

# Application for proposedENFORCEABLE UNDERTAKING

The commitments in this undertaking are offered to the regulator by

Enter person/entity name

**ABN / ACN** Enter person/entity ABN/ACN

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.

## COMMENCMENT 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) |  |
| Street address: |  |
| Postal address: |  |
| Telephone: |  |
| Email address: |  |
| Legal structure: |  |
| Type of business: |  |
| Commencement date: |  |
| Workers: Full time:Part time:Casual: |  |
|  |
|  |
| Products and services: |  |
| Comments: |  |

### 1.2 Details of the alleged contravention

*(If proceedings initiated - This should reflect the details of the Complaint and Summons, omitting personal details and reference to gender.)*

### 1.3 Detail the events surrounding the alleged contravention

*(Generally includes factual incident details and avoids blame or opinions)*

### 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 |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

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

### 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 - Please provide details

[ ]  not applicable

Status: Add status of claim and level of recovery/return

*(This should reflect the status of any claims and level of recovery/return to work that is 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 |
|  |  |  |
|  |  |  |

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

*(Describe how health and safety risks are managed, including types of procedures or policies or standards)*

### 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

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

*(This should reflect any consultation in developing the undertaking e.g. workers, managers, safety committees, injured worker/s external consultants)*

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

*(This should reflect measures taken to rectify the contravention, post incident)*

**Total amount spent on rectifications $** Enter total amount

## 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

### 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

*(This should not include an admission of guilt)*

### 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

### 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: Insert document version Dated: Insert document date

### 2.5 Acknowledgement that this undertaking may be published and publicised

2.5.1 Enter name of person acknowledges that the undertaking may be published on the SafeWork SA website and referenced in SafeWork SA material.

2.5.2 Enter name of person 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 Enter name of person has the financial ability to comply with the terms of this undertaking and have provided evidence by way of Enter type of evidence provided with this undertaking to support this declaration.

2.6.2 In the event of impending liquidation or sale of the entity, Enter name of person 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

### 2.8 Statement regarding Intellectual Property Licence

Enter name of person, 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 convictions[[1]](#footnote-1), 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

*(Detail the management strategies to be employed that will satisfy and demonstrate to officer/s of the person that this commitment is being met)*

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

*(Activities that may promote or benefit the person need to link the activity/benefit to this undertaking)*

## 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)

*(This may include dissemination to work health and safety representatives and in the annual report, if applicable)*

Dissemination will be achieved by doing the following:

Dissemination will occur by:

### 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 | Enter proposed activity | $ Enter minimum cost | Enter number months from acceptance |
| 3.2.2 | Enter proposed activity | $ Enter minimum cost | Enter number months from acceptance |
| 3.2.3 | Enter proposed activity | $ Enter minimum cost | Enter number months from acceptance |
| Total minimum cost of benefits for workers/others | $ Enter total |

### 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 | Enter proposed activity | $ Enter minimum cost | Enter number months from acceptance |
| 3.3.2 | Enter proposed activity | $ Enter minimum cost | Enter number months from acceptance |
| 3.3.3 | Enter proposed activity | $ Enter minimum cost | Enter number months from acceptance |
| Total minimum cost of benefits for industry | $ Enter total |

### 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 |
| 3.4.1 | Enter proposed activity | Enter minimum cost | Enter number months from acceptance |
| 3.3.2 | Enter proposed activity | Enter minimum cost | Enter number months from acceptance |
| 3.3.3 | Enter proposed activity | Enter minimum cost | Enter number months from acceptance |
| Total minimum cost of benefits for the community | $ Enter total |

### 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 | $ Enter amount |
| Compliance monitoring costs | $ Enter amount |
| Publication costs | $ Enter amount |
| Total Amount | $ Enter amount |

### 3.6 Minimum spend

3.6.1 Enter name of person 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 | $ Enter amount |
| Benefits to industry | $ Enter amount |
| Benefits to community | $ Enter amount |
| Regulator costs | $ Enter amount |
| Estimated total minimum spend for the undertaking | $ Enter amount |

3.6.2 Enter name of person 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)

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

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:

[Person]

[Print name]

[Position]

Dated at this day of 20

### OR

As a duly authorised person of Enter name of person I offer this undertaking and commit Enter name of person to the terms herein.

Signed:

[Duly Authorised Person]

[Print name]

[Position]

Dated at 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]

[Print name]

[Position]

Dated at this day of 20

1. Subject to any local legal constraints such as spent conviction legislation [↑](#footnote-ref-1)