



Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

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

By

Mr Nelson Joseph Takiwa

and

Tuks Excavations Pty Ltd

ABN: 54 650 934 660

Part 1 Executive summary

Section 1 Agreed actions

1. Mr Takiwa is committed to enforcing the HVNL in all aspects of his operations and will undertake comprehensive training to achieve this, more specifically, undertaking the following training courses:
 - (a) TLIF0005 - Apply a Fatigue Risk Management System;
 - (b) TLIF0006 - Administer a Fatigue Risk Management System;
 - (c) TLIF0009 - Ensure the Safety of Transport Activities; and
 - (d) TLIF0014 - Monitor the Safety of Transport Activities.
2. Mr Takiwa will implement a NHVR recognised Electronic Work Diary.
3. Mr Takiwa will make a donation to the Australian Road Safety Foundation.

Section 2 Total cost of actions

4. The total cost of all actions agreed with by Mr Takiwa pursuant to this Enforceable Undertaking is \$2,502.00

Part 2 General information

Section 1 Purpose

- 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

- The commitments in this enforceable undertaking are offered to the NHVR by Nelson Joseph Takiwa (**Mr Takiwa**) sole director and employee of Tuks Excavations Pty Ltd ACN 650 934 660 (**Tuks Excavations**).
- 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:	[REDACTED]
Postal address:	[REDACTED]
Telephone:	[REDACTED]
Email address:	[REDACTED]
Legal structure:	Registered Australian Proprietary Company
Type of business:	Excavation Business
Commencement of entity:	10 June 2021
Number of workers:	1
Products and/or services:	Excavation and Earthworks

Details of the alleged contravention

- An Isuzu heavy vehicle bearing SA registration [REDACTED] was detected travelling between Safe-T-Cam sites in less than the allowable travel time between 7 October 2022 at 12:04am and 8 October 2022 at 7:39pm. It is therefore alleged that the driver committed an offence contrary to the HVNL, specifically section 250(1)(a).

Details of the events surrounding the alleged contravention

- On 2 November 2022, an authorised officer from the NHVR issued a Notice to Produce to the registered operator Tuks Excavations requesting the name and address of the driver at the time of the alleged offence.
- On 14 November 2022, a response was received from the registered operator nominating Mr Takiwa as the driver of the vehicle.
- Mr Takiwa forwarded his work diary pages dated 7 October 2022 and 8 October 2022 to the NHVR for inspection.
- Upon inspection of Mr Takiwa's work diary, the authorised officer identified a breach of the HVNL between 10:45am on 7 October and 10:45am on 8 October when Mr Takiwa had worked for 15 hours and 45 minutes.

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

- There were no injuries or financial loss incurred as a result of the alleged contravention.

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

- Mr Takiwa received a Court Attendance Notice on 18 September 2023, to appear before the Parramatta Local Court.

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

15. Tuks Excavations did not have an established comprehensive safety management system in place that encompasses Chain of Responsibility compliance because it does not usually do long haul journeys as part of its business operations. This offence resulted from a long journey that was a once-off journey, and it was the first time Tuks Excavations needed to be compliant with the HVNL.

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

16. As the sole director and employee of Tuks Excavations, Mr Takiwa is the company representative for the EU. Mr Takiwa was made aware by the prosecuting authority, on behalf of the NHVR, that an Enforceable Undertaking may be an available option.

Section 3 Statements

Statement of assurance

17. Mr Takiwa confirms that he is committed to complying with his obligations under the HVNL, and ensuring so far as is reasonably practicable, the health and safety of all persons that have the potential to be impacted by his business or undertakings.

Statement of regret

18. Mr Takiwa regrets the events that occurred between 7 and 8 October 2022. He unwittingly contravened HVNL and accepts full responsibility for not being aware of his responsibilities. Mr Takiwa regrets his decision to drive that long a distance without the required rest because he appreciates the danger that fatigue poses to himself and other road users, and that it was a risk that should never have been taken.

Statement of ability to comply

19. Mr Takiwa confirms that he has the financial and operational capacity to comply with the terms of this Enforceable Undertaking.

Statement granting permission to use

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

Statement of prior undertakings

21. Mr Takiwa or Tuks Excavations have not been the subject of an undertaking from another statutory body (including but not limited to Work Health and Safety, local or state-based statutory bodies).

Section 4 Acknowledgement

22. Mr Takiwa acknowledges that the NHVR alleges that he has contravened section 250(1)(a) of the HVNL.
23. The alleged contraventions are taken very seriously by Mr Takiwa, who is committed to providing a safe and healthy workplace to conduct his business in a way that helps protect the environment and the communities in which it operates.

Section 5 Details of Injury or Illness

Types of workers compensation provided (if the injured person is a worker of the person)

24. 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

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

Section 6 Rectifications made

26. Mr Takiwa is committed to working with NHVR to become fully compliant with the HVNL.

Section 7 Acknowledgement of publication

27. Mr Takiwa 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

28. Mr Takiwa is committed to ensuring that the behavior that led to the alleged contravention has ceased and that he will take all reasonably practicable steps to prevent recurrence.

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

29. Mr Takiwa is committed to the ongoing effective management of public risks associated with transport activities within his business operations.
30. Mr Takiwa has a commitment to ongoing continuous improvement in how he manages risks associated with his business operations, including the review of new technology when made available.

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

31. Mr Takiwa is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including senior and operational management, health and safety management team, Health and Safety Committees and Health and Safety Representatives, workers, and all relevant contractors and subcontractors who may work for Tuks Excavations. This information will be disseminated to any future employees, if required, through records kept in dedicated workspace files and toolbox talks.

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

32. Mr Takiwa is committed to participating constructively in all compliance monitoring activities of the EU.
33. Mr Takiwa 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.
34. 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.

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

35. Mr Takiwa 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.

Section 2 Strategies that will deliver benefits

Benefits to drivers and parties within the chain of responsibility

- 36. As part of this enforceable undertaking, Mr Takiwa aims to deliver strategies that focus on benefits to:
 - a. himself, other drivers and parties within the chain of responsibility; and
 - b. the transport industry and the broader community.
- 37. Mr Takiwa intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness for Mr Takiwa of the importance of complying with Chain of Responsibility laws.

Activities

Activity 1 – Comprehensive Training in Fatigue Management and Safety of Transport Activities
Scope
Mr Takiwa will undertake NHVR approved comprehensive training on fatigue management and safety of transport activities with a focus on not only his responsibilities as a driver, but also enhancing his understanding of procedures and compliance in his role as a director.
Details
Mr Takiwa has enrolled in the following courses: TLIF0005 - Apply a Fatigue Risk Management System; TLIF0006 - Administer a Fatigue Risk Management System; TLIF0009 - Ensure the Safety of Transport Activities (CoR); and TLIF0014 - Monitor the Safety of Transport Activities
Timeframe
Mr Takiwa is already enrolled with Civil Trans Training and will complete the courses within two months of the acceptance of this EU.
Outcome
Mr Takiwa will have a high level of understanding of relevant transport industry legislation, regulations, codes and guidelines. Mr Takiwa will be able to implement appropriate strategies to minimise fatigue for future heavy vehicle operations. Further, Mr Takiwa will have a greater understanding of applying the requirements of chain of responsibility legislation and workplace procedures as they apply to his work role.
Costs
\$540.00
Output
A copy of the statements of attainment from the respective courses will be provided to the NHVR as evidence of completion.

Activity 2 – Donation to the Australian Road Safety Foundation
Scope
To promote the prevention of physical and mental illness, death and disability that result from road crashes and incidents. The Australian Road Safety Foundation (ARSF) achieves this through innovative road safety awareness programs, road user education, advocacy, research and community engagement.
Details
[REDACTED]
Timeframe
This activity will be completed within 3 months of the acceptance of the EU.
Outcome
Mr Takiwa’s donation will assist the ARSF to continue to provide awareness and education on road safety in communities throughout Australia, while also supporting further research that helps drive change.
Costs
\$1,500.00
Output
Mr Takiwa will provide receipt of payment to the NHVR as evidence of the donation.
Activity 3 – Implementation of a NHVR approved Electronic Work Diary
Scope
Mr Takiwa will sign up for a Hubfleet electronic work diary (EWD) which is available on his phone making it possible to use it as both a driver BYO device and a device fixed to the company vehicle. Mr Takiwa will send the NHVR reports at the end of each month for 12 months to show that the subscription is active, and the diary software is being used.
Details
https://www.hubfleet.com.au/
Timeframe
Mr Takiwa will subscribe at the time the EU is accepted.
Outcome
The EWD will automatically check Mr Takiwa’s work and rest periods against fatigue management rules and warn of impending breaches, which makes it easy and convenient to maintain compliance and avoid any future penalties. Mr Takiwa will input his work/rest times and the EWD calculates his work breaks automatically to minimise the risk of accidental non-compliance.
Costs
\$462.00 pa.
Output
Mr Takiwa will provide receipt of the subscription to the NHVR monthly as evidence of compliance.

38. The total estimated value of the undertaking is \$2,502.00.

Part 4 Offer of undertaking

Executed as an Undertaking

	
Signature	Signature of Director
Nelson Takiwa	Belinda Hughes
Name	Name of Director (print)
Date: 24 October 2023	Date: 14 November 2023

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 Executive Director
RAY HASSALL
Name of Executive Director (print)
Date: 28 Nov 2023