



# Enforceable Undertaking

## Chapter 10.1A

### Heavy Vehicle National Law

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

By

SULPET PTY LTD

ACN: 620 062 197

## Part 1 Executive summary

### Section 1 Agreed actions

1. Sulpet Pty Ltd (“Sulpet”) is a parent company to its wholly owned subsidiary company, C & D Pty Ltd (“C & D”). Sulpet and C & D have no other related entities. Sulpet has no employees, and its function as a company is to rent machinery and vehicles to C & D. Sulpet is not involved in day-to-day operations, this function is performed by its subsidiary, C & D as an operational company. Sulpet agrees to implement the following activities focused on improving health and safety across Sulpet’s subsidiary and operational business C&D and across the transport industry more broadly.
2. These comprise:
  - a. Policy Change;
  - b. Chain of Responsibility or Loading and Unloading course and Policy review; and
  - c. Publication of a pamphlet for use by the heavy vehicle industry.

### Section 2 Total cost of actions

3. Total costs of rectification work already made is \$2,781.00.
4. Total estimated cost of proposed strategies that will deliver benefits is \$5,500.

## 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 (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

- The commitments in this enforceable undertaking are offered to the NHVR by Sulpet.
- 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:	[REDACTED]
Postal address:	[REDACTED]
Telephone:	[REDACTED]
Email address:	[REDACTED]
Legal structure:	Australian Proprietary Company, Limited by Shares
Type of business:	Equipment rental and leasing
Commencement of entity:	28 June 2017
Number of workers:	Sulpet does not have any employees, however Sulpet's wholly owned subsidiary company, C & D, employs 12 workers, including 2 heavy vehicle drivers (who are the only persons involved in the managing/loading the heavy vehicle), 3 administrative staff, and 7 'crew'/labourers.
Products and/or services:	Sulpet is a private company that owns vehicles, plant and equipment for hire to C & D for residential and commercial asphaltting services.

#### Details of the alleged contravention

- It is alleged that on 21 September 2022 at Box Hill, New South Wales, Sulpet, permitted [REDACTED] to drive a heavy vehicle, a white Mack Tipper truck bearing the NSW South Wales plates [REDACTED] towing a 3-axle trailer with New South Wales plates [REDACTED] ("the vehicle"), and did not ensure the vehicle, the vehicle's components and load, complied with the mass requirements for that vehicle, in breach of section 96(1)(c) of the *Heavy Vehicle National Law (NSW) 2013*.
- The trailer is classified as a Pig trailer, which attracts a 1 to 1 loading ratio.
- In accordance with Schedule 1, Part 1, section 2(4) of the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation (NSW) (2013 SI 247a)*, the vehicle was found to be 4 tonne over the mass limit, this amounted to an excess of 139% of weight, which placed this breach in the severe risk breach category, carrying a maximum penalty of \$69,930.

#### Details of the events surrounding the alleged contravention

- On 21 September 2022, Sulpet hired the vehicle to its subsidiary company, C & D, who provide residential and commercial asphaltting services across NSW.
- The vehicle is only ever hired out to C & D, no other third parties.
- [REDACTED] is an employee of C & D. [REDACTED] was the only licensed person at C & D to load and drive the

vehicle at the time of the offence. [REDACTED] is the only other person who is licensed to load and drive the vehicle.

14. On 21 September 2022, [REDACTED] (“the driver”), loaded the vehicle at Garden Island.
15. The equipment that was loaded onto the vehicle included a paver (which is approximately 10 tonnes) and a roller (which is approximately 4.3 tonnes). The gross weight and axle of the truck and trailer was not checked after they had been loaded.
16. The driver had been verbally instructed on the day by [REDACTED] to load the paver onto the trailer and the roller onto the truck, but instead loaded both the paver and roller onto the trailer, against the direction of [REDACTED]. However, Sulpet acknowledge that despite the verbal instructions given to the driver, [REDACTED] the incident occurred as a result of an authorized person check for compliance with the verbal instructions prior to the vehicle departing from the relevant location.
17. Later that day, the National Heavy Vehicle Regulator compliance officers observed the vehicle, driving on Windsor Rd, Box Hill, New South Wales.
18. Compliance officers intercepted and directed the vehicle into the Box Hill Work Site. The compliance officers spoke to the driver. The vehicle and trailer were inspected.
19. Compliance officers weighed the vehicle and the trailer using a Truckscan system in the presence of the driver.
20. The vehicle was found to have an approximate mass of 11.65 tonnes, while the trailer had an approximate mass of 16.65 tonnes.
21. The trailer exceeded the mass of the towing vehicle by 4 tonnes, where the weight of the trailer must not be more than the mass of the towing vehicle.

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

22. There were no injuries or financial loss that arose as a result of the alleged contravention.

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

23. Sulpet received a court attendance notice to attend Windsor Local Court on 23 November 2022 in respect of the alleged contravention that occurred on 21 September 2022. This date has been adjourned by consent to 8 February 2023.

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

24. Sulpet agrees to and is subject to C & D’s safety management system.
25. C & D have an established comprehensive safety management system in place which encompasses Chain of Responsibility compliance. C & D participates in internal and external auditing processes. The external auditing is conducted by QMS auditing annually and qualifies C & D for ISO standards in Quality, Environment, and WHS. C & D also have a dedicated Safety & Compliance officer, who is responsible for internal auditing for the ISO standards mentioned above. These audits are conducted annually in the middle of the year to offset the QMS external audit. The Safety & Compliance officer is also responsible for developing and monitoring documents and procedures in place for the safety of the business activities and compliance with the HVNL and road laws and other current rules, regulations, and legislation.
26. All workers are required to comply with the chain of responsibility standard operating procedure, fatigue management policy & program, site safety rules, code of conduct, safe work method statement and load restraint methodology. A chain of responsibility risk register has also been established to identify and assess risks in the workplace.
27. Sulpet and C & D’s existing transport safety management system at the workplace is supported by the following procedures and documents:
  - a. IMS002.16 – Chain of Responsibility
  - b. IMS003.23 – Chain of Responsibility Standard Operating Procedure
  - c. IMS005.16 – Chain of Responsibility Risk Register
  - d. IMS002.08 – Fatigue Management Policy & Program
  - e. IMS002.10 – Site Safety Policy

- f. Appendix 3 - Organization Chart
  - g. IMS002.11 – Code of Conduct
  - h. IMS003.24 – Load Restraint Methodology
  - i. CDASP-SWMS-01 - Safe Work Method Statement
28. A copy of the procedures and documents is **attached** to this EU.

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

29. Consultation has been undertaken regarding the proposed EU within Sulpet's leadership and management team.

## **Section 3 Statements**

### **Statement of assurance**

30. Sulpet confirms that 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 others that have the potential to be affected by its business or undertakings.

### **Statement of regret**

31. Sulpet regrets that the incident on 21 September 2022 occurred.

### **Statement of ability to comply**

32. Sulpet confirms that it has the financial and operational capacity to comply with the terms of this enforceable undertaking.

### **Statement granting permission to use**

33. Sulpet grants the NHVR permission to use any documents, policies and procedures developed as a result of this enforceable undertaking for the purpose of training and development by the NHVR.

### **Statement of prior undertakings**

34. Not applicable.

## **Section 4 Acknowledgement**

35. Sulpet acknowledges that the NHVR alleges Sulpet has contravened section 96(1)(c) of the HVNL.
36. The alleged contravention is taken very seriously by Sulpet, its directors and management, who are committed to providing a safe workplace conduct its business in a way that help 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)**

37. 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**

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

## Section 6 Rectifications made

39. Sulpet 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
Issuing safety kit (which includes NHVR manual V3.0, as well as mass and dimension charts and 30m tape measure) for the vehicle	\$280
Preparing an updated daily pre-start inspection checklist for the vehicle, in accordance with C & D Site Safety Rules.	\$70
Speaking with C & D and the driver to reiterate and educate the attendees on the importance of heavy vehicle mass, dimension and loading requirements (as the only employee with a heavy vehicle licence)	Nil
Purchasing and installing digital weigh scales on the existing heavy vehicle for the truck and trailer	\$2,431.00
<b>Total cost</b>	<b>\$2,781.00</b>

## Section 7 Acknowledgement of publication

40. Sulpet 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

41. Sulpet 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

42. Sulpet is committed to the ongoing effective management of public risks associated with transport activities within its business operations.
43. Sulpet 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

44. Sulpet is committed to disseminating information about the enforceable undertaking to its directors and operating company and its workers within the chain of responsibility, including the Managing Director/C & D Manager [REDACTED] Operations Manager, Safety and Compliance Manager, HR Manager and crew working for Sulpet on behalf of its operating company C & D.. This information will be disseminated through:
- a. For internal employees: email correspondence and records kept in dedicated workspace in [REDACTED]

- compliance manager and supervisor to meet with driver of the vehicle to advise of obligations of EU;
- b. For external contractors and sub-contractors C & D may have in the future: email communication provided by Safety and Compliance officer.
- c. All email correspondence captured through its document management system.

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

- 45. Sulpet is committed to participating constructively in all compliance monitoring activities of the EU.
- 46. Sulpet acknowledges that responsibility for demonstrating compliance with the undertaking rests with Sulpet and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.
- 47. 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**

- 48. Sulpet 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**

- 49. As part of this enforceable undertaking, Sulpet aims to deliver strategies that focus on benefits to:
  - a. drivers and parties within the chain of responsibility
  - b. the transport industry and the broader community.
- 50. Sulpet intends to achieve these outcomes through the implementation of the strategies set out below that aim to educate, train and raise awareness among Sulpet workforce and all parties within the chain of responsibility of the importance of complying with Chain of Responsibility laws.

**Activities**

<b>Activity 1 – Policy change</b>
<b>Scope</b>
Sulpet would ensure that its operating company C & D undertake a written policy change that involves implementing a system to ensure each load is checked after it has been loaded and prior to departure to ensure it complies with the rules and regulations.
<b>Details</b>
Sulpet would ensure that its operating company, C & D enact a written policy change as described above, in which each time a heavy vehicle is loaded, it would be checked by both the driver and the manager on site prior to departure to ensure compliance with the HVNL, and both the driver and manager would sign a checklist stating that the vehicle complies with the rules and regulations.
<b>Timeframe</b>
Within 14 days of acceptance of the enforceable undertaking. The timeframe is to allow for the creation of the checklist and dissemination of the policy to Sulpet and employees of its operating company C & D.
<b>Outcome</b>
The company will develop a written policy change as described. Sulpet will direct employees of its operating company C & D, involved in loading/managing heavy vehicles, to read and comply with the policy, with documented and implemented consequences for non-compliance.

### Activity 1 – Policy change

#### Costs

\$1000 to create the policy and checklist.

#### Output

A copy of the new policy and checklist and the directive to staff will be submitted to the NHVR as evidence within 1 month of acceptance.

### Activity 2 – Chain of Responsibility Course & Policy Review

#### Scope

Sulpet would ensure that relevant personnel from its operating company C & D are enrolled in a chain of responsibility course and/or another relevant safety course around mass, dimension and loading requirements of heavy vehicles. The relevant personnel include: heavy vehicle driver and loader / manager and director [REDACTED] heavy vehicle driver and loader / crew member [REDACTED] safety and compliance officer [REDACTED]

Sulpet also proposes that future employees involved in loading / driving that they will also undertake the CoR course.

#### Details

Sulpet will commit to a training provider that is approved by the NHVR. Any proposed courses will be referred to the NHVR in advance for approval and confirmation of its direct relevance and appropriateness.

#### Timeframe

Initial Training to be completed within 6 months of acceptance of this enforceable undertaking.

Updated Policies to be provided to the NHVR within 6 months of completion of the Chain of Responsibility course.

#### Outcome

Sulpet will ensure that the two current (2) drivers (who also load the vehicle), one being the director and manager [REDACTED] and the other driver and crew member [REDACTED] as well as safety and compliance officer [REDACTED] are involved in loading and driving have a robust understanding of the chain of responsibility and how the company and its workers can collectively ensure compliance with the HVNL to prevent any future contraventions.

On completion of the CoR course, safety and compliance officer [REDACTED] will review the existing safety modules including guidelines and procedures around CoR and update or amend policies as required. These updated policies will be made available to the NHVR for dissemination amongst the industry.

Sulpet will also enrol any future employees involved in loading / driving in a CoR course recommended by NHVR.

#### Costs

Approximately \$3000 for the duration of this enforceable undertaking.

#### Output

Copy of attendance sheet(s) and certificate of completion for Chain of Responsibility or other relevant course to be provided to the NHVR within 4 weeks of completion.

Copies of updated policies to be provided to the NHVR within 6 months of completion of the Chain of Responsibility course.



<b>Activity 3 – Creating and publishing a pamphlet for use by the heavy vehicle industry</b>
<b>Scope</b>
Sulpet would prepare and distribute an educational pamphlet on prescribed mass loading requirements to the heavy vehicle industry.
<b>Details</b>
Sulpet would ensure that the company creates a pamphlet as described above to be used as a tool by the wider heavy vehicle industry. This would be provided to the NHVR for comments and approval before disseminating to the broader transport community.
<b>Timeframe</b>
Within 6 months of acceptance of the enforceable undertaking.
<b>Outcome</b>
To create a physical tool for drivers and those involved in the loading and management of heavy vehicles to refer to on the job and improve the overall safety and compliance across the industry.
<b>Costs</b>
The estimated cost would be \$1500.
<b>Output</b>
To bring greater awareness and specific knowledge to mass management and requirements of heavy vehicles.

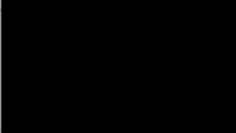
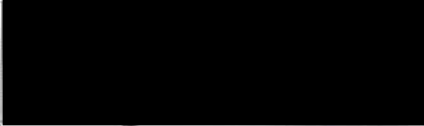


51. The total estimated value of the undertaking is \$ 5,500 (not include the rectifications made in the amount of \$2,781.00.)

## Part 4 Offer of undertaking

Executed as an Undertaking

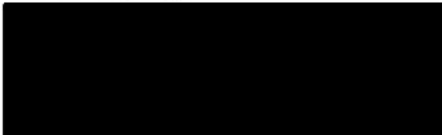
Sulpet Pty Limited ACN: 620 062 197

Executed by Sulpet Pty Limited ACN: 620 062 197 pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature of Director	Signature of Director/Company Secretary
	
Name of Director (print)	Name of Director/Company Secretary (print)
5/6/23 Date: Click or tap to enter a date.	5/6/23 Date: Click or tap to enter a date.

## 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:

	
<b>Signature of Chief Executive Officer</b>	
Sal Petrocchio	
<b>Name of Chief Executive Officer (print)</b>	
01/09/2023	
<b>Date:</b> Click or tap to enter a date.	