.1. The ATSB will keep the ONRSR informed during an investigation. Where the ATSB identifies matters of safety concern the ATSB will immediately inform the ONRSR of these.

21. **ATSB DIRECTLY INVOLVED PARTY (DIP) PROCESS**

21.1. The ATSB will provide the ONRSR for review and comment a draft report in relation to any rail investigation conducted by the ATSB in accordance with the ATSB Directly Involved Party (DIP) process.
21.2. The ATSB will document on its files its response to any written comments provided by the ONRSR. That response will indicate whether the ATSB has accepted, partly accepted or rejected the comments provided, particularly having regard to supporting evidence, and will outline any proposed changes to the investigation report as a result of that evidence. In addition, where appropriate, the response may also contain an indication of any further inquiries the ATSB intends to make as a result of new evidence provided in those comments. In considering the written comments, the ATSB may need to seek clarification or further evidence from the relevant party in order to make an informed decision on those comments.

21.3. The ATSB will ensure that the ONRSR is aware of the content of the final report prior to its public release.

22. SAFETY ISSUES IDENTIFIED DURING INVESTIGATIONS

22.1. The ONRSR will notify the ATSB of any relevant actions the ONRSR is undertaking for inclusion in the ATSB report.

22.2. In making recommendations for safety action by the ONRSR, the ATSB will clearly and explicitly identify the safety issue(s) to be addressed. The ATSB will consult with the ONRSR prior to a recommendation being made.

22.3. The ONRSR will respond to all recommendations in accordance with the ATSB’s requirements.

22.4. The ATSB agrees that where it becomes aware of a serious or imminent rail safety concern, it will immediately advise the ONRSR and other relevant parties so that timely safety action may be taken.

23. ATSB INVESTIGATIONS AT THE REQUEST OF THE REGULATOR

23.1. The ONRSR may request the ATSB undertake an independent investigation into a matter the ATSB has previously declined to investigate.

23.2. If the ATSB declines this request, the reasons for this will be made public.
MAJOR ACCIDENT ROLES AND RESPONSIBILITIES

24. MAJOR ACCIDENT PREPAREDNESS

24.1. The parties will inform each other and co-operate on any opportunities to participate in major accident preparedness activities, including major accident exercises that may arise.

25. PRIMARY MEDIA CONTACT

25.1. All media inquiries received by the ATSB in relation to regulatory matters, including ONRSR compliance investigations, will be referred to the ONRSR.

25.2. All media inquiries received by the ONRSR relating to the initiation or conduct of ATSB investigations will be referred to the ATSB.

25.3. Both parties will acknowledge the other’s role in all major occurrences, if approached by the media.

26. BRIEFING FOR MINISTERS IN THE EVENT OF MAJOR ACCIDENTS

26.1. Both parties will ensure the Ministers and Chief Executives of affected agencies are informed in accordance with the attached process (Schedule C).

INVESTIGATION FINDINGS AND SAFETY ACTIONS

27. MONITORING AND REPORTING ON IMPLEMENTATION OF ATSB INVESTIGATION FINDINGS AND RECOMMENDATIONS BY THE ONRSR

27.1. The ATSB monitors responses to its investigation recommendations and makes them available publicly.

27.2. It is the responsibility of the ONRSR to monitor the implementation, compliance and effectiveness of recommendations from any investigation.
28. COMMENCEMENT, VARIATION, REVIEW AND TERMINATION OF THE MOU

28.1. This MOU will come into effect from 20 April 2013.

28.2. This MOU supersedes the MOU between the ATSB and the rail safety regulators for those States and Territories that have enacted the RSNL.

28.3. The parties will formally review this MOU in 2016. This MOU may be terminated or varied at any time by agreement in writing by the Chief Commissioner (ATSB) and Chief Executive (ONRSR).

28.4. Amendment to the appendices to this MOU may be made by agreement in writing by the General Manager, Surface Safety Investigations (ATSB) and Executive Director, Corporate and Policy (ONRSR).

28.5. In the event that any disagreements or disputes arise in respect to any of the provisions of this MOU, the dispute/disagreement will initially be referred to the General Manager, Surface Safety Investigations (ATSB) and the Executive Director Corporate and Policy (ONRSR). Should a mutually satisfactory resolution not be forthcoming, the issue will be referred to the Chief Commissioner (ATSB) and the Chief Executive (ONRSR) for resolution.

29. MAKING THE MOU AVAILABLE PUBLICLY

29.1. The MOU will be made publicly available in the interests of transparency and accountability.

Martin Dolan
Chief Commissioner
Australian Transport Safety Bureau

< signed >
11 April 2013

Rob Andrews
Chief Executive
Office of the National Rail Safety Regulator

< signed >
26 March 2013
The following policy shall apply to the release of various types of Restricted Information by the ATSB:

a) Statements (whether oral or in writing) obtained from persons by a staff member in the course of an investigation (including any record of such a statement) under the TSI Act

- Statements will not be released to the ONRSR or to any other party seeking access because of the guarantees of confidentiality that the ATSB provides in relation to such statements. It is important that the industry does not perceive the ATSB to be exercising any discretion in relation to the release of interview statements.

- Subject to any concerns raised by witnesses, the ATSB will seek to provide the ONRSR with a list of all witnesses that have been interviewed by the ATSB during the course of the ATSB investigation.

b) Information recorded by a staff member in the course of an investigation under the TSI Act

- Where this information represents basic, verified factual information – for example, site survey data - such information would be considered for release after it has been verified by the ATSB. The General Manager, Surface Safety Investigations would consider each request on a case by case basis and would need to take into account how doing so may impact on any Directly Involved Parties.

c) Communications with persons involved in the operation of a transport vehicle that was or is the subject of an investigation under the TSI Act

- This category of information would normally cover train control recordings. The ATSB will advise the ONRSR to obtain this evidence from the original source.

- Where advised in writing that it is not possible to obtain this evidence from the original source, including relevant justification, the ATSB will reconsider the request to release the evidence to the ONRSR.
d) Medical or private information regarding persons (including deceased persons) involved in a transport safety matter that is or has been investigated under the TSI Act

- The ATSB will advise the ONRSR to obtain medical and private information from its original source.

e) In relation to a transport vehicle that is or was the subject of an investigation under the TSI Act – information recorded for the purpose of directing or monitoring the progress of a vehicle from one place to another or information recorded in relation to the operation of the vehicle

- This category of restricted information includes a variety of recorded information such as that from data loggers, event recorders or signalling system logs.

- The ATSB will advise the ONRSR to obtain this information from the original source.

- Where advised in writing that it is not possible to obtain this evidence from the original source, including relevant justification, the ATSB will reconsider the request to release the evidence to the ONRSR. It is likely that if the information is released to the ONRSR it will be in the form of a section 25 report to ensure that the information cannot be used in any other legal forums.

f) Records of any analysis of information or evidential material acquired in the course of an investigation (including opinions expressed in that analysis)

- This category of restricted information would include analysis carried out by ATSB personnel as well as external personnel assisting the ATSB either under contract or by other agreed arrangements, for example, technical analysis of components or human factors analysis.

- In instances where the technical and/or destructive examination of a component or item is to be undertaken by either party, the other party undertakes to provide full opportunity for relevant representatives to attend the examination, for the purposes of gathering the information necessary to facilitate their own investigative endeavours.

- The ATSB would not, under normal circumstances, release the results of technical examinations undertaken by ATSB staff, or undertaken by others for the purposes of an ATSB safety investigation. The ATSB may, however, decide on a case by case basis that the circumstances warranted the
release of this type of restricted information. It is likely that if the information is released to the ONRSR it will be in the form of a section 25 report to ensure that the information cannot be used in any other legal forums.

g) Information contained in a document that is produced to a staff member under paragraph 32(1) (b) or 36(3) or (4) (a) of the TSI Act

- This category of restricted information has been obtained under compulsion powers in order to keep it confidential. The ATSB will advise the ONRSR to seek this information from its original source.