

25 January 2022
Our Reference: 2753



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 Troy Heavy Haulage Pty Ltd (“THH”) 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. On 27 April 2020 at Wallan in the State of Victoria, THH was the operator of a heavy vehicle that failed to comply with the applicable mass limits of section 96(1) of the HVNL.
 - b. The heavy vehicle combination operated by THH on 27 April 2020 exceeded the prescribed mass limits of 43.0 tonnes applying to the vehicle.
3. The NHVR commenced a prosecution against THH alleging the contravention. The maximum penalty for the offence is \$168,200. Note *This is the correct maximum penalty and the penalty in the EU application did not include CPI.*
4. On 18 January 2022, THH wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.
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:

The nature and extent of the act or omission alleged

7. Heavy vehicles that are overmass present a risk to safety and infrastructure. In this matter there was no manifestation of the risk.

8. The heavy vehicle combination was loaded at 191% of the prescribed mass limit. This is classified as a severe risk breach.
9. Additionally, the heavy vehicle was travelling in a combination that required a permit. No permit had been issued for the combination.
10. There is no evidence of systematic non-compliance with the HVNL by the accused.

The person's compliance history

11. Since commencing operations in Australia in 1994, THH 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 THH business or undertaking.

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

12. THH 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 a recurrence.
13. THH is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
14. THH has committed to ongoing continuous improvement in how it manages risks associated with its business operations.
15. THH has completed two (2) rectifications prior to the application for an EU:
 - a. Engagement of Prodrive Compliance Pty Ltd (Prodrive) to assist in identifying areas where improvements in existing systems could be made. Prodrive completed a full gap analysis on all operating systems. An action plan has been developed to assist THH in identifying, assessing, and controlling risks to prevent any further breaches. The total cost of the Gap Analysis and Compliance rectification was \$10,000.
 - b. Engagement of a permanent employee to carry out the correct and timely application of NHVR OSOM permits. The total cost of the OSOM Permit Administration rectification was \$2,500.
16. THH has proposed ten (10) initiatives to achieve the proposed outcomes. The initiatives will commence at various timeframes upon acceptance of the EU and all initiatives will be completed within 12 months of acceptance. The total estimated cost of these initiatives is \$65,000.

Initiative 1

Relevant staff will be tested for their knowledge of the mass, dimension and loading regulations for different configurations in different States and their understanding of specific permits, loading and restraining points. Additional training to be provided where required.

As part of the induction and internal training, safe operating procedures will be developed for all areas of operation, and these will be completed with the input of key personnel within the company. This will be part of competency training for each driver and is a small part of a large form. All drivers need written proof of training completed.

Load restraint training and specific lashing diagrams will be developed to ensure all drivers are aware of the requirements. Mass management training for all staff to be more extensive. To ensure all drivers and allocators are aware of specific combinations weight limits, route maps, recording requirements and the importance of compliance in these vehicles.

Safe Operating Procedures to be completed within 6 months; relevant staff to be tested and training to be completed within 12 months of the signing of the Enforceable Undertaking. The estimated cost of the initiative is \$15,000.

Initiative 2

A new Chain of Responsibility Manual will be created and tailored to the THH operation. A smaller Drivers' Manual to be adapted from this along with a comprehensive induction procedure to ensure that all current and new employees are aware of their responsibilities. THH uses a Non-Conformance/Corrective Action (NCR/CA) system comprehensively and this will be included in the new Chain of Responsibility Manual and induction and training programs.

All members of staff to undergo face-to-face training in Chain of Responsibility and supply chain participants to be informed of their obligations.

To be completed within 3 months of the signing of the Enforceable Undertaking. The estimated cost of the initiative is \$20,000.

Initiative 3

Specific pre-trip checklists will be further developed, and drivers trained practically to ensure they conduct these mandatory inspections properly. This will also become part of the employee induction process.

Training and development of updated checklists to be completed within 3 months of the signing of the enforceable undertaking. The estimated investment and cost of the initiative is \$5,000.

Initiative 4

A revised Safe Work Method Statement/Risk Assessment is to be implemented along with clear tolerances for speeding offences and disciplinary action to be taken.

To be completed within 3 months of the signing of the Enforceable Undertaking. The estimated investment and cost of the initiative is \$2,500.

Initiative 5

THH is commencing the process of becoming accredited in fatigue management. Safe Work Method Statement/Risk Assessment will be revised to show that the company understands the hierarchy of control for fatigue compliance. THH will train drivers and the scheduler in Basic Fatigue Management. Further training will be introduced for work diary record management across the entire company including other parties in the supply chain. Driver health education is part of NHVAS Fatigue Management and will also be properly addressed.

To be completed within 12 months of the signing of the Enforceable Undertaking. The estimated cost of the initiative is \$7,500.

Initiative 6

Systems will be reviewed to ensure they meet current standards and are consistent with insurance and workers compensation guidelines. As a result, training and procedures will be developed and implemented.

To be completed within 6 months of the signing of the Enforceable Undertaking. The estimated cost of the initiative is \$2,500.

Initiative 7

A Subcontractor Management Plan will be developed to ensure all companies contracting to THH comply with the regulations. Where required, subcontractors will be audited by Prodrive or another third party of THH's choice.

To be completed within 12 months of the signing of the Enforceable Undertaking. The estimated cost of the initiative is \$5,000.

Initiative 8

External auditor reviews to be completed.

To be completed within 6 months of the signing of the Enforceable Undertaking. The estimated cost of the initiative is \$2,500.

Initiative 9

Engagement of a permanent employee to carry out the correct and timely application of NHVR OSOM permits. Liaise with Road Managers to ensure the permit application process is completed in a timely manner and all requirements are met. Renewal of all permits as they expire and monitoring of legislation to ensure up to date

information is recorded and issued to all relevant staff. Establishment of an OSOM permit register to ensure all permits are current and renewed in a timely manner. Training of all drivers and allocators in OSOM permit documents and OSOM legislation.

This activity has commenced with the employment of the Administration Assistant and is ongoing. Training of drivers and allocators has commenced and will be ongoing as changes in legislation and permits occur. The estimated cost of the initiative is \$5,000.

Initiative 10

The Enforceable Undertaking and THH's Chain of Responsibility Manual will be published on the THH web page. THH will also provide an explanation of the breach of the HVNL and in particular reference to the 5 x 8 combinations and the requirements for route specific permits in Victoria and the difference compared to NSW. No further cost associated to THH.

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

17. 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. THH'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; 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

18. Overmass vehicles decrease safety performance through ineffective brakes etc. They can also have a detrimental effect on the road infrastructure both acutely in some circumstances, or over longer periods. Education that results in less contravention will lead to safer heavy vehicles on the road and less impact on road infrastructure.

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

19. THH has set a realistic timeframe for the implementation of the EU, with completion within 12 months.

20. THH 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

21. I have taken into consideration the fact that, through the proposed strategies, THH has demonstrated an understanding of the importance of safety in transport operations.

22. The resources and projects proposed, to ensure that both THH's and the transport industry's processes and procedures are improved, are of great value to the industry and are commensurate to THH's capability.

The support the person has provided/has committed to providing into the future to an injured or affected person

- a. Not applicable

Input from injured and affected persons

- a. Not applicable

Reason for Decision

23. I have considered the merits of continuing the Prosecution against THH 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 THH is an appropriate enforcement option which will meet community expectations.
24. 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 THH and to the wider Transport Industry. Ten (10) activities will be undertaken in order to deliver benefits to THH'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 THH. 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 Enforceable 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 THH Australia companies, in the wider supply chain, as well as in the communities in which THH operates.

25. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking THH offered on 18 January 2022.

26. THH is required to send all supporting documentation in relation to this EU to intelligence@nhvr.gov.au.

Yours sincerely



Sal Petrocchio

Chief Executive Officer