

15 November 2023

Our Reference: [REDACTED]

[REDACTED]
[REDACTED]
Project Resources Australia Pty Ltd
[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

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 Project Resources Australia Pty Ltd¹ pursuant to Part 10.1A of the HVNL (the EU proposal).
2. I have considered the EU 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 contravention alleged in this case.

The Alleged Facts

3. On 5 July 2022 at Bass Highway, Leongatha in Victoria, Project Resources Australia Pty Ltd permitted another person, namely [REDACTED], to drive a heavy vehicle, namely a 2007 Mitsubishi tray registration number [REDACTED], on a road without ensuring the vehicle, its components and load, complied with the applicable dimension requirements, namely the vehicle

¹ Project Resources Australia Pty Ltd, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL signed by Project Resources Australia Pty Ltd on 03/10/2023.

exceeded the prescribed rear overhang limit of 2,604mm as applied by Schedule 6 of the Heavy Vehicle (Mass, Dimension and Loading) National Regulation and contrary to section 102(1) of the HVNL.

4. The alleged rear overhang was 3.303 metres. The overhang was 696mm in excess of the prescribed rear overhang limit. This is categorised as a severe risk breach.
5. In December 2022, the NHVR commenced a prosecution against Project Resources Australia Pty Ltd alleging a severe risk breach.
6. For a corporation, the maximum penalty available for the offence is \$59,100.00.

The Proposed Enforceable Undertaking

7. The EU proposal comprises four initiatives to be completed by May 2024 and has a total estimated cost of \$5,200.00.
8. Project Resources Australia Pty Ltd undertakes to:
 - a. Initiative 1 – The Director to upgrade current licence to Heavy Combination and undertake relevant training through TDT Training Australia.
 - b. Initiative 2 – The Director and any employees involved with driving heavy vehicles to undertake Chain of Responsibility training with Pinnacle Safety and Training.
 - c. Initiative 3 – Documents addressing the company’s safety and compliance to be drafted and disseminated to those involved with driving heavy vehicles. The documents to include the following:
 - i. Drivers’ safety policy
 - ii. Chain of responsibility procedure
 - iii. Drivers’ induction pack including a check list for when the truck is used
 - iv. How to operate vehicle procedures
 - v. Safe loading of truck procedure
 - vi. Material restraint procedure
 - vii. Vehicle prestart form
 - viii. Visible information inside the heavy vehicle relating to weights, loads and load restraints.
 - d. Initiative 4 – Delivering benefits to broader community. The EU is to be published on the Project Resources Australia Pty Ltd website as well as on their social media platforms.

Criteria to be applied

9. In arriving at my decision, I have evaluated the EU proposal against the eleven evaluation criteria in Section 4 of the EU Guidelines, namely:
 - i. The nature and extent of the omission alleged.
 - ii. The Promisor's compliance history.
 - iii. Whether the EU proposal delivers benefits to the public beyond the Promisor's compliance with the law.
 - iv. The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety.
 - v. The likely improvements in safety within the Promisor's business or operations.
 - vi. The Promisor's ability, including financial ability, to meet the terms of the EU proposal.
 - vii. The significance of the commitment compared to the capability of the Promisor.
 - viii. The support the Promisor has provided and has committed to providing into the future to an injured or affected person(s).
 - ix. Input from injured and affected persons.
 - x. The likely outcome should the matter be dealt with through legal proceedings.
 - xi. 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 Project Resources Australia Pty Ltd's compliance history.

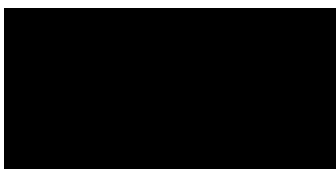
11. I acknowledge that prior to these allegations, I am not aware of any convictions for compliance breaches of the HVNL or any breaches of related safety duties by Project Resources Australia Pty Ltd.

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 Project Resources Australia Pty Ltd's transport operations.
13. With regards to criteria (6) and (7), I acknowledge that Project Resources Australia Pty Ltd has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to Project Resources Australia Pty Ltd'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 Project Resources Australia Pty Ltd will be withdrawn.

Yours sincerely



Raymond Hassall
Executive Director, Statutory Compliance