

8 April 2024

Mr Andrew Charles Allen

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 (the EU proposal) by you (the EU proposal¹) pursuant to Part 10.1A of the HVNL.
2. I have considered this 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 contraventions alleged in this case.

The Alleged Facts

3. It is alleged that on 23 May 2023, you drove a heavy vehicle, namely a Hino [REDACTED] Series table-top without fittings, on the Princes Highway at South Nowra that did not comply with the dimension requirements, contrary to section 102(1)(b)(iii) of the HVNL.
4. The prescribed width of the vehicle was 2.5 meters. The vehicle's width was measured at 2.625m. Taking into account the applicable dimension adjustment, the vehicle’s alleged width was 2.605m, an excess width of 105 mm. The contravention of the vehicle’s permitted width resulted in a severe risk breach.
5. You drove the vehicle loaded with scaffolding from Nowra and were on a journey to Husskison when intercepted.

¹ Andrew Charles Allen, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 12/02/2024.

6. You informed the authorised officers that you had loaded the vehicle and secured the load.
7. The NHVR commenced a prosecution against you alleging the contravention. The maximum penalty available for the offence is \$11,820.00.

The Proposed Enforceable Undertaking

8. The EU proposal from you comprises three (3) initiatives to be completed within six (6) months from the date of the NHVR's acceptance of the EU and would amount to a total estimated cost of \$949.00.
9. The three initiatives can be summarised as follows. You undertake to:
 - a. Complete a Chain of Responsibility Course (\$250.00);
 - b. Complete a Loading and Unloading Course (\$199.00); and
 - c. Make a donation to Road Trauma Support Group NSW (\$500.00).

Criteria to be applied

10. In arriving at my decision, I have evaluated the EU proposal against the 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; and

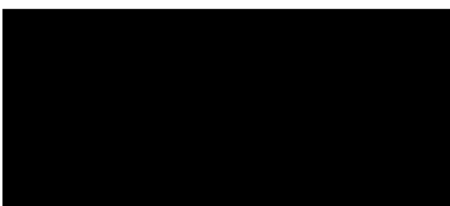
11) Reports or assessments of investigating or prosecuting agencies who have conduct of the matter.

11. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and your compliance history.
12. I acknowledge that prior to these allegations, I am not aware of any convictions for compliance breaches of the HVNL or any breaches of related safety duties by you.
13. With regards to criteria (3), (4) and (5), I acknowledge and have considered that the EU proposal initiatives may benefit the public beyond the compliance of the law, are of good strategic quality, have potential to make noticeable positive change in the transport industry in terms of implementation of safety measures, and are likely to improve your transport operations.
14. With regards to criteria (6) and (7), I acknowledge that you have the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to your capability.
15. 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.
16. 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.

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 you will be withdrawn.

Yours sincerely



Raymond Hassall
Executive Director, Statutory Compliance