

27 September 2023

Our Reference: [REDACTED]

Ferrycarrig Construction Pty Ltd
[REDACTED]

By email: [REDACTED]

Dear Proper Officer

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 Ferrycarrig Construction Pty Ltd (the EU proposal)¹ pursuant to Part 10.1A of the HVNL.
2. I have considered the EU proposal and assessed it against the National Heavy Vehicle Regulator (NVHR) 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 8 November 2022, Ferrycarrig Construction Pty Ltd (Ferrycarrig), permitted the driver, [REDACTED] to drive a heavy vehicle, namely a white DAF Tipper truck bearing New South Wales registration number [REDACTED]. The vehicle was driven on Victoria Street, Wetherill Park, New South Wales.

¹ Enforceable Undertaking proposed by Ferrycarrig Construction Pty Ltd pursuant to Chapter 10.1A of the HVNL dated 27/06/2023.

4. Upon inspection, the vehicle had an assessed mass of 6.70 tonnes on the first axle group—with the permitted maximum weight limit being 6.00 tonnes, this represents 106% of the maximum mass permitted for the vehicle, amounting to a substantial risk category breach.
5. The vehicle's second axle group had an assessed mass of 20.15 tonnes—with the permitted maximum weight limit being 16.50 tonnes, this represents 122% of the maximum mass permitted for the vehicle, amounting to a severe risk category breach.
6. The vehicle's overall gross mass had an assessed mass of 27.10 tonnes—with the permitted maximum weight limit being 22.50 tonnes, this represents 120% of the maximum mass permitted for the vehicle, amounting to a severe risk category breach.
7. The second charged incident is an allegation that on 21 March 2023, Ferrycarrig permitted the driver, [REDACTED] to drive a heavy vehicle, namely a white DAF tipper truck bearing New South Wales registration number [REDACTED]. The vehicle was driven on the Grand Avenue, Camelia, New South Wales.
8. Upon inspection, the vehicle had an overall gross mass of 28.45 tonnes when the allowable mass was 23.00 tonnes. This represents 123% of the maximum mass permitted for the vehicle, amounting to a severe risk category breach.
9. Furthermore, the vehicle's third axle group mass was 21.60 tonnes when the allowable mass was 16.50 tonnes. This represents 130% of the maximum mass permitted for the vehicle, amounting to a severe risk category breach.
10. On 8 March 2023, the NHVR commenced the prosecution against Ferrycarrig for the alleged incident on 8 November 2022. The maximum penalty available for the offences are as follows:
 - Charge 1: \$35,550.00
 - Charge 2: \$64,800.00
 - Charge 3: \$59,100.00
11. On 16 May 2023, the NHVR commenced the prosecution against Ferrycarrig for the alleged incident on 21 March 2023. The maximum penalty available for the offences are as follows:
 - Charge 1: \$67,650.00.
 - Charge 2: \$87,600.00.

The Proposed Enforceable Undertaking

12. The EU proposal comprises nine (9) initiatives and four (4) rectifications to be completed within six (6) months from the date of the NHVR's acceptance of the EU and amounts to a total estimated cost of \$139,000.00.
13. The nine (9) initiatives can be summarised as follows. Ferrycarrig undertakes to:
 - a. finalise retro-fitting of suitable mass measurement scales to any trucks within the fleet of 6-10 wheeler trucks that do not have suitable scales fitted
 - b. establish a register or schedule of scale calibration intervals
 - c. carry out targeted in house COR training to be completed on site – focusing on loading procedures. This is to be completed by members of the plant team and safety advisors for site
 - d. engage an external training services provider to deliver business-wide CoR awareness refresher training
 - e. implement a system and working procedures to ensure that such records are entered into Assignar, to permit ready compliance checks on load and vehicle mass requirements
 - f. fit labels to the fleet of 6-10 wheeler trucks (outside and inside on scale screens) showing the tare mass and load limits for each truck, and ensure that the fleet register is updated to record all tare weights, axle and gross mass limits for each truck
 - g. ensure yard scales used to calibrate on-board mass measurement scales are themselves properly calibrated and fully-functioning
 - h. engage external legal advisers to review the terms of its subcontracts, to ensure compliance assurance conditions and other CoR performance-management provisions are included wherever relevant
 - i. issue a 3-part LinkedIn post campaign on the critical components of load mass management – equipment, training/procedure and verification checks.

Criteria to be applied

14. 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

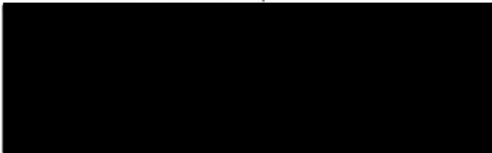
the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety; (5) the likely improvements in safety within the Promisor's business or operations; (6) the Promisor's ability, including financial ability, to meet the terms of the EU proposal; (7) the significance 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.

15. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Ferrycarrig's compliance history. I acknowledge that prior to these allegations, I am not aware of any convictions for mass breaches of the HVNL or any breaches of related safety duties by Ferrycarrig.
16. With regards to criteria (3) and (4), 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.
17. With regard to criteria (5), I acknowledge the proposal initiatives are likely to improve Ferrycarrig's transport operations.
18. With regard to criteria (6), I acknowledge that Ferrycarrig has the ability to meet the terms of the EU proposal.
19. With regard to criteria (7), I have considered that Ferrycarrig has taken into account the significance of the EU commitment, compared to its capability.
20. 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.
21. 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

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

Yours sincerely



Sal Petrocchio OAM
Chief Executive Officer