

8 October 2020
Our Reference: PC/2 DOC20/135552

Qube Ports Pty Limited
(ABN 43 123 021 492)
45-53 Clarence Street
SYDNEY NSW 2000

To the proper officers,

Heavy Vehicle National Law

Part 10.1A – Enforceable Undertaking

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 which I follow I am of the opinion that the undertakings given by Qube Ports Pty Limited (“Qube Ports”) are an appropriate enforcement option in regard to the relevant alleged contraventions.

Background to the application

2. It is alleged by Transport for New South Wales (“TfNSW”) (formally Roads and Maritime Services) that:
 - a. On 19 November 2019 a heavy vehicle registered to Qube Bulk Pty Limited (“Qube Bulk”) 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 tonnes, 111% in excess of the 20 tonne weight allowed.
 - b. Qube Bulk was not the operator of the heavy vehicle at the time of the offence. Rather, at the time of the alleged offence, the operator of the heavy vehicle was Qube Ports.
3. The allegation is a contravention of s 96(1)(c) of the HVNL. TfNSW commenced prosecutions against Qube Bulk on the basis of the above alleged contraventions. The proceedings were subsequently transferred into the name of Qube Ports.

4. On 10 August 2019, Qube Bulk wrote to the NHVR, through legal counsel, proposing an enforceable undertaking for these alleged contraventions, and explaining that the operator of the heavy vehicle was Qube Ports.
5. The notification was made to the NHVR, and not TfNSW as no Authorised Officers in TfNSW had been empowered to act under Part 10.1A of the HVNL.

Factors to be taken into consideration

6. I have assessed the proposal submitted against NHVR Policy – *Enforceable Undertakings* (“the policy”) and NHVR Guideline – *Proposing an Enforceable Undertaking* (“the guidelines”).
7. In assessing the proposal per Section 4 of the guidelines I have regard to the following factors:
 - a. While the alleged overmass contraventions were of the highest risk category, there was no manifestation of the risk to public safety, road infrastructure or the environment.
 - b. Qube Ports has not previously been the subject of an enforceable undertaking under the HVNL or under any Work Health and Safety statutory regime.
 - c. Since commencing operation in Australia, Qube Ports has not been convicted of any offence under the HVNL, a breach of any safety duty under the WHS legislation of a State, Territory or the Commonwealth, a failure to comply with any enforceable undertaking or any offence involving the death, serious injury or illness of any person involved in Qube Ports’ business or undertakings.
 - d. Prior to the proposal Qube Ports has already made a significant rectification to their compliance and transport systems, showing a commitment and willingness for positive change. The proposed enforceable undertaking will deliver a three-tiered approach in order to deliver benefits to their drivers, other parties in the chain of responsibility, the wider transport industry and the border community.
 - e. The total estimated value of these undertakings is far in excess of the maximum penalties that the Court could impose for these offences.

- f. The undertakings proposed are likely to achieve measurable improvements in the heavy vehicle transport industry internally, to the wider supply chain as well as to the communities in which they operate.
 - g. Overmass heavy vehicles are a common occurrence. Education, systems and training which results in less contraventions will lead to safer heavy vehicles on the road and less impact on road infrastructure.
 - h. Qube Ports has given their commitment to deliver the undertakings, in a staged approach in a realistic timeframe (12 months).
8. I have considered the views of the prosecuting agency, TfNSW in assessing this proposal.

Reasons for decision

9. Having considered all of the above factors, and in all of the circumstances of this matter, I am of the opinion that the undertakings given by Qube Ports are an appropriate enforcement option in regard to the relevant contraventions.
10. I have concluded that the undertakings are a preferred enforcement option to continuing the prosecutions against the relevant contravention due to the opportunity to provide lasting organisational change within Qube Ports. The undertakings proposed would not have been achieved in the present matters by prosecution alone.
11. Pursuant to section 590A of the HVNL, it is my decision to accept the undertaking by Qube Ports offered on 10 August 2020.

Yours sincerely,



Sal Petrocitto

Chief Executive Officer