

18 November 2024

Our Reference: [REDACTED]

Mr Justin Lavers
[REDACTED]

Dear Mr Lavers

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 Justin Lavers¹ 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. On 19 May 2023 at Marulan, in the State of NSW, you were stopped by NHVR Safety Compliance Officers. Upon review of your National Work Diary, two offences contrary to the HVNL were detected.
4. In the 24-hour period between 6:00pm on 17 May 2023 and 6:00pm on 18 May 2023, you were a solo driver of a fatigue-regulated heavy vehicle bearing registration [REDACTED]. At the time, you were operating under the Basic Fatigue Management (BFM) option.
5. Charge 1: During that 24-hour period the prescribed maximum work time was 14 hours. You worked for a total of 19 hours and 15 minutes, constituting a critical risk breach.

¹ Justin Lavers, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 12/02/2024.

6. Charge 2: During that 24-hour period the prescribed minimum continuous rest time was 7 hours. The longest continuous rest achieved by you was 1 hour and 30 minutes, constituting a critical risk breach.
7. The NHVR commenced a prosecution against you alleging the contravention. The maximum penalty available for each offence is a fine of \$17,740.

The Proposed Enforceable Undertaking

8. The EU proposal from you comprises three initiatives to be completed no later than 12 months from the acceptance of the EU and would amount to a total estimated cost of \$2,336.00.
9. The three initiatives can be summarised as follows. You would undertake to:
 - a. Engage with [REDACTED] to deliver Fatigue Management Training TLIF0005.
 - b. Enter into a 12-month subscription with Hubfleet for an Electronic Work Diary.
 - c. Make a \$2,000.00 donation to the Australian Road Trauma Safety Foundation.

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 activities.

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.

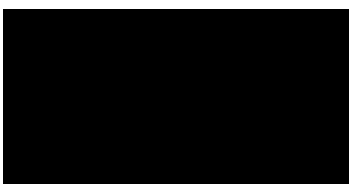
15. With regards to criteria (8) and (9), concerning the EU proposal's support of injured or affected person(s) and input from injured and affected persons, I have found these factors are not a relevant consideration, bearing in mind the specific facts of this matter.

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