

ONRSR Ref: A1258944
Your Ref:

27 October 2021

Mr Nick Easy
Chief Executive Officer
Queensland Rail (QR)
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Dear Mr Easy

Notice of Decision - Enforceable Voluntary Undertaking (Near Miss Incidents near Thorneside, Queensland)

I refer to the proposed written undertaking (**the Undertaking**) from Queensland Rail (**QR**) to the National Rail Safety Regulator (**Regulator**), provided by email on 10 September 2021 (with clarifications provided on 8 October 2021), for acceptance pursuant to section 251 of the Rail Safety National Law (**RSNL**). This undertaking has been offered to demonstrate that QR is committed to effective long-term rectification of the matters that have given rise to the alleged contraventions in the RSNL.

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) Whilst the investigation undertaken by ONRSR identified contraventions of the RSNL, none were identified as section 58 offences, which, if they were, would preclude an Undertaking from being accepted; and
- (2) The nature of the alleged contraventions and the actions taken by QR to date in response to the incident, and to be taken by QR in accordance with the proposed Undertaking have been assessed as being appropriate for consideration of an Undertaking; and
- (3) I have formed the view that in accordance with the policy set out in the ONRSR Way, the public interest would be better served by the acceptance of the proposed Undertaking in lieu of legal proceedings on the basis that it will have the same (or better) regulatory impact and is more cost effective for industry as a whole. Moreover, the rail safety outcomes will be significant should all the undertakings be complied with, which may reasonably outweigh any regulatory outcome as a result of a prosecution; and

- (4) The issue of general and specific deterrence is a significant consideration as well. The specific deterrence will be realised by way of agreement to publish the Undertaking (other than commercially sensitive or personal details) on ONRSR's website. This will place the Undertaking on the public record and ensure compliance by QR, but will also serve as a general deterrent for the rail industry as they too will also see the requirements placed on QR as part of the Undertaking, as a serious alternative to prosecution; and
- (5) Track worker safety is a critical issue for ONRSR, and I see that the project elements to be delivered as part of the Undertaking should see significant changes across the QR network, and set a precedent for other rail transport operators as to how to manage those kinds of risks across different operations and geographic locations; and
- (6) QR will bear the cost of the appointment of the independent person who will provide the oversight and monitoring of the Undertaking, and this person will share any and all information with the Regulator, if and when requested.

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 for 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.

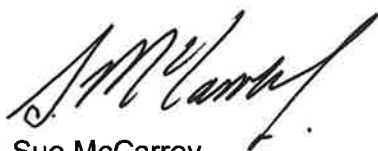
Proceedings

In accordance with section 257 of the RSNL, the Regulator cannot commence proceedings in relation to the contraventions identified as a result of this incident whilst the Undertaking is in effect.

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.

Please contact me on (08) 8406 1510 or email sue.mccarrey@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



Sue McCarrey
National Rail Safety Regulator