



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 Daniel Cabban

DC

Part 1 Executive summary

Section 1 Agreed actions

1. Daniel Cabban accepts and agrees to comply with the terms of this Enforceable Undertaking.
2. The National Heavy Vehicle Regulator consents to the Enforceable Undertaking and agrees to withdraw the charges against Daniel Cabban listed within Case [REDACTED]

Section 2 Total cost of actions

3. Cost to enrol in online fatigue management course TLIF0005 with Brisbane Truck School Online: \$120.00
4. Cost of 12-month subscription to Electronic Work Diary with Logmaster Australia: \$100.00
5. Donation to RYDA Road Safety Education which promotes youth road safety education: \$500.00

Total cost of actions: \$720.00

Section 1 General information Purpose

6. 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

7. The commitments in this enforceable undertaking are offered to the NHVR by Daniel Cabban (the defendant).
8. 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:	
Postal address:	
Telephone:	
Email address:	
Legal structure:	Individual
Type of business:	Employed truck driver and construction worker
Commencement of entity:	date of employment
Number of workers:	Nil
Products and/or services:	Specialist surfacing construction worker and related freight

Details of the alleged contravention

9. Between 10am on 1 February 2023 and 10am on 2 February 2023, at Ballina and elsewhere in the State of New South Wales, the defendant, being the solo driver of a fatigue regulated vehicle, Hino [REDACTED] Upper New South Wales registration [REDACTED] worked more than the standing maximum work hours prescribed by the Heavy Vehicle (Fatigue Management) National Regulation. In a 24-hour period he worked for 13 hours and 45 minutes where the prescribed allowable time was 12 hours, thereby committing a critical risk breach.

Details of the events surrounding the alleged contravention

10. The defendant's 13 hours and 45 minutes of work time within a 24-hour period was comprised of:
 - a. 10 hours 45 minutes work time between 10am and 10:30pm on 1 February recorded on work diary daily sheet [REDACTED] and [REDACTED]
 - b. 3 hours work time between 6:30am and 10am on 2 February 2023 recorded on work diary daily sheet [REDACTED]
11. The 13 hours and 45 minutes of work within a 24-hour period was identified by authorized officers of the HVNL upon inspection of the accused's work diary pages [REDACTED]

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

12. No injuries or financial loss arose from the alleged contravention.

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

13. The defendant received a letter from the NHVR dated 14 July 2023 [REDACTED] attaching a charge sheet and summons to attend Parramatta Local Court on 7 September 2023.

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

14. The defendant's employer is a small business which has a traffic monitoring system in place which includes a Tracking System in all vehicles that monitor journey and speed. The company have sign in & sign out time sheet apps for workers and drivers. Daily checks are done for daily sign in to timesheet app and vehicles that are in use. Workers are required to provide receipt of log book copies from their required journeys to the office. Most of the driving of Heavy Vehicles in the company is localised. It is rare that drivers travel outside of the local area.

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

15. The defendant has consulted with his employer regarding this EU.

Section 3 Statements**Statement of assurance**

16. The defendant 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 may be impacted by the work or undertakings in which he engages.

Statement of regret

17. The defendant regrets working in excess of the maximum hours permitted for solo drivers of fatigue regulated heavy vehicles in a 24-hour period over the 1st and 2nd of February 2023.

Statement of ability to comply

18. The defendant confirms that he has the operational and financial capacity to comply with the terms of this EU.

Statement granting permission to use

19. The defendant 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

20. The defendant has not been the subject of an undertaking from another statutory body.

Section 4 Acknowledgement

21. The defendant acknowledges that the NHVR alleges that defendant contravened section 249 of the HVNL.
22. The alleged contraventions are taken very seriously by defendant, who is committed to being part of a safe and healthy workplace and to conduct his work 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)

23. 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

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

Section 6 Rectifications made

25. Nil to date of this EU.

Section 7 Acknowledgement of publication

26. The defendant acknowledges that the enforceable undertaking will be published on the NHVR's internet site and may be referenced in the NHVR's publications.

Part 2 Enforceable terms

Section 1 Commitments

Commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

27. The defendant is committed to ensuring that the behaviour 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

28. The defendant is committed to the ongoing effective management of public risks associated with transport activities within the business in which he operates.
29. The defendant 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

30. The defendant 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 working for the defendant. This information will be disseminated directly to relevant persons as required.

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

31. The defendant is committed to participating constructively in all compliance monitoring activities of the EU.
32. The defendant 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.

Activity 1 – Completion of TLIF0005 - Apply a fatigue risk management system

Activity 2 – Register and Implement and electronic work diary with Logmaster Australia

Scope

Register with Logmaster Australia for 12 months and begin using an electronic work diary via mobile phone: <https://logmaster.com.au/electronic-work-diary-2/>

Details

- An NHVR approved EWD from Logmaster Australia will be used initially for 12 months after which the NHVR will be advised if the defendant will revert to a paper National Work Diary.
- The EWD will permit electronic recording of work and break times and will enhance NHVR's ability to monitor the defendant's work.

Timeframe

Registration will occur within 3 months of the date of this EU and continue for a minimum of 12 months.

Outcome

The EWD will assist the defendant to comply with fatigue management requirements and reduce the risk of another contravention.

Costs

12-month subscription fee of \$100.00.

Output

Confirmation of the 12-month subscription and or registration will be provided to the NHVR.

Activity 3 – Donation to RYDA Road Safety Education

Scope

A donation will be made to RYDA Road Safety Education: <https://rse.org.au/about-ryda/>

Details

Road Safety Education Limited (RSE) is a not for profit and leading learning organisation operating throughout Australia and New Zealand, committed to saving lives through the provision of world class road safety education to youth.

Timeframe

Within 14 days of the defendant being advised by the NHVR that this EU has been accepted.

Outcome

To support teachers as they provide their students with the tools and understanding they need to see themselves as active, responsible road citizens.

33. 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

34. The defendant 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

35. As part of this enforceable undertaking, the defendant aims to deliver strategies that focus on benefits to:
- a. himself, drivers and parties within the chain of responsibility
 - b. the transport industry and the broader community.
36. The defendant intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness to assist him in continuing his work within the transport industry and to exemplify to relevant personnel the importance of complying with Chain of Responsibility laws.

Activities

Activity 1 – Completion of TLIF0005 - Apply a fatigue risk management system

Scope

- This unit of competency involves the skills and knowledge required for heavy vehicle drivers to manage fatigue and to work safely within the Transport and Logistics Industry.
- It includes applying fatigue risk management strategies, identifying and acting on signs of fatigue, operating within a fatigue risk management system, planning and navigating trips, updating and maintaining records, complying with work and rest limits, and implementing appropriate strategies to minimise fatigue during work activities.

Details

Course title: TLIF0005 - Apply a fatigue risk management system

Proposed provider: [REDACTED]
 registered with Queensland Transport and Logistics Training.

Timeframe

To be completed within 6 months

Outcome

Issued with a certificate of completion or equivalent.

Costs

\$120.00

Output

A copy of the certificate of completion or equivalent will be submitted to the NHVR.

Activity 3 – Donation to RYDA Road Safety Education

Costs

\$500.00

Output


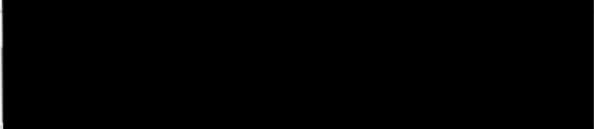

A copy of the receipt for the donation will be provided to the NHVR.

37. The total estimated value of the undertaking is \$720.00.

Part 3 Offer of undertaking

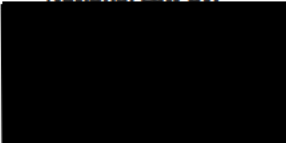
Executed as an Undertaking

Executed by Daniel William Cabban:

	
Signature	Signature of witness
Daniel William Cabban	
Name	Name of witness (print)
Date: 18/10/2023	Date: 18/10/2023

Part 4 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, Statutory Director
RAYMOND HASSALL
Name of Executive Director (print)
Date: 08 Nov 2023