



Heads of Workplace Safety Authorities
Australia and New Zealand



Memorandum of Understanding

between

Office of the National Rail Safety Regulator (ONRSR)

and

Workplace Safety Authorities

Comcare

Victorian WorkCover Authority ('WorkSafe Victoria')

SafeWork NSW

Office of Industrial Relations (Queensland)

SafeWork SA

NT WorkSafe

WorkSafe Tasmania

for the period 2018 to 2021

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1.1 Background

The Office of the National Rail Safety Regulator (ONRSR) commenced administration on 20 January 2013. ONRSR is an independent body corporate established under the *Rail Safety National Law (South Australia) Act 2012*. It was formed to replace seven jurisdictional based rail safety regulators with a single national rail safety regulator. The primary objectives of ONRSR are to encourage and enforce safe railway operations and to promote and improve national rail safety.

The Workplace Safety Authorities are responsible for administering each jurisdiction's work health and safety legislation, with the aim of achieving the best possible work health, safety and welfare (WHS) and public safety outcomes. The Heads of Workplace Safety Authorities (HWSA) is a forum of agency leaders that coordinates national WHS policy interventions with an emphasis on the implementation of the *Australian Work Health and Safety Strategy 2012-2022*.

ONRSR and the Workplace Safety Authorities recognise that there is significant overlap in their areas of safety regulation. Both parties recognise that it is mutually beneficial to establish a cooperative relationship on cross operational issues between ONRSR and the Workplace Safety Authorities.

This Memorandum of Understanding (MOU) sets out arrangements to promote effective communication, cooperation and coordination between ONRSR and the Workplace Safety Authorities.

1.2 Purpose

The purpose of this MOU is to promote a collaborative, best practice approach to the administration of rail safety and WHS regulation. The joint goals of ONRSR and the Workplace Safety Authorities in entering into this MOU are to improve communication and reduce duplication, influence a reduction in the quantity and severity of safety incidents, and provide consistent outcomes for industry.

This MOU seeks to:

- a) ensure that the parties are aware of each other's regulatory functions
- b) embed the concept of ongoing regulatory collaboration between the parties
- c) facilitate the provision of advice and the sharing of information between the parties in a timely and efficient manner
- d) acknowledge the expertise of the parties in their specific spheres of activity, and
- e) encourage opportunities for combined learning and professional development to enhance service delivery, ensure that the parties take steps to minimise, where possible, the regulatory burden on regulated persons, companies and organisations where both parties are enquiring into the same safety issue.

1.3 Principles

- a) This MOU is not legally binding and parties enter this agreement with the understanding that:
- This MOU provides the framework for cooperation between ONRSR and the Workplace Safety Authorities in relation to the statutory, operational and administrative interactions between the parties
 - The parties acknowledge that ONRSR and the Workplace Safety Authorities each have separate and independent regulatory mandates and roles
 - While recognising each party's independent regulatory mandate and role, the parties are committed to a constructive and cooperative relationship in the common pursuit of safe rail travel and working environments in each state and territory jurisdiction
 - The parties share an understanding of the scope of their individual obligations under this MOU, and
 - The parties may develop protocols at the jurisdictional level for the purpose of providing operational guidance as required.
- b) Parties acknowledge the related MOU on the regulation of dangerous goods transportation by rail in NSW, NT, QLD, SA, TAS, WA and VIC between ONRSR and Competent Authorities.

1.4 Definitions

HWSA	Heads of Workplace Safety Authorities
ONRSR	Office of the National Rail Safety Regulator
Parties	All signatories to this Memorandum of Understanding; including ONRSR and the Workplace Safety Authorities of each Australian jurisdiction.
Non-disturbance notice	As defined in the RSNL at section 4 and in occupational health and safety legislation in a given jurisdiction.
Railway premises	As defined in section 4 of the <i>Rail Safety National Law</i> .
RSNL	The Rail Safety National Law which has been enacted as a schedule to the <i>Rail Safety National Law (South Australia) Act 2012 (SA)</i> .
RTO	Rail transport operator accredited for rail operations under the RSNL.
Significant property damage	Is damage that: <ol style="list-style-type: none">requires major repairs or replacement of the property; and/oraffects the structural integrity, performance or operational characteristics of the train, rolling stock, and/or rail and civil infrastructure.
Workplace Safety Authorities or WSA	The agencies responsible for administering occupational health, safety and welfare legislation in each state and territory that are listed in Appendix A and are signatories to this MOU.

Other rail-specific terms are defined in the RSNL.

2 Responsibilities and authorities

2.1 Office of the National Rail Safety Regulator

ONRSR administers the RSNL, as passed in each participating jurisdiction. In doing so, ONRSR administers the accreditation regime under the RSNL and works with rail transport operators, rail safety workers and others involved in railway operations to improve rail safety nationally. In addition, ONRSR monitors, investigates and enforces compliance with the RSNL.

2.2 The Workplace Safety Authorities

The Workplace Safety Authorities are committed to cross-jurisdictional harmonisation and contributing towards the achievement of the targets of the *Australian Work Health and Safety Strategy 2012-2022*, which include a 20 per cent reduction in the incidence of work-related fatalities and a 30 per cent reduction in the incidence rate of claims resulting in one or more weeks off work by 2022.

The Workplace Safety Authorities are committed to providing information, assistance and enforcement activity that improves the capability of industry to conduct business safely, while minimising health and safety risks and identifying causal factors for non-compliance.

3 Scope of cooperation

3.1 Advice and assistance

- a) Parties will reasonably provide advice and assistance where requested.
- b) Parties may request the assistance of technical specialists from another party, where the requesting party does not have access to that technical specialty from within its own workforce.
- c) Requests for assistance should be made through the officers nominated in Appendix A.
- d) This MOU places no obligation on either party to grant access to a technical specialist.
- e) Where assistance is provided, each party will normally bear its own costs.

3.2 Incident notification

- a) When one party becomes aware of a death, serious injury or significant property damage that is (or may be) relevant to the other party, the initial party will inform the other party as soon as practicable. The information provided to the other party is to include a brief description of the incident and details of any planned attendance. It is not necessary to notify the other party of incidents in which suicide or attempted suicide is suspected at the outset.
- b) In the case of a major Category A incident (notifiable occurrence under the RSNL), the Chief Executive, ONRSR (or delegate) will also advise the relevant transport Minister's Office in the state or territory in which the incident occurred.
- c) Appendix B provides further guidance on notifications and jurisdictional interests.

3.3 Coordination at the scene of an incident

- a) Parties undertake where possible to coordinate investigative actions to minimise disruption on site and unintended stress upon persons involved in the incident.
- b) Where it is likely that both parties will investigate with a view to prosecute, the operational contacts (Appendix A) should liaise to see if this can be coordinated and a lead investigator established.

- c) On site, the parties shall take steps to secure the scene and use their best endeavours to ensure the site and any evidence are not disturbed (unless necessary to do so to evacuate injured persons or to render the site safe). If either party has issued a non-disturbance notice they will communicate this to all other parties in attendance.
- d) ONRSR may ask its drug and alcohol testing contractor to undertake tests on RTO staff at the scene.

3.4 Investigations and activities

- a) The parties acknowledge that nothing in this MOU overrides the power any party has to initiate and undertake an investigation in accordance with their statutory responsibilities, and that it may be entirely appropriate to undertake separate investigations of the same occurrence, which may be for different purposes.
- b) Given (a), parties agree to notify one another where an investigation may relate to the other party's area of responsibility.
- c) Appendix B provides guidance as to when such notifications should be made, and the decision making process outlining which party should take the lead investigative role, should this be deemed appropriate.
- d) Parties agree to notify each other, as early as practicable, in relation to compliance and enforcement activities that result in the issuing of a formal notice, initiating of a prosecution or progressing of an enforceable voluntary undertaking judged to be of interest to the other party.
- e) ONRSR and a Workplace Safety Authority may undertake investigations and activities jointly in a state or territory (in accordance with their respective legislation) if this is agreed by both parties to be mutually beneficial.

3.5 Information sharing between the parties

- a) The parties agree to coordinate and share information to the extent that is legally possible in order to reduce regulatory duplication. This includes the sharing of information about regulated rail entities conducting operations within each party's areas of regulatory responsibility.
- b) Each party will take all reasonable steps to ensure that it complies with its legal, policy and administrative requirements which apply to the disclosure and protection of information.
- c) Unless required by law, a party receiving confidential or personal information under this MOU will not disclose that information to a third party without obtaining the prior written consent of the party that originally supplied the information. This clause does not apply to communications between Workplace Safety Authorities.
- d) With respect to any information supplied by the Workplace Safety Authorities to ONRSR (and vice versa), each party agrees to:
 - i. protect the information in a reasonable and appropriate manner in accordance with public sector information standards
 - ii. use and reproduce information only for the purposes outlined in this MOU, and
 - iii. unless required by law, not to disclose or otherwise make available the information other than to staff that need to know that information in order to give effect to the purposes set out in this MOU.
- e) Section d) shall not apply to any information that is:
 - i. publicly known
 - ii. already known by the receiving organisation, or
 - iii. disclosed by the originating party to a third party with express written permission to disclose further (except for any restrictions set out in any relevant legislation).

- f) Where a party is progressing a change or proposed change to legislation or regulation that may affect the other party or parties or the conduct of operations under this MOU, they should consider consulting or informing the other as appropriate.
- g) Media enquiries and social media posts about another party will be referred to that party.

3.6 Training of staff

- a) Parties acknowledge their shared intention that staff are aware of the activities, operations and regulatory responsibilities of the other party.
- b) The parties agree to consider joint training of staff where requested by the other party.

4 MOU management

- a) This MOU is effective from the date it is executed by the parties and will remain effective for a period of 3 years or until such time as it is terminated by the parties.
- b) The parties will attempt in good faith to resolve any dispute arising in relation to this agreement through negotiation:
 - i. In the first instance, the officers of the disputing parties should negotiate to resolve the issue.
 - ii. If the officers in (i) are unable to come to an agreement within 7 days (or immediately, in the case of an on-site dispute) they are to escalate the matter to the officers nominated as primary contacts in Appendix A.
 - iii. If the dispute is unable to be resolved under (ii) within a further 14 days, the matter will be referred in writing to the National Rail Safety Regulator (or his/her nominee) and the Chief Executive of the Workplace Safety Authority (or his/her nominee) for resolution.

Unless precluded by the nature of the dispute, the parties will continue to operate under the MOU while attempts are made to resolve the dispute.

- c) At the conclusion of the term of the agreement, the parties will renegotiate the agreement. The agreement will remain in force during the renegotiation period.
- d) A party will give notice (of not less than 28 days) to the other parties of its intention to withdraw from this MOU. If ONRSR withdraws from the MOU, the MOU will cease to have effect. However, the MOU will continue to have effect in those jurisdictions of the Workplace Safety Authorities that remain signatories if both ONRSR and one or more Workplace Safety Authorities remain as signatories.
- e) The contact persons for matters concerning this MOU are nominated by the parties in Appendix A.
- f) Changes to contact details or agency names over the term of the MOU do not require re-signing of the MOU.
- g) Changes to the MOU should not be made during its term unless agreed by the parties.
- h) Parties will endeavour to ensure this MOU is circulated and easily accessible to all impacted areas of their organisation.
- i) Parties shall each bear their own costs of administering this MOU.

5 Execution

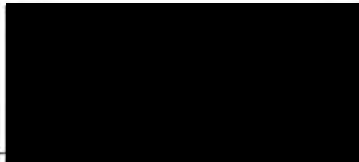
Executed on behalf of ONRSR



Name: Susan Jane McCarrey, Chief Executive

Date: 30/10/2018

Executed on behalf of Comcare



Name: Justin Napier, General Manager

Date: 09.11.2018

Executed on behalf of WorkSafe Victoria



Name: Clare Amies, Chief Executive

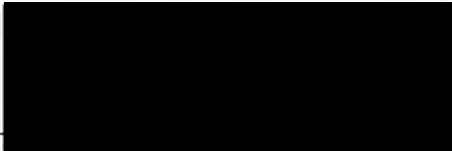
Date: 21/12/18

Executed on behalf of SafeWork NSW


Name: Andrew Gavrielatos, Executive Director

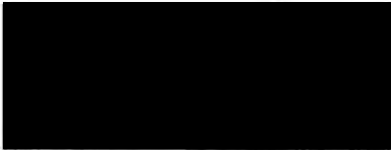
Date: 29.11.18

Executed on behalf of Office of Industrial Relations (Queensland)


Name: Craig Allen, Deputy Director General

Date: 7/1/2020

Executed on behalf of SafeWork SA


Name: Martyn Campbell, Executive Director

Date: 29/11/18

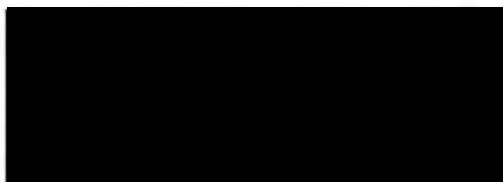
Executed on behalf of NT WorkSafe



Name: Stephen Gelding, Executive Director

Date: 04/12/2018

Executed on behalf of WorkSafe Tasmania



Name: Mark Cocker, Chief Executive Officer

Date: 1/11/2018

Appendix A: Contacts

Primary contacts - ONRSR

ONRSR	Julie Bullas Executive Director, Policy, Reform and Stakeholder Engagement (08) 8406 1550
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Primary contacts – Competent Authorities

Commonwealth	Comcare	Justin Napier General Manager, Regulatory Operations Group (03) 9627 5422
Victoria	WorkSafe Victoria	Julie Nielsen Executive Director Health & Safety 1800 136 089
New South Wales	SafeWork NSW	Andrew Gavrielatos Executive Director (02) 9895 0637
Queensland	Office of Industrial Relations (Queensland)	Craig Allen Deputy Director General, Office of Industrial Relations (07) 3406 9880
South Australia	SafeWork SA	Martyn Campbell Executive Director (08) 8303 0230
Northern Territory	NT WorkSafe	Stephen Gelding Executive Director (08) 8999 5492
Tasmania	WorkSafe Tasmania	Mark Cocker Chief Executive Officer (03) 6166 4744

Occurrence notifications

To ONRSR (via the ONRSR Duty Officer)	1300 550 865 (24 hours / 7 days)
To Comcare	1300 366 979 (WHS Hotline)
To WorkSafe Victoria	13 23 60 (24hr emergency)
To SafeWork NSW	13 10 50
To Office of Industrial Relations (Queensland)	1300 362 128
To SafeWork SA	1800 777 209 (24hr emergency)
To NT WorkSafe	1800 019 115
To WorkSafe Tasmania	1300 366 322

Requests for Assistance	
To ONRSR	Peter Doggett Executive Director National Operations (08) 8406 1520
To Comcare	Justin Napier General Manager, Regulatory Operations Group (03) 9627 5422
To WorkSafe Victoria	Michael Coffey Head of Hazardous Industries and Industry Practice (03) 8663 5002 / 0481 930 624
To SafeWork NSW	Andrew Gavrielatos Executive Director (02) 9895 0637
To Office of Industrial Relations (Queensland)	Helen Burgess Director, Construction Compliance and Field Services 0481 014 901
To SafeWork SA	Martyn Campbell Executive Director (08) 8303 0230
To NT WorkSafe	Neil Burgess Director Operations (08) 8999 5044
To WorkSafe Tasmania	Mark Cocker Chief Executive Officer (03) 6166 4744

Appendix B: Guidance on notifications and jurisdiction

This matrix and accompanying diagram are a guide for identifying agency jurisdiction based on the duty holders involved in the incident. The determination of jurisdiction or a 'lead investigator' for the purpose of investigation and/or prosecution must be made as per agency statutory requirements and in consultation with the other party as relevant.

Incident scenario	ONRSR	Workplace Safety Agency	Comcare	Example:
1. Duty holder is a Comcare licensee (and/or Australian Rail Track Corporation (ARTC)) not at railway premises – not involving railway operations.	No	No	Yes	
2. Duty holders is a State/Territory Employer not at railway premises – not involving railway operations	No	Yes	No	Any workplace – not a railway premises or undertaking railway operations
3. Duty holder is Comcare licensee (and/or ARTC) at railway premises not involving railway operations (for example electrical incident, construction incident not involving railway plant or infrastructure)	No	No	Yes	
4. Duty holder is Comcare licensee (and/or ARTC) at railway premises not involving railway operations (for example electrical incident, construction incident not involving railway plant or infrastructure)	No	No	Yes	Construction site not adjacent to or infringing on live track – not subject to worksite protection issues
5. Duty holder is a Comcare licensee (and/or ARTC) at railway premises involving railway operations (for example construction, maintenance, management or operation of rail infrastructure or rolling stock). Comcare and ONRSR may agree to nominate either Comcare or ONRSR as the "lead" investigator	Yes	No	Yes	

Incident scenario	ONRSR	Workplace Safety Agency	Comcare	Example:
6. Duty holder is a State/Territory Employer at railway premises involving railway operations (for example construction, maintenance, management or operation of rail infrastructure or rolling stock). Workplace Safety Agency and ONRSR may agree to nominate either Workplace Safety Agency or ONRSR as the "lead" investigator	Yes	Yes	No	Construction site/track within the rail corridor – subject to work site protection requirements
7. Multiple Duty holders are involved at incident: - Comcare licensee (and/or ARTC) and - State/Territory Employees, Employers or contractors Not at railway premises – not involving railway operations	No	Yes	Yes	Key entities to be identified to enable level of control and subsequent jurisdiction to be determined
8. Multiple Duty holders are involved at incident: - Comcare licensee (and/or ARTC) and - State/Territory Employees, Employers or contractors at railway premises not involving railway operations (for example electrical incident, construction incident not involving railway plant or infrastructure).	Notify Only	Yes	Yes	

Incident scenario

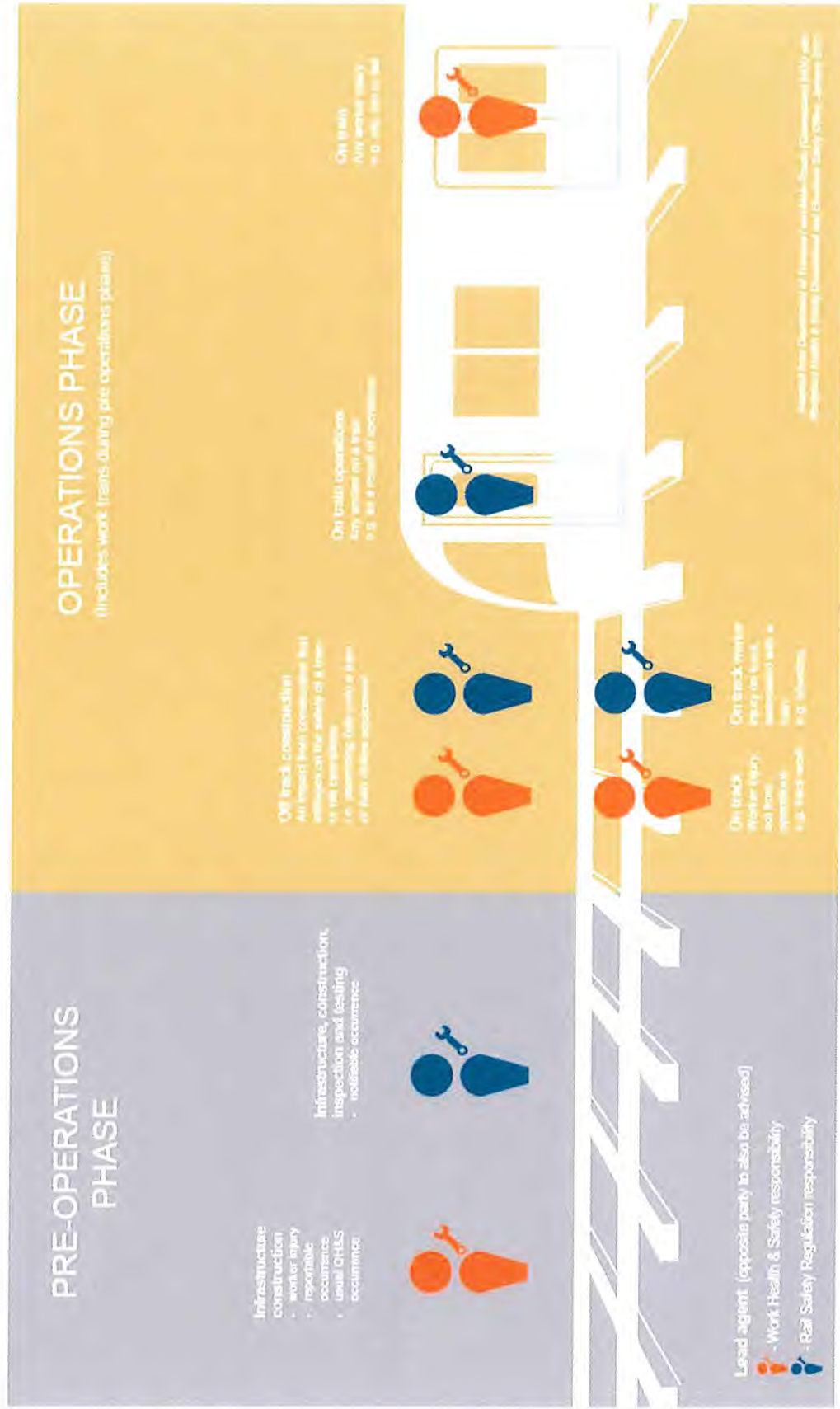
Example:

Comcare

Workplace Safety Agency

ONRSR

Incident scenario	ONRSR	Workplace Safety Agency	Comcare	Example:
<p>9. Multiple Duty holders are involved at incident:</p> <ul style="list-style-type: none"> - Comcare licensee (and/or ARTC) - State/Territory Employees, Employers or contractors <p>at railway premises involving railway operations (for example construction, maintenance, management or operation of rail infrastructure or rolling stock).</p> <p>See step 1-4 – Determine Occupational or Rail Safety failure and State/Territory or National Licensee.</p>	Yes	Yes	Yes	Principal is either a National company or a Comcare licence with NSW sub-contractors. See footnote below
<p>10. Duty holder is a Volunteer organisation at railway premises involving railway operations (for example construction, maintenance, management or operation of rail infrastructure or rolling stock).</p> <p>Workplace Safety Agency and ONRSR may agree to nominate either Workplace Safety Agency or ONRSR as the "lead" investigator.</p>	Yes	Yes	No	Tourist and heritage operator (can be a mix of volunteers and employees)



Notes to the table:

1. “Duty holder” means a holder of a duty with respect to safety under any or all of the following:

- *Rail Safety National Law*
- *Work Health and Safety Act 2011 (NSW)*
- *Work Health and Safety Act 2011 (Cwth)*
- *Work Health and Safety Act 2011 (ACT)*
- *Work Health and Safety (National Uniform Legislation) Act 2011(NT)*
- *Work Health and Safety Act 2011 (QLD)*
- *Work Health and Safety Act 2012 (SA)*
- *Work Health and Safety Act 2012 (Tas)*
- *Occupational Health and Safety Act 2004 (Vic)*

“Comcare licensee” means a licensee under the *Safety Rehabilitation and Compensation Act 1988 (Cth)* operating in the rail industry and includes:

- Pacific National
- John Holland Pty Ltd
- John Holland Rail Pty Ltd

2. When identifying a lead WHS agency - The level of control exercised (or assumed to have been exercised) by the duty holder/s in the matter must be established.

For example - Where Comcare and WorkCover might have a responsibility/interest in a matter. If this was the case, it is most likely that the principal contractor/controller would fall under the jurisdiction of Comcare (ARTC or JHR). If the incident primarily related to a failure or alleged failure of the entity covered by Comcare, then it may be more effective for Comcare to assume responsibility and/or take the lead in the matter.

3. For Scenarios under box 9 of the above matrix:

Step One - Determine the appropriate legislation – Rail Safety and/or WHS

Relevant factors to look at for Rail Safety National Law:

- Is there a Rail Transport Operator (rail infrastructure operator and/or rolling stock operator) or other person carrying out railway operations including commissioning, maintenance, repair, modification or decommissioning of rolling stock or rail infrastructure?
- Are railway premises involved? (for example railways, monorail, light rail (excluding trams in Victoria), stations, platforms, sidings, goods yards, freight terminal with railway)

Step Two - Key entities to be identified to enable jurisdiction to be determined – State/Territory Workplace Safety Agency or Comcare

- **Track Owner and Occupiers** (State/Territory Company such as RailCorp, State/Territory Company owned private siding or National Company such as Australian Rail and Track Corporation (ARTC)).
- **Rail Infrastructure Operator/ Rolling Stock Operator** (State/Territory Company such as RailCorp, National Company such as Pacific National or ARTC)
- **Railway Operations (commissioning, maintenance, repair, modification or decommissioning of rolling stock)** – (State/Territory Company such as United Group, National company such as Pacific National or ARTC)
- **Construction Principal Contractor** (State/Territory Company, Comcare Licensee such as JHR or Joint Venture/Alliance)
- **Sub contracted** – predominantly State/Territory Companies
- **Volunteer organisations** – Rail Heritage Society (can be a mix of volunteers and employees)

Step Three (State/Territory Workplace Safety Agency only) – Determination & Notifications

- **On receipt of notification by Police – liaise with ONRSR & Comcare** ^{**Historically the Police assume Workplace Safety Agency are lead until told otherwise. **}
- Determine Jurisdiction – Workplace Safety Agency or Comcare (if possible) or identify whether both have a role.
- Obtain contact details (mobile phone) for the attending Investigators (Workplace safety agency/ONRSR/Comcare)
- Communicate these details to all parties including the Police with approximate time of arrival (Beneficial for early cooperation/communication between Investigators).

Step Four – Once jurisdiction has been determined - Document that decision and establish a protocol for ongoing liaison, as required.

4. Other jurisdictions

Australian Transport Safety Bureau

The ATSB investigate significant passenger safety incidents such as aircraft crashes, or significant rail crashes. They investigate on a no blame or just culture basis, and they will consider incidents from a human factors perspective. They do not prosecute but they may refer matters to other agencies if legislative breaches are identified.

For more information, visit ATSB's website: <http://www.atsb.gov.au>

Telephone: **1800 020 616 / (02) 6257 4150**