

24 January 2025

[REDACTED]

[REDACTED]

By email only: [REDACTED]

RE: Austral Masonry (Qld) Pty Ltd Enforceable Undertaking proposal

Dear [REDACTED]

Heavy Vehicle National Law

Part 10.1 – Enforceable Undertakings

REASONS FOR DECISION

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 Austral Masonry (Qld) Pty Ltd (the EU proposal) pursuant to Part 10.1A of the HVNL.
2. I have considered the EU proposal and assessed it against the National Heavy Vehicle Regulator's (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 contravention alleged in this case.

The Alleged Facts

3. On 23 August 2024, authorised officers of the NHVR observed a heavy vehicle, namely a white Volvo FM13 Flat top truck, bearing registration number [REDACTED] ("the vehicle") travelling on the Pacific Motorway, NSW. Upon inspection of the heavy vehicle, the NHVR identified the following breach:

3.1 Not complying with dimension requirements (severe risk), namely, the vehicle and its load was 2.69m wide when only allowed to be 2.5m wide.

4. On 29 October 2024, the NHVR commenced the prosecution against Austral Masonry (Qld) Pty Ltd for the following alleged breach:

4.1 'not comply with dimension requirements – severe risk'.

The maximum penalty available for the offence is \$66,550.

The Proposed Enforceable Undertaking

5. The EU proposal comprises four initiatives to be completed within 12 months:

- (a) Register of vehicle dimension's compliance with HVNL requirements for all company trucks and trailers – \$0 – Internal resources will be utilised for completion of the activity.
- (b) Addition of dimension check to "Daily Pre-Start Vehicle Check" supported with training – \$5,000.
- (c) Additional engineering controls to reduce the width of truck-mounted forklifts – \$19,520.
- (d) Establishment of software to automate driver dimension confirmation and on-site Weighbridge – \$108,000 with an ongoing cost of \$2,500 per annum.

6. The total cost of the initiatives in the EU proposal is \$132,520.

Criteria to be applied

7. In arriving at my decision, I have evaluated the EU proposal against the eleven (11) 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.
 - (11) Reports or assessments of investigating or prosecuting agencies who have conduct of the matter.
8. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Austral Masonry (Qld) Pty Ltd's compliance history. Prior to these allegations, there have been no convictions or breaches of the HVNL that I am aware of.
 9. With regards to criteria (3) and (4), I have considered that the EU proposal initiatives benefit the public beyond the compliance of the law, are of good strategic quality, and have potential to make noticeable positive change in the transport industry in terms of implementation of safety measures.
 10. With regards to criteria (5), I acknowledge the proposal initiatives are likely to improve Austral Masonry (Qld) Pty Ltd's transport operations.
 11. With regards to criteria (6), I acknowledge that Austral Masonry (Qld) Pty Ltd has the ability to meet the terms of the EU proposal.
 12. With regards to criteria (7), I have considered that Austral Masonry (Qld) Pty Ltd has taken into account the significance of the EU commitment, compared to their capability.
 13. With regards to criteria (8) and (9), concerning the EU proposal's support of injured or affected persons 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 taken these matters into account.
 15. I also reasonably believe that Austral Masonry (Qld) Pty Ltd's undertaking will ensure it will comply with the HVNL.

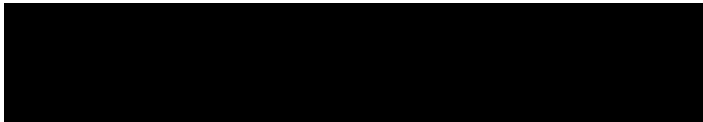
Reports or assessments of investigating or prosecuting agencies

16. A representative of the Monitoring Compliance team has reviewed and assessed the EU proposal as being monitorable.

Conclusion

17. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Austral Masonry (Qld) Pty Ltd will be withdrawn.

Yours sincerely



Paul Alsbury
Executive Director
Statutory Compliance