

26 March 2024

Our Reference: [REDACTED]

Mr Christopher Paul Ford
[REDACTED]
[REDACTED]
[REDACTED]

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 (the EU proposal) by Christopher Paul Ford¹ pursuant to Part 10.1A of the HVNL.
2. I have considered this proposal and assessed it against the National Heavy Vehicle Regulator’s (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 26 June 2023, Christopher Paul Ford was driving a fatigue-regulated heavy vehicle, Kenworth prime mover bearing registration number FGC and towing trailer bearing registration [REDACTED] travelling on Narellan Road, Mt Annan.

¹ Christopher Paul Ford, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 4/03/2024.

4. Upon inspection of Mr Ford's work diary, NHVR authorised officers identified two severe risk fatigue breaches of the HVNL:
 - (a) Between 4:30pm on 25 June 2023 and 4:30pm on 26 June 2023, Mr Ford had worked for 13 hours and 30 minutes. The applicable limit was 12 hours in any 24-hour period.
 - (b) Between 7:00am on 26 June 2023 and 7:00am 27 June 2023, Mr Ford worked 13 hours and 30 minutes. The applicable limit was 12 hours in any 24-hour period.
5. The NHVR commenced a prosecution against Mr Ford alleging the contravention. The maximum penalty available for each offence is \$11,820.

The Proposed Enforceable Undertaking

6. The EU proposal from Mr Ford comprises three initiatives to be completed within 12 months of acceptance of the EU and would amount to a total estimated cost of \$6,618.
7. The three initiatives can be summarised as follows. Mr Ford undertakes to:
 - (a) Donate \$6,000 to Road Trauma Support Group (NSW).
 - (b) Obtain the Logmaster Australia electronic work diary application and supply compliance reports generated from the application to the NHVR.
 - (c) Complete the following training courses:
 - i. TLIFF0009 'Ensure safety of transport activities (Chain of Responsibility)'.
 - ii. TLIF2010 'apply fatigue management strategies'.
 - iii. TLIE3028 'Complete a work diary'.

Criteria to be applied

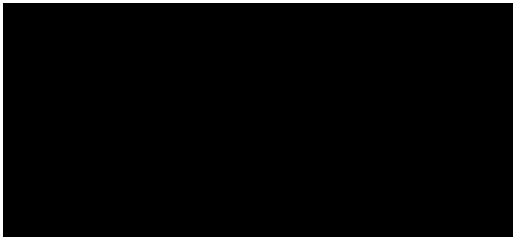
8. In arriving at my decision, I have evaluated the EU proposal against the 11 evaluation criteria in section 4 of the EU Guidelines namely:
 1. The nature and extent of the omission alleged;
 2. The Promisor's compliance history;
 3. Whether the EU proposal delivers benefits to the public beyond the 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 Ford's compliance history.
10. I acknowledge that prior to these allegations, Mr Ford had one prior conviction for rest less than the standard minimum time, severe risk breach, contrary to section 250(1)(b) of the HVNL. The offence occurred on 28 September 2019. On 6 January 2020, Mr Ford was convicted and fined \$1,000 at Katoomba Local Court.
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 Mr Ford's transport operations.
12. With regards to criteria (6) and (7), I acknowledge that Mr Ford 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 Ford'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. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Mr Ford will be withdrawn.

Yours sincerely



Raymond Hassall
Executive Director, Statutory Compliance