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## **Memorandum of Understanding**

between

**Energy Safe Victoria**

and

**Director, Transport Safety**

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# MEMORANDUM OF UNDERSTANDING BETWEEN ENERGY SAFE VICTORIA AND THE DIRECTOR, TRANSPORT SAFETY

## PARTIES

This memorandum of understanding is made between the following parties:

**Energy Safe Victoria ("ESV")**, of Level 5, Building 2, 4 Riverside Quay, Southbank Vic 3006

## AND

The **Director, Transport Safety**, of Level 15, 121 Exhibition Street, Melbourne, Victoria, 3000.

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## 1. INTRODUCTION

### 1.1 Interpretation

In this memorandum of understanding:

**"Bus Incident"** has the meaning given to that term in regulation 4 of the *Bus Safety Regulations 2010* (Vic);

**"Bus Safety Worker"** has the meaning given to that term in section 3 of the *Bus Safety Act 2009* (Vic);

**"Domestic Commercial Vessel"** has the meaning given to that term in section 7 of the Marine Safety (Domestic Commercial Vessel) National Law (contained in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth));

**"Electrical Incident"** means an event or incident with implications for electricity safety referred to in section 7 of the *Electricity Safety Act 1998* (Vic) (see also "Serious Electrical Incident");

**"Gas incident"** means an incident as defined in section 3 of the *Gas Safety Act 1997* (Vic);

**"Health Information"** has the meaning given to that term in the *Health Records Act 2001* (Vic);

**"Incident"** means an incident that must be notified to either of the parties under legislation and includes a Bus Incident, a Marine Incident, a Rail Incident, a Gas Incident and an Electrical Incident, but does not include:

- a notifiable occurrence within the meaning of section 4 of the Rail Safety National Law (contained in the Schedule of the *Rail Safety National Law (South Australia) Act 2012* (SA)); or
- a marine incident within the meaning of section 6 of the Marine Safety (Domestic Commercial Vessel) National Law (contained in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth));

**“Local Maritime”** refers to maritime operations captured under the *Marine Safety Act 2010* (Vic);

**“Local Rail”** refers to railway operations captured under the *Rail Safety (Local Operations) Act 2006* (Vic);

**“Marine Incident”** has the meaning given to that term in section 3 of the *Marine Safety Act 2010* (Vic);

**“MOU”** means this memorandum of understanding;

**“Personal Information”** has the meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic);

**“Privacy Legislation”** means laws in respect of privacy and the protection of Personal Information and Health Information including, without limitation, the *Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic) and the *Privacy Act 1988* (Cth);

**“Protocol”** means the communications protocol established under clause 4.1;

**“Rail Incident”** means a railway accident or incident or a notifiable accident or incident within the meaning given to those terms in regulation 41 of the *Rail Safety (Local Operations) Regulations 2006* (Vic);

**“Rail Safety Worker”** has the meaning given to that term in section 3 of the *Rail Safety (Local Operations) Act 2006* (Vic);

**“Relevant Legislation”** means the legislation that each party is responsible for administering and enforcing, as set out in clause 3 of this MOU;

**“Safety Director”** means the Director, Transport Safety, a statutory office established under section 171 of the *Transport Integration Act 2010* (Vic), and may include, as the context requires, his delegates and staff members of TSV authorised to act on his behalf;

**“Serious Electrical Incident”** means an incident involving electricity which causes or has the potential to cause the death of or injury to a person or significant damage to property or a serious risk to public safety, as defined in section 3 of the *Electricity Safety Act 1998* (Vic).

**“TSV” or Transport Safety Victoria** means the persons employed by the Victorian Department of Economic Development, Jobs, Transport and Resources to assist the Safety Director in the exercise of his or her powers and the performance of his functions;

**“ESV”** means Energy Safe Victoria, the independent statutory body responsible for administering various legislation, including but not limited to the *Electricity Safety Act 1998* (Vic), the *Electricity Safety (Installations) Regulations 2009* (Vic), the *Gas Safety Act 1997* (Vic) and the *Pipelines Act 2005* (Vic).

## 1.2 Purpose

- (a) This MOU provides a framework to promote effective communication, cooperation and coordination between the parties in their statutory, operational and administrative interactions.
- (b) The purposes of this MOU are to:
  - (i) document the working relationship between the parties to enhance and promote a best practice approach to transport safety and energy safety regulation;
  - (ii) promote open communication and reduce duplication of efforts;
  - (iii) influence a reduction in the quantity and severity of Incidents; and
  - (iv) provide consistent safety outcomes for industry.
- (c) To achieve the purposes above, this MOU seeks to:
  - (i) ensure that the parties are aware of each other’s legislative obligations and operating policies and procedures;
  - (ii) clarify the specific working arrangements between the parties in relation to notifying, attendance, investigation and reporting of Incidents that fall under both parties’ remit;
  - (iii) foster ongoing regulatory collaboration and cooperation between the parties;
  - (iv) facilitate the timely and efficient provision of advice and sharing of information between the parties;
  - (v) acknowledge the expertise of the parties in their specific spheres of activity;
  - (vi) reduce the regulatory burden on regulated persons where both parties are enquiring into the same issue.

### 1.3 No legally binding effect

- (a) While the parties shall, as far as practicable, follow procedures set out in this MOU and take necessary measures to ensure that officers of the parties are aware of and comply with the terms of this this MOU, it is not intended to create legally enforceable obligations between the parties.
- (b) Nothing in this MOU should be construed as preventing or inhibiting either party from acting in the proper performance of their statutory or other public functions or restricting the statutory discretions and powers available under legislation administered by either party.

### 1.4 Term

This MOU shall continue in force until terminated under clause 7.3.

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## 2. OBJECTIVES AND PRINCIPLES

- 2.1 The Safety Director and ESV each have separate and independent regulatory mandates and roles.
- 2.2 While recognising each party's regulatory mandate and independent role, the parties are committed to a constructive and co-operative relationship in the common pursuit of safety in Victoria.
- 2.3 ESV's objectives include regulating the safety and technical compliance of energy conveyance and supply, installations, appliances and pipelines, and to raise industry and community awareness of electricity, gas and pipeline safety.
- 2.4 The Safety Director's (represented by TSV) statutory object is to independently seek the highest transport safety standards that are reasonably practicable, consistent with the transport system's vision and objectives under the *Transport Integration Act 2010* (Vic).
- 2.5 The parties share a common vision, values and understanding of the scope of their individual obligations under this MOU.

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## 3. ROLES AND RESPONSIBILITIES

### Role of ESV

- 3.1 **ESV is responsible for administering a range of safety and technical legislation related to electricity, gas and pipelines. The Director of Energy Safety:**
  - (a) administers the registration and licensing of electrical contractors and electrical workers, respectively
  - (b) protects underground and underwater structures from the corrosive effects of electrolysis caused by stray currents, such

as from the train and tram networks, registers Cathodic Protection Systems

- (c) approves or accepts electrical safety management schemes, safety cases, and a variety of plans submitted by energy industry participants
- (d) monitors and audits safety systems and safety practices in relation to the design, construction and maintenance of electricity, gas and pipeline networks and installations
- (e) controls the safety standards of gas and electrical work
- (f) takes enforcement action as appropriate to address safety risks and non-compliance by industry participants.

3.2 Through the administration of relevant legislation, the director of Energy Safety has jurisdiction over:

- (a) persons responsible for carrying out electrical work, including registered electrical contractors and licensed workers and will respond to compliance and safety issues in relation to electrical installation work and electrical installations, including complex installations
- (b) major electricity companies and specified operators (operators of at-risk electric lines) that must design, construct, operate, maintain and decommission their electricity supply networks or at-risk electric lines, respectively, and implementation of the safety management systems (known as schemes). ESV will respond to safety issues to ensure the public and customers are protected from the hazards and risks arising from gas.
- (c) persons carrying out gasfitting work to ensure it complies with prescribed standards in relation to that work, and gas fitting work on an appliance or gas installation to ensure the appliance or installation (including complex installation) complies with prescribed standards and requirements. ESV will respond to safety issues to ensure the public and customers are protected from the hazards and risks arising from gas.
- (d) licensed gas companies responsible for supply, conveyance or sale of gas are to manage and operate facilities under the implementation of a safety case system. ESV will respond to safety issues to ensure the public and customers are protected from the hazards and risks arising from gas and gas quality.
- (e) licensed pipeline operators and gas company pipeline operators must protect the public from environmental, health and safety risks resulting from the construction and operation of pipelines. ESV will respond to safety issues to ensure public safety is protected.

3.3 The Director of Energy Safety does not have jurisdiction over:

- (a) the licensing and registration of plumbers or gasfitters or of plumbing work under the *Building Act 1993* (Vic).

## **Role of the Safety Director**

### **3.4 The Safety Director is responsible for administering a range of transport safety legislation related to bus, maritime and rail transport. The Safety Director:**

- (a) licences, registers and accredits operators and other industry participants;
- (b) monitors the transport industries and participants' systems for managing safety risks;
- (c) monitors compliance with transport safety legislation; and
- (d) takes enforcement action as appropriate to promote safety outcomes in Victoria.

### **3.5 Through the administration of relevant legislation, the Safety Director has jurisdiction over:**

- (a) bus safety duty holders, including accredited and registered bus operators captured under the *Bus Safety Act 2009 (Vic)* and its regulations, and will respond to safety issues including in relation to the operation, design, maintenance, and equipment of buses and the safety management systems and policies of bus operators;
- (b) marine safety duty holders, including operators of regulated hire and drive vessels and recreational vessels, port management bodies, local port managers and waterway managers, harbour masters, pilots, pilot exempt masters, and pilotage services providers, captured under the *Marine Safety Act 2010 (Vic)* and its regulations. The Safety Director will respond to safety issues including in relation to the operation, design, construction and equipment of regulated hire and drive and recreational vessels, the conduct of pilots, pilot exempt masters, pilotage services providers and harbour masters, and issues concerning the safe navigation and operation of relevant vessels on state waters.
- (c) rail safety duty holders, including all light rail transport operators and a number of tourist and heritage rail transport operators captured under the *Rail Safety (Local Operations) Act 2006 (Vic)*, and will respond to safety issues relating to the operation, design, maintenance, and equipment of rolling stock and rail infrastructure and the safety management systems and policies of rail transport operators.

### **3.6 TSV delivers certain regulatory functions on behalf of national regulators. The Safety Director does not have jurisdiction over:**

- (a) Domestic Commercial Vessels, with respect to their responsibilities under the *Marine (Domestic Commercial Vessel) National Law Act 2012 (Cth)*, which are regulated by the Australian Maritime Safety Authority under since 1 July 2013 (with the exception of navigational safety in Victorian waters);

- (b) heavy rail transport operators and some tourist and heritage rail operators, which are regulated by the Office of the National Rail Safety Regulator under the Rail Safety National Law (as applied in Victoria under the *Rail Safety National Law Application Act 2013* (Vic) since 19 May 2014.

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#### **4. CROSS-JURISDICTIONAL ISSUES AND OPERATIONAL ARRANGEMENTS**

##### **4.1 Establishing jurisdiction**

- (a) The parties agree to establish a protocol within 12 months of entering into this MOU that sets out a jurisdictional matrix with respect to categories of Incidents that may fall within both parties' jurisdiction.
- (b) If there is any doubt over jurisdiction, when contacted, ESV and the Safety Director will respond, and will discuss who the lead agency should be.
- (c) Where either party has responded to an Incident then changes its view that the Incident does or does not fall within its jurisdiction, that party will consult the other party prior to taking any action based on its changed view on jurisdiction. The former party will continue to provide such assistance as required until the investigation is completed.

##### **4.2 Notification of relevant safety issues**

- (a) The parties agree:
  - (i) that when a party is contacted regarding a matter, including an Incident, that is also the responsibility of the other party, the party who is contacted must notify the other party as soon as practicable in accordance with the Protocol (if any); and
  - (ii) to notify each other, as soon as is practicable, of any activities conducted by one party under that party's Relevant Legislation that may affect, relate to or otherwise impact on the regulatory functions of the other party;

using the relevant emergency contact number listed in Schedule 1.

##### **4.3 Conduct of investigations**

- (a) In the conduct of investigations of Incidents that fall within both parties' jurisdiction, the parties agree to observe and comply with the Protocol (if any).
- (b) If either party decides to take regulatory action arising from the Incident, they must:



- (i) where practicable, notify the other party before taking the action; or
  - (ii) if notification before taking the action is not practicable, notify the other party of the regulatory action taken as soon as practicable after taking the action.
- (c) For the purposes of clause 4.3(b), regulatory action may include (but is not limited to):
- (i) issuing improvement, prohibition or infringement notices;
  - (ii) issuing a direction; or
  - (iii) suspending a licence, accreditation, registration or certification.

#### **4.4 Provision of expert assistance**

- (a) The parties agree to provide advice and assistance to each other to the best of their ability when requested to do so.
- (b) In particular, in the event of:
  - (i) an inspection or investigation being conducted by either party, the other agrees to provide expert opinion as required.
  - (ii) a prosecution being conducted by either party, the other agrees to provide expert witnesses in accordance with its internal policy.

#### **4.5 Consultation about proposed proceedings**

- (a) The parties agree to consult each other as soon as is practicable in respect of any prosecution action proposed by either party that has, or is likely to have, a direct impact on both transport safety and electrical and/or gas safety.
- (b) In relation to proposed proceedings, where legislation permits, the parties agree to consult with the other party and as far as possible to take into account any views that the other party may have in relation to any such proposed course of action.

#### **4.6 Legal professional privilege**

Nothing in this MOU:

- (a) entitles or requires a person to disclose information that is the subject of legal professional privilege; or
- (b) affects the law or practice relating to legal professional privilege.

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## **5. COMMUNICATION AND ADMINISTRATIVE ARRANGEMENTS**

### **5.1 Relationship managers**

- (a) Each party must nominate a relationship manager, who will serve as the key point of contact for any issues arising under this MOU, including all notifications and consultation required by clause 4.
- (b) The relationship managers for the parties are as set out in Schedule 1 to this MOU.
- (c) A party may change its nominated relationship manager under this MOU by notice in writing to the other party.

### **5.2 Regular meetings**

- (a) The relationship managers will meet at least every six months, or as otherwise agreed, to discuss matters of common interest, including to:
  - (i) inform each other about any current or proposed activities that may be of interest to the other party, such as safety investigations, inspections or enforcement activities with both transport and electricity and/or gas safety elements;
  - (ii) assess the effectiveness of the operation of the Protocol (once established);
  - (iii) identify opportunities for joint activities, training, opportunities to work collaboratively and/or more efficiently, and/or the sharing of information and expertise;
  - (iv) report on any other developments that may impact on the regulatory functions of the other party, including any known proposals to amend or vary a regulatory provision that, if adopted, may affect the safety of transport systems and/or electricity and/or gas safety in Victoria; and
  - (v) review incident reporting trends and compare incidents reported to each party.
- (b) The relationship managers may meet as necessary to assess the general operation of this MOU and to discuss the ongoing relationship between the parties.

### **5.3 Information sharing**

- (a) The parties recognise the value of sharing information, while recognising that they each have obligations in relation to the protection of information.
- (b) Where appropriate and subject to legislated restrictions on disclosure of information and in accordance with clause 6, the parties will share information that is relevant to the regulatory functions of the parties, including any reports resulting from investigations of Incidents.

- (c) The parties will invite staff to participate in relevant training and workshops conducted by either organisation from time to time.

#### **5.4 Staff awareness of MOU**

- (a) Each party will take reasonable steps to ensure that its staff and contractors are fully informed of the content and overall purpose of this MOU at all times.
- (b) All officers involved in the investigation of any matters that relate to this MOU will have a copy of or have access to this MOU.

#### **5.5 Announcements or releases**

- (a) A party may not make any public announcements or press releases relating to this MOU without first consulting with, and obtaining consent from, the other party. The parties must reasonably agree on the form and content of any such announcements or releases.

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## **6. PRIVACY AND CONFIDENTIALITY**

### **6.1 Privacy**

The parties:

- (a) acknowledge that they will be bound by the Privacy Legislation with respect to any act done or practice engaged in by them under or in connection with this MOU;
- (b) agree to co-operate with any reasonable request of the other relating to the protection of Personal Information or Health Information or the investigation of a complaint about the handling of Personal Information or Health Information; and
- (c) will co-operate to ensure they do not cause any other party to breach any privacy obligations that Party has at law.

### **6.2 Confidentiality**

- (a) A party who has received information under this MOU must not use it except for the purpose, principles and objectives outlined in this MOU.
- (b) Subject to clause 6.2(c), if a party wishes to use or disclose information provided pursuant to this MOU for any other purpose, that party must seek prior written consent of the party who supplied the information. Such consent may be given or withheld in the supplying party's absolute discretion.
- (c) Nothing in this MOU prevents either party from disclosing information:

- (i) if required to do so by law, including in response to a request made under the *Freedom of Information Act 1982* (Vic); or
  - (ii) if required to do so in connection with legal proceedings relating to this MOU.
- (d) A party who has received information under this MOU must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received information from it under clause 5.3
- (e) This clause 6.2 shall not apply to information which is:
- (i) publicly known;
  - (ii) already known to the receiving party; or
  - (iii) permitted under legislation to be disclosed by either ESV or the Safety Director to a third party without restriction.
- (f) This clause 6.2 will survive termination (for whatever reason) of this MOU.

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## **7. AMENDMENT, VARIATION OR MODIFICATION**

### **7.1 Review**

- (a) The parties will formally review this MOU three years after the date of execution and subsequent to that, at regular intervals not exceeding three years or as agreed between the parties.
- (b) Either Party may reasonably request a review of this MOU at any time.

### **7.2 Variation**

- (a) Either Party may reasonably request the other party to agree to a variation of this MOU. Where the other Party agrees, the amendments will be set out in writing in a format agreed to by the parties, signed by both parties and annexed to the original MOU.
- (b) In developing the Protocol pursuant to clause 4.1, the parties will amend this MOU as required.
- (c) The date of effect of the variation will be the date on which the amending document is executed or such other date as may be nominated by the parties.

### **7.3 Termination**

- (a) This MOU will remain in force unless terminated by the parties pursuant to this clause 7.3.
- (b) Either party may terminate this MOU by giving 30 days' written notice to the other party.
- (c) Both parties may agree to terminate this MOU immediately by written consent.
- (d) Termination will take effect from the date specified in the written notice.

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## **8. GENERAL**

### **8.1 Dispute Resolution**

The parties agree to co-operate and use all reasonable endeavours to resolve any disputes or differences between them (Disputes). Disputes which remain unresolved for 30 days or more will be referred to the Director, Energy Safety and the Safety Director, or their respective nominees, for binding resolution.

### **8.2 No Authority**

Neither party may enter into any agreement or incur any liabilities on behalf of the other party without that other party's prior written consent and may not represent to any person that it has any authority to do so.

### **8.3 Counterparts**

This MOU may be executed in any number of counterparts.

### **8.4 Costs and Expenses**

Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this MOU and any other related documentation.

### **8.5 In this MOU, unless expressed to the contrary:**

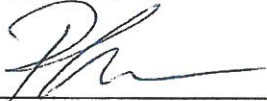
- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other gender;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;

- (ii) a person includes its legal personal representatives, successors and assigns;
- (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (iv) a right includes a benefit, remedy, discretion, authority or power;
- (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation; and
- (vi) a reference to a clause is a reference to a clause of this MOU.

**EXECUTION**

**SIGNED** by the **DIRECTOR,**  
**TRANSPORT SAFETY**  
for and on behalf of the **CROWN IN**  
**RIGHT OF THE STATE OF**  
**VICTORIA**  
in the presence of:

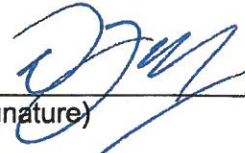
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)



Witness (Signature)

MARIA PETROVA

Witness (Print name)



(Signature)

DAVID HOURIGAN

Date: 8/8/2017

**SIGNED** by **DIRECTOR OF ENERGY**  
**SAFETY** for and on behalf of the  
**CROWN IN RIGHT OF THE STATE**  
**OF VICTORIA** in the presence of:

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)  
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Witness (Signature)

AMBER COE

Witness (Print name)



(Signature)

PAUL FEARON

Date: 21/08/2017

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**SCHEDULE 1****CONTACT DETAILS**

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**DIRECTOR, TRANSPORT SAFETY****Relationship manager**

Name Matt d'Abbs  
Position Director, Strategy, Policy & Corporate Services  
Address Level 15, 121 Exhibition Street, Melbourne VIC  
Telephone (03) 9655 2027  
Fax (03) 9655 8929  
Email matt.h.d'abbs@transportsafety.vic.gov.au

**Emergency contact details**

TSV Duty Officer 1800 301 151

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**ENERGY SAFE VICTORIA****Relationship manager**

Name Dr Roanne Allan  
Position General Manager Risk, Regulatory Planning & Policy  
Address Level 5, Building 2, 4 Riverside Quay, Southbank Vic  
Telephone (03) 9203 9713  
Fax (03) 9686 2197  
Email Roanne.allan@energysafe.vic.gov.au

**Emergency contact details**

Electricity (24 hours) 1800 000 922  
Gas (24 hours) 1800 671 337

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