

ONRSR Ref: A1112610
Your Ref:

9 June 2020

Mr Mark Campbell
Chief Executive Officer
Australian Rail Track Corporation Limited
PO Box 10343
Gouger Street
ADELAIDE SA 5000

National Office
PO Box 3461, Rundle Mall
ADELAIDE SA 5000
contact@onrsr.com.au
08 8406 1500
www.onrsr.com.au
ABN: 44 260 419 904

Dear Mr Campbell

Notice of Decision – Enforceable Voluntary Undertaking (*Rail Safety Undertaking*)

I refer to the proposed written undertaking (**the Undertaking**) from Australian Rail Track Corporation Limited (**ARTC**) to the National Rail Safety Regulator (**Regulator**), provided by email on 1 June 2020, for acceptance pursuant to section 251 of the Rail Safety National Law (**RSNL**). This Undertaking has been offered as an alternative to enforcement action that the Regulator was contemplating in relation to a serious incident at Frampton, New South Wales on 25 June 2018.

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) An overview of the investigation undertaken by ONRSR including contraventions identified as a result, was set out in a letter to ARTC on 18 September 2019. ARTC was informed that the Regulator was considering all enforcement options as a result of the investigation, including considering filing charges in respect of the contraventions identified. None of the contraventions identified were 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 ARTC to date in response to the incident, and to be taken by ARTC 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, that the public interest would be better served by the acceptance of the proposed Undertaking in lieu of continuation of the current 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 ARTC, but will also serve as a general deterrent for the rail industry as they too will also see the requirements placed on ARTC 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 ARTC 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) ARTC 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 rail safety undertaking

In accordance with section 254 of the RSNL, it is an offence for you to contravene the rail safety 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 of a rail safety 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 rail safety undertaking is in effect.

We will be in contact with you shortly to further discuss and agree the specific arrangements with regard to 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