
Memorandum of Understanding

between

The Office of the
National Rail Safety Regulator
(‘ONRSR’)

and

National Transport Commission
(‘NTC’)

2018 - 2021

Version No.	Details	Effective date
1.0	Execution of MOU	The date it is signed by both parties

1 Introduction

1.1 Background

In 2009 the Council of Australian Governments (COAG) endorsed the establishment of a single national rail safety regulator and national law as part of a National Rail Reform package that:

- supports a seamless national rail transport system
- does not reduce existing levels of rail safety
- streamlines regulatory arrangements and reduces the compliance burden for business
- improves national productivity and reduces transport costs generally.

A project board and office were established to oversee the implementation of the regulator by 2013. The NTC undertook the legislation work stream for the project, which included consolidating existing rail safety legislation into the new legislation and resolving outstanding policy issues to support the establishment of the new regulator. The NTC released the Draft Rail Safety National Law (RSNL) in July 2011 and it was approved by the Standing Council on Transport and Infrastructure (SCOTI) in November 2011.

Following enactment of the *Rail Safety National Law (South Australia) Act 2012*, the Office of the National Rail Safety Regulator (ONRSR) commenced administration of the RSNL in January 2013. The RSNL is hosted by South Australia and enacted in jurisdictions through enabling state/ territory law.

The NTC and ONRSR recognise that they have a shared interest in improving rail safety regulation and that it is mutually beneficial to establish a cooperative relationship on matters relating to the RSNL and national rail safety reform.

1.2 Roles

Office of the National Rail Safety Regulator

ONRSR administers the RSNL, as passed in each participating jurisdiction. In doing so ONRSR administers the accreditation regime under the RSNL and works with rail transport operators, rail safety workers, and others involved in

railway operations, to improve rail safety nationally. In addition, ONRSR monitors, investigates and enforces compliance with the RSNL.

The National Transport Commission

The NTC is an independent authority established under section 5 of the *National Transport Commission Act 2003*. The NTC is responsible for developing regulatory and operational reform for road, rail and intermodal transport. It develops and submits reform recommendations for approval to the Transport and Infrastructure Council (the Council) which comprises federal, state and territory transport, infrastructure and planning ministers.

The NTC also plays an important role in implementation planning to ensure reform outcomes are realised on the ground, as well as coordinating, monitoring, evaluating and maintaining the implementation of approved reforms. Under the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA)*, the NTC also has an important role in monitoring and maintaining national laws to ensure they remain contemporary and consistent with their policy intent.

1.3 Purpose

The purpose of this Memorandum of Understanding (MOU) is to clarify the ongoing roles of ONRSR and NTC in rail reform and support a cooperative and collaborative working arrangement.

This MOU seeks to:

- (a) Support the COAG objectives for rail reform set out in clause 1.1;
- (b) Foster strategic discussion between both parties and align work activities where mutually beneficial;
- (c) Recognise the roles of both parties in the ongoing maintenance of the RSNL and rail reform policy, including any amendment, repeal or variation to the RSNL and subordinate legislation;
- (d) Promote stakeholder confidence in both parties; and
- (e) Facilitate collaboration and information sharing for monitoring and reporting on rail reform.

The parties to this MOU, meaning ONRSR and NTC:

- (a) Agree that rail safety outcomes are best achieved through mutual support, cooperation, openness and professional relationships; and

- (b) Acknowledge that ONRSR and NTC each have separate and independent mandates and roles; and
- (c) Are committed to the common pursuit of safe, efficient and sustainable growth of the railway industry.

The NTC 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.

1.4 Definitions

IGA – *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*

National Regulations – *Rail Safety National Law National Regulations 2012* approved by the ministerial council and made under the RSNL.

NTC Act - *National Transport Commission Act 2003*.

ONRSR – Office of the National Rail Safety Regulator established under section 12 of the Rail Safety National Law.

Parties – means the parties to this MOU, being ONRSR and NTC jointly or separately.

RSNL - *Rail Safety National Law* which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)*. In Western Australia, 'RSNL' means the Rail Safety National Law which has been enacted as mirror legislation in the *Rail Safety National Law (WA) Act 2015*.

2 Interactions between parties

In delivering their obligations under the RSNL and NTC Act the parties acknowledge their roles in the following interactions.

2.1 Publications affecting both parties

- (a) The NTC and ONRSR will invite comment from each other and collaborate as appropriate, on the development of or response to publications and other documents of mutual interest, particularly where the subject matter overlaps or makes commentary on the responsibilities or performance of the other party.

2.2 Maintenance of the RSNL and National Regulations

- (a) The NTC and ONRSR share responsibility for the ongoing identification, review and response to maintenance items for the RSNL;
- (b) Where a maintenance matter constitutes operational policy, streamlining business processes or is part of a Ministerial Council directed review this will be progressed by ONRSR. ONRSR will seek input from NTC and keep NTC informed of the proposed outcomes;
- (c) In leading the major policy maintenance items, the NTC will invite ONRSR input on the process and matters of interest and keep the ONRSR informed of the proposed outcomes, including through the Rail Safety National Law Maintenance Group;
- (d) ONRSR and NTC will provide feedback in a timely manner (see Schedule A for contact details);
- (e) Where mutually beneficial ONRSR and NTC will work together to undertake public exposure of proposed changes to the RSNL, under the leadership of the NTC for maintenance policy or ONRSR for operational policy;
- (f) The NTC will have carriage for any Regulatory Impact Statements undertaken in relation to the RSNL, with feedback from ONRSR as appropriate, except when a Regulatory Impact Statement is required as part of a Ministerial Council directed review,
- (g) The NTC will continue to engage with the Transport and Infrastructure Senior Officials Committee (TISOC) and the Council on the progress of maintenance items for which they have the lead role as per the terms of reference for those committees and consistent with the NTC's current role;
- (h) The NTC is responsible for developing drafting instructions and managing the process of preparing any subsequent amendment to the RSNL and National Regulations for those changes in which they have the lead role;
- (i) The NTC will be responsible for submitting Regulatory Impact Statements and amendments to the RSNL and the National Regulations to the Council for approval, except when it is a Ministerial Council directed review or constitutes operational policy or streamlining business processes;
- (j) The NTC and ONRSR agree to work together as necessary to provide assistance to the host jurisdiction to make any the Council approved amendments to the RSNL and National Regulations;

- (k) The NTC and ONRSR agree to work together in setting the times and locations of meetings with mutual stakeholders to avoid scheduling clashes and to minimise inconvenience to parties involved in such meetings.
- (l) For ONRSR led changes, this includes development of options, consultation with stakeholders, submission to Ministerial Council and progressing legislation through South Australian Parliament;
- (m) NTC and ONRSR will work together as much as possible during the maintenance process as to align work being progressed to Ministerial Council and through South Australian Parliament.
- (n) The flow chart at Schedule B sets out the above process.

2.3 Setting Annual Fees in the National Regulations

- (a) ONRSR will adjust the rate payable by Rail Transport Operators in the National Regulations annually, with the endorsement of the revised regulation from participating Ministers at the Council each year as applicable;
- (b) The ONRSR will expose the rate and drafting instructions to stakeholders, including the NTC, for consultation before making a submission to the Council; and
- (c) ONRSR will liaise with Parliamentary Counsel to develop and publish the rate in the National Regulations as appropriate.

2.4 Review of rail reform policies

- (a) ONRSR is responsible for reviewing the national policy for drug and alcohol management, fatigue risk management and cost recovery and reporting on these to the Council;
- (b) ONRSR will, in consultation with stakeholders, including the NTC, develop the terms of reference for the reviews listed in 2.4 (a);
- (c) ONRSR will consult with stakeholders, including the NTC on the proposed recommendations of the reviews listed in 2.4 (a); and

2.5 Monitoring and reporting of reform objectives

- (a) The NTC is responsible for monitoring, evaluating and reporting on progress against the COAG objectives for rail reform and will work with

the ONRSR to identify and progress reviews and recommendations, including the annual reform monitoring reports;

- (b) ONRSR will report to TISOC and the Council on the progress of ONRSR and such other matters as directed; and
- (c) Both parties may publish reports on their progress against their respective roles, such as Annual Reports, but will consult with the other party where the other party may be impacted or when otherwise appropriate.

3 Information Sharing, Privacy and Confidential Information

- (a) The parties agree, where legally permitted, to share information relevant to each party undertaking its legal obligations;
- (b) The parties acknowledge that NTC is bound by the Commonwealth Freedom of Information Act and the Commonwealth Privacy Act;
- (c) The parties acknowledge that ONRSR is bound by section 244 of the Rail Safety National Law (Confidentiality of Information) and the *Freedom of Information Act 1991* of South Australia;
- (d) Unless required by law, a party receiving information under this MOU will not disclose that information to a third party without obtaining the prior written consent of the party that originally supplied the information;
- (e) With respect to any information supplied by one party to the other that is designated confidential, each party agrees to:
 - I. protect the confidential information in a reasonable and appropriate manner in accordance with uniform privacy legislation.
 - II. use and reproduce information only for the purposes outlined in this MOU.
 - III. unless required by law, not disclose or otherwise make available confidential information other than to staff that need to know that information in order to give effect to the purposes set out in this MOU.
- (f) Section (e) shall not apply to any information that is:
 - I. publicly known;
 - II. already known by the receiving organisation; or
 - III. disclosed by the originating party to a third party without restriction.

4 MOU Management

- (a) This MOU is effective from the date it is executed by both parties or a nominated post-date and will remain effective for a period of 3 years or until such time as it is terminated by the parties;
- (b) The parties agree to meet at least once every six months to discuss the effectiveness of the arrangements in this MOU and will formally review this MOU in 2021;
- (c) This MOU may be terminated or varied at any time by agreement in writing by the Chief Executive Officer (NTC) and the Chief Executive (ONRSR);
- (d) Amendment to Schedule A to this MOU may be made by agreement in writing by the primary contacts listed in Schedule A;
- (e) The primary contact persons for all matters concerning this MOU are the persons nominated by the parties in Schedule A;
- (f) In the event that any disagreements or disputes arise in respect to any of the provisions of this MOU, it will initially be referred to the persons listed as the primary contacts in Schedule A. Where a mutually satisfactory resolution is not forthcoming, the issue will be referred to the Chief Executive Officer (NTC) and the Chief Executive (ONRSR) for resolution;
- (g) The parties shall each bear their own costs of administering this MOU;
- (h) This MOU will be made publicly available in the interests of transparency and accountability.

This MOU is authorised to take effect on the date it is executed by both of the following authorised officers:



Sue McCarrey
Chief Executive, ONRSR
Date:



Paul Retter, AM
Chief Executive and Commissioner NTC
Date:

Schedule A – Contacts

ONRSR

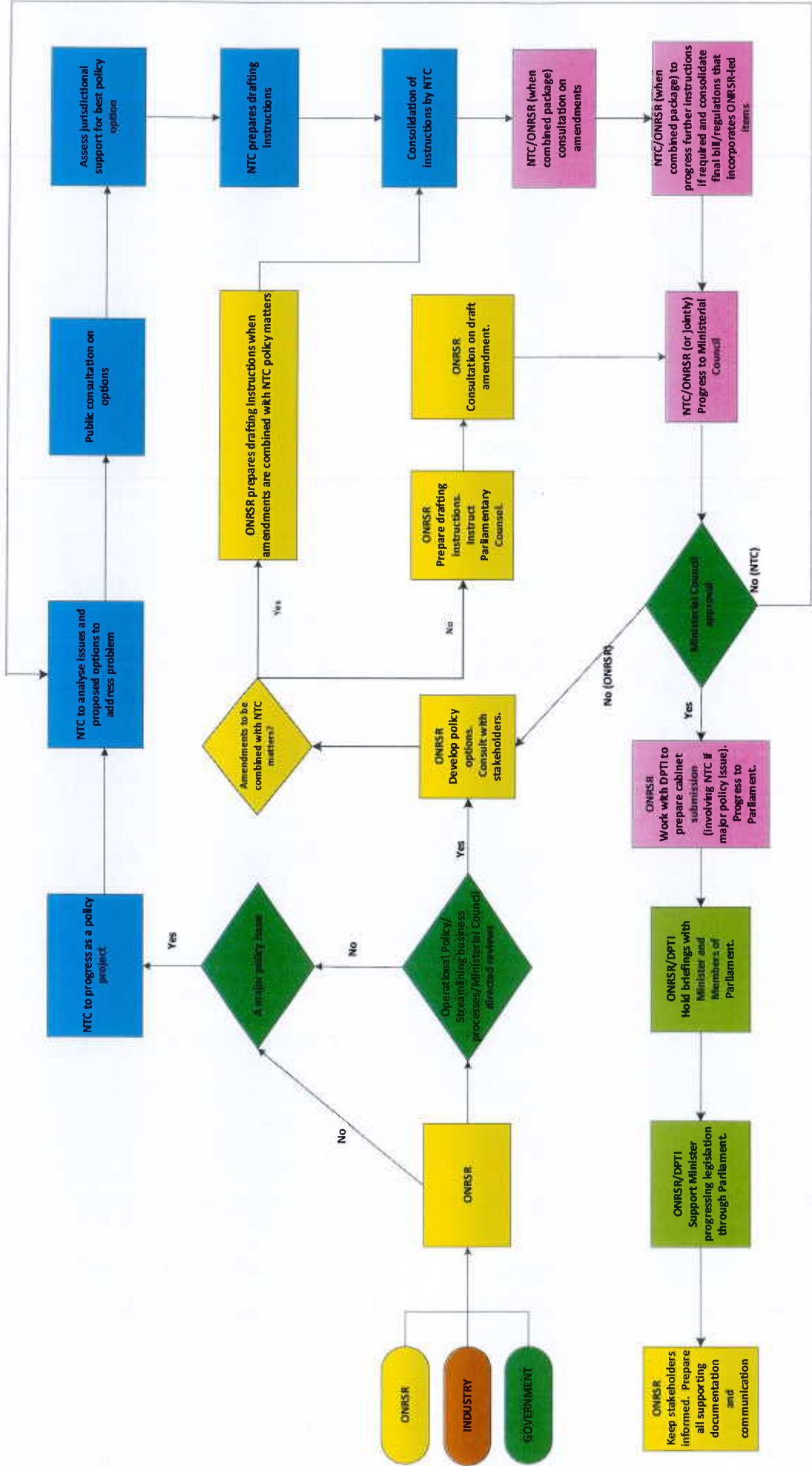
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KEY

ONRSR only	1
NTC only	2
Ministerial Council	3
ONRSR/NTC	4
ONRSR/DFTI	5

