

Memorandum of Understanding

between

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

and

Victoria Police

2024 to 2027

Victoria Police Number: FF-265470
ONRSR Reference:153480868-1001

1. Introduction

1.1 Purpose

- (a) This Memorandum of Understanding (MOU) sets out arrangements to promote effective communication, cooperation and coordination between ONRSR and Victoria Police on overlapping areas of regulatory responsibilities, to:
- i. ensure that the parties are aware of each other's regulatory obligations;
 - ii. embed the concept of ongoing collaboration between the parties;
 - iii. clarify procedures for officers of the parties when attending an incident involving rail vehicles, facilities, equipment or personnel / or a prescribed notifiable occurrence within the meaning of Regulation 57 of the Rail Safety National Law National Regulations 2012;
 - iv. encourage and facilitate the sharing of information relevant to both organisations undertaking their statutory functions, including investigation reports and drug and alcohol test results, in a timely and efficient manner; and
 - v. ensure that both parties take steps to minimise, where possible, the regulatory burden on regulated persons, companies and organisations where both parties are enquiring into the same safety issue.

1.2 Principles

- (a) This MOU is not legally binding and parties enter this agreement with the understanding that:
- i. this MOU provides the framework for cooperation between ONRSR and Victoria Police in relation to the statutory, operational and administrative interactions between the parties;
 - ii. the parties each have separate and independent mandates and roles;
 - iii. the parties are committed to a constructive and cooperative relationship in the common pursuit of safe rail travel and rail incident response;
 - iv. the parties share a common vision, values and understanding of the scope of their individual obligations under this MOU; and
 - v. nothing in this MOU requires either party to disclose information that is legally privileged or otherwise protected or prohibited by law from disclosure.

1.3 Definitions

Authorised person – a person appointed by the Regulator as an authorised person for the purpose of testing rail safety workers for the presence of drugs or alcohol under section 124 of the Rail Safety National Law. A police officer is defined as an authorised person under section 4 of the Rail Safety National Law.

National Regulations – means the *Rail Safety National Law National Regulations 2012*.

Regulator – the National Rail Safety Regulator appointed under section 17 of the Rail Safety National Law.

ONRSR – the Office of the National Rail Safety Regulator as constituted under section 16 of the Rail Safety National Law.

Police Commander – the police officer appointed to control an incident site, where the police have attended the scene of an incident.

Rail safety officer or **RSO** – a person appointed by the Regulator as a rail safety officer under section 135 of the Rail Safety National Law.

RSNL - means the Rail Safety National Law which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012* and as enacted in Victoria by means of the *Rail Safety National Law Application Act 2013* as the *Rail Safety National Law (Victoria)*.

2. Agency responsibilities

2.1 Office of the National Rail Safety Regulator

- (a) ONRSR administers the RSNL under a co-regulatory framework for the purpose of facilitating safe railway operations.
- (b) Under the RSNL public or private entities that undertake railway operations in Australia are required to be accredited (excluding a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations).
- (c) Accredited operators are required to establish a safety management system to manage their rail safety risks so far as is reasonably practicable.
- (d) ONRSR is responsible for overseeing compliance with this requirement, which it typically does through routine audits and inspections.
- (e) ONRSR undertakes evidentiary drug and alcohol testing, including programmed (non-incident related: intelligence-led and random) and post-incident testing, of rail safety workers to improve safety by reducing risks associated with rail safety workers undertaking work while under the influence of drugs and/or alcohol (i.e. by being a deterrent); and to monitor compliance with the RSNL.

2.2 Victoria Police

- (a) Victoria Police is the primary law enforcement agency of Victoria providing a 24 hour police service to the community of Victoria. It operates under the *Victoria Police Act 2013* (Vic) and enforces and prosecutes traffic and criminal laws embodied in State and Commonwealth legislation.
- (b) Victoria Police has the general functions under s 9 of *the Victoria Police Act 2013* (Vic) of:
 - i. preserving the peace;
 - ii. protecting life and property;
 - iii. preventing the commission of offences;
 - iv. detecting and apprehending offenders; and
 - v. helping those in need of assistance.

- (c) Victoria Police is also the designated control agency for road, rail and tram incidents in Victoria. Victoria Police also investigate collisions involving public transport.

3. Scope of cooperation

3.1 Advice and assistance

- (a) The agencies will reasonably provide advice and assistance to each other as required, for example, where advice to stakeholders is required, the agencies agree to coordinate a shared response where appropriate.
- (b) Where assistance is provided, each agency will normally bear its own costs. An exception to this is where Victoria Police provides services in relation to the evidentiary alcohol breath testing of rail safety workers, Victoria Police reserves the right to recoup the costs of providing this service.

3.2 Incident response

3.2.1 Incident notification

- (a) When either party becomes aware of a death, serious injury or significant property damage that is (or may be) relevant to the other party, it will notify the other party (excluding probable suicide) immediately after becoming aware of the occurrence.

3.2.2 Coordination at the scene of an incident

- (a) The parties undertake to work cooperatively and collaboratively at the scene of an incident, in the interests of rail safety.
- (b) The Victoria Police Commander will, in accordance with Victoria Police Manual – Policy Rules - Emergency management response and Victoria Police Emergencies Handbook, take control of an incident scene.
- (c) ONRSR does not attend all incidents but if they do, the senior Rail Safety Officer will, upon arriving at an incident scene, report to the Victoria Police Commander and liaise on actions that need to be undertaken in order to secure evidence and undertake any ONRSR or Victoria Police required investigation.
- (d) The first party at the scene of an incident shall take steps to secure the scene.
- (e) The senior RSO and Police Commander (together with other police and ONRSR staff in attendance) will work together to:
- (i) preserve the scene;
 - (ii) gather evidence, including the mechanical examination of rail equipment and the acquisition of train data and signalling data; and
 - (iii) advise when the scene can be released for return to service.
- (f) In doing so, the Police Commander and senior RSO will agree on who will exercise powers (RSO powers under the RSNL or police powers) to achieve the requirements of (g).
- (g) It is the intention of the parties in entering into this MOU to reduce, where practicable, duplication and unintended stress upon persons involved in the incident. To this end, Victoria Police and ONRSR agree that:

- i. at an incident at which both parties attend, police will undertake preliminary drug and alcohol testing for incidents where Victoria Police will conduct an investigation;
 - ii. where possible, only one set of drug and alcohol testing is undertaken on each person involved (see section 3.2.3), with the results shared between the parties; and
 - iii. contradictory orders/powers are not made/exercised by police and ONRSR personnel.
- (h) ONRSR engages a contractor to undertake compliance drug and/or alcohol testing (see sections 3.2.3 and 3.3). ONRSR's contractor will liaise with Victoria Police on testing but does not undertake any other compliance or investigation activities.

3.2.3 Drug and alcohol testing

- (a) Under the *Rail Safety National Law*, Sections 4 and 124, respectively, members of Victoria Police are automatically appointed as an RSO. Other persons may be appointed as, 'authorised persons' for the purposes of conducting drug and alcohol testing or causing drug and alcohol testing to be conducted on rail safety workers. (Note: Rail safety workers include more than just the driver and co-driver).
- (b) Where possible, Victoria Police will provide reasonable assistance to the ONRSR authorised person in accessing the site.
- (c) In order to implement 2.5(g)ii (non-duplication of testing) the parties agree, subject to compliance with statutory privacy and confidentiality laws, to share the results of any testing undertaken upon an individual within 24 hours of those results becoming available or such other time as may be reasonably necessary within the circumstances.
- (d) The parties agree that at an incident at which both parties attend, Victoria Police will undertake preliminary drug and alcohol testing or rail safety workers for incidents where Victoria Police will conduct an investigation – e.g. a crash at a level crossing.
- i. Where police are unable to conduct a drug test in circumstances such as mentioned above and an ONRSR authorised person who is able to conduct such tests attends the incident, that person may undertake the drug testing.
- (e) Where the ONRSR authorised person attends an incident, they may be present when a test is conducted.
- (f) Similarly, Victoria Police may be present when a test is conducted by an ONRSR authorised person.
- (g) If the ONRSR authorised person requires further testing than that undertaken by Victoria Police, they may cause these tests to be undertaken under s126 and/or 127 of the RSNL.
- (h) Where the ONRSR authorised person records a non-negative result on a preliminary breath test (post-incident or as part of programmed testing) the Victoria Police agree, subject to resource availability, to undertake a full breath analysis (for evidence that may be used for prosecution purposes).
- (i) The parties agree to liaise on any prosecution of rail safety workers for drug and alcohol offences at an incident at which both parties have attended.

3.3 Evidentiary alcohol breath analysis for programmed testing

- (a) This area of cooperation applies to programmed (non-incident related) testing, done in accordance with the ONRSR *Drug and Alcohol Testing Policy*, by an ONRSR contractor. Victoria Police's assistance is limited to alcohol breath analysis.
- (b) This area of cooperation does not extend to alcohol testing performed by a rail transport operator as part of their drug and alcohol management programme under their safety management system.
- (c) It will apply to the situation in which an authorised person may, on behalf of ONRSR, at any time, require a rail safety worker in any of the circumstances set out s 126(1), except s 126(1)(e) of the RSNL to submit to a preliminary breath test or breath analysis (or both). In such cases, a preliminary breath test will be conducted by an Authorised Person who is not a police officer. The preliminary test must be conducted in accordance with s48 of the *Rail Safety National Law Application Act 2013 (Victoria)*.
- (d) Where the result of the breath test is positive, each case will be reviewed by ONRSR to determine if an investigation should be undertaken.
- (e) Victoria Police agree, subject to resource availability, to undertake a confirmatory breath analysis (for evidence that may be used for prosecution purposes) at police stations as part of an investigation being conducted by ONRSR. Breath analysis must be conducted in accordance with s48 of the *Rail Safety National Law Application Act 2013 Victoria* and the breath analysing instrument must be operated by a person authorised to do so by the Chief Commissioner of Victoria Police.
- (f) Victoria Police will prepare appropriate evidentiary material for prosecution upon request by ONRSR and will provide evidence in court with respect to that evidentiary material.

3.4 Compliance investigations

- (a) Parties agreed to notify the other party where an investigation relates to their area of responsibility for the purposes of co-ordinating and sharing information to the extent that is legally possible.
- (b) Parties may initiate separate investigations of the same occurrence, which may be for different purposes.
- (c) In relation to a rail safety incident where both parties have undertaken an investigation, the parties agree to inform each other of any prosecutions they intend to commence or penalties they intend to impose. Consultation on prosecution issues is to be between those persons nominated in Schedule "A". Prosecutions by more than one party for the same incident or regulated party should be minimised to the extent possible.
- (d) Each party will inform the other of the name and contact details of their Chief/Lead Investigator as soon as possible after the incident.
- (e) The parties expect that the Chief/Lead Investigators will liaise with each other and act as the principal point of contact for all enquiries and requests in relation to investigations into the incident.
- (f) The parties agree that coronial investigations or investigations where there is a possibility of serious criminal charges being laid will be prioritised, and every effort will

be made not to delay these investigations due to other investigations into these matters.

3.5 Legislative changes

- (a) Where either 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, the parties agree to consult with the other party on the change.

3.6 Media and communications

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

3.7 Information exchange

- (a) When either party undertakes an investigation or prepares a report in relation to rail safety that it considers may be of interest to the other party, it will notify the other party.
- (b) Upon request, where either party undertakes an investigation or prepares a report in relation to rail safety, it will provide to the other party such information as it believes it can provide under statutory privacy and confidentiality laws.
- (c) The 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.
- (d) The parties acknowledge that Victoria Police is bound by the *Privacy and Data Protection Act 2014* (Vic) (PDP Act), and that these principles will underpin the provision of personal information and Law Enforcement Data (LED) from Victoria Police to ONRSR under this MOU.
- (e) Of relevance to this MOU, these principles require that:
 - i. Victoria Police may in its absolute discretion disclose LED to ONRSR for the purposes connected with the matters specified in this MOU under the Protective Data Security Standards (Standards) as issued under Part 4 of the PDP Act, Victoria Police policy and applicable law.
 - ii. ONRSR acknowledges that Victoria Police is bound by the Standards and agrees that, to the extent that any LED is disclosed to ONRSR by Victoria Police, it will, to the extent lawfully possible, treat that LED in accordance with the requirements of the Standards. In particular, it will endeavour to:
 - a. not disclose LED to any other organisation or individual unless authorised by Victoria Police, the Standards or by applicable law;
 - b. not disclose or allow access to LED to any staff member other than persons who have a need to know for the purposes connected with this MOU;

- c. ensure that transmission of LED via electronic messaging (including email) is subject to appropriate routing, encryption where possible and auditing in order to protect the data from being viewed by anyone other than the intended recipient;
- d. not transmit LED via insecure consumer applications, such as file sharing and instant messaging;
- e. store documents containing LED only in a secure facility that is physically protected against unauthorised access, including the use of lockable containers, cabinets, and restricted access rooms;
- f. store electronic LED only on a computer and/or system (including portable computing or data storage devices such as USB sticks) which is appropriately protected against unauthorised access, including the use of passwords, encryption, firewalls, and/or other appropriate protections;
- g. protect LED during storage, handling and transport, particularly information contained on portable computing devices or portable data storage devices;
- h. return to Victoria Police all copies of documents and materials that contain or refer to any LED that is in their possession, custody or control, upon a written request from Victoria Police;
- i. ensure that LED will be subject to the destruction schedule requirements as provided for in the *State Records Act 1997* of SA (as modified by the National Regulations);
- j. report to Victoria Police any security breaches involving compromise or loss of LED as soon as practical; and
- k. implement procedures for managing and reporting LED security incidents to Victoria Police and provide security awareness training to all ONRSR staff involved with handling LED.

For the avoidance of doubt, the parties agree that:

- a. nothing in clause 3.7(e) imposes any obligation whatever on Victoria Police to disclose LED to ONRSR;
- b. Victoria Police may only disclose LED if permitted to do so by law and in accordance with the terms of this MOU, Victoria Police policy and the Standards; and
- c. this clause 3.7(e) will survive the expiration or termination of this MOU.

(f) In reference to (d) and (e) above, Victoria Police and ONRSR recognise that:

- i. both parties are statutory bodies established under the *Victoria Police Act 2013* and *Rail Safety National Law (Victoria)* respectively.
- ii. rail safety incidents may result in the imposition of both criminal and pecuniary penalties, including penalties under the *Rail Safety National Law (Victoria)*.
- iii. the exchange of information from Victoria Police and ONRSR that falls within these criteria is permitted by exemptions to the information privacy principles in the PDP Act.

- (g) The parties acknowledge that ONRSR is bound by section 244 of the RSNL and that these requirements will underpin the provision of personal information from ONRSR to Victoria Police under this MOU.
- (h) Unless required 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.
- (i) Section (f) 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.
- (j) With respect to any information supplied by one party to the other that is designated confidential, each party agrees to:
 - i. protect the information in a reasonable and appropriate manner in accordance with public sector information standards;
 - ii. use and reproduce information only for the purposes it was provided for; and
 - 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.
- (k) With specific reference to criminal records, Victoria Police agree to provide to ONRSR current criminal records for individuals when requested for the purpose of use in prosecutions under the RSNL. Victoria Police and ONRSR agree the distribution of such reports will be limited to the following persons:
 - i. ONRSR Legal Personnel
 - ii. defendants the subject of the criminal record requested
 - iii. lawyers representing the defendant/s referred to in (ii) above
 - iv. courts hearing prosecution matters run under the RSNL

Otherwise, all privacy and confidentiality provisions as listed elsewhere in this MOU will be applicable to all criminal records provided by Victoria Police to ONRSR. For the purpose of requesting criminal records a template is to be used, as set out in Schedule "B".

3.8 Provision of information to staff

- (a) The parties acknowledge that in accordance with the purpose and principles outlined in this MOU, it is the intention of the parties to improve the knowledge of staff about the activities, operations and regulatory responsibilities of the other party.
- (b) Where one party believes that there is benefit in providing information to the staff of the other party on an issue (in particular regarding the conduct of operations under this MOU, or in relation to an issue that is within the referring party's area of regulatory responsibility), a request may be made for staff to be informed by the persons outlined in Schedule "A".

4. MOU Management

- (a) This MOU is effective from the date it is executed by both parties and will remain effective for a period of 3 years or until such time as it is terminated by the parties.
- (b) At the conclusion of the term of this MOU, the parties can elect to renew the agreement for a further two years in writing by the primary contact persons in Schedule "A".
- (c) At the conclusion of the term of the agreement, or at the end of the 2-year period under clause (b), the parties will renegotiate the agreement. The arrangements under this MOU will remain in force during the renegotiation period.
- (d) Either party may give written notice to the other of its intention to withdraw from this MOU. Notice must be given of a minimum of 28 days before the proposed date of cessation.
- (e) The primary contact persons for all matters concerning this MOU are the persons nominated by the parties in Schedule "A".
- (f) The parties commit to working together in good faith to implement this MOU. The parties agree that any operational issues will be resolved by negotiation.
 - i. In the first instance, the operational officers of the parties should negotiate to resolve the issue.
 - ii. If the officers in (i) are unable to come to an agreement within 7 days (or immediately, in the case of an on-site dispute) they are to escalate the matter to the officers nominated as 'MOU Contacts' in Schedule "A".
 - iii. If the dispute is unable to be resolved under (ii) within a further 14 days, the matter will be referred in writing to the National Rail Safety Regulator (or his/her nominee) and the Chief Commissioner of Victoria Police (or his/her nominee) for resolution.
 - iv. Unless precluded by the nature of the dispute, the parties will continue to operate under this MOU while attempts are made to resolve the dispute.
- (g) Changes to contact details over the term of the MOU do not require re-signing of the MOU.
- (h) Other 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.
- (i) Parties must ensure that this MOU is circulated and easily accessible to all impacted areas of their organisation.
- (j) The parties shall each bear their own costs of administering this MOU. An exception to this is where Victoria Police undertakes evidentiary alcohol breath testing of rail safety workers. Victoria Police reserves the right to recoup the costs of providing this service.
- (k) The parties may publish the MOU on their website in which case signatories and contact details will be redacted and hence not made public.

5. Execution

Executed by the National Rail Safety Regulator

Date:

Executed on behalf of Victoria Police

Date:

Schedule A: Contacts

Schedule B: Template for ONRSR requesting criminal records information