



Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

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

By

Mr Anthony Kuschert



[Redacted text block]

Part 1 Executive summary

Section 1 Agreed actions

1. The terms mentioned within this Enforceable Undertaking are accepted and agreed to be complied with by Anthony Kuschert.
2. The National Heavy Vehicle Regulator consents to the Enforceable Undertaking and agrees to withdraw the charge before Lithgow Local Court against Anthony Kuschert.

Section 2 Total cost of actions

3. Cost to enrol in and undergo a Chain of Responsibility (CoR) course with Australian Onsite Training: \$395
 4. Cost to enrol in and undergo a Training & Load Restraint (LR) course with Australian Onsite Training: \$150
 5. Donation to Road Trauma Support Group NSW: \$455
- Total Costs of Actions: \$1,000

General information

Section 1 Purpose

6. 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

7. The commitments in this enforceable undertaking are offered to the NHVR by Anthony Kuschert.
8. 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.

Details of the person proposing the undertaking:

Registered address:	████████████████████
Postal address:	██████
Telephone:	████████
Email address:	████████████████████
Legal structure:	Sole Trader- ██████████
Type of business:	Employed Truck Driver
Commencement of entity:	2022
Number of workers:	Nil
Products and/or services:	Freight and Transport

Details of the alleged contravention

9. On 11 January 2023 at Bell, Anthony Kuschert did without reasonable excuse drive a heavy vehicle, namely a Western Star 4900 bearing NSW registration ██████████ and NSW registered trailer ██████████ on a road and did fail to ensure that the heavy vehicle, its components and load complied with the dimension requirements.

Details of the events surrounding the alleged contravention

10. On 11 February 2023, National Heavy Vehicle Regulator authorised officers observed a heavy vehicle, namely Western Star 4900 FX, registration number ██████████ and trailer registration number ██████████ travelling on the Bells Line of Road, transporting hay bales.
11. The Regulators authorised officers intercepted the vehicle, spoke to the driver, Anthony Kuschert, and inspected the vehicles load.
12. The vehicles alleged width was 200mm in excess of the permissible width.
13. Anthony Kuschert informed the authorised officers that during his journey another heavy vehicle cut him off causing him to swerve off the road which caused the load to shift to one side.

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

14. Nil

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

15. Anthony Kuschert received a letter on about 22 February 2023 (Reference 6960) with a charge and summons to attend Lithgow Local Court.

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

16. Anthony Kuschert is an individual and hasn't consulted any company regarding this Enforceable Undertaking.

Section 3 Statements

Statement of assurance

17. Anthony Kuschert confirms that he is committed to complying with his obligations under the HVNL and ensuring so far as is reasonably practicable, the health and safety of all persons that have the potential to be impacted by its business or undertakings.

Statement of regret

18. Anthony Kuschert regrets the events that occurred on 11 January 2023.

Statement of ability to comply

19. Anthony Kuschert confirms that he has the financial and operational capacity to comply with the terms of this enforceable undertaking.

Statement granting permission to use

20. Anthony Kuschert grants the NHVR a permanent, irrevocable, royalty-free, worldwide non exclusive licence to use, reproduce, distribute, electronically transmit, electronically distribute, adapt, and modify and materials developed as a result of this enforceable undertaking.

Statement of prior undertakings

21. Mr Kuschert confirms that he has not been the subject of an enforceable undertaking from another statutory body.

Section 4 Acknowledgement

22. Mr Kuschert acknowledges that NHVR alleges that he has contravened section 325(1) of the HVNL.

23. The alleged contraventions are taken very seriously by Anthony Kuschert who is committed to providing a safe and healthy workplace to conduct his business in a way that helps protect the environment and the communities in which he operates.

Section 5 Details of Injury or Illness

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

24. 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

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

Section 6 Acknowledgement of publication

26. Anthony Kuschert acknowledges that the enforceable undertaking will be published on the NHVR's internet site and may be referenced in the NHVR's publications.

Part 2 Enforceable terms

Section 1 Commitments

Commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

27. Anthony Kuschert is committed to ensuring that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence.

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

28. Anthony Kuschert is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
29. Anthony Kuschert 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.

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

30. Anthony Kuschert is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including senior and operational management, health and safety management team, Health and Safety Committees and Health and Safety Representatives, workers, and all relevant contractors and subcontractors working for Anthony Kuschert. This information will be disseminated directly to the people concerned, if and when it eventuates.

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

31. Anthony Kuschert is committed to participating constructively in all compliance monitoring activities of the EU.
32. Anthony Kuschert acknowledges that responsibility for demonstrating compliance with the undertaking rests with him 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. Anthony Kuschert 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 as a result 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, Anthony Kuschert 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. Anthony Kuschert intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness to assist him in continuing his work within the transport industry and providing an exceptional example for relevant personnel and highlighting the responsibility of the importance of complying with Chain of Responsibility laws.

Activities

Activity 1 – Chain of Responsibility (CoR) course

Scope

The latest Nationally Recognised Unit of Competency, TLIF0009, includes the skills and knowledge required to ensure the safety of 'transport activities' and applying chain of responsibility obligations as defined by the Heavy Vehicle National Law (HVNL) or applicable State/Territory law and regulations.

Details

Course Title – Chain of Responsibility (CoR) course

Provider – Australian Onsite Training

Timeframe

To be completed within 6 months

Outcome

Issued with Statement of Attainment/Certificate of Completion

Costs

\$396

Output

A copy of statement of attainment/certificate of completion to be submitted to the NHVR

Activity 2 – Training & Load Restraint (LR) course

Scope

Upon completion of the training, learners will have a fundamental knowledge of how goods / cargo are loaded and unloaded in accordance with relevant mass, dimension and loading regulations and workplace procedures as per the current chain of responsibility legislation.

Details

Course Title – Training & Load Restraint (LR) Course

Provider – Australian Onsite Training

Timeframe

To be completed within 6 months

Outcome

Issued with Statement of Attainment/Certificate of Completeness

Activity 2 – Training & Load Restraint (LR) course

Costs

\$150

Output

A copy of statement of attainment/certificate of completion to be submitted to the NHVR

Activity 3 – Donation to Road Trauma Support NSW

Scope

The Road Trauma Support Group NSW is the voice of families of road trauma. Long after the crash, survivors, family and friends continue to feel the impact

Details

Donation of \$455

Timeframe

Donation to be made within 28 days of the Undertaking being accepted

Outcome

Donation

Costs

Donation \$455

Output

Provide evidence of Donation to the NHVR


37. The total estimated value of the undertaking is \$1,000.

Part 3 Offer of undertaking

Executed as an Undertaking

Anthony Kuschert ABN: [Enter ABN number]


Executed by Anthony Kuschert ABN: [Enter ABN number] pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature		

Anthony Kuschert - Individual	
Date: 23/03/2023	Date: Click or tap to enter a date.

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 Petrocchio
Name of Chief Executive Officer (print)
30/03/2023
Date: Click or tap to enter a date.