

26 May 2023

Our Reference: [REDACTED]

Service Stream Maintenance Pty Ltd
[REDACTED]

To the proper officers

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 Service Stream Maintenance Pty Ltd ("**Service Stream**") ("**the EU proposal**")¹ 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. It is alleged that on 22 February 2022, you permitted a worker to drive a white HINO medium rigid tipper with registration (SA) [REDACTED] on 22 February 2022 on Waterloo Corner Road, a public road, while the vehicle was in breach of the mass requirements applicable to it, contrary to section 96(1) of the *Heavy Vehicle National Law (HVNL)*.
4. NHVR commenced a prosecution against you, alleging a severe risk breach for the drive axle (Count 1), and a minor risk breach for the steer axle (Count 2).
5. The maximum penalty for Count 1 is \$157,450.

¹ Enforceable Undertaking proposed by Service Stream Maintenance Pty Ltd pursuant to Chapter 10.1A of the HVNL dated 17/04/2023.

6. The maximum penalty for Count 2 is \$4,580.

The Proposed Enforceable Undertaking

7. The EU proposal comprises two (2) initiatives to be completed within 12 months from the date of the Regulator's acceptance of the EU and amounts to a total estimated cost of \$27,000.
8. The two initiatives can be summarised as follows. Service Stream undertakes to:
 - (a) Develop and implement an online Chain of Responsibility Training Module; and
 - (b) Launch the Chain of Responsibility Training Module with a hosted in-person and live streamed event.

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 Service Stream's compliance history.
11. 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 Service Stream.
12. 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 Service Stream's transport operations.

13. With regards to criteria (6) and (7), I acknowledge that Service Stream has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Service Stream's capability.
14. 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.
15. 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

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 Service Stream will be withdrawn.

Yours sincerely



Sal Petrocchio

Chief Executive Officer
National Heavy Vehicle Regulator