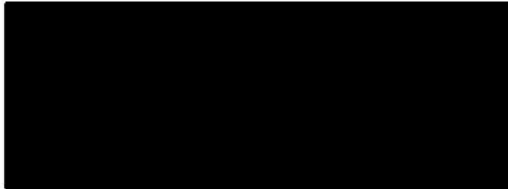


30 June 2022
Our Reference: 3055



To the proper officers,

Heavy Vehicle National Law
Part 10.1A – Enforceable Undertakings
REASONS FOR DECISION

1. I have received your proposal for an Enforceable Undertaking per Part 10.1A of the *Heavy Vehicle National Law* (“HVNL”). For the reasons set out I am of the opinion the undertakings given by Downer EDI Works Pty Ltd (“DOWNER”) are appropriate enforcement options in regard to the relevant contravention.

Background to the application

2. It is agreed that on 12 October 2020, DOWNER failed to comply with the mass requirements prescribed by section 96(1)(c) of the HVNL.
3. The heavy vehicle combination operated by DOWNER on 12 October 2020 was weighed and the tri-axle mass of the vehicle was 24,040kg, exceeding the prescribed mass limit of 20,000kg by an excess mass of 4,040kg or 120.2%, constituting a severe risk breach.
4. The National Heavy Vehicle Regulator (“NHVR”) commenced a prosecution against DOWNER alleging the contravention. The maximum penalty available for the offence is \$57,450.00.
5. On 26 May 2022, DOWNER wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.
6. I have assessed the proposal submitted against the NHVR Policy – *Enforceable Undertakings* (“the policy”) and the NHVR Guideline – *Proposing an Enforceable Undertaking* (“the guidelines”).
7. In assessing the proposal per Section 4 of the guidelines I have considered the following factors.

The nature and extent of the act or omission alleged

8. Heavy vehicles that are over-mass present a risk to safety and infrastructure. In this matter there was no manifestation of the risk.
9. There is no evidence of systematic non-compliance with the HVNL by the accused.

The person's compliance history

10. Since commencing operations in Australia in 2007, DOWNER has not been convicted of:
 - a. Any offence under the HVNL;
 - b. A breach of any safety duty under the Work, Health and Safety legislation of a State, Territory or the Commonwealth;
 - c. A failure to comply with any Enforceable Undertaking; or
 - d. Any other offence involving the death, serious injury or illness of any person involved in DOWNER's business or undertaking.

Whether the EU delivers benefits to the public beyond the Promisor's compliance with the law

11. DOWNER has proposed a commitment to ensuring that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent a recurrence.
12. DOWNER is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
13. DOWNER has committed to ongoing continuous improvement in how it manages risks associated with its business operations.
14. DOWNER has completed four (4) rectifications prior to the application for an EU.
15. DOWNER has committed to ensuring it has developed systems that identify, assess and control risks and these systems are designed to promote continual improvement. The following opportunities for the enhancement of processes have been undertaken:
 - a. DOWNER has installed on-board electronic weigh scales on all vehicles (4 loader vehicles in total) used for mobile field-based surfacing activities.
All vehicles in the [REDACTED] (4 loader vehicles in total) have had scales fitted to wheel loaders used for the roadside loading of aggregates.
The total cost of the rectification was \$200,000.
 - b. All employees, including senior field staff and regular loader drivers in the [REDACTED] will be trained to use loader weigh scales.
The total cost of the rectification was \$10,000.
 - c. DOWNER has enrolled all employees engaged in mobile field-based surfacing activities in internal online NHVR training packages on Chain of Responsibility, Load Mass and dimension, Risk Management, Speed and Fatigue.
The total cost of the rectification was \$25,000.

- d. All vehicles in mobile field-based surfacing activities have been placarded with legal load limits by axle groupings. DOWNER has ascertained tare weight and payload legal limits in gross and per axle loading for all vehicles and updated its records.

The total cost of the rectification was \$10,000.

16. The total cost of the four (4) rectifications was \$245,000.

17. DOWNER has also committed to completing three (3) initiatives:

Initiative 1

Employment of Compliance Manager and Comprehensive Knowledge Review

Outcome – The new Compliance Manager role will ensure the National Roads Business has an experienced expert dedicated to ensuring DOWNER’s policies, procedures and practices are up to date and fully reflect compliance with the HVNL. The results of the Comprehensive Knowledge Review will begin an ongoing process of implementing improvements to DOWNER’s policies and procedures to ensure full compliance with the HVNL and chain of responsibility requirements and the adoption of industry best practice.

- i. Compliance manager employed within two months of the EU commencing.
- ii. Review undertaken within five months of EU commencing.
- iii. Audit on implementation progress within eleven months of EU commencing.
- iv. Estimated cost of the initiative is \$200,000

Initiative 2

Review of Training Processes and upgraded HVNL Document Suite

Outcome – The Review will ensure the training processes within the National Roads Business are comprehensive and up to date with the aim of improving the safety and well-being of all parties within the chain of responsibility, therefore minimising risks to the community.

- i. Review undertaken within six months of EU commencing.
- ii. Upgrades to HVNL Document Suite made within eight months of EU commencing.
- iii. To be completed within 12 months of the signing of the EU.
- iv. Estimated cost of the initiative is \$50,000.

Initiative 3

Development of OHS Body of Knowledge

Outcome – The new Chapter of the OHS Body of Knowledge publication will provide a resource to the transport community to facilitate increased competency and understanding of HVNL requirements, and their interaction with WHS, and integration into existing WHS risk management systems. The Chapter will contribute to increasing the standard of HVNL compliance as well as promoting the broader concept of Chain of Responsibility as a systematic risk management process designed to ensure the safe operation of heavy vehicles amongst the wider transport community.

- i. The Chapter is to be developed within twelve months of the EU commencing.
- ii. Estimated cost of the initiative is \$25,000.

18. Upon acceptance of the EU these initiatives will be commenced and completed within 12 months, **with a total estimated cost of \$275,000.**

The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety

19. Industry specific training is a key factor in driving heavy vehicle safety. Engagement with experts in the field of heavy vehicle safety, together with the sharing of information within the industry, is likely to achieve measurable improvement in heavy vehicle transport safety. DOWNER's proposal to seek expert input and deliver internal training, as well as work with industry partners to develop and disseminate a Chain of Responsibility resource, is likely to achieve measurable improvement in heavy vehicle transport safety.

The benefits of the proposal to the persons who might be affected by a similar contravention; the likely improvements in safety within the Promisor's business or operations; and the likelihood that the proposed undertaking will result in sustained improvement in compliance after its completion

20. Education that results in fewer contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.

The person's ability, including financial ability, to meet the terms of the EU

21. DOWNER has set a realistic timeframe for the implementation of the EU, with completion within 12 months.
22. DOWNER has confirmed in its proposal that it has the financial capacity to comply with the terms of the EU.

The significance of the commitment compared to the capability of the person

23. I have taken into consideration the fact that, through the proposed strategies, DOWNER has demonstrated an understanding of the importance of safety in transport operations.
24. The resources and projects proposed are of great value to the industry and are commensurate to DOWNER's capability.

The support the person has provided has committed to providing into the future to an injured or affected person

25. Not applicable.

Input from injured and affected persons

26. Not applicable.

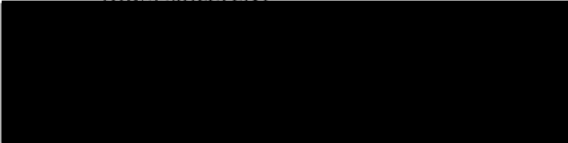
Reason for Decision

27. I have considered the merits of continuing the prosecution against DOWNER to meet the sentencing principles of rehabilitation, punishment, deterrence and denouncing of the conduct. In all of the circumstances of this matter, on balance, I am of the opinion that the EU proposed by DOWNER is an appropriate enforcement option which will meet community expectations.
28. I conclude that the EU is the preferred enforcement option to continuing the prosecution for the relevant contravention for the following key reasons;
 - a. The opportunity to provide lasting organisational change within DOWNER and to the wider transport industry. Two activities will be undertaken in order to deliver benefits to DOWNER's drivers, other parties in the chain of responsibility, and the broader community.
 - b. The activities and benefits proposed would not have been achieved by prosecution alone. Upon a conviction, a financial penalty would have been imposed on DOWNER. This would not have had the same direct impact on promoting safety awareness in the industry as the strategies outlined in the Enforceable Undertaking.
 - c. The Undertaking proposes material and tangible changes that can lead to the broader industry taking greater steps to address fitness for duty in drivers.
 - d. Education, systems and training which result in fewer contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.
 - e. The activities proposed are likely to achieve measurable improvements in the heavy vehicle transport industry, in the DOWNER Australia companies, in the wider supply chain, as well as in the communities in which DOWNER operates.

29. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking DOWNER offered on 26 May 2022.

30. DOWNER is required to send all supporting documentation in relation to this EU to intelligence@nhvr.gov.au.

Yours sincerely,



Sal Petrocitto

Chief Executive Officer

30/6/22