

30 January 2023

Our Reference: 4234

Lance Michael VOTTA



To Mr Votta

Heavy Vehicle National Law
Part 10.1 – Enforceable Undertakings

REASONS FOR DECISION

I. Introduction

1. In accordance with section 590A (7) of the Heavy Vehicle National Law ('HVNL'), I provide written notice and reasons for my decision to accept the Enforceable Undertaking proposed by Lance Michael Votta ('the EU proposal')¹ pursuant to Part 10.1A of the HVNL.
2. I have considered this proposal and assessed it against the NHVR *Prosecution Policy* ('the policy'), *Enforceable Undertakings Policy* ('the EU policy') and the *Guidelines on Proposing an Enforceable Undertaking* ('the EU Guidelines'). For the reasons set out below I am of the opinion that the EU proposal, in the circumstances, is an appropriate enforcement option for the particular contraventions alleged in this case.

The Alleged Facts

3. On 11 May 2022 at Sunbury Road, Sunbury, you drove a heavy vehicle without ensuring that the vehicle, its components and load complied with the prescribed mass limits of its drive axle, contrary to section 96(1) of the HVNL.
4. The heavy vehicle was loaded with dirt. The permitted drive axle mass was 9,000 kg.
5. The drive axle mass was weighed at 11,350 kg. Taking into account the applicable mass adjustment of 500 kg, the drive axle's alleged mass was 10,850 kg, an excess mass of 1,850 kg. This is 120.56% of the prescribed mass limit. The contravention of the mass requirement resulted in a severe risk breach.
6. The Regulator commenced a prosecution against you alleging the contravention. The maximum penalty available for the offence is \$11,490.

¹ Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 23/12/2022.

The Proposed Enforceable Undertaking

7. The EU proposal received from you comprises two (2) initiatives to be completed within 12 months of the date of the Regulator's acceptance of the EU and would amount to a total cost of \$2,200. The EU also comprises one (1) rectification with a cost of \$870.

Activities

- (1) Activity 1 – you will undertake a comprehensive training course developed by an established training provider.
- (2) Activity 2 – you will undertake to develop, with the assistance of the established training provider, a simple mass limits guide for smaller rigid body trucks and typical truck and dog trailer combinations which generally operate in the demolition, civil construction and landscaping sectors.

Rectification

- (1) You have installed a weight indicator on the vehicle's rear axle to monitor payload.

II. Criteria to be applied

8. In arriving at my decision, I have evaluated the EU proposal against the 10 evaluation criteria in Section 4 of the EU Guidelines namely: (1) the nature and extent of the omission alleged; (2) the Promisor's compliance history; (3) whether the EU proposal delivers benefits to the public beyond the Promisor's compliance with the law; (4) the quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety; (5) the likely improvements in safety within the Promisor's business or operations; (6) the Promisor's ability, including financial ability, to meet the terms of the EU proposal; (7) the significance of the commitment compared to the capability of the Promisor; (8) the support the Promisor has provided and has committed to providing into the future to an injured or affected person(s); (9) input from injured and affected persons; (10) the likely outcome should the matter be dealt with through legal proceedings; and (11) reports or assessments of investigating or prosecuting agencies who have conduct of the matter.
9. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and your compliance history. I have considered that the allegation relates to a single incident on a single day.
10. I acknowledge that prior to these allegations, I am not aware of any convictions for compliance breaches of the HVNL or any breaches of related safety duties by you.
11. With regards to criteria (3), (4) and (5), I acknowledge and have considered that the EU proposal initiatives may benefit the public beyond the compliance of the law, are of good strategic quality, have potential to make noticeable positive change in the transport industry in terms of implementation of safety measures, and are likely to improve your transport operations.
12. With regards to criteria (6) and (7), I acknowledge that you have the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to your capability.

13. With regards to criteria (8) and (9), concerning the EU proposal's support of injured or affected person(s) and input from injured and affected persons, I have found these factors are not a relevant consideration, bearing in mind the specific facts of this matter.
14. With regards to criteria (10) and (11), concerning the likely outcome should this matter be dealt with through legal proceedings and the views of investigating and prosecuting agencies, I have similarly taken these matters into account.

III. Conclusion

15. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution.
16. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against you will be withdrawn.

Yours sincerely



Sal Petrocchio
Chief Executive Officer