



# Enforceable Undertaking

## Chapter 10.1A

Heavy Vehicle National Law

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

By

Cliffard R MCBRIDE

## Part 1 Executive summary

### Section 1 Agreed actions

1. The Promisor will undertake chain of responsibility training to raise his awareness, knowledge and skills in relation to HVNL and chain of responsibility.
2. The Promisor will volunteer his time in assisting and contributing at 4 half day training sessions related to heavy vehicle safety.
3. The Promisor will undertake a chain of responsibility audit to identify any additional opportunities for improvement and best practice methods in relation to compliance with HVNL and chain of responsibility.
4. The Promisor will engage a service provider to assist with the development of a training package in relation to compliance with HVNL and chain of responsibility to benefit the industry.
5. The Promisor will donate to the National Road Safety Partnership Program (NRSPP) to assist with the funding of initiatives in relation to heavy vehicle safety.
6. The Promisor will obtain and implement a NHVR approved Electronic Work Diary (EWD) to assist with fatigue management compliance.

### Section 2 Total cost of actions

7. Total costs of rectifications made are \$9,595.00
8. Total costs of additional strategies to implement are \$29,650.00

## Part 2 General information

### Section 1 Purpose

9. 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

10. The commitments in this enforceable undertaking are offered to the NHVR by Clifford R MCBRIDE (Promisor).
11. 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:

Name:	Cliffard R MCBRIDE
Registered address:	25 Brolga Boulevard, Taralgon VIC 3844
Postal address:	25 Brolga Boulevard, Taralgon VIC 3844
Telephone:	[REDACTED]
Email address:	[REDACTED]
Type of business:	Haulage
Commencement of operations:	2013
Products and/or services:	Haulage of timber from designated sites

### Details of the alleged contravention

12. It is alleged by NHVR that between the period of 1 July 2021 and 3 August 2021, the Promisor contravened section 250(1)(a) of the Heavy Vehicle National Law and exceeded his allowable, standard work hour limit of 12 hours per 24 hour period on 13 occasions comprising:
  - a. 4 x Critical Breaches (subject to charges);
  - b. 4 x Severe Breaches (subject to charges);
  - c. 1 x Substantial Breach (not charged – aggravating factor); and
  - d. 4 x Minor Breaches (not charged – aggravating factor).
13. It is alleged by NHVR that the Promisor contravened section 325(1) of the Heavy Vehicle National Law by recording that he was working under BFM hours instead of standard hours on 23 separate occasions.

### Details of the events surrounding the alleged contravention

14. On 4 August 2021 a registered heavy vehicle operated by the Promisor was intercepted by NHVR authorised officers, who spoke to the Promisor and inspected his work diary.
15. The Promisor had completed multiple entries in the work diary on the basis that he was operating under BFM hours. The Promisor was unable to produce his BFM certification and authorisation endorsements when requested by the NHVR officers. It was determined by the NHVR officers that the Promisor was not operating under BFM conditions.
16. Upon inspection of the Promisor's work diary, NHVR officers identified 8 critical and severe breaches of the HVNL between 1 July 2021 and 3 August 2021:
  - a. Critical Breach - In the 24 hour period between 2:15am on 9 July 2021 and 2:15am on 10 July 2021 exceeded standard hours by working 13.75 hours.
  - b. Critical Breach - In the 24 hour period between 8:30am on 18 July 2021 and 8:30am on 19 July 2021 exceeded standard hours by working 14.25 hours.
  - c. Critical Breach - In the 24 hour period between 8:00am on 25 July 2021 and 8:00am on 26 July 2021 exceeded standard hours by working 14.75 hours.
  - d. Critical Breach - In the 24 hour period between 5:30am on 27 July 2021 and 5:30am on 28 July 2021 exceeded standard hours by working 14.00 hours.
  - e. Severe Breach - In the 24 hour period between 2:15am on 7 July 2021 and 2:15am on 08 July 2021 exceeded standard hours by working 13.50 hours.
  - f. Severe Breach - In the 24 hour period between 1:45am on 13 July 2021 and 1:45am on 14 July 2021 exceeded standard hours by working 13.50 hours.
  - g. Severe Breach - In the 24 hour period between 7:00am on 20 July 2021 and 7:00am on 21 July 2021 exceeded standard hours by working 13.50 hours.



- h. Severe Breach - In the 24 hour period between 7:00am on 21 July 2021 and 7:00am on 22 July 2021 exceeded standard hours by working 13.50 hours.
17. It was alleged that the Promisor breached his work and rest hours a further 5 times:
- a. Substantial Risk Breach – In the 24 hour period between 2:15am on 8 July 2021 and 2:15am on 9 July 2021 exceeded standard hours by working 13.00 hours.
  - b. Minor Risk Breach – In the 24 hour period between 4:00pm on 1 July 2021 and 4:00pm on 2 July 2021 exceeded standard hours by working 12.75 hours.
  - c. Minor Risk Breach – In the 24 hour period between 7:00am on 22 July 2021 and 7:00am on 23 July 2021 exceeded standard hours by working 12.50 hours.
  - d. Minor Risk Breach – In the 24 hour period between 1:45am on 29 July 2021 and 1:45am on 30 July 2021 exceeded standard hours by working 12.50 hours.
  - e. Minor Risk Breach – In the 24 hour period between 5:30am on 2 August 2021 and 5:30am on 3 August 2021 exceeded standard hours by working 12.25 hours.
18. It was alleged that the Promisor recorded in his work diary on the following 23 occasions, that he was operating under BFM conditions, which was false or misleading as he was working under standard hours:
- a. 1 July 2021, 2 July 2021, 7 July 2021, 8 July 2021, 9 July 2021, 14 July 2021, 15 July 2021, 16 July 2021, 18 July 2021, 19 July 2021, 20 July 2021, 21 July 2021, 22 July 2021, 23 July 2021, 25 July 2021, 26 July 2021, 27 July 2021, 28 July 2021, 29 July 2021, 30 July 2021, 2 August 2021, 3 August 2021, 4 August 2021.

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

19. There were no injuries or financial loss that arose as a result of the alleged contraventions.

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

20. The Promisor received a letter from NHVR dated 22 November 2021 (Reference 3341) with a charge sheet and summons to attend the Magistrates Court in Latrobe Valley.

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

- 21. The Promisor has a safety management system which includes transport safety management and chain of responsibility compliance.
- 22. The safety management system includes fatigue management and is audited annually.
- 23. The Promisor has implemented further risk controls to ensure HVNL compliance. These risk controls include vehicle weighing scale, vehicle sleeping bunk, vehicle speed management and inspection programs.

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

24. Consultation has not taken place within the company as the Promisor is the sole employee of the company.

## **Section 3 Statements**

### **Statement of assurance**

25. The Promisor 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**

26. The Promisor regrets that the contraventions between 1 July 2021 and 3 August 2021 occurred.

### Statement of ability to comply

27. The Promisor confirms that he has the financial and operational capacity to comply with the terms of this enforceable undertaking.

### Statement granting permission to use

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

### Statement of prior undertakings

29. The Promisor confirms that he has not been the subject of an enforceable undertaking from another statutory body.

## Section 4 Acknowledgement

30. The Promisor acknowledges that NHVR alleges that he has contravened section 250(1)(a) and section 325(1) of the HVNL.
31. The alleged contraventions are taken very seriously by the Promisor, 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)

32. 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

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

## Section 6 Rectifications made

34. The Promisor is committed to ensuring he 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 following opportunities for enhancement of processes have been undertaken:

Description	\$ Amount
Consultant fees for establishment of BFM	\$1980.00
Consultant fees for establishment of mass management	\$2145.00
Set up fee of software and procedures	\$1200.00
Annual subscription cost of management software	\$1270.00
Completion of BFM Training	\$3000.00
<b>Total cost</b>	<b>\$9,595.00</b>



## Section 7 Acknowledgement of publication

35. The Promisor acknowledges that the enforceable undertaking will be published on the NHVR's internet site and may be referenced in the NHVR's publications.

## Part 3 Enforceable terms

### Section 1 Commitments

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

36. The Promisor is 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 recurrence.

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

37. The Promisor is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
38. The Promisor 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**

39. The Promisor 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 the Promisor. This information will be disseminated through:
- For external contractors and sub-contractors: communication provided by the Promisor.

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

40. The Promisor is committed to participating constructively in all compliance monitoring activities of the EU.
41. The Promisor acknowledges that responsibility for demonstrating compliance with the undertaking rests with the Promisor and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
42. 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**

43. The Promisor 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**

44. As part of this enforceable undertaking, the Promisor 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.
45. The Promisor intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness among all parties within the chain of responsibility of the importance of complying with Chain of Responsibility laws.

**Activities**

<b>Activity 1 – Chain of responsibility training</b>
<b>Scope</b>
The Promisor will undertake chain of responsibility training to raise his awareness, knowledge and skills in relation to HVNL and chain of responsibility.
<b>Details</b>
<p>The training will include the following components:</p> <ol style="list-style-type: none"> <li>1. Identification of transport activities and parties in the chain of responsibility</li> <li>2. Principle of shared responsibility obligations within chain of responsibility in the HVNL</li> <li>3. Primary duty of each party in the chain of responsibility as outlined in the HVNL</li> <li>4. So far as reasonably practicable or reasonable steps, compliance with chain of responsibility as outlined in the HVNL</li> <li>5. Breaches and penalties for failure to comply with chain of responsibility as identified in the HVNL</li> <li>6. Workplace policies, procedures and other documents relevant to transport activities</li> <li>7. Management and monitoring of speed and fatigue</li> <li>8. Management and monitoring of mass limits and vehicle dimensions</li> <li>9. Management of load restraint</li> <li>10. Management and monitoring of heavy vehicle safety standards</li> <li>11. Management of transport risks in accordance with workplace procedures</li> <li>12. Management and monitoring of workplace records</li> <li>13. Reporting of transport risks</li> <li>14. Communication of workplace policies and procedures in relation to chain of responsibility</li> <li>15. Management and monitoring of workplace policies and procedures in relation to chain of responsibility</li> <li>16. Corrective actions in relation to non-compliance with chain of responsibility</li> <li>17. Identification of transport risks and safety duties in accordance with job function and workplace procedures</li> <li>18. Analysing current hazards and risk information in a timely manner and appropriate mitigation actions considered</li> <li>19. Allocation of resources in accordance with job function and workplace procedures</li> <li>20. Implementation of risk control measures and mitigation processes in accordance with workplace procedures</li> </ol>
<b>Timeframe</b>
This activity will be completed within 12 months of acceptance of this undertaking.
<b>Outcome</b>
Chain of responsibility training will raise awareness, knowledge and skills in relation to HVNL and chain of responsibility.
<b>Costs</b>
\$3,650.00
<b>Output</b>
A copy of the training record will be submitted to NHVR as evidence of this deliverable.



### Activity 2 – Volunteer at industry training sessions

#### Scope

The Promisor will volunteer his time in assisting and contributing at 4 half day training sessions related to heavy vehicle safety.

#### Details

1. The Promisor will assist Australian Trucking Safety Services and Solutions at 4 half day sessions of training sessions related to heavy vehicle safety.
2. The training sessions will involve content in relation to chain of responsibility obligations, fatigue management, speed management, mass management, load restraint, vehicle standards and heavy vehicle roll awareness.
3. The Promisor will contribute by presenting at each training session and will detail his experience of being charged by NHVR and the consequences he has endured. The Promisor will also detail the rectifications made and will share his experience on how he is now managing his heavy vehicle safety obligations.
4. The Promisor will assist by providing any tools, equipment and time in supporting the training sessions.

#### Timeframe

This activity will be completed within 12 months of acceptance of this undertaking, subject to COVID-19 restrictions.

#### Outcome

This activity will provide a benefit to the industry as participants will obtain an insight into the consequences of breaching HVNL. It will increase communication on this issue, which may influence other individuals in the industry to improve their standards.

The training providers will also benefit from the additional resources available to them.

#### Costs

\$12,000.00

#### Output

A statement confirming the Promisor has assisted and contributed at the training sessions will be provided by the training provider which will be submitted to NHVR.

### Activity 3 – Chain of responsibility audit

#### Scope

The Promisor will undertake a chain of responsibility audit to identify any additional opportunities for improvement and best practice methods in relation to compliance with HVNL and chain of responsibility.

#### Details

The Promisor will engage a third party provider to review the management of HVNL and chain of responsibility in the Promisor's operations in relation to:

- a. Fatigue management
- b. Mass dimensions and management
- c. Load restraint
- d. Speed management
- e. Vehicle standards

#### Timeframe

This activity will be completed within 12 months of acceptance of this undertaking.



**Activity 3 – Chain of responsibility audit**

**Outcome**

This activity will identify any additional opportunities for improvement while improving compliance and reducing the risk of a contravention.

**Costs**

\$3,000.00

**Output**

A copy of the audit report will be submitted to NHVR.

**Activity 4 – Development of a training package**

**Scope**

The Promisor will engage a service provider to assist with the development of a training package in relation to compliance with HVNL and chain of responsibility to benefit the industry.

**Details**

1. The focus of the training package will be on small owner operators or small businesses with limited administrative capacity.
2. The training package will utilise the Promisor as a case study of the importance of compliance with HVNL and chain of responsibility.
3. The training package will involve content in relation to chain of responsibility obligations, fatigue management, speed management, mass management, load restraint, vehicle standards and heavy vehicle roll awareness.
4. The training package will be in the format of a slide show presentation and hand outs.
5. The training package will be used in future industry training sessions conducted through Australian Trucking Safety Services and Solutions.

**Timeframe**

This activity will be completed within 12 months of acceptance of this undertaking, subject to COVID-19 restrictions.

**Outcome**

The training package will raise the awareness, knowledge and skills in relation to HVNL and chain of responsibility and will provide a benefit to the industry.

**Costs**

\$4000.00

**Output**

A copy of the training package developed will be submitted to NHVR.

**Activity 5 – Donation to National Road Safety Partnership Program**

**Scope**

The Promisor will donate to the National Road Safety Partnership Program (NRSP) to assist with the funding of initiatives in relation to heavy vehicle safety.

**Details**

The donation will assist in funding several initiatives undertaken by the NRSP which include:

**Activity 5 – Donation to National Road Safety Partnership Program**

1. Funding NRSPP Heavy Vehicle Tool Box Talks which provide knowledge to the industry regarding work related driving safety while promoting discussion and awareness.
2. Development of a research paper in relation to the Heavy Vehicle legal implications for businesses.
3. Sponsorship of research projects for honour students on topics such as direct/indirect vision, truck blind spots.
4. Development of NSRPP Questions and Answers which provide information and guidance on specific issues.
5. Development of other free resources for the industry such as webinars and case studies.

**Timeframe**

This activity will be completed within 6 months of acceptance of this undertaking.

**Outcome**

The donation will assist in funding the above initiatives which will assist in increasing the knowledge and awareness of heavy vehicle safety in the industry.

**Costs**

\$5,000.00

**Output**

A copy of the donation transfer will be submitted to the NHVR.

**Activity 6 – Implementation of a NHVR approved Electronic Work Diary**

**Scope**

The Promisor will obtain and implement a NHVR approved Electronic Work Diary (EWD) to assist with fatigue management compliance.

**Details**

1. The Electronic Work Diary (EWD) will allow the electronic recording of work and rest times of the Promisor and will provide several benefits, which include:
  - a. Provide a simpler means to record work and rest hours for the Promisor
  - b. Provide a simpler means to review past work and rest hours to ensure compliance
  - c. Reduce the administrative burden of record keeping
  - d. Assist the Promisor to monitor his business and prevent breaches to fatigue management
2. The Promisor will obtain and implement an EWD approved by the NHVR.
3. The Promisor will record all work activity in the EWD once obtained.
4. The Promisor will provide all work activity recorded in the EWD to the compliance sector of NHVR.
5. The above conditions will operate for 12 months.

**Timeframe**

The EWD will be obtained within 3 months of acceptance of this undertaking.

**Outcome**

The EWD will assist the Promisor in ensuring compliance with fatigue management and will reduce the risk of another breach.



**Activity 6 – Implementation of a NHVR approved Electronic Work Diary**

**Costs**

\$2,000.00

**Output**

A copy of the tax invoice from the purchase of the EWD will be provided to the NHVR

A copy of the completed work activity extracted from the EWD will be provided to the NHVR for a period of 12 months

46. The total estimated value of the undertaking is \$29,650.00.

## Part 4 Offer of undertaking

Executed as an Undertaking

Executed by **Cliffard R MCBRIDE** in the presence of:

	
Signature	Signature of Witness
Cliffard R McBride	
Name (print)	Name of Witness (print)
Date: 3 <sup>rd</sup> February 2022	Date: 3 <sup>rd</sup> February 2022

## Part 5 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
<b>SAL PETROCITTO</b>
Name of Chief Executive Officer (print)
Date: <b>3-5-2022</b> <small>Click or tap to enter a date.</small>