

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

AUSTRALIAN TRANSPORT SAFETY  
BUREAU

AND THE

OFFICE OF THE NATIONAL RAIL SAFETY  
REGULATOR

2019 TO 2022

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<b>Version No.</b>	<b>Details</b>	<b>Effective date</b>
1.0	Execution of MOU	The date it is signed by both parties
1.2	Inclusion of new section 10.2	The date it is signed by both parties
1.3	Inclusion of new Schedule C (Category A Occurrences to be reported to ATSB immediately) and revised paragraphs on incident reporting.	The date it is signed by both parties

## 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 means that include the following:
  - 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.
- 1.6. The RSNL sets out the powers of ONRSR 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.

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

## THE MOU

### 2. COMMENCEMENT, VARIATION, REVIEW AND TERMINATION OF THE MOU

- 2.1 This Memorandum of Understanding (MOU) will come into effect from the date it is signed by both parties.
- 2.2 The parties will formally review this MOU in 2021.
- 2.3 This MOU may be terminated or varied at any time by agreement in writing by the Chief Commissioner (ATSB) and Chief Executive (ONRSR).
- 2.4 Amendment of all Schedules to this MOU may be made, from time to time, by agreement in writing by the ATSB and ONRSR contacts for matters related to the MOU, listed in Schedule B to this MOU.
- 2.5 In the event that any disagreements or disputes arise in respect to any of the provisions of this MOU, the dispute or disagreement will initially be referred to the ATSB and ONRSR contacts for matters related to the MOU, listed in Schedule B to this MOU. 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.

### 3. PURPOSE OF THE MOU

- 3.1 The purpose of this MOU is to establish and maintain a cooperative working arrangement between the ATSB and ONRSR.
- 3.2 The parties agree to use this MOU as a vehicle to set expectations and guidelines on how reports of Category A and Category B occurrences will be shared between the ATSB and ONRSR.

- 3.3 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.
- 3.4 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.

#### 4. PRINCIPLES

- 4.1 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.
- 4.2 The parties agree that rail safety outcomes are best achieved through mutual support, cooperation, openness and professional relationships.

#### INTERACTIONS BETWEEN THE TWO PARTIES

##### 5. EXECUTIVE MEETINGS AND BRIEFINGS

- 5.1 The Chief Commissioner (ATSB) and the Chief Executive (ONRSR) and their nominated officials, 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 rail 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.

## 6. COMMUNICATIONS (GENERAL PRINCIPLE)

- 6.1 Staff of the ATSB and ONRSR are encouraged to communicate with each other at any time regarding issues considered to be of mutual interest.

## 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 ONRSR commences research and associated data analysis into major rail safety issues, the parties will endeavour to consult with each other to identify any opportunity for input and mutual cooperation.
- 7.3 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 legislative requirements and other constraints).
- 7.4 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 other constraints.
- 7.5 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.
- 7.6 The ATSB and ONRSR will work co-operatively in relation to progressing outcomes from research projects.

## 8. SAFETY EDUCATION AND PROMOTION

- 8.1 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.

## 9. SHARED OPPORTUNITIES FOR TRAINING

- 9.1 The parties will seek to accommodate requests to have staff of the other party participate in relevant internal training.
- 9.2 All costs associated with this will be met by the requesting organisation.

## OCCURRENCE REPORTING, INFORMATION AND DATA

### 10. PRIVACY

- 10.1 The ATSB and ONRSR will work in accordance with the provisions of any relevant privacy legislation and policies.

### 11. VERBAL NOTIFICATION OF CATEGORY A OCCURRENCES

- 11.1 When a rail transport operator gives a report of a Category A occurrence, or a telephone notification of any occurrence, to ONRSR, and the occurrence is not excluded on the list of the matters prescribed in Schedule C to this MOU, the parties agree that ONRSR will pass on the report to the ATSB duty officer by a telephone call immediately after receiving the report.
- 11.2 The parties agree that operators are only required to notify ONRSR, who will take these calls on behalf of itself and the ATSB. Both parties will update their websites and agree to develop any necessary supporting material to make it clear to rail industry stakeholders that the expectation is for rail transport operators to make only one report and this is to ONRSR.
- 11.3 When a rail transport operator gives a report of a Category A occurrence to the ATSB, the parties agree that the ATSB will pass on the report to ONRSR duty officer by telephone call immediately after receiving the report.
- 11.4 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.

### 12. WRITTEN CATEGORY A AND CATEGORY B REPORTS AND NORMALISATION DATA

- 12.1 When a rail transport operator gives a *written* report of a Category A or Category B occurrence to ONRSR, the parties agree that ONRSR will pass on the written report of the occurrence to the ATSB on the following business day.

- 12.2 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.
- 12.3 The parties agree that ONRSR will provide occurrence data (written reports and any additional coding) 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.
- 12.4 The parties agree that ONRSR will provide the ATSB with train kilometre normaliser data quarterly, and track kilometre normaliser data annually.
- 12.5 If the ATSB is aware that occurrence data should be updated, the ATSB will discuss this with ONRSR.
- 12.6 An automatic daily report which summarises the immediately reportable occurrences over the previous 24 hours will be developed by ONRSR, and reports provided as soon as this is complete.

### 13. CONFIDENTIAL REPORTING

- 13.1 *The Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012* (REPCON Regulation) establishes a scheme (the REPCON Scheme) for the voluntary and confidential reporting to the ATSB of issues that affect transport safety.
- 13.2 Subject to the provisions of the REPCON Regulation, the ATSB will discuss reports received with ONRSR and forward, where appropriate, de-identified rail REPCON information.
- 13.3 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.
- 13.4 ONRSR may use information supplied in a de-identified REPCON report in appropriate educational and safety promotion materials.

## INCIDENT RESPONSE

### 14. ON-SITE COORDINATION

- 14.1 Once at the scene of an incident, the parties will first seek each other out.
- 14.2 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.

- 14.3 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).
- 14.4 The parties agree to undertake, where possible, coordinated investigative actions to minimise disruption on an accident 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.
- 14.5 Parties will work together and under Police command to preserve the scene:
- a) inform emergency services, Police and the other party of any non-disturbance<sup>1</sup> or protection order<sup>2</sup> and any such evidence protected by it
  - b) 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
  - c) advise when the scene can be released for return to service.
- 14.6 With respect to their own investigation, each party will seek to gather evidence from original sources in the first instance.
- 14.7 ONRSR may deploy its drug and alcohol testing contractor, AusHealth Work, which will work under the direction of ONRSR.
- 14.8 A request by anyone for approval to conduct any recovery work, or to clean up an accident site, following a Category A reportable occurrence, will be forwarded to ATSB unless ONRSR has specifically requested that the site be held.

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<sup>1</sup> 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.

<sup>2</sup> 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.

## INVESTIGATIONS

### 15. PARTICIPATION IN INVESTIGATIONS

- 15.1 The ATSB may undertake 'no-blame' safety investigations in accordance with the TSI Act and ONRSR may separately undertake compliance investigations.
- 15.2 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.
- 15.3 Where assistance is provided, each party will normally bear its own costs.

### 16. EVIDENCE AND DISCLOSURE OF INFORMATION RELATING TO INVESTIGATIONS

- 16.1 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.
- 16.2 Any requests for evidence by ONRSR to the ATSB will be in writing and be addressed to the Investigator in Charge (ATSB).
- 16.3 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.

### 17. RESTRICTED INFORMATION

- 17.1 Nothing in this MOU requires either party to disclose information that is legally privileged, confidential or otherwise protected or prohibited by law from disclosure.
- 17.2 Schedule A provides guidance on the discretions that the ATSB may apply to the release of information that is categorised as Restricted Information.

### 18. ATSB DIRECTLY INVOLVED PARTY (DIP) PROCESS

- 18.1 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.

- 18.2 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.
- 18.3 The ATSB will ensure that ONRSR is aware of the content of the final report prior to its public release.

## 19. SAFETY ISSUES IDENTIFIED DURING INVESTIGATIONS

- 19.1 ONRSR will provide relevant information to the ATSB by request, as legally permitted, for inclusion in the ATSB report.
- 19.2 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.
- 19.3 ONRSR will respond to all proposed recommendations in accordance with the ATSB's requirements.
- 19.4 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.

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

- 20.1 The ATSB monitors responses to its investigation recommendations and makes them available publicly.
- 20.2 It is the responsibility of ONRSR to monitor the implementation, compliance and effectiveness of recommendations from any investigation.

## 21. ATSB INVESTIGATIONS AT THE REQUEST OF THE REGULATOR

- 21.1 ONRSR may request the ATSB undertake an independent investigation into a matter the ATSB has previously declined to investigate.
- 21.2 If the ATSB declines this request, the reasons for this will be passed to ONRSR.

## MAJOR ACCIDENT ROLES AND RESPONSIBILITIES

### 22. MAJOR ACCIDENT PREPAREDNESS

- 22.1 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.

### 23. PRIMARY MEDIA CONTACT

- 23.1 All media inquiries received in relation to investigations or other regulatory activities undertaken by the other party will be referred to that party.
- 23.2 Both parties will acknowledge the other's role in all major occurrences, if approached by the media.

### 24. BRIEFING FOR MINISTERS IN THE EVENT OF MAJOR ACCIDENTS

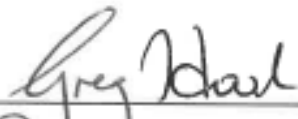
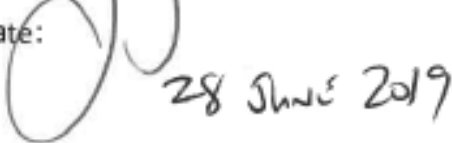
- 24.1 ONRSR will immediately notify the relevant state/ territory Department Head and Transport Minister of any major category A occurrences in their jurisdiction.
- 24.2 The ATSB will also inform the affected Transport Minister of a major category A occurrence, where it intends to investigate.
- 24.3 Both parties will ensure the Ministers and Department Heads of affected agencies are informed in accordance with Schedule D.



## 25. EXECUTION

- 25.1 The MOU may be made publicly available in the interests of transparency and accountability.
- 25.2 This MOU may be executed in counterparts signed and dated by the Chief Commissioner (ATSB) and the Chief Executive (ONRSR), each of which when combined shall constitute the original.

Greg Hood  
Chief Commissioner  
Australian Transport Safety Bureau

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

  
Date: 

  
Date: 

## 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 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 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 ONRSR. 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.
- 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

[REDACTED]

Executive Director,  
Transport Safety  
Telephone: 1800 020 616

#### ONRSR

[REDACTED]

Executive Director,  
Policy, Reform and Stakeholder Engagement  
Telephone: [REDACTED] / [REDACTED]

### VERBAL NOTIFICATION OF CATEGORY A MATTERS AND DECISION TO INVESTIGATE

#### ATSB

Duty Officer (24/7)

Telephone: 1800 011 034

#### ONRSR

Duty Officer (24/7)

Telephone: 1800 430 888

### OCCURRENCE REPORTING, DATA AND RESEARCH

#### ATSB

[REDACTED]

Manager, Safety Reporting

Telephone: [REDACTED]

#### ONRSR

[REDACTED]

National Manager, Safety Assurance

Telephone: [REDACTED] / [REDACTED]

## CONFIDENTIAL REPORTING

### ATSB

[REDACTED]

Confidential and International Reporting Coordinator,  
Safety Reporting

Telephone: 1800 020 505

### ONRSR

[REDACTED]

National Manager,  
Safety Assurance

Telephone: [REDACTED] / [REDACTED]

## INVESTIGATIONS AND OTHER OPERATIONAL MATTERS

### ATSB

[REDACTED]

Executive Director, Transport Safety

Telephone: 1800 020 616

### ONRSR

[REDACTED]

Chief Operating Officer

Telephone: [REDACTED] / [REDACTED]

## MEDIA CONTACTS

### ATSB

[REDACTED]

Manager Communications

Telephone: [REDACTED]

### ONRSR

[REDACTED]

Manager Strategic Planning and Communications

Telephone: [REDACTED]

## SCHEDULE C: CATEGORY A OCCURRENCES TO BE REPORTED TO ATSB IMMEDIATELY

The parties agree that when a rail transport operator gives a report of a Category A occurrence, or a telephone notification of any occurrence, to ONRSR, the matter will be reported by ONRSR to the ATSB immediately via telephone call with the exception of:

- i) death or injury to a person that is reasonably believed to have resulted from natural causes, drug overdose, suicide, attempted suicide, assault or trespass, unless the death or injury was to a rail safety worker.
- ii) a slip, trip or fall, unless the slip , trip or fall was associated with the movement of rolling stock.
- iii) derailments of road-rail vehicle.
- iv) property damage not involving rolling stock.

# SCHEDULE D: REPORTING ON CATEGORY A OCCURRENCES

## ONRSR High Level Reporting on Category A Occurrences

