

IN THE FAIR WORK COMMISSION

Matter Name: Re Svitzer Australia Pty Limited

Matter No.: B2022/1726

OUTLINE OF SUBMISSIONS ON BEHALF OF QUBE PORTS PTY LTD

1. In response to the Directions dated 16 November 2022 and the particular questions identified at paragraph 3 of those Directions, the position of Qube Ports Pty Ltd (**Qube**) is:
 - (a) Qube's understanding is that the indefinite lockout of employees commencing at 12 pm on Friday 17 November 2022 notified by Svitzer Australia Pty Ltd on Monday 14 November 2022 (**Lockout**) is protected industrial action (**PIA**) that is threatened, impending or probable, but that is as far as it can advance this issue.
 - (b) The PIA is threatening or would threaten to cause significant damage to the Australian economy or an important part of it.
 - (c) With the history of protracted negotiations; a previous suspension of PIA; and the ongoing uncertainty and damage further PIA will cause; the Fair Work Commission (**Commission**) should terminate the PIA.

Question (b) – significant damage to the Australian Economy

2. Qube conducts a stevedoring business and provides stevedoring services to ports throughout Australia. The Lockout will halt vessel movement in and out of certain Australian ports. Qube, like other stevedoring operators, is the next immediate link in the supply chain for the transport of goods and services throughout Australia¹.
3. It is plainly evident that the business of Qube, like other stevedores and terminal operators, will be directly disrupted by the Lockout². However, as an early and integral part of the transport and logistics supply chain, the disruption the Lockout will cause Qube will cascade and affect other parts of the supply and logistics chain³.
4. By way of illustration of the impact, in the confined period of midday on Friday, 18 November 2022 to the end of Sunday, 20 November 2022 (**Weekend Period**), the Lockout will prevent the loading and unloading of cargo at affected ports, with the result that traded goods will not depart Australia or arrive in Australia for distribution. Evidence given in the Statement of Michael Ventura Sousa dated 17 November 2022 (**Statement of Michael Sousa**) of the immediate impact of the Lockout in respect of Qube's operations which only relate to 6 ports during the Weekend Period indicates that:
 - (a) 34 vessels scheduled to be discharged at ports located in Queensland, New South Wales, Victoria, South Australia and Western Australia will be turned away from port (or, if they have docked, will be removed from their berth). These 34 vessels carry key commodities

¹ Para 7 of the Statement of Michael Sousa.

² Paras 12, 13 and 26 of the Statement of Michael Sousa.

³ Paras 13 and 20 of the Statement of Michael Sousa.

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and products such as automobiles, machinery, steel and other construction materials, fertiliser, cement and pulp, with a total value of \$740,947,715⁴;

- (b) the departure of vessels waiting to be loaded with grain for export to the value of \$53,600,000 will be delayed⁵;
 - (c) passengers due to disembark from cruise vessels will be delayed, with a potential downstream impact to the hospitality and transportation industries⁶;
 - (d) the services of road freight transportation operators will be disrupted, with the need to stand down employees and close depots⁷; and
 - (e) affected employers, such as Qube, may need to stand down employees⁸.
5. Should the Lockout continue after the Weekend Period, the ongoing impact on Qube's operations and the resulting disruption to the economy, is likely to be of a similar in nature, scale and gravity⁹.
6. In light of the above, and considering Qube's key role in in the transport and logistics network that connects the delivery of goods transported by vessels to and from Australia to 730,000 different supply chains¹⁰, Qube submits that the PIA will cause significant damage to the Australian economy.

Question (c) – Order to terminate the Industrial Action

7. Qube submits that the Commission should terminate, rather than suspend, the PIA.
8. The factors that support termination of the PIA¹¹ include:
- (a) the length of time negotiations have been going on and progress made in those negotiations, noting the negotiations have been underway for more than 2 years¹²;
 - (a) the PIA that has been taken to date, with repeated and economically damaging instances of PIA failing to result in any meaningful progress in negotiations.]Further, PIA taken has already resulted in suspension covering a two week period¹³;
 - (b) the impact of the PIA as described above; and
 - (c) the uncertainty arising out of suspended PIA, as well as the resumption of PIA when the suspension ceases.¹⁴

⁴ Para 17 of the Statement of Michael Sousa.

⁵ Para 24 of the Statement of Michael Sousa.

⁶ Para 20 of the Statement of Michael Sousa.

⁷ Para 25 of the Statement of Michael Sousa.

⁸ Para 25 of the Statement of Michael Sousa.

⁹ Paras 21 and 22 of the Statement of Michael Sousa.

¹⁰ Para 7 of the Statement of Michael Sousa.

¹¹ See *Essential Energy v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2016] FWC 3338 at [37].

¹² See *Ambulance Victoria v Liquor, Hospitality and Miscellaneous Union* [2009] FWA 44 at [27]; *Ausgrid; Endeavour Energy; Minister for Industrial Relations (New South Wales) v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia; the Australian Manufacturing Workers' Union* [2015] FWC 1600 at [59]; *Victorian Hospitals' Industrial Association v Australian Nursing Federation* [2011] FWAFB 8165 at [60]; and *Application by State of Victoria, Department of Sustainability and Environment & Australian Workers' Union* [2016] FWC 203 at [40] and [41].

¹³ *Svitzer Australia Pty Ltd v The Australian Maritime Officers' Union* [2022] FWC 493.

¹⁴ See *Application by Specialist Diagnostic Services Pty Ltd T/A Dorevitch Pathology* [2017] FWC 4610 at [9]; *Minister For Tertiary Education, Skills, Jobs And Workplace Relations* [2011] FWAFB 7444 at [13] and [15]; and para 27 of the Statement of Michael Sousa.

9. If the PIA is not terminated, Qube submits that the economic implications arising from the resulting uncertainty are significant and ongoing. Affected operators will incur significant cost from ongoing and unpredictable changes to vessel scheduling which will have to be passed downstream, and the re-direction of imports that, but for the uncertainty, would be unloaded and distributed within Australia¹⁵.
10. Taking into consideration the fact that the Lockout is a further instance of ongoing PIA that has not caused any meaningful progress in negotiations, has caused damage to the industry, and threatens to continue to cause severe damage to part of the Australian economy (including where the potential for further PIA remains uncertain), Qube submits that the PIA should be terminated.

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Solicitors for Qube Ports Pty Ltd
17 November 2022

¹⁵ Para 27 of the Statement of Michael Sousa.