

25 March 2020

Our Reference: CCF/627 DOC20/13434

Your Reference: KM/JM

Laing O'Rourke Australia Construction Pty Ltd
(ABN 39 112 099 000)
Level 21, 100 Mount Street
NORTH SYDNEY NSW 2060

To the proper officers,

Heavy Vehicle National Law
Part 10.1A – Enforceable Undertaking
REASONS FOR DECISION

1. I have received your proposal for an Enforceable Undertaking per Part 10.1A of the Heavy Vehicle National Law ("HVNL"). For the reasons which I follow I am of the opinion that the undertakings given by Laing O'Rourke Australia Construction Pty Ltd ("LORAC") are an appropriate enforcement option in regard to the relevant alleged contraventions.

Background to the application

2. It is alleged by Transport for New South Wales ("TfNSW") (formally Roads and Maritime Services) that:
 - a. On 16 October 2018 at 11:04am a registered heavy vehicle operated by LORAC was weighed at Mount White on the Pacific Highway and it is alleged that the weight detected on axle group 1 of that vehicle was 7.88 tonne, 21.2% in excess of the 6.5 tonne weight allowed.
 - b. On 24 May 2019 at 6:42am a registered heavy vehicle operated by LORAC was weighed at Kankool on the New England Highway and it is alleged that the weight detected on that vehicle was 26.92 tonnes, 34.6% in excess of the 20-tonne weight allowed.
3. Both of these allegations are contraventions of s 96(1)(c) of the HVNL. TfNSW commenced prosecutions against LORAC on the basis of the above alleged contraventions.
4. On 22 October 2019, LORAC notified the NHVR, through legal counsel, of their intention to submit a proposal for an enforceable undertaking for these alleged contraventions. The notification was made to the NHVR, and not TfNSW as no Authorised Officers in TfNSW had been empowered to act under Part 10.1A of the HVNL.

Factors to be taken into consideration

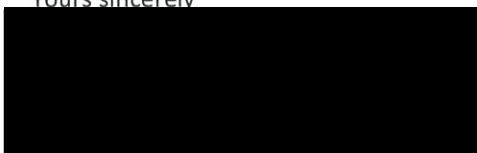
5. I have assessed the proposal submitted against NHVR Policy – Enforceable Undertakings ("the policy") and NHVR Guideline – Proposing an Enforceable Undertaking ("the guidelines").
6. In assessing the proposal per Section 4 of the guidelines I have regard to the following factors:
 - a. While the alleged overmass contraventions were of the highest risk category, there was no manifestation of the risk to public safety, road infrastructure or the environment.

- b. LORAC has not previously been the subject of an enforceable undertaking under the HVNL or under any Work Health and Safety statutory regime.
 - c. Since commencing operation in Australia, LORAC has not been convicted of any offence under the HVNL, a breach of any safety duty under the WHS legislation of a State, Territory or the Commonwealth, a failure to comply with any enforceable undertaking or any offence involving the death, serious injury or illness of any person involved in LORAC's business or undertakings.
 - d. Prior to the proposal, LORAC has already made significant rectification to their compliance and transport systems, showing a commitment and willingness for positive change. The proposed enforceable undertaking will deliver a three-tiered approach in order to deliver benefits to their drivers, other parties in the chain of responsibility, the wider transport industry and the broader community.
 - e. The total estimated value of these undertakings is far in excess of the maximum penalties that the Court could impose for these offences.
 - f. The undertakings proposed are likely to achieve measurable improvements in the heavy vehicle transport industry internally, to the wider supply chain as well as to the communities in which they operate.
 - g. Overmass heavy vehicles are a common occurrence. Education, systems and training which results in fewer contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.
 - h. LORAC has given their commitment to deliver the undertakings, in a staged approach in a realistic timeframe (two years).
7. I have considered the views of the prosecuting agency, TfNSW in assessing this proposal.

Reasons for decision

- 8. Having considered all of the above factors, and in all of the circumstances of this matter, I am of the opinion that the undertakings given by LORAC are an appropriate enforcement option in regard to the relevant contraventions.
- 9. I have concluded that the undertakings are a preferred enforcement option to continuing the prosecutions against the relevant contraventions due to the opportunity to provide lasting organisational change within LORAC. The undertakings proposed would not have been achieved in the present matters by prosecution alone.
- 10. Pursuant to section 590A of the HVNL, it is my decision to accept the undertaking by LORAC offered on 18 March 2020.

Yours sincerely



Sal Petrocchio
Chief Executive Officer

Enc (1): Signed Enforceable Undertaking