

MEMORANDUM OF UNDERSTANDING

BETWEEN

DIRECTOR, PUBLIC TRANSPORT SAFETY

AND THE

THE CHIEF INVESTIGATOR, TRANSPORT AND MARINE SAFETY INVESTIGATIONS

Contents

Clause Number	Heading	Page
1	Parties	1
2	Purpose	1
3	Background	1
4	Interpretation and Definition	2
5	Principles	3
6	Notification	3
7	Investigations	4
8	Ministerial Direction to Investigate	4
9	Information Exchange	5
10	Review and Termination of MOU	6

Schedule 1: Requirements in Respect of Verbally-Notified Category A Occurrences	8
Schedule 2: Requirements in Respect of Documented Notification of Occurrences	8
Schedule 3: Protocol for Concurrent Investigations	9

1 Parties

The parties to this Memorandum of Understanding (MOU) are:

- **Director, Public Transport Safety**, a statutory office under section 9K of the *Transport Act 1983 (VIC)*, of 80 Collins Street, Melbourne VIC (*Safety Director*).
- **Chief Investigator, Transport and Marine Safety Investigations**, an independent statutory office under section 83 of the *Transport Act 1983 (VIC)*, of 80 Collins Street, Melbourne VIC (*CI*).

2 Purpose

- 2.1 The purpose of this MOU is to outline the respective roles and responsibilities of, and the relationship between, the Safety Director and the Chief Investigator (together "the parties") in relation to the investigation of rail or bus occurrences in Victoria.
- 2.2 Specifically, this MOU sets out procedures and working arrangements to assist the parties in relation to:
- (a) notification between the parties of rail or bus occurrences;
 - (b) coordination of concurrent investigations of rail or bus occurrences by the parties ;
 - (c) the sharing of information between the parties.
- 2.3 Nothing within this MOU is intended to:
- (a) create any binding rights, powers, duties, liabilities or obligations;
 - (b) waive, fetter, limit or affect the rights, powers, duties, liabilities or obligations of the parties; or
 - (c) affect the due and proper performance of the parties' statutory functions or their ability to comply with all applicable statutory requirements.

3 Background

- 3.1 The principal objective of the Safety Director is to facilitate the safe operation of rail and bus transport services in Victoria.
- 3.2 The principal function of the CI is to conduct, relevantly, investigations into public transport safety matters and report the results of those investigations. The TA specifically provides for the conduct of investigations into incidents involving rolling stock, rail infrastructure, a bus or any infrastructure used in bus operations by the CI.
- 3.3 The CI is authorised by s85G of the TA and the Safety Director is authorised under s.9ZC of the TA to enter into a memorandum of understanding with each other about the performance or exercise of their respective functions or powers.

4 Interpretation and Definition

Notifiable accident or incident has the meaning set out at regulation 41 of the Rail Safety Regulations 2006 (VIC) and the Bus Operator Accreditation Help Kit Section 2.2.3.

Notifiable circumstance has the meaning set out at regulation 41 of the Rail Safety Regulations 2006 (VIC).

Concurrent investigation means a rail or bus occurrence which is the subject of parallel, but separate investigations, by the Safety Director and the CI.

Compliance inspection means an inspection by a transport safety officer for compliance and investigative purposes under Division 4B of Part VII of the TA.

Embargoed (copy of s85 investigation reports) refers to conditions attached by the CI to any copy of a draft s85 investigation report that is provided under section 85A of the TA to the Safety Director, and other directly involved parties, prior to the report being given to the Minister for Transport.

Investigator in Charge (IIC) means the OCI investigator appointed by the CI to lead an s83D(1) investigation.

Investigation Officer means the transport safety officer appointed by the Safety Director under section 228T and authorised to conduct a compliance inspection, a disciplinary inquiry under RSA s.59 or PTCA s.20, or a TA s9W investigation on behalf of the Safety Director.

Rail Occurrence means any public transport safety matter in relation to rail infrastructure or rolling stock which either the Safety Director or the CI has the statutory authority to investigate under the RSA or TA but for the avoidance of doubt, does not include any complaint (where there is no occurrence), any project, accreditation or any audits of any persons.

Bus Occurrence means any public transport safety matter in relation to buses or bus infrastructure used in bus operations which both the Safety Director and the CI has the statutory authority to investigate under the PTCA or TA, but for the avoidance of doubt, does not include any complaint (where there is no occurrence), any project, accreditation or any audits of any persons.

Public transport safety matter - has the meaning set out at s82A of the TA and includes any matter which the Safety Director may investigate under the RSA or PTCA, not being limited to investigations pursuant to Ministerial directions given under s9W of the TA.

Protocol for Concurrent Investigations means the protocol setting out the procedures to enhance the co-ordination and cooperation between the parties in the event of a Concurrent Investigation, and as described in Schedule 3 of this MOU.

PTCA means the *Public Transport Competition Act 1995 (VIC)* and all regulations and instruments made under the PTCA.

Rail Controller means a person, usually a representative of the rail infrastructure manager or rolling stock operator, who coordinates the implementation of railway response plans and activities at the site of a rail or bus occurrence, including ensuring that the immediate area in the rail corridor where the occurrence takes place is made safe.

RSA means the *Rail Safety Act 2006 (VIC)*

Regulations means the *Rail Safety Regulations 2006*

Site Controller means a person, usually a police officer, who controls access to the site of a rail or bus occurrence and is responsible for the coordination of evacuation and recovery activities at the site, including the general safety of all persons at the site.

TA means the *Transport Act 1983 (VIC)* and all regulations and instruments made under the TA.

Unless otherwise expressly provided, any terms which are defined in the TA and RSA have the same meaning when used in this MOU.

5 Principles

5.1 The parties will have regard to the following principles in the application of this MOU:

- (a) the Safety Director and the CI have separate and independent mandates and roles under the TA and RSA;
- (b) the Safety Director and the CI each have the statutory discretion to conduct investigations but do so for different purposes;
- (c) the Safety Director and the CI have a common interest in, and responsibility for, the promotion of rail and bus safety; and
- (d) the CI and the Safety Director will endeavour to conduct Concurrent Investigations in a manner which by exception, reduces the impost on rail operators and the public.

5.2 While recognising each party's mandate and independent role, the Safety Director and the CI are committed to a constructive and co-operative relationship in their common pursuit of enhancing the safety of rail and bus operations in Victoria.

5.3 Nothing in this MOU prevents either party from making a decision to conduct an investigation, or undertaking an investigation.

6 Notification

Verbal Notification

6.1 The RSA and TA designate the Safety Director as the person to whom operators must immediately provide verbal notification of any notifiable accident or incident.

6.2 The Safety Director will notify the CI immediately of any notifiable accident or incident on receipt of any such notification by verbally contacting the OCI duty officer.

6.3 In the event that the CI receives notification of a notifiable accident or incident from any source other than the Safety Director, the CI will notify the Safety Director immediately of the notifiable accident or incident by contacting the PTSV duty officer on 1800 301 151.

Documented Notifications

6.4 The Safety Director and the CI agree to work in a cooperative manner in the receipt and management of documented notifications in accordance with the requirements set out in Part 6 of the *Regulations 2006* and associated regulations.

6.5 The Safety Director agrees to forward to the CI in writing:

- (a) any notifiable circumstances received by PTSV within 72 hours of having received such notification; and

- (b) any electronic notifications in relation to rail occurrences or bus occurrences within 72 hours of receipt of such notifications by email.
-

7 Investigations

Who will investigate?

- 7.1 In the event of a notifiable accident or incident or notifiable circumstance (collectively referred to as “incident” in this part and the schedules) occurring, the parties agree as follows:
- (a) The CI will decide whether or not to investigate the incident.
 - (b) If the CI decides to investigate the incident, the CI will inform the Safety Director, and the Safety Director will not, subject to part 8 below, appoint an Investigation Officer to attend the incident site.
 - (c) Once the CI has attended the incident site, the CI may disclose information to the Safety Director if of the view that the disclosure is necessary or desirable for the purposes of transport safety.
 - (d) On receipt of the information, the Safety Director may decide to conduct a compliance inspection or a disciplinary inquiry into the operations of a rail operator. If this occurs, the parties will follow the matters set out in part 9 of this MOU.
 - (e) If the CI decides not to investigate the incident, the CI will inform the Safety Director as soon as possible.
 - (f) The Safety Director may decide to conduct a compliance inspection or disciplinary inquiry if the CI does not conduct an investigation. If this occurs, the parties will follow the matters set out in part 9 of this MOU.

Who will secure the site of the incident?

- 7.2 An accredited rail operator has a duty to secure the site of an incident under regulation 48 of the Regulations and must ensure that the site is not disturbed until directed by a transport safety officer or the Safety Director. In the event that the CI decides to investigate an incident in accordance with 7.1 of this MOU, the Safety Director agrees to inform the CI prior to directing the ARO that the site may be disturbed.
- 7.3 In the event that the Safety Director directs that an ARO need no longer disturb a site, the CI may secure the site under s.84(c) of the *Transport Legislation (Safety Investigations) Act 2006*.
-

8 Ministerial Direction to Investigate

- 8.1 The Minister may direct the Safety Director to investigate a public transport safety matter under s9W of the TA. In the event that the relevant public transport safety matter is a notifiable accident or incident into which the CI has decided to conduct an investigation, then the parties will conduct a concurrent investigation. In the event of a concurrent investigation, the parties agree to cooperate and assist each other to the extent that is possible without compromising their own independent investigation. To this end, the parties agree to:
- (a) appoint an Investigation Officer and IIC, for the Safety Director and the CI respectively, through whom coordination can be effected;
 - (b) coordinate, where possible, the deployment of officers to the incident site;

- (c) coordinate, where possible, actions on site to avoid duplication and minimise interference with each other's investigation;
 - (d) discuss and negotiate the collection of physical evidence, information and material at incident sites; and
 - (e) give practical effect to the arrangements in Schedule 3.
- 8.2 In order to ensure co-operation and co-ordination in relation to evidence at the site of the incident, the parties agree to:
- (a) seek a joint briefing from any Site Controller and any Rail Controller that may be present on arrival at the site of the incident;
 - (b) 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);
 - (c) advise the other party of anything that is identified as relevant to the other party's investigation;
 - (d) make any physical evidence available for inspection to each other and not to move, take, dismantle, change or alter any such piece of evidence without advising the other party or until providing the other parties with the opportunity to conduct a detailed inspection; and
 - (e) afford each other the opportunity to be present when recordings and data are downloaded.
- 8.3 The Safety Director will take custody of physical evidence, subject to the Safety Director agreeing to provide all reasonable assistance for providing to the CI or his delegates with access to the seized evidence.
- 8.4 The Safety Director agrees to ensure that the collection, continuity and preservation of any physical evidence will be in accordance with agreed procedures.
- 8.5 The Safety Director also agrees to provide to the CI access to such physical evidence that is collected or surrendered to it.
- 8.6 In addition the Safety Director agrees to make available to the CI any information, material or evidence it collects or is provided to the greatest extent permitted by law.

9 Information Exchange

- 9.1 Section 85D of the TA permits the CI to disclose information if the CI considers that the disclosure is necessary or desirable for the purposes of transport safety.
- 9.2 Section 9Z(1) of the TA permits the Safety Director to disclose information if the Safety Director thinks it necessary for the safe operation of public transport.
- 9.3 To fulfil the intent and purpose of sections 85D and 9Z of the TA, the parties agree to provide each other with any information, documentation or other material obtained during the course of their respective investigation or compliance inspection/disciplinary inquiry to the extent permitted by law.

Requests for Information

9.4 Any request for information by the CI or the Safety Director will be provided to each other in writing.

RSA Section 67 & TA Section 9 Reports

9.5 The Safety Director will provide the CI with copies of any s67 RSA reports or s9W TA reports.

9.6 If CI decides to investigate following the review of any such report, CI will provide information about the investigation if requested by the Safety Director.

10 Review and Termination of MOU

10.1 This MOU may only be amended by a document signed by or on behalf of each of the parties.

10.2 The parties will formally review this MOU twelve (12) months after the date of execution and subsequent to that, at regular intervals not exceeding three (3) years, as agreed between the parties.

10.3 Either party may terminate this MOU by seven (7) days notice in writing to the other party.

10.4 Authorisation for amendment or termination of this MOU must be signed by the Safety Director and the CI, or a properly authorised person acting on behalf of the Safety Director or the CI.

Execution

Signed by

ALAN OSBORNE

Director, Public Transport Safety

Date: / / 2006

Signed by

IAN MCCALLUM

Chief Investigator, Transport and Marine
Safety Investigations

Date: / / 2006

Schedule 1: Requirements in Respect of Verbally-Notified Incidents

STEPS	AGENCY	ACTIONS/RESPONSIBILITIES	TIMEFRAME	NOTES
1. Verbal Notification of notifiable accident or incident	OCI & PTSV	Report incident to the CI, or his delegate (being the Duty Officer) on a number to be confirmed by the CI.	Immediately	
2.	OCI	Report incident to Safety Director, or his delegate (being the Duty Officer), on 1800 301 151	Immediately	
3. Subsequent Coordination	OCI & PTSV	Should a notifiable accident or incident become the subject of investigation by both Safety Director and CI, the parties will observe the protocols described in Protocol for Concurrent Investigation (set out in Schedule 3).	N/A	

Schedule 2: Requirements in Respect of Documented Notification of Incidents

STEPS	AGENCY	ACTIONS/RESPONSIBILITIES	TIMEFRAME	NOTES
1. Written Notification of notifiable circumstance	OCI &/OR PTSV	Documented notifications received by the Safety Director or CI are forwarded to the other party	Within 72 hours of receipt	
2. Conduct of Investigations/Preliminary Investigations	OCI & PTSV	Should an incident become the subject of investigation by both the Safety Director and the CI, the parties will observe the protocols described in Schedule 3.	N/A	

Schedule 3: Protocol for Concurrent Investigations

A) Requirements for Reporting and Concurrent Investigation of Verbally Notified Incidents

STEPS	AGENCY	ACTIONS/RESPONSIBILITIES	TIMEFRAME	NOTES
1. Verbal Notification of incident to PTSV's Duty Officer	PTSV	Safety Director or his delegate notifies the CI or his delegate of incident via a telephone number to be confirmed by the CI.	Immediately	
2. Notification of IIC	OCI	CI or his delegate notifies PTSV of , if possible, the contact details for Investigator In Charge (IIC)	ASAP	
3. Notification of Investigation Officer	PTSV	Safety Director or his delegate notifies CI of, if possible, contact details for lead officer. Investigation Officer and IIC commence direct liaison.	ASAP	
4. Deployment	OCI & PTSV	If the Investigation Officer and IIC have arrived on site under separate arrangements, they should establish contact with each other at the site.	As soon as possible after notification	
5. Immediate Action on Arrival at Site		Investigation Officer and IIC should establish contact with the <ul style="list-style-type: none"> • Site Controller & Rail Controller • Operator/s • Other investigation agencies • Police/emergency response agencies 		Record names positions and contact details for relevant agencies
6. Coordination at Site	OCI & PTSV	The CI and the Safety Director will endeavour to coordinate the conduct of investigatory activity at the site including: <ul style="list-style-type: none"> • ensuring that evidence at the site is not disturbed or contaminated (unless necessary in order to allow the evacuation of injured persons or to render the site safe); • ensuring that all parties engaged in proper investigatory functions enjoy access to the site and evidentiary material at the site; and • ensuring that appropriate arrangements are made for the removal of evidentiary material from the site by the Safety Director. 	On arrival	

		<p>OCI & PTSV will:</p> <ul style="list-style-type: none">• make any piece of 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; and• afford the other party the opportunity to be present when recordings and data are downloaded.		
--	--	--	--	--