

15 March 2024

Our Reference: [REDACTED]

Attention: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: Country Wide Asphalt and Civil Pty Ltd

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 Country Wide Asphalt and Civil Pty Ltd pursuant to Part 10.1A of the HVNL.
2. 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

3. It is alleged that on 21 December 2022 at Dubbo in the State of NSW, a Volvo Tipper heavy vehicle bearing NSW registration [REDACTED] was travelling on Newell Highway NSW.
4. The heavy vehicle was intercepted by NHVR authorised officers where a compliance check under the HVNL was done on the vehicle. The vehicle was driven by an employee by the name of [REDACTED]. The vehicle was leased at the time of the intercept to the employer Country Wide Asphalt and Civil Pty Ltd. The vehicle was carrying road base and was on a journey to Brocklehurst NSW.

5. Upon inspection, the authorised officers identified there was a mass weight breach on the second axle group of the vehicle. This is contrary to section 96 of the HVNL.
6. The vehicle's mass was weighed at 20.50 tonnes. Taking into account the applicable mass adjustment, the vehicle's alleged mass was 20 tonnes on the second axle group, an excess mass of 3.5 tonnes, or an overload of 121%.
7. The NHVR commenced a prosecution against Country Wide Asphalt and Civil Pty Ltd alleging the contravention. The maximum penalty available for the offence is \$59,670.

The Proposed Enforceable Undertaking

8. The EU proposal from Country Wide Asphalt and Civil Pty Ltd comprises five initiatives to be completed by 12 August 2024 and would amount to a total estimated cost of \$144,500.
9. The five initiatives can be summarised as follows. Country Wide Asphalt and Civil Pty Ltd undertakes to:
 - (1) (a) Engage an external consultant by the name of [REDACTED] to conduct a gap analysis of the company's COR Policy and HV Management Plan (Gap Analysis).
 - (b) Roll out a revised COR Policy and HV Management Plan by 31 May 2024.
 - (2) Will install scales on its trucks and long-term hires that are utilised and maintained by the company by 30 April 2024.
 - (3) Will source candidates for a new role (New Resource) who will be based in Dubbo and in conjunction with project engineering responsibilities will also be accountable for site quality, compliance and surveillance for the northern operations and subcontractor related works (estimated \$110k annual salary). The role is committed to be permanently filled by June 2024.
 - (4) Will donate \$2,500 to RYDA (RSE) education program in the Western NSW region. The donation will be made by 14 July 2024.
 - (5) Will donate \$5,000 to Road Trauma Support Group NSW. The donation will be made by July 2024.

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 Country Wide Asphalt Pty Ltd's 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 Country Wide Asphalt Pty Ltd.
13. With regards to criteria (3), (4) and (5), there are two proposals for donations to the community. The first proposal of a donation is to RYDA (RSE) education program and the second proposal of a donation is to Road Trauma Support Group NSW.
14. The donation proposal to RYDA and Road Trauma Support Group NSW has measurable output towards heavy vehicle transport safety and as such it delivers a benefit to the community.
15. With regards to criteria (6) and (7), I acknowledge that Country Wide Asphalt 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 Country Wide Asphalt Pty Ltd's capability.

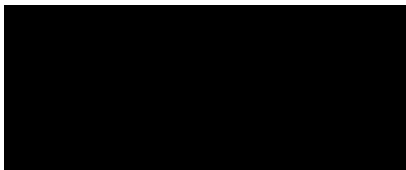
16. With regards to criteria (8) and (9), concerning the EU proposal's support of injured or affected person(s) and input from injured and affected persons, I have found these factors are not a relevant consideration, bearing in mind the specific facts of this matter.

17. 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

18. 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 Country Wide Asphalt Pty Ltd will be withdrawn.

Yours sincerely



Raymond Hassall

Executive Director, Statutory Compliance