

14 November 2023

Our Reference: [REDACTED]

Mr Darren Manton  
[REDACTED]  
[REDACTED]

By email: [REDACTED]

Dear Mr Manton

**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 (the EU proposal) by Mr Darren Craig Manton pursuant to Part 10.1A of the HVNL.
2. I have considered this proposal and assessed it against the National Heavy Vehicle Regulator (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 contraventions alleged in this case.

**The Alleged Facts**

3. On 15 December 2022 at Cowra, in the State of NSW, Mr Manton did not drive in compliance with dimension requirements, severe risk on two occasions, contrary to section 102(1)(b)(iii) of the HVNL.
4. Mr Manton did without reasonable excuse drive a heavy vehicle, namely a white Volvo prime mover bearing SA registration [REDACTED], in combination with a trailer bearing SA registration [REDACTED], on a road, namely Lachlan Valley Way, and did fail to ensure that the heavy vehicle, its components and load complied with the dimension requirements as prescribed by the Heavy Vehicle (Mass, Dimension and Loading) National Regulation (NSW), namely the assessed length

measurement was 20.66 metres where the prescribed allowable length was 19 metres, thereby committing a severe risk breach. The NHVR Class 1 Oversize Notice was not valid as the load consisted of more than one non-divisible item.

5. Mr Manton did without reasonable excuse drive a heavy vehicle, namely a white Volvo prime mover, bearing SA registration [REDACTED], in combination with a trailer bearing SA registration [REDACTED] on a road, namely Lachlan Valley Way, and did fail to ensure that the heavy vehicle, its components and load complied with the dimension requirements as prescribed by the Heavy Vehicle (Mass, Dimension and Loading) National Regulation (NSW), namely the assessed width measurement was 2.90 metres where the prescribed allowable length was 2.5 metres, thereby committing a severe risk breach. The NHVR Class 1 Oversize Notice was not valid as the load consisted of more than one non-divisible item.
6. The NHVR commenced a prosecution against Mr Manton alleging the contravention. The maximum penalty available for each offence is \$11,820.
7. The EU proposal from Mr Manton comprises four (4) initiatives to be completed by 18 April 2024, and would amount to a total estimated cost of \$1,875.
8. The four initiatives can be summarised as follows. Mr Manton undertakes to:
  - a. Complete Chain of Responsibility training and training in ensuring and monitoring the safety of transport activities, including TLIF0009, TLIF0014 and TLID0015 (\$675).
  - b. Develop improved prestart checks and document prestart checks for vehicle loads/ dimensions (\$450).
  - c. Complete refresher training on loading and unloading plant (\$650).
  - d. Donation to Road Trauma Support Group NSW (\$100).

#### **Criteria to be applied**

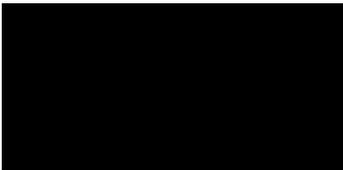
9. In arriving at my decision, I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU Guidelines namely:
  - 1) The nature and extent of the omission alleged;
  - 2) The Promisor's compliance history;
  - 3) Whether the EU proposal delivers benefits to the public beyond 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.
10. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Mr Manton's compliance history.
  11. 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 Mr Manton.
  12. 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 Mr Manton's transport operations.
  13. With regards to criteria (6) and (7), I acknowledge that Mr Manton has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Mr Manton's capability.
  14. 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.
  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. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Mr Manton will be withdrawn.

Yours sincerely



Raymond Hassell

**Executive Director, Statutory Compliance**