

Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

The commitments in this enforceable undertaking are offered
to the National Heavy Vehicle Regulator

By

Troy Heavy Haulage Pty Ltd

ABN: 22 067 511 755

Part 1 Executive summary

Section 1 Agreed actions

1. Troy Heavy Haulage is committed to enforcing the HVNL in all aspects of its operations. We have engaged suitably qualified personnel to assist us in achieving this. With their assistance we have identified several areas where we can improve our operations and are committed to achieving this through simplified documentation of procedures, and the training and education of our workforce.
2. Troy Heavy Haulage's employees are committed to the company's ongoing success and are therefore committed to the success of this Enforceable Undertaking and what it requires of each of them as part of the Chain of Responsibility.

Section 2 Total cost of actions

3. Rectifications made 1st part \$12,500
4. Activities 2nd part \$65,000

Part 2 General information

Section 1 Purpose

- The purpose of this enforceable undertaking is to document the undertakings offered to the National Heavy Vehicle Regulator (the NHVR) pursuant to Chapter 10.1A of the Heavy Vehicle National Law (Victoria) (the HVNL) in connection with a matter relating to an alleged contravention of the HVNL.

Section 2 Details

- The commitments in this enforceable undertaking are offered to the NHVR by **Troy Heavy Haulage Pty Ltd (Troy Heavy Haulage)**.
- This enforceable undertaking is given on the day and date that it is accepted and signed by the Chief Executive Officer of the NHVR. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

Details of the person proposing the undertaking:

| | |
|----------------------------------|--|
| Registered address: | MTN Accounting Pty Ltd, Suite 5, 203 Central Coast Highway, ERINA NSW 2250 |
| Postal address: | PO Box 3703, Erina, NSW 2250 |
| Telephone: | (02) 4372 1500 |
| Email address: | info@troyheavyhaulage.com.au |
| Legal structure: | Proprietary Limited Company |
| Type of business: | Transport |
| Commencement of entity: | 1994 |
| Number of workers: | 41 |
| Products and/or services: | Troy Heavy Haulage is a transport company based on the Central Coast of New South Wales. It has a fleet of over 100 trucks, trailers, plant and machinery and been in operation for over 25 years. |

Details of the alleged contravention

- It is alleged by the NHVR that on 27 April 2020 at Wallan, Troy Heavy Haulage permitted another person to drive a heavy vehicle, namely a white 2012 Kenworth prime mover with the registration number THH043 (NSW) with trailer registration number 354UEX (QLD) on a road without ensuring that the vehicle, its components and load, complied with the applicable mass requirements, namely that the vehicle exceeded the prescribed mass limit of 43.0 tonnes, contrary to section 96(1) of the HVNL, carrying a maximum penalty of \$156,050.

Details of the events surrounding the alleged contravention

- On 27 April 2020, authorised officers of the NHVR observed a heavy vehicle, namely a 2012 Kenworth three-axle prime mover with the registration number THH043 towing a five-axle float low loader with the registration number 354UEX (the vehicle) travelling south on the Hume Freeway at Wallan.
An authorised officer intercepted the vehicle and spoke to the driver.
The vehicle's mass was measured, and the load was inspected. The vehicle was loaded with a large machine, namely a cold recycler and soil stabiliser.
The prime mover and the trailer were registered to Troy Heavy Haulage.
- The vehicle was en route from Queanbeyan in NSW to Templestowe in VIC. This is a distance of approximately 680 kms (7 hours).
A five-axle float low loader must have a permit issued by the NHVR to operate in Victoria. Troy Heavy Haulage had applied for a permit for this combination, which was being assessed, but no permit had been issued at the time of the alleged offence. Consequently, the vehicle's permissible combination mass limit was 43 tonnes.

The mass detected was 83.54 tonnes. Taking into account the applicable mass adjustment, the alleged mass was 82.54 tonnes, which is 191% of the prescribed mass limit and a severe risk breach pursuant to the Heavy Vehicle (Mass, Dimension and Loading) National Regulations.

The details of any injury or financial loss that arose from the alleged contravention

11. There were no injuries or financial loss that arose from the alleged contravention.

The details of any notices issued that relate to the alleged contravention

12. Troy Heavy Haulage was served with a letter from the NHVR dated 10 June 2021 (NHVR reference 2753) enclosing a charge-sheet and summons requiring Troy Heavy Haulage to attend the Magistrates' Court at Broadmeadows on 17 August 2021. That date has been adjourned by consent.

The details of any existing transport safety management systems at the workplace including the level of auditing currently undertaken

13. Troy Heavy Haulage operates under the Mass and Maintenance National Heavy Vehicle Accreditation Schemes - NHVAS20598. Being accredited under the NHVAS in Mass and Maintenance, Troy Heavy Haulage is required to complete internal reviews on a quarterly and annual basis.
14. Troy Heavy Haulage has a HVNL and Chain of Responsibility policy which has been signed by the director. This policy and the company Heavy Vehicle Drivers Handbook clearly define responsibilities for all personnel. All employees must conduct online training. A non-conformance/corrective action process is also in place for incidents involving parties in the Chain of Responsibility and a register of incidents is maintained. The company receives information and advice from third parties.

Any consultation undertaken within the company regarding the proposal of an EU

15. Consultation has been undertaken regarding the proposal of this enforceable undertaking. Consultation has occurred within the management teams and operational teams through the following mechanisms:
 - a. Troy Heavy Haulage contracted external auditors, Prodrive Compliance Pty Ltd (Prodrive), to perform a gap analysis. A comprehensive audit was conducted and addressed the relevant aspects of the HVNL requirements including vehicle mass limits and weight distribution, vehicle dimensions, load restraint, fatigue management, speed management and vehicle standards. The gap analysis identified several areas where the company could improve
 - b. Prodrive will conduct quarterly reviews with reports to be provided at the completion of 6 months and 12 months to ensure compliance with the Enforceable Undertaking.

Section 3 Statements

Statement of assurance

16. Troy Heavy Haulage confirms that it is committed to complying with its obligations under the HVNL and ensuring so far as is reasonably practicable, the health and safety of all workers and other persons that have the potential to be impacted by its business or undertakings.

Statement of regret

17. Troy Heavy Haulage regrets that the incident on 27 April 2020 occurred.

Statement of ability to comply

18. Troy Heavy Haulage confirms that it has the financial and operational capacity to comply with the terms of this enforceable undertaking.

Statement granting permission to use

19. Troy Heavy Haulage grants the NHVR a permanent, irrevocable, royalty-free, worldwide non-exclusive licence to use, reproduce, distribute, electronically transmit, electronically distribute, adapt, and modify any materials developed as a result of this enforceable undertaking

Statement of prior undertakings

20. Troy Heavy Haulage has had no prior undertakings.

Section 4 Acknowledgement

21. Troy Heavy Haulage acknowledges that the NHVR alleges Troy Heavy Haulage has contravened section 96(1)(c) of the HVNL.
22. The alleged contravention is taken very seriously by Troy Heavy Haulage, its director and management team, who are committed to providing a safe and healthy workplace to conduct its business in a way that helps protect the environment and the communities in which it operates.

Section 5 Details of Injury or Illness

Types of workers compensation provided (if the injured person is a worker of the person)

23. Not applicable. No injuries were sustained to workers or members of the public as a result of the alleged contravention.

Support provided, and proposed to be provided, to the injured person to overcome injury/illness

24. Not applicable. No injuries were sustained to workers or members of the public as a result of the alleged contravention.

Section 6 Rectifications made

25. Troy Heavy Haulage is committed to ensuring it has developed systems that identify, assess and control risks and are designed to promote continual improvement and as a result of the alleged contravention, the following opportunities for enhancement of processes have been undertaken:

| Description | Amount |
|--|-----------------|
| Gap Analysis and Compliance | \$10,000 |
| Prodrive were engaged to assist Troy Heavy Haulage in identifying areas where improvements in our existing systems could be made. They completed a full gap analysis on all operating systems. An action plan has been developed to assist us in identifying, assessing and controlling risks to prevent any further breaches. | |
| The external audit and review consisted of the following: | |
| 1. Staff induction and training materials on vehicle mass limits, permit requirements, dimension limits and loading requirements. | |
| 2. Safe operating procedures for all vehicles and equipment. | |
| 3. HVNL and Chain of Responsibility Manual, the Heavy Vehicle Drivers Handbook and the staff and supply chain participant induction procedure. | |
| 4. Vehicle maintenance procedures including pre-trip vehicle inspections, cleanliness, and fault reporting/recording. | |
| 5. Risk assessment for speed using telematics and written procedures. | |
| 6. Review of procedures for emergency response and incident management | |
| 7. Identification of need for a subcontractor management plan to ensure control of all companies contracting to Troy Heavy Haulage. | |

| Description | Amount |
|---|-----------------|
| 8. Review of existing Fatigue Management policy and the need to update existing safe work method statement/risk assessment. This also identified the need to implement Basic Fatigue Management for some aspects of the company's operations. | |
| OSOM Permit Administration | \$2,500 |
| Engagement of a permanent employee to carry out the correct and timely application of NHVR OSOM permits. | |
| Liaise with Road Managers to ensure the permit application process is completed in a timely manner and all requirements are met. | |
| Renewal of all permits as they expire and monitoring of legislation to ensure up to date information is recorded and issued to all relevant staff. | |
| Establishment of an OSOM permit register to ensure all permits are current and renewed in a timely manner. | |
| Partially completed training of drivers and allocators in OSOM permit documents and OSOM legislation. | |
| Total cost | \$12,500 |

Section 7 Acknowledgement of publication

26. Troy Heavy Haulage acknowledges that the enforceable undertaking will be published on the NHVR's internet site and may be referenced in the NHVR's publications.

Part 3 Enforceable terms

Section 1 Commitments

Commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

27. Troy Heavy Haulage is committed to ensuring that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence.

Commitment to the ongoing effective management of public risk associated with transport activities

28. Troy Heavy Haulage is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
29. Troy Heavy Haulage has a commitment to ongoing continuous improvement in how it manages risks associated with its business operations, including the review of new technology when made available.

Commitment to disseminate information about the EU to workers and other relevant parties in the chain of responsibility

30. Troy Heavy Haulage is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including our executive, senior and operational management, and all relevant subcontractors working for Troy Heavy Haulage. This information will be disseminated through:
 - a. Troy Heavy Haulage's website which is accessible to all employees, clients, and partners within two months from the date of acceptance of the enforceable undertaking.
 - b. Training sessions conducted by Prodrive for existing employees and management.

Commitment to participating constructively in all compliance monitoring activities of the EU

31. Troy Heavy Haulage is committed to participating constructively in all compliance monitoring activities of the EU.
32. Troy Heavy Haulage acknowledges that responsibility for demonstrating compliance with the undertaking rests with Troy Heavy Haulage and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
33. It is acknowledged that the NHVR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to the NHVR including providing details of workshops and training conducted for industry and community benefit.

Commitment that any promotion of a benefit arising from the EU will clearly link the benefit to the undertaking and make it clear that the undertaking was entered into as a result of an alleged contravention

34. Troy Heavy Haulage is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking will clearly link the benefit to the undertaking and that the undertaking was entered into as a result of the alleged contravention.

Section 2 Strategies that will deliver benefits

Benefits to drivers and parties within the chain of responsibility

35. As part of this enforceable undertaking, Troy Heavy Haulage aims to deliver strategies that focus on:
 - a. benefits to drivers and parties within the chain of responsibility; and
 - b. benefits to the transport industry; and

- c. benefits to the broader community. Retraining drivers and staff in safety, awareness, load restraint and driver behaviour to ensure a culture that embraces and accepts the concerns of other road users and the general public.
36. Troy Heavy Haulage intends to achieve these outcomes through the implementation of the strategies set out in the **Activities Table** below that aim to educate, train and raise awareness among Troy Heavy Haulage workforce and all parties within the chain of responsibility of the importance of complying with Chain of Responsibility laws.

Activities Table

| Activity 1 – Controls – Mass, Dimension and Loading |
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| Details |
| <p>Relevant staff will be tested for their knowledge of the mass, dimension and loading regulations for different configurations in different States and their understanding of specific permits, loading and restraining points. Additional training to be provided where required.</p> <p>As part of the induction and internal training, safe operating procedures will be developed for all areas of operation, and these will be completed with the input of key personnel within the company.</p> <p>This will be part of competency training for each driver and is a small part of a large form. All drivers need written proof of training completed.</p> <p>Load restraint training and specific lashing diagrams will be developed to ensure all drivers are aware of requirements.</p> <p>Mass management training for all staff to be more extensive. To ensure all drivers and allocators are aware of specific combinations weight limits, route maps, recording requirements and the importance of compliance in these vehicles.</p> |
| Timeframe |
| <p>Relevant staff to be tested within 12 months of the signing of the enforceable undertaking.</p> <p>Procedures to be completed within 6 months of the signing of the enforceable undertaking.</p> <p>To be incorporated in the Safe Operating Procedures and completed within 6 months of the signing of the enforceable undertaking.</p> <p>Training to be completed within 12 months of the signing of the enforceable undertaking.</p> |
| Outcome |
| Staff trained and compliant in HVNL Mass, Dimension and Loading |
| Estimated Cost |
| \$15,000 |
| Activity 2 – Chain of Responsibility |
| Details |
| <p>A new Chain of Responsibility Manual will be created and tailored to the Troy Heavy Haulage operation. A smaller Drivers’ Manual to be adapted from this along with a comprehensive induction procedure to ensure that all current and new employees are aware of their responsibilities. Troy Heavy Haulage use a Non-Conformance/Corrective Action (NCR/CA) system comprehensively and this will be included in the new Chain of Responsibility Manual and induction and training programs.</p> <p>All members of staff to undergo face-to-face training in Chain of Responsibility and supply chain participants to be informed of their obligations.</p> |
| Timeframe |
| <p>CoR Manual to be completed within 3 months of the signing of the enforceable undertaking.</p> <p>Staff training to be completed within 3 months of the signing of the enforceable undertaking.</p> |
| Outcome |

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| Activity 2 – Chain of Responsibility |
| Staff trained and compliant in HVNL Chain of Responsibility |
| Estimated Cost |
| \$20,000 |
| Activity 3 – Maintenance Management |
| Details |
| Specific pre-trip checklists will be further developed, and drivers trained practically to ensure they conduct these mandatory inspections properly. This will also become part of the employee induction process. |
| Timeframe |
| Training and development of updated checklists to be completed within 3 months of the signing of the enforceable undertaking. |
| Outcome |
| Staff trained and compliant in Maintenance Management |
| Estimated Cost |
| \$5,000 |
| Activity 4 – Speed Management |
| Details |
| A revised Safe Work Method Statement/Risk Assessment is to be implemented along with clear tolerances for speeding offences and disciplinary action to be taken. |
| Timeframe |
| Revised SWMS and RA to be completed within 3 months of the signing of the enforceable undertaking. |
| Outcome |
| Staff trained and compliant in Speed Management |
| Estimated Cost |
| \$2,500 |
| Activity 5 – Fatigue Management |
| Details |
| Troy Heavy Haulage is commencing the process of becoming accredited in Fatigue Management. Safe Work Method Statement/Risk Assessment will be revised to show that the company understands the hierarchy of control for fatigue compliance. Troy Heavy Haulage will train drivers and the Allocator in Basic Fatigue Management. |
| Further training will be introduced for work diary record management across the entire company including other parties in the supply chain. Driver health education is part of NHVAS Fatigue Management and will also be properly addressed. |
| Timeframe |
| To be completed within 12 months of the signing of the enforceable undertaking. |
| Outcome |

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| Activity 5 – Fatigue Management |
| Staff trained and compliant in Fatigue Management |
| Estimated Cost |
| \$7,500 |
| Activity 6 – Emergency Response and Incident Management |
| Details |
| Systems will be reviewed to ensure they meet current standards and are consistent with insurance and workers compensation guidelines. As a result, training and procedures will be developed and implemented. |
| Timeframe |
| To be completed within 6 months of the signing of the enforceable undertaking. |
| Outcome |
| Staff trained and compliant in emergency response and incident management |
| Estimated Cost |
| \$2,500 |
| Activity 7 – Task Specific Controls – Subcontractor Monitoring |
| Details |
| A Subcontractor Management Plan will be developed to ensure all companies contracting to Troy Heavy Haulage comply with the regulations. Where required, subcontractors will be audited by Prodrive or another third party of Troy Heavy Haulage’s choice. |
| Timeframe |
| To be completed within 12 months of the signing of the enforceable undertaking. |
| Outcome |
| Subcontractors will be compliant with regulations |
| Estimated Cost |
| \$5,000 |
| Activity 8 – Management System Assurance – Internal Review |
| Details |
| External auditor reviews to be completed. |
| Timeframe |
| To be completed 6 and 12 months after the signing of the enforceable undertaking. |
| Outcome |
| Ongoing compliance |
| Estimated Cost |
| \$2,500 |

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| Activity 9 – OSOM Permit Administration |
| Details |
| <p>Engagement of a permanent employee to carry out the correct and timely application of NHVR OSOM permits.</p> <p>Liaise with Road Managers to ensure the permit application process is completed in a timely manner and all requirements are met.</p> <p>Renewal of all permits as they expire and monitoring of legislation to ensure up to date information is recorded and issued to all relevant staff.</p> <p>Establishment of an OSOM permit register to ensure all permits are current and renewed in a timely manner</p> <p>Training of all drivers and allocators in OSOM permit documents and OSOM legislation to ensure awareness of requirements and ongoing compliance</p> |
| Timeframe |
| <p>This activity has commenced with the employment of the Administration Assistant and is ongoing.</p> <p>Training of Drivers and Allocators has commenced and will be ongoing as changes in legislation and permits occur.</p> |
| Outcome |
| Compliance with permit requirements |
| Estimated Cost |
| \$5,000 |
| Activity 10 – Industry Awareness |
| Details |
| <p>The Enforceable undertaking and our Chain of Responsibility Manual will be published on the Troy Heavy Haulage web page. We will also provide an explanation of the breach of the HVNL and in particular reference to the 5 x 8 combinations and the requirements for route specific permits in Victoria and the difference compared to NSW.</p> |
| Timeframe |
| Within 1 month of the EU being granted. |
| Outcome |
| To provide assistance to other Heavy Vehicle operators when determining requirements for OSOM loads in Victoria. |
| Estimated Cost |
| \$0 |

37. The total estimated value of the undertaking is \$65,000.

Part 4 Offer of undertaking

Executed as an Undertaking

Troy Heavy Haulage Pty Ltd ABN: 22 067 511 755

Executed by Troy Heavy Haulage Pty Ltd ABN: 22 067 511 755 pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

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| Signature of Director |
| Barry Colin Troy |
| Name of Director (print) |
| Date: 21 January 2022 |

Part 5 Acceptance of undertaking

Accepted by the National Heavy Vehicle Regulator pursuant to sections 590A(2) and 661(1)(b) of the Heavy Vehicle National Law by:

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| Signature of Chief Executive Officer |
| Sal Petrocchio |
| Name of Chief Executive Officer (print) |
| Date: 25/01/2022 |