

1 October 2024

Our Reference: [REDACTED]

**Re: Trojan Transport Pty Ltd Enforceable Undertaking proposal**

[REDACTED]

## **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 Trojan Transport Pty Ltd (the EU proposal) pursuant to Part 10.1A of the HVNL.
2. I have considered the EU proposal and assessed it against the National Heavy Vehicle Regulator's (NHVR) *Prosecution Policy* (the policy), *Enforceable Undertakings Policy* (the EU policy), and the *Guidelines on Proposing an Enforceable Undertaking* (the EU Guidelines). 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 contravention alleged in this case.

##### **The Alleged Facts**

3. On 13 December 2023, a Hino heavy vehicle bearing NSW registration [REDACTED] was intercepted at Port Botany, NSW. Upon inspection of the heavy vehicle, the NHVR identified the following breach:
  - 3.1 Not complying with dimension requirements (severe risk), namely, the vehicle and its load was 5.14m high when only allowed to be 4.30m high.

4. On 6 March 2024, the NHVR commenced the prosecution against Trojan Transport Pty Ltd for the following alleged breach:

4.1 'not comply with dimension requirements – severe risk'.

The maximum penalty available for the offence is \$63,000.

### **The Proposed Enforceable Undertaking**

5. The EU proposal comprises four initiatives. Initiative one (complete training courses) is to be completed within one month. Initiative two (review of and development of policies and procedures) is to be completed within six months. Initiative three (internal review of systems and practices) is to be completed at six months and 12 months. Initiative four (development of toolbox talk) is to be completed within nine months. Initiative five (toolbox talk) is to be completed at six months and 12 months. The initiatives will commence from the date of the NHVR's acceptance of the EU. The total cost estimated is \$15,400.

6. The four initiatives can be summarised as follows. Trojan Transport Pty Ltd undertakes to:

- a. Management personnel will undertake training courses 'TLIF4066 Implement and supervise transport regulations compliance system' and 'TLIF0009 Ensure the Safety of Transport Activities' at a cost of \$1,650.
- b. An external service provider will review and develop policies, procedures and manuals at a cost of \$8,250.
- c. Internal review by management staff of systems and practices at six months and 12 months at a cost of \$0.
- d. Production of a toolbox talk for internal and public dissemination by an external consultant at a cost of \$5,500.
- e. Toolbox talk for employees to be held at six months and 12 months at a cost of \$0.

### **Criteria to be applied**

7. In arriving at my decision, I have evaluated the EU proposal against the eleven (11) evaluation criteria in Section 4 of the EU Guidelines namely:

- (1) The nature and extent of the omission alleged.
- (2) The Promisor's compliance history.

- (3) Whether the EU proposal delivers benefits to the public beyond the Promisor's compliance with the law.
  - (4) The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety.
  - (5) The likely improvements in safety within the Promisor's business or operations.
  - (6) The Promisor's ability, including financial ability, to meet the terms of the EU proposal.
  - (7) The significance of the commitment compared to the capability of the Promisor.
  - (8) The support the Promisor has provided and has committed to providing into the future to an injured or affected person(s).
  - (9) Input from injured and affected persons.
  - (10) The likely outcome should the matter be dealt with through legal proceedings.
  - (11) Reports or assessments of investigating or prosecuting agencies who have conduct of the matter.
8. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Trojan Transport Pty Ltd's compliance history. I acknowledge that prior to these allegations, I am aware of 15 convictions for breaches of the HVNL between 2014 and 2020.
  9. With regards to criteria (3) and (4), I have considered that the EU proposal initiatives benefit the public beyond the compliance of the law, are of good strategic quality, and have potential to make noticeable positive change in the transport industry in terms of implementation of safety measures.
  10. With regards to criteria (5), I acknowledge the proposal initiatives are likely to improve Trojan Transport Pty Ltd's transport operations.
  11. With regards to criteria (6), I acknowledge that Trojan Transport Pty Ltd has the ability to meet the terms of the EU proposal.
  12. With regards to criteria (7), I have considered that Trojan Transport Pty Ltd has taken into account the significance of the EU commitment, compared to their capability.
  13. With regards to criteria (8) and (9), 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.

14. With regards to criteria (10) and (11), 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.

**Reports or assessments of investigating or prosecuting agencies who have had contact of the matter**

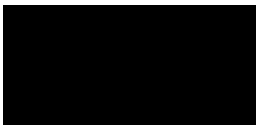
15. A representative of the Monitoring Compliance team, [REDACTED], has reviewed and assessed the matter. The assessment is overall supportive of the EU.

16. A representative of the NSW Safety Compliance Officers, [REDACTED], has reviewed and assessed the matter. The assessment is overall supportive of the EU.

**Conclusion**

17. Considering all of 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 Trojan Transport Pty Ltd will be withdrawn.

Yours sincerely

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Paul Simionato  
**Acting Executive Director Statutory Compliance**