



Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

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

By

Mark David Huston McCauley

ABN: N/A - individual

Part 1 Executive summary

Section 1 Agreed actions

1. McCauley will engage an external partner to develop a unique, comprehensive but simple to follow Due Diligence Manual to assist executives to comply with their personal due diligence obligations under the HVNL. The Due Diligence Manual will be made widely available to industry including by being published on the NHVR website.
2. McCauley will engage an external video production company to develop a high production quality, and highly engaging induction video targeted at individual executives of businesses that are parties in the Chain of Responsibility. This video will focus on:
 - a) Personal accounts (in a Q and A personal interview format) of the impact of the accident upon individuals and the company. This will be a powerful, personalized introduction to engage inductees with the presentation.
 - b) Particular due diligence considerations for executives having regard to the actual circumstances of the accident and of the company (now in liquidation).
 - c) General summary of systems available to individual executives to comply with their personal due diligence obligations under the HVNL.The video will be widely disseminated through social media and to industry free of charge to those recipients.
3. McCauley will prepare, present and have video-recorded a high-quality verbal and written presentation to the Australian Institute of Company Directors and/ or other industry bodies. The presentation will be widely disseminated in written and video-recorded format to industry and to social media platforms. External Partners will be engaged to video-record the presentation and to ensure that the presentation is of a high quality and standard throughout, including the addition of visual aids to the presentation.

Section 2 Total cost of actions

4. \$36,000.00

Part 2 General information

Section 1 Purpose

5. The purpose of this enforceable undertaking is to document the undertakings offered to the National Heavy Vehicle Regulator (NHVR) pursuant to Part 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

6. The commitments in this enforceable undertaking are offered to the NHVR by Mark David Huston McCauley ('McCauley').
7. 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:	McCauley - N/A	
Postal address:	18 Pitt Street, Paddington, QLD 4064	
Telephone:	[REDACTED]	
Email address:	[REDACTED]	
Legal structure:	Individual / employed / former director	
Type of business:	Former director of Goondicum Resources Pty. Ltd. (in liquidation) (a mining company)	
Commencement of entity:	06/03/2000	
Number of workers:	50	
Products and/or services:	Mining of ilmenite	

Details of the alleged contravention

8. McCauley was charged with alleged breaches of the HVNL, being:

- A category 2 offence under section 26G of the HVNL by, as an executive of a legal entity, failing to exercise due diligence to ensure the legal entity's compliance with the primary duty under section 26C.
- It was alleged that the following measures were reasonably practicable for the legal entity (Goondicum Resources Pty Ltd) to implement:
 - a) Identify, document and educate contracted drivers about the hazards and risks associated with its transport activities; and
 - b) Introduce and use appropriate resources to eliminate or minimize those hazards and risks, including -
 - i. Maintain a system for checking that heavy vehicles tasked to perform its transport activities complied with relevant heavy vehicle standards;
 - ii. Conduct daily maintenance checks on vehicles involved in its transport activities;
 - iii. Keep accurate records of and monitor driver work and rest times;
 - iv. Assess the fatigue of drivers before, during and after driving duties;
 - v. Implement procedures to prevent recurrence if and when fatigue breaches were identified;
 - vi. Maintain an up-to-date register of driver and vehicle records;
 - c) Provide adequate information, training, instruction and supervision regarding the heavy vehicle transport activities of Goondicum Resources Pty Ltd to contracted drivers.
- It was further alleged that the following measures were reasonably practicable for McCauley to have undertaken:
 - a) Acquire, and keep up to date, knowledge about the safe conduct of Goondicum Resources Pty Ltd.'s transport activities, namely around fatigue management and vehicle maintenance;
 - b) Gain an understanding of the hazards and risks, including the public risk, associated with fatigue management and vehicle maintenance; and
 - c) Ensure Goondicum Resources Pty Ltd had, and used, appropriate resources to eliminate or minimize those hazards and risks.

Details of the events surrounding the alleged contravention

9. On or about 17 May 2019, at approximately 3:30pm, Mr. Brock Rode, an independent haulage contractor engaged by Goondicum Resources Pty Ltd, was fatally injured when the heavy vehicle he was driving apparently stopped on an inclined section of public road before rolling backwards and then over the adjacent drop-off (which was several metres high).
10. Mr. Brock Rode was the only occupant and died at the scene after apparently seeking to exit the heavy vehicle.

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

11. Mr. Brock Rode was fatally injured.

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

12. McCauley was served with a summons to appear in respect of the alleged contravention in relation to a hearing before the Biloela Magistrates Court of Queensland, subsequently transferred to the Magistrates Court at Brisbane.

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

13. Goondicum Resources Pty Ltd, the legal entity employing McCauley had an established comprehensive safety management system in place which encompassed Chain of Responsibility compliance.
 - a) Appointment of general manager and health and safety training coordinator with responsibility for Chain of Responsibility training and Fatigue Management training. These company officers attended Mine Safety Institute of Australia courses;
 - b) Haulage document (14 pages) provided to all haulage contractor drivers with detailed maps and photographs and analysis of haulage system requirements including:
 - i. Link to compulsory haulage induction (cloud-based);
 - ii. Authority to Load document;
 - iii. Confirmation as to driver fatigue and vehicle mechanical requirements;
 - c) Authority to load document required to be completed and signed by each driver;
 - d) Visual checks by employees of heavy vehicles with escalation from employees to supervisor level when required;
 - e) Employees requesting each driver upon arrival at the site to confirm fatigue management requirements and to tick and sign the Authority to Load document;
 - f) Regular emails from responsible managers to drivers reminding drivers of fatigue management requirements;
 - g) Safe operating procedure for truck loading and unloading;
 - h) Written haulage contracts specifying fatigue management and mechanical condition requirements (but not for Mr Rode who had been appointed on a trial basis).
 - i) Pre-start check for all company owned vehicles on site.

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

14. N/A – legal entity is in liquidation

Section 3 Statements

Statement of assurance

15. McCauley confirms that within his respective new role with new employers (following liquidation of Goondicum Resources Pty Ltd) he is committed to complying with his obligations under the HVNL including exercising due diligence to ensure that his employer ensures, so far as is reasonably practicable, the safety of its transport activities, including the safety of all workers and independent contractors.

Statement of regret

16. The death of Mr Rode has had a substantial impact upon the following:
 - a) Mr Rode's partner, children, siblings and parents.
 - b) Mr Rode's employees within his independent haulage contracting business. The accident resulted in the closure of Mr Rode's business.
 - c) The health and safety training coordinator and other managers and executives of Goondicum Resources Pty Ltd
 - d) The holding company of Goondicum Resources Pty (in liquidation) and the directors and shareholders of that holding company
 - e) McCauley who deeply regrets the incident which occurred on 17 May 2019, resulting in the death of Mr Rode and the substantial impact upon all of the above persons

Statement of ability to comply

17. McCauley, whilst having suffered loss of his role with the legal entity following its administration / liquidation following the accident, individually has the financial capacity and operational experience to comply with the terms of this enforceable undertaking.

Statement granting permission to use

18. Following detailed negotiations with their proposed external production partners, McCauley is in a position to grant to 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.

Statement of prior undertakings

19. McCauley has not been the subject of any prior undertaking from any other statutory body (including but not limited to Work Health and Safety, local or state-based statutory bodies).

Section 4 Acknowledgement

20. McCauley acknowledges that the NHVR alleges that McCauley has contravened the HVNL as described at paragraph 8.
21. The alleged contraventions are taken very seriously by McCauley. He acknowledges that whilst Goondicum Resources Pty Ltd had effective on-site systems for discharging the company's obligations as a party in the chain of responsibility, that he also had personal due diligence obligations, as an executive, in respect of fatigue management and mechanical safety matters pertaining to independent contractors. He is committed to educating the heavy vehicle transport industry and in assisting related industries to develop effective systems to deal with the personal responsibility under the HVNL of executives of entities within the Chain of Responsibility as defined in the HVNL.

Section 5 Details of Injury or Illness

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

22. Not applicable. Mr Rode was not a worker of the legal entity, Goondicum Resources Pty Ltd. No injuries were sustained to workers of Goondicum Resources Pty Ltd or members of the public as a result of the alleged contravention.

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

23. Mr Rode was fatally injured in the accident. No injuries were sustained to workers or members of the public as a result of the alleged contravention. The legal entity did provide support to its own workers impacted by the incident including but not limited to:
- Shutting the site for a period of 24 hours to enable engagements with all affected staff
 - Providing worker support

Section 6 Rectifications made

24. Following the incident, the legal entity Goondicum Resources Pty Ltd ('the company') (prior to its liquidation) embarked upon a comprehensive redevelopment of systems to identify, assess and control risks, including but not limited to the following:
- An ICAM Incident Investigation was completed.
 - The ICAM Form identified appropriate due diligence to be undertaken by Goondicum Resources to ensure that contractors had in place and were enforcing all safety systems required by HVNL and Goondicum Resources including fatigue management, equipment maintenance, and personnel training.
 - The company completed and circulated a document entitled "Ilmenite Haulage" setting out 'minimum requirements' to be met by transport operators undertaking transport activities for Goondicum Resources Pty Ltd. This included details requirements as to NHVR accreditation policies and procedures, drug testing and management structure.
 - Maintenance checks carried out on contractor vehicles were duly evidenced in writing.
 - 'Toolbox' meetings were conducted.
 - The policy 'Goondicum Mine Haulage and Chain of Responsibility Requirements' was completed and the requirements implemented.
 - Haulage operations were shut for a period of over three weeks while the above steps were carried out.

Goondicum Resources subsequently entered into administration and then liquidation.

Description	\$ Amount
Shut down of mine as above	\$50,000
Haulage shut down direct cost	\$7,000
ICAM Report and completion of new policy	\$10,000
Appointment of haulage contractor at highest rate to encompass a Goondicum fleet controller with a support administrator to ensure critical HVNL requirements were met on a daily basis	\$105,000
Total cost p.a.	\$172,000

Section 7 Acknowledgement of publication

25. McCauley 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

26. McCauley is committed to ensuring that the behaviour that led to the alleged contravention has ceased and that he will take all reasonably practicable steps to prevent recurrence.

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

27. McCauley is committed to the ongoing effective management of public risks associated with transport activities within his new role with other companies.
28. McCauley has a commitment to ongoing continuous improvement in how he manages risks associated with the business operations of his employer companies, 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

29. McCauley is committed to disseminating information about the enforceable undertaking to executives and employees of his new employers including senior and operational management, health and safety management team, Health and Safety Committees and Health and Safety Representatives, all relevant contractors and subcontractors working for his new employers, now and in the future and to all business partners who are parties in the Chain of Responsibility for a heavy vehicle. This information will be disseminated through:
 - a) For internal employees: Records kept in dedicated workspace in M-Files; Toolbox talks by Distribution Supervisors and Production Managers.
 - b) For external contractors, sub-contractors and other parties in the Chain of Responsibility: communication provided by Department Heads noted in paragraph 29(a).
 - c) All email correspondence captured through document management system CRM.
 - d) Personal formal and informal presentations to senior management highlighting the risks associated with insufficient oversight of fatigue management and vehicle inspection and maintenance by contractors and sub-contractors.

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

30. McCauley is committed to participating constructively in all compliance monitoring activities of the EU.
31. McCauley acknowledges that responsibility for demonstrating compliance with the undertaking rests with McCauley personally and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
32. 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

33. McCauley 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

34. As part of this enforceable undertaking, McCauley aims to deliver strategies that focus on benefits to:
 - a) drivers and parties within the chain of responsibility
 - b) the transport industry and the broader community.
35. McCauley intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness among the workforce within his new company management role and all parties within the chain of responsibility of the importance of complying with Chain of Responsibility laws.

Activities

Activity 1 – HVNL due diligence manual

Scope

McCauley will engage an appropriate partner to develop a detailed HVNL Due Diligence Manual ('HVNL DDM') to be made widely available to the mining and transport industries on the basis set out below.

Details

- a. McCauley has provided to the NHVR a sample detailed due diligence manual previously developed by an external law firm entitled 'Work Health & Safety Officer Due Diligence Manual' ('the WH&S DDM'). The WH&S DDM provided is currently widely distributed to industry by an external law firm on a commercial basis.
- b. McCauley will engage an appropriate partner (most likely the same external law firm) to adapt the sample WH&S DDM and to develop a detailed due diligence manual specifically applicable to the HVNL including the primary duty and focusing upon the duty to exercise due diligence ('the HVNL DDM').
- c. The HVNL DDM will enable companies and more specifically individual executives and managers in those companies (within the Chain of Responsibility) to prepare their own personalised HVNL DDM with minimal input required from other parties. The HVNL DDM will be of a standard at least equivalent to the sample WH&S DDM but tailored to the specific requirements of the HVNL.
- d. The HVNL DDM will be a unique offering to the mining and transport industries, providing a simple but very comprehensive template to simplify individual executive compliance with the HVNL and better outcomes within the industry.
- e. The sample WH&S DDM is presently the subject of copyright in favour of an external law firm and that other manual is provided by that firm on a commercial basis to the industry. McCauley has negotiated with that external partner to ensure that the new HVNL DDM will be made available free of charge to the NHVR. The NHVR may share the NHVL DDM with industry and the HVNL DDM may be made fully accessible to industry on the NHVR's website.
- f. The HVNL DDM would also be available to McCauley for use in his own new companies.

Engagement with NHVR

McCauley will instruct his external partner to liaise with the NHVR about the content of the Manual throughout its development.

Timeframe

External partner to be engaged within two (2) months of the EU commencing. Project delivered within six (6) months of the EU commencing.

Outcome

A simple but comprehensive manual suitable for any executive of a party in the Chain of Responsibility to develop their own personalised due diligence system in compliance with the HVNL.

Costs

Activity 1 – HVNL due diligence manual

McCauley's contribution towards the total cost to develop the manual (including liaising with the NHVR to ensure satisfactory quality) is estimated at \$10,000 with McCauley contributing the entirety of that sum personally.

Output

McCauley to make the new manual available to his current employer for use within that business. New manual to be available for the NHVR to share with industry and to be made accessible on the NHVR's website.

Activity 2 – Induction Video

Scope

McCauley will engage an external partner to develop a high production value induction video aimed at directors and executives of smaller scale operators in the industry. The video will focus on personal and corporate responsibility but will emphasise the personal obligation upon individuals who are executives of parties in the chain of responsibility to exercise due diligence to ensure that the company complies with its primary duty.

Details

- a. McCauley is in advanced discussions with a video production company Livewire Productions to develop a detailed induction video demonstrating the due diligence requirements imposed upon directors and executives within the Chain of Responsibility with a particular focus on personal responsibility of those parties, as opposed to delegation to line managers.
- b. This video will have three key components, described below as the personal, the particular and the general.
- c. The video will commence with a brief personal account of the incident by McCauley. A sample wording for this introduction to the video has been provided to the NHVR. This personal account of the impact of the accident upon the company and its executives and staff will immediately engage the interest of inductees in a powerful message as to personal (as opposed to corporate) due diligence responsibilities.
- d. The video will then address the following particular issues which may arise in specific companies such as: -
 - i. ensuring the treatment of independent contractors is perceived and understood by company personnel as having the same HVNL requirements as managing in-house activities);
 - ii. stressing personal responsibility for off-site matters (in this case the incident occurred on a public road away from the mine site);
 - iii. addressing systems for monitoring mechanical safety of vehicles operated by independent contractors (in addition to company owned vehicles);
 - iv. fatigue management issues and systems to avoid gaps and deficiencies arising from shift changeovers.
 - v. Special circumstances and associated risks at times of change within an organisation (such as re-opening a moth-balled operation on care and maintenance)
- e. Finally, the video will provide a general summary of Chain of Responsibility obligations and appropriate due diligence steps applicable to individual executives to address those responsibilities.
Livewire Production has confirmed a non-exclusive free licence of copyright will be granted as necessary to enable this video to be provided to: -
 - i. NHVR for its general purposes;
 - ii. Social media through YouTube and other sources; and
 - iii. The Australian Institute of Company Directors and/or other key industry publicity channels (see below).

Engagement with NHVR

McCauley will instruct his external partner to liaise with the NHVR about the script of the video throughout its development.

Timeframe

External partner to be appointed within two (2) months of the EU commencing. Project delivered within six (6) months of the EU commencing.

Outcome

Activity 2 – Induction Video

A high production value, engaging video widely disseminated with a focus on the HVNL Chain of Responsibility, including the personal responsibility stipulated in the HVNL. The video will also cover the tools and resources available from the NHVR.

Costs

McCauley’s contribution to the total cost of this production is estimated at \$20,000 with McCauley contributing that sum personally.

Output

As described above.

Activity 3 – Presentation to the Australian Institute of Company Directors

Scope

McCauley will prepare and present a paper to the Australian Institute of Company Directors (AICD) and/or other industry bodies. Should those bodies (who have not yet been approached) not wish to engage with McCauley in that regard, McCauley will liaise with the NHVR for suitable arrangements of similar value.

Details

- a. This will be a personal presentation by McCauley containing the following: -
 - i. The circumstances under which the accident has occurred and how charges came to be laid against the individual executive McCauley;
 - ii. Key risks and particular lessons from the particular circumstances which occurred; and
 - iii. summary of impact upon other executives and the company.
- b. An external partner will be engaged to produce the paper and the presentation in a professional format.
- c. This presentation will be filmed by Livewire Productions (or similar) and made available for dissemination free of charge on social media, website of the AICD/other industry body and generally to the wider industry.
- d. McCauley has further obtained a commitment from an external law firm to provide at this presentation a brief technical and practical summary of the due diligence requirements under the HVNL at no cost.

Engagement with NHVR

McCauley will liaise with the NHVR about the content of the paper and presentation throughout its development.

Timeframe

Presentation to be prepared and presented to NHVR for approval within three (3) months of EU commencing. Presentation to industry to be made within twelve (12) months of EU commencing.

Outcome

A personalised engaging presentation to industry and made broadly available.

Costs

Engagement of Livewire Productions	\$3,000
Time of presenter (McCauley) including presentation	\$3,000

Output

As described above.

36. The total estimated value of the undertaking is \$36,000.

Part 4 Offer of undertaking

Executed as an Undertaking

SIGNED SEALED AND DELIVERED)

by MARK DAVID HUSTON McCAULEY in the)
presence of:)



Signature of MARK DAVID HUSTON
McCAULEY



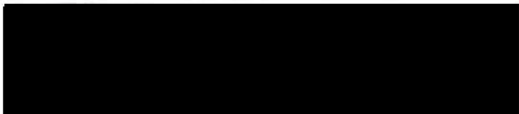
Signature of witness

Sacha Hennessy

Name of witness (print)

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
<i>Sal Petrocchio</i>
Name of Chief Executive Officer (print)
Date: <i>07/02/2022</i>

