

# Memorandum of Understanding

Establishing regulatory responsibilities in the transportation of dangerous goods by rail in Queensland

between

Queensland Department of Transport and Main Roads

and

Queensland Department of Education

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# Document control options

## Departmental approvals

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# 1. Introduction

## 1.1 Purpose

The purpose of this Memorandum of Understanding (MOU) is to formalise an agreement between the Department of Transport and Main Roads through Land Transport Safety and Regulation Branch and Department of Education through the Office of Industrial Relations about the establishment and communication of collaborative arrangements with responsibilities for safety in the rail industry in Queensland relating to the transportation of dangerous goods by rail.

This MOU seeks to:

- ensure that the Parties are aware of each other's regulatory obligations
- facilitate the provision of advice and the sharing of information between the Parties in a timely and efficient manner
- acknowledge the expertise of the Parties in their specific spheres of activity
- provide for a framework for cooperation between the Parties in relation to statutory, operational and administrative interactions
- recognise each Party's independent regulatory mandate and role.

## 1.2 Legislative scope

This MOU applies to all rail operations covered by the:

- *Transport Infrastructure Act 1994 (Chapter 14)*
- *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2011.*

## 1.3 Related Memorandums of Understanding

Parties acknowledge the following related MOUs:

- Memorandum of Understanding between the Office of the National Rail Safety Regulator and Heads of Workplace Safety Authorities (HWSA).
- Memorandum of Understanding between the Office of the National Rail Safety Regulator and Dangerous Goods by Rail Competent Authorities (which includes the Department of Transport and Main Roads).

## 1.4 Parties to the Agreement

The Parties to this MOU are the:

- Department of Transport and Main Roads (Land Transport Safety and Regulation), and
- Department of Education (Office of Industrial Relations)

## 1.5 Definitions

Certain terms used in this MOU are defined in Schedule 1. However, if a term in Schedule 1 is defined by legislation, the definition in the relevant legislation, as amended from time to time, prevails over the definition in Schedule 1.

## 2. Responsible parties for this Memorandum of Understanding

### 2.1 Role of the parties

As the Dangerous Goods Competent Authority in Queensland, the Director-General (Chief Executive) for the Department of Transport and Main Roads is responsible for the compliance and enforcement of dangerous goods legislation.

The legislation for the safe transport of dangerous goods by rail is the *Transport Infrastructure Act 1994* and *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*.

The Land Transport Safety and Regulation Branch, Department of Transport and Main Roads:

- is responsible for regulating the transportation of dangerous goods by rail under the *Transport Infrastructure Act 1994* and the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*
- develops, implements and maintains state rail safety policy and legislation to enhance rail safety
- participates in the maintenance of national rail safety legislation
- reviews rail operator's incident reports for the transportation of dangerous goods by rail
- assesses applications for exemptions from rail operators responsible for the transport of dangerous goods by rail
- monitors the activities and safety outcomes of individual rail operators responsible for the transport of dangerous goods by rail
- coordinates and undertakes risk-based safety inspections of individual rail operators responsible for the transport of dangerous goods by rail.

Office of Industrial Relations (OIR), Department of Education

- The OIR includes the agencies of Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO). The OIR administers the *Work Health and Safety Act 2011*, the *Safety in Recreational Water Activities Act 2011*, and the *Electrical Safety Act 2002*.
- WHSQ's goal is to foster safe and healthy work environments for all workers in Queensland. The key outcome is a reduction in work-related death, injury and illness in Queensland.

### 2.2 Nominated representatives of the parties

Department of Transport and Main Roads:

- General Manager, Land Transport Safety and Regulation

OIR, Department of Education

- Deputy Director-General, OIR

## 3. Co-operation between the parties

### 3.1 Advice and assistance

The Parties to which this MOU applies acknowledge that both the Department of Transport and Main Roads and OIR, Department of Education are the owners of this MOU.

The Parties agree to observe and comply with this MOU.



The Parties will provide advice and assistance to each other as required and agree to share technical capabilities and collectively develop such advice and guidance where appropriate.

Should each Party require advice, the Parties are to contact the nominated representative of the Party to discuss the issue and agree on a timeframe. Where assistance is provided, each Party will normally bear its own costs.

### 3.2 Policy development

The Parties acknowledge that issues concerning safety in transporting dangerous goods by rail require specific policy development for effective management, and therefore:

- agree to consult and collaborate, where appropriate, in relation to state based rail safety policy that may affect work health and safety
- agree to share information resources or interventions supporting rail safety policy
- agree that, so far as is practicable, standards, industry liaison bodies and consultative arrangements should be made as consistent and harmonious as is possible with respect to safety issues in the rail industry
- undertake to evaluate proposed legislative and/or policy changes to determine whether they will affect the operation and/or implementation of the MOU
- undertake to inform each other of all policy and legislative changes which may impact on the operation or implementation of the MOU
- undertake, where practicable and appropriate, to ensure that their respective policies are consistent with and supportive of this MOU
- agree that where proposed legislative and/or policy changes have the potential to affect the operation of the MOU, the agencies will work together to resolve these issues.

### 3.3 Incident notification

When one Party becomes aware of a Dangerous Situation that occurs in the transport of dangerous goods, the initial Party will notify the other Party in a timely manner via the following email address:

- Office of Industrial Relations: [whsq.aaa@oir.qld.gov.au](mailto:whsq.aaa@oir.qld.gov.au)
- Land Transport Safety and Regulation Branch: [railsafety@tmr.qld.gov.au](mailto:railsafety@tmr.qld.gov.au)

The Parties will advise each other in writing and in a timely manner if an investigation is to be conducted in response to these incidents.

- Office of Industrial Relations: [whsq.aaa@oir.qld.gov.au](mailto:whsq.aaa@oir.qld.gov.au)
- Land Transport Safety and Regulation Branch: [railsafety@tmr.qld.gov.au](mailto:railsafety@tmr.qld.gov.au)

### 3.4 Lead agent

The following table outlines the role of each Party in relation to rail related activities involving dangerous goods.

Lead Agent	Role
Land Transport Safety and Regulation Branch	<ul style="list-style-type: none"> <li>• Regulate the safe transport of dangerous goods by rail in Queensland</li> <li>• Administer the Dangerous Goods by Rail legislation</li> </ul>



Office of Industrial Relations	<ul style="list-style-type: none"> <li>• Administer provisions relating to hazardous chemicals, and those dangerous goods and combustible liquids that are classified as hazardous chemicals</li> <li>• Regulate safety of major hazard facilities</li> </ul>
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### 3.5 Information sharing/disclosure of information

The Parties acknowledge that general information sharing, where it is considered practical and appropriate, will minimise duplication of government resources.

The Parties agree that, subject to legislative provisions, information available to one Party which is relevant to the responsibilities of another Party will be shared as requested. Each Party will provide relevant information to the other Party on a 'best endeavours' basis. This will be subject to any relevant legal and operational considerations and any conditions which the provider of the information might place upon the use or disclosure of the information including compliance with the *Right to Information Act 2009* and *Information Privacy Act 2009*.

Schedule 2 of the MOU contains further details regarding information sharing.

## 4. Investigation Management

Investigations may be conducted in response to those railway related incidents which are determined to be:

- a 'dangerous situation'
- a 'notifiable incident'.

These terms are defined in Schedule 1 which has been replicated from the following Queensland legislation:

- *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*
- *Work Health and Safety Act 2011*

### 4.1 Investigations

Investigations are undertaken in order to determine:

- causes
- secure compliance with the legislation
- whether action has been taken or needs to be taken to prevent a recurrence of the incident
- lessons to be learnt and to influence the legislation and policy
- what response is appropriate to an alleged breach of the legislation.

The Parties may, in accordance with their statutory responsibilities, initiate separate investigations of the same occurrence, which may be for a different purpose.

Depending on the nature of the incident, the Parties may discuss establishing a 'lead agency' for investigations if considered appropriate. Each Party undertakes to notify the other Party as soon as practicable once an investigation is approved into an incident that is, or may be, of interest to the other Party.

Nothing in this MOU shall prevent any Party from investigating an incident, nor whether or not a prosecution should be commenced, another sanction applied, or other appropriate action taken in accordance with their statutory responsibilities, if the Party believes this is required.



Further, in respect of investigations:

- each Party may provide, upon request from another, technical assistance where specialist skills and knowledge may be required
- the Parties agree to keep each other fully and freely informed on the progress of an investigation which may fall either wholly or partially within their respective jurisdictions, when requested
- if as a result of an investigation a Party issues a notice under an Act, or issues written directions, and the notices or directions may be of interest to the other Party, a copy of that notice or written direction shall be forwarded to that Party, subject to legislative provisions.
- the parties are committed to open, transparent and consultative approach to sharing information with those affected by an incident unless access would genuinely jeopardise an investigation or prosecution.
- in the event of an investigation into an incident, the parties will, within the scope of their jurisdiction, share information on the investigation and outcome with those affected by the incident.

## 4.2 Compliance and enforcement

Each Party will be responsible for undertaking compliance and enforcement practices which align with the Party's Policy.

It is recognised that each Party has a wide selection of compliance strategies ranging from information, advice, cooperation, inspection, auditing, investigation, verification and compulsion through to deterrence activities available for its use.

The most effective and appropriate enforcement measures should be used to achieve compliance. The principles governing such sanctioning aim to:

- reduce risk arising from transporting dangerous goods by rail
- influence change in the behaviour of the rail operator
- eliminate any financial incentive of non-compliance
- be proportionate to the nature of the offence and the harm caused
- deter future non-compliance
- be responsive and consider what is appropriate for the particular obligation holder.

## 5. Governance

### 5.1 Term of MOU

This MOU will commence on and be effective from the date of execution by all parties and will continue in force until terminated earlier, in writing, by either party.

### 5.2 Maintenance and review of MOU

This MOU may be varied or withdrawn at any time by an agreement in writing executed by the Parties.

The Parties agree to review and evaluate the operation of the MOU as a result of implementation of new or significantly varied legislation, or by request by either Party to this agreement.

Following the evaluation, the Parties will, where appropriate or necessary, develop mechanisms to discuss, share learnings and improve the MOU and/or ways in which the Parties are operating under the MOU.

### **5.3 Availability of Memorandum of Understanding**

The Parties agree to circulate the signed MOU to all affected officers in their respective agencies.

The Parties agree to publish the signed MOU on their respected web sites.

### **5.4 Effect of the MOU**

This MOU is not intended to:

- be legally binding, so that an alleged or real breach of any provision of this agreement is not intended to give rise to a legally enforceable course of action
- entitle or require a person to disclose information that is the subject of legal professional privilege
- entitle or require a person to disclose information that is protected by legislation
- restrict the statutory duties, directions and powers of parties to this agreement
- restrict the statutory duties, directions and powers available to the Parties that are responsible for safety on the rail network.

### **5.5 Resolution of issues regarding the MoU**

The Parties commit to working together in good faith to implement this MOU. The Parties agree that any issues will be resolved by negotiation in a timely manner.

The Parties agree to attempt to resolve any disputes that may arise under this MOU at the workplace level:

- in the first instance, by and between the nominated representatives of the Parties as set out in the schedule
- in the event matters cannot be resolved at that level, by and between representatives of the Parties at more senior levels of management
- unless precluded by the nature of the dispute, the Parties will continue to operate under this MOU while attempts are made to resolve the dispute.



## 6. Signatories

Signed for and on behalf of the Department of Transport and Main Roads by:

Mike Stapleton, Deputy Director-General (Customer Services, Safety and Regulation) -  
Department of Transport and Main Roads

*M. Stapleton*

Dated this 7<sup>th</sup> day of November 2019

Signed for and on behalf of the Office of Industrial Relations, Department of Education by:

Craig Allen, Deputy Director-General, Office of Industrial Relations

*C. Allen*

Dated this 7<sup>th</sup> day of January 2020

## Schedule 1

### Definitions

**Dangerous incident** - under the *Work Health and Safety Act 2011*, means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to—

- a) an uncontrolled escape, spillage or leakage of a substance; or
- b) an uncontrolled implosion, explosion or fire; or
- c) an uncontrolled escape of gas or steam; or
- d) an uncontrolled escape of a pressurised substance; or
- e) electric shock; or
- f) the fall or release from a height of any plant, substance or thing; or
- g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use under a regulation; or
- h) the collapse or partial collapse of a structure; or
- i) the collapse or failure of an excavation or of any shoring supporting an excavation; or
- j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
- k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
- l) any other event prescribed under a regulation;

but does not include an incident of a prescribed kind.

**Dangerous goods** - under the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018* means—

- (1) Goods are dangerous goods if—
  - a) the chief executive has made a determination that the goods are dangerous goods; or
  - b) the goods satisfy the criteria stated, or referred to, in part 2 of the ADG Code
- (2) However, goods that satisfy the criteria stated, or referred to, in part 2 of the ADG Code are not dangerous goods if—
  - a) the chief executive has made a determination that the goods are not dangerous goods; or
  - b) the goods are described as not subject to the ADG Code in a special provision in chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the dangerous goods list.

**Dangerous Situation** – under the *Transport Operations (Passenger Transport) Act 1994* a dangerous situation is a situation involving the transportation of dangerous goods by rail that is causing or is likely to cause, imminent risk of:

- a) Death of, or significant injury to, a person; or
- b) Significant harm to the environment; or
- c) Significant damage to property.

**Serious injury or illness** - under the *Work Health and Safety Act 2011*, means an injury or illness requiring the person to have—

- a) immediate treatment as an in-patient in a hospital; or
- b) immediate treatment for—
  - i. the amputation of any part of his or her body; or



- ii. a serious head injury; or
  - iii. a serious eye injury; or
  - iv. a serious burn; or
  - v. the separation of his or her skin from an underlying tissue (for example, degloving or scalping); or
  - vi. a spinal injury;
  - vii. the loss of a bodily function; or
  - viii. serious lacerations; or
- c) medical treatment within 48 hours of exposure to a substance; and includes any other injury or illness prescribed under a regulation but does not include an illness or injury of a prescribed kind.

**ADG Code** – means the Australian Code for the transport of dangerous goods by road and rail approved by the National Transport Commission, as in force from time to time.

**Incident** – for the purpose of this MOU, means either an incident resulting in a dangerous situation or a notifiable incident.

**ONRSR** – Office of the National Rail Safety Regulator.

**Rail Safety** - ensuring that persons, including rail safety workers, passengers, other users of railways, users of road crossings and the general public are free from:

- death, injury or illness caused by railway operations, rail safety work or other activities associated with railway operations
- risk of death, injury or illness caused by railway operations, rail safety work or other activities associated with railway operations.

**TMR** - the Department of Transport and Main Roads.

**Party** – a signatory to this MOU

**Parties** – all signatories to this MOU.

**Office of Industrial Relations** – for the purpose of this MOU means Department of Education.

**Transport of Dangerous Goods** – consistent with dangerous legislation, includes:

- the packing, loading and unloading of the goods, and the transfer of the goods to or from a rail vehicle
- the marking of packages and unit loads containing dangerous goods, and the placarding of containers and rail vehicles in which dangerous goods are transported
- other matters incidental to their transport.

## Schedule 2

### Information sharing between the parties

Each party agrees to:

- coordinate and share information to the extent that is legally possible in order to reduce regulatory duplication.
- take all reasonable steps to ensure that it complies with all legal, policy and administrative requirements which apply to the disclosure and protection of information.
- use and reproduce information only for the purposes outlined in this MOU.
- unless required by law, not to disclose or otherwise make available the information other than to staff who need to know that information in order to give effect to the purposes set out in this MOU.

Specific legislative requirements to be aware of include:

- Section 271 of the WHS Act and Section 193 of the ES Act provide that if a person obtains information in exercising any power or function under the respective Act, the person must not disclose the information to anyone else, unless an exception applies.

There are a range of exceptions, including section 271(3)(c)(iii) of the WHS Act and section 193(3)(c)(iii) of the ES Act which allow for disclosure of information if the regulator reasonably believes:

- the disclosure is necessary for the administration or enforcement of another Act or law, and
- if the disclosure is necessary to lessen or prevent a serious risk to public health or safety.

The regulator may also disclose information if the regulator reasonably believes the disclosure is necessary for the administration or enforcement of another Act prescribed under a regulation. The Transport and Police acts are prescribed acts for the purposes of disclosing information under s271(3)(c)(ii) of the WHS Act and s193(3)(c)(ii) of the ES Act – see Schedule 18A of the *Work Health and Safety Regulation 2011* and Schedule 8A of the *Electrical Safety Regulation 2013*.

- The *Right to Information Act 2009* provides members of the public with a legally enforceable right to access documents held by Queensland government agencies. The *Right to Information Act 2009* requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- The Parties are also required to comply with the *Information Privacy Act 2009* (the IP Act). The IP Act places obligations on Parties to handle, collect, store, secure, use and disclose personal information in accordance with the information privacy principles. For example, Information Privacy Principle 11 (IPP11) of the IP Act limits disclosure of an individual's personal information in particular circumstances. The Parties acknowledge that personal information may only be disclosed to another Party consistent with the information privacy principles.

Examples of information that may be shared by Parties, subject to legislative provisions and consideration on a case by case basis are:

- information regarding the investigation of incidents such as final incident reports and notification of the commencement of an investigation
- research or data on injuries, illnesses, fatalities or incidents.



