

6 May 2021

Our Reference: CCF/908/DOC21/19337

GDC Chartered Accountants
Suite 300, Level 3, 447 Victoria Street
WETHERILL PARK NSW 2164

To the proper officers

Heavy Vehicle National law
Part 10.1A – Enforceable Undertakings
REASONS FOR DECISION

1. I have received your proposal for an Enforceable Undertaking per Part 10.1A of the Heavy Vehicle National Law (“HVNL”). I am of the opinion that the undertakings given by YF Waste Services Pty Limited (“YF Waste”) are appropriate actions to address the particular contravention.

Background to the application

2. It is alleged by Transport for New South Wales (“TfNSW”) that:
 - a. *On the 12 August 2020 a heavy vehicle operated by YF Waste Services Pty Limited was weighed at Chester Hill, detected with minor risk gross overmass 104.83% overloaded and severe risk axle overmass 125.56% overloaded respectively. No death, injury or infrastructure damage was caused by these particular overloads.*
3. The allegation is a contravention of section 96(1) of the HVNL. TfNSW commenced a prosecution against YF Waste on the basis of the above alleged contraventions.
4. On 1 April 2021, YF Waste wrote to the National Heavy Vehicle Regulator (“NHVR”), through legal counsel, proposing an enforceable undertaking for the alleged contravention.
5. The notification was made to the NHVR, and not TfNSW, as no Authorised Officers in TfNSW have been empowered to act under Part 10.1A of the HVNL.

Factors to be taken into consideration

6. I have assessed the proposal submitted against [NHVR Policy – Enforceable Undertakings](#) (“the policy”) and [NHVR Guideline – Proposing an Enforceable Undertaking](#) (“the guidelines”).
7. In assessing the proposal per Section 4 of the guidelines I have considered the following factors:
 - a. While the alleged overmass contraventions were of a high risk category, there was no manifestation of the risk to the public safety, road infrastructure or the environment.
 - b. YF Waste 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, YF Waste 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 YF Waste’s business or operations.
 - d. The proposed enforceable undertaking of YF Waste shows a commitment and willingness for positive change. The enforceable undertaking will deliver three activities in order to deliver benefits to their drivers, other parties in the chain of responsibility, and the broader community.
 - e. The undertakings proposed are likely to achieve measurable improvements in the heavy vehicle transport industry internally, and to the wider supply chain as well as to the communities in which they operate.
 - f. Overmass heavy vehicles are a common occurrence. Education, systems and training which result in fewer contraventions will lead to safer heavy vehicles on the road and will result in less impact to road infrastructure.
 - g. YF Waste has given their commitment to deliver the undertakings in a staged approach in a realistic timeframe, aiming to complete the three activities within a 12 month period.
8. I have considered the views of the prosecuting agency, TfNSW, in assessing the proposal.

Reason for Decision

9. Having considered all the above factors, and in all of the circumstances of this matter, I am of the opinion that the undertakings given by YF Waste are an appropriate enforcement option in regard to the relevant contraventions.

10. I conclude that the undertakings are a preferred enforcement option to continuing the prosecution for the relevant contravention due to the opportunity to provide lasting organisational change within YF Waste. The expected outcomes of the undertakings are unlikely to have been achieved by prosecution alone.

11. Pursuant to section 590A of the HVNL, it is my decision to accept the undertaking by YF Waste offered on 1 April 2021.

Yours sincerely



Sal Petrocchio
Chief Executive Officer