

ENFORCEABLE UNDERTAKING

Chapter 10.1A

Heavy Vehicle National Law 2013 (NSW)

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

by

Qube Ports Pty Limited

ABN: 43 123 021 492

APPLICATION FOR AN ENFORCEABLE UNDERTAKING

PART 1 - GENERAL INFORMATION

SECTION 1 – PURPOSE

1. 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 2013 (NSW)* (**HVNL**).
2. These undertakings arise in connection with a matter relating to an alleged contravention of the HVNL.

SECTION 2 – DETAILS

3. The commitments in this enforceable undertaking are offered to the NHVR by Qube Ports Pty Limited (**Qube Ports**).
4. 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	45-53 Clarence Street, Sydney NSW 2000
Postal address:	As above
Telephone:	02 9080 1900
Email address:	[REDACTED]
Number of workers:	1,609
Legal Structure	Proprietary Company, ultimately owned by Qube Holdings Ltd.
Products and / or services	On-wharf operations at port precincts, cargo storage and distribution, heavy vehicle operation and maintenance, diesel transport and associated project delivery and management.

Details of alleged contravention

5. It is alleged by Transport for NSW (**TfNSW**) that on 19 November 2019 Qube Bulk Pty Limited (**Qube Bulk**) failed to comply with the mass requirements as required by section 96(1)(c) of the HVNL.

Details of the events surrounding the alleged contravention

6. On 19 November 2019, at 03:46, a NSW registered heavy vehicle was weighed at Mount Boyce on the Great Western Highway and it is alleged that the weight detected on Axle Group 4 was 42.20 tonne, an overload percent of 111% of the statutory limit of 20 tonne. It is alleged that Axle Group 4 on a road and the vehicle did not comply with the mass requirements applying to the vehicle or the vehicle's components and the load.
7. Qube Bulk was not the operator of the heavy vehicle at the time of the alleged offence. Rather, at the time of the alleged offence, the operator of the heavy vehicle was Qube Ports.

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

8. 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

9. Qube Bulk has received a Breach Report from TfNSW (B311565) dated 19 November 2019 in respect of the alleged contravention that occurred on 19 November 2019.
10. Qube Bulk has also received a Court Attendance Notice (CAN ID: 240003) in respect of the alleged contravention that occurred on 19 November 2019 in relation to a hearing before the Katoomba Local Court of NSW.

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

11. Qube Ports has an established comprehensive Safety Health and Environment Management System (SHEMS) which encompasses Chain of Responsibility compliance and transport safety management.
12. The SHEMS has been implemented at all of Qube Ports' sites throughout Australia, including its Port Kembla operations where the alleged contravention occurred.
13. The SHEMS is based on the approach of continuous improvement in how Qube Ports manages risks associated with Safety, Health and Environment and is designed to achieve compliance with legislative requirements (including the HVNL).
14. The SHEMS has been independently audited and certified to the following standards: AS4801: Occupational Health and Safety Management and ISO14001: Environment Management.

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

15. Consultation has been taken regarding the proposed EU within Qube's Leadership team, management team and workforce through the following established mechanisms:
- (a) Qube Operating Division (Qube Ports, Qube Bulk and Qube Logistics) Safety Health and Sustainability Committee; and
 - (b) Qube Ports Executive Management Committee.

SECTION 3 - STATEMENTS

Statement of assurance

16. Qube Ports 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 others that have the potential to be impacted by its business or undertakings.

Statement of regret

17. Qube Ports regrets that the incident on 19 November 2019 occurred.

Statement of ability to comply

18. Qube Ports confirms that it has the financial and operational capacity to comply with the terms of this undertaking. Qube Ports is a subsidiary of Qube Holdings Limited, which is an ASX 100 listed company.

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

SECTION 4 – ACKNOWLEDGEMENT

20. Qube Ports acknowledges that TfNSW alleges that Qube Bulk has contravened section 96(1)(c) of the HVNL.
21. The alleged contraventions are taken very seriously by Qube Ports, its Directors and Senior Management, 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

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

22. 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

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

SECTION 6 – RECTIFICATIONS

24. Qube Ports' SHEMS is designed to promote continual improvement and as a result of the alleged contravention the following opportunities for enhancement of processes have been undertaken:

Review of Mass, Maintenance and Fatigue Management Manual

Description	\$ Amount <i>(estimated internal staff costs)</i>
(a) Review and modification to Qube Ports' Port Kembla Mass, Maintenance and Fatigue Management Manual.	\$2,500
(b) Training of personnel in enhancements and modified processes.	\$5,500

Review associated Safe Work Method Statements

Description	\$ Amount <i>(estimated internal staff costs)</i>
(c) Review and modification to Qube Ports' Port Kembla associated heavy haulage Safe Work Method Statements (SWMS), including mass verification requirements.	\$2,500
(d) Training of personnel in enhancements and modified processes.	\$5,500

Review and update of Port Kembla Risk Register

Description	\$ Amount <i>(estimated internal staff costs)</i>
(e) Review assessment of the risks associated with heavy haulage operations, driver fatigue, loading/unloading to identify and implement controls as required.	\$2,500

Re-training of personnel in Chain of Responsibility and Mass Management requirements

Description	\$ Amount <i>(estimated internal staff costs)</i>
(f) Re-issuing and re-training of Chain of Responsibility requirements to all personnel involved in Port Kembla heavy haulage operations.	\$3,500

Upgrade of trailing sets

Description	\$ Amount <i>(external cost)</i>
(g) Review of trailing sets used for heavy haulage operations and the associated installation and/or recalibration of axle scales.	\$331 Invoice attached as Appendix A.

Upgrade of In-vehicle management system

Description	\$ Amount
(h) Review of in-vehicle management system within transport fleet and system upgrades, where identified.	\$40,000 Invoice attached as Appendix B (\$32,564). \$7,436 of estimated internal management cost.

25. The total amount spent on enhancement and rectifications following the alleged contravention is \$62,331.

SECTION 7 – ACKNOWLEDGEMENT OF PUBLICATION

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

PART 2 – ENFORCEABLE TERMS

SECTION 1 – COMMITMENTS

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

27. Qube Ports 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. Qube Ports is committed to the ongoing effective management of public risk associated with transport activities within its business operations.
29. Qube Ports 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. Qube Ports is committed to disseminating information about the enforceable undertaking to workers and other relevant parties within the chain of responsibility, including Qube's Executive Management, Senior Management, Operational Management, Health and Safety Committees, Health and Safety Representatives, and other workers (including contractors working for Qube Ports).

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

31. Qube Ports is committed to participating constructively in all compliance monitoring activities of the EU.
32. Qube Ports acknowledges that responsibility for demonstrating compliance with the undertaking rests with Qube Ports and evidence to demonstrate compliance with the terms will be provided to the NHVR by the due date of each term.

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

33. Qube Ports 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

34. As part of this enforceable undertaking, Qube Ports aims to deliver strategies that benefit:
- (a) the drivers and parties within the chain of responsibility; and
 - (b) the transport industry and community.

35. Qube Ports intends to achieve these outcomes through the strategies set out below.

Benefits to drivers and parties within the chain of responsibility

Activities

Activity 1 - Development of Critical Risk Awareness video message campaign

Scope

Video messages promoting *Making Zero Harm Your Choice* and providing workers with a greater understanding of Critical Risks and associated control measures for heavy vehicle operations.

Details

Topics covered within the video awareness campaign will include mass management, load restraint, fatigue, speed and driver distraction.

Video messaging campaign supported by workplace posterware and micro learning events.

Roll out of awareness campaign to persons involved with heavy vehicle operations and chain of responsibility within Qube Ports' business.

The topics of the initiative will address the following key risks areas associated with Heavy Vehicle operations:

Mass Management

The mass management video will include the following content:

- Legal compliance requirements relating to mass management, particularly related to heavy haulage operations.
- How to meeting legal compliance requirements, including use of axle scales, weight bridges, consignment notes and engineer calculations.
- Consequences (both from a regulatory penalty perspective and a human perspective) of not complying / managing this risk.
- The proactive choices and decisions that persons within the chain of responsibility need to take to ensure effective management of overloading risks.

Load Restraint

The load restraint video will include the following content:

- Legal compliance requirements relating to load restraint, particularly related to heavy haulage operations and project cargo.
- How to meeting legal compliance requirements, including the use of the National Load Restraint guide, specific load restraint methods for common project cargo handled, maintenance of load restraint equipment and the completion of 360 degree pre-journey inspections.
- Consequences (both from a regulatory penalty perspective and a human perspective) of not complying / managing this risk.
- The proactive choices and decisions that persons within the chain of responsibility need to take to ensure effective management of load restraint risks.

Fatigue

The fatigue management video will include the following content:

- Legal compliance requirements relating to fatigue management.
- How to meeting legal compliance requirements, including allocation and planning aspects and work recording (such as work diaries and In-vehicle management systems).
- Consequences (both from a regulatory penalty perspective and a human perspective) of not complying / managing this risk.
- The proactive choices and decisions that persons within the chain of responsibility need to take to ensure effective management driver fatigue.

Speed and Driver distraction (broadly driver behaviour)

The speed and driver distraction video will include the following content:

- Legal compliance requirements relating to speed and driver behaviour

- Consequences (both from a regulatory penalty perspective and a human perspective) of not complying / managing this risk.
- The proactive choices and decisions that persons within the chain of responsibility need to take in relation to behaviour.

Delivery

The campaign will be delivered via a combination of face to face, instructor led training and self-paced on-line delivery.

Outcomes

Increased workforce understanding of Critical Risk Control measures associated with heavy vehicle operations.

Costs

- Project Management and development of video content: \$50,000.
- Delivery of awareness message to persons involved in heavy vehicle operations (i.e workforce hours): \$10,000.

TOTAL: \$60,000

Timeframe

- Content Development - within 9 months of this enforceable undertaking being accepted.
- Training/Delivery Deliverable - within 12 months of this enforceable undertaking being accepted.

Outputs

- A copy of an outline of the content (developed above) submitted to the NHVR as evidence of this deliverable.
- A copy of attendance records will be submitted to the NHVR as evidence of this deliverable.

Activity 2 - Mass Management Review

Scope

External review of current mass management protocols for heavy vehicle operations relating to heavy haulage operations.

Detail

Review of current mass management protocols by external consultant.

The purpose of the review will be to identify any additional opportunities for improvement and/or best practice methods for the management of mass compliance within heavy vehicle operations and specifically related to heavy haulage and project work.

The review will include the following:

- A desktop review of Qube's existing Procedures, Manuals and associated process for the management of compliance with Chain of Responsibility requirements.
- Interview with Qube personnel involved in the management of compliance with Chain of Responsibility requirements.
- Review of Qube's level of implementation of processes for the management of compliance with Chain of Responsibility requirements.

Outcomes

Identification of additional enhancements to existing process for the management of mass compliance for heavy haulage and project cargo operations.

Costs

- External provider costs: \$10,000.

TOTAL: \$10,000

Timeframe

<ul style="list-style-type: none"> • Within 12 months of this enforceable undertaking being accepted. <p>Outputs</p> <ul style="list-style-type: none"> • A copy of the report will be provided to the NHVR as evidence of this deliverable. 	
Total estimated cost of benefits for driver and parties in the chain of responsibility	\$70,000

Benefits to the transport industry and community

Activities	
<p>Activity 3 - Sharing of Awareness video message campaign</p> <p>Scope</p> <p>Qube Ports will develop an un-branded version of video message materials (referred to in Activity 1) and share it with the NHVR so that it can be utilised for broader industry use.</p> <p>Details</p> <p>As set out above, topics covered within the video awareness campaign will include mass management, load restraint, fatigue, speed and driver distraction.</p> <p>Outcomes</p> <p>Increased industry understanding of Critical Risk Control measures associated with heavy vehicle operations.</p> <p>Costs</p> <ul style="list-style-type: none"> • Production of non-Qube Ports branded video and poster content: \$5,000. <p>TOTAL: \$5,000</p> <p>Timeframe</p> <ul style="list-style-type: none"> • Within 12 months of this enforceable undertaking being accepted. <p>Outputs</p> <ul style="list-style-type: none"> • Video messages and posterware will be submitted to the NHVR as evidence of this deliverable. 	
Total estimated cost of benefits to the transport industry	\$5,000

36. The total estimated value of the undertaking is \$75,000.

PART 3: OFFER OF UNDERTAKING

Executed as an Undertaking

Executed by **Qube Ports Pty Limited** (ACN 123 021 492) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

[Redacted Signature]

Signature of Director

Paul Digney

Name of Director (Print)

10 Aug 2020

Date

[Redacted Signature]

Signature of Director/Company Secretary

Thanh Truong

Name of Director/Company Secretary (Print)

10 Aug 2020

Date

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 2013* (NSW) by:

[Redacted Signature]

Signature of Chief Executive Officer

SAL PETROCCITTO

Name of Chief Executive Officer (Print)

30 Sept. 2020

Date