

15 September 2023

Our Reference: [REDACTED]

Matthew Arthur Harrison
[REDACTED]

By email: [REDACTED]

Dear Mr Harrison

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

Introduction

1. In accordance with section 590A (7) of the Heavy Vehicle National Law (HVNL), I provide written notice and reasons for my decision to accept the Enforceable Undertaking proposed by Matthew Arthur Harrison¹ pursuant to Part 10.1A of the HVNL (the proposal).
2. I have considered the proposal and assessed it against the following National Heavy Vehicle Regulator (NHVR) policies:
 - a) The Prosecution Policy (the policy)
 - b) The Enforceable Undertakings Policy (the EU policy)
 - c) The Guidelines on Proposing an Enforceable Undertaking (the EU Guidelines).
3. For the reasons set out below I am of the opinion that the EU proposal, in the circumstances, is an appropriate enforcement option for the particular contraventions alleged in this case.

The Alleged Facts

4. On 18 October 2022, Mr Matthew Arthur Harrison (Mr Harrison) drove a heavy vehicle, namely a white Western Star Prime Mover bearing NSW registration [REDACTED] towing trailers bearing NSW

¹ Matthew Arthur Harrison, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 24/08/2023.

registration [REDACTED] and [REDACTED] (the vehicle) on the New England Highway in NSW while it was not compliant with the applicable mass limits for the vehicle.

5. NHVR authorised officers intercepted the vehicle and identified two (2) breaches of the HVNL, namely:
 - a) A severe weight breach on the second axle group – the maximum allowable mass for the second axle group was 16.5 tonnes. Taking into account the applicable mass adjustment, the mass of the second axle group was 26.2 tonnes. This was an excess mass of 9.7 tonnes, or a 158.78% overload.
 - b) A substantial weight breach on the third axle group – the maximum allowable mass for the third axle group was 20.00 tonnes. Taking into account the applicable mass adjustment, the mass of the third axle group was 21.52 tonnes. This was an excess mass of 1.52 tonnes, or a 107.6% overload.
6. The vehicle's mass was under the allowable gross limit and also under the allowable mass limit on the first and fourth axle groups.
7. In December 2022, the NHVR commenced a prosecution against Mr Harrison alleging a severe risk breach and a substantial risk breach.
8. For an individual, the maximum penalty for the severe risk breach is \$31,820. The maximum penalty for the substantial risk breach is \$7,110 or a total maximum penalty of \$38,930.

The Proposed Enforceable Undertaking

9. The EU proposal from Mr Harrison comprises four (4) initiatives to be completed within six months of approval of the EU and would amount to a total estimated cost of \$13,500.

The initiatives can be summarised as follows. Mr Harrison undertakes to:

- a) Complete mass management and weight verification training.
- b) Distribute the knowledge gained from the above training to employees and subcontractors.
- c) Conduct vehicle modifications.
- d) Make a \$1,500 donation to Road Trauma Support Group NSW.

Criteria to be applied

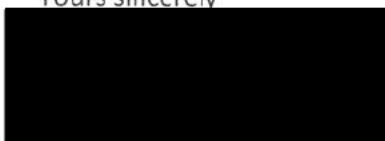
10. In arriving at my decision, I have evaluated the EU proposal against the 10 evaluation criteria in Section 4 of the EU Guidelines namely:
- a) The nature and extent of the offence alleged.
 - b) The promisor's compliance history.
 - c) Whether the EU proposal delivers benefits to the public beyond the promisor's compliance with the law, the quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety.
 - d) The likely improvements in safety within the promisor's business or operations.
 - e) The promisor's ability, including financial ability, to meet the terms of the EU proposal.
 - f) The significance of the commitment compared to the capability of the promisor.
 - g) The support the promisor has provided and has committed to providing into the future to an injured or affected person(s).
 - h) Input from injured and affected persons.
 - i) The likely outcome should the matter be dealt with through legal proceedings.
 - j) Reports or assessments of investigating or prosecuting agencies who have conduct of the matter.
11. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Mr Harrison's compliance history. I acknowledge that prior to this allegation, I am not aware of any convictions for compliance breaches of the HVNL or any breaches of related safety duties by Mr Harrison.
12. With regards to criteria (3) and (4), I acknowledge and have considered that the EU proposal initiatives may benefit the public beyond the compliance of the law, are of good strategic quality, have potential to make noticeable positive change in the transport industry in terms of implementation of safety measures, and are likely to improve Mr Harrison's transport operations.
13. With regards to criteria (5) and (6), I acknowledge that Mr Harrison has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Mr Harrison's capability.

14. With regards to criteria (7) and (8), concerning the EU proposal's support of injured or affected person(s) and input from injured and affected persons, I have found these factors are not a relevant consideration, bearing in mind the specific facts of this matter.
15. With regards to criteria (9) and (10), concerning the likely outcome should this matter be dealt with through legal proceedings and the views of investigating and prosecuting agencies, I have similarly taken these matters into account.

Conclusion

16. Considering all these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Mr Harrison will be withdrawn.

Yours sincerely



Sal Petrocchio OAM
Chief Executive Officer