

23 May 2024

Our Reference: [REDACTED]

Attn: [REDACTED]
Mulgoa Excavations Pty Ltd
[REDACTED]

Dear [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 (the EU proposal) by Mulgoa Excavations Pty Ltd¹ pursuant to Part 10.1A of the HVNL.

I have considered this proposal and assessed it against the National Heavy Vehicle Regulator (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

2. On 13 September 2023 at Mount White, in the State of NSW, [REDACTED] did without reasonable excuse permit another to drive a heavy vehicle on a road and did fail to ensure that the heavy vehicle and load complied with the prescribed mass requirements, contrary to section 96(1)(c) of the HVNL.
3. [REDACTED] was the registered operator of a Kenworth T604 Prime Mover bearing NSW registration [REDACTED] and permitted [REDACTED] to drive the vehicle on the Pacific Motorway at Mount White.

¹ Mulgoa Excavations Pty Ltd, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 16/04/2024.

4. The prescribed mass limit applicable to axle group 3 was 20 tonnes. The assessed mass of axle group 3 was 26.24 tonnes or 131.2% of the maximum mass permitted. The offence constituted a severe risk breach.
5. The NHVR commenced a prosecution against [REDACTED] alleging the contravention. The maximum penalty available for the offence is \$18,870.
6. [REDACTED] is the sole Director of Mulgoa Excavations Pty Ltd.

The Proposed Enforceable Undertaking

7. The EU proposal from Mulgoa Excavations Pty Ltd comprises five (5) initiatives to be completed by 8 March 2025 and would amount to a total estimated cost of \$29,376.
8. The five initiatives can be summarised as follows. Mulgoa Excavations Pty Ltd undertakes to:
 - a. Implement a new Company Manual/Drivers Manual with updated Policies and Procedures created by Pro Drive Compliance. Pro Drive Compliance will consult with NHVR Monitoring and Compliance during the development of the Company Manual/Drivers Manual to ensure it adheres to the requirements of HVNL – at a cost of \$16,000.
 - b. Arrange two training sessions conducted by Pro Drive Compliance to instruct and advise all Mulgoa Excavation employees with the job title of ‘heavy vehicle driver’ of updated company policies and procedures – at a cost of \$1,000.
 - c. Arrange training in Nationally Accredited Unit of Competency TLIF0014 - Monitor the safety of transport activities (Chain of Responsibility) course to be completed by the Director, Fleet Operations Manager, Maintenance Manager and Compliance Officer – at a cost of \$876.
 - d. Implement improved mass, loading and dimension training documentation by Pro Drive Compliance. Pro Drive Compliance will consult with NHVR Monitoring and Compliance during the development of the mass, loading and dimension training documentation to ensure it adheres to the requirements of the HVNL – at a cost of \$9,000.
 - e. Make a donation to Road Trauma Support Group NSW – \$2,500.

Criteria to be applied

9. 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.
10. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and [REDACTED] compliance history.
11. I acknowledge that prior to this allegation, I am aware of one conviction for a compliance breach of the HVNL and past penalty notices.
12. On 15 August 2016, it is alleged that you committed one offence of not comply with mass requirements - operator - severe risk contrary to section 183(2)(c) of the HVNL. This was finalised at Gosford Local Court on 25 May 2017 with a conviction and a penalty of \$1,000.00.
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 Mulgoa Excavations Pty Ltd's transport operations.
14. With regards to criteria (6) and (7), I acknowledge that Mulgoa Excavations Pty Ltd has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Mulgoa Excavations Pty Ltd's 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 the investigators, 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 [REDACTED] will be withdrawn.

Yours sincerely



Raymond Hassall
Executive Director, Statutory Compliance