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# Memorandum of Understanding

between

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

and

National Transport Commission  
(‘NTC’)

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2021 - 2024

<b>Version No. 1</b>	<b>Details</b>	<b>Effective Date</b>
1.0	Execution of MOU	The date it is signed by both parties

## 1 Introduction

### 1.1 Background

The National Transport Commission (NTC) and the Office of the National Rail Safety Regulator (ONRSR) recognise that they have a shared mutual interest in improving national rail safety reform.

The NTC and ONRSR recognise that the work undertaken by both organisations contributes to the way individual strategic goals and objectives are achieved.

An effective and supportive partnership between the NTC and ONRSR will improve collaboration and share knowledge and expertise on matters of mutual interest, including but not limited to:

- > proposed changes to the Rail Safety National Law (RSNL),
- > proposed national transport reform initiatives affecting safety, including the National Rail Action Plan and National Rail Safety Data Strategy,
- > proposed changes to operational policy settings affecting the rail sector.

This Memorandum of Understanding supersedes the MOU of January 2018 and sets out the principles and objectives upon which the NTC and ONRSR will work together, and how the responsibilities for mutual rail reform are shared.

### 1.2 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 (now NFRC) objectives for rail reform.
- b) Foster a strategic relationship between both parties and align work activities where mutually beneficial.
- c) Recognise the distinct and complementary 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.
- e) Facilitate timely collaboration and information sharing on rail reform.

The parties to this MOU:

- f) Agree that rail safety outcomes are best achieved through mutual support, cooperation, openness and professional relationships.
- g) Acknowledge that ONRSR and NTC each have separate and independent mandates and roles.
- h) 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.

### 2.1 The Office of the National Rail Safety Regulator

The Office of the National Rail Safety Regulator (ONRSR) is an independent body corporate established under the *Rail Safety National Law (South Australia) Act 2012* and has responsibility for regulatory oversight of rail safety across all of Australia, on behalf of Commonwealth, State and Territory Governments.

The primary objectives of ONRSR are to encourage and enforce safe railway operations and promote and improve national rail safety.

Consistent with its functions under the RSNL, ONRSR's corporate goals are to:

- > Enhance its risk-based approach to rail safety regulation.
- > Reduce regulatory burden on industry.
- > Work with industry to address national rail safety issues.
- > Invest in ONRSR's national capability, governance and culture to drive its strategic intent.

To achieve these goals, ONRSR aims to maintain and improve rail safety through consistent risk-based application of the law across jurisdictions, advocating for national harmonisation of legislative requirements and industry standards, sharing and improving regulatory practice and developing strong stakeholder relationships and engagement.

ONRSR administers the RSNL. 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.

ONRSR is governed by the Regulator (Chief Executive) and two non-executive members appointed by responsible Ministers. ONRSR works closely with State, Territory and Commonwealth transport agencies, and reports to Ministers directly via ITMM and individually as required.

### 2.2 The National Transport Commission

The NTC leads national land transport reform in support of Australian governments to improve safety, productivity, environmental outcomes, provide for future technologies and improve regulatory efficiency.

The *National Transport Commission Act 2003* (the NTC Act) and the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA) establish the NTC and define its role. The NTC has a legislative requirement to develop, monitor and maintain uniform or nationally consistent regulatory and operational arrangements for road, rail and intermodal transport.

As a key contributor to the national reform agenda, the NTC is accountable to Commonwealth, state and territory ministers responsible for transport and infrastructure who make up membership of the Infrastructure and Transport Ministers' Meeting (ITMM). The NTC works closely with ITMM's advisory body, the Infrastructure and Transport Senior Officials' Committee (ITSOC), which includes the heads of Commonwealth, state and territory agencies.

### 3 Interactions between parties

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

#### 3.1 Business and Strategic Planning – harmonising and complementary work programs

The NTC and ONRSR will consult each other in a timely manner before embarking on a strategic or operational review. If there is opportunity and benefit to aligning priorities and/or projects, including as part of the NTC Work Program and ONRSR Statement of Intent (supported by the Corporate Plan), this should be pursued.

#### 3.2 Publications affecting both parties

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.

#### 3.3 Maintenance of the RSNL and National Regulations – improve collaboration and share knowledge and expertise

The NTC and ONRSR share responsibility for the ongoing identification, review and response to maintenance items for the RSNL. Any proposed changes to the RSNL will be consulted with the other party.

Where a maintenance matter constitutes operational policy, streamlining business processes or is part of an ITMM directed review, this will be progressed by ONRSR. ONRSR will seek input from NTC and keep NTC informed of the proposed outcomes.

In leading the major strategic policy maintenance items, the NTC will invite ONRSR's input on the process and matters of interest and keep ONRSR informed of the proposed outcomes, including through the Rail Safety National Law Maintenance Advisory Group.

The parties will discuss and agree the appropriate approach where a need for a Regulatory Impact Statement is required in relation to the RSNL.

ONRSR and NTC will provide feedback in a timely manner, and where mutually beneficial, will work together to undertake and direct stakeholder exposure of proposed changes to the RSNL, under the leadership of the NTC for strategic and non-operational policy changes and ONRSR for operational policy. The NTC and ONRSR will continue to engage with the ITSOC and the ITMM 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 and ONRSR's current roles.

The NTC and ONRSR are responsible for the development of options, consultation with stakeholders, development of drafting instructions, submission to the ITMM, and progressing legislation through the South Australian Parliament for any amendment to the RSNL and National Regulations for those changes in which they have the lead role, to ensure the changes may commence on an agreed commencement date (normally 1 July).

In meeting these respective responsibilities, and recognising that amendments may be progressed outside of the maintenance process, the NTC and ONRSR agree to work together as much as possible during the maintenance process to align work being progressed to the ITMM and to provide assistance to the host jurisdiction to make any of the ITMM approved amendments to the RSNL and National Regulations.

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.

The primary contact persons for all matters concerning this MOU are the persons nominated by the parties in Schedule A.

The flow chart at Schedule B sets out the maintenance of the RSNL and National Regulations process.

### **3.4 Setting Annual Fees in the National Regulations**

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 ITMM each year as applicable.

ONRSR will expose the rates and drafting instructions to stakeholders through members of the Senior Government Policy Group for consultation before making a submission to the ITMM and will liaise with Parliamentary Counsel to develop and publish the rate in the National Regulations as appropriate.

### **3.5 Developing reforms**

The requirements for the NTC to progress reforms are outlined in the NTC Act and the IGA. The NTC has responsibility for substantive and material (ie strategic and not operational) policy maintenance items.

### **3.6 The National Rail Action Plan**

The National Rail Action Plan (NRAP) aims to implement reforms to improve delivery of rail infrastructure and improve the safety and productivity of rail operations.

The NTC is responsible for the ongoing support of the three joint government and industry committees established as part of the NRAP, approved by the former Transport and Infrastructure Council in November 2019.

The NRAP joint committees include the interoperability committee, harmonisation committee and the skills and labour committee. These committees help to achieve the NRAP's broad purpose to support the significant pipeline of upcoming major rail projects by addressing skills capability, local manufacturing capability and network interoperability functionality.

ONRSR participates as an observer on the NRAP committees and has an advisory function.

### **3.7 Review of rail reform policies**

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 ITMM.

ONRSR will consult with stakeholders, including the NTC, to develop the terms of reference for the reviews.

### **3.8 Monitoring and reporting of reform objectives**

The NTC is responsible for monitoring, evaluating and reporting on progress against the COAG objectives for rail reform and will work with ONRSR to identify and progress reviews and recommendations, including the annual reform monitoring reports.

ONRSR will report to the ITSOC and the ITMM on the progress of ONRSR and such other matters as directed.

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.

#### 4 Information Sharing, Privacy and Confidential Information

The NTC and ONRSR agree that they will share information relevant to the powers and functions of each organisation in accordance with law.

Unless required by law, the NTC and the ONRSR undertake not to disclose information received in confidence from the other organisation to a third party without obtaining the prior consent of the other organisation.

#### 5 MOU Management

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.

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 2024.

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).

Amendment to Schedule A to this MOU may be made by agreement in writing by the primary contacts listed in Schedule A.

The primary contact persons for all matters concerning this MOU are the persons nominated by the parties in Schedule A.

In the event a dispute arises regarding the performance of any obligations under this MOU, it will be referred to the parties' Chief Executives.

The parties shall each bear their own costs of administering this MOU.

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



Sue McCarrey  
Chief Executive

Date: 17/5/2021



Dr Gillian Miles  
Chief Executive Officer and Commissioner

Date: 19/5/2021

## Schedule A – Contacts

<b>ONRSR</b>	
Primary contact:	<b>Julie Bullas</b> Executive Director, Policy Reform and Stakeholder Engagement Ph. (08) 8406 1550 <a href="mailto:Julie.bullas@onrsr.com.au">Julie.bullas@onrsr.com.au</a>
Secondary contact:	<b>Belinda Gull</b> Senior Policy Officer Ph. (08) 8406 1531 <a href="mailto:Belinda.gull@onrsr.com.au">Belinda.gull@onrsr.com.au</a>
<b>NTC</b>	
Primary contact:	<b>Sandra McKay</b> Executive Leader Sustainability Ph. (03) 9236 5016 <a href="mailto:smckay@ntc.gov.au">smckay@ntc.gov.au</a>
Secondary contact:	<b>Jeremy Wolter</b> Head of Legislative Reform Ph. (03) 9236 5057 <a href="mailto:jwolter@ntc.gov.au">jwolter@ntc.gov.au</a>



## Definitions

<b>IGA</b>	<i>Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport</i>
<b>National Regulations</b>	<i>Rail Safety National Law National Regulations 2012 approved by the ministerial council and made under the RSNL.</i>
<b>NTC Act</b>	<i>National Transport Commission Act 2003</i>
<b>ONRSR</b>	Office of the National Rail Safety Regulator established under section 12 of the Rail Safety National Law
<b>Parties</b>	Means the parties to this MOU, being ONRSR and NTC jointly or separately
<b>RSNL</b>	The <i>Rail Safety National Law</i> enacted as a Schedule to the <i>Rail Safety National Law (South Australia) Act 2012 (SA)</i> . In Western Australia, 'RSNL' means the Rail Safety National Law enacted as mirror legislation in the <i>Rail Safety National Law (WA) Act 2015</i>

# RAIL SAFETY NATIONAL LAW MAINTENANCE PROCESS

