

15 August 2022

Our Reference: 3302



To the proper officers

Heavy Vehicle National Law
Part 10.1A – Enforceable Undertakings
REASONS FOR DECISION

I. 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 the Horsham Rural City Council (“HRCC”)¹ pursuant to Part 10.1A of the HVNL. I have considered this proposal and assessed it against the National Heavy Vehicle Regulator’s (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

2. On 7 July 2021 at Haven, in the State of Victoria, HRCC was the operator of a heavy vehicle that failed to comply with the mass requirements applying to the vehicle, contrary to section 96(1)(c) of the HVNL.
3. The vehicle was intercepted while traveling on Laharum Road in Haven and was identified as having failed to comply with the applicable mass requirements. The vehicle’s steer axle permitted mass was 6.0 tonnes. The alleged mass of the steer axle was 7.6 tonnes, an excess of 1.6 tonnes or 126% of the prescribed mass limit, categorised as a severe risk breach.

¹ Horsham Rural City Council, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 8 August 2022.

4. The NHVR commenced a prosecution against HRCC alleging the contravention. The maximum penalty available for the offence is \$74,550.

The Proposed Enforceable Undertaking

5. The EU proposal from HRCC comprises two initiatives to be completed by 30 November 2022, and would amount to a total estimated cost of \$30,000.
6. The two initiatives can be summarised as follows. HRCC undertake to:
 - a. Develop a Chain of Responsibility (“CoR”) Management System, and develop and deliver extensive training on:
 - i. CoR obligations and vehicle weight limits to an estimated 120 participants, including employees of HRCC, neighbouring councils, and local earth moving contractors; and
 - ii. Load restraint to an estimated 30 employees in HRCC’s operations team.
 - b. Publish a synopsis of the EU and a link to the accepted undertaking on the HRCC website.

II. Criteria to be Applied

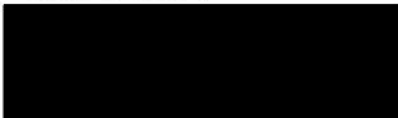
7. In arriving at my decision, I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU guidelines, namely: (1) the nature and extent of the omission alleged; (2) the Promisor’s compliance history; (3) whether the EU proposal delivers benefits to the public beyond the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

9. 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 HRCC.
10. 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 HRCC's transport operations.
11. With regards to criteria (6) and (7), I acknowledge that HRCC has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to HRCC's capability.
12. 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.
13. 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.

III. Conclusion

14. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution.
15. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against HRCC will be withdrawn.

Yours sincerely



Sal Petrocitto

Chief Executive Officer