



Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

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

By

Nathan John Hartge

Part 1 Executive summary

Section 1 Agreed actions

1. Mr Nathan John Hartge (Mr Hartge) agrees to enter into the Enforceable Undertakings and comply with the terms herein.
2. The National Heavy Vehicle Regulator (NHVR) consents to the undertaking and agrees to withdraw the charge against Mr Hartge listed in the Penrith Local Court.
3. Donation to Road Trauma Support Group NSW
4. Completion of TOIP course, Road Sense Pty Ltd
5. Training in Fatigue Risk Management course (TLIF2010)
6. Complete a work diary course (TLIF 3028)

Section 2 Total cost of actions

7. Donation to Road Trauma Support Group NSW: \$1,000
8. Completion of TOIP course, Road Sense Pty Ltd: Cost \$185
9. Training in Fatigue Risk Management course (TLIF2010): Cost \$220
10. Complete a work diary course (TLIF 3028): Cost \$80

Total Costs of Actions: \$1,485

Part 2 General information

Section 1 Purpose

11. 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

12. The commitments in this enforceable undertaking are offered to the NHVR by Mr Hartge.
13. 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:

Registered address:	Not Applicable - Employee
Postal address:	[REDACTED]
Telephone:	[REDACTED]
Email address:	[REDACTED]
Legal structure:	Employee [REDACTED]
Type of business:	Employed Truck driver
Commencement of entity:	Not applicable
Number of workers:	Not applicable
Products and/or services:	Food and beverage

Details of the alleged contravention

Offence: Solo driver works more than standard time - Critical risk

14. It is alleged that in the 24-hour period commencing at 5.30 pm on the 28 August 2023 and concluding at 5.30 pm on the 29 August 2023, Nathan John Hartge being the solo driver of a fatigue regulated heavy vehicle namely a DAF prime mover white with NSW registration [REDACTED] did work more than the prescribed standard maximum work hours.

Short Particulars:

15. The accused was detected by authorised officers on the 30 August 2023 at Mt White, New South Wales.
16. The heavy vehicle had a gross combination mass exceeding 12 tonnes constituting a fatigue regulated heavy vehicle.
17. In a 24-hour period, the prescribed Standard maximum work time was 12 hours.
18. The Accused worked a total of 15 hours and 45 minutes.
19. The offence constituted a critical risk breach.
20. Statutory Provision Describing Offence: Section 250(1)(a) *Heavy Vehicle National Law (NSW)*
Law Part Code: 80123 5.

Details of the events surrounding the alleged contravention

21. Mr Hartge has been driving trucks for some ten years and has been employed by his employee for two years.

22. Mr Hartge travels regional areas and interstate to places like Brisbane, Melbourne and occasionally South Australia, Western Australia, Dubbo, and Blayney. Mr Hartge also does local work delivering to the cruise boats at White Bay and to the overseas passenger terminal.
23. On Monday, 28 August 2024 Mr Hartge had not worked, and as such his employer asked him to do a delivery up to Brisbane Airport. The pickup was from Seymonds Road, Dean Park NSW 2761.
24. Mr Hartge departed from the pickup location at 5:30 pm on Monday 28 August 2024 and stopped some 5 hours later when he started to get tired at around 10:45 pm around which time he stopped at the Macksville, NSW rest area.
25. The next morning on 29 August 2024 Mr Hartge continued the road trip at 4.00 am to make the 10 am delivery at Brisbane airport.
26. Even though Mr Hartge is accredited with a Basic Fatigue Management (BFM) certificate Mr Hartge, because he had never done a split driving shift, he accidentally miscalculated his hours, thinking he was okay to drive the full 12 hours. When Mr Hartge was pulled over by NHVR at the Mt White weigh station, Mr Hartge took full responsibility for his error.
27. Mr Hartge's employer has now since introduced an electronic work diary (EWD) to prevent drivers at any given time from breaching their hours and rest times. The EWD alerts the driver if he /she is in jeopardy of breaching the permissible work hours and rest times.
28. Mr Hartge has been trained on how to use the EWD.
29. Mr Hartge has now since reviewed the rules on counting time and understands how travel times and rest periods are to be counted to ensure this error does not ever happen again.
30. Mr Hartge has undertaken a TOIP course.
31. Mr Hartge will complete the Administer a Fatigue Risk Management System course and the Chain of Responsibility of Awareness course.

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

32. No injury or financial loss has been suffered or sustained by any third party because of the contraventions by Mr Hartge.
33. Mr Hartge did not suffer any injury or financial loss due to the contraventions.

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

34. Mr Hartge was served with one Court Attendance Notice to attend Gosford Local Court on 24 July 2024. The matter was adjourned to Penrith Local Court.

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

35. Mr Hartge is an employee.
36. Mr Hartge complies with his employer's business procedures and practices that account for all necessary safety precautions in accordance with work, health, and safety (WHS) legislation and standards.
37. Mr Hartge's observation is his employer ensures that all his vehicles are always roadworthy and capable of carrying out the requirements of the business in accordance with the HVNL.
38. Mr Hartge's employer regularly checks his vehicles to ensure they meet the requirements of WHS legislation and his business's policies and procedures.
39. Mr Hartge's employer has now installed EWDs in the work trucks that do long/split hauls.

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

40. There has been no formal consultation with Mr Hartge, however, Mr Hartge was made aware by his lawyers, Repute Law, that an enforceable undertaking may be an available option.

Section 3 Statements

Statement of assurance

41. Mr Hartge is committed to complying with his obligations under the HVNL (Heavy Vehicle National Law) and ensuring so far as is reasonably practicable, the health and safety of himself, his family, colleagues, other road users and the wider community will not be put in any danger or be inconvenienced by carrying out of his business.

Statement of regret

42. Mr Hartge regrets the contraventions between 5.30 pm on the 28 August 2023 and concluding at 5.30 pm on the 29 August 2023
43. Through his interaction with NHVR officers, Mr Hartge has learned about the importance of keeping track of hours on the road and managing fatigue, and he expects to learn more about the training activities he will undertake.
44. Mr Hartge takes full responsibility for causing a safety issue for himself and the community and regrets that he did not better monitor his time and necessary breaks.
45. Mr Hartge takes pride in being a responsible employee and enjoys his work and the responsibility that is attached to being a truck driver. He is upset about his failure to comply with the HVNL regulations. Mr Hartge will ensure it does not happen again.
46. Mr Hartge is also further distressed at the ominous prospect of losing his licence and not being able to drive trucks and thereby losing his job with his employer or being able to work as a truck driver. Mr Hartge is a husband and father. He has two young boys who are 'high needs' autistic (8-year-old and 5-year-old) and another young 10-year-old who has ADHD and ODD and requires the full-time care of his wife, who is, therefore, unable to work. Their family is dependent on Mr Hartge's wage, and they would be in dire financial strife if Mr Hartge were to lose his license and, therefore, his job, thus compounding the seriousness of Mr Hartge's oversight and his frustration with himself for having made this error.

Statement of ability to comply

47. Mr Hartge confirms that he has the financial and operational capacity to comply with the terms of this enforceable undertaking.

Statement granting permission to use

48. Mr Hartge grants the NHVR permission to use any documents, policies and procedures developed as a result of this enforceable undertaking for the purposes of training and development by the NHVR.

Statement of prior undertakings

49. Mr Hartge has not been the subject of any undertaking from any statutory body.

Section 4 Acknowledgement

50. Mr Hartge acknowledges that NHVR alleges he has contravened Section 250(1)(a) Heavy Vehicle National Law (NSW) 2013 Law Part Code: 80123 5
51. Mr Hartge has taken the allegations against him very seriously and is committed to providing a safe and healthy workplace to perform his duties in a way that helps protect himself, his colleagues and the wider community 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)

52. 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

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

Section 6 Rectifications made

54. Mr Hartge is committed to following the rules and regulations of the Heavy Vehicle National Law ensuring he continues to identify, assess and control risks and to follow and when appropriate suggest and implement practices that 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
Mr Hartge is enrolled to complete a TOIP course provided by Road Sense Pty Ltd Traffic Offender Intervention Program. This course is delivered online in a Synchronous (Virtual Classroom) Learning and Teaching environment.	\$185
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Total cost p.a.	

Section 7 Acknowledgement of publication

55. Mr. Hartge 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

56. Mr Hartge is committed to ensuring that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence.

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

57. Mr Hartge is committed to the ongoing effective management of public risks associated with transport activities within the business operations.
58. Mr Hartge has a commitment to ongoing continuous improvement in how it manages risks associated with his employer's business operations and the performance of his duties, including the review of new technology when made available and he is committed to the ongoing effective management of public risks associated with transport activities within its business operations.

Commitment to disseminate information about the EU to workers and other relevant parties in the chain of responsibility

59. Mr Hartge is committed to disseminating information about the enforceable undertaking to co-workers and other relevant parties within the chain of responsibility, including senior and operational management, the health and safety management team, Health and Safety Committees and Health and Safety Representatives, workers, and all

relevant contractors and subcontractors working for Mr Hartge. This information will be disseminated directly to the people concerned, if and when it eventuates.

60. Mr Hartge is committed to participating constructively in all compliance monitoring activities of the EU.
61. 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.

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

62. Mr Hartge 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.

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

63. Mr Hartge is committed to participating constructively in all compliance monitoring activities of the EU.
64. Mr Hartge acknowledges that responsibility for demonstrating compliance with the undertaking rests with him and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
65. 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.

Section 2 Strategies that will deliver benefits

Benefits to drivers and parties within the chain of responsibility

66. As part of this enforceable undertaking, Mr Hartge 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.
67. Mr Hartge intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness to Mr Hartge's workforce and all parties within the chain of responsibility of the importance of complying with the Chain of Responsibility laws.

Activities

Activity 1 – Donation to Road Trauma Support Group NSW

Scope

Donation to Road Trauma Support Group NSW. Road Trauma Support Group NSW is a not-for-profit organisation dedicated to helping support families of road trauma. It advocates for safe roads for all NSW road users with a special focus on providing support to families affected by road trauma death, the delivery of education and public awareness, and driving reforms to the criminal justice system with respect to road trauma deaths in NSW. It relies on donations from the community and external stake

Details

Donation of \$1,000 to be paid as directed by Road Trauma Support Group NSW

Timeframe

Within the next two months of acceptance of this undertaking.

Outcome

Activity 1 –Donation to Road Trauma Support Group NSW

The Donation will assist the Road Trauma Support Group in its mission to be an active advocate for safer roads for all road user

Costs

The donation is to be \$1,000

Output

Mr Hartge will provide a receipt from the recipient of the donation within the timeframe specified.

Activity 2 –Apply fatigue management strategies (TLIF 2010)

Scope

Mr Hartge will participate in this training course, and it will provide him with the skills and knowledge required to enable him to apply fatigue management strategies within the transport and logistics industry.

It includes identifying and acting on signs of fatigue and implementing appropriate strategies to minimise fatigue during work activities, particularly when operating equipment and vehicles.

Work is undertaken in compliance with relevant legislation, regulations, codes and guidelines.

Work is performed under some supervision generally within a team environment.

No licensing, legislative or certification requirements apply to this unit at the time of publication.

Details

Recognise signs of fatigue and implement appropriate strategies to minimise fatigue during work activities, particularly when operating equipment and vehicles to ensure road safety and to avoid legal repercussions.

This is an online course provided by an RTO that is accredited to provide the training (e.g. Training.gov.au).

Timeframe

Within the next two months of acceptance of this undertaking.

Outcome

At the conclusion of the course, Mr Harge will have the skill and knowledge required to enable him to apply fatigue management strategies within the transport and logistics industry to identify and act on signs of fatigue and implement appropriate strategies to minimise fatigue during work activities, particularly when operating equipment, vehicles

Costs

The cost is \$220.

Output

A copy of a Statement of Attainment from the course provider will be provided to the NHVR at the completion of the course.

Activity 3 –Complete a work diary (TLIE 3028)

Scope

Mr Hartge will participate in this training course. Legislation and mandatory requirements for Driver Work Diaries. This course is a must for Heavy Vehicle Drivers. The course will satisfy the requirements for the chain of responsibility by giving a clear understanding of the legal requirements and the function and completion of the Driver Work Diary

Details

This course is a must for Heavy Vehicle Drivers. The course will satisfy the requirements for chain of responsibility by giving a clear understanding of the legal requirements and the function and completion of the Driver Work Diary.

This is an online course provided by an RTO that is accredited to provide the training (e.g. Training.gov.au).

Timeframe

Within two months of acceptance of this undertaking.

Outcome

This course provides participants with the knowledge and skills to complete a Driver Work Diary that will satisfy the requirements for the chain of responsibility by giving a clear understanding of the legal requirements and the function and completion of the Driver Work

Costs

The cost is \$80.

Output

A copy of a Statement of Attainment from the course provider will be provided to the NHVR at the completion of the course.

Activity 4 –

Scope

Details

Timeframe

Outcome

Activity 4 –

Costs

Output


68. The total estimated value of the undertaking is \$1,485.

Part 4 Offer of undertaking

Executed as an Undertaking


ABN:

Executed by **Nathan Hartge**, pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature	
Nathan John Hartge	
Name	
Date: 10/09/24	

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 A/Executive Director
Paul Simionato
Name of A/Executive Director(print)
Date: 25/09/24