



Government
of South Australia

SafeWork SA

Application for proposed **ENFORCEABLE UNDERTAKING**

The commitments in this undertaking are offered to the regulator by

**ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY.
LTD.**

ABN / ACN 40 000 201 516

The information provided in this document is for the purpose of an undertaking given to the regulator under Part 11 of the *Work Health and Safety Act 2012* (SA). This information will be managed within the requirements of the current State Government privacy regime.

The terms of an accepted enforceable undertaking are a matter of public record.

When an enforceable undertaking is accepted, notice of the decision to accept it and reasons for that decision will be published by the regulator on the SafeWork SA website within 14 days of the date of the decision.

Enforceable undertakings will not be removed from the public register and will remain on the register after a company or individual has discharged all obligations of the undertaking.

COMMENCEMENT OF UNDERTAKING

This enforceable undertaking is given on the day and date that it is accepted and signed by the regulator. The undertaking and its enforceable terms will commence to operate as a legally binding commitment on the part of the person from the date it is given.

SECTION 1: GENERAL INFORMATION

1.1 Details of the person proposing the undertaking

Nominated person: (Point of contact for SWSA communications)	Danny Parkinson
Street address:	Level 7, 80 King William Street, Adelaide 5000
Postal address:	174 Turner Street, Port Melbourne 3207
Telephone:	0409 839 405
Email address:	danny.parkinson@acciona.com
Legal structure:	Pty Ltd company
Type of business:	Construction
Commencement date:	22 May 1957 (date of incorporation of the Company)
Workers: Full time:	100
Part time:	
Casual:	
Products and services:	Delivery of infrastructure projects
Comments:	Acciona Infrastructure Projects Australia Pty Ltd ("the Company") was awarded the Gawler Rail Electrification Project ("the Project") in February 2018. The Company is a global leader for sustainable solutions for infrastructure, renewable energy and water treatment projects in Australia and abroad.

1.2 Details of the alleged contravention

While no formal contravention of the *Work Health and Safety Act 2012 (SA)* (the Act) has been alleged, the Company understands the correct characterisation that could be made to be the following with respect to a trench collapse which occurred on the Project on 6 July 2021:

- Failed in its duty to comply with health and safety, under Section 32 of the Act;

- Failed in its duty to ensure, so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged by the person, while the workers are at work in the business or undertaking, under Section 19(1) (a) of the Act;
- Failed in its duty to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking, under Section 19(2) of the Act;
- Failed in its duty to ensure, so far as is reasonably practicable, the provision and maintenance of a work environment without risks to health and safety, under Section 19(3)(a) of the Act;
- Failed in its duty to ensure, so far as is reasonably practicable, that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking, under Section 19(3)(g) of the Act;
- Failed, as a duty holder, in managing risks to health and safety, to identify reasonably foreseeable hazards that could give rise to risks to health and safety, under regulation 34 of the *Work Health and Safety Regulations, 2012* (SA) (the Regulations);
- Failed as a person conducting a business or undertaking to manage risks associated with the carrying out of construction work in accordance with Chapter 3 Part 1, under regulation 297 of the Regulations;
- Failed as a person conducting a business or undertaking that includes the carrying out of high risk construction work to put in place arrangements for ensuring that high risk construction work is carried out in accordance with the safe work method statement for the work, under regulation 300 of the Regulations;
- Failed as a person conducting a business or undertaking to manage risks to health and safety associated with excavation work in accordance with Chapter 3 Part 1, under regulation 305 of the Regulations;
- Failed as a person conducting a business or undertaking, who proposed to excavate a trench at least 1.5 metres deep to ensure, so far as is reasonably practicable, that the work area is secured from unauthorised access (including inadvertent entry) and minimise the risk to any person arising to the collapse of the trench by ensuring that all sides of the trench are adequately supported by doing one or more of the following:
 - (a) shoring by shielding or other comparable means;
 - (b) benching

(c) battering

under regulation 306(3) of the Regulations.

1.3 Detail the events surrounding the alleged contravention

On 6 July 2021, a worker was injured by a trench collapse on the Project. Emergency services were called to the scene and the injured worker was extracted from the collapsed trench.

1.4 Details of any enforcement notices issued that relate to the alleged contravention

☐

Tick if there were no notices issued by SWSA in relation to the contravention

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
29 July 2021	Improvement notice	203077	A review of Work Health and Safety Management Plan, Document Number 258737-LLE-PM-PLN-0034, Dated 14 October 2020 against WHS Regulation 309 (e) was undertaken following a notifiable incident on 6 July 2021 where a trench collapsed onto a subcontractor (worker) resulting in serious injury. It was identified the arrangements for the collection, assessment, monitoring and review of Safe Work Method Statements (SWMS) is in place, but fails	1. The Company has reviewed its safe systems of work for the assessment of SWMS. As a result of this review, the Company considers that its existing safety systems for SWMS are compliant with the WHS Regulation. Refer to the Company's internal review application dated 13 August 2021 for further details of the Company's assessment in this regard. 2. The Company met with SafeWork SA on 19 August 2021 to discuss the requirements of the

			to adequately identify, assess and review high risk construction work activities as listed in the WHS Regulation 291.	<p>Notice in further detail.</p> <p>3. While the Company considers that its systems of work for the assessment of SWMS are compliant with the WHS Regulation, following the meeting held with SafeWork SA on 19 August 2021 the Company has amended its SWMS template (LLE601B) to include a list of high risk construction work activities as listed in the WHS Regulation 291.</p>
9 July 2021	Prohibition notice	306247	<p>Following a notifiable incident where the excavated trench collapsed injuring a worker and observations of the area there is the potential for further collapse creating a risk to workers. Provide evidence to SafeWork SA of implemented controls to manage risk of collapse and risk to workers is working in the trench.</p>	The company provided a work plan and geotechnical engineer's report to stabilise the works and manage the risk for collapse and the risk to workers.
6 July 2021	Prohibition notice	308440	Following a notifiable incident	A geotechnical engineer was

			where an excavated trench collapsed injuring a worker that required emergency services to conduct the retrieval procedure, the area around the incident area has the potential of further collapse with a risk to workers. PCBU to assess and implement control measures associated with excavation work and engage a geotechnical engineer to sign off procedure prior to work recommencing. Provide evidence to a SafeWork SA inspector.	engaged to sign off the work procedure prior to work recommencing and the Company provided evidence of geotechnical document to SafeWork SA.
6 July 2021	Non-disturbance notice	306651	Fencing to be erected and maintained to prevent access to trenching area and immediate areas from the northern end of the traction power operating slab to the northern end of CSR pit 30412.	Fences were erected and the site was maintained in a secure and undisturbed state for the duration of the non-disturbance notice.

1.5 Detail the injury sustained or illness suffered by worker/s or other/s as a consequence of the alleged contravention detailed above

The injured person suffered a fractured pelvis, fractured rib, lower back contusions, bruising and trauma.

1.6 Detail the employment status and the workers' compensation or other insurance status regarding the person who sustained injury or suffered illness as detailed in 1.5

The injured person is:

- ☐ an employee of the entity
- ☐ a self-employed person
- ☒ other - A worker employed by a subcontractor
- ☐ not applicable

Status: It is reported by the injured person's employer that the injured person has recovered from the physical injuries however the trauma element of the incident is an ongoing concern.

1.7 Detail the support provided or proposed by the person to the injured person and/or family or other/s

Date	Description of support	Comments
6/07/2021	Attendance on the injured person at hospital and the offer of emotional support and assistance	The injured person's employer and the Company's Safety Advisor attended hospital to check on the injured person's welfare and wellbeing, and to provide emotional support and assistance to the injured person's family member.
Post incident – ongoing	Income maintenance, payment of medical expenses, return to work and counselling support offered	Injured person's employer has worked with the claims agent to support and manage the injured person's return to work opportunities. Offers of counselling to the injured person and their family, training opportunities offered to then be able to undertake different career path within the business as part of his return to work.

1.8 Detail any current work, health and safety systems at the workplace

Risks to health and safety are managed using the Company's work health and safety management system (WHSMS) which includes policies, procedures, standards, management systems and dedicated personnel. The strategies currently in place are:

- The continued development, implementation and maintenance of practical written procedures.
- Identifying and assessing health and safety hazards and risks and where they cannot be eliminated, ensuring they are effectively controlled.
- Workers and visitors to any site are provided with information, communication, training and supervision, relevant to their existing knowledge and skills and identified needs.

- Providing a WHS team of resources commensurate to the level of risk that are competent in safety management systems and legislative requirements and have responsibilities that are documented and communicated.
- Taking prompt corrective action in response to reported hazards, inspections, audits and incidents.
- Regular monitoring and auditing of our health and safety performance and the identification of preventive actions to improve safety performance.

The Company has committed to, has established and will maintain, review and continually improve its work health and safety management systems to meet the requirement of the current standards related to the development, design, construction, maintenance, operation and asset management of all the Company's activities. The Company's integrated management approach is applied to our strategic direction and operational decisions to ensure work health, safety and wellbeing systems have compliant and consistent results from all our activities, taking into account economic, environmental, work health and safety, legislative and psychosocial factors, with a permanent vision of sustainability through improvement and optimisation of processes. The Company's WHS Policy is communicated to all levels of the organisation, both directly and via internal publications including on the Company's Intranet, website and notice boards. The Company's WHS policy is made available to all interested parties and will be periodically reviewed to ensure it remains relevant and appropriate to the business operational scope.

1.9 Detail the level of auditing currently undertaken on the work, health and safety systems referred to in term 1.8, including compliance audits and audit frequency

The Company has in place Project audit schedules which are established at the commencement of each project and typically cover a month-by-month or quarterly audit work scope/task criteria, based on the risk profile of the relevant project. These audits included desktop safety systems audits, in field task specific procedural audits, as well as client and third-party auditing. The Company's Federally funded FSC registered projects are also subject to FSC auditing of the Company's safety management systems and compliance on a yearly basis or as required. The Company also frequently engages third party independent auditors to undertake audits of the Company's safety management system and site procedure compliance.

1.10 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking

The Company's regional leadership has met and consulted on a weekly basis between 6 June 2022 and 25 July 2022 in respect to the content and details of the EU.

Project managers on other projects of the Company were consulted on 20 July 2022 and made aware of the expected contents of the EU.

The wages personnel, and other workers, on the Project were consulted via a toolbox meeting on 29 July.

Feedback from the workers and management has been incorporated into the EU.

1.11 Detail the rectifications to the workplace or work practices made as a result of the alleged contravention and the enforcement notices issued

The following measures were taken by the Company to rectify the perceived contravention (noting that no formal alleged contravention has to date been made against the Company), post incident:

- The Company suspended works for 3 days and secured the site
- The Company undertook a comprehensive legally privileged investigation of the causes of the incident
- A geotechnical engineer was engaged by the Company to assess the stability of the trench and design a remedial plan to ensure the trench was stable to enable work to recommence
- A new risk assessment was developed
- The SWMS was revised and updated
- The requirements of the prohibition notices issued were undertaken, and the prohibitions lifted as a consequence of the remedial actions taken by the Company
- Workers were inducted to the revised and updated excavation procedure and SWMS for undertaking the work
- The trench was back filled and re-excavated in accordance with the geotechnical engineer's design
- The Company engaged a suitably qualified trainer to carry out trenching awareness training for all personnel and subcontractors on the Project
- The Company modified the standard template for SWMS so that it now explicitly refers to the high-risk work activities as listed in the WHS Regulation 291

- The Company updated the excavation procedure across the group nationally to refer to the stated elements of the Victorian Code of Practice including the benching dimensions for benched excavations

Total amount spent on rectifications \$107,000

SECTION 2: GENERAL TERMS

The person acknowledges and commits to the general terms set forth in the sub-terms below.

2.1 Acknowledgement that the regulator alleges a contravention occurred as detailed in term 1.2

Whilst no formal contravention of the *Work, Health and Safety Act, 2012* (SA) has been alleged, the company understands the characterization of a potential allegation as referred to in paragraph 1.2 herein.

2.2 Statement of regret that the alleged contravention occurred and the reasons the person considers this undertaking is a more appropriate response to the alleged contravention than a court-imposed sanction

The Company and its management sincerely regret the incident of 6 July 2021 and the injury sustained by the worker. The Company considers this undertaking is a more appropriate response than a court-imposed sanction because the Company is aware of the safety issues that contributed to the incident and is eager to invest in improving safety at the worksite and in the industry. Through this undertaking the Company commits to continuously take steps to ensure that such an incident or a similar incident does not occur again.

2.3 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur

- The Company pledges that the behaviour, activities and other factors which caused or led to the incident have ceased and will not reoccur.
- Most notably, the Company has ensured, as described in the foregoing, that additional training is available to the industry generally to upskill workers in the risks and control measures required for trenching.
- Internal training is being implemented which ensures that engineers and managers understand and fully implement requirements for close supervision of subcontractors.
- The Company is committed to complying with all of its obligations under the Act.

2.4 Acknowledgment of the guidelines published by the regulator for the acceptance of an undertaking

I have read and understood the **Guidelines for the acceptance of an enforceable undertaking**

Version: 1

Dated: June 2018

2.5 Acknowledgement that this undertaking may be published and publicised

2.5.1 The Company acknowledges that the undertaking may be published on the SafeWork SA website and referenced in SafeWork SA material.

2.5.2 The Company acknowledges that the undertaking may be publicised in electronic and/or print media.

2.6 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities

2.6.1 the Company has the financial ability to comply with the terms of this undertaking and have provided evidence by way of copies of the financial accounts of the Company with this undertaking to support this declaration.

2.6.2 In the event of impending liquidation or sale of the entity, the Company will advise SafeWork SA of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

2.7 Statement regarding person's relationship with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking

The Company confirms that there are no relationships with any corporations, officers, employees, contractors, proposed beneficiaries or donations or scholarships or other recipients of financial benefits contained in this undertaking.

2.8 Statement regarding Intellectual Property Licence

The Company, grants SafeWork SA a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce, publish, distribute, electronically transmit, electronically distribute, adapt and modify any materials developed as a result of this undertaking.

2.9 Acknowledgement that the person may be required to provide a statutory declaration

Has SafeWork SA requested a statutory declaration outlining details of any prior work health and safety convictions¹, subject to any local legal constraints such as spent conviction legislation, or findings of guilt under work health and safety legislation or work health and safety related legislation?

☐ YES ☒ NO

The statutory declaration is attached (if applicable)

☐ YES ☒ NO

2.10 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

2.10.1 It is acknowledged that the regulator will conduct compliance monitoring to ensure compliance with the terms of this undertaking.

2.10.2 Cooperation will be given to allow the regulator's officers to assess compliance including giving access to relevant material (evidence of compliance).

2.10.3 It is acknowledged that the regulator may initiate additional compliance inspections as considered necessary at the regulator's expense.

2.10.4 An update, together with supporting evidence, in relation to compliance with each of the enforceable terms of this undertaking will be provided to the regulator at six monthly intervals during the course of the undertaking.

2.11 A commitment by the person to perform activities that will ensure the ongoing effective management of risks to health and safety in the future conduct of its business or undertaking

The Company is committed to discharging its obligations under the Act and this commitment is reinforced by the rectifications referred to in clause 1.11 and the undertakings provided in this document.

¹ Subject to any local legal constraints such as spent conviction legislation

2.12 A commitment regarding linking the promotion of benefits by the person to this undertaking

The Company is committed to promoting the benefits contained within this undertaking and to the undertaking itself.

SECTION 3: ENFORCEABLE TERMS

The person acknowledges all activities set forth in the enforceable terms below must be auditable and include a date for completion and a minimum cost for each activity.

The person commits to performing the activities below diligently, competently and by the respective completion date.

3.1 A commitment to disseminate information about this undertaking to workers, and other relevant parties, and in the annual report (if applicable)

Dissemination will be achieved by doing the following:

- The Company will print and provide a copy of the executed Enforceable Undertaking to all full time and casual workers on the Company's projects in South Australia;
- A copy of the Enforceable Undertaking will also be placed on the notice board at each project and at the office

Dissemination will occur within 14 days of this undertaking being approved.

3.2 Activities to be undertaken to promote the objects of the *Work Health and Safety Act 2012 (SA)* that will deliver benefits for workers/others

Activities		Minimum cost	Timeframe
3.2.1	The Company must sponsor training in trenching awareness by an appropriately qualified organisation in South Australia (the Civil Contractors Federation (CCF)). The training will be provided by the CCF and funded by the Company and will be available to the industry in South Australia for two years post the date of this undertaking, available each month to	\$42,240	3 months from acceptance

	the value of \$1,760.00 per session.		
3.2.2	The Company must deliver trenching awareness training across all of its projects in South Australia and for all personnel on those projects for two years from the date of the Undertaking. The projects subject to this requirement will include those led by Acciona Construction Australia Pty Ltd, minimum of 12 sessions.	\$ 119,120	6 months from acceptance to deliver the training to existing employees. Within 3 months of commencement for all new starters.
3.2.3	The Company will develop and deliver an internal frontline leadership training program for all of the Company's supervisory personnel in South Australia and provide refresher training annually for up to two years after the date of the undertaking. This internal training will include requirements for general works supervision, trenching supervision, earthworks supervision and subcontractor management.	\$ 52,500	Each supervisor on the Company's projects will be subject to the training at least once over a two year period. The start date for the proposed action is 3 months from acceptance.
Total minimum cost of benefits for workers/others		\$ 213,860	

3.3 Activities to be undertaken to promote the objects of the *Work Health and Safety Act 2012* (SA) that will deliver benefits for industry

Activities	Minimum cost	Timeframe
3.3.1 The Company will prepare an alert, in consultation with SafeWork SA, to be disseminated broadly within the Civil and Infrastructure industry in South Australia which highlights the causes of the incident and preventative measures that can be implemented.	\$ 9,000	6 months from acceptance
3.3.2 The Company will work with the CCF to share learnings from this incident to benefit and/or promote safety within the construction industry. This will be achieved by advertising the trenching awareness training in the CCF newsletter and using the CCF to distribute the safety alert through its website to members of the CCF. The CCF has over 500 members in South Australia.	\$ 6,000	6 months from acceptance
3.3.3 The Company will advertise the trenching awareness training through the CCF website and in the newsletter and promote the opportunity for training and provide funding to support the training for two years post the date of the EU.	\$ 2,500	6 months from acceptance
Total minimum cost of benefits for industry	\$ 17,500	

3.4 Activities to be undertaken to promote the objects of the *Work Health and Safety Act 2012* (SA) that will deliver benefits for community

Activities	Minimum cost	Timeframe
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3.4.1	The Company will donate \$30,000 to Beyond Blue to promote the utilisation of their services to construction workers.	\$30,000	6 months from acceptance
3.4.2	The Company will donate \$20,000 to the Cancer Council SA to support Australian's impacted by cancer including construction workers.	\$25,000	6 months from acceptance
3.4.3	The Company will arrange for the delivery of Mates in Construction Assist Training of five personnel of the Company by Mates in Construction which will benefit construction workers	\$14,650	12 months from acceptance
Total minimum cost of benefits for the community		\$ 69,650	

3.5 Agreement to pay the regulator's costs

- 3.5.1 Agreement is given to paying the regulator's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the regulator's invoice:

Recoverable costs	Amount
Investigation, legal & administrative costs associated with the alleged contravention & proposed undertaking	\$ 0
Compliance monitoring costs	\$ 4,910.00
Publication costs	\$ 0
Total Amount	\$ 4,910.00

3.6 Minimum spend

- 3.6.1 The Company acknowledges the minimum spend for this undertaking will comprise of the:

(The amounts below should correspond with total amounts from terms 3.2–3.5 above)

Estimated total value of	Minimum spend
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Benefits to workers/others	\$ 213,860
Benefits to industry	\$ 17,500
Benefits to community	\$ 69,650
Regulator costs	\$ 4,910
Estimated total minimum spend for the undertaking	\$ 305,920

3.6.2 The Company agrees to spend any residual amount arising from the total minimum spend value not being met. Agreement on how to spend this residual will be sought from the regulator.

3.7 A commitment to establish and maintain (or maintain if a system already exists) a work, health and safety management system (WHSMS)

The Company is committed to the ongoing maintenance of its WHSMS system for 24 months, as referred to in section 1.8 above, and to maintaining, on an ongoing basis, its compliance with these WHSMS systems.

3.8 A commitment to ensure the WHSMS is audited by third party auditors

The Company:

- is committed to a proactive and best practice approach to maintaining and monitoring its safety standards and systems to ensure the highest level of compliance is upheld;
- commits to ensuring that third party audits are undertaken by competent, qualified and accredited third-party auditors such as Peter Johnston of Occupational Risk Services Pty Ltd;
- acknowledges that details of the auditor's qualifications against the requirements will be provided within the third-party audit report submitted to the regulator;
- commits to providing a copy of the enforceable undertaking to the auditor; and
- commits to audits taking place at a frequency of one audit every three months for the duration that the Company has ongoing projects in South Australia (or two (2) years maximum from the date of the EU).

3.9 A commitment to provide a copy of each finalised WHSMS audit report to the regulator

3.9.1 It is acknowledged that audit reports received from the auditor will be sent to the regulator within 30 days of the audit along with a letter certifying that the

report has not been altered from the copy provided to the person by the auditor.

- 3.9.2 It is acknowledged that within 30 days of receipt of the auditor's written report, the regulator will be advised of the intended action in addressing each of the report's recommendations.

3.10 A commitment to implement the recommendations from these audits (unless otherwise negotiated with the regulator)

- 3.10.1 The recommendations resulting from the WHSMS audit will be fully within six months of receiving the audit report, unless the regulator offers a variation of the undertaking due to the actions being unreasonable.

SECTION 4: OFFER OF UNDERTAKING

EITHER

I offer this undertaking and commit to the terms herein.

Signed: _____
[Person]


[Print name]

[Position]

Dated at _____ this _____ day of _____ 20____

OR

As a duly authorised person of Acciona Infrastructure Projects Australia Pty Limited I offer this undertaking and commit Acciona Infrastructure Projects Australia Pty Limited to the terms herein.

Signed:  _____
[Duly Authorised Person]

Jose Angel Andres Lopez

[Print name]

Managing Director

[Position]

Dated at 25/9/2023 _____ this _____ day of _____ 20____

SECTION 5: ACCEPTANCE OF UNDERTAKING

I accept this undertaking as an enforceable undertaking under section 216 of the *Work Health and Safety Act 2012* (SA).

Signed: 
[Person]

GLENN FARRELL
[Print name]

EXECUTIVE DIRECTOR
[Position]

Dated at KESWICK this 14th day of NOVEMBER 2023