



Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

The commitments in this enforceable undertaking are offered
to the National Heavy Vehicle Regulator

By

Downer EDI Works Pty Ltd

ABN: 66 008709 608

Part 1 Executive summary

Section 1 Agreed actions

1. Downer EDI Works Pty Ltd has agreed to implement 3 broad and proactive activities focused on improving compliance with mass requirements and improving driver competency across the transport industry.
2. Activity 1 involves:
 - a. The creation of a new “Compliance Manager” role for heavy vehicle activities within the National Roads Business of Downer Group; and
 - b. A Comprehensive Knowledge Review of chain of responsibility obligations and the *Heavy Vehicle National Law (HVNL)* requirements to be undertaken by the new Compliance Manager.
3. For Activity 2, Downer Group will undertake a review of its existing training processes for chain of responsibility and the HVNL, and consult, design and implement improvements to its existing suite of HVNL content.
4. For Activity 3, Downer Group will support the development of a new chapter on Chain of Responsibility to be published as part of the OHS Body of Knowledge publication. This chapter will address the risks associated with safe heavy vehicle activities, and will include information regarding the interaction of the HVNL with work, health and safety (WHS) legislation. Downer will collaborate with the Australian Institute of Health and Safety and OHS Body of Knowledge organisation to develop the Chapter and facilitate its dissemination as a resource for WHS professionals within the broader transport community.
5. The full details of these activities are set out below.

Section 2 Total cost of actions

6. The estimated total value of the undertaking \$275,000.
7. The cost to conduct Activity 1 is estimated to be: \$200,000.
8. The cost to conduct Activity 2 is estimated to be: \$50,000.
9. The cost to conduct Activity 3 is estimated to be: \$25,000.

Part 2 General information

Section 1 Purpose

10. The purpose of this enforceable undertaking is to document the undertakings offered to the National Heavy Vehicle Regulator (NHVR) pursuant to Chapter 10.1A of the HVNL in connection with a matter relating to an alleged contravention of the HVNL.

Section 2 Details

11. The commitments in this enforceable undertaking are offered to the NHVR by Downer EDI Works Pty Ltd, which is part of the Downer Group.
12. This enforceable undertaking is given on the day and date that it is accepted and signed by the NHVR. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the parties from

the date it is given.

Details of the person proposing the undertaking:

Registered address:	[REDACTED]
Postal address:	As above
Telephone:	[REDACTED]
Email address:	[REDACTED]
Legal structure:	Australian Proprietary Company, Limited by Shares
Type of business:	Road Surfacing
Commencement of entity:	2007
Number of workers:	2036
Products and/or services:	Bituminous products and aggregate for micro surfacing roads

Details of the alleged contravention

13. It is alleged by the National Heavy Vehicle Regulator (NHVR) that on 12 October 2020, Downer EDI Works Pty Ltd failed to comply with the mass requirements as required by section 96(1)(c) of the HVNL.

Details of the events surrounding the alleged contravention

14. The NHVR alleges that on 12 October 2020 at Merbein South Weighbridge, Victoria, a NSW registered heavy vehicle operated by Downer EDI Works Pty Ltd, namely a white Scania prime mover [REDACTED] with trailer [REDACTED] was weighed and the tri-axle mass of the vehicle was 24,040kg, exceeding the prescribed mass limit of 20,000kg by an excess mass of 4,040kg or 120.2%, constituting a severe risk breach.

The details of any injury or financial loss that arose from the alleged contravention

15. There were no injuries or financial loss that arose as a result of the alleged contravention.

The details of any notices issued that relate to the alleged contravention

16. Downer EDI Works Pty Ltd received a Charge Sheet and Summons dated 14 October 2021 in respect of the alleged contravention, in relation to a hearing before the Magistrate's Court of Victoria at Mildura.

The details of any existing transport safety management systems at the workplace including the level of auditing currently undertaken

17. Downer Group has a comprehensive and integrated risk management framework. Downer Group's approach to risk management includes the identification, analysis and management of critical risks involved in our activities. The critical controls required by a particular work activity are included in the procedures or standards associated with the activity. As a result of this approach, the controls associated with the management of heavy vehicles are identified and communicated through the information associated with the relevant work activity. Information is retained in, and accessed through our integrated management system, known internally as The Downer Standard.
18. The Zero Harm management system includes:
- Health and Safety Policy and Fitness for Work Policy;
 - HVNL and Chain of Responsibility Guide providing information on HVNL legislative requirements;
 - Training and Competency Management Standard;
 - Observation and Inspection procedures;
 - Incident Management Procedure;
 - contractor management, including consideration of heavy vehicle activities and legal requirements, which were externally reviewed in relation to Downer EDI Ltd in March 2020;
 - Guidance for Transport Operations, loading management, and meeting vehicle mass requirements;

- h. requirements for Loading and Unloading, including load security and delays;
 - i. Fatigue Management including requirements for heavy vehicles;
 - j. the incorporation of specific provisions into contracts relating to heavy vehicle activity and heavy vehicle legal requirements; and
 - k. incidents related to heavy vehicles are identified in Downer's Incident Management Database.
17. The National Roads Business consists of a fleet of over 350 heavy vehicles, 2036 staff and 2000 contractors. The National Roads Business:
- a. has invested in safety management technology, including GPS tracking;
 - b. undertakes fatigue, speed and driver diary audits;
 - c. has designated appropriate responsibility with business unit managers and general managers for HVNL compliance, where applicable in their business;
 - d. provides training for drivers, loaders, schedulers and contractors concerning their responsibilities;
 - e. is renewing its fleet to introduce electronic-controlled weight systems and air bag mass management systems to provide operators with an immediate indication of vehicle weight. Twelve newly acquired prime movers include electronic-controlled weight systems and four additional prime movers will be purchased by the end of financial year 2022/2023. Air bag mass management systems are included on three trailers, with an additional five to be progressively implemented;
 - f. is subject to regular management system audits, with the last inspection on 1 February 2022; and
 - g. is audited periodically by Downer Group's audit and risk function which reports directly to the Board.

Any consultation undertaken within the company regarding the proposal of an EU

- 18. Consultation has been undertaken regarding the proposal of this EU with key management personnel both within the National Roads Business and the Downer Group, including the Downer EDI Works Pty Ltd Board.
- 19. The strategies and deliverables proposed in this EU were designed with input from these stakeholders to ensure the activities proposed generate maximum benefit and impact across the whole Downer Group, including its drivers and supervisory staff, contractors, and the transport industry more broadly.

Section 3 Statements

Statement of assurance

- 20. Downer EDI Works Pty Ltd confirms that it is committed to complying with its obligations under the NHVL, particularly the mass requirements, and so far as is reasonably practicable, the health and safety of all workers and others that have the potential to be impacted by its business or undertakings.

Statement of regret

- 21. Downer EDI Works Pty Ltd regrets that the incident on 12 October 2020 subject of the alleged contravention occurred.

Statement of ability to comply

- 22. Downer EDI Works Pty Ltd confirms that it has the financial and operational capacity to comply with the terms of this enforceable undertaking.

Statement granting permission to use

- 23. Downer EDI Works Pty Ltd grants the NHVR permission to use any documents, policies and procedures developed as a result of this enforceable undertaking for the purpose of training and development by the NHVR.

Statement of prior undertakings

- 24. Downer EDI Works Pty Ltd has not been the subject of an undertaking from any other statutory body in Victoria or nationally.

Section 4 Acknowledgement

25. Downer EDI Works Pty Ltd acknowledges that the NHVR alleges that it has contravened section 96(1)(c) of the HVNL.
26. The alleged contravention is taken very seriously by Downer Group, its Board and Senior Management, who are committed to providing a safe workplace. Downer Group is committed to undertaking its operations in compliance with the HVNL in a way that helps promote road safety and protects the communities in which it operates.

Section 5 Details of Injury or Illness

Types of workers compensation provided (if the injured person is a worker of the person)

27. Not applicable. No injuries were sustained to workers as a result of the alleged contravention.

Support provided, and proposed to be provided, to the injured person to overcome injury/illness

28. Not applicable. No injuries were sustained to workers as a result of the alleged contravention.

Section 6 Rectifications made

29. Downer Group is committed to ensuring it has developed systems that identify, assess and control risks and are designed to promote continual improvement and as a result of the alleged contravention, the following opportunities for enhancement of processes have been undertaken:

Description	\$ Amount
Downer EDI Works Pty Ltd has installed on-board electronic weigh scales on all vehicles (4 loader vehicles in total) used for mobile field-based surfacing activities. All vehicles in the [REDACTED] [REDACTED] (4 loader vehicles in total) have had scales fitted to wheel loaders used for the roadside loading of aggregates.	\$200,000
All employees, including senior field staff and regular loader drivers in the [REDACTED] will be trained to use loader weigh scales.	\$10,000
Downer EDI Works Pty Ltd has enrolled all employees engaged in mobile field-based surfacing activities in internal online HVNL training packages on Chain of Responsibility, Load Mass and dimension, Risk Management, Speed and Fatigue.	\$25,000
All vehicles in mobile field-based surfacing activities have been placarded with legal load limits by axle groupings. Downer EDI Works Pty Ltd has ascertained tare weight and payload legal limits in gross and per axle loading for all vehicles and updated its records.	\$10,000
Total cost p.a.	\$245,000

Section 7 Acknowledgement of publication

30. Downer EDI Works Pty Ltd acknowledges that the enforceable undertaking will be published on the NHVR's internet site and may be referenced in the NHVR's publications.

Part 3 Enforceable terms

Section 1 Commitments

Commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

31. Downer EDI Works Pty Ltd is committed to preventing the behaviour that led to the alleged contravention and will take all reasonably practicable steps to prevent recurrence.

Commitment to the ongoing effective management of public risk associated with transport activities

32. Downer EDI Works Pty Ltd is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
33. Downer EDI Works Pty Ltd has a commitment to ongoing continuous improvement in how it manages risks associated with its business operations, including the review of new technology as it is introduced.

Commitment to disseminate information about the EU to workers and other relevant parties in the chain of responsibility

34. Downer EDI Works Pty Ltd is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including senior and operational management, health and safety management, Health and Safety Committees and Health and Safety Representatives, trainers, workers, and all relevant contractors and subcontractors working for Downer EDI Works Pty Ltd. This information will be disseminated through:
 - a. briefing to the Board and Senior Management;
 - b. public disclosure in the Downer Sustainability Report as part of disclosure of convictions, enforceable undertakings and penalties; and
 - c. briefing key management personnel to ensure commitment to participating constructively in all compliance monitoring activities of the EU.
35. Downer EDI Works Pty Ltd is committed to participating constructively in all compliance monitoring activities of the EU.
36. Downer EDI Works Pty Ltd acknowledges that responsibility for demonstrating compliance with the undertaking rests with Downer EDI Works Pty Ltd and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
37. It is acknowledged that the NHVR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to the NHVR including providing details of activities conducted for industry and community benefit.

Commitment that any promotion of a benefit arising from the EU will clearly link the benefit to the undertaking and make it clear that the undertaking was entered into as a result of an alleged contravention

38. Downer EDI Works Pty Ltd is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking, particularly any benefit to Downer Group as a whole, will clearly link the benefit to the undertaking and that the undertaking was entered into as a result of the alleged contravention.

Section 2 Strategies that will deliver benefits

Benefits to drivers and parties within the chain of responsibility

39. As part of this enforceable undertaking, Downer EDI Works Pty Ltd aims to deliver strategies that focus on benefits to:
 - a. drivers, loaders, schedulers, packers and other parties within the chain of responsibility within the National Roads Business of Downer Group;
 - b. Downer Group as a whole; and
 - c. the transport industry and the broader community.
40. Downer EDI Works Pty Ltd intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness among the National Roads Business workforce, and all parties within the chain of responsibility, of the importance of complying with chain of responsibility obligations and HVNL requirements.

Activities

Activity 1 – Employment of Compliance Manager and Comprehensive Knowledge Review

Scope

Downer Group will employ a suitably qualified and experienced compliance professional in the position of “Compliance Manager” within the National Roads Business to undertake a Comprehensive Knowledge Review of the current knowledge of chain of responsibility obligations and HVNL requirements within the National Roads Business, and to implement strategies that improve that knowledge in order to ensure compliance with the HVNL.

Details

43. The role of the Compliance Manager will be to provide knowledge and support to all relevant persons in transport operations on relevant statutory compliance requirements and industry good practice. The key responsibilities of the role will be to:
 - a. ensure that all Downer Group policies, standards, procedures adhere to the HVNL and relevant road legislation;
 - b. monitor, design, develop and review all procedures, policies and systems to ensure compliance with the HVNL requirements and industry good practice;
 - c. provide technical support and HVNL expertise to all areas of the business;
 - d. liaise with regulatory authorities including the NHVR and relevant work, health and safety authorities on behalf of the Downer Group;
 - e. monitor and conduct compliance audits of company systems to identify gaps and implement solutions;
 - f. facilitate internal/external audits with internal customers and regulators;
 - g. ensure transport emergency response plans are in place and tested;
 - h. assist with accident/breach investigations to determine root cause, facilitate remediation and identify preventative actions; and
 - i. oversee all aspects of compliance training.
44. The Compliance Manager will undertake a Comprehensive Knowledge Review of chain of responsibility and HVNL requirements in the National Roads Business, which will include:
 - a. review of allocation of responsibility for HVNL compliance to identify any gaps and improvements, including updates to position descriptions of key personnel;
 - b. review of knowledge across the National Roads Business of policies, practices and tools enabling chain of responsibility and HVNL compliance, including key policies, systems for vehicle checks and reporting mechanisms, systems for audits, observations and issues raised, vehicle monitoring systems including pre-start checks and GPS tracking, and vehicle control and management systems;
 - c. identify gaps and areas for improvements and propose recommendations in accordance with industry best practice; and

Activity 1 – Employment of Compliance Manager and Comprehensive Knowledge Review

- d. highlight opportunities for lessons to be replicated outside of the National Roads Business, and ensure opportunities for improvement are shared across Downer Group.
- 45. The National Roads Business:
 - a. will ensure the new role is appropriately resourced and the relevant parts of the organisation are involved in the Comprehensive Knowledge Review;
 - b. is wholly committed to making changes to improve its practices, and where reasonably practicable in the context of Downer Group’s transport activities, will implement any recommendations made to promote best practice arising from the Comprehensive Knowledge Review; and
 - c. undertake a progress audit to ensure the progressive implementation of any changes made to policies, procedures and practices arising from the above knowledge review, and provide that audit to the NHVR.

a. Timeframe

Compliance manager employed within two months of the EU commencing.

Review undertaken within five months of the EU commencing.

Audit on implementation progress within eleven months of the EU commencing.

Outcome

The new Compliance Manager role will ensure the National Roads Business has an experienced expert dedicated to ensuring Downer Group’s policies, procedures and practice are up to date and fully reflect compliance with the HVNL. The results of the Comprehensive Knowledge Review will begin an ongoing process of implementing improvements to Downer Group’s policies and procedures to ensure full compliance with the HVNL and chain of responsibility requirements and the adoption of industry best practice.

Costs

The salary for the role of Compliance Manager will be **\$200,000** per annum.

Output

As described above.

Activity 2 – Review of Training Processes and upgraded HVNL Document Suite

Scope

The National Roads Business will undertake a review of its existing training processes on chain of responsibility obligations and HVNL requirements within the National Roads Business and make necessary improvements.

Details

- 46. The National Roads Business will undertake a review of its existing training processes on chain of responsibility obligations and HVNL requirements within the National Roads Business and make necessary improvements, which will include:
 - a. review of the content of training packages against regulatory requirements to highlight any gaps and ensure the content is comprehensive and up to date;
 - b. review of the effectiveness of education and training for chain of responsibility and HVNL compliance, including degree of uptake, reporting systems and efficacy of training, and evaluations by staff;
 - c. comprehensively review non-compliances, breaches and incident reporting to identify any recurring themes to be addressed by training improvements;
 - d. review the effectiveness of training to relevant personnel in the chain of responsibility, including employees, contractors, sub-contractors and suppliers;
 - e. consultation, design and implementation any improvements identified in the review to Downer Group’s existing Document Suite of HVNL content where relevant; and

Activity 2 – Review of Training Processes and upgraded HVNL Document Suite

- f. consideration to how the improvements may be applied across the Downer Group, and to external service delivery partners.

Timeframe

Review undertaken within six months of the EU commencing.
 Upgrades to HVNL Document Suite made within eight months of the EU commencing.

Outcome

The Review will ensure the training processes within the National Roads Business are comprehensive and up to date with the aim of improving the safety and wellbeing of all parties within the chain of responsibility, therefore minimising risks to the community.

Costs

\$50,000

Output

As described above.

Activity 3 – Development of OHS Body of Knowledge Chapter

Scope

For the purposes of benefitting the broader community and supporting the understanding and management of safe heavy vehicle operations, Downer Group will support the development of chapter in the OHS Body of Knowledge publication on Chain of Responsibility. This chapter will address the risks associated with safe heavy vehicle operation, and the interaction of the HVNL with WHS legislation. Downer will collaborate with the Australian Institute of Health and Safety (AIHS) and OHS BoK organisation (OHS BoK) to develop the Chapter and facilitate its dissemination as a resource for WHS professionals within the broader transport community.

Details

46. For the purposes of benefitting the broader community, Downer Group will develop a new Chain of Responsibility Chapter to be published as part of the OHS Body of Knowledge publication concerning the risks associated with safe heavy vehicle operation, and the interaction of the HVNL with WHS legislation.
47. The AIHS produces the OHS Body of Knowledge publication, which is a freely available written professional resource aimed to improve and support the practice of WHS in all Australian jurisdictions. The publication provides best practice guidelines to WHS professionals, particularly senior leaders who influence WHS practices within their organisations. The publication is owned by the AIHS and is overseen by an expert advisory panel. It is internationally recognised as best practice industry guidance by the International Network of Safety and Health Professional Organisations.
48. Downer will collaborate with the AIHS and the OHS BoK to develop the Chapter and facilitate its dissemination as a professional resource for WHS professionals in the broader transport and heavy vehicle community. The Chapter will benefit WHS professionals in the broader transport community to support a shared understanding of causation and control of work-related risks of injury resulting from HVNL breaches.
49. The Chapter will be a written in pdf format document providing evidenced-based guidance. The content will be developed through a collaborative process involving Downer Group and a technical panel appointed by the AIHS, with the draft chapter tested through industry-based focus groups. Downer will provide the expertise in authoring the Chapter.
50. The intended structure of the Chapter is as follows:
 - a. Introduction;
 - b. Historical perspective (to the approach of supply chain management);
 - c. Extent of the problem/relevance to OHS professionals (addressing why this topic is important in the management of OHS);
 - d. Legislation and regulation;

Activity 3 – Development of OHS Body of Knowledge Chapter

- e. Hazard and risks in the Chain of Responsibility;
 - f. Systems approach to managing Chain of Responsibility risks;
 - g. Implications for practice;
 - h. Summary, references and appendices with further information.
51. The contents of the Chapter will be peer-reviewed, academically referenced and rely on data where relevant. It will be outcome tested by a focus group or technical panel appointed by AIHS and the OHS BoK to ensure it will improve and promote safe heavy vehicle activities in accordance with the Chain of Responsibility.
52. The Chapter will be promoted by the AIHS and the OHS BoK on its platforms, including its website and through its industry and professional development activities. Downer Group will disseminate and promote the Chapter to its relevant senior management, staff and contractors and support its dissemination across the broader industry.

Timeframe

The Chapter is to be developed within twelve months of the EU commencing.

Outcome

The new Chapter of the OHS Body of Knowledge publication will provide a resource to the transport community to facilitate increased competency and understanding of HVNL requirements and their interaction with WHS and integration into existing WHS risk management systems. The Chapter will contribute to increasing the standard of HVNL compliance as well as promoting the broader concept of Chain of Responsibility as a systematic risk management process designed to ensure the safe operation of heavy vehicles amongst the wider transport community.

Costs

\$25,000

Output

As above.

41. The total estimated value of the undertaking is \$300,000.

Part 4 Offer of undertaking

Executed as an Undertaking

Downer EDI Works Pty Ltd ABN: 66 008709 608

Executed by Downer EDI Works Pty Ltd ABN: 66 008709 608 pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director	Signature of Director/Company Secretary
Name of Director (print)	Name of Director/Company Secretary (print)
26 May 2022 Date: Click or tap to enter a date.	Date: Click or tap to enter a date.

Part 5 Acceptance of undertaking

Accepted by the National Heavy Vehicle Regulator pursuant to sections 590A(2) and 661(1)(b) of the Heavy Vehicle National Law by:


Signature of Chief Executive Officer
Sal Petroccitto
Name of Chief Executive Officer (print)
Date: <small>Click or tap to enter a date.</small> 30/6/2022