

# INTERGOVERNMENTAL AGREEMENT ON RAIL SAFETY REGULATION AND INVESTIGATION REFORM

Council of  
Australian  
Governments

An agreement between

- the Commonwealth of Australia and
- the States and Territories, being:
  - The State of New South Wales
  - The State of Victoria
  - The State of Queensland
  - The State of Western Australia
  - The State of South Australia
  - The State of Tasmania
  - The Australian Capital Territory
  - The Northern Territory of Australia

An agreement to establish a national system of rail safety regulation and investigation to include uniform regulation and a single national rail safety regulator, complemented by a national rail safety investigator.

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# Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform

## RECITALS

1. Rail safety regulation and investigation reform is identified as a competition reform priority in the [National Partnership Agreement to Deliver a Seamless National Economy](#) and this Intergovernmental Agreement (the Agreement) should be read in conjunction with that agreement and subsidiary schedules.
2. The Parties to this Agreement agreed in 2009 to establish national systems for heavy vehicles, rail safety and commercial vessel safety that are aimed at improved safety and reduced costs and regulatory burden for Australian transport companies as well as reduced costs of exports and trade.
3. The Parties agreed on 7 December 2009 to establish a national rail safety regulator (NRSR) in South Australia and national rail safety law.
4. The Parties further agreed to extend the Australian Transport Safety Bureau's (ATSB) role to operate as an enhanced national rail safety investigator covering corporate rail operators and those engaged in interstate trade.
5. In entering into this Agreement, the Commonwealth and the States and Territories recognise that they have a mutual interest in improving outcomes in rail safety regulation and investigation and need to work together to achieve those outcomes. This Agreement sets out the principles and processes to implement the Parties' decision to deliver a national system for rail safety regulation and investigation (the national rail safety system).

## PART 1 — OPERATIVE PROVISIONS

### Parties to this Agreement

6. This Intergovernmental Agreement is between the Commonwealth of Australia and the States and Territories.

### Term of the Agreement

7. This Agreement will commence as soon as the Agreement is signed by the Parties and will expire on 31 December 2013, unless terminated earlier or extended as agreed in writing by the Parties.

### Enforceability of the Agreement

8. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

## Delegations

9. The relevant Standing Council responsible for rail safety regulation and investigation is authorised to agree the Schedules and changes to the Schedules attached to this Agreement.

## Interpretation

10. Unless otherwise specified, the following terms and definitions are used throughout this Agreement:
  - (a) *ATSB*: the Australian Transport Safety Bureau.
  - (b) *Standing Council*: the relevant Standing Council established under the Council of Australian Governments to consider transport matters, currently the Standing Council on Transport and Infrastructure, or its successor, but constituted so that it consists of only one Minister per Party when dealing with matters with which this Agreement or the national rail safety system are concerned.
  - (c) *national rail safety system*: the national system for rail safety regulation and investigation comprising national rail safety law, the national rail safety regulator, national rail safety investigation law, the national rail safety investigator and the supporting administration, structures and systems that will enable their operation.
  - (d) *national rail safety law*: the legislation and regulations that will establish and govern the institution of the national rail safety regulator and govern rail safety nationally, enacted by the South Australian Parliament and adopted by the remaining States and Territories as the law of their parliaments, as amended from time to time.
  - (e) *national rail safety investigation law*: the *Commonwealth Transport Safety Investigation Act 2003* (TSI Act) and Transport Safety Investigation Regulations 2003 as pertaining directly to rail safety investigation and as amended from time to time.
  - (f) *NRSR*: the Office of the National Rail Safety Regulator; the independent body established by legislation enacted by the South Australian Parliament and adopted by the remaining States and Territories to regulate the national rail safety law in Australia by 1 January 2013.
  - (g) *Regulator/Chief Executive*: the person holding the office of the Regulator/Chief Executive of the national rail safety regulator as prescribed in the national rail safety law.
  - (h) *RSRP*: the Rail Safety Regulators' Panel (comprising rail safety regulators from all States and the Northern Territory as defined in existing laws in those respective jurisdictions).
  - (i) *TSI Act*: the *Commonwealth Transport Safety Investigation Act 2003*.

## PART 2 — OBJECTIVES

### Objectives

11. Through this Agreement, the Parties commit to the objectives of:
  - (a) improved rail safety for the Australian community; and
  - (b) seamless national safety regulation of rail operations.

## Outcomes

12. The Agreement will contribute to the following outcomes for the rail industry:
  - (a) promotion of safety and safety improvement in the delivery of rail transport;
  - (b) improved productivity and efficiencies from consistent national requirements; and
  - (c) decreased regulatory burden.

## Outputs

13. The objectives and outcomes of this Agreement will be achieved by:
  - (a) the introduction of national rail safety law for the safety regulation of Australian rail operations;
  - (b) the establishment of an independent national rail safety regulator that administers the national rail safety law and maintains, monitors and enforces rail operators' application of, and compliance with, appropriate safety standards; and
  - (c) an expansion of the role of the ATSB to cover rail safety investigations nationally.

## PART 3 — NATIONAL SYSTEM

14. The Parties agree to work cooperatively to create the national rail safety system, including any changes to Commonwealth, State and Territory laws and administrative arrangements that are necessary to facilitate this, as per the implementation milestones outlined in Part 5 (Performance Monitoring and Reporting).
15. Each Party will use best endeavours to secure through their respective parliament legislation that provides that their existing rail safety regulation and investigation legislation is repealed as appropriate in accordance with this Agreement.

## National Law

16. The Parties agree that the national rail safety legislation, as agreed by the Standing Council, will be enacted in the South Australian Parliament. The other States and Territories will adopt that legislation as legislation of the parliaments of those States and Territories. Any subsequent amendments to the national rail safety legislation, as agreed by the Standing Council, will be enacted in the South Australian Parliament.
17. Regulations and any subsequent amendments to the regulations, developed as required under the national rail safety legislation, will be agreed by the Standing Council. The Parties agree that:
  - (a) each State and Territory will arrange for regulations and any subsequent amendments to the regulations, as published by the nominated jurisdiction, to be introduced as regulation of the parliaments of those States and Territories; and
  - (b) a regulation may be disallowed in accordance with the processes detailed in the national rail safety legislation.

18. Amendments and additions to the national rail safety legislation and regulations and such other matters as may be agreed by the Parties or the Standing Council from time to time will be incorporated into the national rail safety law consistent with the processes and arrangements in this Agreement and its Schedules.

## National Rail Safety Regulator

19. The Parties agree that the NRSR will:
- (a) be established as an independent statutory agency under legislation of the South Australian Parliament (as host jurisdiction);
  - (b) be established as a commission headed by a Regulator/Chief Executive supported by two Assistant Commissioners; and
  - (c) operate in accordance with the requirements of the national rail safety law and the arrangements set out at Schedule A (National Rail Safety Regulator Arrangements).
20. The Parties agree that jurisdictions may elect to deliver national rail safety regulatory services under agreement with the NRSR.
21. The Parties agree that the direction-making powers of Ministers will be established in the national rail safety law and will enable the relevant State or Territory Minister, within the context of the statutory independence of the NRSR, to:
- (a) request advice or information from the NRSR on any rail safety matter within that Minister's State or Territory; and
  - (b) request or direct the NRSR to investigate any rail safety matter within that Minister's State or Territory (recognising that investigation may lead to prosecution). Such an investigation is not a 'no blame' investigation.

## National Rail Safety Investigation

22. The Parties agree:
- (a) to extend the ATSB's role to operate as an enhanced national rail safety investigator;
  - (b) that the ATSB may use states' existing investigation resources by agreement;
  - (c) that the ATSB operations will have regard to the scope, role and functions set out at Schedule B (Australian Transport Safety Bureau Arrangements), and that Schedule B will be used to guide the development of any required amendments to the *TSI Act*;
  - (d) that the relevant State or Territory Minister can request that the ATSB commence an investigation into a rail transport safety matter occurring within their jurisdiction which the ATSB has not already exercised its powers to investigate; and
  - (e) that governance arrangements will be developed to include Standing Council consideration of the appointment of designated rail member(s) of the ATSB commission and for reporting arrangements of the ATSB to the Standing Council.
23. Any of the Parties to this Agreement may propose amendments to the *TSI Act* with regard to rail safety investigations by communicating the proposed amendments to the Standing Council and the justification for seeking them.

## PART 4 — ROLES AND RESPONSIBILITIES

24. To realise the objectives and commitments in this Agreement, each Party has specific roles and responsibilities, as outlined below and in the Schedules to this Agreement.
25. The Standing Council has overall responsibility for implementing the national rail safety system. The Standing Council will undertake those responsibilities outlined in Schedule C (Role and Procedural Arrangements of the Standing Council).

### Role of the Commonwealth

26. The Commonwealth will:
  - (a) introduce legislation into its legislature to make any necessary amendments to the *TSI Act* and any other relevant Commonwealth legislation to implement the national rail safety system or this Agreement, and will consult with all Parties on any amendments sought during parliamentary processes; and
  - (b) not submit a Bill, Bills or Regulations to its legislature which would be inconsistent with, or alter the effect of, the legislation to implement the national rail safety system or this Agreement without prior agreement of the Standing Council.

### Role of South Australia

27. The State of South Australia will:
  - (a) enact the national rail safety legislation and any subsequent amendments as agreed by the Standing Council, and will consult with all Parties on any amendments sought during parliamentary processes;
  - (b) ensure that regulations and any subsequent amendments to the regulations, as published by the nominated jurisdiction, are tabled in the South Australian Parliament;
  - (c) ensure that any necessary consequential amendments (including repeal) are made to other legislation;
  - (d) not submit a Bill, Bills or Regulations to its legislature which would be inconsistent with, or alter the effect of, the legislation to implement the national rail safety system or this Agreement without prior agreement of the Standing Council;
  - (e) advise Parties to this Agreement as soon as possible of any reason, issue, and/or impediment that would affect, detract from or alter its role as host jurisdiction;
  - (f) on recommendation by the Standing Council, appoint the Regulator/Chief Executive and Assistant Commissioners in accordance with the national rail safety law and Schedule A (National Rail Safety Regulator Arrangements) and Schedule C (Role and Procedural Arrangements of the Standing Council);
  - (g) provide such data and information to the NRSR (and the NRSR Project Office (Project Office)) as appropriate in establishing the NRSR) as is necessary for the NRSR to undertake its responsibilities and functions as set out in this Agreement and the national rail safety law; and  
  
provide such data and information to the ATSB as is necessary for the ATSB to undertake its responsibilities and functions as set out in this Agreement and the *TSI Act*.

## Role of the Other States and Territories

28. Each State and Territory will:
- (a) ensure that the national rail safety legislation and any subsequent amendments, as enacted by South Australia, is effectively applied;
  - (b) ensure that regulations and any subsequent amendments to the regulations are tabled in their Parliament;
  - (c) ensure that any necessary consequential amendments (including repeal) are made to other legislation;
  - (d) not submit a Bill, Bills or Regulations to their legislature which would be inconsistent with, or alter the effect of, the legislation to implement the national rail safety system or this Agreement without prior agreement of the Standing Council;
  - (e) provide such data and information to the NRSR (and the Project Office as appropriate in establishing the NRSR) as is necessary for the NRSR to undertake its responsibilities and functions as set out in this Agreement and the national rail safety law; and
  - (f) provide such data and information to the ATSB as is necessary for the ATSB to undertake its responsibilities and functions as set out in this Agreement and the *TSI Act*.
29. In addition to those responsibilities at Paragraph 28, the jurisdiction nominated in the national rail safety legislation (currently New South Wales) will publish regulations and any subsequent amendments to the regulations, as agreed by the Standing Council. Each Standing Council member will be responsible to inform their own State and Territory when a regulation, or any subsequent amendment to a regulation, has been published.

## Implementation Arrangements

30. The Parties have agreed to establish a Project Office, led by a Project Director, to manage the establishment of the NRSR and oversee adoption of the national rail safety law. The Parties acknowledge the agreement by the then Standing Committee on Transport, established under the auspices of the Australian Transport Council, to fund the Project Office and its activities.
31. The Project Director will support the Parties to achieve the project milestones set out in Part 5 (Performance Monitoring and Reporting) and will ensure the Project Office's work schedule, deliverables and timeframes are met.
32. The Project Office and the position of the Project Director will be disbanded at 30 June 2013 or at another time as agreed by the Standing Council.
33. The Parties have previously agreed (7 December 2009) to establish a strengthened Rail Safety Regulators' Panel that will provide better national harmonisation of rail safety regulation as an interim measure during the period in which the NRSR is being established. In addition, the RSRP will work with the Project Office during this time as appropriate.



## PART 5 — PERFORMANCE MONITORING AND REPORTING

34. The Parties agree to meet the following implementation milestones:

Output	Performance Indicator	Responsibility
National rail safety law	Draft national rail safety legislation and regulations developed and agreed by all Parties by <b>November 2011</b>	All Parties
	National rail safety legislation introduced into South Australian Parliament by <b>March 2012</b>	South Australia
National rail safety law	South Australia passes national rail safety legislation by <b>May 2012</b>	South Australia
	States and Territories draft enabling legislation by <b>August 2012</b>	States and Territories (except South Australia)
	States and Territories introduce enabling legislation into their parliaments by <b>September 2012</b>	
	States and Territories pass enabling legislation by <b>December 2012</b>	
National service delivery standards	National service delivery standards developed and agreed by <b>March 2012</b>	All Parties
Transition plan	Transition plan agreed by <b>31 December 2011</b>	All Parties
<i>TSI Act</i> amendments	Drafting instructions for the <i>TSI Act</i> amendments developed and agreed by <b>30 June 2011</b>	Commonwealth
	<i>TSI Act</i> amendments passed by Commonwealth Parliament along with regulations by <b>30 November 2012</b>	
National rail safety investigations	Transition plan to increase ATSB capacity to undertake national investigations agreed by <b>31 March 2012</b>	Commonwealth
	ATSB capacities increased by <b>30 October 2012</b>	
National arrangements	NRSR established and operational by <b>1 January 2013</b>	All Parties
	Commencement of national rail safety investigation arrangements by <b>1 January 2013</b>	

### Reporting arrangements

35. The States and Territories will report to the Standing Council twice a year against the agreed performance indicators during the term of the Agreement.

## PART 6 — FINANCIAL RESPONSIBILITIES

### Establishment Costs

36. The Parties agree that the NRSR establishment costs are limited to those requirements essential to establishing the NRSR head office and creating the minimum level of information technology (IT) systems connectivity necessary to allow seamless national rail regulatory processing (for example operator accreditations and variations).
37. The Parties agree that the NRSR establishment costs will be borne by the Commonwealth. Payment will be made in accordance with a Project Agreement to be entered into between the Commonwealth and the State of South Australia.
38. The costs of establishing the ATSB as the national rail safety investigator will be borne by the Commonwealth.

### Transitional Costs

39. The Parties agree that all transitional costs will be borne by the States and Territories. These costs include implementing the national rail safety law and disestablishment costs of jurisdictions' existing regulators where required.

### Ongoing Costs – Rail Safety Regulation

40. The Parties agree that with regard to the provision of national rail safety regulation:
  - (a) all ongoing NRSR costs will be shared by each State and Territory through a combination of cost-recovery from industry and/or State or Territory government contribution. Each State and Territory may individually determine the level of any government contribution within its own jurisdiction;
  - (b) where desired and in agreement with the NRSR, a State or Territory can purchase additional regulatory services from the NRSR beyond those specified in the NRSR's Statement of Intent that fall within the scope, role and functions of the NRSR and that these additional regulatory services may increase that jurisdiction's costs above its existing costs of regulation;
  - (c) a nationally consistent industry charging regime be implemented by the commencement of the NRSR and that the NRSR levies and collects those charges directly from industry;
  - (d) States and Territories agree to provide the NRSR at the beginning of each quarter of each financial year, the amount of government funding to cover the contribution outlined in paragraph 40(a) and any additional amounts to fund services agreed in Paragraph 40(b) (where not recovered directly by the NRSR from industry);
  - (e) where jurisdictions elect to enter into a service agreement to deliver rail safety regulation services on behalf of the NRSR, the NRSR will make payments to the service delivery agency according to the service agreement; and
  - (f) States and Territories not fully recovering costs from industry will consider progressively moving towards full cost recovery in the long term. Any State or Territory government contribution will take into account implications for the national system.

## Ongoing Costs – Rail Safety Investigation

41. The Parties agree that with regard to the provision of national rail safety investigation services:
  - (a) jurisdictions with their own identified existing investigator, that elect to enter into a service agreement to deliver investigatory services on behalf of the ATSB, will fully meet their own on-going costs; and
  - (b) all other States will pay the full cost of ATSB investigatory services in their jurisdiction.
42. The Parties agree that, where desired and in agreement with the ATSB, a State or Territory can purchase additional investigation services from the ATSB that fall outside the scope, funding and resource arrangements of this Agreement. These additional investigation services may increase that jurisdiction's costs above its existing costs of investigation.

## PART 7 — GOVERNANCE ARRANGEMENTS

### Dispute Resolution

43. Any Party may give notice to other Parties of a dispute under this Agreement.
44. Officials of relevant Parties will attempt to resolve any dispute in the first instance.
45. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers and if necessary, the Standing Council.
46. If a dispute cannot be resolved by the relevant Ministers, it may be referred by a Party to the Council of Australian Governments for consideration.

### Review of the Agreement

47. The Agreement will be reviewed by 30 June 2013 with regard to progress made by the Parties in respect of achieving the agreed outcomes.

### Variation of the Agreement

48. The Agreement may be amended at any time by agreement in writing by all the Parties.
49. A Party to the Agreement may terminate their participation in the Agreement at any time by notifying all the other Parties in writing.

The Parties have confirmed their commitment to this Agreement as follows:

**Signed for and on behalf of the Commonwealth of Australia by**

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**The Honourable Julia Gillard MP**

Prime Minister of the Commonwealth of Australia

19 August 2011

**Signed for and on behalf of the State of New South Wales by**

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**The Honourable Barry O'Farrell MP**

Premier of the State of New South Wales

19 August 2011

**Signed for and on behalf of the State of Queensland by**

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**The Honourable Anna Bligh MP**

Premier of the State of Queensland

19 August 2011

**Signed for and on behalf of the State of South Australia by**

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**The Honourable Mike Rann MP**

Premier of the State of South Australia

19 August 2011

**Signed for and on behalf of the Australian Capital Territory by**

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**Ms Katy Gallagher MLA**

Chief Minister of the Australian Capital Territory

19 August 2011

**Signed for and on behalf of the State of Victoria by**

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**The Honourable Ted Baillieu MLA**

Premier of the State of Victoria

19 August 2011

**Signed for and on behalf of the State of Western Australia by**

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**The Honourable Colin Barnett MLA**

Premier of the State of Western Australia

19 August 2011

**Signed for and on behalf of the State of Tasmania by**

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**The Honourable Lara Giddings MP**

Premier of the State of Tasmania

19 August 2011

**Signed for and on behalf of the Northern Territory by**

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**The Honourable Paul Henderson MLA**

Chief Minister of the Northern Territory of Australia

19 August 2011

# National Rail Safety Regulator Arrangements

## INTERGOVERNMENTAL AGREEMENT ON NATIONAL RAIL SAFETY REGULATION AND INVESTIGATION

### Objectives

- A1 The objectives of the national rail safety regulator (NRSR) are to:
- (a) facilitate the safe operation of rail transport in Australia;
  - (b) exhibit independence, rigour and excellence in carrying out its regulatory functions; and
  - (c) promote safety and safety improvement as a fundamental objective in the delivery of rail transport in Australia.

### Scope

- A2 The NRSR will regulate all rail operations as defined in the national rail safety law, noting that light rail and tram network(s) operating outside of the heavy rail network will only be provided regulatory coverage by the NRSR where a jurisdiction has indicated a preference for it to do so. Day to day regulation of rail operations carried out within any one jurisdiction may be exercised locally, either by the state branch of the NRSR or by state officers acting under an instrument of delegation.

### Role

- A3 The NRSR will:
- (a) administer the national rail safety law and perform the functions and responsibilities conferred/imposed on it by that law;
  - (b) secure compliance with the national rail safety law through effective and appropriate compliance and enforcement measures;
  - (c) promote improvement of the safe carrying out of railway operations;
  - (d) ensure railway operators manage risks associated with their railway operations;
  - (e) promote public confidence in the safety of railway operations;
  - (f) undertake cost benefit analysis where mandatory decisions have a significant impact on industry; and
  - (g) consult with the ATSB where appropriate and practicable to do so.

## Functions

- A4 In administering the national rail safety law, the NRSR will:
- (a) administer, audit and review the accreditation regime under the national rail safety law;
  - (b) work with rail transport operators, rail safety workers and others involved in railway operations to improve rail safety in Australia;
  - (c) research, collect and publish information relating to rail safety;
  - (d) provide, or facilitate the provision of, advice, education and training in relation to rail safety; and
  - (e) monitor, inspect, investigate and enforce compliance with the national rail safety law.

## Structure and Governance

- A5 The NRSR will be headquartered in Adelaide with regional offices established in each mainland state capital city. Tasmania and the Northern Territory will have a regulatory presence overseen by the Adelaide regional office. Day-to-day regulation will be handled at the local level by the regional office of the NRSR in accordance with national processes and procedures.
- A6 The NRSR will consist of:
- (a) a Regulator/Chief Executive, appointed for a period of no longer than five years with no limitation to re-appointment; and
  - (b) two Assistant Commissioners, each appointed for a period of no longer than four years with no limitation to re-appointment.
- A7 The Standing Council will decide the remuneration and allowances for the Regulator/Chief Executive and Assistant Commissioners, from time to time. In setting the remuneration and allowances, the Standing Council will have regard to relevant rates (if any) published by the Commonwealth Remuneration Tribunal.

## Role and Responsibilities of the Regulator/Chief Executive and Assistant Commissioners

- A8 All regulatory powers will rest with the Regulator/Chief Executive. The Regulator/Chief Executive will have the power to delegate his or her functions and powers.
- A9 The Regulator/Chief Executive and Assistant Commissioners will act in the best interests of the NRSR, consistent with its objectives, functions and legislation including:
- (a) managing the operations and performing the core governance functions of the NRSR;
  - (b) annual reporting, development of an annual budget, establishment of performance indicators for the organisation;
  - (c) accountability to the Standing Council for meeting agreed outcomes established in the agreed rolling three year Statement of Intent;
  - (d) the fiduciary duty to act in the best interests of the organisation consistent with its purpose;
  - (e) meeting as necessary with the Minister of each Party or his or her representative; and
  - (f) establishing regular consultative arrangements with the rail industry and other stakeholders across the range of its interests and NRSR activities as necessary.

- A10 The Regulator/Chief Executive and Assistant Commissioners will, in accordance with the national rail safety law:
- (a) conduct regular dialogue with each and all jurisdictions on national operational policy and service delivery standards and arrangements; such dialogues are not directive in nature and place the NRSR under no obligation to respond in a particular way;
  - (b) report annually to the Standing Council on the implementation of agreed policy and NRSR objectives; and
  - (c) hold meetings as necessary for the efficient performance of the NRSR's functions.

## Accountability and Reporting

- A11 The NRSR will be subject to the corporate governance requirements established in the national rail safety law. South Australia will ensure that financial statements of the NRSR are audited annually.
- A12 The NRSR will report twice a year to each Party's Minister responsible for rail safety on the operations of the NRSR in their jurisdiction to provide proper accountability of the NRSR's activities. Through its annual work program, annual report and consultation arrangements with the States and Territories, the NRSR will ensure that each jurisdiction's rail safety issues are addressed.
- A13 The NRSR will:
- (a) operate in accordance with the national standards for the delivery of regulatory activities and services, as agreed by the Standing Council;
  - (b) provide the Standing Council each year with a rolling three year Statement of Intent regarding the administration of the NRSR;
  - (c) prepare an annual report for the Standing Council (also to be tabled in the South Australian Parliament) that must include any information required by the Standing Council;
  - (d) in addition to the annual report, provide information to the Standing Council on the performance of its functions including information about the manner in which the NRSR performs its operations within each jurisdiction;
  - (e) submit an annual budget and corporate plan (including any associated risk management plan and identified performance benchmarks) to the Standing Council for consideration;
  - (f) provide advice on particular regulatory issues following relevant consultation to the Standing Council as requested; and
  - (g) provide advice, within its limits of responsibility, on matters of a significant national nature to the Standing Council as requested.
- A14 The NRSR, if it becomes aware that a Party to the Agreement is acting in a way which would prevent the NRSR from undertaking its functions under the Agreement, must provide a report to the Standing Council outlining the irregularity.

## Consultation

- A15 In the performance of its functions and the exercise of its powers, the NRSR must, where appropriate and practicable to do so, consult with governments, industry and other interested people, relevant bodies and organisations.
- A16 To ensure ongoing engagement by the NRSR with stakeholders, the NRSR will establish and maintain a consultative group to include industry and other relevant stakeholders.





# Australian Transport Safety Bureau Arrangements

## INTERGOVERNMENTAL AGREEMENT ON NATIONAL RAIL SAFETY REGULATION AND INVESTIGATION

- B1 The Australian Transport Safety Bureau (ATSB) is an independent Commonwealth statutory agency. The ATSB has a commission structure headed by a Chief Commissioner/Chief Executive supported by two part-time Commissioners.
- B2 The parties to this Agreement acknowledge the cooperative arrangements that will exist between the ATSB and the existing independent state transport investigators and that rail safety investigations will be conducted in accordance with the *Transport Safety Investigation Act 2003 (TSI Act)*.

### Objectives

- B3 The objectives of the ATSB in relation to the Agreement are to:
- (a) maintain and improve rail transport safety; and
  - (b) maintain and improve public confidence in Australia's rail industry.

### Scope

- B4 The scope of the ATSB's role (as national rail safety investigator) will cover rail operations concerning the ATSB's jurisdiction under Section 11 of the *TSI Act*.
- B5 The criteria for the ATSB to commence a rail safety investigation should, having regard to the ATSB fulfilling its functions with respect to improving transport safety, generally include:
- (a) accidents involving fatalities, including significant accidents at level crossings;
  - (b) significant mainline derailments and collisions, and those indicative of systemic safety issues;
  - (c) significant incidents involving passenger train operations which had the potential to result in fatalities or a significant derailment or collision; and
  - (d) significant accidents, incidents or safety issues at the request of a Minister and/or recommendation of the national rail safety regulator.

### Role

- B6 The ATSB will support and enhance rail industry safety by performing its functions outlined in the *TSI Act*.

## Functions

- B7 In accordance with the *TSI Act*, the ATSB's function is to improve transport safety by means that include:
- (a) receiving and assessing reports of transport safety matters, reportable matters, and other safety information that is prescribed by the regulations;
  - (b) independently investigating transport safety matters;
  - (c) identifying factors that contribute, or have contributed, to transport safety matters; or affect, or might affect, transport safety;
  - (d) communicating those factors to relevant sectors of the transport industry and the public in any way, including by making safety action statements, safety recommendations, or issuing safety advisory notices;
  - (e) reporting publicly on those investigations;
  - (f) conducting public educational programs about matters relating to transport safety; and
  - (g) any other means prescribed by the regulations.

## Consultation

- B8 In the performance of its functions and the exercise of its powers, the ATSB must, where appropriate and practicable to do so, consult with the NRSR, state based independent safety investigators, government, industry and other interested people, relevant bodies and organisations.

## Accountability and Reporting

- B9 The ATSB is subject to the corporate governance requirements established in the *TSI Act* and other relevant Commonwealth legislation, including for annual reporting.
- B10 The ATSB will report regularly to each Minister on rail safety matters in their jurisdiction and be able to respond to the immediate needs of each Minister while taking account of the ATSB's independence.
- B11 The ATSB, if it becomes aware that a Party to the Agreement is acting in a way which would prevent the ATSB from undertaking its functions under the Agreement, must provide a report to the Standing Council outlining the irregularity.

# Role and Procedural Arrangements of the Standing Council

## INTERGOVERNMENTAL AGREEMENT ON NATIONAL RAIL SAFETY REGULATION AND INVESTIGATION

### Role of the Standing Council

c1 The Standing Council will:

- (a) provide national, strategic guidance and decision making on the reform as specified in this Agreement;
- (b) agree the draft national rail safety legislation prior to it being introduced into the South Australian Parliament and agree regulations as required under the national rail safety legislation;
- (c) agree any necessary draft amendments to the Commonwealth *Transport Safety Investigation Act 2003 (TSI Act)* relating only to rail safety investigation matters prior to introduction into the Commonwealth Parliament;
- (d) agree any subsequent amendments to the national rail safety legislation, regulations and *TSI Act* (relating only to rail safety investigation matters);
- (e) report to the Council of Australian Governments on progress in implementing the national rail safety system;
- (f) fulfil the dispute resolution function in accordance with Paragraphs 41 to 44 of the Agreement;
- (g) engage with the National Rail Safety Regulator (NRSR) and the Australian Transport Safety Bureau in accordance with the national rail safety law, *TSI Act* and the arrangements at Schedule A (National Rail Safety Regulator Arrangements) and Schedule B (Australian Transport Safety Bureau Arrangements); and
- (h) endorse nominees for the roles of Regulator/Chief Executive and Assistant Commissioners, for formal appointment by the South Australian Minister, in accordance with this Schedule.

c2 The Standing Council may:

- (a) notify the Regulator/Chief Executive and/or Assistant Commissioner(s) of its views on the strategic direction of the NRSR;
- (b) notify the Regulator/Chief Executive and/or Assistant Commissioner(s) of its policy objectives; and
- (c) provide direction to the Regulator/Chief Executive and/or Assistant Commissioner(s) on the manner in which functions are performed.

## Voting Arrangements

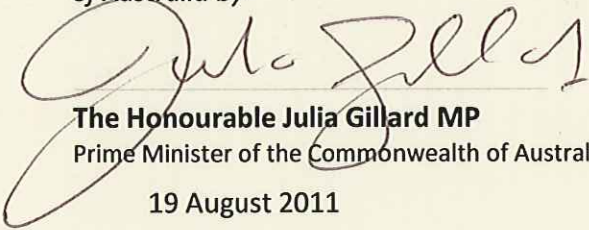
- C3 The Standing Council voting arrangements, as amended from time to time, apply to general matters pertaining only to this Agreement, except as detailed in this Schedule.
- C4 A vote on the national rail safety law, any proposed amendments and associated regulations, and amendments to the *TSI Act* and associated regulations (relating only to rail safety investigation matters), will be carried upon the unanimous agreement of Ministers.

## Appointing the Regulator/Chief Executive and Assistant Commissioners

- C5 The Regulator/Chief Executive and Assistant Commissioners will be appointed as follows:
- (a) The South Australian Minister (as host Minister) will write inviting Ministers to nominate candidates for the positions of Regulator/Chief Executive and Assistant Commissioner(s) as vacancies arise from time to time.
  - (b) If a Minister does not respond within 36 days of the date of the written invitation, the nomination period is closed, and the Minister will be taken not to have made a nomination.
  - (c) Within 36 days of the close of nominations, or such other period unanimously agreed by Ministers, all the nominations will be submitted to the Standing Council for a vote on whether to recommend a nominee for appointment as Regulator/Chief Executive or Assistant Commissioner(s), with a recommendation to appoint or remove the Regulator/Chief Executive or Assistant Commissioner(s) carried if unanimously agreed by Ministers.
  - (d) In determining whether to support a candidate for appointment, Ministers will ensure that a candidate's skills and expertise are commensurate with the requirements of the national rail safety regulator (NRSR) and the national rail safety law, and that there is an appropriate balance of skills and expertise.
  - (e) The South Australian Minister, in accordance with a nomination of the Standing Council, will formally appoint the Regulator/Chief Executive and Assistant Commissioner(s).
  - (f) The South Australian Minister, acting on the advice of the Standing Council, will only have the power to remove the Regulator/Chief Executive and Assistant Commissioner(s) for incapacity, incompetence or misbehaviour, in accordance with the provisions of the national rail safety law.

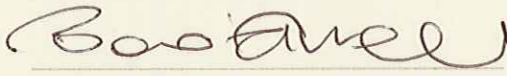
The Parties have confirmed their commitment to this Agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by




**The Honourable Julia Gillard MP**  
Prime Minister of the Commonwealth of Australia  
19 August 2011

Signed for and on behalf of the State of New South Wales by



**The Honourable Barry O'Farrell MP**  
Premier of the State of New South Wales  
19 August 2011

Signed for and on behalf of the State of Victoria by



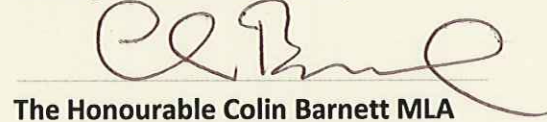
**The Honourable Ted Baillieu MLA**  
Premier of the State of Victoria  
19 August 2011

Signed for and on behalf of the State of Queensland by




**The Honourable Anna Bligh MP**  
Premier of the State of Queensland  
19 August 2011

Signed for and on behalf of the State of Western Australia by



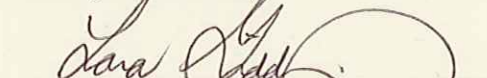
**The Honourable Colin Barnett MLA**  
Premier of the State of Western Australia  
19 August 2011

Signed for and on behalf of the State of South Australia by



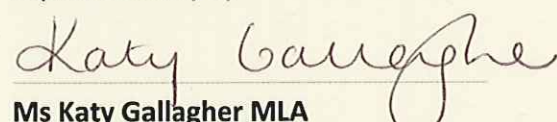
**The Honourable Mike Rann MP**  
Premier of the State of South Australia  
19 August 2011

Signed for and on behalf of the State of Tasmania by




**The Honourable Lara Giddings MP**  
Premier of the State of Tasmania  
19 August 2011

Signed for and on behalf of the Australian Capital Territory by



**Ms Katy Gallagher MLA**  
Chief Minister of the Australian Capital Territory  
19 August 2011

Signed for and on behalf of the Northern Territory by



**The Honourable Paul Henderson MLA**  
Chief Minister of the Northern Territory of Australia  
19 August 2011