

Memorandum of Understanding

between

Office of the National Rail Safety Regulator (ONRSR)

and

Access Canberra (ACT)
Independent Pricing and Regulatory Tribunal (NSW)
Energy Safe Victoria (VIC)
Office of the Technical Regulator (SA)

2024 - 2027

1 Introduction

1.1 Purpose

The purpose of this MoU is to facilitate co-ordination and co-operation on overlapping areas of regulatory responsibilities to:

- > ensure that the parties are aware of each other's regulatory obligations and
- > ensure that the parties take steps to minimise, where possible, the regulatory burden on regulated persons, companies and organisations where two or more of the parties are enquiring into the same safety issue.

1.2 Principles

This MoU is not legally binding and the parties enter this agreement with the understanding that:

- > each party has separate and independent regulatory mandates and roles
- > the parties are committed to a constructive and cooperative relationship in the common pursuit of safety
- > nothing in this MoU is legally binding or intended to restrict a party from undertaking their statutory responsibilities and
- > the parties may develop protocols at the jurisdictional level for the purpose of providing operational guidance as required.

Parties also acknowledge that ONRSR has MoUs with all state and territory workplace safety authorities.

1.3 Definitions

Term / Acronym	Meaning / Definition
AC	Alternating current; an electric current that reverses its direction many times a second (nominally 50 Hz), typically used in electricity supply networks.
DC	Direct current; an electric current flowing in one direction only, typically used in rail traction systems.
Electrical Safety Regulators	The agencies responsible for administering electrical safety and related legislation in each state and territory that are listed in Appendix A and are signatories to this MoU.
MoU	Memorandum of Understanding
ONRSR	Office of the National Rail Safety Regulator
Parties	All signatories to this Memorandum of Understanding; including ONRSR and the Electrical Safety Regulators from Australian jurisdictions.
Railway premises	As defined in section 4 of the RSNL.
RSNL	The <i>Rail Safety National Law</i> which has been enacted as a schedule to the <i>Rail Safety National Law (South Australia) Act 2012 (SA)</i> .
RTO	Rail transport operator accredited for rail operations under the RSNL.

Term / Acronym	Meaning / Definition
Significant property damage	<p>Damage to rolling stock, infrastructure or property reasonably expected to exceed \$AU100,000. This does not include any consequential costs, such as train delays nor the cost of recovering equipment from site; and/or</p> <p>Damage to rolling stock that results in the rolling stock being disabled and unable to be operated without repair or requires the rolling stock to be rescued. This does not include minor damage that can be repaired by the train crew; and/or</p> <p>Damage to rolling stock that resulted in the loss of passenger compartment integrity or cab integrity.</p>
	Other rail-specific terms are defined in the RSNL.
	Other electrical safety-specific terms are defined in the relevant electrical safety legislation.

2 Agency Responsibilities

2.1 Office of the National Rail Safety Regulator

- > Administers the RSNL for the purpose of facilitating safe railway operations.
- > Under the RSNL public or private entities that undertake railway operations in Australia are required to be accredited, exempted or working on behalf of an accredited or exempted operator.
- > Accredited operators are required to establish a safety management system to manage their rail safety risks so far as is reasonably practicable.
- > ONRSR is responsible for overseeing compliance with this which it typically does through routine audits and inspections.
- > The RSNL also places general safety obligations on duty holders under the law including rail transport operators, suppliers, manufacturers which ONRSR administers.
- > ONRSR also has a reform objective and works closely with industry to promote national consistency in rail standards and legislation.

2.2 Electrical Safety Regulators

Parties who are signatories to this MoU are described below:

2.2.1 Access Canberra

Access Canberra is part of the Chief Minister, Treasury and Economic Development Directorate within ACT Government.

The Electrical Inspectorate within Access Canberra operates under the *Electricity Safety Act 1971* and the *Construction Occupations (Licensing) Act 2004* to ensure electrical installations comply with current legislation and standards. The Electrical Inspectorate is responsible for inspecting all new electrical installations in the ACT. The statutory office holder under the *Construction Occupations (Licensing) Act 2004* is the Construction Occupations Registrar, who reports to the Head of Access Canberra.

The Utilities Technical Regulation Team within Access Canberra operates under the *Utilities (Technical Regulation) Act 2014* (UTR Act) to support the statutory office holder, the Technical

Regulator. Under the *Public Service Management Act 1994* the Head of Access Canberra is able to exercise certain functions of the Technical Regulator and may act as delegate.

The ACT Technical Regulator's role, in relation to regulated utility services (which can include a light rail utility service), is to:

- > prepare and consult on draft technical codes
- > monitor and enforce compliance with technical codes by regulated utility services
- > audit the performance and compliance of regulated utility services
- > audit the performance and compliance of owners of isolated infrastructure and
- > provide advice about the operation of the UTR Act.

2.2.2 Independent Pricing and Regulatory Tribunal

The Independent Pricing and Regulatory Tribunal (IPART) is the safety and reliability regulator for NSW electricity networks. It monitors compliance with the *Electricity Supply Act 1995 (NSW)* (ES Act) and associated regulations. IPART has inspectors who have a role in responding to serious electricity works accidents. Where necessary, IPART will inspect the site of accidents, undertake investigations and communicate details of accidents in the interest of public information and safety. IPART has a MoU with SafeWork NSW and has also appointed SafeWork NSW inspectors (appointed under section 156 of the *Work Health and Safety Act 2011 (NSW)*) as inspectors under the ES Act to respond to serious electricity works accidents. Electricity works are defined in the ES Act and include network assets up to the point of connection to a customer installation.

2.2.3 Energy Safe Victoria

Energy Safe Victoria (ESV) is the independent statutory body responsible for the safe generation, supply and use of electricity, gas and pipelines in Victoria. ESV is established under the *Energy Safe Victoria Act 2005*. The *Electricity Safety Act 1998*, *Gas Safety Act 1997* and *Pipelines Act 2005* include statutory objectives and functions that ESV must fulfil which include (but are not limited to) ensuring that:

- > electricity, gas and pipeline infrastructure are safe during construction and operation, and gas and electricity installations are safely maintained, operated and decommissioned
- > bushfire danger prevention and mitigation is promoted
- > licensed and registered individuals and businesses undertake gas and electrical work, according to regulation and prescribed standards
- > stray electrical currents do not cause loss or damage to existing structures and
- > the community and industry are aware of electricity and gas safety requirements.

ESV's role is to ensure gas and electricity is supplied safely for the community to use safely. We do this by:

- > determining minimum safety standards for gas and electrical equipment, installations and electrical work
- > encouraging and monitoring the use of electricity safety management schemes (ESMS) and safety cases by gas companies
- > investigating events or incidents which have implications for gas and electricity safety
- > providing advisory and consultative services in relation to gas and electricity safety and equipment, installations and electrical work
- > advise the gas and electricity industry and the community in relation to energy safety

- > ensuring pipelines are constructed and operated to protect the public from harm and
- > monitoring and enforcing compliance with the Acts and the regulations.

2.2.4 Office of the Technical Regulator (SA)

The Office of the Technical Regulator is responsible for South Australia's electrical, gas and plumbing safety and technical regulation.

The position of the Technical Regulator is established under the following Acts:

- > *Electricity Act 1996*
- > *Gas Act 1997*
- > *Energy Products (Safety and Efficiency) Act 2000*
- > *Water Industry Act 2012*

OTR assists the Technical Regulator in the administration of these Acts. Its primary objectives are ensuring the safety of workers, consumers and property as well as compliance with legislation and applicable technical standards in the electricity, gas and water industries.

3 Scope of Cooperation

3.1 Advice and assistance

- > Parties will reasonably provide advice and assistance, where requested, to the extent legally permitted.
- > Parties may request the assistance of technical specialists from another party, where the requesting party does not have access to that technical specialty from within its own workforce.
- > Parties may undertake activities jointly if this is agreed by the parties to be mutually beneficial.
- > Requests for assistance should be made through the officers nominated in Appendix A
- > This MoU places no obligation on any party to grant access to a technical specialist.
- > Where assistance is provided, the parties will normally bear their own costs.

3.2 Incident notification

- > When one party becomes aware of a death, serious injury or significant property damage that is (or may be) relevant to the other party, the initial party will inform the other party as soon as practicable.

3.3 Coordination at the scene of an incident

- > ONRSR will generally attend an incident site involving railway operations where there has been a fatality, serious injury or significant property damage (generally suicide is the exception).
- > Electrical Safety Regulators will generally attend an incident site where it involves electricity, gas and/or a pipeline, as relevant in the given jurisdiction.
- > The parties will liaise with Police and other agencies on actions that need to be undertaken in order to secure evidence and undertake any ONRSR required investigation.
- > Parties undertake where possible to coordinate investigative actions to minimise disruption on site and unintended stress upon persons involved in the incident.

- > Where it is likely that two or more parties will investigate with a view to prosecute, the operational contacts (Appendix A) should liaise to see if this can be coordinated and a lead investigator established.
- > On site, the parties shall take steps to secure the scene and use their best endeavours to ensure the site and any evidence are not disturbed (unless necessary to do so to evacuate injured persons or to render the site safe).
- > If a party has issued a non-disturbance notice, or if there is a statutory requirement to preserve an incident site, they will communicate this to all other parties in attendance.

3.4 Investigation and/or prosecution

- > The parties agree to notify each other where they intend to investigate on matters related to the other's area of responsibility, for the purpose of reducing duplication of effort.
- > Where the parties are intending to investigate the same incident they agree to share information to the extent that is legally possible.
- > Parties may initiate separate investigations of the same occurrence, which may be for different purposes.
- > Parties may establish primary jurisdiction for the purposes of co-ordinating lead actions and other investigative activities (where two or more parties have a role) noting:
 - ONRSR is primarily concerned with the safety of railway operations, which means incidents that occur on rolling stock or rail infrastructure (which includes electrical power supply and electric traction systems), as a result of railway operations and/or impacting the public or rail workers.
 - Electrical Safety Regulators are primarily concerned with incidents that relate to the safety of electricity supply. Jurisdictional agency responsibilities vary, and other jurisdictional regulators may be involved depending on the nature of electrical safety incident.
- > Appendix B is an indicative guide for identifying agency jurisdiction based on the relevant responsible regulators involved in the incident. The determination of jurisdiction or a 'lead investigator' for the purpose of investigation and/or prosecution must be made as per agency statutory requirements using their own statutory powers for evidence collection and other matters, and in consultation with the other party where possible.
- > Parties agree that whilst a limitation period applies within which to bring proceedings, investigations will not be unreasonably delayed or drawn out where there is significant public interest - including where the relevant Coroner may also be investigating.

4 Information Exchange

- > Parties agree, where legally permitted, to share information relevant to each party undertaking its legal obligations. This includes the sharing of information about regulated rail entities conducting operations within each party's areas of regulatory responsibility.
- > The parties will endeavour to share information and collaborate as required to improve overall regulatory outcomes.
- > ONRSR is bound by section 244 of the RSNL (Confidentiality of information) and the *Privacy Act 1988* (Cwlth).
- > Unless required or authorised by law, a party receiving confidential or personal 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.

- > With respect to any information supplied between the parties that is designated private or confidential, parties agree to:
 - protect the information in a reasonable and appropriate manner in accordance with public sector information standards and
 - use and reproduce information only for the purposes it was provided for.
- > The above does not apply to any information that is:
 - publicly known
 - already known by the receiving organisation or
 - disclosed by the originating party to a third party without restriction.

5 Policy and Communications

5.1 Legislative Changes

- > Where a party becomes aware of a change or proposed change to legislation, regulation, policy or procedure that may affect the other party or the conduct of operations under this MoU, they will consult or inform the other as appropriate.

5.2 Media and Communications

- > All media enquiries received by the parties in relation to regulatory matters will be referred to the responsible agency.
- > Parties agree to consult so far as is reasonably practicable on any communications or reports that impact other party/s.

6 MoU Management

- a. This MoU is effective from the date it is executed by the parties and will remain effective for a period of three years or until such time as it is terminated by the parties.
- b. At the conclusion of the three-year term of the MoU, the parties can elect to:
 - (i) renew the agreement for a further two years in writing by the primary contact persons in Appendix A; or
 - (ii) seek to renegotiate the MoU.
- c. At the conclusion of the term of the agreement, or at the end of the further two-year period under clause (b) the parties will renegotiate the agreement. The MoU will remain effective during the renegotiation period.
- d. A party will give written notice (of not less than 28 days before the proposed date of withdrawal) to the other parties of its intention to withdraw from this MoU. If ONRSR withdraws from the MoU, the MoU will cease to have effect. However, the MoU will continue to have effect in those jurisdictions of the Electrical Safety Regulators that remain signatories if both ONRSR and one or more Electrical Safety Regulators remain as signatories.
- e. The contact persons for matters concerning this MoU are nominated by the parties in Appendix A.
- f. An annual review of Appendix A - Contacts is to be undertaken by all parties. Appendix A may be updated without re-signing of the MoU.
- g. Changes to the MoU should not be made during its term unless there are significant operational or legislative changes that may deem it unusable, as agreed by all parties.

- h. Parties must ensure that this MoU is circulated and easily accessible to all impacted areas of their organisation.
- i. Parties shall each bear their own costs of administering this MoU.
- j. Parties may publish the MoU on their website in which case signatories and contact details will be redacted and hence not made public.

7 Execution

Appendix A - Contacts

Appendix B – Example incident types and indicative guide to agency jurisdiction

The table below provides examples as guidance for identifying agency jurisdiction based on the relevant responsible regulators involved in the incident. The determination of jurisdiction or a 'lead investigator' for the purpose of investigation and/or prosecution must be made as per agency statutory requirements and in consultation with the other party as relevant.

Note that electrical safety regulator responsibilities will vary across the jurisdictions and other jurisdictional regulators may be involved depending on the nature of incident.

In South Australia, the Office of the Technical Regulator may be involved in electrical incidents that relate to general light and power but are not involved in incidents relating to the electrification of the track system.

In NSW, IPART only has agency jurisdiction to the extent that:

- (a) The incident involves a "serious electricity works accident", as defined under the ES Act;
- (b) The incident is reportable to IPART, under the ES Act or associated regulations, or under a licence condition imposed on a electricity network operator's licence; or
- (c) The incident concerns the safe design, construction, commissioning, operation and decommissioning of a "transmission network" or "distribution network".

Note that IPART may be involved in electrical incidents that relate to the AC distribution system but are not involved in incidents relating to the traction system (typically DC, but may be AC).

Incident category	Example incident type	ONRSR	Electrical Safety Regulators
Incident is not on railway premises	Electrocution or shock of worker or member of the public at a site adjoining or nearby railway premises.	No	Yes
Incident is on railway premises	An electrical accident or incident that has caused death, serious injury or significant property damage or may generate public interest or concern.	Yes	Yes
	An overhead transmission line falls on to railway tracks.	Yes	Yes
	The detection of an irregularity in any electrical infrastructure that could affect the safety of railway operations or the safety of people.	Yes	Yes
	Possible failure of a rail transport operator to comply with standards for separating workers or the public from electricity.	Yes	Yes

Incident category	Example incident type	ONRSR	Electrical Safety Regulators
Incident is on railway premises (continued)	Electrical shock of worker working on rolling stock, track and/or in a railway maintenance area (e.g. depot, sheds, pits, substations).	Yes	Yes
	A utilities worker is injured whilst doing electrical work on an overhead transmission line or transformer, which is on railway premises but does not impact the safety of railway operations.	Notify only	Yes
	Electric shock of utilities worker on the railway station concourse or platform.	Notify only	Yes
	Electric shock of member of public caused by railway infrastructure or operations	Yes	Yes
	Electric shock of member of the public on the railway station concourse or platform	Notify only	Yes
	A security incident, including an act of trespass, vandalism, sabotage or theft, that involves electrical infrastructure and could affect the safety of railway operations.	Yes	Yes