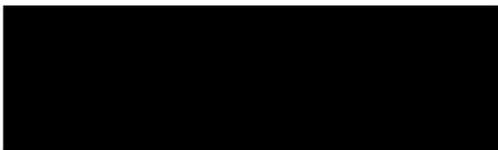


27 June 2022
Our Reference: 3096



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 (“EU”) 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 Civilscape Contracting Tasmania Pty Ltd (“CCT”) are appropriate enforcement options in regard to the relevant contravention.

Background to the application

2. It is agreed that on 11 February 2021 at Howth, in the State of Tasmania, CCT was the operator responsible for a heavy vehicle combination that failed to comply with the mass requirements applying to the vehicle, contrary to section 96(1) of the HVNL.
3. On this date, CCT permitted another person, namely employee [REDACTED] to drive a heavy vehicle combination, namely an Isuzu heavy rigid tipper [REDACTED] towing a triaxle ‘tag’ trailer [REDACTED] (“the vehicle”) loaded with an excavator, on a road. The vehicle was intercepted while driving on the Bass Highway in Howth and was identified as having failed to comply with the applicable mass requirements. The mass of the triaxle tag trailer was greater than the sum of the mass of all the axles on the heavy rigid tipper that was towing the trailer, contrary to section 96(1) of the HVNL and Schedule 1 Part 1 Clause 2(4A) of the Heavy Vehicle (Mass Dimension and Loading) National Regulation.
4. The triaxle tag trailer’s permitted mass was 14.82 tonnes. The alleged mass of the trailer was 17.88 tonnes, an excess of 3.06 tonnes. The trailer was loaded at 120% of its permitted mass, categorised as a severe risk breach.
5. On 11 October 2021, the National Heavy Vehicle Regulator (“NHVR”) commenced a prosecution against CCT alleging the above contravention. The maximum penalty for the offence alleged is \$56,950.

6. On 20 May 2022, CCT wrote to the NHVR proposing an EU for the alleged contravention.
7. I have assessed the proposal submitted against NHVR Policy – *Enforceable Undertakings* (“the policy”) and NHVR Guideline – *Proposing an Enforceable Undertaking* (“the guidelines”).
8. In assessing the proposal per Section 4 of the guidelines I have considered the following factors:

The nature and extent of the act or omission alleged

9. The heavy vehicle combination being used by CCT at the time of the offence consisted of a rigid tipper and a triaxle ‘tag’ trailer. The contravention resulted in a severe risk breach.
10. There was no manifestation of the risk in this instance.

The person’s compliance history

11. Since commencing operations in Australia in 2005, CCT 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 EU; or
 - d. Any other offence involving the death, serious injury or illness of any person involved in CCT business or undertaking.

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

12. CCT has proposed a number of commitments, namely to:
 - a. Ensure that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent a recurrence;
 - b. Implement ongoing effective management of public risks associated with transport activities within its business operations;
 - c. Implement ongoing continuous improvement in how it manages risks associated with its business operations;
 - d. Disseminate information about the EU to employees, contractors and sub-contractors within the chain of responsibility of CCT business operations;
 - e. Participate constructively in all compliance monitoring activities of the EU; and

- f. Ensure that any promotion of a benefit arising from the EU will link the benefit to the EU, confirming that the EU was entered into as a result of the alleged contravention.
- 13. CCT completed four (4) rectifications prior to the application for an EU.
- 14. These rectifications demonstrate CCT’s commitment to ensuring it has developed systems that identify, assess and control risks and that these systems are designed to promote continual improvement as a result of the alleged contravention.
- 15. The rectifications comprise:

Description of rectification	Cost
Consultation with management, administration and operators around mass dimension and loading requirements	\$1,200
Commenced weighing of trucks, machinery, trailers and floats and compiling of records	\$650
Making concrete blocks suitable to travel in the back of trucks when floating machinery to ensure loads are compliant	\$2,200
Photographing and compiling records of machinery tied down on floats as reference points for compliance	\$1,000

- 16. **The total cost of the rectifications was \$5,050.**
- 17. CCT has committed to undertaking four (4) initiatives:

Initiative 1

- 18. CCT undertakes to organise, present, and record a one (1) hour webinar for the ‘Tasmanians in Transport’ Facebook page members. This Facebook page has approximately 4,600 members and the presentation will be supported by social media campaign advertising.
- 19. The webinar would feature CCT Director [REDACTED] together with Legal Counsel, discussing their dealings and experience with the NHVR as well as relevant laws surrounding heavy vehicles with the aim of ensuring that the industry in Tasmania understands the need for full compliance with weight mass requirements.

20. The webinar will be recorded by CCT and will be freely available via the *Tasmanians in Transport* Facebook page so that those who cannot attend are still able to view and access the webinar content.
21. This initiative will be completed within three (3) months of the signing of the EU.
22. **This initiative has an estimated cost of \$1,500.**

Initiative 2

23. CCT undertakes to organise a training program for all CCT staff members to be facilitated and presented by Australian Onsite Training.
24. Australian Onsite Training is nationally accredited in load and mass training and will conduct a real time training session with CCT staff. CCT will follow the recommendations of Australian Onsite Training and staff will undertake the TLID0015 – Load & unload goods/cargo training.
25. The real time training will run for approximately four (4) hours and a nationally accredited statement of attainment will be provided to CCT upon completion.
26. This initiative will be completed within six (6) months of the signing of the EU.
27. **This initiative has an estimated cost of \$3,180.**

Initiative 3

28. CCT undertake to immediately implement and monitor a system that allows CCT drivers and management to ensure that all trucks and trailers are fully compliant with mass specifications prior to travel.
29. CCT undertakes to audit the implementation of this system to ensure that the new training and weight documents are effective.
30. CCT has now registered with its local weighbridge and will weigh all trucks, machinery floats and trailers in their possession. CCT will compile all recorded weights into a user-friendly document to be kept in all trucks and will show a breakdown of weight distributions for all possible combinations within their fleet.
31. An external organisation will be used to audit the new documentation after six (6) months of implementation and then on a regular basis after this initial audit.
32. This initiative will be completed immediately upon the signing of the EU, with ongoing audit activities.
33. **This initiative has an estimated initial cost of \$10,145.**

34. Audit activities are expected to be ongoing at a cost of \$4,000-\$5,000 per audit.

Initiative 4

35. CCT undertakes to make a donation to Motor Neuron Disease Association of Tasmania.

36. This initiative will be completed within one (1) month of the signing of the EU.

37. **This initiative has an estimated initial cost of \$1,000.**

Total of all four (4) initiatives

38. The initiatives will commence at various timeframes upon acceptance of the EU and all activities will be completed within 12 months of acceptance, **with a total estimated cost of \$15,825.**

The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety

39. The strategies proposed are of high quality and draw on the expertise of accredited training providers, legal counsel and external auditing companies.

40. 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. CCT'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 the 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

41. Education that results in less contravention will lead to safer heavy vehicles on the road and less impact on road infrastructure.

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

42. CCT has set a realistic timeframe for the implementation of the EU, with completion within 12 months.

43. CCT 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

44. I have taken into consideration the fact that, through the proposed strategies, CCT has demonstrated an understanding of the importance of safety in transport operations.
45. The resources and projects proposed, to ensure that both CCT's and the transport industry's processes and procedures are improved, are of great value to the industry and are commensurate to CCT's capability.

The support the person has provided has committed to providing into the future to an injured or affected person

46. Not applicable.

Input from injured and affected persons

47. Not applicable.

Reason for Decision

I have considered the merits of continuing the Prosecution against CCT 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 EU proposed by CCT is an appropriate enforcement option which will meet community expectations.

48. I conclude that the EU 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 CCT and to the wider transport industry. Four activities will be undertaken in order to deliver benefits to CCT's drivers, other parties in the chain of responsibility, and the broader community.
 - b. The activities and benefits proposed would not have been achieved by prosecution alone. Upon a conviction, a financial penalty would have been imposed on CCT. This would not have had the same direct impact on promoting safety awareness in the industry as the strategies outlined in the EU.
 - c. The EU proposes material and tangible changes that can lead to the broader industry taking greater steps to address fitness for duty in drivers.
 - d. Education, systems and training will lead to fewer contraventions of the HVNL, improve the safety of our public roads and reduce the impact to road infrastructure.

e. The activities proposed are likely to achieve measurable improvements in the heavy vehicle transport industry, in CCT, in the wider supply chain, as well as in the communities in which CCT operates.

49. Pursuant to section 590A of the HVNL, it is my decision to accept the EU CCT offered on 20 May 2022.

50. CCT is required to send all supporting documentation in relation to this EU to monitoring.compliance@nhvr.gov.au.

Yours sincerely,



Sal Petrocchio

Chief Executive Officer