

**Work Health and Safety Act 2011 (WHS Act)**  
**Work Health and Safety Regulation 2011 (WHS Regulation)**

**Enforceable undertaking**

Undertaking to the Secretary, Department of Trade and Investment, Regional Infrastructure and Services NSW given for the purposes of Part 11 (**Enforceable undertakings**) of the *Work Health and Safety Act 2011 (WHS Act)*, the operation of which extends to a contravention or alleged contravention of a provision of the Occupational Health and Safety laws that occurred or is alleged to have occurred on or after 7 June 2011 pursuant to clause 6 of Schedule 18B of the *Work Health and Safety Regulation 2011 (WHS Regulation)*.

**By**

General Carrying Pty Limited ACN 067 829 190

## **Enforceable undertaking**

### **Purpose**

The purpose of this enforceable undertaking is to document the undertakings offered to the Director, Mine Safety Performance of the New South Wales Department of Trade and Investment NSW (DTI) pursuant to Part 11 (**Enforceable undertakings**) of the *WHS Act*.

### **1. Particulars about the person proposing the undertaking**

Contact Details: Mr Stephen Speakman

Business address: Lot 211 Topham Road, Smeaton Grange NSW 2567

Registered office: 263 Kingsgrove Road, Kingsgrove NSW 2208

Telephone contact: [REDACTED]

Legal structure: Unlisted private company

Type of business: Transport, warehousing and distribution

Commencement date of corporation: About 1995

Number of workers: As at 7 December 2011, General Carrying had approximately 77 people working for it either directly or through a related but separate company, Smeaton Grange Investments Pty Ltd (**Smeaton Grange**).

Products and services: Transport, warehousing and distribution

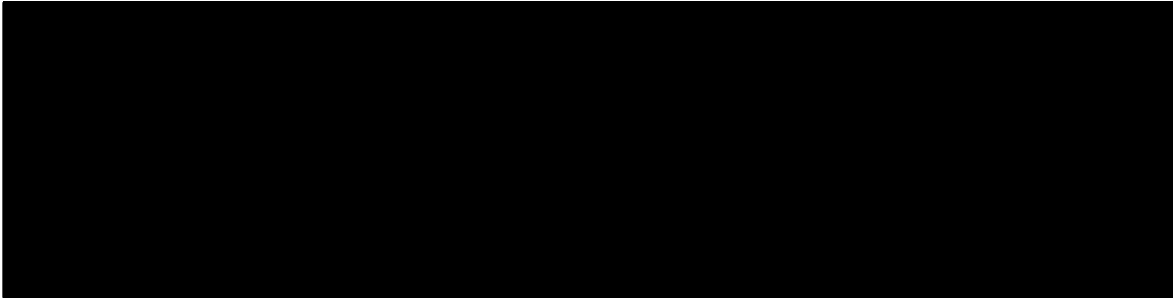
- 1.1 General Carrying is a family business and has been trading since about 1995. Truck drivers were provided by Smeaton Grange as part of the family business arrangement.
- 1.2 General Carrying had a contract with Smeaton Grange to lease equipment to it including trucks and to provide the services of drivers, including the injured person (IP), for the carriage of products including containerized products on behalf of its clients throughout Australia.
- 1.3 General Carrying administered and controlled work performed by the IP, which included the provision of information, instruction and supervision of day-to-day work.

### **2. Details of the alleged contravention**

- 2.1 It is alleged by the Director, Mine Safety Performance that on 7 December 2011, General Carrying being an employer at the Tasman Mine, George Booth Drive, via Seahampton NSW (**Mine**), contravened section 8(2) of the *Occupational Health and Safety Act 2000* (NSW) (**OHS Act**), in that it failed to ensure, so far as was reasonably practicable, the IP

was not exposed to risks to health or safety arising from the conduct of General Carrying's undertaking while they were at General Carrying's place of work contrary to section 8(2) of the *OHS Act*.

2.2



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

- 3.1 Donaldson Coal Pty Ltd (**Donaldson**) owns the Tasman Underground Mine situated off George Booth Drive via Seahampton near Newcastle. Tasman Mine is a bord and pillar operation using continuous miners for first workings and secondary extraction. Steel mesh sheets are used as part of the roof and rib support system.
- 3.2 Australian Steel and Wire Pty Ltd (**ASW**), based in Western Australia, contracted with Donaldson for the supply and delivery of steel mesh. ASW loaded the mesh, stacked in 11 bundles of 60 sheets weighing approximately 1.3 tonnes per bundle, into containers for transport by rail to NSW. The container had a series of steel gates on either side, which could be opened to contain and discharge a load. Each side of the container had a sliding flexible outer tarpaulin on the outside of the gates. ASW had a contract with General Carrying for the carriage of loads of steel mesh to Tasman mine.

#### Unloading steel mesh at Tasman mine

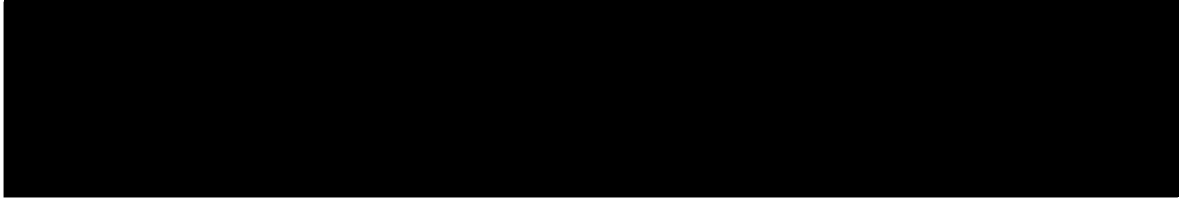
- 3.3 The containers of steel mesh were unloaded at the Pacific National rail yard at Chullora onto trucks. From about October 2010, General Carrying commenced undertaking carriage of steel mesh to Tasman Mine approximately 2-3 times per month.
- 3.4 On 7 December 2011 the IP attended at Tasman mine with a load of mesh. During the unloading process the IP was standing in a safe position to one side of the telehandler. The operator of the telehandler had completed unloading eight bundles of mesh, two at a time, but on the last lift attempted to unload three bundles of mesh. With the three bundles of mesh suspended the telehandler alarm began to beep, the orange indicator light came on indicating the telehandler was overloaded the operator continued reversing and turned the telehandler away from the front of the truck. The IP observed the telehandler reversing away and commenced to close the gates, tie down straps and draw the side curtains working from the rear of the truck towards the driver's cabin. The telehandler operator observed the mesh sliding forward and attempted to crowd the load back but the function would not work.

### 4. An acknowledgment that DTI has alleged a contravention has occurred

- 4.1 It is acknowledged DTI alleges General Carrying has contravened section 8(2) of the *OHS Act*.

**5. Details of injury arising from the alleged contravention**

5.1



**6. Details of any notices issued relating to the alleged contravention**

Date issued	Notice type	Notice number	Action taken to respond to notice
14/12/2011	s62 of OHS Act Documents and information	n/a	Reply received by DTI 14/1/2012
17/9/2012	s171 of WHS Act Documents and information	120917TF – 001	Reply received by DTI 18/9/2012
9/11/2012	s155 of WHS Act Documents and information	121109GCPL – 001	Reply received by DTI 7/12/2012
9/11/2012	s155 of WHS Act Documents and information	121109GCPL –002	Reply received by DTI 7/12/2012
21/11/2012	s155 of WHS Act Documents and information	121121AP – 001	Reply received by DTI 7/12/2012
22/2/2013	s155 of WHS Act Documents and information	130222TF – 001	Reply received by DTI 19/3/2013
7/5/2013	s155 of WHS Act Documents and information	130507TF – 001	Reply received by DTI 30/5/2013

**7. A statement of assurance about future work health and safety behaviour**

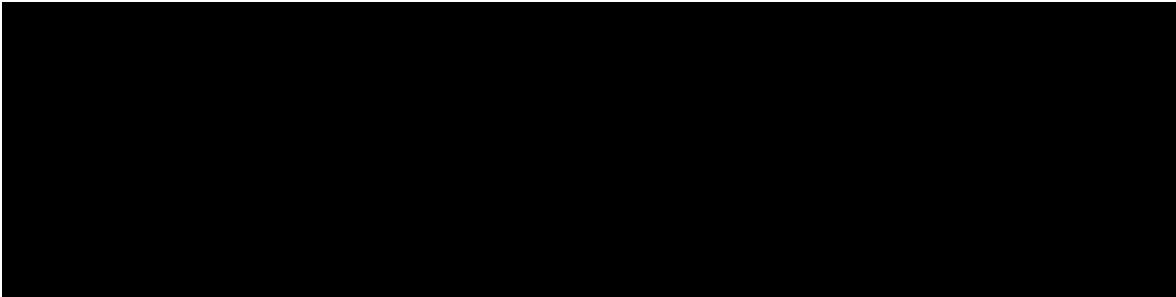
7.1 General Carrying takes its workplace health and safety obligations very seriously. General Carrying is committed to complying with its obligations under the *WHS Act* to ensure, so far as reasonably practicable, the health and safety of all workers.

7.2 General Carrying gives DTI an assurance that it will use its best endeavours to ensure that it does not in the future engage in conduct the subject of the alleged contravention.

**8. Details of the type of workers compensation**

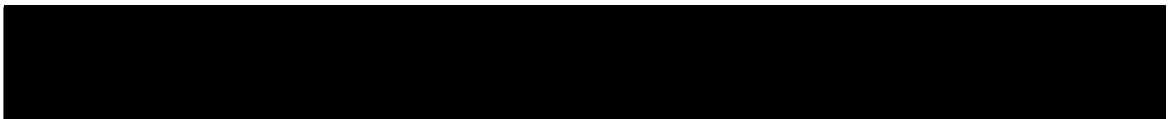
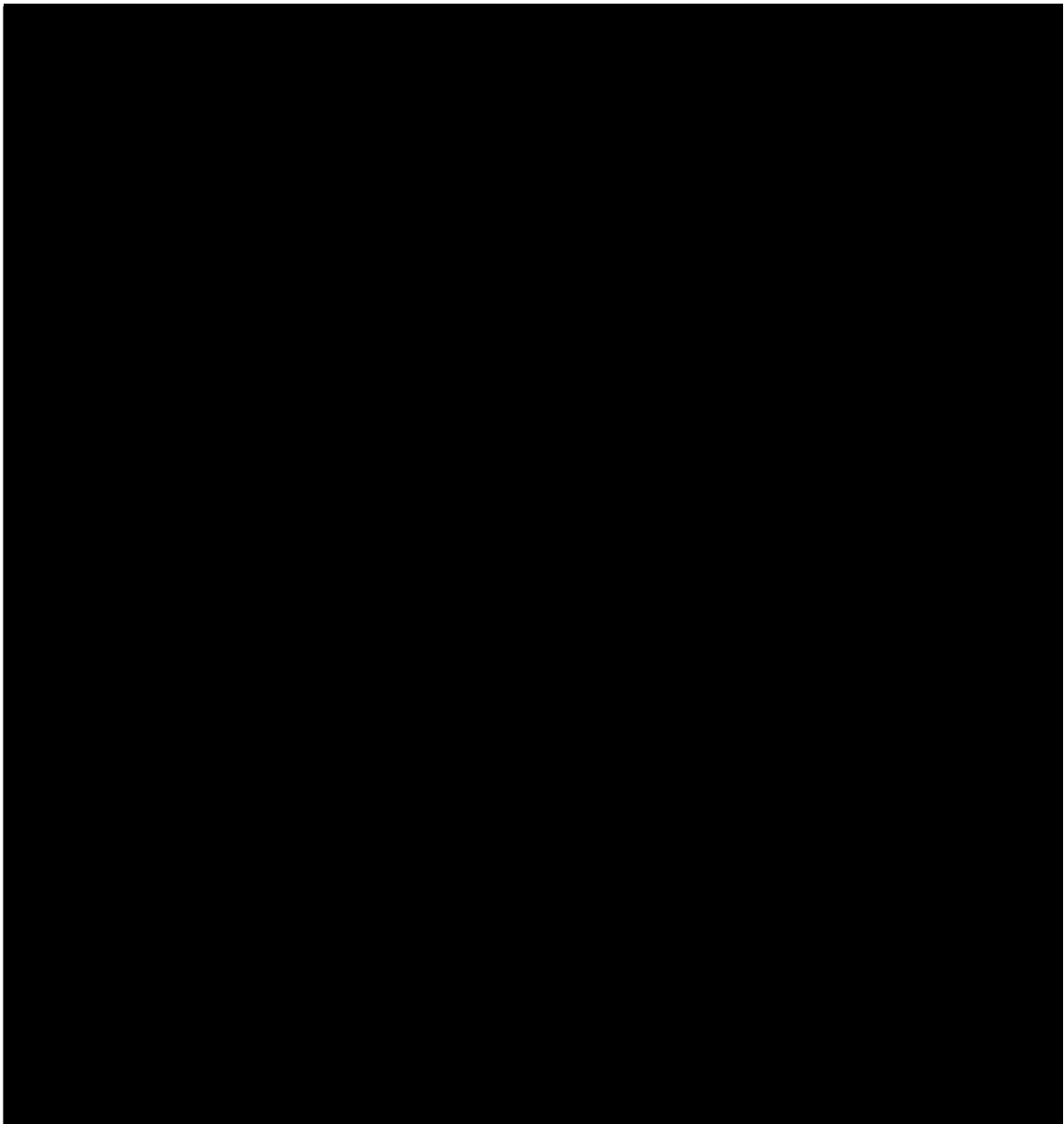
8.1





**9. Details of the support provided and proposed to be provided to the injured person to overcome the illness\injury**

9.1 Following support has been provided to the IP:



- [REDACTED]
10. **If the matter involves a fatality a very serious injury, a claim to demonstrate that exceptional circumstances exist that the enforceable undertaking is a more appropriate response than pursuing prosecution.**

10.1 [REDACTED]  
[REDACTED]  
[REDACTED]

There are exceptional circumstances that make this enforceable undertaking a more appropriate response than pursuing prosecution. In particular:

- (a) The Incident occurred on premises that were not under the control of General Carrying and not generally subject to General Carrying's safety system.
- (b) The operator of the Mine had control of the premises and was immediately responsible for the implementation of appropriate safety systems for work to be undertaken at the premises, including the loading and unloading of steel mesh products.
- (c) It is not alleged that General Carrying had failed to take steps to eliminate or minimize and control the risks associated with forklift operations and pedestrian movement per se. General Carrying maintained a functional and operating safety system at its own premises. In respect to external sites operated by or under the control of other PCBU's, General Carrying had facilitated drivers' participation as required in inductions, information and training to assimilate into the external safety system. In this case, the delivery instructions identified a site induction was required at the Mine.
- (d) At all material times the scope of General Carrying's work was limited to cartage of mesh and did not extend to the loading or unloading of the mesh. General Carrying was under the direction and control of the Mine and understood (naively) and relied upon the Mine to have a safe system of work for unloading the mesh and to provide the induction in accordance with delivery instructions.
- (e) At all material times the IP had been informed by and was aware of General Carrying's policy to contact a supervisor in the event of difficulties and in particular matters concerning safety.
- (f) The telehandler operator was a statutory official of the Mine and had extensive experience in the assessment of, and implementing controls for dealing with hazards and risks.

- (g) The IP and telehandler operator consulted about the system of work to be employed for unloading the mesh.
  - (h) The brief factual circumstances are set out in 3.4 above. There is controversy between the evidence of the telehandler operator and the IP as to the last moments before the incident. However there is no dispute the IP was in a safe area stationed outside of the hazard zone of the telehandler for almost all of the unloading process.
  - (i) General Carrying had no control over and could not know the Mine provided a telehandler operator who was not authorized or appointed as a person competent to undertake telehandler operations.
  - (j) General Carrying had no control over and could not know the telehandler operator would continue to operate the machine when the overload warning light and alarm were activated.
  - (k) General Carrying had no control over the mechanical operation of the telehandler and could not know the telehandler would not respond to the operator's attempt to crowd the load.
  - (l) General Carrying does not currently undertake the cartage of wire mesh to the Mine and does not intend to do so in the foreseeable future.
- 11. Details of any existing SMS at the workplace including the level of auditing currently undertaken.**
- 11.1 At the time of the incident General Carrying had in place a safety management system. Following the incident General Carrying employed a transport industry based consultant to review its systems and implemented a range of measures intended to prevent any recurrence of incidents of a similar nature to this Incident. The consultant has been appointed to provide ongoing support in the continued development of the safety management system and including an annual audit.
- 12. Details of any consultation undertaken within the workplace regarding the proposal of an enforceable undertaking.**
- 12.1 General Carrying has consulted with relevant workers including the IP and within the senior management team including the Managing Director regarding a proposed enforceable undertaking.
- 13. Statement of regret that the incident occurred**
- 13.1 General Carrying sincerely regrets the Incident occurred and that the IP sustained injuries as a result of the Incident. The company, directors and management are committed to the health and safety of all persons in the workplace and those who use their plant and

equipment.

#### **14. Any rectifications made as a result of the contravention**

14.1 General Carrying engaged transport industry based safety consultants to undertake the following scope of works:

- assess site safety and risk assessments; On-site assessment conducted using risk matrix. Interviews conducted including with supervisors and managers and observations of a variety of functions including loading, load restraint, interaction with forklifts and their operations.
- expand and update policies and procedures operational changes; Operations policy and procedure reviewed, disassembled, and reconstructed incorporating additional policies and procedures and strengthening existing ones.
- develop a driver manual; Driver induction manual developed and approved linked directly to operations manual. Drivers were consulted, trained and given a power point presentation on the changes which includes undertaking a site based risk assessment.
- General Carrying provided several copies of the manual to its customers and had requested customers undertake random checks with drivers to establish the manual is present when on site.
- conduct training and re-induction of heavy vehicle drivers; The principles of forklift loading and unloading exclusion zones (LUEZ) were expanded and included in the driver training.
- conduct risk assessments on MHE activities both on-site and off-site; Off-site risk assessments were conducted at 3 sites over a 5 day period. The process involved consultation with site safety managers about activities involving heavy vehicles, drivers and forklift operations and interaction. Observation and assessment using risk matrix over several hours at each site.
- provide ongoing support and advice on operational activities as required; Processes and procedures developed for managing mass and basic fatigue management accreditations, and driver inductions\training.
- spill kit training;

14.2 Total amount spent on rectification \$16,769

#### **15. Acknowledgement that WHS undertaking may be published and publicized**

15.1 General Carrying acknowledges that the enforceable undertaking may be publicized on the DTI internet site and referenced in departmental material.

15.2 General Carrying will, within 30 days of the date of this undertaking, cause a public notice to be published in an appropriate trade magazine, such as Diesel Diesel, Australia's premier truck and trailer magazine (or other media as agreed with DTI).

#### **16. Statement of ability to comply with the terms of the undertaking**

16.1 General Carrying acknowledges it has the financial ability to comply with the terms of this



enforceable undertaking.

**17. Statement regarding relationships with beneficiaries**

- 17.1 General Carrying acknowledges that there are no known current relationships with any beneficiaries outlined in this enforceable undertaking, other than its employees and transport industry stakeholders who will be informed of the undertaking and the results of the project.

**18. Intellectual property licence**

- 18.1 General Carrying grants DTI a permanent, irrevocable, royalty free, worldwide, non-exclusive licence to use, reproduce, distribute, electronically transmit electronically distribute adapt, and modify any materials as a result of this enforceable undertaking.

**19. Statutory declaration**

- 19.1 General Carrying acknowledges DTI may require a statutory declaration outlining details of any prior work health and safety convictions, or findings of guilt under any work health and safety legislation or work health and safety related legislation.

**20. Acknowledgement of overview and guidelines**

- 20.1 General Carrying has read and understands Enforceable undertaking Guidelines for proposing a WHS undertaking- September 2013.

**Section 2 Enforceable terms**

- (a) **A commitment that the behavior that led to the alleged contravention has ceased or will not re-occur**
- (i) General Carrying is committed to taking all reasonably practicable steps to prevent a re-occurrence of the incident.
- (b) **A commitment to the ongoing effective management of WHS risks**
- (i) General Carrying is committed to taking and exercising its best endeavours to ensure the effective management of work health and safety risks.
- (c) **A commitment to disseminate information about the undertaking to workers, and other relevant parties (which may include work health and safety representatives), and in the annual report (if applicable)**
- (i) General Carrying agrees to disseminate information about the enforceable undertaking within the workplace, including to the members of any safety committee, health and safety representative, to workers and other relevant persons within 20 days from the date on which the undertaking comes into effect. The information will be disseminated through a general communication tool to all workers through a company meeting and by a notice placed on notice boards.
- (ii) General Carrying is not a publicly listed company and by legislative enactment is not required to and does not publish an annual report.

- (d) **A commitment to participate constructively in all compliance monitoring activities of the undertaking**
- (i) General Carrying acknowledges the responsibility for demonstrating compliance with the enforceable undertaking rests with the person who has given the undertaking. Evidence to demonstrate compliance with the terms will be provided to DTI by the due date for the term of the undertaking.
  - (ii) General Carrying acknowledges that DTI may undertake other compliance monitoring activities to verify the evidence that is provided and compliance with the relevant term. The evidence provided to demonstrate compliance with the undertaking will be retained by the person who has given this undertaking until advised by DTI that the undertaking has been completely discharged.
  - (iii) General Carrying acknowledges that DTI may initiate additional compliance monitoring activities such as inspections, as considered necessary at DTI expense.
- (e) **Strategies that will deliver worker benefits**
- (i) General Carrying will fund and undertake a project with the aim of increasing industry awareness and focus on the interaction of mobile plant and pedestrians on the surface at mine sites and in warehouses, in loading and unloading operations of stores, equipment and plant and effectively communicating the information to PCBU's within the mining industry and the general transport industry in NSW and assisting in identifying and improving loading and unloading operations.
  - (ii) General Carrying will engage independent consultants to undertake the following work and project activities:
    - (A) Review Trade and Investment, Coal Services, WorkCover NSW, Transport Industry Association and WorkSafe databases on mobile plant and pedestrian incidents;
    - (B) Publish an open letter in transport industry journal with national exposure seeking information on mobile plant and pedestrian incidents;
    - (C) Establish an online survey tool to acquire information on mobile plant and pedestrian incidents;
    - (D) Identify the top key areas of safety concern;
    - (E) Develop an evaluation tool using the top key areas of safety concern identified in the database review;
    - (F) Apply the evaluation tool to review a sample of mobile plant and pedestrians movements on the surface at open cut and underground mine sites and in warehouse, in loading and unloading operations of stores, equipment and plant at all participating NSW mines and transport industry sites;

- (G) Assess the results of the review and develop a mine and transport industry specific baseline of data which can be interfaced;
  - (H) Provide DTI, and if requested WorkCover NSW and SafeWork Australia with a written report of the results;
  - (I) Provide feedback to individual operations on outcomes of the review at their site;
  - (J) Communicate progress and outcomes of the project to the mining and transport industries.
  - (K) Timeframe 66 weeks from start of project work commencing in 2015
- (iii) General Carrying will develop and implement a program for supervisors development aimed to expand and enhance the acquisition of skills, knowledge and awareness of responsibilities and to effectively impart these benefits in the continuing development of safety and to monitor and mentor workers.
- (A) The program include lessons from the Incident;
  - (B) Training will be subject to evaluation and assessment;
  - (C) Training will be developed and delivered by external safety providers.
  - (D) Timeframe 16 weeks from start of project work commencing in 2015.
- (iv) General Carrying will work with selected large retailers whose business requires customers to pick up goods from external warehouses. General Carrying has experienced this process and firmly believes there is scope for the development of safety systems and processes.
- (A) The program include lessons from the Incident;
  - (B) General Carrying representatives will attend site visits; meetings and workshops with the view to improve safety systems and processes for customer safety;
  - (C) Timeframe 26 weeks from start of project work commencing in 2015.
- (v) General Carrying will publish a two-page article in an industry based publication highlighting the need for hazard awareness and the importance of communication when undertaking deliveries at external sites, including traffic management, induction, processes and procedures and interface between pedestrians and mobile plant.
- (A) The publication will include lessons from the Incident;
  - (B) Timeframe 16 weeks from start of project work commencing in 2015.
- (vi) General Carrying has brought forward its plant replacement program and has now purchased 2 Volvo prime mover trucks at an additional extra cost of \$120,000. The WHS advantages for General Carrying's workers are

specifically aimed at improving ergonomics, improving the safety system and standards for the driver and other road users through an electronically controlled brake system, increased stability, reduced and more uniform, wear on brake system and minimises the risk of skids, roll-over, jack-knifing and trailer swing the cause of many collisions, an underrun protection safety system for other motorists, systems that improve driving comfort and safety. The system includes:

- (A) EBS (Electronically controlled Brake System) is a very fast-reacting brake system that offers a number of improvements in terms of traffic safety and vehicle productivity, both for single vehicles and tandem vehicle combinations.
- (B) The following product features characterise EBS-STD: The system reacts extremely quickly, resulting in shorter braking distances. Electronic control adapts and optimises brake force characteristics.
- (C) Brake force distribution, between axles, and between the tractor and trailer, increases stability.
- (D) Reduced, and more uniform, wear on brake linings and tyres. Brake blending with the optional auxiliary brakes reduces wear on the disc brakes. The principle is for each axle to brake its own load, and each section of a combined vehicle to brake its own weight. Brake distribution avoids jack-knifing and trailer swing.
- (E) Single accidents are simulated in the world's toughest and most realistic safety test the Swedish Cab Test, in which the same cab is subjected to three rigorous, individual tests designed to simulate realistic driving conditions as closely as possible. The Swedish Cab Test sets the benchmark in truck cab safety.
- (F) The Front Underrun Protection System (FUPS) is an integrated steel structure fitted under the front of Volvo trucks which prevents an oncoming passenger car from being trapped under the truck during a frontal collision. Volvo's underrun protection beam provides a highly effective barrier for cars. Car passenger safety is improved by our extensive and rigorous testing program which minimizes the risk of injury. Volvo's safety standard exceeds the legislated static test by using real truck-car crash testing.
- (G) The following features characterise BRAKE-DV electronic control for quick response and shorter braking distance. Spine-like fitting allows the brake disc to expand symmetrically, which minimises the risk of cracking. The brake disc is manufactured in a durable alloy. The brake blend function, with optional auxiliary brakes reduces wear on the disc brakes.
- (H) Comfort and safety systems such as hill starting assistance, and emergency brake assistance.
- (I) Electronic Stability Program (ESP) minimises the risk of skids, roll-over

and jack-knifing.

- (J) Preventative safety package for Volvo FM The preventative safety package includes EBS disc brakes and driving support systems that improve driving comfort and safety.
  - (K) LCS: The Lane Changing Support radar system monitors the blind spot on the passenger side and alerts the driver during lane changes if there is any risk of a side collision.
  - (L) ACC: Adaptive Cruise Control uses radar to maintain a set time gap from the vehicle in front through automatic application of the accelerator and brakes.
- (vii) General Carrying has brought forward its plant replacement program and has now purchased 4 trailers at additional extra cost of \$160,000. The WHS advantages for General Carrying's workers using Drop Deck Titeliners are specifically aimed at improving ergonomics, elimination of manual handling systems, eliminating repetitive strain injuries, eliminating falls from heights and improving overall safety. The system includes:
- (A) Automatic Buckle-Less Curtain System – This system eliminates the need for drivers to buckle and un-buckle the curtains by hand. This system also eliminates the need for gates to be used on the trailer thus the drivers do not lift or lift off the gates every time the trailer is loaded.
  - (B) Automatic Mezzanine Floors – This system allows the drivers to move the mezzanine floors up and down to the required height without any manual handling whatsoever.
  - (C) Powered Landing Legs – This system engages and disengages the landing legs by a powered motor thus eliminating any manual handling to operate the landing legs.
  - (D) Rubber Bungee's for Winch Straps - This system eliminates the need for the driver to have to climb on the trailer to secure the restraint strap over the top of the upper level load or to have to throw the buckle and strap over the upper level load.
- (viii) General Carrying's budget forecast is to purchase 2 trucks and 2 trailers each year having the improved safety features.
- (ix) General Carrying is committed to upgrading its truck and trailer fleet to include the improved safety features or better as technology changes.
- (A) Timeframe **[116]** weeks from start of project work commencing in 2015.

**(f) Strategies that will deliver industry benefits**

The projects set out above will deliver significant benefit to the mining and general transport industries.

**(g) Strategies that will deliver community benefits**

The projects set out above will deliver significant benefit to the community at large.

(h) **Total estimated cost of enforceable undertaking excluding item (vi) \$110,000**

(i) **Linking promotion of benefits to the WHS undertaking**

General Carrying is committed to ensuring any promotion of a benefit arising from this undertaking will clearly link the benefit to the undertaking and the undertaking was entered into as a result of the alleged contravention.

**Section 3- Offer of undertaking**

As a duly authorized person of

General Carrying Pty Ltd,

I offer this undertaking and commit

General Carrying Pty Ltd,

to the terms herein:

Signed:   
[Duly authorised person]

Name: *Stephen Speatman*  
[Print name]

Position: General Manager

Dated at: Smeaton Grange this 19th day of March 2015

**Section 4 – NSW Trade & Investment's acceptance of undertaking**

I accept this undertaking as an enforceable undertaking under section 216 of the *Work Health and Safety Act 2011*.

Signed:   
Position: *SECRETARY*..... delegate of the Secretary,

Department of Trade and Investment, Regional Infrastructure and Services (NSW Trade & Investment)

Dated at: *Sydney* this, *13* day of *May*, 20*15*