

14 July 2021  
Our Reference: 2298, 2973

Boss Logging Pty Ltd (T/A Boss Forestry)  
450 Forge Creek Road  
BAIRNSDALE VIC 3875

Via email to: [admin@bossforestry.com.au](mailto:admin@bossforestry.com.au)

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”).
2. I am of the opinion the undertakings proposed by Boss Logging Pty Ltd (“Boss”) in response to the alleged contraventions are appropriate outcomes in lieu of prosecution.

**Background to the application**

3. It is alleged by the National Heavy Vehicle Regulator (“NHVR”) that:

On 3 April 2020 Boss permitted a person, namely Michael Barton, to drive a heavy vehicle, namely a white 2015 Mack 3-axle prime mover registration number BOS685 towing a 4-axle low loader registration number YQ00DR (“**the vehicle**”), loaded with an excavator, from Dargo to Bairnsdale, Victoria.

It is alleged that the steer axle weighed 7,000kg, a substantial mass breach of 107.69% (in breach of the permitted limit of 6,500kg). It is further alleged that the drive axle mass group weighed 28,350kg, a severe mass breach of 171.82% (in breach of the statutory limit of 16,500kg), in contravention of section 96(1)(c) of the HVNL.

It is further alleged that the load restraint fitted to the combination that was restraining the excavator, failed to meet the guidelines. It is alleged that the insufficient load restraint was a substantial risk breach in contravention of section 111(1)(b) of the HVNL.

4. The NHVR commenced prosecutions against Boss on the basis of the above alleged contraventions.
5. On 5 July 2021, Boss wrote to the NHVR proposing an enforceable undertaking.

### 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 regarded to the following factors:
  - a. While the alleged overmass contraventions were of a severe and substantial risk category, there was no manifestation of the risk to public safety, road infrastructure or the environment.
  - b. Boss is a small transport company and 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, Boss 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 Boss’s business or undertakings.
  - d. The proposed enforceable undertaking 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. Education, systems and training in relation to overmass heavy vehicles resulting in less contravention will lead to safer heavy vehicles on the road and less impact on road infrastructure.
  - g. Boss has given their commitment to deliver the undertakings, in a staged approach in a realistic timeframe, completing the seven activities within a 12-month period.

### Reason for Decision

8. Having considered all the above factors, and in all of the circumstances of this matter, I am of the opinion that the undertakings proposed by Boss are appropriate responses to the relevant contraventions.
9. I have concluded that the Enforceable Undertaking is the preferred enforcement option due to the opportunity to provide lasting organisational change within Boss. The results of the proposed Enforceable Undertaking could not be achieved by prosecution alone.

10. Pursuant to section 590A of the HVNL, it is my decision to accept the undertaking by Boss offered on 5 July 2021.

Yours sincerely,



Sal Petrocchio

**Chief Executive Officer**