

7 February 2022
Our Reference: 3140

Pacific Hire Wangaratta Pty Ltd
Suite 10, 856-860 Doncaster Road
Doncaster East Victoria 3109

[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 Pacific Hire Wangaratta Pty Ltd (“PHW”) are appropriate enforcement options in regard to the alleged contravention.

Background to the Application

2. It is agreed by the National Heavy Vehicle Regulator (“NHVR”) that:
 - a. On 29 September 2020 at Dandenong South in the State of Victoria, PHW 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 exceeded the prescribed twin steer axle mass limits of 11.0 tonnes applying to the vehicle; the alleged mass in fact being 15.40 tonnes.
3. The NHVR commenced a prosecution against PHW alleging the contravention. The maximum penalty for the offence is \$68,970.
4. On 20 December 2021, PHW wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.
5. I have assessed the proposal submitted against the NHVR Policy – *Enforceable Undertakings* (“the Policy”) and the NHVR Guideline - *Proposing an Enforceable Undertaking* (“the Guidelines”).
6. In assessing the proposal against 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 140% of the prescribed mass limit. This is classified as a severe risk breach.
9. There is no evidence of systematic non-compliance with the HVNL by the accused.

The Company's compliance history

10. Since commencing operations in Australia in 2006, PHW 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 PHW's business.

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

11. PHW has proposed a commitment to ensuring the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent a recurrence.
12. PHW is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
13. PHW has committed to ongoing continuous improvement in how it manages risks associated with its business operations.
14. PHW has completed four (4) rectifications prior to the application for an EU, namely;
 - a. Eliminate the use of Tilt Tray Trucks to transport 66ft boom lift
 - b. Purchase of 2 x Tri-Axle float trailers \$340,000 per trailer, total rectification \$680,000
 - c. Purchase of 2 x Prime movers to suit the trailers:

- i. Mack Anthem \$249,000
 - ii. Mack Granite \$225,000
- d. Purchase specialist truck and trailer combinations for heavy loads:
 - i. Mack Superliner \$340,000
 - ii. Drake Quad Float \$410,000
 - iii. Drake Dolly \$110,000
- e. Total for vehicle and trailer purchase \$2,014,000.00
- f. Maintenance and operational cost p.a. \$34,500.00

15. PHW has proposed four (4) initiatives to achieve the proposed outcomes:

Initiative 1 - Load Restraint Training

To have all staff trained in safety regulations regarding loading restraints. The training will involve demonstrations using PHW's own equipment, tailored specifically to PHW's industry.

Training completed on 15 January 2022, prior to the signing of the enforceable undertaking. The estimated cost of the initiative is \$4,500.

Initiative 2 – Creation of In House Driver Handbook

This handbook will be tailored to PHW to complement the existing third party training to provide additional company-specific information. It will include items such as:

- NHVR guidelines, drivers handbook
- safety charter
- restraints.

A copy of the handbook will be placed in each truck.

An electronic version of this publication will be made available to the industry, available for download from PHW's website. This will be accompanied by a post on PHW's Facebook and Instagram pages sharing a link to the publication for download, thereby promoting safety and benefiting the broader transport community.

To be completed by March 2022. The eestimated cost of the initiative is \$9,380.00.

Initiative 3 - Elevated Work Platform (EWP), Forklift and Yellow Card Training

To have all staff trained in the operation and transport of high-risk equipment (EWP, yellow card and forklift training) for familiarisation of safe stowing for equipment.

To be completed by January 2022. The estimated investment and cost of the initiative is \$40,482.00.

Initiative 4 - Safety Management System Audit

Six monthly audits and review of transport procedures and processes with amendments if and when required to be discussed at monthly toolbox meetings conducted by senior management.

The next review is to occur in March 2022, with the remainder to occur every six months thereafter.

The estimated investment and cost of the initiative will be absorbed into existing costs of senior management wages.

16. The initiatives will commence immediately upon acceptance of the EU and will be completed within 12 months of acceptance, with a total estimated cost of \$54,362.00.

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. PHW'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 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. The published EU will act as a deterrent to other persons tempted to commit a similar contravention. Overmass vehicles can have a negative impact on a vehicle's safety performance, including by reducing the effectiveness of brakes and the vehicle's ability to manoeuvre. They can also have a detrimental effect on the road infrastructure both acutely in some circumstances, or over longer periods. These factors clearly result in a risk to PHW's employees and members of the public. Education within PHW and the broader transport community will lead to fewer contraventions and increased safety to persons and road infrastructure.

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

19. PHW has set a realistic timeframe for the implementation of the EU (Immediate), with completion within 12 months.
20. PHW 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, PHW has demonstrated an understanding of the importance of safety in transport operations.
22. The resources and projects proposed, to ensure that both PHW's and the transport industry's processes and procedures are improved, are of great value to the industry and are commensurate to PHW'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 PHW 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 PHW 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 PHW and to the wider transport industry. The EU proposes material and tangible changes that can lead to the broader industry taking greater steps to address fitness for duty in drivers.
 - b. The activities and benefits proposed within the EU have a greater direct impact on promoting safety awareness in the industry than a conviction and financial penalty from prosecution alone.

- c. Education, systems and training which result in fewer contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.

25. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking PHW offered on 20 December 2021.

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

Yours sincerely



Sal Petrocitto

Chief Executive Officer