

21 April 2022
Our Reference: 3341

Cliffard R McBRIDE
25 Brolga Boulevard
TRARALGON VIC 3844

Mr McBride,

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 Cliffard R McBRIDE ('MCBRIDE') 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:
 - a. On 4 August 2021, MCBRIDE was intercepted by NHVR authorised officers at Tallangatta in Victoria. At that time, and at all relevant times, he was driving a fatigue-regulated heavy vehicle, registration number XV35QZ (VIC) ('the vehicle').
 - b. Inspection of MCBRIDE's National Driver Work Diary revealed that between 1 July 2021 and 4 August 2021 MCBRIDE exceeded the standard work hour limits of 12 hours in a 24-hour period on 13 occasions:
 - i. 4 CRITICAL risk breaches – subject to charges;
 - ii. 4 x SEVERE risk breaches – subject to charges;
 - iii. 1 x SUBSTANTIAL risk breach – not charged, aggravating factor;
 - iv. 4 x MINOR risk breaches – not charged, aggravating factor; and
 - c. MCBRIDE had additionally recorded false or misleading information in his work diary on 23 occasions.
3. The NHVR commenced a prosecution against MCBRIDE in relation to these offences.
4. On 3 February 2022, MCBRIDE wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.

5. I have assessed the proposal submitted against the NHVR Policy – *Enforceable Undertakings*, and NHVR Guideline - *Proposing an Enforceable Undertaking* ('the guideline').
6. In assessing the proposal in accordance with the evaluation requirements of Section 4 of the guideline I have considered the following factors.

The nature and extent of the act or omission alleged

7. The alleged offending is detailed above in paragraph 2.

The person's compliance history

8. Australian Criminal Intelligence Commission checks show that MCBRIDE has not been convicted of:
 - any offence under the HVNL;
 - a breach of any safety duty under the work, health and safety legislation of a State, Territory or the Commonwealth; or
 - a failure to comply with any enforceable undertaking.

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

9. MCBRIDE has committed to ensuring that the behaviour that led to the alleged contravention has ceased and that he will take all reasonably practicable steps to prevent a recurrence.
10. MCBRIDE has committed to the ongoing effective management of public risks associated with transport activities within his business operations.
11. MCBRIDE has committed to ongoing continuous improvement in how he manages risks associated with his business operations, including the review of new technology when made available.
12. MCBRIDE has committed to disseminating information about the EU to workers and other relevant parties within the Chain of Responsibility (CoR), including all relevant contractors and subcontractors working for MCBRIDE.
13. MCBRIDE has committed to participating constructively in all compliance monitoring activities of the EU.
14. MCBRIDE has committed to ensuring that any promotion of a benefit arising from this EU will clearly link the benefit to the undertaking and that the undertaking was entered into as a result of the alleged contravention.

15. MCBRIDE aims to deliver strategies that focus on benefits to:
 - a. Driver and parties within the CoR.
 - b. The transport industry and the broader community.
16. MCBRIDE has proposed six (6) initiatives to achieve the proposed outcomes.
17. The initiatives will be completed within three (3) to twelve (12) months of entering into the EU, with a total **estimated** cost of \$29,650.
18. These initiatives aim to deliver strategies that focus on benefits to drivers and parties within the CoR as well as the transport industry and the broader community. Further, they aim to educate, train and raise awareness among parties within the CoR of the importance of complying with CoR laws.

Initiative 1

19. MCBRIDE is to undertake CoR training to raise his awareness, knowledge and skills in relation to the HVNL and CoR. Components of the training include identification of transport activities and parties in the CoR, breaches and penalties for failure to comply with the chain of responsibility as identified in the HVNL and identification of transport risks and safety duties in accordance with job function and workplace procedures among other aspects. This training will be completed within 12 months of acceptance of the undertaking.
 - a. *Initiative 1 outcome:* CoR training will raise MCRBIDE's awareness, knowledge, and skills in relation to the HVNL and CoR.
 - b. *Initiative 1 output:* A copy of the training record will be submitted to the NHVR as evidence of this deliverable.
 - c. The **estimated** cost of the initiative is \$3,650.

Initiative 2

20. MCBRIDE is to contribute to four (4) half-day training sessions related to heavy vehicle safety provided by Australian Trucking Safety Services. MCBRIDE will contribute by presenting at each training session about his experience of being charged by the NHVR and the consequences he has faced. He will also detail the rectifications made and will share his experience on how he is now managing his heavy vehicle safety obligations. This activity will be completed within 12 months of the acceptance of the undertaking, subject to COVID-19 restrictions.
 - a. *Initiative 2 outcomes:* Increased communication on this issue, which may influence other individuals in the industry to improve their standards. Training providers will have additional resources available to them.

- b. *Initiative 2 output:* A statement confirming that MCBRIDE has assisted and contributed to the training sessions will be provided by the training provider and submitted to the NHVR.
- c. The **estimated** cost of the initiative is \$12,000.

Initiative 3

21. MCBRIDE is to engage a third-party provider to undertake a CoR audit of his business, CRM Transport Pty Ltd (A.C.N. 365 193 242), to identify areas for improvement and best practice methods in relation to HVNL compliance. This will address operations in relation to fatigue management, mass and dimension management, load restraint, speed management and vehicle standards. This activity will be completed within 12 months of the acceptance of the undertaking.
- a. *Initiative 3 outcome:* Identification of any additional opportunities for improvement while improving compliance and reducing the risk of future contravention.
 - b. *Initiative 3 output:* A copy of the audit report will be submitted to the NHVR.
 - c. The **estimated** cost of the initiative is \$3,000.

Initiative 4

22. MCBRIDE is to engage a service provider to assist with the development of a training package in relation to compliance with the HVNL and CoR to benefit the industry. This training package will involve content in relation to CoR obligations, fatigue management, speed management, mass management, load restraint, vehicle standards and heavy vehicle roll awareness. It will be aimed at small owner-operators or small businesses with limited administrative capacity and be in the format of a slide show presentation with handouts. This activity will be completed within 12 months of the acceptance of the undertaking, subject to COVID-19 restrictions.
- a. *Initiative 4 outcome:* The training package will raise awareness in relation to the HVNL and CoR laws which will benefit the industry.
 - b. *Initiative 4 output:* A copy of the training package developed will be submitted to the NHVR.
 - c. The **estimated** cost of the initiative is \$4,000.

Initiative 5

23. MCBRIDE is to donate to the National Road Safety Partnership Program (NRSPP). This will assist in funding NRSPP Tool Box Talks, developing of a research paper, sponsorship of research projects and developing other resources which will assist in increasing the knowledge and awareness of heavy vehicle safety in the industry. This activity will be completed within six (6) months of the acceptance of the undertaking.

- a. *Initiative 5 outcome:* The donation will assist in funding NRSPP Tool Box Talks, developing a research paper, sponsorship of research projects and developing other resources which will assist in increasing the knowledge and awareness of heavy vehicle safety in the industry.
- b. *Initiative 5 output:* A copy of the donation transfer will be submitted to the NHVR.
- c. The **donation will be in the sum of** \$5,000.

Initiative 6

24. MCBRIDE is to obtain and implement an NHVR approved Electronic Work Diary (EWD) to assist with fatigue management compliance. He will provide a copy of all work activity recorded in the EWD to the NHVR. These conditions will operate for 12 months. The EWD will be obtained within three (3) months of acceptance of the undertaking.
- a. *Initiative 6 outcome:* Ensuring compliance with fatigue management will reduce the risk of another breach.
 - b. *Initiative 6 output:* A copy of the tax invoice from the purchase of the EWD will be provided to the NHVR and a copy of the completed work activity extracted from the EWD will be provided to the NHVR for a period of 12 months.
 - c. The **estimated** cost of the initiative is \$2,000.

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

25. MCBRIDE proposes to make a significant financial and personal commitment to ensure not only his own future compliance but to promote awareness about the requirements of the CoR laws under the HVNL on a broader level. The training sessions and package proposed are of particular note as they will utilise MCBRIDE's own experience as a case study of the importance of compliance, and the potential consequences of breaches.

The benefits of the proposal to the persons who might be affected by a similar contravention; and 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

26. In sharing his personal experiences with his peers in the industry, MCBRIDE will be able to offer an insight into the consequences of breaching the HVNL in a way that is relatable and impactful.
27. The scale of initiatives proposed by MCBRIDE will also serve as an example for other owner-operators and small businesses as to the kind of commitment that can be made.

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

28. MCBRIDE has not provided any financial reports; however, he has stated he has the financial capacity and operational experience to comply with the terms of the EU.
29. MCBRIDE has set a realistic timeframe for the implementation of the EU, with completion of all activities within 12 months of the EU commencing, subject to COVID-19 restrictions.

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

30. I have taken into consideration the fact that, through the proposed strategies, MCBRIDE has demonstrated an understanding of the importance of safety in transport operations.
31. The resources and projects proposed, as well as the personal experience MCBRIDE can provide, are of value to the industry and are commensurate to their capability.
32. The financial commitment is approximately 25% of the maximum penalty that a court could impose for an individual (\$114,920).

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

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

Input from injured and affected persons

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

Reason for Decision

35. I have considered the merits of continuing the prosecutions against MCBRIDE in order to meet the sentencing principles of rehabilitation, punishment, deterrence, and denunciation of the conduct. In all of the circumstances of this matter, on balance, I am of the opinion that the Enforceable Undertaking proposed by him is an appropriate enforcement option that will meet community expectations.
36. 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 an example of the kind of initiatives which can be proposed by an owner-operator or small business which is actively committed to ongoing compliance and safety. Six activities will be undertaken in order to deliver benefits to parties in the CoR, and the broader community.
- b. The activities and benefits proposed would not have been achieved by prosecution alone. Upon a conviction a financial penalty can be expected to be imposed on MCBRIDE. This would not have the same direct impact on promoting safety awareness in the industry as the strategies outlined in the Enforceable Undertaking.
- c. The Enforceable 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 less contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.
- e. The activities proposed are likely to achieve improvements in the heavy vehicle transport industry and other communities in which MCBRIDE operates.

37. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking MCBRIDE offered on 3 February 2022.

38. MCBRIDE is required to send all supporting documentation in relation to this EU to

[REDACTED]

Yours sincerely,

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Sal Petrocchio
Chief Executive Officer