

14 November 2023

Our Reference: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

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 Daniel William Cabban (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 (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 1 February 2023, Daniel William Cabban was driving a white Hind [REDACTED] Tipper heavy vehicle bearing NSW registration [REDACTED] on Pacific Highway A1 adjacent to the 12 Mile Creek Avoidance Heavy Vehicle Safety Station (HVSS) NSW.

¹ Enforceable Undertaking proposed by Daniel William Cabban pursuant to Chapter 10.1A of the HVNL dated 30/08/2023.

4. The heavy vehicle failed to divert off the Pacific Highway into the screening lane of the 12 Mile Creek HVSS as directed by road signage.
5. The registered owner of the heavy vehicle on 1 February 2023 was [REDACTED].
6. On 20 February 2023, NHVR authorised officers sent a Notice to Produce to [REDACTED] requesting the name and address of the driver at the time of the alleged offence, as well as the work diary records from 31 January 2023 to 2 February 2023.
7. On 3 March 2023, a response was received from a representative of [REDACTED] nominating Mr Cabban as the driver of the heavy vehicle at the time of the alleged offence. [REDACTED] also provided NHVR authorised officers with copies of relevant pages from Mr Cabban's National Driver Work Diary with serial numbers [REDACTED] to [REDACTED], as well as Mr Cabban's NSW Heavy Vehicle Driver's Licence no. [REDACTED].
8. Upon inspection of Mr Cabban's work diary, namely work diary pages [REDACTED] to [REDACTED], the authorised officers identified a breach of the HVNL between 10am 1 February 2023 and 10am 2 February 2023 when Mr Cabban had worked for 13 hours and 45 minutes in a 24-hour period. Mr Cabban was operating under standard hours. His maximum allowable work hours was 12 hours.
9. Mr Cabban worked an excess of 1 hour and 45 minutes placing the offence in the critical risk category.
10. On 14 July 2023, the NHVR commenced the prosecution against Mr Cabban for the alleged incident between 1 February 2023 and 2 February 2023. The maximum penalty available for the offence is \$17,740.00.

The Proposed Enforceable Undertaking

11. The EU proposal comprises three (3) initiatives to be completed within six months for the training and donation; and 12 months to be registered with Logmaster Australia in the use of an electronic work diary. The initiatives will commence from the date of the NHVR's acceptance of the EU. The total cost estimated is \$720.00.
12. The three initiatives can be summarised as follows. Mr Cabban undertakes to:
 - 1) Enrol in and complete the online TLIF0005 Apply a fatigue risk management system course through an external training services provider namely [REDACTED].

- 2) Register with Logmaster Australia for 12 months and begin using an electronic work diary via mobile phone.
- 3) Make a donation to RYDA Road Safety Education.

Criteria to be applied

13. 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.
14. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Mr Cabban's compliance history. I acknowledge that prior to these allegations, I am not aware of any convictions for fatigue breaches of the HVNL.
15. 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.
16. With regard to criteria (5), I acknowledge the proposal initiatives are likely to improve Mr Cabban's transport operations.

17. With regard to criteria (6), I acknowledge that Mr Cabban has the ability to meet the terms of the EU proposal.
18. With regard to criteria (7), I have considered that Mr Cabban has taken into account the significance of the EU commitment, compared to his capability.
19. 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.
20. 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.

Reports or assessments of investigating or prosecuting agencies who have had contact of the matter

21. [REDACTED] from the NHVR is the investigating officer in this matter. She supports the proposed EU.
22. A representative of the Monitor Compliance team, [REDACTED], has reviewed and assessed the matter. The assessment is overall supportive of the EU.

Conclusion

23. 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 Daniel William Cabban will be withdrawn.

Yours sincerely

A large black rectangular redaction box covering the signature of Raymond Hassall.

Raymond Hassall
Executive Director, Statutory Compliance