



YOU, THE HVNL AND THE NHVR

As AFRA members are probably aware, the National Heavy Vehicle Regulator (NHVR) has taken over responsibility for enforcement of the Heavy Vehicle National Law (HVNL) in all HVNL jurisdictions except Queensland.

In recent times, the NHVR has been active in pushing for remedies other than fines and penalties. These include enforceable undertakings, commercial benefits orders, cancellation or suspension of vehicle registration, and supervisory intervention orders. As the following case studies show, these penalties can have far reaching financial and reputational consequences for transport operators.

One recent example is the imposition of a \$14,000 fine and a Prohibition Order on a former director of Todiam Freightlines, who destroyed thousands of driver records in a chemical bath of weed killer. The order excludes the former director from engaging in transport activities of any kind for 12 months. As the NHVR has stated, this outcome reinforces that executives who fail to meet their personal safety obligations, including to 'exercise their own personal due diligence', will be held to account.

Despite the destruction of evidence, the NHVR's investigations were able to identify that drivers 'regularly failed to comply with their minimum rest requirements' and made false entries into work diaries. As a result, the company was also convicted of failing to comply with its safety duty and fined \$120,000, which was reduced to \$84,000 due to its guilty plea.

In another case, the NHVR accepted an enforceable undertaking from Origin Energy Services Limited (Origin) after it failed to respond to

three 'Notices to Produce' requesting information about a driver who did not divert into a weighbridge. The undertaking requires Origin to spend approximately \$380,000 on a 'driver consequence framework' and sponsorship of heavy vehicle health and safety forums.

This far exceeds the maximum fine the company would have received in court, and reinvests the money into safety initiatives which will deliver improved outcomes for Origin staff and the wider transport industry. The fact that an enforceable undertaking of this magnitude was sought highlights the importance of responding to any communication from the NHVR.

Finally, the NHVR has also accepted an enforceable undertaking from Lindsay Transport to the value of \$750,000 for failing in its safety duty under the HVNL by 'exposing one of its drivers to a risk of death or serious injury'. Tragically, this risk materialised and resulted in the death of a driver at Loganlea, Queensland.

The undertaking required Lindsay Transport to donate funds to a not-for-profit organisation or research/medical entity with a focus on heavy vehicle driver medicals (\$125,000), develop a web-based driver education platform for the heavy vehicle industry (\$450,000), engage experts to review their policies, procedures and practices (\$75,000), deliver a training program to internal management (\$75,000), and to produce a video for use in the heavy vehicle industry covering various safety issues (\$25,000).

Despite the increasing use of alternative enforcement remedies, significant fines are also still being levied against transport operators.

In December 2022, De Paoli Transport was fined \$180,000 for a breach of the primary duty to ensure, so far as is reasonably practicable, the safety of its transport activities. The company agreed that it had failed to maintain adequate systems to ensure compliance with speed and fatigue requirements and had failed to adequately train drivers with respect to fatigue, rest, speeding and safety.

Notably, the fact that these failures did not actually result in any accidents was given little weight: the offences are based on the risk created by poor systems and practices, not just on the actual harm caused.

As these cases make clear, the cost of failing to comply with your obligations under the HVNL can be much greater than a simple fine or penalty. It could result in an order preventing you from working in the industry or in undertakings or fines costing your business hundreds of thousands of dollars.

No business wants to face these consequences, which is why it is critical that transport businesses and their teams do all that is required under the HVNL to fulfil their safety obligations. ●

If you have any questions, or would like to discuss your obligations, please email the AFRA helpline at afrahelpline@bristowlegal.com.au.