

Memorandum of Understanding

Between the

Independent Transport Safety and
Reliability Regulator (NSW)

And the

Australian Transport Safety Bureau

1. The Parties

The Independent Transport Safety and Reliability Regulator

- 1.1 The Independent Transport Safety and Reliability Regulator (ITSRR) of 201 Elizabeth Street, Sydney NSW is established as a statutory corporation under section 42B of the *Transport Administration Act 1988* (NSW) (TA Act).
- 1.2 ITSRR's Officers are authorised under the *Rail Safety Act 2002* (NSW) (RS Act) to investigate railway incidents.
- 1.3 ITSRR's principle objective is to facilitate the safe operation of transport services in NSW. In addition, ITSRR as the rail regulator is also responsible for administration of the RS Act and conducts compliance investigations into potential breaches of that Act and the Regulations made under it.

Australian Transport Safety Bureau

- 1.4 The Australian Transport Safety Bureau (ATSB) of 15 Mort Street, Canberra City ACT is an operationally independent bureau within the Australian Government's Department of Transport and Regional Services (DOTARS). Under the *Transport Safety Investigation Act 2003* (CTH) (TSI Act), the Executive Director of Transport Safety Investigation in the ATSB is responsible for the investigation of transport safety matters including safety matters within the rail system. The ATSB conducts its investigations in accordance with 'no-blame' principles and independently of other government agencies and private organisations.
- 1.5 In performing its functions under the TSI Act, for the rail mode of transport, the ATSB's primary focus is the investigation of serious rail safety occurrences on the DIRN.

2. Purpose

- 2.1 The primary purpose of this Memorandum of Understanding (MoU) is to outline the respective roles and responsibilities of, and the relationship between, ITSRR and the ATSB (together 'the parties') in relation to the investigation of rail safety occurrences in NSW.
- 2.2 Specifically, this MoU sets out procedures and working arrangements to assist the parties through a framework designed to deliver a co-operative relationship with respect to the:
 - (a) notification of occurrences between the parties;
 - (b) coordination of concurrent rail safety investigations by the parties; and
 - (c) sharing of information between the parties.
- 2.3 The parties recognise that they each have separate and independent roles under their governing legislation but they acknowledge the benefits of a constructive and co-operative relationship. However, nothing in 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. Interpretation and Definitions

3.1 Definitions

Category A Notifiable Occurrence¹ has the same meaning as defined in schedule 2 of the *Rail Safety (General) Regulation 2003* (NSW).

Category B Notifiable Occurrence has the same meaning as defined in schedule 2 of the *Rail Safety (General) Regulation 2003* (NSW).

Concurrent Investigation means an occurrence which is the subject of parallel, but separate investigations, by ITSRR and the ATSB.

DIRN means the Defined Interstate Rail Network as published by the Code Management Company (Australian Railway Association).

Immediately Reportable Matter² has the same meaning as in regulation 4.3 of the *Transport Safety Investigation Regulations 2003* (CTH) (TSI Regulations). Note that regulation 4.1 of the TSI Regulations means that the occurrence must have happened on the DIRN for it to be reportable.

Protection Order means an order issued by the ATSB protecting evidence from removal or interference under section 43 of the TSI Act.

Rail Commander means a person, usually a representative of the track owner or rolling stock operator, who coordinates the implementation of railway response plans and investigation activities following the release of a site by the Site Controller, including ensuring that the immediate area in the rail corridor where the occurrence takes place is made safe.

Rail Safety Occurrence includes a **Category A Notifiable Occurrence**, a **Category B Notifiable Occurrence** and a **Transport Safety Matter** as defined by section 23 of the TSI Act.

Restricted Information means information obtained by the ATSB, as defined in section 3 of the TSI Act and protected by section 60.

¹ The definitions of a Category A Occurrence (RS Act) and Immediately Reportable Matter (TSI Act) are largely based on the definition of a Category A occurrence in the Australian Standard 4292.1 Appendix C. Both terms cover occurrences that are serious incidents however there are differences. For example the TSI Act definition of an Immediately Reportable Matter does not include a death or serious injury that was intentionally self inflicted.

² As per footnote 1.

Site Controller means a person, usually a police officer, who controls access to the site of an 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, prior to the commencement of investigation activities.

Train Safety Record has the same meaning as described in section 61 of the RS Act 2002.

Train Safety Recording has the same meaning as described in section 61 Definitions of the RS Act 2002.

3.2 Interpretation

- (a) A reference in this MoU to a document (including to a Code) is a reference to that document as amended from time to time; and
- (b) A reference in this MoU to legislation is a reference to that legislation as in force from time to time.

4. Principles

- 4.1 The parties will have regard to the following principles in the application of this MoU:
 - (a) Both parties have a common interest in, and responsibility for, the promotion of rail safety; and
 - (b) The officers of ITSRR and the ATSB each have statutory powers to conduct investigations, but do so for different purposes.

5. Relationship between the ATSB and OTSI

- 5.1 The NSW Office of Transport Safety Investigations (OTSI) and the ATSB conduct investigations for similar purposes. While recognising that the ATSB's main concern will be with Immediately Reportable Matters on the DIRN, where it appears that both the ATSB and OTSI are interested in conducting an investigation into a rail safety occurrence, the ATSB will resolve the matter separately with OTSI.

6. Notification

- 6.1 It is agreed that in the first instance, the ATSB will seek notification from OTSI of any Category A Occurrence that is an Immediately Reportable Matter.
- 6.2 If, however, ITSRR knows that the ATSB is not aware of a Category A Occurrence, that is an Immediately Reportable Matter which has occurred on the DIRN, it will seek to inform the ATSB as soon as is reasonably practicable via their notification line as listed in schedule C.

- 6.3 If the ATSB becomes aware of a Category A or Category B Occurrence that it knows ITSRR is not aware of, the ATSB will notify ITSRR as soon as is reasonably practicable via their notification line as listed in schedule C.

7. Decision to Investigate

- 7.1 The parties agree to provide advice to each other, as soon as is reasonably practicable, of their respective decisions to conduct an investigation into a Category A Occurrence on the DIRN that is an Immediately Reportable Matter in NSW.
- 7.2 If the ATSB decides to conduct an investigation into a Rail Safety Occurrence that is not an Immediately Reportable Matter, it will inform ITSRR as soon as is reasonably practicable where that occurrence was in NSW.
- 7.3 To facilitate a decision being made under either clause 7.1 or 7.2 of this MoU, the parties, subject to clause 9, agree to provide each other with as much information about a Rail Safety Occurrence, as appropriate, to assist with making a decision to investigate.
- 7.4 The ATSB will apply the ATSB policy guidelines for ‘The Investigation of Rail Safety Occurrences on the DIRN’ as to the degree of safety value the investigation may yield and what resources will be put into such an investigation. Schedule A contains the guidelines.
- 7.5 In cases where the ATSB discontinues its investigation it will notify ITSRR as soon as reasonably practicable.
- 7.6 ITSRR acknowledges that its decisions and actions in respect of initiating and conducting an investigation may affect an ATSB investigation and have implications under the TSI Act. ITSRR will be mindful of the effects of its decisions on ATSB investigations when it decides to take any action.³

8. Concurrent Investigations

Initial Coordination:

- 8.1 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:

³ Note that section 24 of the TSI Act requires persons to refrain from engaging in conduct that is reckless as to whether it may adversely affect an ATSB investigation that could be conducted into an Immediately Reportable Matter. However, there are exceptions for emergency responders (in subsection 24(2)) and the ATSB can authorise conduct that may be reckless as to whether it will adversely affect an ATSB investigation.

A person is reckless with respect to an adverse affect occurring if:

(a) he or she is aware of a substantial risk that the adverse affect will occur; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

- (a) appoint a lead officer and lead investigator, for ITSRR and the ATSB respectively, through whom coordination can be effected;
- (b) make contact prior to deployment to provide details of the lead officer and the lead investigator;
- (c) inform each other of protocols, processes, concerns or restrictions related to the site, evidence or investigation, in accordance with arrangements in 8.2-8.8;
- (d) coordinate, where possible, actions onsite to avoid duplication and to ensure that neither party interferes with the other party's investigation;
- (e) discuss and negotiate the collection of physical evidence, information and material;
- (f) the ATSB informing ITSRR when a protection order⁴ is issued to eliminate potential interference with evidence referred to in the protection order.

On-site coordination:

8.2 If the parties arrive onsite at the same time, they will seek a joint briefing from any Site Controller or Rail Commander who may be present on arrival. Nothing in this MoU, however, precludes either party from seeking a briefing independently, prior to or after the arrival of the other party.

8.3 The parties will ensure to the greatest extent practicable that:

- (a) clearance is sought from the Site Controller prior to commencing any investigatory activities;
- (b) The party arriving on-site first informs the Police, emergency service or other investigating bodies of the imperative of ensuring that every effort is made to prevent disturbance of evidence at the site. However, it is understood that emergency services personnel, while liaising with ITSRR and the ATSB where possible, must be able to perform their jobs to:
 - i. ensure the safety of persons, animals or property;
 - ii. remove deceased persons or animals from an accident site;
 - iii. move a transport vehicle, or the wreckage of a transport vehicle, to a safe place;
 - iv. protect the environment from significant damage or pollution; and
- (c) The ATSB will inform emergency services, Police and ITSRR of any protection order and any such evidence protected by it.

Evidence Collection, Continuity and Retention

This clause does not apply to Train Safety Recordings or any device or item from which any such Train Safety Recordings can be downloaded or otherwise obtained. Please see clauses 8.5 to 8.8 below in respect of these recordings.

8.4 In order to ensure co-operation and co-ordination in relation to evidence at the site of the Rail Safety Occurrence, the parties agree:

- (a) to make any physical evidence available for inspection to each other and not to move, take, dismantle, change or alter any such piece of evidence

⁴ A Protection Order may be issued under section 43 of the TSI Act by ATSB over the site, or parts thereof, requiring that the evidence must not be removed or interfered with by any party except as provided for in subsection 43(4) or with the permission of the Executive Director/Delegate of ATSB.

- without providing the other party, where practicable, with the opportunity to conduct a detailed inspection of it insitu;
- (b) to the ATSB having prima facie priority with regard to the removal and retention of evidence that both parties are seeking. However, the ATSB's lead investigator must discuss with ITSRR's lead officer ITSRR's interests in the evidence and whether the ITSRR should be the party to take custody of the evidence. The parties may agree that the ITSRR should be the party to remove and retain the evidence;
 - (c) to ensuring that the removal and retention of evidence is conducted in line with appropriate chain-of-evidence protocols;
 - (d) that subject to the information exchange considerations in clause 9 of this MoU, if the ATSB retains physical evidence acquired during an investigation, that evidence will be made available for ITSRR to view or analyse following a written request by ITSRR to the ATSB in accordance with clause 10 of this MoU⁵;
 - (e) subject to the information exchange considerations in clause 9 of this MoU, if ITSRR retains physical evidence acquired during an investigation, that evidence will be made available for the ATSB to view or analyse following written request by the ATSB to the ITSRR in accordance with clause 10 of this MoU; and
 - (f) that the Lead Officer and Lead Investigator will provide to each other, through documented or verbal means, appropriate details of the physical and other evidence collected at the site, at a time convenient to the parties.

Train Safety Recordings

- 8.5 The parties acknowledge that failure to gain access to relevant Train Safety Recordings, or a transcript of them, may adversely affect the conduct of their respective investigations.
- 8.6 Acknowledging clause 8.5, the parties agree that if it is practicable and appropriate, in the first instance, they will (either jointly or individually) take reasonable steps to ensure that the owner/operator will download the relevant Train Safety Recordings with both parties present:
- (a) at or near the occurrence site; or
 - (b) if the rail vehicle has left the occurrence site, at or near the site where the rail vehicle is located.
- 8.7 If the Owner/Operator is unable to download the relevant Train Safety Recordings in accordance with clause 8.6, the ATSB will take possession of the device from which the Train Safety Recording is able to be downloaded in accordance with appropriate chain-of-evidence procedures and will conduct a download.
- 8.8 Acknowledging clause 8.5 above, after downloading the relevant Train Safety Recording, in accordance with clause 8.7, the ATSB will promptly return the

⁵ Depending on the circumstances of the case in question, it may be appropriate for ITSRR to make such a written request under subsection 45(6) of the TSI Act.

device from which the Recording was downloaded to the Owner/Operator concerned and will promptly notify ITSRR that it is returning the device.

9. Information Exchange

- 9.1 Nothing in this MoU requires either party to disclose information that is legally privileged, confidential or otherwise protected or prohibited by law from disclosure.
- 9.2 For the ATSB, any information classified as Restricted Information under the TSI Act, will be considered sensitive as staff members are bound by the confidentiality provisions in section 60 of the TSI Act. Disclosure of Restricted Information in circumstances where that information may facilitate blame being attributed to a person or organisation can limit the free flow of that information to the ATSB in the future.
- 9.3 For ITSRR, sensitivities may arise in disclosing information where that disclosure will have an adverse impact, or potential adverse impact, on any investigation it conducts.

Considerations on the release of information:

- 9.4 In the first instance, and wherever practicable, both parties will seek and request information from its original source to minimise the use of formal requests for the release and exchange of information between the parties.
 - 9.4.1 However:
 - (a) if the ATSB is the only source of the information, or it is impracticable to obtain it from anywhere else, the ATSB will consider the release of the information in accordance with the applicable law and any sensitivities attached to the documentation; or
 - (b) if the ITSRR is the only source of the information, or it is impracticable to obtain it from anywhere else, the ITSRR will consider the release of the information in accordance with the governing law and any sensitivities attached to the documentation.
 - 9.4.2 Schedule B provides guidance on the discretions that the ATSB may apply to the release of information that is categorised as Restricted Information.
- 9.5 Notwithstanding the considerations with respect to the release of information outlined in clause 9.4 of this MoU, the ATSB agrees that where it becomes aware of a potentially significant time-critical safety issue, it will immediately provide the necessary safety information to ITSRR, in accordance with the release provisions of the TSI Act, so that timely safety action may be taken. This information is likely to be supplied in the form of a safety recommendation issued as a report under section 25 of the TSI Act.

10. Form of requests for physical evidence (including documents)

ATSB requests to ITSRR

- 10.1 Where the ATSB requests physical evidence from ITSRR for the purpose of an investigation under the TSI Act, the ATSB will request that physical evidence through a 'notice to produce', issued under section 32 of the TSI Act.
- 10.2 Such requests will be addressed to the CEO of ITSRR, with a carbon copy to the Lead Officer, as nominated by the party, where a concurrent investigation is underway.
- 10.3 The Notice to Produce and any attached documentation may be served via post, fax or electronic means.
- 10.4 Where the notice to produce seeks the disclosure of information that is a Train Safety Record⁶ by ITSRR, and the ATSB is aware that such information is a Train Safety Record:
 - 10.4.1 The notice to produce should be accompanied by a letter indicating the reasons why the disclosure to the ATSB is necessary or desirable and in the public interest.
 - 10.4.2 Upon receipt of a request, the ITSRR will prepare a brief to the Minister recommending a course of action.
 - 10.4.3 The ITSRR will convey to the ATSB any decisions reached by the Minister, and if consent is granted, the ITSRR will forward the documents as soon as practicable to the ATSB.
 - 10.4.4 The ATSB position, if consent is not granted, is that the TSI Act overrides the RS Act.

ITSRR requests to ATSB

- 10.5 Any requests for information by ITSRR to the ATSB, will be in writing and be addressed to the Executive Director ATSB with a carbon copy to the team leader, Rail Safety Investigations where a concurrent investigation is underway.
- 10.6 The request may be served via post, fax or electronic means.

⁶ Section 72 of the RS Act provides that it is an offence for ITSRR to directly or indirectly disclose or produce the whole or part of a Train Safety Record to any person. Section 71 provides that ITSRR may disclose to a Commonwealth authority the whole or part of a Train Safety Record with the consent of the NSW Minister. Disclosure must be in the public interest.

11. ATSB Investigation Reports

- 11.1 The ATSB will provide a copy of the draft final report for every investigation it conducts into a rail safety occurrence in NSW to ITSRR, for the purpose of ITSRR making a submission to the ATSB on the report or to take safety action on the basis of the report's findings.
- 11.2 All submissions are to be made in writing within 28 days (or as otherwise agreed) of the date of the ATSB's covering letter.
- 11.3 As appropriate, ITSRR agrees to provide comment on any errors of fact, exclusion of factual information and any inconsistencies with any concurrent investigation being conducted by ITSRR.
- 11.4 Submissions from ITSRR will be considered and may be incorporated into the final report if the ATSB considers this appropriate and where supporting evidence has been provided. ITSRR may make suggestions to the ATSB in respect of the inclusion of final safety recommendations.
- 11.5 Following consideration of ITSRR's submissions, the ATSB will inform ITSRR of whether it has accepted or rejected submissions having a direct impact on the functions of ITSRR prior to the release of the final report.
- 11.6 The ATSB will send ITSRR a copy of the final report 8 working days prior to the release of the final report.

12. Safety Action

- 12.1 The ATSB will acknowledge safety actions taken, or intended to be taken, by ITSRR, in response to safety issues identified during the course of an ATSB investigation. Information about safety actions taken will be included in the investigation report to the extent reasonable and practicable. The ATSB encourages safety action that obviates the need to make safety recommendations.
- 12.2 Where ITSRR intends to or has taken safety actions in response to a Rail Safety Occurrence, ITSRR will provide the ATSB with appropriate notification as soon as practicable.
- 12.3 The ATSB may issue formal recommendations to ITSRR at any time during or at the completion of an investigation. In making recommendations for action by ITSRR, the ATSB will generally identify as far as practicable, only the safety issue and the need to address it. The ATSB will liaise with ITSRR prior to a recommendation being made.
- 12.4 Unless otherwise agreed, within 60 days of the ATSB issuing a recommendation to ITSRR, ITSRR agrees to respond to the ATSB in writing. The written response will contain clear statements of acceptance, partial acceptance or rejection of each recommendation. The written response may also contain information detailing the timetable and procedures for implementing the

recommendations or part thereof; or provide a full explanation for the decision not to implement any recommendation or part thereof, and identify any alternative action proposed. The ITSRR response may also identify which part of the written response is intended for publication.

12.5 Where a recommendation is formally issued prior to the final report, the responses will be included in the final report where time permits and to the extent appropriate. The ATSB will, as a minimum, publish a summary of recommendations directed to ITSRR, including ITSRR's responses to those recommendations, on the ATSB's web site.

12.6 Where consideration and implementation of a recommendation is protracted, ITSRR will inform the ATSB of progress at regular intervals as agreed between the parties.

13. Review and Termination of MoU

13.1 Subject to clause 13.2 this MoU may only be amended by a document signed by or on behalf of each of the parties.

13.2 Information contained within the schedules may be amended at any time by the party who provided the information, so long as it is communicated to the other party within a reasonable time.

13.3 The parties will formally review this MoU after one (1) year from the date of execution and three (3) yearly thereafter.

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

13.5 Authorisation for amendment or termination of this MoU must be signed by the CEO of ITSRR and the Executive Director of the ATSB.

14. General

14.1 Counterparts

This document may be executed in counterparts and those counterparts, taken together, form the MoU.

14.2 Exchange

The parties may exchange this document by facsimile, however they must, within a reasonable time after execution, cause an original of this document to be served on the other party at the addresses contained in clauses 1.1 and 1.4 of this MoU".

14.3 Relationship with other MoU's

This MoU, once executed, revokes the MoU between the ATSB and the New South Wales Rail Safety Regulator for the Investigation of Rail Safety Occurrences on the Defined Interstate Rail Network, dated 8 August 2003.


However, this MoU, once executed, is separate from and has no effect on the arrangements agreed between the ATSB and ITSRR, in the MoU between the ATSB and the Rail Safety Regulators concerning the Working and Business Arrangements for the National Rail Occurrence Database (NROD), dated 21 April 2005.

Execution

Signed on Behalf of ITSRR by Carolyn Walsh, Chief Executive Officer
on this 11 day of OCTOBER 2006.


Signature

Signed on Behalf of ATSB by Kym Bills, Executive Director
on this 17th day of OCTOBER 2006.


Signature

Schedule A **ATSB Policy guidelines for the Investigation of Rail Safety Occurrences on the DIRN**

The ATSB is resourced each year to undertake a finite number of more complex and medium complexity rail investigations on the Defined Interstate Rail Network (DIRN). It is acknowledged, however, that an occurrence with a large number of deaths (not including an occurrence that was primarily a road accident) would represent a ‘major accident’ and supplementary funding may be required.

In categorising rail accidents and incidents and selecting which of those the ATSB should investigate, the decision-makers must consider:

1. The potential safety value that may be gained by conducting an investigation;
2. On board fatalities and/or serious passenger injuries;
3. The public profile of the occurrence;
4. The extent of resources available and projected to be available; and, in the event of conflicting priorities,
5. Any risks associated with not investigating; and
6. The requirement under s21 (2) of the TSI Act for the Executive Director to publish reasons (justification) for discontinuing an investigation where an investigation has already commenced.

The following broad hierarchy should also be taken into account when making the decision to initiate and categorise an investigation:

1. Passenger operations;
2. Freight and other commercial operations; and
3. Non-commercial operations.

The decision to investigate will also have regard as to whether, in the absence of an ATSB investigation, a credible safety investigation is likely.

In view of these considerations, initiation of a formal ATSB investigation can only be made at or above Team Leader level after discussion and agreement with the Deputy Director and/or Director and Executive Director. Each investigation will be categorised on a scale of 1 –5 (see below).

Following the initial assessment of an occurrence a decision will be made whether or not to conduct a field investigation. Unless otherwise agreed by the Executive Director, all occurrences will initially be categorised at level 4. Subsequently an investigation may be upgraded or downgraded. The decision to upgrade (and commit extra resources) or to downgrade must be made at deputy Director level or above after discussion with the Director and/or Executive Director. Any decision to discontinue an investigation must be endorsed by the Executive Director.

The following guidance on the categorisation of rail occurrences is intended to serve as a suggested starting point based on initial information. In addition, this guidance is not intended to cover all possible scenarios but illustrates a broad range of typical events. It is expected that judgment will be required in order to categorise some events which do not neatly fit these categories or where the circumstances, potential safety value and available resources suggest that they should be assigned a different category.

CATEGORY 1

- An *accident* involving one or more trains resulting in large scale fatalities and serious injuries, property damage and intense public interest.

CATEGORY 2

- An *accident* involving one or more trains with 5 or more fatalities (except where it is primarily a road accident) plus serious injuries, property damage and intense public interest.

CATEGORY 3

- An *accident* involving one or more trains with less than 5 fatalities (except where it is primarily a road accident), serious injuries and property damage.
- An *accident* involving one or more trains with serious injuries and property damage (except where it is primarily a road accident) where there was a significant risk of fatalities or serious injuries ('on-train' or 'off-train'), substantial property damage and a substantial commitment of investigative resources is likely to significantly mitigate the possibility of future accidents.
- A *serious incident* involving one or more trains and/or failure of a safety management system where there was a significant risk of multiple fatalities and serious injuries and a substantial commitment of investigative resources is likely to significantly mitigate future passenger train accidents.
- An *accident* involving one or more trains at an active level crossing where an investigation is likely to significantly mitigate future accidents.
- Occurrences indicating a trend that may involve serious safety deficiencies.

CATEGORY 4

- An *accident* involving one or more trains without fatalities or serious injuries and without substantial property damage where investigation is likely to contribute to mitigating future accidents.
- A *serious incident* involving one or more trains and/or failure of a safety management system where a limited commitment of investigative resources could contribute to mitigating future accidents.
- An *accident* involving one or more trains at a passive level crossing where a limited commitment of investigative resources could mitigate future accidents.
- Any other significant safety occurrence not included in the preceding categories.

CATEGORY 5

- An *accident* or *serious incident* where another competent body will be conducting an investigation and available resources do not allow for an ATSB investigation.
- An *accident* involving one or more trains without fatalities where the potential safety lessons do not, after initial review, justify the commitment of investigative resources within available funds. Data will be filed for statistical purposes
- An *accident* involving one or more trains with 'off-train' fatalities at a passive level crossing which is primarily a road accident.
- An *accident* or *serious incident* involving one or more trains and/or failure of a safety management system where the potential safety lessons do not, after initial review, justify the commitment of investigative resources. Data will be filed for statistical purposes.

Note: Fatalities do not include suicides or 'train surfers'

Schedule B

ATSB Policy for the Release of Restricted Information

The following policy shall apply to the release of various types of Restricted Information by the ATSB:

(a) Statements (whether oral or in writing) obtained from persons by a staff member in the course of an investigation (including any record of such a statement) under the TSI Act

- Statements will not be released to ITSRR or to any other party seeking access because of the guarantees of confidentiality that the ATSB provides in relation to such statements. It's important that the industry does not perceive the ATSB to be exercising any discretion in relation to the release of interview statements.

(b) Information recorded by a staff member in the course of an investigation under the TSI Act

- Where this information represents basic, verified factual information - for example, site survey data - such information would be considered for release after it has been verified by the ATSB. The Executive Director would consider each request on a case by case basis and would need to take into account how doing so may impact on any Directly Involved Parties.

(c) Communications with persons involved in the operation of a transport vehicle that was or is the subject of an investigation under the TSI Act

- This category of information would normally cover train control recordings. The ATSB will advise ITSRR to obtain this evidence from the original source.
- Where advised in writing that it is not possible to obtain this evidence from the original source, including relevant justification, the ATSB will reconsider the request and may release the evidence to ITSRR.

(d) Medical or private information regarding persons (including deceased persons) involved in a transport safety matter that is or has been investigated under the TSI Act

- The ATSB will advise ITSRR to obtain medical and private information from its original source.
- However, where requested, the ATSB may provide ITSRR with the details of witnesses that have been interviewed for the purpose of its investigation.

(e) In relation to a transport vehicle that is or was the subject of an investigation under the TSI Act – information recorded for the purpose of directing or monitoring the progress of a vehicle from one place to another or information recorded in relation to the operation of the vehicle

- This category of restricted information includes a variety of recorded information such as that from data loggers.
- The ATSB will advise ITSRR to obtain this information from the original source.
- Where advised in writing that it is not possible to obtain this evidence from the original source, including relevant justification, the ATSB will reconsider the request and may release the evidence to ITSRR.

(f) Records of any analysis of information or evidential material acquired in the course of an investigation (including opinions expressed in that analysis)

- This category of restricted information would include analysis carried out by ATSB personnel as well as external personnel assisting the ATSB either under contract or by other agreed arrangements, for example, technical analysis of components or human factors analysis.
- The Executive Director would need to be convinced on a case by case basis that the circumstances warranted the release of this type of restricted information.

(g) Information contained in a document that is produced to a staff member under paragraph 32(1) (b) or 36(3) or (4) (a) of the TSI Act

- This category of restricted information has been obtained under compulsion powers in order to keep it confidential. The ATSB will advise ITSRR to seek this information from its original source.

	ATSB	ITSRR
Notification:	Phone: 1800 011 034	Phone: (02) 8263 7211 E-mail: occurrences@transportregulator.nsw.gov.au
Organisation address:	Australian Transport Safety Bureau PO Box 967, Civic Square ACT 2608	Independent Transport Safety and Reliability Regulator Level 22, 201 Elizabeth Street, Sydney 2000
Organisation address:	<p>Executive Director ATSB: Kym Bills Phone: (02) 6274 6456 Fax: (02) 6274 6474 E-mail: Kym.Bills@atsb.gov.au</p> <p>Deputy Director Surface Safety: Peter Foley Phone: (02) 6274 7183 Fax: (02) 6274 6699 E-mail: Peter.Foley@atsb.gov.au</p> <p>Team Leader Rail Safety: Mark Stallbaum Phone: (08) 8110 2272 Fax: (08) 8110 2280 E-mail: Mark.Stallbaum@atsb.gov.au</p>	<p>Chief Executive Officer ITSRR: Carolyn Walsh Phone: (02) 8263 7185 E-Mail: carolyn.walsh@transportregulator.nsw.gov.au</p> <p>Director Rail Audit, Accreditation & Compliance: Colin Holmes Phone: (02) 8263 Mobile: 0418 440 356 Fax: (02) 8263 7153 E-mail: colin.holmes@transportregulator.nsw.gov.au</p> <p>Team Leader Compliance Investigation: Alan Lidbetter Phone: (02) 8263 Mobile: 0418 254 270 Fax: (02) 8263 7153 Email: alan.lidbetter@transportregulator.nsw.gov.au</p>