

September 2024

Our Reference: [REDACTED]



Re: Nathan Hartge Enforceable Undertaking proposal



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 Nathan Hartge ("the EU proposal") pursuant to Part 10.1A of the HVNL.
2. I have considered the EU proposal and assessed it against the *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 29 August 2023, a DAF prime mover heavy vehicle bearing NSW registration [REDACTED] was intercepted at Mt White, NSW.
4. Upon inspection of the heavy vehicle, the Regulator identified the following breach:
 - 4.1 Solo driver work more than std maximum time - Critical risk namely, Nathan Hartge worked 15 hours and 45 minutes in a 24 hour period.
5. On 24 July 2024, NHVR commenced the prosecution against Nathan Hartge for the following alleged breach:

- 5.1 'Solo driver work more than std maximum time - Critical risk . The maximum penalty available for the offence is \$18,900

The Proposed Enforceable Undertaking

6. The EU proposal comprises of three (3) initiatives. Initiative 1 (one) (Donation to Road Trauma Support Group) is to be completed within two (2) month. Initiative 2 (two) (undertake training Applied fatigue management TLIF 2010) is to be completed within two (2) months. Initiative 3 (three) (undertake training Complete work Diary TLIE 3028) is to be completed at two(2) months. The initiatives will commence from the date of the Regulator's acceptance of the EU. The total cost estimated is \$1,300.

Criteria to be applied

7. 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.
8. With regards to criteria (1), I have considered the nature and extent of the conduct alleged and Nathan Hartge compliance history. I acknowledge that prior to these allegations, no convictions for breaches of the *HVNL*.
9. With regards to criteria (2) and (3), 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 (6), I acknowledge that Nathan Hartge has the ability to meet the terms of the EU proposal.
11. With regards to criteria (7), I have considered that Nathan Hartge has taken into account the significance of the EU commitment, compared to their capability.
12. 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.

13. 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.

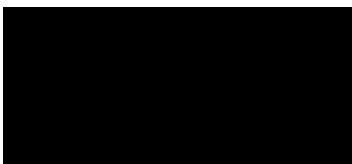
Reports or assessments of investigating or prosecuting agencies who have had contact of the matter

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

Conclusion

16. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution.
17. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Nathan Hartge will be withdrawn.

Yours sincerely,



Raymond Hassall

**Executive Director
National Heavy Vehicle Regulator**