

ONRSR Ref: ONRSR-1032527577-236
Your Ref:

8 May 2023

Mr Paul Scurrah
Managing Director and Chief Executive Officer
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Via email: paul_scurrah@pacificnational.com.au

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Dear Paul

Notice of Decision – Enforceable Voluntary Undertaking regarding incident at Jumperkine, Avon Valley, Western Australia on 24 December 2019

I refer to the proposed written undertaking (**the Undertaking**) offered by Pacific National to the National Rail Safety Regulator (**Regulator**), provided by email on 1 May 2023 for consideration pursuant to section 251 of the Rail Safety National Law (**RSNL**).

This Undertaking is offered in relation to proceedings commenced by the Regulator in the Magistrates Court of Western Australia in relation to a fatal train collision at Jumperkine, Avon Valley, Western Australia on 24 December 2019. I note the acceptance of the Undertaking does not constitute an admission of guilt by Pacific National in respect of the contraventions alleged as part of those proceedings.

In accordance with section 252(1) I hereby give written notice that I have made the decision to **accept** the Undertaking.

Reasons for the Decision

- (1) The alleged contravention of the RSNL was not a Category 1 offence.
- (2) The actions proposed by Pacific National contribute to improved safety outcomes for not only Pacific National but also the wider rail industry and the communities it impacts.
- (3) The actions proposed by Pacific National are likely to provide effective long term rectification of the matters that have given rise to the legal proceedings initiated by ONRSR regarding the Jumperkine incident.

- (4) The actions proposed by Pacific National coupled with the publication of the EVU and associated publicity will ensure lessons learned are prominent and widely available for the rail industry to leverage off. The undertakings provide opportunities for the wider rail industry, with particular focus on the intermodal freight operators, to learn and improve from this incident from the deliverables to be shared by Pacific National.
- (5) The dollar amount to be invested by Pacific National in industry safety improvements is reasonable and arguably commensurate with or higher than any potential penalty that might have eventuated from a successful prosecution. The commitment to the spend is further demonstrated by any other monies not used as part of the undertaking to be donated to TrackSAFE Foundation or other such rail safety charity.
- (6) The discontinuation of further legal action allows both ONRSR and Pacific National to devote resources to improving safety that would otherwise be allocated to the ongoing legal proceedings.
- (7) Genuine safety improvement, internal cultural change and measures to ensure such an incident will not occur again were future actions that were important to the family of the deceased worker in this matter. I believe the commitments set out in this EVU will better achieve those measures than pursuing proceedings which will not guarantee any such change. The commitments are long term and not 'quick fix' opportunities which will hopefully embed the positive changes into the organisation. These undertakings ensure that the commitments are tangible, clear, and provide deliverables that are auditable and measurable by ONRSR.
- (8) The public interest will be better served by accepting this EVU and ensuring the proposed safety improvements are implemented rather than devote further time and resources to legal proceedings.
- (9) Pacific National has appropriate resources and has demonstrated a commitment at the highest level to ensuring the deliverables outlined in this EVU will be achieved.
- (10) Pacific National understands its legal obligations upon acceptance of this EVU and in particular the ramifications for any non-compliance.

Compliance with the Undertaking

In accordance with section 254 of the RSNL, it is an offence for you to contravene the Undertaking made by you that is now in effect.

If the Regulator considers that you have contravened the Undertaking, the Regulator may apply to the Court of enforcement of that Undertaking. The Court, in accordance with section 255(2) of the RSNL, may make a variety of orders in relation to that contravention, and it is an offence not to comply with any order made under that section.

Withdrawal or Variation of an Undertaking

In accordance with section 256 of the RSNL, you may, at any time, with the written agreement of the Regulator, withdraw the Undertaking, or vary the Undertaking.

Proceedings

In accordance with section 257(4) of the RSNL, the Regulator will take all reasonable steps to have the proceedings discontinued as soon as possible.

Governance and Publication

We will be in contact with you shortly to further discuss and agree the specific arrangements regarding the governance, compliance and oversight of the obligations set out in the Undertaking.

This notice of decision, and your Undertaking will be published on the National Rail Safety Register.

Please contact me on 0439 883 963 or email peter.doggett@onrsr.com.au if you have any questions in relation to this notice of decision.

This decision is not reviewable in accordance with section 215 of the RSNL.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Doggett', with a long horizontal flourish extending to the right.

Peter Doggett
A/National Rail Safety Regulator

