

# Enforceable Undertaking

## Chapter 10.1A

Heavy Vehicle National Law

**The commitments in this enforceable undertaking are offered  
to the National Heavy Vehicle Regulator**

**By**

**Lindsay Transport Pty Ltd**

**ABN: 62 055 792 919**

## Part 1 Executive summary

### Section 1 Agreed actions

1. Lindsay Transport Pty Ltd (**Lindsay Transport**) has agreed to implement five broad and pro-active activities focused on improving health and safety across the transport industry.
2. This includes:
  - a. Lindsay Transport will engage an appropriate partner to develop a web-based driver education platform that would provide industry members with highly engaging educational materials;
  - b. Lindsay Transport will engage a suitably qualified and experienced expert (including a suitably qualified and experienced expert with expertise in relation to the issue of sleep in the heavy vehicle industry) to review for best practice policies, procedures and practices, across all of the Lindsay group of companies' (**Lindsay Group**) transport activities;
  - c. Lindsay Transport will engage a suitably qualified and experienced expert (including a suitably qualified and experienced expert with expertise in relation to the issue of sleep in the heavy vehicle industry) to deliver an internal management (senior and front line) training program;
  - d. Lindsay Transport will engage appropriate partner(s) to produce a video for use in the heavy vehicle industry covering:
    - i. general fitness and health issues for transport industry/heavy vehicle worker/drivers;
    - ii. fitness for work; and
  - e. Lindsay Transport will donate funds to a not-for-profit organisation or research/medical entity with a specific focus on heavy vehicle driver medicals (with a focus on the scope and frequency of driver medicals, health issues confronting long haul drivers, the changing demographic of long-haul drivers and related medical needs and/or a study into sleep apnoea and shift work).
3. The full details of these activities are set out below.

### Section 2 Total cost of actions

4. Total costs of actions already taken:
  - a. Approximate total cost p.a: **\$1,080,176.00**; and
  - b. Approximate costs hardware: **\$1,889,490.00**.
5. Total costs of additional strategies to implement: **\$590,000 – \$750,000**.

## Part 2 General information

### Section 1 Purpose

6. The purpose of this enforceable undertaking is to document the undertakings offered to the National Heavy Vehicle Regulator (**NHVR**) pursuant to Chapter 10.1A of the Heavy Vehicle National Law (**HVNL**) in connection with a matter relating to an alleged contravention of the HVNL.

### Section 2 Details

7. The commitments in this enforceable undertaking are offered to the NHVR by Lindsay Transport, which is part of the Lindsay Group.
8. This enforceable undertaking is given on the day and date that it is accepted and signed by the NHVR. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

**Details of the person proposing the undertaking:**

Registered address:	152 Postle Street, Acacia Ridge Queensland 4110
Postal address:	As above
Telephone:	(07) 3240 4901
Email address:	[REDACTED]
Legal structure:	Australian Proprietary Company, Limited by Shares
Type of business:	National Transport Carrier
Commencement of entity:	1953
Number of workers:	Approximately 1340
Products and/or services:	The Lindsay Group is an integrated transport, logistics and rural supply company. The group has an extensive east coast network of in excess of 37 stores and depots.

**Details of the alleged contravention**

9. Lindsay Transport was charged with alleged breaches of the HVNL, being:
- a. a category 2 offence relating to a breach of the primary duty at 26C of the HVNL, where it was alleged that the following measures were reasonably practicable for Lindsay Transport to take:
    - i. implementing fitness to drive policies and procedures to prevent or minimise the risks of drivers driving whilst not fit for the driving task;
    - ii. training employees in those procedures including how to identify and report factors affecting drivers' fitness for duty;
    - iii. assigning roles and responsibilities for implementing fitness to drive policies and procedures to identified persons within the business;
    - iv. monitoring compliance with those policies and procedures;
  - b. a category 2 offence relating to a breach of the primary duty at 26C of the HVNL, where it was alleged that the following measures were reasonably practicable for Lindsay Transport to take:
    - i. establishing a process that identified drivers approved for scheduling to drive shuttle runs and that prevented unapproved drivers from being scheduled to drive shuttle runs;
    - ii. directing managers, schedulers and allocators that until further notice, Mr John Bolton was not approved for scheduling on shuttle runs;
    - iii. engaging an agency driver to drive the shuttle run when no employee driver was available;
  - c. a category 2 offence relating to a breach of the primary duty at 26C of the HVNL where it was alleged that the following measures were reasonably practicable for Lindsay Transport to take:
    - i. ensuring drivers completed safe driving plans before commencing every trip;
    - ii. monitoring the completion and accuracy of safe driving plans for drivers travelling on those routes;
    - iii. reviewing or suspending the scheduling of drivers who did not accurately complete all required safe driving plans.

**Details of the events surrounding the alleged contravention**

10. At approximately 11.15pm, on 13 November 2018, Mr John Bolton, was fatally injured when the heavy vehicle he was driving crashed through a barrier and fell 13 metres to the ground below.

**The details of any injury or financial loss that arose from the alleged contravention**

11. Mr John Bolton was fatally injured.

### **The details of any notices issued that relate to the alleged contravention**

12. Court Attendance Notices were served on Lindsay Transport in relation to the alleged breaches described at paragraph 9.

### **The details of any existing transport safety management systems at the workplace including the level of auditing currently undertaken**

13. All Lindsay Group entities have obtained QMS AS/NZ ISO9001:2015 and OHSMS ISO4001:2018 accreditation. Lindsay Transport is accredited under the National Heavy Vehicle Accreditation Scheme in mass management, maintenance management and basic fatigue management and the Western Australian Heavy Vehicle Accreditation scheme. Lindsay Transport head office has been assessed and certified as meeting the Australian Logistics Council Master Code (AMCAS).
14. The Lindsay Group has invested heavily in safety related technology, including the Guardian fatigue monitoring cameras for drivers and Teletrac Navman's electronic work diary. This is in addition to the first class safety features found on its newly renewed vehicles with all equipment specified with all available safety systems.
15. The Lindsay Group fleet consists of over 300 prime movers, 750 trailers, 100 rigid trucks, 100 light vehicles and 125 items of material handling equipment including forklifts. The Lindsay Group has a fleet renewal program, ensuring the fleet is comprised of state-of-the-art late-model equipment. The average age of the Lindsay Group fleet is very low.
16. In December 2019, the Lindsay Group recruited an experienced head of compliance to fulfil the role of National Compliance Manager. The National Compliance Manager's primary responsibilities include:
  - a. overseeing and managing compliance for the Lindsay Group for day-to-day transport operations;
  - b. supporting each department and all staff with compliance under the National Heavy Vehicle Accreditation Scheme accreditation business rules and the HVNL; and
  - c. providing management and supervision of the Compliance Team, now based in Brisbane;
  - d. driving and influencing continual improvement and development of national compliance, safety programs and reporting; and
  - e. managing and developing continuous improvement and efficiencies across the organisation and improving national and company-wide compliance procedures.

### **Any consultation undertaken within the company regarding the proposal of an EU**

17. Consultation has been undertaken regarding the proposal of this EU with key management personnel and the Lindsay Transport board.
18. The strategies and deliverables proposed in this EU were designed with input from these stakeholders, to ensure they would generate the maximum benefit for the Lindsay Group staff (including drivers, schedulers, loaders and administrative staff), contractors, and the industry more broadly.

## **Section 3 Statements**

### **Statement of assurance**

19. Lindsay Transport confirms that it is committed to complying with its obligations under the HVNL to ensure, so far as reasonably practicable, the health and safety of all parties in the chain of responsibility, and those who may be affected by its business or undertaking.

### **Statement of regret**

20. Lindsay Transport regrets that the incident on 13 November 2018 occurred.
21. Lindsay Transport particularly regrets the impact the tragic death of Mr John Bolton has had on his family, friends and work mates, and acknowledges Mr Bolton's family.

### **Statement of ability to comply**

22. Lindsay Transport confirms that it has the financial and operational capacity to comply with the terms of this enforceable undertaking.

### Statement granting permission to use

23. Lindsay Transport grants the NHVR permission to use any documents, policies and procedures developed as a result of this enforceable undertaking for the purpose of training and development by the NHVR.

### Section 4 Acknowledgment

24. The Lindsay way is:

*'Our business and people success depends on being a reputable organisation. We believe that actions speak louder than words; our values underpin how we manage our business and what is important to us. Our behaviour as individuals and as a group will influence how the broader community views the Lindsay Group.'*

25. It is alleged that that Lindsay Transport breached the HVNL as described at paragraph 9.

26. The alleged contravention is taken very seriously by Lindsay Transport, its Board and senior management, who are committed to the following value:

*'SAFETY ALWAYS*

*Choose to make safety a personal value; think SAFE, act SAFE, be SAFE.*

*We have an obligation to our team mates and the public to operate safely. There is nothing we do that is worth hurting ourselves or others over. Our friends and family drive, and work alongside us every day, this is a privilege we take very seriously. We are all responsible for communicating and rectifying any issues that may harm ourselves, our people or community.'*

### Section 5 Details of Injury or Illness

#### Types of workers compensation provided (if the injured person is a worker of the person)

27. Not applicable.

#### Support provided, and proposed to be provided, to the injured person to overcome injury/illness

28. The Lindsay Group provided the following:

- a. funeral expenses of approximately \$18,000;
- b. flights, accommodation and travel expenses for Mr Bolton's family to be together; and
- c. counselling for Mr Bolton's family.

### Section 6 Rectifications made

29. Lindsay Transport is committed to ensuring it has developed systems that identify, assess and control risks and are designed to promote continual improvement and as a result of the alleged contravention, the following opportunities for enhancement of processes have been undertaken:

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Description	\$ Amount
The Lindsay Group has implemented the real-time driver fatigue monitoring system called 'Guardian' in each and every one of the Lindsay Group's heavy vehicles following the incident.	Approximate cost of hardware: <b>\$713,250.00</b> Approximate ongoing annual costs: <b>\$232,044.00</b> per annum.
The Guardian System is a driver safety system that works in real-time using in-cab sensors and inbuilt algorithms to detect and immediately alert drivers when signs of fatigue and distraction are detected. The System comprises of an in-cab sensor, GPS unit, seat vibration unit, audible alarm and forward facing dash cam.	
The Guardian System uses infrared technology to track eye movement and head position of a driver, and when signs of fatigue or distraction are detected, an alert is sent to the driver	

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Description	\$ Amount
<p>by way of audible alarm and/or seat vibration.</p> <p>When a fatigue event occurs, Lindsay’s National Transport Office contacts the driver to discuss their fitness to drive.</p>	
<p>The Lindsay Group has implemented the Teletrac Navman Iface &amp; In Vehicle Unit (IVU), which is an artificial intelligence powered telematics platform that delivers real-time data, visibility and impact for its fleet operations.</p> <p>The Iface is the dash-mounted in-vehicle device that is used for driver interaction. It is used to display fatigue data, deliver a message, support electronic documentation and make weight declarations.</p> <p>The IVU is the black box installed in line with the vehicle’s performance data allowing for feedback on driver behaviour and vehicle performance.</p>	<p>Approximate cost of hardware: <b>\$1,167,240.00</b></p> <p>Approximate ongoing annual costs: <b>\$498,132.00</b> per annum.</p>
<p>The Lindsay Group National Fleet Monitoring team trial was introduced in October 2020 with a main focus on providing:</p> <ul style="list-style-type: none"> <li>• Live Driver/Vehicle and Load monitoring including Trailer and Rail Temperatures;</li> <li>• Real time Fatigue/Compliance intervention, including by using the Guardian system;</li> <li>• Driver Welfare checks and support;</li> <li>• Centralised Compliance Reporting; and</li> <li>• Disaster Management, road closure monitoring with live updates both internal and external.</li> </ul> <p>Since implementation the Lindsay Group has seen an increase in overall compliance and the team have provided an additional layer of support to the Lindsay Group drivers which has driven the increase to a 24/7, 365 day monitoring operation.</p> <p>Live fatigue management capability continues to provide one of the most significant benefits to the Lindsay Group and its drivers, in assisting in the management of fatigue and providing live data for drivers on the road.</p>	<p>Approximately <b>\$350,000</b> with four employees engaged to operate the team 24 hours a day, seven days a week, 365 days a year. With plans for two additional employees to be hired to support this team.</p>
<p>The Lindsay Group is a pilot participant in the roll out of the use of Electronic Work Diaries (EWD) through the Sentinel in-cab devices that the Lindsay Group already has in place across its fleet. EWD roll out will assist in accuracy of recording driver hours as opposed to (or in conjunction with) the paper-based work diary.</p>	
<p><b>Approximate total cost p.a. \$1,080,176.00</b></p> <p><b>Approximate costs hardware: 1,889,490.00</b></p>	

## Section 7 Acknowledgement of publication

30. Lindsay Transport acknowledges that the enforceable undertaking will be published on the NHVR’s internet site and may be referenced in the NHVR’s publications.

## **Part 3 Enforceable terms**

### **Section 1 Commitments**

#### **Commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur**

31. Lindsay Transport is committed to ensuring that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence.

#### **Commitment to the ongoing effective management of public risk associated with transport activities**

32. Lindsay Transport is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
33. Lindsay Transport has a commitment to ongoing continuous improvement in how it manages risks associated with its business operations, including the review of new technology when made available.

#### **Commitment to disseminate information about the EU to workers and other relevant parties in the chain of responsibility**

34. Lindsay Transport is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including senior and operational management, health and safety management team, Health and Safety Committees and Health and Safety Representatives, workers, and all relevant contractors and subcontractors working for the Lindsay Group. This information will be disseminated through:
  - a. For internal employees: via internal newsletters and toolbox talks; and
  - b. For external contractors and sub-contractors: external announcement / newsletter to external email distribution lists.

#### **Commitment to participating constructively in all compliance monitoring activities of the EU**

35. Lindsay Transport is committed to participating constructively in all compliance monitoring activities of the EU.
36. Lindsay Transport acknowledges that responsibility for demonstrating compliance with the undertaking rests with Lindsay Transport and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
37. It is acknowledged that the NHVR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to the NHVR including providing details of workshops and training conducted for industry and community benefit.

#### **Commitment that any promotion of a benefit arising from the EU will clearly link the benefit to the undertaking and make it clear that the undertaking was entered into as a result of an alleged contravention**

38. Lindsay Transport is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking will clearly link the benefit to the undertaking and that the undertaking was entered into as a result of the alleged contravention.

### **Section 2 Strategies that will deliver benefits**

#### **Benefits to drivers and parties within the chain of responsibility**

39. As part of this enforceable undertaking, Lindsay Transport aims to deliver strategies that focus on benefits to:
  - a. drivers and parties within the chain of responsibility; and
  - b. the transport industry and the broader community.

40. Lindsay Transport intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness among the Lindsay Group's workforce and all parties within the chain of responsibility of the importance of complying with Chain of Responsibility laws.

## Activities

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### Activity 1 – Web Based Driver Education Platform

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#### Scope

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Lindsay Transport will engage an appropriate partner to develop a web-based driver education platform that would provide industry members with highly engaging educational materials.

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#### Details

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41. Lindsay Transport will engage an appropriate partner to develop a web-based driver education platform that would provide industry members with highly engaging educational materials around areas of:
- addressing drivers' fitness for duty;
  - returning to work after illnesses, including health and safety risks (including sleep apnoea and fitness to drive);
  - key risks around fatigue (fatigue management);
  - key risks around speed (speed compliance);
  - key risks around mass management (axle weights, load distribution, load restraints);
  - pre-trip checks; and
  - other educational opportunities, with functional capability to add policies, procedures, SOPs and risk assessments.
42. Lindsay Transport would work with the partner to design and develop the platform to:
- work within all commonly used web-browsers, across desktops, mobiles, and tablet devices;
  - leverage the benefits of micro learning to deliver content in short courses;
  - leverage the benefits of gamification and simulation within the course materials;
  - leverage simple and effective practices in interactivity, voice over and animation to deliver effective learning experiences;
  - leverage badges, credentials, achievements and leader-boards to incentivise users to complete all of the training content;
  - leverage social media integration; and
  - leverage data capture and analytics to measure success and performance.
43. This will be made available to industry and will be available free to be adapted for use by other transport operators.
44. At a high level the application would:
- allow industry members to create company accounts and manage user enrolment and data analysis on the platform;
  - allow industry members to access micro learning short courses on the above suggested content;
  - allow industry members to gain credentials and badges in line with completed micro-learning short courses;
  - allow industry members to share their personal results on the platform and across social media; and
  - collect data on the efficacy of the program and its members to undertake and complete the training content and micro learning courses.
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#### Timeframe

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Partner engaged within the first six months of the EU commencing.

Project delivered within two years of the EU commencing.

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**Activity 1 – Web Based Driver Education Platform**

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**Outcome**

The key safety outcome for this is to provide for a user-friendly web-based platform to cover the key risks that heavy vehicle drivers may encounter across the transport industry. This platform will be focused on ensuring usability and continue the trend away from paper-based work health and safety compliance to a driver focused platform.

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**Costs**

\$350,000-\$450,000

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**Output**

As described above.

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**Activity 2 – Expert review of system**

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**Scope**

Lindsay Transport will engage a suitably qualified and experienced expert (including a suitably qualified and experienced expert with expertise in relation to the issue of sleep in the heavy vehicle industry) to review for best practice policies, procedures and practices, across all the Lindsay Group's transport activities.

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**Details**

45. Lindsay Transport will engage a suitably qualified and experienced expert (including a suitably qualified and experienced expert with expertise in relation to the issue of sleep in the heavy vehicle industry) to review for best practice policies, procedures and practices, across all of the Lindsay Group's transport activities, as they relate to:
- a. fitness to drive;
  - b. scheduling;
  - c. safe driving plans;
  - d. managing employees who present with common recognised health issues such as sleep issues and diabetes;
  - e. the current scheduling practice of shuttle runs between Sydney to Brisbane;
  - f. minimum time allowed for "change of shift" notifications to drivers;
  - g. non work-related illnesses that have the potential to impact on the safety of transport operations, including considering a policy which outlines steps to be taken before a person with such a work related illness will be allowed to return to work; and
  - h. identifying drivers that fall within the sleep apnoea risk profile and any relevant testing (including considering whether testing for sleep apnoea should be undertaken).
46. Lindsay Transport:
- a. will give notice to the NHVR of the experts it proposes to engage, including their CV and experience, and, before engaging them, allow the NHVR an opportunity to comment on whether those persons are suitably qualified and experienced;
  - b. is wholly committed to making changes to improve its practices, and where reasonably practicable in the context of Lindsay's transport activities, will implement any recommendations made to promote best practice arising from the review;
  - c. ensure appropriate training is provided across the organisation so persons are aware of the changes; and
  - d. engage an auditor, who is an approved auditor under the National Heavy Vehicle Accreditation Scheme, to conduct an audit on implementation of any changes made to policies, procedures and practices arising from the above review and provide that report to the NHVR.
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**Timeframe**

Expert engaged within the first six months of the EU commencing.

Review complete within one year of the EU commencing.

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**Activity 2 – Expert review of system**

Audit completed within two years of the EU commencing.

**Outcome**

This review will ensure that the Lindsay Group’s policies, procedures and practices reflects best practice. This will be completed hand in hand with appropriate experts to ensure any areas for continuous improvement have the benefit of dedicated expertise which will promote the highest levels of health and safety.

**Costs**

\$50,000 to \$75,000

**Output**

As described above.

**Activity 3 – Management (senior and front line) training program**

**Scope**

Lindsay Transport will engage a suitably qualified and experienced expert (including a suitably qualified and experienced expert with expertise in relation to the issue of sleep in the heavy vehicle industry) to deliver an internal management (senior and front line) training program.

**Details**

47. Lindsay Transport will engage a suitably qualified and experienced expert (including a suitably qualified and experienced expert with expertise in relation to the issue of sleep in the heavy vehicle industry) to deliver an internal management (senior and front line) training program focused on:
  - a. fitness to drive;
  - b. scheduling; and
  - c. managing employees who present with sleep issues.
48. Lindsay Transport will give notice to the NHVR of the experts it proposes to engage, including their CV and experience, and, before engaging them, allow the NHVR an opportunity to comment on whether those persons are suitably qualified and experienced.

**Timeframe**

Expert engaged within the first six months of the EU commencing.

Training delivered within one year of the EU commencing.

**Outcome**

Building on the review of Lindsay’s policies, procedures and practices above, this training will engage senior and frontline managers to highlight practical ways in which health and safety can be promoted and improved across the transport industry.

**Costs**

\$50,000 to \$75,000

**Output**

As described above.

**Activity 4 – Video focused on drivers**

**Scope**

Lindsay Transport will engage appropriate partner(s) to produce a video for use in the heavy vehicle industry.

**Details**

49. Lindsay Transport will engage appropriate partner(s) to produce a video for use in the heavy vehicle industry

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**Activity 4 – Video focused on drivers**

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covering:

- a. general fitness and health issues for transport industry/heavy vehicle worker/drivers;
- b. fitness for work; and
- c. managing fatigue.

50. This will be made available to industry, accompanied by a media and social media campaign using the Lindsay Group's media and social media platforms, including FaceBook, LinkedIn and industry publications and will be free to be shared by third parties.

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**Timeframe**

Partner engaged within the first six months of the EU commencing.

Project complete within two years of the EU commencing.

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**Outcome**

This video will provide an engaging means of communicating important safety messages specifically targeted at drivers across the transport industry with the aim of continuing to promote the highest levels of health and safety.

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**Costs**

\$15,000 to \$25,000

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**Output**

As described above.

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**Activity 5 – Donation focused on heavy vehicle safety.**

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**Scope**

Lindsay Transport will make a donation focused on heavy vehicle safety.

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**Details**

51. Lindsay Transport will donate funds to a not-for-profit organisation or research/medical entity with a specific focus on heavy vehicle driver medicals (with a focus on the scope and frequency of driver medicals, health issues confronting long haul drivers, the changing demographic of long-haul drivers and related medical needs and/or a study into sleep apnoea and shift work).

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**Timeframe**

Within six months of the EU.

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**Outcome**

This donation will contribute to the broader industry work to see health and safety improve across the transport industry.

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**Costs**

\$125,000

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**Output**

As described above.

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52. Lindsay Transport will provide six monthly compliance reports to the NHVR.

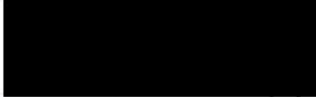

53. The total estimated value of the undertaking is \$590,000 to \$750,000.

## Part 4 Offer of undertaking

Executed as an Undertaking

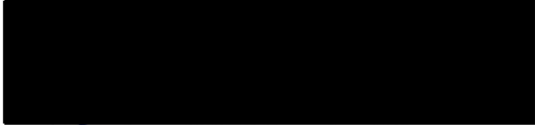
Lindsay Transport Pty Ltd ABN: 62 055 792 919

Executed by Lindsay Transport Pty Ltd ABN: 62 055 792 919 pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature of Director	Signature of Director/Company Secretary
MICHAEL LINDSAY	BRODERICK JONES
Name of Director (print)	Name of Director/Company Secretary (print)
Date: 05/11/2021	Date: 05/11/2021
Date: Click or tap to enter a date.	Date: Click or tap to enter a date.

## Part 5 Acceptance of undertaking

Accepted by the National Heavy Vehicle Regulator pursuant to sections 590A(2) and 661(1)(b) of the Heavy Vehicle National Law by:


Signature of Chief Executive Officer
Sal Petrocchio
Name of Chief Executive Officer (print)
Date: 08/11/2021