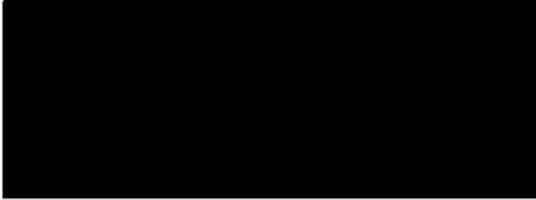


29 August 2022
Our Reference: 3631



To the proper officers

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 D.M. & M.T. NOLAN PTY LTD (“NOLAN”)¹ pursuant to Part 10.1A of the HVNL. I have considered this proposal and assessed it against the National Heavy Vehicle Regulator’s (NHVR) Prosecution Policy (“the policy”), the 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. On 25 October 2021, NOLAN was the operator of a heavy vehicle that failed to comply with the mass requirements applying to the vehicle, contrary to section 96(1)(c) of the HVNL.
3. The vehicle was intercepted while traveling on Boundary Road in Laverton, Victoria, and was identified as having failed to comply with the applicable mass requirements. The vehicle’s steer axle permitted mass was 6.5 tonnes. The alleged mass of the steer axle was 8.44 tonnes, an excess of 1.94 tonnes or 129% of the prescribed mass limit, categorised as a severe risk breach.

¹ D.M. & M.T NOLAN PTY LTD, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 24 August 2022.

4. The NHVR commenced a prosecution against NOLAN alleging the contravention. The maximum penalty available for the offence is \$83,100.

The Proposed Enforceable Undertaking

5. The EU proposal from NOLAN comprises nine (9) initiatives to be completed at various stages, with the final initiative to be completed by June 2023, and would amount to a total estimated cost of \$31,431 (exclusive of ongoing annual cost; the average estimated value of Annual Training is \$3,000).
6. The nine initiatives can be summarised as follows. NOLAN undertake to:
 - a. review all current training materials, questionnaires, and associated documentation in relation to – mass, dimension and load restraint
 - b. provide and display stickers on all vehicles to display tare and gross weights and maximum permitted heights
 - c. identify responsible parties and their roles in relation to mass responsibilities
 - d. consult with all employees about their obligations/responsibilities in relation to Chain of Responsibility and mass
 - e. update documentation associated with mass including but not limited to training manuals, questionnaires, and other training materials
 - f. produce and deliver a series of 5 to 10-minute training videos in relation to mass management
 - g. update the NOLAN website to provide access to the training videos and training materials
 - h. provide retraining to all staff and contractors in mass, dimension and load restraint
 - i. incorporate mass management as a priority matter in all on-going staff training and operational reviews.

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 Guideline 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; 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 NOLAN's compliance history.
9. I acknowledge that prior to these allegations, I am not aware of any convictions for compliance breaches of the HVNL or any breaches of related safety duties by NOLAN.
10. With regards to criteria (3), (4) and (5), I acknowledge and have considered that the EU proposal initiatives may 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 NOLAN's transport operations.
11. With regards to criteria (6) and (7), I acknowledge that NOLAN has the ability to meet the terms of the EU proposal 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 proposal's support of 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 similarly taken these matters into account in coming to my decision.

III. Conclusion

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

Yours sincerely



Sal Petrocchio

Chief Executive Officer