

10 October 2023

Our Reference: [REDACTED]

David Joseph Murphy
[REDACTED]

By email: [REDACTED]

Dear Mr Murphy

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 you, David Joseph Murphy¹, 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 6 April 2023 you, David Joseph Murphy, without reasonable excuse drove a heavy vehicle on a road and failed to ensure the vehicle, its components and load complied with the mass requirements applying to the vehicle, contrary to section 96(1)(c) of the HVNL.
4. The NHVR commenced a prosecution against you alleging the contravention. The maximum penalty available for the offence is \$20,580.

¹ David Joseph Murphy, Enforceable Undertaking Proposal pursuant to Chapter 10.1A of the HVNL dated 25/08/2023.

The Proposed Enforceable Undertaking

5. The EU proposal from you comprises four (4) initiatives to be completed within 3 months of acceptance of the EU and would amount to a total estimated cost of \$7,500.
6. The four initiatives can be summarised as follows. David Murphy, and the company he operates namely Northwest Pty Ltd, undertakes to:
 - a. Comprehensive training on HVNL legislation and requirements
 - b. Review and implementation of Business Mass Management Operating Procedures
 - c. Apply for accreditation by approved NHVAS auditor
 - d. Donation to not-for-profit organisation.

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 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
 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 David Murphy'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 defendant.
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 David Joseph Murphy's transport operations.
11. With regards to criteria (6) and (7), I acknowledge that David Joseph Murphy has the ability to meet the terms of the EU proposal and have taken into account the significance of the EU commitment, compared to David Murphy's 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.

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I have decided to accept the proposed EU and advise that the legal proceedings against David Joseph Murphy will be withdrawn.

Yours sincerely



Sal Petrocchio OAM

Chief Executive Officer