



# Enforceable Undertaking

## Chapter 10.1A

### Heavy Vehicle National Law

The commitments in this enforceable undertaking are offered  
to the National Heavy Vehicle Regulator

By

D M & M T Nolan P/L t/a Nolan's Interstate Transport

ABN: 29009 767 766

## Part 1 Executive summary

### Section 1 Agreed actions

1. Training material in relation to Mass, Dimension and Load Restraint to be updated.
2. Retraining of relevant staff in relation to Mass, Dimension and Load Restraint, and supply evidence of completed training.
3. Feedback and consultation on revised training from staff, for continuous improvement.

### Section 2 Total cost of actions

Costing estimates	
Man hours	\$22,070.00
Video production	\$9361.00
Total costs	\$31,431.00

## Part 2 General information

### Section 1 Purpose

1. The purpose of this enforceable undertaking is to document the undertakings offered to the National Heavy Vehicle Regulator (NHVR) pursuant to Chapter 10.1A of the Heavy Vehicle National Law (HVNL) in connection with a matter relating to an alleged contravention of the HVNL.

### Section 2 Details

2. The commitments in this enforceable undertaking are offered to the NHVR by D M & M T Nolan P/L (Nolan's Interstate Transport).
3. This enforceable undertaking is given on the day and date that it is accepted and signed by the NHVR. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.
4. A schedule detailing actions, including the person responsible, priority, status, start and end dates, notes and cost estimates of each action is attached.

### Details of the person proposing the undertaking:

Registered address:	[REDACTED]
Postal address:	[REDACTED]
Telephone:	[REDACTED]
Email address:	[REDACTED]
Legal structure:	Incorporated Trading Entity
Type of business:	Road Transport
Commencement of entity:	1900's
Number of workers:	396
Products and/or services:	Freight services for fresh produce

### Details of the alleged contravention

- On the 25<sup>th</sup> of October 2021 a heavy vehicle operated by D M & M T Nolan P/L was intercepted and weighed by NHVR officers and shown to have failed to comply with the applicable mass limits of section 91(1)(c) of the Heavy Vehicle National Law. The front axle vehicle was loaded at 129% of the prescribed mass limit, though the total Gross vehicle mass was not exceeded. That is the load had been configured too far forward causing incorrect weight on the front axle.

### Details of the events surrounding the alleged contravention

- The vehicle was loaded incorrectly at the company's Melbourne Depot resulting in the goods that were being transported not being loaded for the correct distribution for the vehicle axles, thus creating a breach of mass on the steer axle.
- There was a failure of process which would have detected that the load was distributed incorrectly.
- The vehicle does not have any onboard scales.
- The vehicle was not weighed to check for mass allowances.

### The details of any injury or financial loss that arose from the alleged contravention

- There was no financial loss or injury that arose from the alleged contravention.

### The details of any notices issued that relate to the alleged contravention

- D M & M T Nolan P/L has received a summons to attend the Magistrates court of Victoria at Werribee Magistrates Court on 12 May 2022, adjourned until 14<sup>th</sup> of July 2022.

### The details of any existing transport safety management systems at the workplace including the level of auditing currently undertaken

- D M & M T Nolan P/L has an established comprehensive safety management system in place which encompasses Chain of Responsibility compliance.
- D M & M T Nolan P/L has an existing safety management system in the workplace which is supported by the following accreditations, procedures and documents
  - NHVAS Mass, Maintenance and Basic Fatigue Management [REDACTED]
  - NHVAS Advanced Fatigue Management [REDACTED]
  - Australian Logistics Council Master Code of Practice
  - Australian Trucking Association TruckSafe [REDACTED]
  - Risk Assessments

- f. Policies
- g. Operational Practices/Work Instructions
- h. Induction and refresher training

### **Any consultation undertaken within the company regarding the proposal of an EU**

14. Consultation has been taken regarding the proposed EU with D M & M T Nolan P/L directors, management and workforce via the following mechanisms:
- a. Direct conversations with employees involved in the contravention.
  - b. A formal meeting with management, the company's Compliance Department and the HR and Training Department.

## **Section 3 Statements**

### **Statement of assurance**

15. The Company is committed to providing all stakeholders with a high level of assurance that any risk to safety will be minimised through the transportation, storage, and holding processes. All parties who have control or influence over the transport task understand their responsibilities for complying with the Heavy Vehicle National laws and consequences of and for breaches of those laws. The company will, as far as is reasonably practicable, comply with its obligations to ensure the health and safety of all workers and any other party who has the potential to be affected by its business or undertaking.

### **Statement of regret**

16. D M & M T Nolan P/L regrets the mass breach occurring on 25<sup>th</sup> October 2021. The company takes great pride in its professional reputation which include complying with all rules and regulations applying to its business and the safety of its employees and members of the public. The company is thankful that no harm has been caused and it has been given the opportunity to ensure all current and future employees have the knowledge and motivation to adopt and comply with its expectations and standards.

### **Statement of ability to comply**

17. D M & M T Nolan P/L has the financial and operational capacity to comply with the terms of this enforceable undertaking and will work hard to rectify any deficiencies to prevent further mass breaches.

### **Statement granting permission to use**

18. The corporate defendant grants the NHVR permission to use any documents policies and procedures developed as a result of this enforceable undertaking, for the purpose of training and development by the NHVR. Nolans retain copyright and all materials videos and other documents that may be developed and provided pursuant to this undertaking.

### **Statement of prior undertakings**

19. The company has not had been subject to any prior undertakings from this or any another statutory body.

## **Section 4 Acknowledgement**

20. D M & M T Nolan P/L acknowledges that the NHVR alleges that the company contravened section 96(1) of the HVNL.
21. The company takes the contravention seriously and is committed to providing a safe workplace which protects its workers and the community.

## Section 5 Details of Injury or Illness

### Types of workers compensation provided (if the injured person is a worker of the person)

22. Not applicable. No injuries were sustained to workers or members of the public as a result of the alleged contravention.

### Support provided, and proposed to be provided, to the injured person to overcome injury/illness

23. Not applicable. No injuries were sustained to workers or members of the public as a result of the alleged contravention.

## Section 6 Rectifications made

24. D M & M T Nolan P/L is committed to ensuring it has developed systems that identify, assess and control risks and are designed to promote continual improvement and as a result of the alleged contravention.

The company has taken immediate action to redeploy single steer vehicles used for this task with twin steer vehicles that ought not have a similar load weight configuration issue.

The company also immediately undertook a review and refresh with all employees, staff, operators, drivers and allocators of the load mass, dimension, and load restraint requirements, and is reviewing its on-going training and review process to ensure that such a breach does not re-occur and remains a constant standard to be subject to vigilant monitoring.

Three nonconformance reports were issued directly to the driver, forklift operator and the scheduler in relation to the mass breach.

Communications were issued to all loading staff, including night shift, regarding the changes that needed to be made to the way that single steer body trucks were to be loaded.

Changes were made to the loading sheet to supply more information about load position so that the event should not occur again. Notable changes to the layout of the load plans are weight limits of the equipment. This is now visible on the load plan, making this information visible to the planners, forklift operators and the drivers. The load plan on the left side of the document, is now completed by planners to note instructions such as "bar off" indicating to load the stock further back in the body of the truck rather than all up towards the front of the truck, thus preventing overloading of the steer axle.

Toolbox talks were conducted in relation to adjusted mass procedures, load planning, and drivers' and forklift operators' requirements to check loads prior to departure. Further information was made available to all staff including CoR policy, permitted weights and loading and unloading procedures.

All of these rectifications were completed in the months of October and November 2021.

Total Cost p.a.

\$3,000.00

## Section 7 Acknowledgement of publication

25. D M & M T Nolan P/acknowledge the obligation of the Regulator to publish information on the Regulator's website, including our promise to accept an undertaking under s. 590A(9) of the HVNL. And the reasons for the decision. D M & M T Nolan P/L retain all copyright in all videos materials and documents produced for the purpose of this Enforceable Undertaking.

## Part 3 Enforceable terms

### Section 1 Commitments

#### **Commitment that the behavior that led to the alleged contravention has ceased and will not reoccur**

26. D M & M T Nolan P/L is committed to ensuring that the behavior that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence. D M & M T Nolan Pty Ltd have great pride in their professional reputation.

#### **Commitment to the ongoing effective management of public risk associated with transport activities**

27. D M & M T Nolan P/L is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
28. D M & M T Nolan P/L has a commitment to ongoing continuous improvement in how it manages risks associated with its business operations, including the review of new technology when made available.
29. The Forward action plan sets out means and process to ensure current employees' knowledge and alertness is constantly updated and refreshed, and new employees are brought up to a high standard of knowledge, commitment and performance to meet the goals set out in this EU.

#### **Commitment to disseminate information about the EU to workers and other relevant parties in the chain of responsibility**

30. D M & M T Nolan P/L has already commenced and completed the initial actions and is committed on an on-going basis to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including senior and operational management. This information will be disseminated through:
  - a. For internal employees: Induction training (commencement of employment), refresher training (at a minimum biennially) and toolbox talks when and where required.
  - b. For external contractors and sub-contractors: Manual – Contractor Handbook
  - c. For all personnel involved, on-going monitoring review and updates

#### **Commitment to participating constructively in all compliance monitoring activities of the EU**

31. D M & M T Nolan P/L is committed to participating constructively in all compliance monitoring activities of the EU.
32. D M & M T Nolan P/L acknowledges that responsibility for demonstrating compliance with the undertaking rests with D M & M T Nolan P/L and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
33. It is acknowledged that the NHVR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to the NHVR including providing details of workshops and training conducted for industry and community benefit.

#### **Commitment that any promotion of a benefit arising from the EU will clearly link the benefit to the undertaking and make it clear that the undertaking was entered into as a result of an alleged contravention**

34. D M & M T Nolan P/L is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking will clearly link the benefit to the undertaking and that the undertaking was entered into because of the alleged contravention.

## Section 2 Strategies that will deliver benefits

### Benefits to drivers and parties within the chain of responsibility

35. As part of this enforceable undertaking, D M & M T Nolan P/L aims to deliver strategies that focus on benefits to:
  - a. drivers and parties within the chain of responsibility.
  - b. the transport industry and the broader community.
36. D M & M T Nolan P/L intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness among D M & M T Nolan P/L workforce and all parties within the chain of responsibility of the importance of complying with Chain of Responsibility laws.
37. On-going commitment  
 At a minimum Biennial training will commence after the initial delivery of refresher training. All new employees will undergo training at time of induction. Continuous improvement will include regular review, updates to material and training, and ongoing training to employees in relation to mass, dimension and load restraint, acknowledging training will be approximately: 300 employees at 1 hour per employee, at \$40.00 per hour over a two year period = \$12,000.00 each two years or an average of \$6000.00 per year

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### Activities

#### Activities

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#### Activity 1 – Review Training Materials

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##### Scope

Review all current training series, questionnaires, and associated documentation in relation to:

- Mass
- Dimension
- Load restraint

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##### Details

All training manuals, power points, questionnaires to be reviewed and notes made on where improvements and further information can be made

All parties to review and agree to changes required

##### To be prepared and completed by

██████████ -HR & Training -driver trainer

██████████ - Compliance - Administration

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##### Timeframe

Commencing March 2022 with initial completion 31<sup>st</sup> December 2022

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##### Outcome

All training manuals, power points, questionnaires to be reviewed and notes made on where improvements and further information can be made

All parties to review and agree to changes required

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##### Cost

\$1,440.00

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##### Output

All document updates are recorded, and version and review dates are noted. All training material, old and new versions, are kept for record keeping purposes and is available to the NHVR.

**Activity 2 – Additional Signage on vehicles**

**Scope**

Provide and display stickers for Vehicles to display:

- Tare weights
- Gross weights
- Max height

On all vehicles

**Details**

Stickers will be placed inside the cab of each vehicle to disseminate the required information.

**To be prepared and completed by**

██████████ -HR & Training -driver trainer

██████████ - Compliance - Administration

**Timeframe**

Commencing May 2022 and completion by 31<sup>st</sup> January 2023

**Outcome**

Details of weight configuration and requirements to be displayed in prominent positions for observance by the Driver and forklift driver operators

**Cost**

\$80.00

**Output**

Records of when and where stickers are placed on vehicles will be recorded in the Workshop Maintenance program and is available to the NHVR.

**Activity 3 – Roles and Responsibilities**

**Scope**

Identify Responsible parties and specifically their roles in relation to mass responsibilities. E.G.

- Drivers
- Operations staff
- Forklift operators
- Drivers
- Allocators
- Customer service

**Details**

Create a template of questions from this information in preparation of interviews/discussions with employees – next step below.

**To be prepared and completed by**

██████████ -HR & Training -driver trainer

██████████ - Compliance - Administration

**Timeframe**

Commencing May 2022 and completion by 31<sup>st</sup> January 2023

**Outcome**



Specifically define what part each operator has with the planning and loading of freight.

Create a template of questions from this information in preparation of interviews/discussions with employees in training and induction.

Cost

\$320

Output

All materials used in preparation for retraining are kept on file and is available to the NHVR.

Activity 4 – Consultation with Employees

Scope

Interview/talk to all employees about their understanding of their obligations/responsibilities in relation to Chain of Responsibility and Mass upon acceptance of the EU

Details

Define a data base of Who checks the loads from start to finish?

what happens when a problem/issue with mass is identified?

Who is ultimately responsible to correct issues with mass?

Recording of mass on documentation

Processes for weighing goods with and without the availability of weighbridges

Then proceed with a series of one on one or small group discussions with operators to discuss their obligations roles and responsibilities in relation to mass management

To be prepared and completed by

[Redacted] -HR & Training -driver trainer

[Redacted] - Compliance – Administration

Timeframe

July to 31<sup>st</sup> January 2023

Outcome

Operators will have a clear understanding of practical mass management issues and how to implement, document and manage these to ensure ongoing compliance

Cost

\$3,200.00

Output

Evidence of employees training are updated in the company’s database and is available to the NHVR.

Activity 5 – Update Training Materials

Scope

Update documentation associated with mass including but not limited to:

- Training manuals
- Questionnaires
- Training materials

**Details**

Document in relation to mass management the

- Hierarchy of control
- Clear documentation and understanding of what is needed to be done if there is an issue with mass or load restraint.
- Update all Training manuals
- Develop and provide handouts/resources including concessional mass guides etc to be retained by operators for easy and ready reference
- Develop and provide a contractor handbook which contains all relevant mass management information and details for their use and reference

To be prepared and completed by

- ██████████ HR & Training -driver trainer
- ██████████ – Compliance - Administration

Timeframe

Commencing September 2022 and completion by March 2023

Outcome

All employees and contractors will have available to them in the form of training, handouts, pamphlets and handbooks complete documentation of mass management matters including roles, responsibilities, requirements and management techniques and processes

Cost

\$3,200.00

Outputs

Evidence of employees training are updated in the company’s database. All document updates are recorded, and version and review dates are noted. All training material, old and new versions, are kept for record keeping purposes and is available to the NHVR.

**Activity 6 – Produce and deliver Training Videos**

**Scope**

Produce a series of 5-to-10-minute training videos to be provided in relation to mass management matters including but not limited to:

- Mass
- Load restraint
- Load distribution

**Details**

██████████ in conjunction with ██████████ to source quotes for video creation from Media companies to provide presentation on services then consult with Media companies to provide quotes to produce the video’s.

██████████ and ██████████ of HR & Training/Compliance to create & provide to media company outline of required material.

On completion of the video's Management is to approve production of training videos and a program for delivery of the videos to all employees in training sessions.

To be prepared and completed by

██████████ -HR & Training -driver trainer  
██████████ - Compliance – Administration

Timeframe

To commence in May 2022 and be completed by April 2023

Outcome

Nolan's will have available to them and their employee's a series of videos for training of mass management to be used across the company's operational sites for training and induction of all employees and to be available to all contractors

Cost

\$9,221.00

Output

All material associated with the production of the videos will be kept on file and available to the NHVR.

Activity 7 – Web-Site Update and Review

Scope

Update Nolan's company web site to include videos and access to documentation and training series

Details

IT department to load access to the videos and training documents as part of the employee training modules then test online training portal to ensure videos play, giving employees have access to the training resources

Incorporate in the web-site capacity for questionnaire responses that are automatically sent to HR & Training department

To be developed and provided by ██████████ -HR & Training -driver trainer, ██████████ - Compliance – Administration and Nolan's IT department team

Timeframe

May 2023

Outcome

All training videos and resources will be available to all employees contractors and the public for ease of view at any time

Cost

\$320.00

Output

Links to the video training will be provided once external users have completed an initial registration form. Nolan's will retain the right to hold evidence of the external users on file. This will be available to the NHVR.

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Activity 8 – Retraining

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Scope

Provide retraining on:

- Mass
- Dimension
- Load restraint

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Details

Send out notification to affected employees requesting training to be completed by the end of March 2023.

Follow up employees who have not complied by end of February 2023 and offer alternative training delivery options:

- Online
- In person at HR & Training
- Group setting with multiple people at one time at HR & Training

Provide consequences for failing to complete training

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Timeframe

January to June 2023

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Outcome

Employees will have been delivered current and up to date training and ongoing access to resources

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Cost

\$950.00

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Output

Evidence of employees training will be updated in the company’s database and available to the NHVR.

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Activity 9 – Consultation and Continuous Improvement

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Scope

Incorporate mass management as a priority matter in all on-going staff training and operational reviews

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Details

Provide survey at end of training for employees to complete and submit collated responses

Meet with management to discuss responses and suggestion to improve training in following 12-month period

To be delivered by [redacted]-HR & Training -driver trainer and [redacted]-Compliance – Administration.

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Timeframe

January to June 2023

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Outcome

Mass management to be incorporated as a primary focus in the operation of the business by all employees involved directly or indirectly in mass management

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Cost

\$950.00

Output

All survey material and feedback will be kept on record and will be available to the NHVR.

39. The total estimated value of the undertaking is \$31,431.00 exclusive of ongoing annual cost.

40. The average estimated value of Annual Training is \$3,000.00 per year Offer of undertaking

**Executed as an Undertaking**


D M & M T Nolan P/L ABN: 29009 767 766

Executed by D M & M T Nolan P/L ABN: 29009 767 766 pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature of Director	Signature of Company Secretary
	
Name of Director (print)	Name of Director/Company Secretary (print)
Date: 24/08/2022	Date: 24/08/2022

**Part 4 Acceptance of undertaking**

Accepted by the National Heavy Vehicle Regulator pursuant to sections 590A(2) and 661(1)(b) of the Heavy Vehicle National Law by:


Signature of Chief Executive Officer
Sal Petrocetto
Name of Chief Executive Officer (print)
Date: 29/08/2022