



Application for proposed **ENFORCEABLE UNDERTAKING**

The commitments in this undertaking are offered to the regulator by

MS XIAOJIE (PAULINE) HU

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)	Ms Xiaojie (Pauline) Hu
Street address:	C/- 5-7 Kaurna Ave, Edinburgh SA 5111
Postal address:	As above
Telephone:	8283 0008
Email address:	info@infusebottling.com.au
Legal structure:	Individual
Type of business:	N/A
Commencement date:	TBA
Workers: Full time:	N/A
Part time:	N/A
Casual:	N/A
Products and services:	Export wine bottling services
Comments:	

1.2 Details of the alleged contravention

Prosecution pursuant to ss 33 and 27(1) of the *Work Health and Safety Act 2012* (**WHS Act**), with respect to the PCBU's duty under s 197 (obligation to comply with a prohibition notice) of the WHS Act.

1.3 Detail the events surrounding the alleged contravention

On 16 April 2019, Inspector Reid issued PCBU Infuse Bottling Company Pty Ltd (**Infuse**) with a prohibition notice which directed Infuse to:

- stop using a bottling line machine at its site;
- remedy risks associated with the bottling line machine, specifically by ensuring that the bottling line was inspected by a competent person to ensure it was fit for purpose;

- provide evidence to SafeWork SA of the above actions.

Ms Hu, in her role as a director of Infuse, took receipt of the prohibition notice issued to Infuse. Ms Hu had a duty under s 27(1) of the act to ensure that Infuse comply with the terms of the prohibition notice issued to it.

Unfortunately, and unbeknownst to Ms Hu, the bottling line machine the subject of the prohibition notice, continued to be used for a period of time on 16 April 2019 to complete a job, after the prohibition notice had been issued.

The PCBU that Ms Hu was an officer of Infuse was also prosecuted in relation to certain alleged failings. This enforceable undertaking is entered into against the backdrop of the PCBU pleading guilty to offences under sections 32, 46 and 197 of the WHS Act.

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

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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
16 April 2019	Prohibition Notice	306719	Operating the bottling line machine until inspected by a competent person	Third party industry specialist retained to examine and remedy risks. The results of the examination were then provided to SafeWork SA

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

No injury or illness sustained.

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

Not applicable.

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
	Not applicable	

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

Infuse, under the direction of Ms Hu had, and continues to have, the following health and safety systems in place:

Infuse Health and Safety Policy.

Additional Infuse policies relating to (among others):

- Manual Handling
- PPE
- Bullying and Harassment
- Worker Conduct

Implementation of Safety Management System management awareness session training.

Development and implementation of Quality Management System ISO9001:2015 & HACCP.

Development and implementation of worker on-site induction package.

Retainer of WHS Expert to implement above systems and present WHS presentation to workers.

Operational Meetings documented by management, with work health and safety addressed at each meeting.

Considered approach to worker supervision at the workplace.

With respect to the relevant plant, the subject of the prohibition notice, under the direction of Ms Hu Infuse had, and continues to have, the following health and safety systems in place:

Implementation of bottling line's full operating manuals, addressing:

- Cap placing and milling machine

- Washing, nitrogen and liquid filling, corking and sealing machine
- Operating instruction: Automatic Four Sides Labelling Machine
- Semi-automatic Carton Sealing Machine
- Servo Divider SFD-02A
- Pelletizing Robot Accessory Equipment
- Operating Manual IRC5 and 'RobotStudio'.

Implementation and use of documented production line (bottling line) maintenance record.

Training and induction of workers on the bottling line.

Considered approach to worker supervision operating the bottling line.

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

Audits are undertaken as and when needed. Due to current tariffs on wine export to China, Infuse operations are currently restricted.

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

Consultation will be undertaken with those workers remaining at Infuse as well as consultation throughout the proposed undertaking.

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

Under the direction of Ms Hu, Infuse undertook:

- Full risk assessment of all aspects of the bottling line
- Development and implementation of bottling line safety rules and regulations
- Documented training of workers on bottling line
- Implementation of documented bottling line checklist
- Third party industry specialist retained to examine and remedy risks.

Total amount spent on rectifications \$ 48, 413.95

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

Ms Hu acknowledges this.

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

As an officer of Infuse, the provision of a safe workplace for our workers is of profound importance to me. For me, our workers are the most important asset of Infuse. That workers at Infuse were placed at risk with respect to the operation of a piece of plant weighs very heavily on me and I very much regret this.

I believe the undertaking is more appropriate than a court-imposed sanction because what I propose will result in a level of governance at Infuse over and above that which merely meets an officer's due diligence obligations.

In addition, the opportunity to speak with peers within the Chinese and business communities in South Australia about officer due diligence and what that means in a practical sense will, in my view, further the community's understanding of this important duty.

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

I can commit to stating that the contravention has ceased at the workplace and through systems implemented will not reoccur.

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: 27 August 2021

2.5 Acknowledgement that this undertaking may be published and publicised

- 2.5.1 Xiaojie (Pauline) Hu acknowledges that the undertaking may be published on the SafeWork SA website and referenced in SafeWork SA material.
- 2.5.2 Xiaojie (Pauline) Hu acknowledges that the undertaking may be publicised in newspapers.

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 Xiaojie (Pauline) Hu has the financial ability to comply with the terms of this undertaking and has provided further evidence by way of bank statement from the corporate defendant, in to support this declaration.
- 2.6.2 In the event of impending liquidation or sale of the entity, Xiaojie (Pauline) Hu 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

N/A

2.8 Statement regarding Intellectual Property Licence

Xiaojie (Pauline) Hu, 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?

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

2.11 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

Please see:

- Response at 1.8 – 1.11; and
- Proposal relating to undertaking.

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

Ms Hu gives this commitment.

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:

- Infuse wide email to all Infuse workers
- Discussion of the EU project at management and worker meetings

Dissemination will occur by: see timeframe references below.

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
Ms Hu commits to undertaking activities that are aimed at enhancing the safety leadership within the business. The following activities are committed to by Ms Hu and directed at achieving this end.		
3.2.1.	Ms Hu to engage an external consultant to develop and implement a standard operating procedure for the receipt and supply of any regulatory documents (including prohibition notices, improvement notices and notices to produce) to the officers of Infuse.	\$ 1,000
3.2.2.	Ms Hu to engage an external consultant to develop (or	Three (3) months from acceptance

	review, if an on officer observation checklist already exists) and implement an officer observation checklist		
3.2.3.	Ms Hu to engage an external consultant to deliver a half day safety and leadership training program to the officers of Infuse.	\$ 2,000	Six (6) months from acceptance
3.2.4.	Ms Hu to attend safety walks at the workplace, on at least a monthly basis, to enhance the visibility of upper management in the safety process. Once developed and implemented, Ms Hu will complete an officer observation checklist while conducting safety walks.	\$ 560	Nine (9) months from acceptance.
3.2.5.	Ms Hu to attend WHS for Managers and Supervisors.	\$ 389	Six (6) months from acceptance
Total minimum cost of benefits for workers/others		\$ 4,949.00	

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	Ms Hu to prepare and present to the South Australian Chinese business community (such as via The Australia China Business Council, Chinese Chamber of Commerce South Australia and/or the China Business Network of South Australia) on the importance of officer due diligence under the WHS Act. The content of the presentation would be subject to approval by the regulator prior to dissemination.	\$ 200	Five (5) months from acceptance
3.3.2	Ms Hu to identify and present to the wine industry (such as via the South Australian Wine Industry Association Inc) on the importance of officer due diligence under the WHS Act. The content of the presentation would be subject to approval by the regulator prior to dissemination.	\$ 800	Five (5) months from acceptance
3.3.3	Ms Hu to ensure that the presentations under 3.3.1 and 3.3.2 are recorded and provided to the regulator.		Within 14 days of the presentations under items 3.3.1 and 3.3.2 occurring.
Total minimum cost of benefits for industry		\$ 1,000	

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.	Place an 'advertorial' in the Adelaide Chinese news (or a similar South Australian publication) discussing the risks associated with imported products and machinery, including ensuring they meet Australian Standards and that they do not merely rely on representations.	\$ 1,000	Six (6) months from acceptance
3.4.2.	Place an 'advertorial' in the South Australian Wine Industry Association Inc newsletter (or a similar industry publication) discussing the risks associated with imported products and machinery, including ensuring they meet Australian Standards and that they do not merely rely on representations.	\$ 1,000	Six (6) months from acceptance
Total minimum cost of benefits for the community		\$ 2,000	

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	\$ 750
Compliance monitoring costs	\$ 750
Publication costs	\$ Enter amount
Total Amount	\$ 1,500

3.6 Minimum spend

- 3.6.1 Xiaojie (Pauline) Hu 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
Benefits to workers/others	\$ 4,949.00
Benefits to industry	\$ 1,000
Benefits to community	\$ 2,000
Regulator costs	\$ 1,500
Estimated total minimum spend for the undertaking	\$ 9,449.00

3.6.2. Xiaojie (Pauline) Hu commits to ensuring that invoices are provided to the regulator for expenses incurred for the activities identified in Section 3 of this Undertaking.

3.6.3. Xiaojie (Pauline) Hu agrees to provide an update, together with supporting evidence, in relation to compliance with each of the enforceable terms of this undertaking to the regulator at three monthly intervals during the course of the undertaking.

3.6.4. Xiaojie (Pauline) Hu 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)

Ms Hu commits to continue to maintain Infuse's safety management system in place

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

Ms Hu commits to this.

Details of the auditor's qualifications against the stated requirements will be provided with audit reports submitted to the regulator.

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.

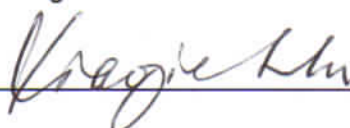
3.10 A commitment to implement the recommendations from these audits (unless otherwise negotiated with the regulator)

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: 

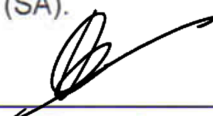
Xiaojie (Pauline) Hu

Director

Dated at this 29th day of September 2021

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]

Martyn Campbell

[Print name]

Executive Director

[Position]

Dated at SafeWork SA this 5th day of October 2021