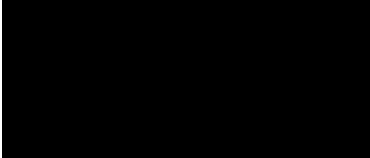


7 November 2022
Our Reference: 3303



To the proper officers,

Heavy Vehicle National Law
Part 10.1A – 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 (“the EU proposal”) by StrathAyr Pty Ltd (“StrathAyr”) under 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 contravention alleged in this case.

The Alleged Facts

2. It is alleged that on 13 July 2021 StrathAyr permitted an employee to drive a heavy vehicle combination that did not comply with the mass requirements applicable to the heavy vehicle combination, contrary to section 96 of the HVNL.
3. The heavy vehicle combination was loaded with 17 pallets of grass/turf. The permitted tri-axle trailer group mass, for the trailer that formed part of the heavy vehicle combination, was 20,000kg.
4. The tri-axle mass weighed 26,940kg. Taking into account the applicable mass adjustment of 500kg, the tri-axle’s alleged mass was 26,440kg, an excess mass of 6,440kg. This is 132% of the prescribed mass limit. The contravention of the mass requirement resulted in a severe risk breach.

5. The NHVR commenced a prosecution against StrathAyr alleging the contravention. The maximum penalty available for the offence is \$91,650.

The Proposed Enforceable Undertaking

6. The EU comprises four initiatives and two rectifications.
7. The initiatives comprise:
 - a. StrathAyr will undertake comprehensive training with an accredited training provider.
 - b. StrathAyr will submit an article to leading turf and landscaping trade associations for publication.
 - c. StrathAyr will implement a Comprehensive Safety Management System.
 - d. StrathAyr will apply for entry into the National Heavy Vehicle Accreditation Scheme.
8. The initiatives are planned to commence at various timeframes upon the acceptance of the EU and all activities are to be completed within 12 months if accepted. The total estimated cost of the activities is **\$21,000**.
9. The rectifications comprise:
 - a. Installed Electronic Scales on each delivery truck;
 - b. Enhanced and Refined Integrated Logistics Platform.
10. The rectifications have already been made at a total cost of **\$29,600**.

Criteria to be Applied

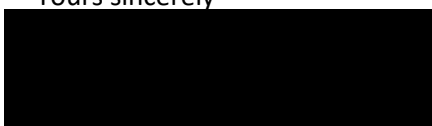
11. In arriving at my decision I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU Guidelines namely : (1) the nature and extent of the omission alleged; (2) the person's compliance history; (3) whether the EU delivers benefits to the public beyond the Promisor's 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.

12. With regards to criteria (1) and (2), I have considered the nature and extent of the omission alleged and StrathAyr's compliance history. I have considered that the allegation relates to a single incident on a single day. I also acknowledge that prior to these allegations, I am not aware of any convictions for compliance breaches of the HVNL or related breaches of safety activities by StrathAyr.
13. With regards to criteria (3), (4), (5), (6), and (7) I acknowledge and have considered that the proposed EU initiatives 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 StrathAyr's business operations. I also acknowledge that StrathAyr has the ability to meet the terms of the EU and have taken into account the significance of the EU commitment, including their prior rectifications, compared to their capability - concluding that it is a significant commitment by StrathAyr.
14. 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.
15. 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.

Conclusion

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

Yours sincerely



Belinda Hughes
A/Executive Director Statutory Compliance