

15 February 2022

Our Reference: 2579

Gavin Allan BONE

3775 Cobden-Lavers Hill Road

Kennedys Creek VIC 3239

To Mr Bone

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'). For the reasons set out I am of the opinion the undertakings given by you, Gavin Allan BONE ('BONE'), are appropriate enforcement options in regard to the relevant contravention.

Background to the application

2. It is agreed by the National Heavy Vehicle Regulator (NHVR) that:
 - a. On 13 July 2020, BONE being an individual operating as part of a Family Partnership, failed to ensure his vehicle complied with the mass limits under the Heavy Vehicle National Law ('HVNL') to ensure his vehicle complied with section 96 of the HVNL.
3. The NHVR commenced a prosecution against BONE alleging the contravention of section 96 of the HVNL.
4. On 2 February 2022, BONE wrote to the NHVR proposing an Enforceable Undertaking for the alleged contravention.
5. I have assessed the proposal submitted against the NHVR Policy – *Enforceable Undertakings*, and NHVR Guideline – *Proposing an Enforceable Undertaking* ("the guideline").
6. In assessing the proposal in accordance with the evaluation requirements of Section 4 of the guideline I have considered the following factors.

The nature and extent of the act or omission alleged

7. I have taken into consideration the fact that there was no evidence of systematic non-compliance with the HVNL nor any manifestation of the risk associated with overmass heavy vehicles.

The person's compliance history

8. Australian Criminal Intelligence Commission checks show that BONE has not been convicted of:
 - any offence under the HVNL;
 - a breach of any safety duty under the work, health and safety legislation of a State, Territory or the Commonwealth; or
 - a failure to comply with any enforceable undertaking.

Whether the EU delivers benefits to the public beyond the Promisor's compliance with the law

9. BONE has committed to the ongoing effective management of public risks associated with transport activities within his Family Partnership.
10. BONE has proposed an undertaking, ensuring that the behaviour that led to the alleged contravention has ceased, and committing to take all reasonably practicable steps to prevent similar contraventions in the future.
11. BONE has proposed (2) two initiatives to achieve the proposed outcomes.
12. The initiatives will commence immediately upon acceptance of the EU and will be completed within (12) twelve months of acceptance, with a total **estimated** cost of \$2,080.
13. These initiatives aim to educate, train, and raise awareness about the importance of complying with Mass and loading laws within the Family Partnership and the broader farming community.

Initiative 1

14. BONE will complete a personalised course by Mass Management. The course will bring greater awareness and specific knowledge to BONE of all issues surrounding mass management and heavy vehicles. BONE will have ongoing support if other issues arise. The estimated cost of this initiative is \$880.

Initiative 2

15. BONE, upon the completion of the Mass Management Course, will distribute information to the community to enhance awareness and understanding of loading issues relevant to heavy vehicle operators within the industry. The information to be disseminated shall be gathered from the NHVR website and the Mass Management Course. The dissemination will occur via a large sized classified type of insertion into a magazine called SPV that is distributed to the numerous potato farmers in Victoria. The estimated cost of this initiative is \$1,200.

The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety

16. BONE proposes to provide information and training regarding the loading issues of heavy vehicles in the same industry. This commitment to sharing the information freely and publicly has the potential to assist others within the industry and will ensure the wide reach of important information.

The benefits of the proposal to the persons who might be affected by a similar contravention; and the likely improvements in safety within the Promisor's business or operations; and the likelihood that the proposed undertaking will result in sustained improvement in compliance after its completion

17. The benefits of the proposed actions will not only increase awareness and understanding as to the mass and loading requirements of BONE but will be distributed to the public. This will achieve both specific and general deterrence of offending of the kind BONE is alleged to have committed.

The person's ability, including financial ability, to meet the terms of the EU

18. BONE has not provided any financial reports; however, he has stated he has the financial capacity and operational experience to comply with the terms of the EU.
19. BONE has set a realistic timeframe for the implementation of the EU with completion of all activities within 12 months of the EU commencing.

The significance of the commitment compared to the capability of the person

20. The commitment is significant when compared to the small operation BONE is engaged in.

The support the person has provided / has committed to providing into the future to an injured or affected person

21. N/A

Input from injured and affected persons

22. N/A

Reason for Decision

39. I have considered the merits of continuing the prosecutions against BONE in order to meet the sentencing principles of rehabilitation, punishment, deterrence, and denouncing of the conduct. I consider in all of the circumstances of this matter, on balance, I am of the opinion that the Enforceable Undertaking proposed by them is an appropriate enforcement option which will meet community expectations.
40. I conclude that the Enforceable Undertaking is a preferred enforcement option to continuing the prosecution for the relevant contravention for the following key reasons:
- a. The opportunity to provide lasting change to the BONE Family Partnership and to the wider transport industry. Two activities will be undertaken in order to deliver benefits to parties in the chain of responsibility and the broader community.
 - b. The activities and benefits proposed would not have been achieved by prosecution alone. Upon a conviction a financial penalty would have been imposed on BONE. This would not have had the same direct impact on promoting safety awareness in the industry as the strategies outlined in the Enforceable Undertaking.
 - c. The Enforceable Undertaking proposes material and tangible changes that can lead to the broader industry taking greater steps to address issues faced by primary producers.
 - d. Education, systems and training which result in fewer contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.
 - e. The activities proposed are likely to achieve improvements in the heavy vehicle transport industry and other communities in which BONE operates.
41. Pursuant to section 590A of the HVNL, it is my decision to accept the Enforceable Undertaking BONE offered on 2 February 2022.
42. BONE is required to send all supporting documentation in relation to this EU to intelligence@nhvr.gov.au.

Yours sincerely



Sal Petrocitto
Chief Executive Officer

15/2/22