MEMORANDUM OF UNDERSTANDING

BETWEEN THE

AUSTRALIAN TRANSPORT SAFETY BUREAU

AND THE

OFFICE OF THE NATIONAL RAIL SAFETY REGULATOR

2018 TO 2021
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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. ONRSR is an independent body corporate established under the Rail Safety National Law (SA) Act 2012 (RSNL) with enabling legislation passed by each State and Territory, except in Western Australia where mirror legislation applies. The RSNL 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. ONRSR is governed by the Chief Executive and two non-executive members.
1.6. 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. 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 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) and their nominated others, 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 ONRSR are encouraged to communicate with each other at any time regarding issues considered to be of mutual interest.
6. RESEARCH

6.1 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.

6.2 Before either the ATSB or 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.

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

6.4 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.

6.5 If the ATSB plans to present, publish or otherwise circulate any information prepared or otherwise arrived at through the use of rail safety data or information provided by ONRSR, ATSB will give ONRSR the opportunity to review prior to release.

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

7. SAFETY EDUCATION AND PROMOTION

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

8. SHARED OPPORTUNITIES FOR TRAINING

8.1 Parties will seek to accommodate requests to have staff of the other party participate in relevant internal training.

8.2 All costs associated with this will be met by the requesting organisation.
9. PRIVACY

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

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

10.1 The ATSB Chief Commissioner and the ONRSR Chief Executive agree to progress a change of initial Category A reporting from ATSB to ONRSR.

10.2 Implementation of the arrangements set out in 10.1 and in the remainder of this section, including as shown in Schedule C, is subject to a change to the Transport Safety Investigation Regulations 2003 being approved by the Commonwealth Government.

10.3 Accredited rail transport operators are required by the RSNL and the TSI Act to provide verbal notification of Category A occurrences to ONRSR.

10.4 ONRSR will immediately notify the ATSB duty officer via a phone call.

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

10.6 As soon as possible following the initial advice of a Category A occurrence, the ATSB will send an SMS to the ONRSR Incident Group if they decide to investigate.

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

11.1 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 ONRSR.

11.2 ONRSR will provide occurrence data for new Category A and B occurrences (and any changes made to existing data) to the ATSB on the following business day. Provision of data will be made electronically in accordance with the agreed format.

11.3 In the event that the ATSB receives written notification of a Category A or B occurrence from any source other than ONRSR, the ATSB will forward the written notification via email to ONRSR by the end of the next business day.
11.4 Where the ATSB is aware that occurrence data should be updated, the ATSB will discuss this with ONRSR.

12. CONFIDENTIAL REPORTING

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

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

12.3 ONRSR may use information supplied in a de-identified REPCON report in appropriate educational and safety promotion materials.

INCIDENT RESPONSE

13. ON-SITE COORDINATION

13.1 Once at the scene of an incident, the parties will first seek each other out.

13.2 In the absence of the other party, the party arriving on-site first will inform 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.

13.3 In the absence of Police, the first party at the scene of an incident shall take steps to secure the scene and 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).

13.4 Parties will undertake where possible to coordinate investigative actions to minimise disruption on site and unintended stress upon persons involved in the incident, including to:

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

b) discuss and negotiate the collection of physical evidence, information and material.

13.5 Parties will work together and under Police command to preserve the scene:
c) inform emergency services, Police and the other party of any non-disturbance or protection order and any such evidence protected by it

d) make any physical evidence available for inspection to each other and not 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

e) advise when the scene can be released for return to service.

13.6 With respect to their own investigation, each party will seek to gather evidence from original sources in the first instance.

13.7 ONRSR may deploy its drug and alcohol testing contractor, Medvet, which will work under the direction of ONRSR.

INVESTIGATIONS

14. PARTICIPATION IN INVESTIGATIONS

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

14.2 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.

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

15. EVIDENCE AND DISCLOSURE OF INFORMATION RELATING TO INVESTIGATIONS

15.1 Where the ATSB requests evidence from 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.

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

1 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.

2 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.
15.3 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 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.

16. RESTRICTED INFORMATION

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

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

17. ATSB DIRECTLY INVOLVED PARTY (DIP) PROCESS

17.1 The ATSB will provide ONRSR a draft report in relation to any rail investigation conducted by the ATSB for review and comment, in accordance with the ATSB Directly Involved Party (DIP) process.

17.2 The ATSB will document on its files its response to any written comments provided by 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.

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

18. SAFETY ISSUES IDENTIFIED DURING INVESTIGATIONS

18.1 ONRSR will provide relevant information to the ATSB by request, as legally permitted, for inclusion in the ATSB report.
18.2 In making recommendations for safety action by ONRSR, the ATSB will clearly and explicitly identify the safety issue(s) to be addressed. The ATSB will consult with ONRSR prior to a recommendation being made.

18.3 ONRSR will respond to all proposed recommendations in accordance with the ATSB’s requirements.

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

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

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

19.2 It is the responsibility of ONRSR to monitor the implementation, compliance and effectiveness of recommendations from any investigation.

20. ATSB INVESTIGATIONS AT THE REQUEST OF THE REGULATOR

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

20.2 If the ATSB declines this request, the reasons for this will be made public.

MAJOR ACCIDENT ROLES AND RESPONSIBILITIES

21. MAJOR ACCIDENT PREPAREDNESS

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

22. PRIMARY MEDIA CONTACT

22.1 All media inquiries received in relation to investigations or other regulatory activities undertaken by the other party will be referred to that party.

22.2 Both parties will acknowledge the other’s role in all major occurrences, if approached by the media.
23. BRIEFING FOR MINISTERS IN THE EVENT OF MAJOR ACCIDENTS

23.1 ONRSR will immediately notify the relevant state/territory Department Head and Transport Minister of any major category A occurrences in their jurisdiction.

23.2 The ATSB will also inform the affected Transport Minister of a major category A occurrence, where it intends to investigate.

23.3 Both parties will ensure the Ministers and Department Heads of affected agencies are informed in accordance with Schedule C.

THE MOU

24. COMMENCEMENT, VARIATION, REVIEW AND TERMINATION OF THE MOU

24.1 This MOU will come into effect from the date it is signed by both parties.

24.2 The parties will formally review this MOU in 2021. This MOU may be terminated or varied at any time by agreement in writing by the Chief Commissioner (ATSB) and Chief Executive (ONRSR).

24.3 Amendment to the appendices to this MOU may be made by agreement in writing by the ATSB and ONRSR contacts for matters related to the MOU in Schedule B.

24.4 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 ATSB and ONRSR contacts for matters related to the MOU in Schedule B. 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.
25. EXECUTION

25.1 The MOU may be made publicly available in the interests of transparency and accountability.

Greg Hood
Chief Commissioner
Australian Transport Safety Bureau

Date: 22 February 2018

Susan Jane McCarrey
Chief Executive
Office of the National Rail Safety Regulator

Date: 22 February 2018
SCHEDULE A: ATSB RELEASE OF RESTRICTED INFORMATION

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 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 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 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 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 ONSR 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 ONSR 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 ONSR. It is likely that if the information is released to ONSR 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 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 ONRSR to seek this information from its original source.
SCHEDULE B: CONTACTS

MATTERS RELATED TO THE MOU

ATSB

Nat Nagy
Executive Director,
Transport Safety

Telephone: [redacted]

ONRSR

Julie Bullas
Executive Director,
Policy, Reform and Stakeholder Engagement

Telephone: [redacted]

VERBAL NOTIFICATION OF CATEGORY A MATTERS AND DECISION TO INVESTIGATE

ATSB

Duty Officer

Telephone: 1800 011 034

ONRSR

Duty Officer (24/7)

Telephone: 1300 550 865

ATSB TEXT NOTIFICATIONS OF CATEGORY A INVESTIGATIONS

ONRSR incident group - contact list to be provided separately of this MOU
OCCURRENCE REPORTING, DATA AND RESEARCH

ATSB
Elaine Hargreaves
Manager, Safety Reporting

ONRSR
Andreas Kornusch
National Manager,
Safety Assurance

Telephone: [redacted]

CONFIDENTIAL REPORTING

ATSB
Elaine Hargreaves
Manager, Safety Reporting

ONRSR
Andreas Kornusch
National Manager,
Safety Assurance

Telephone: [redacted]

INVESTIGATIONS AND OTHER OPERATIONAL MATTERS

ATSB
Nat Nagy
Executive Director, Transport Safety

ONRSR
Peter Doggett
Executive Director, National Operations

Telephone: [redacted]

MEDIA CONTACTS

ATSB
Ingrid Jonach
Manager Communications

ONRSR
Ross Stargatt
Manager Strategic Planning and
Communications

Telephone: [redacted]
ONRSR High Level Reporting on Category A Occurrences

**Key**
- ONRSR
- ATSB
- Branch Director
- Duty Officer
- Government

1. Category A Occurrences → Reported to ONRSR
2. ONRSR advises ATSB of occurrence → ATSB will investigate
   - Yes: ATSB sends an SMS notification internally and to the ONRSR Incident Group
   - Yes: ATSB notifies relevant Ministers and Agencies
   - No: Duty Officer notifies Director Operations and Incident Group via SMS as early as practicable
3. Director Operations decides if Contractor to undertake drug and alcohol testing
   - Yes: Director Operations directs Contractor to attend site or other location
   - No: No further action by Director Operations
4. Director Operations notifies ED National Operations to decide ONRSR attendance at the scene
   - Yes (pending): Director Operations telephones the ED National Operations regarding outcome of attendance

**ONRSR Incident Group**
- National Rail Safety Regulator
- ED National Operations
- ED Policy, Reform and Stakeholder Engagement
- Manager, Strategic Planning and Communications