



8 October 2021  
Our Reference: 3380  
Your Reference:

J.J. Richards & Sons Pty Ltd  
3 Grant Street  
Cleveland QLD 4163  
[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 J.J. Richards & Sons Pty Ltd (“JJR”) 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 on Transport for New South Wales that:
  - a. On the 9 March 2021 a heavy vehicle operated by J.J. Richards & Sons Pty Ltd (“JJR”) was intercepted by Transport for New South Wales (“TfNSW”) Authorised Officers (“AO”). The heavy vehicle was intercepted on Northern Road, Penrith NSW. The vehicle was loaded with a JJR skip bin, the skip bin had been loaded by a JJR customer with food scraps.
  - b. It is alleged by TfNSW that the heavy vehicle operated by JJR failed to comply with the loading requirements applying to the vehicle. TfNSW alleged that prior to and at the time of intercept the skip bin was leaking water onto the road surface, including vehicles following the JJR vehicle. No death, injury or infrastructure damage was caused by this particular insecure load.
3. This allegation is a contravention of section 111(1) of the HVNL. TfNSW commenced a prosecution against JJR alleging the contravention.

4. On 27 August 2021, JJR 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 load restraint contravention was of the highest risk category, there was no manifestation of the risk to the public safety, road infrastructure or the environment.
  - b. JJR has not previously been the subject of an Enforceable Undertaking under the HVNL.
  - c. Since commencing operation in Australia, JJR 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 JJR’s business or undertakings.
  - d. JJR’s proposed Enforceable Undertaking shows a commitment to and willingness for positive change. Two activities will be undertaken in order to deliver benefits to JJR’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 JJR operates.
  - f. JJR has given their commitment to commence the activities, in a staged approach in a realistic timeframe, completing the two activities within a 12-month period.
  - g. TfNSW have been consulted as the prosecuting agency in this matter and approve the NHVR acceptance of the EU provided by JJR in these circumstances.

#### **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 JJR 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 JJR. 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 JJR offered on 22 September 2021.

Yours sincerely,



Sal Petrocitto

**Chief Executive Officer**