

**Workplace Injury Rehabilitation and Compensation Act 2013
Transport Integration Act 2010**

MEMORANDUM OF UNDERSTANDING BETWEEN THE VICTORIAN
WORKCOVER AUTHORITY AND THE DIRECTOR, TRANSPORT SAFETY

PARTIES

This memorandum of understanding is made between the following parties:

The Victorian WorkCover Authority (ABN 90 296 476 627) ('WorkSafe') continuing in existence pursuant to the **Workplace Injury Rehabilitation and Compensation Act 2013** (Vic.), of 222 Exhibition Street, Melbourne, Victoria 3000.

AND

The Director, Transport Safety, of Level 15, 121 Exhibition Street, Melbourne, Victoria 3000.

1. INTRODUCTION

1.1 Interpretation

In this memorandum of understanding:

'**Bus Incident**' has the meaning given to that term in regulation 4 of the Bus Safety Regulations 2010 (Vic.);

'**Bus Safety Worker**' has the meaning given to that term in section 3 of the **Bus Safety Act 2009** (Vic.);

'**Domestic Commercial Vessel**' has the meaning given to that term in section 7 of the Marine Safety (Domestic Commercial Vessel) National Law (contained in Schedule 1 of the **Marine Safety (Domestic Commercial Vessel) National Law Act 2012** (Cth));

'**Health Information**' has the meaning given to that term in the **Health Records Act 2001** (Vic.);

'**Incident**' means an incident that must be notified to either of the parties under legislation and includes a Bus Incident, a Marine Incident, a Rail Incident and a Workplace Incident, but does not include:

- a notifiable occurrence within the meaning of section 4 of the Rail Safety National Law (contained in the Schedule of the **Rail Safety National Law (South Australia) Act 2012** (SA)); or
- a marine incident within the meaning of section 6 of the Marine Safety (Domestic Commercial Vessel) National Law (contained in Schedule 1 of the **Marine Safety (Domestic Commercial Vessel) National Law Act 2012** (Cth));

'**Local Maritime**' refers to maritime operations captured under the **Marine Safety Act 2010** (Vic.);

'**Local Rail**' refers to railway operations captured under the **Rail Safety (Local Operations) Act 2006** (Vic.);

'**Marine Incident**' has the meaning given to that term in section 3 of the **Marine Safety Act 2010** (Vic.);

'**MOU**' means this memorandum of understanding;

'**Personal Information**' has the meaning given to that term in the **Privacy and Data Protection Act 2014** (Vic.);

'**Privacy Legislation**' means laws in respect of privacy and the protection of Personal Information and Health Information including, without limitation, the **Data Protection Act 2014** (Vic.), the **Health Records Act 2001** (Vic.) and the **Privacy Act 1988** (Cth);

'**Protocol**' means the investigations protocol established under clause 4.1;

‘Rail Incident’ means a railway accident or incident or a notifiable accident or incident within the meaning given to those terms in regulation 41 of the Rail Safety (Local Operations) Regulations 2006 (Vic.);

‘Rail Safety Worker’ has the meaning given to that term in section 3 of the **Rail Safety (Local Operations) Act 2006** (Vic.);

‘Relevant Legislation’ means the legislation that each party is responsible for administering and enforcing, as set out in clause 3 of this MOU;

‘Safety Director’ means the Director, Transport Safety, a statutory office established under section 171 of the **Transport Integration Act 2010** (Vic.), and may include, as the context requires, his delegates and staff members of TSV authorised to act on his behalf;

‘TSO’ means a transport safety officer appointed under section 116 of the **Transport (Safety Schemes and Compliance) Act 2014** (Vic.);

‘TSV’ or **Transport Safety Victoria** means the persons employed by the Victorian Department of Economic Development, Jobs, Transport and Resources to assist the Safety Director in the exercise of his or her powers and the performance of his functions;

‘WorkSafe’ means the Victorian WorkCover Authority, the statutory authority responsible for administering various legislation including but not limited to the **Occupational Health and Safety Act 2004** (Vic.), the **Dangerous Goods Act 1985** (Vic.), the **Equipment (Public Safety) Act 1994** (Vic.), the Dangerous Goods (Transport by Road or Rail) Regulations 2008 (Vic.), the Dangerous Goods (Storage and Handling) Regulations 2012 (Vic.), the **Accident Compensation Act 1985** (Vic.), the **Workers Compensation Act 1958** (Vic.) and the **Workplace Injury Rehabilitation and Compensation Act 2013** (Vic.);

‘Workplace’ has the meaning given to that term in section 5 of the **Occupational Health and Safety Act 2004** (Vic.);

‘Workplace Incident’ means:

- (a) an incident resulting in a person suffering serious bodily injury that must be notified to either party under legislation; or
- (b) a work-caused injury that must be notified to either party under legislation or
- (c) a dangerous event that must be notified to either party under legislation; or
- (d) a fatality.

1.2 Purpose

- (a) This MOU provides a framework to promote effective communication, cooperation and coordination between the parties in their statutory, operational and administrative interactions in relation to Incidents involving bus and Local Rail and Local Maritime operations.
- (b) The purposes of this MOU are to:
 - (i) document the working relationship between the parties to enhance and promote a best practice approach to transport safety and Workplace safety regulation;
 - (ii) promote open communication and reduce duplication of efforts;
 - (iii) influence a reduction in the quantity and severity of Incidents; and
 - (iv) provide consistent safety outcomes for industry.
- (c) To achieve the purposes above, this MOU seeks to:
 - (i) ensure that the parties are aware of each other’s legislative obligations and operating policies and procedures;

- (ii) clarify the specific working arrangements between the parties in relation to notifying, attendance, investigation and reporting of Incidents that fall under both parties' remit;
- (iii) foster ongoing regulatory collaboration and cooperation between the parties;
- (iv) facilitate the timely and efficient provision of advice and sharing of information between the parties;
- (v) acknowledge the expertise of the parties in their specific spheres of activity;
- (vi) reduce the regulatory burden on regulated persons where both parties are enquiring into the same issue.

1.3 No legally binding effect

- (a) While the parties shall, as far as practicable, follow procedures set out in this MOU and take necessary measures to ensure that officers of the parties are aware of and comply with the terms of this MOU, it is not intended to create legally enforceable obligations between the parties.
- (b) Nothing in this MOU should be construed as preventing or inhibiting either party from acting in the proper performance of their statutory or other public functions or restricting the statutory discretions and powers available under legislation administered by either party.

1.4 Term

This MOU shall continue in force until terminated under clause 7.3.

2. OBJECTIVES AND PRINCIPLES

- 2.1 The Safety Director and WorkSafe each have separate and independent regulatory mandates and roles.
- 2.2 While recognising each party's regulatory mandate and independent role, the parties are committed to a constructive and co-operative relationship in the common pursuit of safe travelling and working environments in Victoria for workers and members of the public.
- 2.3 WorkSafe's mission is to work with the community to deliver outstanding Workplace safety, together with quality care and insurance protection to workers and employers.
- 2.4 The Safety Director's (represented by TSV) statutory object is to independently seek the highest transport safety standards that are reasonably practicable, consistent with the transport system's vision and objectives under the **Transport Integration Act 2010** (Vic.).
- 2.5 The parties share a common vision, values and understanding of the scope of their individual obligations under this MOU.

3. ROLES AND RESPONSIBILITIES

Role of WorkSafe

- 3.1 WorkSafe, through the administration of the **Dangerous Goods Act 1985** (Vic.) and its regulations, has jurisdiction over and will respond to issues concerning:
 - (a) dangerous goods on Victorian wharves, vessel-to-shore transfer and safe transport of those dangerous goods; and
 - (b) handling of explosives in Victorian ports.
- 3.2 WorkSafe through the administration of the **Occupational Health and Safety Act 2004** (Vic.), and the **Equipment (Public Safety) Act 1994** (Vic.) and their regulations has jurisdiction over and will respond to issues concerning:

- (a) the health, safety and welfare of persons in Victorian Workplaces as specified in Section 2 of the **Occupational Health and Safety Act 2004** (Vic.);
- (b) non-Workplaces in Victoria in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of equipment prescribed under the **Equipment (Public Safety) Act 1994** (Vic.).

The Safety Director

- 3.3 The Safety Director is responsible for administering a range of transport safety legislation related to bus, maritime and rail transport. The Safety Director:
 - (a) licences, registers and accredits operators and other industry participants;
 - (b) monitors the transport industries and participants' systems for managing safety risks;
 - (c) monitors compliance with transport safety legislation; and
 - (d) takes enforcement action as appropriate to promote safety outcomes in Victoria.
- 3.4 Through the administration of relevant legislation, the Safety Director has jurisdiction over:
 - (a) bus safety duty holders, including accredited and registered bus operators captured under the **Bus Safety Act 2009** (Vic.) and its regulations, and will respond to safety issues including in relation to the operation, design, maintenance, and equipment of buses and the safety management systems and policies of bus operators;
 - (b) marine safety duty holders, including operators of regulated hire and drive vessels and recreational vessels, port management bodies, local port managers and waterway managers, harbour masters, pilots, pilot exempt masters, and pilotage services providers, captured under the **Marine Safety Act 2010** (Vic.) and its regulations. The Safety Director will respond to safety issues including in relation to the operation, design, construction and equipment of regulated hire and drive and recreational vessels, the conduct of pilots, pilot exempt masters, pilotage services providers and harbour masters, and issues concerning the safe navigation and operation of relevant vessels on state waters;
 - (c) rail safety duty holders, including all light rail transport operators and a number of tourist and heritage rail transport operators captured under the **Rail Safety (Local Operations) Act 2006** (Vic.), and will respond to safety issues relating to the operation, design, maintenance, and equipment of rolling stock and rail infrastructure and the safety management systems and policies of rail transport operators.
- 3.5 TSV delivers certain regulatory functions on behalf of national regulators. The Safety Director does not have jurisdiction over:
 - (a) Domestic Commercial Vessels, with respect to their responsibilities under the **Marine (Domestic Commercial Vessel) National Law Act 2012** (Cth), which are regulated by the Australian Maritime Safety Authority under since 1 July 2013 (with the exception of navigational safety in Victorian waters);
 - (b) heavy rail transport operators and some tourist and heritage rail operators, which are regulated by the Office of the National Rail Safety Regulator under the Rail Safety National Law (as applied in Victoria under the **Rail Safety National Law Application Act 2013** (Vic.) since 19 May 2014.

4. CROSS-JURISDICTIONAL ISSUES AND OPERATIONAL ARRANGEMENTS

4.1 Establishing jurisdiction

- (a) The parties agree to establish a protocol within 12 months of entering into this MOU that sets out a jurisdictional matrix with respect to categories of Incidents that may fall within both parties' jurisdiction.
- (b) If there is any doubt over jurisdiction, when contacted, WorkSafe and the Safety Director will respond, and will discuss who the lead agency should be.
- (c) Where either party has responded to an Incident then changes its view that the Incident does or does not fall within its jurisdiction, that party will consult the other party prior to taking any action based on its changed view on jurisdiction. The former party will continue to provide such assistance as required until the investigation is completed.
- (d) The parties acknowledge the effect of section 11 of the **Marine Safety Act 2010** (Vic.).

4.2 Notification of relevant safety issues

- (a) The parties agree:
 - (i) that when a party is contacted regarding a matter, including an Incident, that is also the responsibility of the other party, the party who is contacted must notify the other party as soon as practicable in accordance with the Protocol (if any); and
 - (ii) to notify each other, as soon as is practicable, of any activities conducted by one party under that party's Relevant Legislation that may affect, relate to or otherwise impact on the regulatory functions of the other party;using the relevant emergency contact number listed in Schedule 1.

4.3 Conduct of investigations

- (a) In the conduct of investigations of Incidents that fall within both parties' jurisdiction, the parties agree to observe and comply with the Protocol (if any).
- (b) If an inspector/TSO of either party decides to take regulatory action arising from the Incident, they must:
 - (i) where practicable, notify the other party before taking the action; or
 - (ii) if notification before taking the action is not practicable, notify the other party of the regulatory action taken as soon as practicable after taking the action.
- (c) For the purposes of clause 4.3(b), regulatory action may include (but is not limited to):
 - (i) issuing improvement, prohibition or infringement notices;
 - (ii) issuing a direction; or
 - (iii) suspending a licence, accreditation, registration or certification.

4.4 Provision of expert assistance

- (a) The parties agree to provide advice and assistance to each other to the best of their ability when requested to do so.
- (b) In particular, in the event of:
 - (i) an inspection or investigation being conducted by either party, the other agrees to provide expert opinion as required;
 - (ii) a prosecution being conducted by either party, the other agrees to provide expert witnesses in accordance with its internal policy.

4.5 **Consultation about proposed proceedings**

- (a) The parties agree to consult each other as soon as is practicable in respect of any prosecution action proposed by either party that has, or is likely to have, a direct impact on both transport safety and Workplace health and safety.
- (b) In relation to proposed proceedings, where legislation permits, the parties agree to consult with the other party and as far as possible to take into account any views that the other party may have in relation to any such proposed course of action.

4.6 **Legal professional privilege**

Nothing in this MOU:

- (a) entitles or requires a person to disclose information that is the subject of legal professional privilege; or
- (b) affects the law or practice relating to legal professional privilege.

5. **COMMUNICATION AND ADMINISTRATIVE ARRANGEMENTS**

5.1 **Relationship managers**

- (a) Each party must nominate a relationship manager, who will serve as the key point of contact for any issues arising under this MOU, including all notifications and consultation required by clause 4.
- (b) The relationship managers for the parties are as set out in Schedule 1 to this MOU.
- (c) A party may change its nominated relationship manager under this MOU by notice in writing to the other party.

5.2 **Regular meetings**

- (a) The relationship managers will meet at least every six months, or as otherwise agreed, to discuss matters of common interest, including to:
 - (i) inform each other about any current or proposed activities that may be of interest to the other party, such as safety investigations, inspections or enforcement activities with both transport and Workplace safety elements;
 - (ii) assess the effectiveness of the operation of the Protocol (once established);
 - (iii) identify opportunities for joint activities, training, opportunities to work collaboratively and/or more efficiently, and/or the sharing of information and expertise;
 - (iv) report on any other developments that may impact on the regulatory functions of the other party, including any known proposals to amend or vary a regulatory provision that, if adopted, may affect the safety of transport systems and/or Workplace health and safety in Victoria; and
 - (v) review incident reporting trends and compare incidents reported to each party.
- (b) The relationship managers may meet as necessary to assess the general operation of this MOU and to discuss the ongoing relationship between the parties.

5.3 **Information sharing**

- (a) The parties recognise the value of sharing information, while recognising that they each have obligations in relation to the protection of information.

- (b) Where appropriate and subject to legislated restrictions on disclosure of information and in accordance with clause 6, the parties will share information that is relevant to the regulatory functions of the parties, including any reports resulting from investigations of Incidents.
- (c) The parties will invite staff to participate in relevant training and workshops conducted by either organisation from time to time.

5.4 **Staff awareness of MOU**

- (a) Each party will take reasonable steps to ensure that its staff and contractors are fully informed of the content and overall purpose of this MOU at all times.
- (b) All officers involved in the investigation of any matters that relate to this MOU will have a copy of or have access to this MOU.

5.5 **Announcements or releases**

- (a) A party may not make any public announcements or press releases relating to this MOU without first consulting with, and obtaining consent from, the other party. The parties must reasonably agree on the form and content of any such announcements or releases.

6. PRIVACY AND CONFIDENTIALITY

6.1 **Privacy**

The parties:

- (a) acknowledge that they will be bound by the Privacy Legislation with respect to any act done or practice engaged in by them under or in connection with this MOU;
- (b) agree to co-operate with any reasonable request of the other relating to the protection of Personal Information or Health Information or the investigation of a complaint about the handling of Personal Information or Health Information; and
- (c) will co-operate to ensure they do not cause any other party to breach any privacy obligations that Party has at law.

6.2 **Confidentiality**

- (a) A party who has received information under this MOU must not use it except for the purpose, principles and objectives outlined in this MOU.
- (b) Subject to clause 6.2(c), if a party wishes to use or disclose information provided pursuant to this MOU for any other purpose, that party must seek prior written consent of the party who supplied the information. Such consent may be given or withheld in the supplying party's absolute discretion.
- (c) Nothing in this MOU prevents either party from disclosing information:
 - (i) if required to do so by law, including in response to a request made under the **Freedom of Information Act 1982** (Vic.); or
 - (ii) if required to do so in connection with legal proceedings relating to this MOU.
- (d) A party who has received information under this MOU must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received information from it under clause 5.3.

- (e) This clause 6.2 shall not apply to information which is:
 - (i) publicly known;
 - (ii) already known to the receiving party; or
 - (iii) permitted under legislation to be disclosed by either WorkSafe or the Safety Director to a third party without restriction.
- (f) This clause 6.2 will survive termination (for whatever reason) of this MOU.

7. AMENDMENT, VARIATION OR MODIFICATION

7.1 Review

- (a) The parties will formally review this MOU three years after the date of execution and subsequent to that, at regular intervals not exceeding three years or as agreed between the parties.
- (b) Either Party may reasonably request a review of this MOU at any time.

7.2 Variation

- (a) Either Party may reasonably request the other party to agree to a variation of this MOU. Where the other Party agrees, the amendments will be set out in writing in a format agreed to by the parties, signed by both parties and annexed to the original MOU.
- (b) In developing the Protocol pursuant to clause 4.1, the parties will amend this MOU as required.
- (c) The date of effect of the variation will be the date on which the amending document is executed or such other date as may be nominated by the parties.

7.3 Termination

- (a) This MOU will remain in force unless terminated by the parties pursuant to this clause 7.3.
- (b) Either party may terminate this MOU by giving 30 days' written notice to the other party.
- (c) Both parties may agree to terminate this MOU immediately by written consent.
- (d) Termination will take effect from the date specified in the written notice.

8. GENERAL

8.1 Dispute Resolution

The parties agree to co-operate and use all reasonable endeavours to resolve any disputes or differences between them (Disputes). Disputes which remain unresolved for 30 days or more will be referred to the WorkSafe Chief Executive and the Safety Director, or their respective nominees, for binding resolution.

8.2 No Authority

Neither party may enter into any agreement or incur any liabilities on behalf of the other party without that other party's prior written consent and may not represent to any person that it has any authority to do so.

8.3 Counterparts

This MOU may be executed in any number of counterparts.

8.4 Costs and Expenses

Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this MOU and any other related documentation.

- 8.5 In this MOU, unless expressed to the contrary:
- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes the other gender;
 - (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
 - (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation; and
 - (vi) a reference to a clause is a reference to a clause of this MOU.

EXECUTION

SIGNED by the **DIRECTOR,**)
TRANSPORT SAFETY)
for and on behalf of the **CROWN IN**)
RIGHT OF THE STATE OF VICTORIA)
in the presence of:)

Witness (Signature) (Signature)

Witness (Print name) David Hourigan

Date: _____

SIGNED by **Clare Amies, Chief Executive**)
for and on behalf of the **Victorian**)
WorkCover Authority in the presence of:)
)
)

Witness (Signature) (Signature)

Witness (Print name) Clare Amies

Date: _____
