

29 November 2022
Our Reference: 4154

Katoomba Trading Pty Ltd

To the proper officers

Heavy Vehicle National Law
Part 10.1 – 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 by Katoomba Trading Pty Ltd (“Katoomba”) (“the EU proposal”)¹ pursuant to Part 10.1A of the HVNL.
2. I have considered the EU 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

3. On 16 November 2020 at Laverton, in the State of Victoria, Katoomba permitted another person to drive a heavy vehicle without ensuring that the vehicle and its load complied with the prescribed mass limit of its steer axle, contrary to section 96(1) of the HVNL.
4. The prescribed mass limit for the steer axle was 4.40 tonnes. The alleged mass of the steer axle was 5.90 tonnes, exceeding the prescribed mass limit by 1.50 tonnes, or 134% of the prescribed mass limit (a severe risk breach).

¹ Enforceable Undertaking proposed by Katoomba Trading Pty Ltd pursuant to Chapter 10.1A of the HVNL dated 4/10/2022.

5. The NHVR commenced a prosecution against Katoomba alleging the contravention. The maximum penalty available for the offence is \$92,450.

The Proposed Enforceable Undertaking

6. The EU proposal comprises eight (8) initiatives to be completed within 12 months from the date of the NHVR's acceptance of the EU and amounts to a total estimated cost of \$69,785.
7. The eight initiatives can be summarised as follows—Katoomba undertakes to:
 - a. Rectify the processes, equipment and staff conduct that caused the breach leading to the current charge;
 - b. Implement a robust system to monitor workplace safety and train the staff on safety protocols, including mass management;
 - c. Train their staff to comply with the Heavy Vehicle (Mass, Dimension, and Loading) National Regulations (“the Regulations”);
 - d. Implement a Contractor Management Plan to ensure that all the subcontractors will comply with the Regulations;
 - e. Implement a Management System Assurance for internal review to ensure their ongoing compliance with the Regulations;
 - f. Publish the EU and their Chain of Responsibility Manual on their website, Facebook, and Instagram to provide industry awareness to other heavy vehicle operators when determining requirements for axle loads in Victoria;
 - g. Implement a process to monitor the procedures and activities as set out above to ensure that they are running as planned; and
 - h. Engage an external training provider to host a Toolbox Talk at its Dandenong South office for the food industry transport community and share their learning insights from the incident. It will focus on how each attendee can play their part in ensuring compliance and safety of all road users/infrastructure.

Criteria to be applied

8. 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 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.

9. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Katoomba's compliance history.
10. 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 Katoomba.
11. 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 Katoomba's transport operations.
12. With regards to criteria (6) and (7), I acknowledge that Katoomba has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Katoomba's capability.
13. 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.
14. 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

15. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution.

16. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Katoomba will be withdrawn.

Yours sincerely



Sal Petróccitto

Chief Executive Officer