

10 May 2022
Our Reference: 2302

City 2 Sea Landscapes
3 Napier Street
Warragul VIC 3820

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 City 2 Sea Landscapes Pty Ltd ('C2S') are appropriate enforcement options in regard to the relevant contravention.

Background to the application

2. It is agreed by the National Heavy Vehicle Regulator ('NHVR') that on 8 April 2020 at Warragul in Victoria, City 2 Sea Landscapes Pty Ltd ('C2S') was the operator of a heavy vehicle that:
 - a. Failed to comply with the dimension requirements applying to the vehicle, contrary to section 102(1) of the HVNL.
 - b. Failed to comply with the loading requirements applying to the vehicle, contrary to section 111(1) of the HVNL.
3. The heavy vehicle combination operated by C2S on 8 April 2020 exceeded the prescribed rear overhang limits, that being the length limit applying to the vehicle. The trailer was loaded with timber planks that were observed to be extending beyond the rear of the trailer. The trailer's permitted rear overhang was 1040mm. The detected rear overhang was 2140mm after adjustment. This was an excess of 1100mm of the prescribed rear overhang limit. The contravention of the rear overhang requirement resulted in a severe risk breach.
4. In addition to the rear overhang, the load was not adequately secured and was observed by authorised officers to turn and move. The contravention of the loading requirement resulted in a substantial risk breach.
5. The NHVR commenced a prosecution against C2S alleging the contravention. The maximum penalties for the offences are \$56,950 and \$28,550 respectively.
6. On 4 April 2022, C2S wrote to the NHVR proposing an Enforceable Undertaking for the alleged contraventions.

7. I have assessed the proposal submitted against NHVR Policy – *Enforceable Undertakings* ('the policy') and NHVR Guideline – *Proposing an Enforceable Undertaking* ('the guidelines').
8. 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

9. The heavy vehicle combination being used by C2S at the time of the offence consisted of a rigid tipper and a light trailer.
10. There is no evidence of systematic non-compliance with the HVNL by the accused.

The person's compliance history

11. Since commencing operations in Australia in 2017, C2S 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 C2S business or undertaking.

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

12. C2S 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.
13. C2S is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
14. C2S has committed to ongoing continuous improvement in how it manages risks associated with its business operations.
15. C2S has completed five (5) rectifications prior to the application for an EU.
16. C2S has committed to ensuring it has developed systems that identify, assess and control risks and these systems are designed to promote continual improvement. As a result of the alleged contravention, the following opportunities for enhancement of processes have been undertaken:
 - a. Purchase of black tandem axle Traralgon trailer.
The total cost of the rectification was \$8,000.
 - b. Installation of steel racks onto rigid tipper and trailer for timber carrying purposes to ensure planks are transported within prescribed legal limits.
The total cost of the rectification was \$2,190.85.

- c. Employment of safety officer responsible for developing and monitoring the safety of transport activities and compliance with the HVNL and road laws.

The total cost of the rectification was \$30,845.18.

- d. Charts showing allowable dimension limits were placed on display in the workshop.

The total cost of the rectification was \$0.

- e. Pre-departure safety check developed and implemented to check each vehicle and load.

The total cost of the rectification was \$0.

The total cost of the five (5) rectifications was \$41,036.03.

Initiative 1

All C2S employees and management to undertake transport safety and Chain of Responsibility online awareness course, provided by HSE Global. The course will include understanding the impacts associated with failing to manage transport safety risks, the key safety risks and how to control these, legislation including the concept of “Chain of Responsibility”, and the role and responsibilities of parties within the supply chain. HSE Global have indicated that they will provide details of the course and its content to the NHVR.

To be completed within 6 months of the signing of the enforceable undertaking. The estimated cost of the initiative is \$1,120.

Initiative 2

C2S will engage an external provider to host a workshop for small local businesses in the Gippsland area (landscapers, tradespeople, etc) on heavy vehicle and road transport safety. C2S will promote the workshop to other small local businesses involved in the transport industry to allow them to attend free of charge.

The workshop will aim to raise awareness of transport safety risks within the local community amongst similar sizes and types of businesses. The event will focus on emphasising important safety messages regarding fatigue, speed, mass, dimension, load restraint and vehicle roadworthiness within road transport and the practical steps that small businesses can take to comply with the HVNL.

C2S has included a minimum number of people in attendance, being at least 30 people. C2S have stated that they will invite the NHVR Stakeholder Engagement team to attend.

The workshop will be promoted in the local newspaper and on social media to encourage participation. C2S employees will attend as part of the workshop.

To be completed within 12 months of the signing of the enforceable undertaking. The estimated cost of the initiative is \$6,000.

17. The initiatives will commence at various timeframes upon acceptance of the EU and all activities will be completed within 12 months of acceptance, with a total **estimated** cost of \$7,120.

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

18. 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. C2S's proposal to seek expert input and deliver internal training, as well as training to those in the communities in which they operate will ensure the wide reach of important information.

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

19. Education that results in fewer contraventions will lead to safer heavy vehicle movement on the road and less impact on road infrastructure.

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

20. C2S has set a realistic timeframe for the implementation of the EU, with completion within 12 months.

21. C2S 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

22. I have taken into consideration the fact that, through the proposed strategies, C2S has demonstrated an understanding of the importance of safety in transport operations.

23. The resources and projects proposed, to ensure that both C2S's and the transport industry's processes and procedures are improved, are of great value to the industry and are commensurate to C2S's capability.

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

a. Not applicable

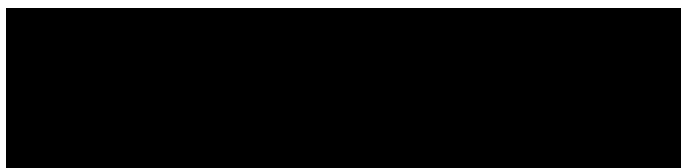
Input from injured and affected persons

a. Not applicable

Reason for Decision

24. I have considered the merits of continuing the prosecution against C2S to meet the sentencing principles of rehabilitation, punishment, deterrence and denouncing of the conduct. I consider in all of the circumstances of this matter, on balance, I am of the opinion that the Enforceable Undertaking proposed by C2S is an appropriate enforcement option which will meet community expectations.
25. I conclude that the Enforceable Undertaking is a 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 C2S and to the wider Transport Industry. Two activities will be undertaken in order to deliver benefits to C2S'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 C2S. 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 will lead to fewer contraventions of the HVNL, improve the safety of our public roads and reduce the impact to road infrastructure.
 - e. The activities proposed are likely to achieve measurable improvements in the heavy vehicle transport industry, in the C2S Australia companies, in the wider supply chain, as well as in the communities in which C2S operates.
26. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking C2S offered on 4 April 2022.
27. C2S is required to send all supporting documentation in relation to this EU to monitoring.compliance@nhvr.gov.au.

Yours sincerely,



Sal Petrocchio
Chief Executive Officer