

Case learnings – July 2024

Background

In April 2021, a fully laden heavy vehicle being driven by a director of a scrap metal company was intercepted by an NHVR authorised officer. The heavy vehicle was followed to the Company's depot. The heavy vehicle was weighed, and it was ascertained there was a severe mass breach – the most serious risk category under the *Heavy Vehicle National Law* (HVNL) for a mass offence.

A subsequent investigation commenced into the Company's business practices. The investigation revealed that over a two-year period, the Company committed 69 mass breaches. A significant amount of those breaches were classified as severe risk breaches. It was also established that the Company had insufficient policies and practices in relation to managing mass breaches, including the induction and training of their drivers to comply with their legal mass limits.

The offence

The Company pleaded guilty as an operator to one Category 1 offence contrary to the HVNL. This is the most serious offence under the HVNL. Three of the Company's executives also pleaded guilty to section 26D offences (Category 3 maximum penalty) for failing to exercise their due diligence.

The offending can be broadly categorised as:

- The Company engaged in conduct over the two-year period in breach of its Primary Duty that exposed others to a risk of death, serious injury or illness without a reasonable excuse and being reckless as to the risk.
- The executives failed to discharge their due diligence to ensure that the Company complied with its safety duty.
- One of the executives was also charged with an additional mass offence which related to the day of the intercept.

In July 2024, the Company was convicted and fined \$240,000, which was reduced to \$180,000 on account of its plea of guilty.

Two executives were each fined \$9,000, reduced to \$7,000 on account of their pleas of guilty.

The executive who also pleaded guilty to the additional mass breach was fined \$10,500, reduced to \$8,500 on account of the plea of guilty.

In the sentencing remarks, and during the hearing, the Magistrate made the following comments:

- That the 69 mass breaches amounted to a significant risk to public safety.
- The over mass created a significant public safety risk by impacting on the performance of the heavy vehicle, the degradation of its structural integrity and breaking and steering capabilities and that the potential for a driver to lose control was high.
- It was a troubling and aggravating feature that there were a further six mass breaches after the intercept.
- It was lucky that no one was killed.



Key takeaways

Considering the potentially significant consequences of non-compliance with your primary duty, it is important that you review your safety systems and ensure you are doing everything reasonably practicable to eliminate or minimise the risks associated with your transport activities.

Below are some takeaways from this case:

- It is important to have systems and procedures in place to ensure your loads are within the legal permissible limit. It is not enough to have a basic policy in place in relation to mass management or to have regular meetings without more.

- Executives have to exercise due diligence to ensure the company complies with its safety duty. This is a proactive duty. It is not enough to claim ignorance to the knowledge of mass breaches or other offences under the HVNL.
- The *Heavy Vehicle National Law* is concerned with potential harm, not actual harm. An accident or fatality does not have to occur for charges to be brought. This Primary Duty investigation commenced from a simple intercept and not as a result of an incident or collision.

Guidance for operators

The case provides some reasonably practicable measures operators can take to reduce or minimise the risks associated with mass management and maintenance of heavy vehicles, including:

- Ensure all loaded heavy vehicles are weighed prior to undertaking any journey to ensure the weight complies with the prescribed weight limits;
- It is imperative to have systems and procedures in place to ensure drivers and loaders are adequately trained in their roles to enable ongoing compliance with the HVNL;
- Where necessary, develop and implement policies with respect to the regular and effective maintenance, calibration, service and repair of weight scales;
- Provide adequate information, training, instruction, and/or supervision of mass and loading requirements and procedures to drivers and other parties in the chain of responsibility;
- Develop and implement systems and processes, including disciplinary practices, to ensure adherence by all employees to policies and procedures to manage prescribed mass limits;
- Monitor and review all policies and procedures to ensure they still meet the needs of the company.

These reasonably practicable measures are just examples of potential controls that you can implement and should be read in conjunction with those outlined in the registered industry [Master Code](#).



For more information:

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