

ONRSR Ref: A822854  
Your Ref:

15 December 2017

Mr Michael Houghton  
Chief Executive Officer  
Metro Trains Melbourne (MTM)  
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Melbourne VIC 3001

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Dear Mr Houghton

### **Notice of Decision- Enforceable Voluntary Undertaking (*Rail Safety Undertaking*)**

I refer to the proposed written undertaking (**the Undertaking**) from Metro Trains Melbourne (MTM) to the National Rail Safety Regulator (**Regulator**), provided via email on 12 December 2017, for acceptance pursuant to section 251 of the Rail Safety National Law (RSNL). This Undertaking has been submitted as an alternative to the legal proceedings commenced by the Regulator on 28 September 2017 regarding the serious injury of a rail safety worker at Laverton on 2 October 2015.

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 contraventions as set out in in the Charge Sheet filed with the Melbourne Magistrates Court on 28 September 2017 are not section 58 offences, which if that was the case, would preclude the proposed undertaking from being accepted; and
- (2) The nature of the alleged contraventions and the actions taken to date in response to the incident, and to be taken by MTM in accordance with the proposed undertaking have been assessed as being appropriate for consideration of an undertaking; and
- (3) The Regulator agrees, in accordance with the *ONRSR Compliance and Enforcement Policy* 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 regulatory impact and is more cost effective for industry as a whole. Additionally, the rail safety outcomes will be significant should all the undertakings be complied with, which may reasonably outweigh any regulatory outcome as the result of a prosecution; and
- (4) The matter of general and specific deterrence is of significant consideration. The specific deterrence will be realised by way of agreement to publish some or all of the undertaking, as accepted (with any personal or commercially sensitive information redacted). This will place the undertaking on the public record to ensure compliance by MTM, but will also serve as a general deterrent for the rail industry as they too will see the requirements placed on MTM as part of the undertaking, as a serious alternative to the continuation of the prosecution; and

- (5) MTM will bear the cost of the appointment of a mutually agreed independent person who will provide oversight and monitoring of the undertaking, and MTM's ability to comply with the requirements set out in the document. Additionally, this independent person will share any and all information with the Regulator, as 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 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 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.

### **Current Proceedings**

Pursuant to section 257(4) of the RSNL, the Regulator will take all reasonable steps to discontinue the proceedings set down for Mention at the Melbourne Magistrates Court on Tuesday 19<sup>th</sup> December 2017.

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](mailto: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