

19 August 2022

Our Reference: 4601

Origin Energy Services Limited



To the proper officer

Heavy Vehicle National Law
Part 10.1A – 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 (“**the EU proposal**”) by Origin Energy Services Limited (“**OESL**”)¹ pursuant to Part 10.1A of the HVNL. 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

2. At all material times, OESL was the registered operator and the employer of drivers of heavy vehicles.
3. On 25 January 2022, an authorised officer of Transport for New South Wales, being an authorised officer for the purposes of the HVNL, issued a third and final request in writing to OESL as a responsible person for a heavy vehicle to provide the name and home address of the driver of a particular heavy vehicle at a specified date and time.
4. The request required OESL to provide that information by 8 February 2022 and no response was received.

¹ OESL, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 19 August 2022.

The Proposed Enforceable Undertaking

5. The EU proposal from OESL is comprised of two (2) initiatives that are to be completed within 12 months of the acceptance of the proposal. The EU proposal outlines a total estimated cost of \$380,000.
6. The two initiatives can be summarised as follows:
 - a. OESL is to develop a standard driver consequence management framework across all of Origin Energy's business units to monitor and improve driver behaviour and safety; and
 - b. OESL will sponsor the Australian Institute of Health and Safety to deliver heavy vehicle safety forums to health and safety professionals across Australia.

II. Criteria to be applied

7. In arriving at my decision I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU Guidelines namely: (1) the nature and extent of the omission alleged; (2) the person's compliance history; (3) whether the EU 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 person's ability, including financial ability, to meet the terms of the EU; (7) the significance of the commitment compared to the capability of the person; (8) the support the person 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.
8. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and OESL's compliance history.
9. I acknowledge that I am not aware of any convictions for compliance breaches of the HVNL by OESL prior to these allegations.
10. With regards to criteria (3), (4) and (5), I acknowledge and have considered that the proposed EU initiatives may benefit the public beyond the compliance of the law, are of good strategic quality, have potential to make some noticeable positive change in the transport industry in terms of implementation of safety measures, and are likely to improve OESL's business operations.
11. With regards to criteria (6) and (7), I acknowledge that OESL has the ability to meet the terms of the EU and have taken into account the significance of the EU commitment, compared to its capability.
12. With regards to criteria (8) and (9), concerning the EU's support to 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.

13. 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 in coming to my decision.

III. Conclusion

14. Considering all of the criteria, I am of the opinion that the nature and extent of the omission alleged against OESL warrant the acceptance of the proposed EU.
15. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against OESL will be withdrawn.

Yours sincerely



Sal Petrocitto

Chief Executive Officer