

9 November 2021

Our Reference: 2696; CCF/1064 DOC21/50092



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 Lindsay Transport Pty Ltd (Lindsay) are appropriate enforcement options in regard to the relevant contravention.

Background to the application

2. It is agreed by the National Heavy Vehicle Regulator (NHVR) that:
 - a. Between the 30 August 2018 and the 14 November 2018, Lindsay Transport Pty Ltd (Lindsay) had a duty under the Heavy Vehicle National Law (HVNL).
 - b. At all times Lindsay was engaged in conduct and transport related activities that exposed Mr John BOLTON (BOLTON) to a risk of death or serious injury.
 - c. The risk manifested itself in the death of Mr BOLTON on 13 November 2019 at Loganlea in New South Wales.
3. Lindsay was in contravention of a Category 2 offence under section 26G of the HVNL.
4. The NHVR commenced a prosecution against Lindsay alleging the contravention.
5. On 5 November 2021, Lindsay wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.

6. I have assessed the proposal submitted against the NHVR Policy – *Enforceable Undertakings*, and NHVR Guideline - *Proposing an Enforceable Undertaking* (“the guideline”).
7. In assessing the proposal in accordance with the evaluation requirements of Section 4 of the guideline I have considered the following factors.

The nature and extent of the act or omission alleged

8. I have taken into consideration the fact that there was no evidence of systematic non-compliance with the HVNL.

The person’s compliance history

9. Since commencing operations in Australia in 2004, Lindsay has not been convicted of:
 - a. any offence under the HVNL;
 - b. a breach of any safety duty under the Work, Health and Safety legislation of a State, Territory or the Commonwealth;
 - c. a failure to comply with any Enforceable Undertaking; or
 - d. any other offence involving the death, serious injury or illness of any person involved in Lindsay’s business or undertaking.

Whether the EU delivers benefits to the public beyond the Promisor’s compliance with the law

10. Lindsay has proposed a commitment 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.
11. Lindsay is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
12. Lindsay has committed to ongoing continuous improvement in how it manages risks associated with its business operations.
13. Lindsay has proposed five initiatives to achieve the proposed outcomes. The initiatives will commence immediately upon acceptance of the Enforceable Undertaking (EU) and will be completed within 24 months of acceptance, with a total estimated cost of \$590,000 to \$750,000.
14. These initiatives involve careful analysis of best practice processes and procedures in the transport industry and, importantly, the sharing of information that may assist the industry with regard to safety in transport activities.

Initiative 1

15. Requires Lindsay to 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), estimated cost of the initiative is \$125,000.

Initiative 2

16. Requires the development of a web-based driver education platform (WDUP) for the heavy vehicle industry, estimated cost of activity \$350,000-\$450,000. The WDUP would provide education on the following topics:

- assessing drivers' fitness for duty;
- returning to work after illnesses, including health and safety risks including sleep apnoea and fitness to drive;
- key risk 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.

17. The WDUP will include functional capability to add policies, procedures, SOPs and risk assessments.

18. The WDUP will work within all commonly used web browsers, across desktops, mobiles, and tablet devices and leverage the benefits of

- micro learning to deliver content in short courses;
- gamification and simulation within the course material;
- simple and effective practices in interactivity, voice over and animation to deliver effective learning experiences;
- credentials, achievements and leaderboards to incentivise users to complete all of the training content;
- social media integration; and
- data capture and analytics to measure success and performance.

19. The WDUP will be made available to industry and will be available free to be adapted for use by other transport operators. At a high level the WDUP will allow industry to:

- create company accounts and manage user enrolment and data analysis on the platform;

- access micro learning short courses on the above suggested content.
- gain credentials and badges commonly obtained through micro-learning short courses.

20. Lindsay proposes to engage a partner within the first six months of the EU and deliver the completed project within two years of the acceptance of the EU.

Initiative 3

21. Requires Lindsay to 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 Lindsay Australia Limited's transport activities, as they relate to:

- fitness to drive;
- scheduling;
- safe driving plans;
- the management of employees with common health issues, such as sleep issues and diabetes;
- the scheduling practices of shuttle runs between Sydney and Brisbane;
- the time allowed for "change of shift" notification to drivers;
- considering the impact of non-work-related illness to have the impact of safe transport operations; and
- identifying drivers that fall within the sleep apnoea risk profile.

22. Lindsay have agreed to:

- 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;
- implement where reasonably practicable recommendations made to promote best practice arising from the review;
- ensure appropriate training is provided across its organisation; and
- engage an auditor, who is an approved auditor under the NHVAS, 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.

23. Lindsay have proposed to engage an expert within the first six months of the EU, complete the review within one year, and have the audit completed within two years of the acceptance of the EU. The estimated investment and cost of the initiative is \$50,000 - \$75,000.

Initiative 4

24. Requires Lindsay to 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 a training program focused on:
- fitness to drive
 - scheduling; and
 - managing employees who present with sleep issues.
25. Lindsay have agreed to notify the NHVR of the experts it intends to engage in the process, including their *curriculum vitae* and experience, and before engagement allow the NHVR to comment on whether the experts are suitably qualified and experienced.
26. Lindsay have proposed to engage an expert within the first six months of the EU, and have the training delivered within one year of the EU being accepted. The estimated investment and cost of the initiative is \$50,000 - \$75,000.

Initiative 5

27. Requires Lindsay to engage appropriate partner(s) to produce a video for use in the heavy vehicle industry. The video will include:
- general fitness and health issues for the transport industry, heavy vehicle workers, and drivers;
 - fitness for work; and
 - managing fatigue.
28. The video, once completed, will be made available to industry. The video will be accompanied by a social media campaign using Lindsay Australia's media and social media platforms and will be free to be shared by third parties.
29. Lindsay have proposed to engage a partner within the first six months of the EU and have the video initiative completed within two years of the EU being accepted. The estimated cost of the initiative is \$15,000 - \$25,000.

The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety

30. Industry specific training is a key factor in driving heavy vehicle safety. Engagement with experts in the field of heavy vehicle safety, together with the sharing of information within the industry, is likely to achieve measurable improvement in heavy vehicle transport safety. Lindsay's proposal to seek expert

input and deliver internal training, as well as training to those in the communities in which they operate will ensure the wide reach of important information.

The benefits of the proposal to the persons who might be affected by a similar contravention; and the likely improvements in safety within the Promisor's business or operations; and the likelihood that the proposed undertaking will result in sustained improvement in compliance after its completion

31. Fatigue is an issue of primary concern for the heavy vehicle industry. Further, the danger posed by drivers of heavy vehicles who are unable to properly control their vehicle due to limited sleep, inadequate rest breaks or other avoidable causes is grave.
32. The outcome of the proposed actions will greatly assist in providing guidance not only to Lindsay's but also to the industry in general on best practices as regards to fatigue management. The sharing of information, through web-based driver education platform and a media campaign, will enable others in the industry to consider their own practices and, if necessary, review and amend them accordingly.

The person's ability, including financial ability, to meet the terms of the EU

33. Lindsay has set a realistic timeframe for the implementation of the EU (Immediate), with completion within a 24-month period.
34. Lindsay has confirmed in its proposal that it has the financial capacity to comply with the terms of the EU.

The significance of the commitment compared to the capability of the person

35. I have taken into consideration the fact that, through the proposed strategies, Lindsay has demonstrated an understanding of the importance of safety in transport operations.
36. The resources and projects proposed, to ensure that both Lindsay's and the transport industry's processes and procedures are improved, are of great value to the industry and are commensurate to Lindsay's capability.

The support the person has provided, has committed to provide into the future to an injured or affected person

37. In addition to the statements and acknowledgements contained in the EU, Lindsay has included an additional acknowledgement to Mr Bolton's family.
38. Lindsay also provided the following;
 - funeral expenses of approximately \$18,000;

- flights, accommodation, and travel expenses for Mr Bolton’s family; and
- counselling for the Bolton family.

Input from injured and affected persons

39. The family of Mr Bolton is supportive of this course. Ensuring Lindsay makes positive changes to prevent any further loss of life and engaging in education to other Transport operators means that the risk of any further loss of life is greatly reduced.

Reason for Decision

40. I have considered the merits of continuing the Prosecution against Lindsay in order to meet the sentencing principles of rehabilitation, punishment, deterrence, and denouncing of the conduct. I consider in all of the circumstances of this matter, on balance, I am of the opinion that the Enforceable Undertaking proposed by Lindsay is an appropriate enforcement option which will meet community expectations.

41. I conclude that the Enforceable Undertaking is a preferred enforcement option to continuing the prosecution for the relevant contravention for the following key reasons:

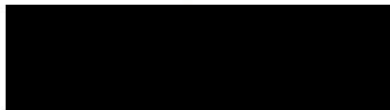
- a. The opportunity to provide lasting organisational change within Lindsay and to the wider Transport Industry. Five activities will be undertaken in order to deliver benefits to Lindsay’s drivers, other parties in the chain of responsibility, and the broader community.
- b. The activities and benefits proposed would not have been achieved by prosecution alone. Upon a conviction a financial penalty would have been imposed on Lindsay. This would not have had the same direct impact on promoting safety awareness in the industry as the strategies outlined in the Enforceable Undertaking.
- c. The Undertaking proposes material and tangible changes that can lead to the broader industry taking greater steps to address fitness for duty in drivers.
- d. Education, systems and training which result in fewer contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.
- e. The activities proposed are likely to achieve measurable improvements in the heavy vehicle transport industry, in the Lindsay Australia companies, in the wider supply chain, as well as in the communities in which Lindsay operates.

- f. Fitness to drive is a safety issue that is encountered across the Transport Industry. This EU addresses the key risks facing operators and drivers assessing fitness to drive, such as fatigue management, appropriate scheduling and managing drivers with medical issues. Importantly I note that the victim's family is supportive of this course. Ensuring Lindsay makes positive changes to address fatigue and engaging in education to other transport operators will greatly reduce the risk of further loss of life.

42. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking Lindsay offered on 5 November 2021.

43. Lindsay is required to send all supporting documentation in relation to this EU to compliance@nhvr.gov.au

Yours sincerely,



Sal Petrocitto

Chief Executive Officer