

14 November 2023

Our Reference: [REDACTED]

David Gregory Page
[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear Mr Page

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 David Gregory Page (the EU proposal)¹ 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).
3. 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

4. On 17 March 2023, David Gregory Page was driving a fatigue-regulated-heavy-vehicle, a white Hino Prime Mover bearing NSW registration [REDACTED] travelling on the Hume Highway when the vehicle was intercepted at Marulan Heavy Vehicle Safety station in NSW.
5. Upon inspection of Mr Page's work diary, NHVR Authorised Officers identified two critical-risk fatigue breaches of the *Heavy Vehicle National Law 2013 (NSW)* (HVNL):

¹ David Gregory Page, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 25 September 2023.

- (a) Between 5:30am on 15 March 2023 and 5:30am on 16 March 2023, Mr Page had worked for 14 hours and 30 minutes. The applicable limit was 12-hours in any 24-hour period.
 - (b) Between 7:15am on 10 March 2023 and 7:15am on 11 March 2023, Mr Page had only taken 5 hours continuous stationary rest. The applicable rest requirement was 7 hours of continuous rest.
6. On 28 June 2023, the NHVR commenced a prosecution against Mr Page alleging the contraventions.
7. The maximum penalty available for each offence is \$17,740.00.

The Proposed Enforceable Undertaking

8. The EU proposal comprises seven initiatives to be completed within 12 months of acceptance of the EU and would amount to a total estimated financial cost of \$1,478.00.
9. The seven initiatives can be summarised as follows. Mr Page undertakes to:
- (a) Complete training course TLIF0009 “Ensure the safety of transport activity chain of responsibility”.
 - (b) Complete training course TLIF2010 “Apply fatigue management strategies”.
 - (c) Complete training course TLIE3028 “Complete a work diary”.
 - (d) Donate \$500 to the Australian Road Safety Foundation.
 - (e) Donate \$500 to the National Road Safety Partnership program (NRSPP).
 - (f) Address drivers in toolbox meetings at his place of employment “Business Relocation Services”.
 - (g) Attend and participate in discussion group of all offence related NRSPP tool box talks conducted by his employer.

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.

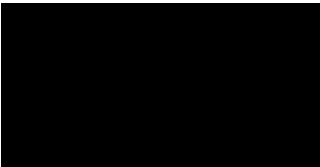
- 3) Whether the EU proposal delivers benefits to the public beyond the Promisor's compliance with the law.
 - 4) The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety.
 - 5) The likely improvements in safety 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.
 - 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 Mr Page's compliance history. 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 Mr Page.
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 Mr Page's transport operations.
13. With regards to criteria (6) and (7), I acknowledge that Mr Page has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Mr Page'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. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Mr Page will be withdrawn.

Yours sincerely



Raymond Hassall

Executive Director, Statutory Compliance