

## Enforceable Voluntary Undertaking

Made pursuant to Part 10 Division 6 of the Rail Safety National Law

The commitments in this enforceable voluntary undertaking are offered to the National Rail Safety Regulator

By

Pacific National Pty Ltd (ACN 098 060 550)

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# Enforceable voluntary undertaking

Made pursuant to Part 10 Division 6 of the Rail Safety National Law

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## 1 Introduction

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- (a) Pacific National Pty Ltd (ACN 098 060 550) (**Pacific National**) of Level 16, 15 Blue Street, North Sydney NSW 2060 is a privately-owned rail freight company with a history dating back to 1855.
- (b) Pacific National is an accredited rolling stock operator under the *Rail Safety National Law* (**RSNL**) and operates throughout Australia.
- (c) Pacific National is committed to providing and maintaining a safe working environment in compliance with its duties. Consistent with that commitment, Pacific National implements safety strategies, practices and systems, including through a comprehensive Integrated Management System as detailed further in section 5.
- (d) Pacific National's overarching approach prioritises safety above all else and embeds that predominating value into all of its operations.
- (e) Pacific National enters into this Enforceable Voluntary Undertaking (**EVU**) as part of its visible demonstration of its commitment to the continuous improvement of its safety management system, prioritisation of its workforce's health and safety and partnership with, and support of, the communities in which it operates.
- (f) Safety is Pacific National's priority, above all else.

## 2 Purpose

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- (a) The commitments within this EVU are offered to the National Rail Safety Regulator (**Regulator**) as an alternative to the continuation of the prosecution before the Court.
- (b) The purpose of this EVU is to document Pacific National's proposed undertakings under section 251 of the RSNL as in force in Western Australia (**WA**), in connection with charges brought by the Regulator after an incident that occurred at Jumperkine, WA on 24 December 2019 and to demonstrate Pacific National's commitment to continuous safety improvement and addressing risks that ONRSR contends were causal or contributory to the incident.
- (c) This proposal is submitted in acknowledgment of the seriousness of the incident.

## 3 Background

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### 3.1 Incident Overview

- (a) At approximately 2.00am on 24 December 2019, Pacific National-operated freight train 7MP5 collided with the rear of a stationary loaded grain train 2K66, operated by Watco, near Jumperkine, WA. The locomotive cabin of 7MP5 was damaged with a significant amount of grain entering the locomotive cabin. The driver of train 7MP5 was found deceased following the collision (**Incident**).
- (b) At the time of the Incident, Pacific National was responsible for the effective control and management of the operation or movement of freight train 7MP5 and was an accredited

rolling stock operator for the purposes of the RSNL as it applies in the State of Western Australia.

### **3.2 Investigation**

- (a) The Office of the National Rail Safety Regulator (**ONRSR**) has completed an investigation into the Incident.
- (b) Pacific National has fully cooperated with ONRSR's investigation into the Incident and related matters.
- (c) ONRSR did not issue any improvement or prohibition notices to Pacific National in relation to the Incident.

### **3.3 Continual improvement since the Incident**

- (a) Pacific National is committed to the safety of its people and business.
- (b) Following the Incident, Pacific National:
  - (i) reviewed its pre-existing risk assessment regarding mainline driving operations;
  - (ii) internally consulted about that risk assessment;
  - (iii) cooperated with regulatory investigations into the Incident;
  - (iv) provided assistance and support to the deceased worker's family;
  - (v) trialled several SPAD-related technology; and
  - (vi) introduced a requirement for there to be two persons in the cab of a locomotive between 12.01am and 6.00am on train services operating between Port Augusta – Adelaide and Kalgoorlie - Perth.

### **3.4 History of compliance with the RSNL**

Pacific National has no prior findings of guilt or convictions for any breach of the RSNL.

## **4 Details of the alleged contravention**

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On 20 December 2021, ONRSR commenced a prosecution of Pacific National in relation to the Incident with the laying of four charges (with four in the alternative) alleging that Pacific National has contravened sections 52(1), 59 and 60 of the RSNL.

The charges relate to an alleged:

- (a) Failure to develop and implement safe systems to address fatigue – hazard identification and risk assessment for fatigue on early morning services;
- (b) Failure to develop and implement safe systems to address fatigue – second worker on early morning services;
- (c) Failure to develop and implement safe systems to address fatigue – ensuring that a work break, or breaks had been planned on relevant services; and
- (d) Failure to make enquiries about fatigue with drivers of certain services.

## 5 Existing Safety Management System

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### 5.1 Integrated Management System

- (a) Pacific National implements a range of safety strategies, practices and systems to comply with its duties and responsibilities under the RSNL and other safety legislation, including through a comprehensive safety management system (**SMS**).
- (b) The SMS includes Pacific National's documented safety strategy which aims to prevent injuries and incidents and maintain a close partnership with its customers and suppliers to ensure safety is the foundation of its operations across its entire supply chain.
- (c) The SMS includes elements addressing, among other things, controls to manage fatigue in rail safety workers and the auditing of that system's effectiveness.
- (d) Fatigue management at Pacific National is a multi-layered and multi-factorial complex of processes and procedures that are anchored by a Fatigue Risk Management Standard and Fatigue Guideline. Those processes and procedures are complemented by:
  - (i) information, training and instruction provided to freight drivers;
  - (ii) engineering controls, such as a cyclic vigilance control system;
  - (iii) a fatigue management system that incorporates algorithmic fatigue monitoring and FAID modelling; and
  - (iv) driver self-identification of fatigue or potential fatigue.

### 5.2 Auditing Systems

The SMS includes systems to ensure that auditing is scheduled, measured, monitored, recorded and analysed and audits are conducted by multi-disciplinary teams who are independent from the organisational unit being audited. Pacific National's operations are also audited by Comcare and the Regulator.

### 5.3 Other

In addition to the systems set out above, in 2020 Pacific National founded a 5-year Health, Safety and Environment (**HSE**) Strategy: right people, right equipment, right systems and procedures, enough time and support to do the job, and right choices.

## 6 Addressing the alleged contravention

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- (a) Pacific National sincerely regrets the Incident and is genuinely committed to ensuring that such an incident does not occur again and to sharing its learnings and the importance of safety with rail industry participants.
- (b) Pacific National is committed to continuous improvement and seeks to address any perceived systems failure which underlie the alleged breaches of the RSNL. Pacific National recognises that to implement enduring change and improvement, there is a need to focus on people, environment and organisational factors and the specific systems and processes used.
- (c) To this end, without making any admissions as to liability, Pacific National has committed to undertakings herein which strengthen and emphasise safety across the rail industry with the aim of enhancing Australian rail safety for rail safety workers, industry and the community. These undertakings are described in detail in section 9. In addition to these factors, Pacific National is committed to sharing learnings with the Australian rail industry and providing tools for the industry to help prevent their own incidents.

## **7 Monitoring the enforceable voluntary undertaking**

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- (a) Pacific National is committed to providing the ONRSR with updates on this EVU on a basis suitable to the ONRSR. Pacific National will:
  - (i) report against its progress on the matters set out in this EVU to the ONRSR on a monthly basis (unless otherwise arranged with ONRSR);
  - (ii) provide agreed evidence to the ONRSR at the completion of defined activities (to this end, it is understood that the ONRSR may choose to undertake compliance monitoring activities to verify the evidence provided by Pacific National); and
  - (iii) work with the ONRSR to identify and appoint (at Pacific National's expense) a suitable independent party to monitor and review compliance with this EVU and to provide the ONRSR with updates as required.
- (b) Pacific National will discuss with the ONRSR an appropriate means to confirm the closure of undertakings contained within this EVU. Pacific National will ensure that all resource costs associated with this undertaking are appropriately tracked.
- (c) A final report to close-out this EVU will be provided by Pacific National to the ONRSR within 3 months of the final milestone.

## **8 Undertaking development**

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This EVU has been developed in consultation with the:

- (a) Jumperkine Incident Steering Committee,
- (b) Executive Leadership Team, and
- (c) Health, Safety and Environment Board Committee.

## **9 Undertakings**

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### **9.1 Overview**

- (a) The undertakings offered are intended to cover improvements in management systems, changes to the way people work and sharing Pacific National's knowledge with the broader industry.
- (b) The activities described in this EVU have been devised to deliver in the following outcomes:
  - (i) Further improve the documented systems and training that Pacific National has in place to manage any risks associated with fatigue amongst intermodal train drivers;
  - (ii) Further improve physical health and wellbeing of intermodal train drivers;
  - (iii) Trial emerging fatigue detection technology that may benefit rail industry participants; and
  - (iv) Dissemination of Pacific National's learnings about fatigue management and associated emerging technology with the Australian rail industry.

## 9.2 Commitment 1 – Human Factors

- (a) Pacific National will engage a full-time fatigue risk manager and a full-time human factors subject matter specialist to develop over a targeted 12 month period commencing in FY24 an updated fatigue management standard and guideline in relation to:
- (i) fatigue-related hazards;
  - (ii) the core principles of fatigue risk management; and
  - (iii) how to develop a decision-making pathway for applying those principles so that rail freight operational risks can be better managed.
- (b) The standard and guideline will provide a pathway for accredited rolling stock operators to consider the management of train crew breaks going forward.
- (c) Pacific National will procure training for train drivers in relation to the documents developed in accordance with clause 9.2(a) within 36 months of the acceptance of this EVU.
- (d) Pacific National will make the documents developed in accordance with clause 9.2(a) available to other participants in the Australian rail industry.
- (e) The estimated cost to deliver the undertaking in this clause 9.2 are set out in the table below:

<b>Item</b>	<b>Estimated Cost</b>
Engagement of subject matter specialists for 12 months	\$437,000
Project management costs including management time, travel and accommodation	\$185,000
Employee consultation costs	\$200,000
Training of train drivers on resulting standard and guideline, including development of training materials, trainers costs (time, travel and accommodation), participants costs (time)	\$500,000
<b>Total estimated cost of Commitment 1</b>	<b>\$1,122,000</b>

## 9.3 Commitment 2 – Physical Health and Wellbeing

- (a) Pacific National will engage a service provider to implement a physical health and wellbeing program for intermodal train drivers. This program will provide Intermodal train drivers with online and mobile health and wellbeing awareness content, face to face health coaching, telehealth coaching, health checks and regular presentations on relevant health and wellbeing topics from subject matter experts. The program and the resources provided within it aim to arm participants with tools to help them implement strategies to improve health and wellbeing including fatigue management. The success of this program will be measured through successful roll out of the program to the target group as well as monitoring areas such as productivity, absenteeism and engagement.
- (b) The program referred to in clause 9.3(a) will be delivered by a third-party specialist program designer, via both an online and face-to-face format, over 36 months from the date of this EVU.
- (c) The estimated cost to deliver the undertaking in this clause 9.3 are set out in the table below:

<b>Item</b>	<b>Estimated Cost</b>
Service provider's fees (3 year program)	\$134,000 per year
Pacific National's costs of engaging with the provider, including the commitment of group management time (3 year program)	\$100,000 per year
<b>Total estimated cost of initiative</b>	<b>\$702,000</b>

#### **9.4 Commitment 3 – Rail Industry Conference**

- (a) Pacific National will host a rail freight safety conference for participants in the rail freight sector to encourage and promote safety in the industry, including rail safety workers and other industry and community attendees.
- (b) The conference referred to in clause 9.4(a) will:
- (i) have a one-day duration;
  - (ii) be attended by guest speakers;
  - (iii) include panel and group discussions regarding fatigue risk management in the rail freight sector;
  - (iv) be held within 24 months of the date of this EVU; and
  - (v) be free for participants to attend.
- (c) For the purpose of clause 9.4(b)(ii), Pacific National will invite speakers from ONRSR, leaders in the rail freight industry and fatigue risk management subject matter experts.
- (d) The estimated cost to deliver the undertaking in this clause 9.4 are set out in the table below:

<b>Item</b>	<b>Estimated Cost</b>
Speaker-related costs	\$25,000
MC	\$5,000
Venue hire	\$2,000
Merchandise	\$5,000
Catering for conference	\$8,250
Audio-visual costs for conference	\$3,500
Marketing for conference	\$5,000
Conference organisation – management time	\$20,000
Travel and accommodation of PN employees	\$30,000
<b>Total estimated cost of initiative</b>	<b>\$103,750</b>

#### **9.5 Commitment 4 – Meeting with RIM**

- (a) Pacific National will convene a meeting with an accredited rail infrastructure manager to discuss signal visibility, location and review the procedures for the train handling in those locations in the vicinity of the Incident site.



- (b) The meeting referred to in clause 9.5(a) will be attended by appropriately senior PN operational staff and the RIM will be invited to participate in a meeting to be held within 12 months of the date upon which this EVU is accepted.
- (c) Pacific National will prepare minutes of the meeting which will identify the signal locations discussed, the train handling procedures that were reviewed and any agreed actions and share those minutes with participants and ONRSR.
- (d) The estimated cost to deliver the undertaking in this clause 9.5 are set out in the table below:

<b>Item</b>	<b>Estimated Cost</b>
Attendance time	\$3,000
<b>Total estimated cost of initiative</b>	<b>\$3,000</b>

### **9.6 Commitment 5 - Emerging Technology Trial – Pacific National**

- (a) Pacific National will conduct a trial in a simulated or other appropriate environment of emerging technology for the detection of distraction/drowsiness events with a third party vendor. Where a simulated exercise is conducted in the first instance, if proven successful, Pacific National will undertake a further trial in a locomotive with a driver(s) to determine if reasonably practicable.
- (b) Pacific National will:
- (i) take reasonable steps to conduct the trial in clause 9.6(a) within 24 months of the date of this EVU;
  - (ii) update ONRSR on the progress of the trial at least every six months;
  - (iii) provide a trial summary report at the conclusion of the trial to ONRSR, of which the findings in the report may be published by ONRSR on its website; and
  - (iv) will allow the vendor to share the results of the trial with other potential customers.
- (c) The estimated cost to deliver the undertaking in this clause 9.6 are set out in the table below:

<b>Action</b>	<b>Estimated Cost</b>
PN Project Management Team	\$60,000
External Vendor Project Management	\$322,500
Technology through preferred vendor	\$3,000
Installation and monitoring	\$7,500
External Vendor Travel and Expenses	\$15,000
<b>Total estimated cost of initiative</b>	<b>\$408,000</b>

### **9.7 Commitment 6 - Emerging Technology Trial – observer participant**

- (a) Pacific National will participate as an observer in a trial of emerging technology for the detection of distraction/drowsiness events by participating in the United Kingdom's chapter of the Rail Industry Safety & Standards Board's trial of a drowsiness detection and management system. The technology will be trialled in 10 passenger railways, one long

distance railway and one freight railway. The exact technology will be determined following tendering phase of the program.

- (b) Pacific National will:
- (i) take reasonable steps to commence its role in the trial in clause 9.7(a) within 6 months of the date of this EVU;
  - (ii) will participate as an observer in the trial for 24 months after the commencement of the trial;
  - (iii) regularly update ONRSR on the progress of the trial;
  - (iv) seek to understand opportunities for Australian application from the outcome of the trial.
- (c) The estimated cost to deliver the undertaking in this clause 9.7 are set out in the table below:

Action	Estimated Cost
Commitment of management time of senior level Pacific National representatives	\$30,000
Travel costs, including flights and accommodation	\$10,000
RISSB association fees	\$40,000
<b>Total estimated cost of initiative</b>	<b>\$80,000</b>

## 9.8 Costs

Pacific National will pay ONRSR's costs itemised in the table below within 30 days of receipt of an invoice for the costs being issued to Pacific National.

Action	Estimated Cost
Incident investigation costs	Nil - ONRSR borne costs
External legal costs in relation to the Proceedings	\$675,763.35
<b>Total estimated cost of initiative</b>	<b>\$675,763.35</b>

## 9.9 Minimum Spend

- (a) The total cost to Pacific National of the undertakings referred to in clause 9.2 to 9.8 is approximately \$3,094,513.35.
- (b) If the cost to Pacific National of complying with the undertakings in clause 9.2 to 9.8 is less than \$3,094,513.35, Pacific will donate the balance of remaining funds to "The TrackSAFE Foundation", or another registered charity associated with rail safety, and provide a receipt of such donation to ONRSR.

## 9.10 Commitment Schedule

A list of the commitments referred to in this section 9, together with their associated costs and completion dates, is set out in the Schedule to this EVU.

## **10 Miscellaneous**

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- (a) This EVU is signed for and on behalf of Pacific National by its Chief Executive Officer, Paul Scurrah, who is duly authorised by Pacific National to do so.
- (b) Pacific National confirms that its financial controller, Manuela Miric, Head of Financial Control, has reviewed this EVU and confirmed that Pacific National can meet its financial obligations under this EVU.
- (c) Pacific National confirms that, to the best of its knowledge, there are no known and undisclosed relationships between Pacific National and any service provider referred to in this EVU.
- (d) Pacific National acknowledges that this EVU may be published on ONRSR's website and may be referenced in ONRSR material.

## **11 Commencement**

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- (a) In accordance with section 253 of the RSNL, this EVU takes effect and becomes enforceable when the Regulator's decision to accept the undertaking is given to Pacific National.
- (b) In accordance with section 257 of the RSNL, ONRSR will take all reasonable steps to have the proceedings withdrawn and dismissed as soon as possible after the EVU takes effect with no order as to costs.

## 12 Execution

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**Executed** as an agreement.

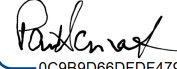
**Accepted by Pacific National Pty Ltd** by:

DocuSigned by:  
  
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\_\_\_\_\_  
Signature of witness

Andrew Beck

\_\_\_\_\_  
Print name

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Signature of authorised officer

Paul Scurrah

\_\_\_\_\_  
Print name

**Accepted** by the **National Rail Safety Regulator** pursuant to clause 251 of the Schedule to the Rail Safety National Law by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of National Rail Safety Regulator  
(or their authorised delegate)

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

## Schedule – Summary of Commitments

No.	Undertaking	Description	Completion Date	Estimated Cost
1	Commitment 1 – Human Factors	Specialist development of updated fatigue management standard and guideline and related training	36 months from acceptance of EVU	\$1,122,000
2	Commitment 2 – Physical Health and Wellbeing	Develop and implement an updated physical health and wellbeing program for intermodal train drivers	36 months from acceptance of EVU	\$702,000
3	Commitment 3 – Rail Industry Conference	Hosting a rail safety conference	24 months from acceptance of EVU	\$103,750
4	Commitment 4 – Meeting with a RIM	Meeting with RIM to discuss signal visibility in the vicinity of the Incident site	12 months from acceptance of EVU	\$3,000
5	Commitment 5 – Emerging Technology Trial – Pacific National	Trial in simulated or controlled environment of emerging technology for the detection of distraction/drowsiness events	24 months from acceptance of EVU	\$408,000
6	Commitment 6 - Emerging Technology	Observer participant in UK trial of emerging technology for the detection of distraction/drowsiness events	24 months from acceptance of EVU	\$80,000
7	Regulator's Costs	Payment towards ONRSR's costs		\$675,763.35
	<b>Total cost</b>			<b>\$3,094,513.35</b>