

MEMORANDUM OF UNDERSTANDING

between

WorkSafe New Zealand

and

New Zealand Transport Agency

August 2016

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THIS MEMORANDUM OF UNDERSTANDING is made on the 10 November 2016

BETWEEN WorkSafe New Zealand

AND New Zealand Transport Agency

PURPOSE

1. This Memorandum of Understanding ("MOU") defines the relationship between WorkSafe New Zealand (WorkSafe) and the New Zealand Transport Agency (Transport Agency) in respect of the administration of the *Health and Safety at Work Act 2015*, the *Railways Act 2005*, and subordinate legislation.
2. There will be times when the regulatory responsibilities of either Party will be performed most efficiently and effectively through collaboration, cooperation, and coordination with the other Party, particularly in relation to identified areas of common interest.
3. This MOU seeks to clarify the regulatory roles of each Party, and to set out ways that each Party can work together toward achieving the Government's objectives. In particular, these objectives relate to:
 - improved workplace-related health and safety outcomes, outlined in *Working Safer – A Blueprint for Health and Safety at Work* (published August 2013),
 - effective collaboration between regulatory functions under the Government Regulatory Practice Initiative, and
 - achieving the Government's transport and rail safety objectives.
4. This MOU recognises that, in regards to the regulation of the safety of railway operations, the Transport Agency's statutory responsibility is focused on adequacy of the systems and operations, while WorkSafe's statutory responsibility is focused on the health and safety of the work activity. Both agencies also act in the interests of public safety around railway activity and infrastructure.
5. This MOU establishes a foundation of shared assumptions, as well as a framework for the current and future relationship of the Parties, by setting out the interagency alignment required for a whole of government approach to regulation in each agency's respective sectors. This includes setting out the assistance or support each Party may provide the other in certain circumstances.
6. Details of assistance, cooperation or support that may be provided in accordance with this MOU will be detailed in the schedules to this MOU.
7. Nothing in this MOU prevents either Party from providing assistance, cooperation and support to each other outside of the terms of this MOU or its schedules, where there is agreement between the Parties.

INTRODUCTION

8. WorkSafe is a Crown entity established under the *WorkSafe New Zealand Act 2013*. It is the primary workplace health and safety regulator in New Zealand. WorkSafe's main objective is to promote and contribute to a balanced framework for securing the health and safety of workers, and others related to work and of workplaces. It therefore has a leadership role in collaborating with other regulatory agencies with health and safety functions and ensuring, as far as practicable, the coordination of health and safety regulatory activities.
9. The Transport Agency is a Crown entity established under section 93 of the *Land Transport Management Act 2003* (LMTA). The Transport Agency has responsibility for the promotion and regulation of land transport safety in New Zealand, including rail safety under the *Railways Act*.
10. This MOU revokes and replaces all previous MOUs between WorkSafe (the Department of Labour or the Ministry of Business Innovation and Employment) and the Transport Agency (Land Transport Safety Authority or Land Transport NZ) (known as "the Parties") for activities associated with health and safety related to work.
11. For clarity, this MOU relates to the Transport Agency's activities as a land transport safety regulator and to WorkSafe's activities as the regulator for the health and safety of workers and workplaces. It does not affect either Party's responsibilities as:

- a. a person conducting a business or undertaking as defined under section 17 of HSWA.
- b. a person with general safety duties on or near a rail vehicle, railway infrastructure, or railways premises as defined under section 9 of the Railways Act.

INTERPRETATION

12. For the purposes of this MOU, the following terms are defined.

- **Areas of common interest** means those matters where each Party contributes to a shared outcome or has a shared role or interest. This includes meeting the requirements of international agreements, meeting government's policy objectives and promoting greater collaboration, cooperation and coordination across the wider government sector.
- **Designated Co-ordinators** means those people named as Designated Co-ordinators in Schedule 1 of this MoU and any subsequent people notified in writing by either Party to the other, as replacements or additions.
- **Event** means an incident, accident, or set of circumstances which may constitute a breach of either or both of the *Health and Safety at Work Act 2015* and the *Railways Act 2005*.
- **Safety case** means a document that contains the information specified in section 30 of the Railways Act. It is a high level description of a rail operator's activities and safety system.
- The **HSNO Act** means the *Hazardous Substances and New Organisms Act 1996*, and includes any subsequent amendments to, and any regulations made under, that Act.
- The **HSWA** means the *Health and Safety at Work Act 2015*, and includes any subsequent amendments to, and any regulations made under, that Act.
- The **LTMA** means the *Land Transport Management Act 2003* and includes any subsequent amendments to, and any regulations made under, that Act.
- This **MOU** means this memorandum of understanding, comprising the master agreement and any schedules (operational agreements) developed under the master agreement.
- The **Railways Act** means the *Railways Act 2005*, and includes any subsequent amendments to, and any regulations made under, that Act.

PARTIES' REGULATORY ROLES

WorkSafe New Zealand

13. WorkSafe operates under HSWA¹ and any regulations made under that Act. WorkSafe is the primary regulator for the health and safety of workers and workplaces.

14. WorkSafe's functions are to:

- a. advise on the operation of the workplace health and safety system, including co-ordination across the different components of the system
- b. make recommendations for changes to improve the effectiveness of the workplace health and safety system, including legislative changes
- c. monitor and enforce compliance with relevant health and safety legislation
- d. publish information about—
 - i. its approach to enforcing compliance with relevant health and safety legislation (including where a provision of relevant health and safety legislation overlaps with a provision in another enactment)
 - ii. its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation
- e. make recommendations about the level of any funding (including fees or levies) that WorkSafe requires to effectively carry out its functions

¹ Previously the *Health and Safety in Employment Act 1992*.

- f. develop codes of practice
- g. develop safe work instruments
- h. provide guidance, advice, and information on workplace health and safety to—
 - i. persons who have duties under the relevant health and safety legislation; and
 - ii. the public
- i. promote and support research, education, and training in workplace health and safety
- j. collect, analyse, and publish statistics and other information relating to workplace health and safety
- k. engage in, promote, and co-ordinate the sharing of information with other agencies and interested persons that contribute to workplace health and safety
- l. foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to workplace health and safety
- m. foster a co-operative and consultative relationship with the Environmental Protection Agency when carrying out its functions, duties, and powers in respect of hazardous substances
- n. promote and co-ordinate the implementation of workplace health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way
- o. perform or exercise any other functions or powers conferred on WorkSafe by or under any other enactment, including those conferred under the Hazardous Substances and New Organisms Act 1996 (HSNO Act)
- p. perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

New Zealand Transport Agency

15. The Transport Agency is a Crown entity established under Section 93 of the Land Transport Management Act 2003 (LTMA) whose objective is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest. Therefore it has responsibilities for both road and rail management, which are:
- a. to contribute to an effective, efficient, and safe land transport system in the public interest
 - b. to investigate and review accidents and incidents involving transport on land in its capacity as the responsible safety authority, subject to any limitations set out in the *Transport Accident Investigation Commission Act 1990*
 - c. to manage the State highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with this Act and the *Government Roadway Powers Act 1989*
 - d. to deliver or manage the delivery of its other activities, including (but not limited to) those relating to research, education, and training
 - e. to manage funding of the land transport system, including (but not limited to)—
 - i. administration of land transport revenue; and
 - ii. auditing the performance of approved organisations in relation to activities approved by the Agency and the operation of the land transport disbursement accounts of approved organisations
 - f. to manage regulatory requirements for transport on land, including (but not limited to) maintaining and preserving records and documents concerning activities within the land transport system, and maintaining registers
 - g. to assist, advise, and co-operate with approved organisations
 - h. to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the Agency are satisfied that the performance of the Agency's functions and duties will not be compromised

- i. to provide the Minister with any advice relating to the Agency's functions that the Minister may request
 - j. to issue guidelines for, and monitor the development of, regional public transport plans
 - k. to carry out any other functions relating to land transport that the Minister directs in accordance with section 112 of the Crown Entities Act 2004
 - l. to carry out those functions conferred on the Agency by other provisions in this Act or under any other Act.
16. Under the Railways Act the Transport Agency is responsible for administering a regulatory system that aims to promote the safety of rail operations. The legislation imposes a general obligation on the Transport Agency and all participants in the sector to take all practicable steps to ensure that no activities cause or are likely to cause the death or serious injury to individuals.
 17. Section 8(2) of the Railways Act requires the Transport Agency and WorkSafe to enter into a MOU with respect to investigations conducted and prosecutions taken under the Railways Act or what is now the HSWA.
 18. Section 32(1) of the Railways Act requires the Transport Agency to consult with Worksafe when considering approval of a safety case.
 19. This MOU, together with its operational agreements (schedules), fulfils the requirements of section 8(2) of the Railways Act.
 20. Under Section 97(c) of the HSNO Act, the Transport Agency may enforce the provisions of the HSNO Act in or on any motor vehicle, on any roads, in or on any rail service vehicle, or on any railway line.

PRINCIPLES

21. The Parties agree to collaborate, cooperate and coordinate their activities in accordance with the following principles:
 - Open communication – each Party will communicate openly, collegially, and promptly to achieve the best overall regulatory outcomes
 - No surprises – each Party will inform the other of any emergent situation in an area of common interest as soon as practicable
 - Collaboration – each Party will work to seek mutually beneficial outcomes where feasible and to increase understanding of what those outcomes might be
 - Integrity – each Party will actively cooperate in a manner that recognises the other Party's functions, duties and powers in a way that fosters mutual respect and trust
 - Efficiency – each Party will enhance their businesses and regulatory performance and ensure that each other's regulatory responsibilities are met effectively with the maximum possible efficiency.

DESIRED OUTCOMES

22. The overarching desired outcome of this MOU is active interagency alignment to achieve a whole of government approach to effective and efficient regulation of workplace health and safety and public health and safety in areas of common interest.
23. The Parties will be working together effectively under this MOU when the following specific outcomes are in place.

Organisational alignment

- **Jurisdictional boundaries:** Parties have a clear understanding of the jurisdictional boundaries between them, and of each Party's regulatory roles and responsibilities. Parties work together to identify, minimise, and manage any gaps or overlaps in regulatory coverage.
- **Strategic alignment:** Strategic policies of the Parties are aligned with the Government's Working Safer: A Blueprint for Health and Safety at Work. Parties' strategic directions ensure that they operate in a complementary manner with respect to workplace health and safety.
- **Policy advice:** Parties inform, consult and support each other when developing policy in areas of common interest, including input into any policy issues arising in third-party agencies.
- **Legal alignment:** Parties' enforcement and prosecution strategies are sufficiently aligned in relation to areas of common interest to ensure, to the extent possible, consistent outcomes, commensurate with risk.
- **Compatible systems and processes:** To the extent practicable, the Parties' operational intelligence and case management systems are sufficiently aligned and compatible to enable effective and efficient sharing of information gathered by either Party for the purposes of recording, reporting and monitoring workplace health and safety.
- **Communications and media:** Parties have aligned media and communications strategies and processes to ensure public messaging is coordinated and consistent.

Operational and enforcement activities

- **Information and intelligence sharing:** Parties have agreed information-sharing processes and parameters to maximise the effectiveness of their regulatory operations. This may include the sharing of intelligence and evidence gathered in the course of enforcement activities such as assessments or investigations (subject to operational and legislative constraints and Court rules).
- **Shared technical expertise:** In relation to areas of common interest Parties regularly share technical and professional expertise, and seek the expertise of the other agency when developing industry guidance information, codes of practice, and other regulatory instruments, and also when carrying out assessments, inspections and enforcement actions.
- **Joint enforcement activity:** Parties engage in collaborative or joint assessments and inspections in areas of common interest, when appropriate and agreed by each Party.
- **Training:** Parties share training opportunities and materials when appropriate.
- **Emergency events:** Parties are willing and able to provide administrative and other support to each other during a response to a major emergency to ensure the continuing effective operation of each Party.

PARTIES' COMMITMENTS

24. In order to work effectively toward the desired outcomes, each Party agrees to meet the terms of this MOU and its schedules.
25. Any collaboration, cooperation and coordination of activities may be undertaken solely between the Parties, or, on agreement, may involve a third-party (such as another regulator).
26. Parties may jointly develop schedules to this MOU to provide further detail on the collaboration, cooperation and coordination they commit to under this MOU.
27. The sub-sections below set out how the Parties will work together to achieve the desired outcomes.
28. The detail of how the Parties' commitments made in this MOU are undertaken and any other details for those commitments joint activates, including how costs are apportioned, may be included in a schedule to this MOU.

Organisational alignment

Jurisdictional boundaries:

29. Parties will clarify with and for each other their own jurisdictional parameters of operation, including specific regulatory roles and responsibilities. Parties will work together to identify and manage any overlaps in responsibility, or any gaps in legislation and regulatory guidelines.

Strategic alignment

30. Prior to the commencement of any financial year, the Parties will meet at least once to discuss:
 - a. each Party's work priorities for the following year
 - b. areas where the Parties will look to increase collaboration and cooperation between them, including the alignment of enforcement and prosecution policy.
31. The meetings can be solely between the two Parties or may involve third-parties where it is considered a multi-agency approach to strategic alignment would improve the effective and efficient provision of workplace health and safety regulation.

Policy advice

32. In the development of policy advice or when participating in policy processes run by other agencies (eg, the Ministry of Transport or the Ministry of Business, Innovation and Employment), each Party will consult the other in areas of common interest.
33. Each Party will advise the other Party of any emerging policy issue considered to be of interest to the other Party. Information relevant to the issue will be provided in a timely manner to ensure that the other Party has the opportunity to participate in the development of the relevant policy.

Legal alignment and prosecutions

34. The Parties agree that, before pursuing legal action in areas of common interest, they will discuss any matter, including litigation or a proposed prosecution, that is likely to result in a material change in the interpretation of the law relevant to the other party or may otherwise adversely affect the other party.
35. The Parties' legal teams will, subject to legal privilege also collaborate by sharing information about any changes to the law and case law in areas of common interest.

Compatible systems and processes

36. To the extent practicable, the Parties will establish compatible processes and systems for recording, reporting and monitoring work health and safety activity. This may include aligning operational intelligence and case management systems to allow for the most effective and efficient usage of information gathered by either Party.

Communications and media

37. The Parties will:
 - a. inform each other at the initial stage of development of any communications campaign they intend to undertake that is relevant to the other Party or to the content of this MOU;
 - b. take all reasonable steps to ensure that adequate time is given for the other Party to provide comment where appropriate; and
 - c. explore opportunities to conduct joint communications campaigns.
38. Where possible, Parties will consult each other when providing information or comment to the media on matters of common interest.

Operational and enforcement activities

Information and intelligence sharing

39. The Parties to this agreement may develop principles, strategies and processes to share relevant information to enhance interagency collaboration, cooperation and coordination.

40. Wherever practicable, these principles, strategies and processes will use available technology and may be adapted with changes in technology.
41. Relevant information to be shared includes, but is not limited to:
 - a. Information about workplace health and safety matters, including risks from new technologies, substances or workplace processes, and the means of mitigating those risks
 - b. Operational intelligence which might assist the regulatory function of the other Party
 - c. Evidence gathered in the course of an assessment or investigation which might assist the other Party with enforcement action
 - d. Any significant enforcement action taken by one of the Parties
 - e. Any other information provided under section 197 of HSWA that may assist either Party in the performance or exercise of its functions, duties or powers.
42. Information will be shared only when it is relevant to the other Party and, when doing so, is consistent with the law, including the Official Information Act 1982, Privacy Act 1993 and the Criminal Disclosure Act 2008.
43. Requests from a third party for information provided by the other Party will be dealt with in accordance with applicable legislative requirements, including those set out in the Official Information Act 1982, the Privacy Act 1993 and the Criminal Disclosure Act 2008.
44. How and when the Parties will inform each other of requests for information, the manner in which information will be shared and the timing of any required consultation may be given effect through schedules to this MOU.

Shared technical expertise

45. Parties will, where possible and appropriate, share technical expertise in relation to assessment, investigation and enforcement activities.
46. Parties will, with mutual consent, consult and draw on the expertise of the other Party, where appropriate. This may occur in the development of guidance information, codes of practice, and other regulatory instruments, and when carrying out assessments, investigations and enforcement activities.
47. This will include advice on safety cases under the Railways Act.

Joint enforcement activity

48. The Parties may, by mutual agreement, undertake joint assessments, investigations and inspections under HSWA or of rail operators and access providers under HSWA or of rail operators and access providers under the Railways Act.
49. The detail of how a mutual agreement may be arrived at, or any other details for the joint inspections, audits or assessments, including how costs are apportioned, may be included in a schedule to this MOU.

Training

50. The Parties will collaborate in identifying training of common interest to each other and, where practicable, will coordinate training programs for health and safety inspectors and other staff.

Emergency events

51. In the event of a major emergency involving workplace health and safety, the Party with jurisdiction for the event may request from the other Party:
 - a. technical and operational assistance,
 - b. administrative and staff support (particularly where the scale, duration, or complexity of the event may result in one of the Parties being unable to effectively carry out its functions, duties or powers)
52. The terms and conditions of any technical or operational assistance, or administrative or staff support, and how that assistance or support is to be funded, may be included in a schedule to this MOU.

53. In each emergency situation, support will be provided commensurate with:
 - a. the practicability of the Party to provide assistance or support at that time, and
 - b. the perceived health and safety risks associated with the incident or emergency event.

DISPUTE RESOLUTION

54. When disputes arise between the Parties about the interpretation or performance of this MOU, local representatives or managers of the Parties will, in the first instance, attempt to resolve the dispute at the earliest opportunity.
55. If a dispute cannot be resolved by local representatives, it will be referred to the General Manager Operational Policy at WorkSafe, and the Group Manager Access & Use at the Transport Agency.
56. If disputes cannot be resolved between the Group Manager Access & Use at the Transport Agency and General Manager Operational Policy at WorkSafe within 28 days of referral, then the matter will be referred, in writing, to the Chief Executive WorkSafe and Chief Executive of the Transport Agency for final resolution.
57. The Parties will resolve any disputes arising under the MOU by discussion and cooperation and will not refer any difference to any third-party.

SCHEDULES

58. From time to time the Parties will develop schedules to this MOU which will detail the terms and conditions for specific procedures and activities between the Parties, including how costs will be apportioned.
59. Every schedule will include:
 - a. the person (by position title) in each agency responsible for the schedule, and contact details for those persons.
 - b. an agreed policy and process for determining how joint activities will be resourced where this is applicable for the purpose of the schedule.
60. Schedules may be signed or amended by a General Manager or above at WorkSafe, and a Group Manager or above at the Transport Agency.
61. A list of the schedules and their current status and contact positions will be attached to this MOU as Annex A. The list will be updated by the Parties as agreed by the Parties and as schedules are amended, added, terminated, or replaced.

RESOURCING

62. The provision of any support, cooperation or assistance under this MOU and its associated schedules will be subject to the availability of the Parties' resources. Such support may be limited, adjusted or terminated as deemed necessary by either Party to meet its other operational commitments.
63. Parties may identify areas where both will benefit from shared resourcing.

STATUS OF MEMORANDUM OF UNDERSTANDING AND SCHEDULES

64. The following applies to this MOU and its schedules (unless the schedule concerned specifically states otherwise):
 - a. The effective date for this MOU and each of its schedules is the date of the last signature, and will continue to be in effect until termination
 - b. A review can be requested by either party at any time
 - c. A review is to be conducted every three years and amendments can be made in writing by mutual agreement of the Parties

- d. Termination can take place at any time by either Party giving the other written notification and will be effective immediately
- e. Termination of the MOU will terminate all schedules, but termination of a schedule will only affect that schedule
- f. Signing this MOU terminates all previous MOUs between the Parties for activities associated with health and safety related to work. However, schedules current at the time of signing will remain current until replaced
- g. The most recent version of the MOU and schedules supersede and cancel all previous versions; and
- h. There is no intention to create any legal rights, duties or obligations, and this MOU is not binding on the Parties.

THIS MEMORANDUM OF UNDERSTANDING is made on the 10 November 2016

BETWEEN WorkSafe New Zealand

AND New Zealand Transport Agency

SIGNED



Gordon McDonald
Chief Executive
WorkSafe New Zealand



Fergus Gammie
Chief Executive
New Zealand Transport Agency