

1 September 2023

Our Reference: [REDACTED]

Sulpet Pty Ltd

[REDACTED]
[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear Director

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 Sulpet Pty Ltd (and C & D Asphaltting) (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 21 September 2022 Sulpet Pty Ltd permitted its employed driver to drive a Mack tipper truck with trailer on Windsor Road, Box Hill, New South Wales, that did not comply with its mass requirements.
4. The trailer required a 1:1 mass ratio with the vehicle. Taking into account the applicable mass adjustment, the vehicle had an approximate mass of 11.65 tonnes, whilst the trailer had an

¹ Enforceable Undertaking proposed by Sulpet Pty Ltd (and C & D Asphaltting Pty Ltd) pursuant to Chapter 10.1A of the HVNL dated 5/06/2023.

approximate mass of 16.65 tonnes. The trailer exceeded the mass of the towing vehicle by 4.00 tonnes, amounted to an excess of 139% of weight, which placed this breach in the category of a severe risk breach.

5. The NHVR commenced a prosecution against Sulpet Pty Ltd alleging the contravention. The maximum penalty available for the offence is \$69,960.00.

The Proposed Enforceable Undertaking

6. The EU proposal comprises three initiatives and four rectifications to be completed within six months from the date of the Regulator's acceptance of the EU and amounts to a total estimated cost of \$5,500.00.
7. The three initiatives can be summarised as follows. Sulpet Pty Ltd undertakes to:
 - a. Review their policy and system regarding loading of vehicles. After review, a written policy would be made and be distributed internally and externally (to industry).
 - b. Undertake accredited Chain of Responsibility training for all management staff and employees operating heavy vehicles.
 - c. Create and publish an educational pamphlet for use by the heavy vehicle industry.

Criteria to be applied

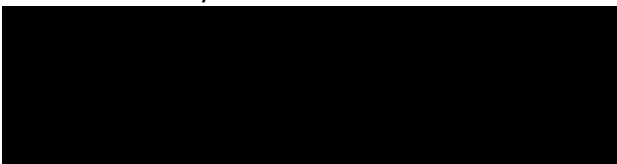
8. In arriving at my decision, I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU Guidelines namely: (1) the nature and extent of the omission alleged; (2) the Promisor's compliance history; (3) whether the EU proposal delivers benefits to the public beyond the 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.
9. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Sulpet Pty Ltd'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 Sulpet Pty Ltd.

10. 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.
11. With regard to criteria (5), I acknowledge the proposal initiatives are likely to improve Sulpet Pty Ltd's transport operations.
12. With regards to criteria (6), I acknowledge that Sulpet Pty Ltd has the ability to meet the terms of the EU proposal.
13. With regards to criteria (7), I have considered that Sulpet Pty Ltd has taken into account the significance of the EU commitment, compared to its 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 Sulpet Pty Ltd will be withdrawn.

Yours sincerely



Sal Petrocchio OAM
Chief Executive Officer