



Enforceable Undertaking

Chapter 10.1A

Heavy Vehicle National Law

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

By

Gavin Allan Bone

ABN: 52 216 406 748

Part 1 Executive summary

Section 1 Agreed actions

1. Mr Gavin Allan Bone agrees to enter the Enforceable Undertaking and comply with the terms herein.
2. The National Heavy Vehicle Regulator consents to the undertaking and agrees to withdraw the charges against Mr Bone listed in the Magistrates Court. Mr Bone agrees to not make an application for costs with regard to the application previously made.

Section 2 Total cost of actions

3. The cost of vehicle modification is \$1500; the cost of an appropriate course is \$880; and the cost of distributing information to the community is about \$1,200.

Part 2 General information

Section 1 Purpose

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

Section 2 Details

5. The commitments in this enforceable undertaking are offered to the NHVR by Gavin Allan Bone.
6. This enforceable undertaking is given on the day and date that it is accepted and signed by 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:	Gavin Allan Bone
Postal address:	3775 Cobden-Lavers Hill Road, Kennedys Creek Victoria 3239
Telephone:	[REDACTED]
Email address:	[REDACTED]
Legal structure:	Individual
Type of business:	Part of Family Partnership
Commencement of entity:	1 April 2000
Number of workers:	Nil
Products and/or services:	Primary Producer - potatoes

Details of the alleged contravention

7. On 13 July 2020 Mr Bone loaded his vehicle with bags of potatoes for delivery to a corporate distributor in Mount Gambier. His vehicle was a 3-axle Volvo tray truck, registration number XV49KK. The load of potatoes was 9,250kg and it was secured over the vehicle's steer axle, which has a maxi-mum permitted mass of 6,000kg. Mr Bone was intercepted driving his vehicle towards Portland along the Princes Highway, Yambuk.

Details of the events surrounding the alleged contravention

8. Mr Bone is a primary producer, currently growing potatoes as his source of income. He is in a family partnership with

his wife, Ida.

9. Mr Bone is responsible for the farming activities carried out by him on his farm and he solely prepared his truck by loading it with his product. The bags of potatoes were loaded onto the truck and secured to side gates that had been installed for the purpose of ensuring the load was secure.
10. The total mass carried by the truck was less than the total mass limit of the truck, but exceeded the mass limit of the steer axle.

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

11. No loss has been suffered by a third party as a consequence of the contravention by Mr Bone.
12. Mr Bone has not suffered a loss as a consequence of the contravention.

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

13. Mr Bone was served a summons to appear at the Colac Magistrates Court on 13 September 2021 but the charge was not accepted by the court due to a dispute over the Colac Magistrates Court not being a proper venue.
14. Mr Bone was served a second summons to appear at the Portland Magistrates Court on 16 November 2021.
15. The validity of the summons was raised by the solicitors acting for Mr Bone, namely that the prosecuting authority had not complied with the issuing requirements of the Criminal Procedure Act Vic.

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

16. Mr Bone is a small primary producer. He takes all the necessary safety precautions in his workplace. Mr Bone is the person responsible for safety compliance.
17. Mr Bone ensures that his vehicle is at all times roadworthy and capable of carrying out the requirements of his business. Mr Bone relies upon the use of this truck on a regular basis; it is a vital piece of his business equipment.
18. Mr Bone regularly checks and maintains his truck and other business machinery and equipment to ensure they, to the best of his ability, remain compliant with the safety regulations.

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

19. There has been no consultation with any organisation regarding the proposal of an Enforceable Undertaking. The prosecuting authority, on behalf of the NHVR, suggested an Enforceable Undertaking may be an available option.

Section 3 Statements

Statement of assurance

20. Mr Bone is committed to complying with his obligations under the Heavy Vehicle National Law (HVNL) and ensuring, so far as it is reasonably practicable, the health and safety of himself, his family, other road users, the community and other who have the potential to be affected by the use of his truck.

Statement of regret

21. Mr Bone has learned about vehicle mass safety through his interactions with the NHVR.
22. Whilst Mr Bone intended to do the right thing with regard to the securing of the load on his vehicle, he accepts that the load overburdened the steer axle of this vehicle and accepts that this caused a safety issue to himself and the community.
23. Mr Bone regrets that he was not aware of the vehicle mass requirements that consequently resulted in the safety issue being caused.
24. Mr Bone regrets that he put himself and others at risk by his non-compliance with the HVNL.

Statement of ability to comply

25. Mr Bone has the capacity to make modifications to his vehicle to ensure the mass requirements of the HVNL are adhered to, and that all loads carried by him shall be carried in a safe and secure manner.

26. Mr Bone has, immediately after being intercepted by the NHVR, made modifications to his vehicle by installing further side gates on his trailer that enable the load to be fixed at various points on the trailer. In doing so, the loads carried by Mr Bone shall be dispersed across the axles and be compliant with the HVNL.
27. Mr Bone has the knowledge and capacity to apply the requirements to any other vehicle that he acquires or uses for his business purposes.

Statement granting permission to use

28. Mr Bone grants permission to NHVR to use any document, policy or procedure developed as part of this enforceable undertaking.

Statement of prior undertakings

29. Mr Bone has not been the subject of any prior undertaking from any statutory body.

Section 4 Acknowledgement

30. Mr Bone acknowledges he has contravened section 96(1)(c) of the HVNL as alleged by the HVNR.
31. Mr Bone has taken the allegations against him very seriously. Mr Bone would not intentionally place himself, his family and other people at risk. Mr Bone is committed to providing a safe and healthy workplace for the benefit of all persons, and the communities in which he operates.

Section 5 Details of Injury or Illness

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

32. 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

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

Section 6 Rectifications made

34. Mr Bone 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
Installation of side gates to his truck that enable the loads to be made secure and distributed across all axles of the vehicle in compliance with the law.	\$1,500 plus installation
Total cost p.a.	

Section 7 Acknowledgement of publication

35. Mr Bone 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

36. Mr Bone 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

37. Mr Bone is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
38. Mr Bone 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

39. Mr Bone is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including senior and operational management, health and safety management team, Health and Safety Committees and Health and Safety Representatives, workers, and all relevant contractors and subcontractors working for Mr Bone. This information will be disseminated directly to the people concerned, if and when it eventuates.

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

40. Mr Bone is committed to participating constructively in all compliance monitoring activities of the EU.
41. Mr Bone acknowledges that responsibility for demonstrating compliance with the undertaking rests with him and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
42. 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

43. Mr Bone 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

44. As part of this enforceable undertaking, Mr Bone aims to deliver strategies that focus on benefits to:
- himself, drivers and parties within the chain of responsibility
 - the transport industry and the broader community.
45. Mr Bone intends to achieve these outcomes through the implementation of the strategies set out below that will provide him with the knowledge and awareness to assist himself, his family and all persons who become employed by him or associated with the use of his vehicle.

Activities

Activity 1 – Completion of Mass Management Course

Scope

Personalised course by Mass Management of 9 High St Eaglehawk, Victoria, 3556.

Details

Course will be tailored for Mr Bone's activities and include vehicle inspections, plus one on one tuition.

Timeframe

To be completed within 6 months.

Outcome

To bring greater awareness and specific knowledge to Mr Bone of all issues surrounding mass management and heavy vehicles. Mr Bone will have ongoing support if other issues arise.

Costs

\$880 for Mr Bone to complete the course.

Activity 2 – Distribution of Informative Material to Heavy Vehicle Users

Scope

Upon the completion of the Mass Management Course, to distribute information to the community to bring greater awareness and specific knowledge to the users of heavy vehicles and the wider community of issues surrounding the safe loading of heavy vehicles.

Details

The information to be disseminated shall be gathered from the NHVR website and the Mass Management Course. The dissemination is most likely be a large sized classified type insertion into a magazine called SPV that is distributed to the numerous potato farmers in Victoria.

Timeframe

To be completed within 6 months of completing the Mass Management Course.

Outcome

To bring greater awareness and specific knowledge to the users of heavy vehicles and the wider community of issues surrounding the safe loading of heavy vehicles.

Costs

Estimated \$1200 for Mr Bone to design and place the advertisement in the magazine.

46. The total estimated value of the undertaking is \$2,080 for the two activities, and \$1,500 in rectification costs has already been paid.

Part 4 Offer of undertaking

Executed as an Undertaking

Mr Gavin Allan Bone ABN: 52 216 406 748

Executed by Gavin Bone ABN: 52 216 406 748:

	
Signature	Signature of witness
Date: 11/02/2022	Date: 11/02/2022

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:


Signature of Chief Executive Officer
Sal Petrocchio
Name of Chief Executive Officer (print)
Date: 15/02/2022