



27 September 2021

Our Reference: 3420

CCF/1039 DOC21/42958

Brother Nature Pty Ltd
15 Dale Street
Brookvale NSW 2100

Via email to: [REDACTED]

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 Brother Nature Pty Ltd (“Brother”) 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”) on behalf of Transport for New South Wales (“TfNSW”) that:
 - a. On the 23 June 2021 a heavy vehicle operated by Brother Nature Pty Ltd (“Brother”) was weighed at New England Highway, Kankool NSW by TfNSW Authorised Officers (“AO”).
 - b. It is alleged that at the time the third axle group weighed 1,020kg, breaching the permitted limit of 750kg (a severe mass breach of 136%). No death, injury or infrastructure damage was caused by this particular overload.
3. This allegation is a contravention of section 96(1)(c) of the HVNL. TfNSW commenced a prosecution against Brother alleging the contravention.
4. On 21 September 2021, Brother 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. Brother has not previously been the subject of an Enforceable Undertaking under the HVNL or under any Work Health and Safety statutory regime.
 - c. Since commencing operation in Australia, Brother 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 Brother’s business or undertakings.
 - d. Brother’s proposed Enforceable Undertaking shows a commitment to and willingness for positive change. Three activities will be undertaken in order to deliver benefits to Brother’s drivers, other parties in the chain of responsibility, and the broader community.
 - e. 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 Brother operates.
 - f. Education, systems and training which result in less contravention will lead to safer heavy vehicles on the road and less impact on road infrastructure.
 - g. Brother has given their commitment to commence the activities, in a staged approach in a realistic timeframe, completing the three 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 Brother 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 for the relevant contravention due to the opportunity to provide lasting organisational change within Brother. The activities and benefits proposed would not have been achieved by prosecution alone.

9. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking Brother offered on 22 September 2021.

Yours sincerely,



Sal Petrocchio
Chief Executive Officer