



8 September 2021

Our Reference: 3402, 1962

CCF/1014 DOC21/40198

Eifers Pty Ltd  
13 Newmarket Lane  
Epping VIC 3076



To the proper officers,

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

1. I have received your proposal for an Enforceable Undertaking per Part 10.1A of the *Heavy Vehicle National Law* ("HVNL"). For the reasons set out I am of the opinion the undertakings given by Eifers Pty Ltd ("Eifers") are appropriate enforcement options in regard to the relevant contravention.

**Background to the application**

2. It is alleged by the National Heavy Vehicle Regulator ("NHVR") that:
  - a. On the 22 October 2019 a heavy vehicle combination operated by Eifers Pty Ltd ("Eifers") was travelling east on the Princess Highway. The combination was traveling from the Melbourne Airport to the Sale R.A.A.F Base, loaded with an excavator. The combination failed to enter the weigh bridge located on the Princess Highway at Flynn operated VicRoads Authorised Officers ("AO").
  - b. It is alleged that at the time the low loader tri axle group weighed 28,650kg, breaching the permitted limit of 20,000kg (a severe mass breach of 143.25%). No death, injury or infrastructure damage was caused by this particular overload.
  - c. It is also alleged that at the time it was observed that there was an unrestrained excavator digging bucket on the deck of the low loader. An unrestrained item such as a digging bucket would be classed as a minor load restraint breach. No death, injury or infrastructure damage was caused by this particular breach.

3. This allegation is a contravention of section 96(1)(c) and 111(1) of the HVNL. The VicRoads commenced a prosecution against the driver Mr Bradley STEWART (an employee of Eifers Pty Ltd) alleging the contraventions.
4. On 1 September 2021, Eifers wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.

#### **Factors to be taken into consideration**

5. I have assessed the proposal submitted against NHVR Policy – *Enforceable Undertakings* (“the policy”) and NHVR Guideline - *Proposing an Enforceable Undertaking* (“the guidelines”).
6. In assessing the proposal per Section 4 of the guidelines I have considered the following factors:
  - a. While the alleged overmass contravention was of the highest risk category, there was no manifestation of the risk to the public safety, road infrastructure or the environment.
  - b. While the alleged load restraint contravention was of the lowest risk category, there was no manifestation of the risk to the public safety, road infrastructure or the environment.
  - c. Eifers or Mr STEWART has not previously been the subject of an Enforceable Undertaking under the HVNL or under any Work Health and Safety statutory regime.
  - d. Since commencing operation in Australia, Eifers has not been convicted of any offence under the HVNL, a breach of any safety duty under the WHS legislation of a State, Territory or the Commonwealth, a failure to comply with any enforceable undertaking, or any offence involving the death, serious injury or illness of any person involved in Eifers’s business or undertakings.
  - e. Eifers’s proposed Enforceable Undertaking shows a commitment to and willingness for positive change. Five activities will be undertaken in order to deliver benefits to Eifers’s drivers, other parties in the chain of responsibility, and the broader community.
  - f. The activities proposed are likely to achieve measurable improvements in the heavy vehicle transport industry internally, and to the wider supply chain, as well as to the communities in which Eifers operates.

- g. Overmass heavy vehicles are a common occurrence. Education, systems and training which result in less contravention will lead to safer heavy vehicles on the road and less impact on road infrastructure.
- h. Eifers has given their commitment to commence the activities, in a staged approach in a realistic timeframe, completing the five activities within a 12-month period.

#### **Reason for Decision**

- 7. Having considered all the above factors, and in all of the circumstances of this matter, I am of the opinion that the Enforceable Undertaking proposed by Eifers is an appropriate enforcement option in regard to the relevant contravention.
- 8. I conclude that the Enforceable Undertaking is a preferred enforcement option to continuing the prosecution against Mr Bradley Stewart for the relevant contravention due to the opportunity to provide lasting organisational change within Eifers. The activities and benefits proposed would not have been achieved by prosecution of Mr STEWART alone.
- 9. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking Eifers offered on 1 September 2021.

Yours sincerely,

A solid black rectangular box redacting the signature of Sal Petrocitto.

Sal Petrocitto

**Chief Executive Officer**