

10 October 2023

Our Reference: [REDACTED]

[REDACTED]

To the proper officers

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 (The EU proposal) by HD Logistics Pty Ltd¹ 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). 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

3. On 10 September 2022 at Marulan, in the state of New South Wales, HD Logistics Pty Ltd is alleged to have committed the offence of permitting another person to drive a heavy vehicle that fails to comply with dimension requirements - severe risk, contrary to section s 102(1)(b)(iii) of the HVNL.
4. It is alleged that the heavy vehicle exceeded the prescribed width requirements. The allowable width was 2.5 metres and the assessed width was 2.92 metres, an excess of 42cm in width. The vehicle was loaded with insulation and the excess width was apparently a result of a loading issue and the driver being unaware of the dimension limits.

¹ HD Logistics Pty Ltd, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL.

5. The NHVR commenced a prosecution against HD Logistics Pty Ltd alleging the contravention. The maximum penalty available for the offence is \$59,100.
6. The EU proposal from HD Logistics Pty Ltd comprises five initiatives to be completed within 12 months of the EU being accepted and would amount to a total estimated cost of approximately \$15,740.
7. The five initiatives can be summarised as follows. HD Logistics Pty Ltd undertakes to:
 - (a) Conduct a full-day load safety training for the company's director, managers, drivers, loaders and all employees (other than staff with a basic secretarial or administrative role only).
 - (b) Establish a new compulsory onboarding process for all newly employed drivers of the company that includes completion of a full-day load safety training course.
 - (c) Donate \$5,000 to the not-for-profit Australian Road Safety Foundation (ARSF) which is dedicated to reducing the impacts of road trauma and saving lives. It is accepted that the company made this donation on 19 September 2023 and has provided evidence to the NHVR.
 - (d) Provide, every six months, an internal training session about HVNL compliance of approximately an hour in duration to all employees. Each internal training session will cover different aspects of HVNL compliance training to ensure employees are reminded of their ongoing obligations.
 - (e) Create a load restraint inspection check list for all drivers to have at hand for use prior to commencing each journey.

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 HD Logistics Pty Ltd.'s compliance history.
- 10. 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 the defendant.
- 11. 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 HD Logistics Pty Ltd.'s transport operations.
- 12. With regards to criteria (6) and (7), I acknowledge that HD Logistics Pty Ltd has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to HD Logistics Pty Ltd.'s capability.
- 13. 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.
- 14. 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

15. 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 HD Logistics Pty Ltd will be withdrawn.

Yours sincerely



Sal Petrocetto OAM

Chief Executive Officer