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In reply please quote: **DH:ljm: A14/1547**

24 July 2015

Sue McCarrey
Chief Executive Officer
Office of the National Rail Safety Regulator
PO Box 3461
RUNDLE MALL ADELAIDE SA 5000

By email: sue.mccarrey@onrsr.com.au

Dear Ms McCarrey,

Transfer of NSW Independent Transport Safety Regulator to the Office of the National Rail Safety Regulator

I write on behalf of the Public Service Association of NSW (**PSA**), and thank you for the opportunity to meet with you at the offices of the NSW Independent Transport Safety Regulator (**ITSR**) on 7 July 2015.

You have advised that the NSW Government intends to transfer the business of ITSR to the Office of the National Rail Safety Regulator (**ONRSR**), with an intended date for this to occur sometime in December 2015.

The salaries and conditions of ITSR employees are currently set out in the *Crown Employees (Independent Transport Safety Regulator) Award 2011*, and the PSA is a party to this Award. When the transfer takes place, section 768AN of the *Fair Work Act (Cth) 2009 (the Act)* provides that the former employees of ITSR will be covered by a copied State Award when they commence work at ONRSR. The copied State Award will include the same terms of the Award currently covering ITSR and its employees.

Salaries and conditions for ONRSR staff are governed by the *Office of the National Safety Regulator (ONRSR) Greenfields Enterprise Agreement 2012-2014*, although I note your advice that a new Enterprise Agreement is in the process of being lodged for approval by the Fair Work Commission (**the draft 2015 Enterprise Agreement**). This will replace the Greenfields Agreement if approved.

I confirm your advice that you would prefer that the conditions of the transferring ITSR staff would mirror that contained in the draft 2015 ONRSR Enterprise Agreement as much as possible, with a few exceptions. While I understand that those exceptions have yet to be fully decided upon, I have been advised that at present ONRSR proposes that staff remain at the salary levels contained in the ITSR Award for the duration of their employment (and as increased by the relevant provision in the draft 2015 ONRSR Enterprise Agreement and subsequent Enterprise Agreements) and at their current hours

of work for the duration of the draft 2015 ONRSR Enterprise Agreement (**the ONRSR proposal**).

I further confirm your advice that to achieve this end ONRSR intends to make an application to the Fair Work Commission prior to the transfer, presumably pursuant to section 768AX of the Act. The grounds on which such an application could be made are not clear, and we look forward to discussing this issue during further meetings with ONRSR.

The PSA has consulted with its members to obtain their views about the ONRSR proposal, and they are of the view that the conditions contained in the ONRSR proposal are markedly inferior to those provided for by their Award, and are therefore opposed to any variation at this stage. However, we remain hopeful that negotiations between the parties may address the concerns of our members. For this purpose, I would be grateful if you could set out in writing the terms of ONRSR's proposal to vary the copied State Award. This would serve to set the parameters of our discussions and assist the PSA in consulting with our members and providing their views to ONRSR.

I also understand that during August ONRSR intends to conduct one-on-one meetings between individual ITSR staff and the relevant ONRSR Executive Director. I have been advised that the purpose of these meetings is to provide individual staff with a copy of their ONRSR position description and an ONRSR organisational chart, and to give staff an opportunity to raise any questions they might have. Our members have expressed some anxiety about this process, particularly as negotiations about the transfer are ongoing.

I have discussed this issue with Ms Janice McLoughlin of your office, and confirm that:

- these documents are to be provided to staff prior to any one-on-one meeting
- the meetings are optional and
- staff are able to indicate whether they would like to schedule a meeting.

I also confirm the request that I made to Ms McLoughlin for a copy of the new ONRSR position descriptions for transferring staff.

Thank you for your attention to this matter and I look forward to your reply. Please do not hesitate to contact me if you would like to discuss this on telephone 0409 220 691 or by email dhennesy@psa.asn.au.

Yours faithfully

Damien Hennessy
Industrial Advocate

CC: Janice McLoughlin, Transition Project Manager, Janice.McLoughlin@onrsr.com.au