

# Guidelines for the acceptance of an enforceable undertaking

*Work Health and Safety Act 2011*

*Electrical Safety Act 2002*

*Safety in Recreational Water Activities Act 2011*

This document outlines general guidelines in relation to the acceptance of the following:

1. WHS undertakings under the *Work Health and Safety Act 2011* (WHS Act)
2. Electrical safety undertakings under the *Electrical Safety Act 2002* (ES Act)
3. Recreational water activities health and safety undertakings under the *Safety in Recreational Water Activities Act 2011* (SRWA Act).

Within this document:

- WHS undertakings, electrical safety undertakings and recreational water activities health and safety undertakings are collectively referred to as an undertaking or enforceable undertaking (EU).
- The WHS Act, ES Act and SRWA Act are collectively referred to as the safety Acts.
- A reference to a contravention includes an alleged contravention.

This document is published in accordance with section 230(3)(b) of the WHS Act and section 186(4)(b) of the ES Act.

Dated this 1st day of September 2014

...  .....

Dr Simon Blackwood

Deputy Director General (regulator appointed for the purposes of the safety Acts)

Office of Industrial Relations

## Preamble

EUs are high level sanctions for contraventions of the safety Acts.

EUs are prescribed under the safety Acts and governed by provisions of those Acts.

The regulator, under the safety Acts is the person occupying the position of Deputy Director-General, Office of Industrial Relations (OIR).

The regulator is the only person who can accept an undertaking. Once accepted, the undertaking becomes an EU. The regulator or a delegate of the regulator can allow an EU to be withdrawn or varied, by agreement.

An EU is a written, legally-binding commitment to implement effective health and safety initiatives that are designed to deliver tangible benefits for workers, industry, and the community as a whole.

An EU operates as an alternative to a court imposed sanction for a contravention, without the recording of a conviction or a finding of guilt against the person. Details of an EU may however form part of the work health and safety compliance record of a person.

An EU does not constitute an admission of guilt by the person giving an undertaking in relation to the contravention.

Court proceedings cannot be brought against a person for the contravention to which an EU relates if it is in effect and is being complied with or has been completely discharged. However, it is an offence for a person to contravene (not comply with) an EU.

An undertaking cannot be accepted as an EU for a contravention that is a category 1 offence (as defined in the safety Acts).

Most undertakings are given after a legal proceeding (also called a prosecution) for the offence has been commenced. If an undertaking is accepted as an EU after a prosecution has been commenced the proceedings will be discontinued. However, a person may give an undertaking in relation to the contravention irrespective of whether a legal proceeding has been commenced for the contravention.

Once a decision has been made by the regulator, the relevant person will be given written notice and the reasons for the decision. If the undertaking is not accepted by the regulator, legal proceedings for the contravention will continue.

The regulator will publish the EU and the reasons for decision on the regulator's website as is required by law.

This document sets out the regulator's general guidelines for the acceptance of an EU in order to promote openness and transparency about prosecutions and the EU acceptance process.

## Guidelines for acceptance

1. To allow for the timely development and effective monitoring of an EU, it needs to be in a written format that covers essential details of both a procedural and substantive nature. Details of the types of procedural matters the regulator requires are shown within the EU template at Annexure A and the OIR EU Program Timeframes/Service Standards at Annexure B.
2. Where an undertaking being given is an alternative to prosecution, the quantum or effect of the undertaking must be commensurate with, and also account for, the benefits that accrue to the applicant due to the prosecution being discontinued. The benefits of avoiding court proceedings, including obviating a possible recorded conviction and other sentencing outcomes, must be reflected in the quantum or effect of the undertaking, that is, those non-tangible benefits of avoiding prosecution must be reflected in the tangible benefits required as part of the undertaking.
3. All persons are obliged to comply with their duties under the safety Acts. Therefore, any term of an EU that merely represents ordinary expected compliance with the safety Acts cannot be considered for the purposes of an EU.
4. For an undertaking to be accepted, the regulator requires terms that promote the objects or purposes of the safety Acts for the benefit of one or more of the following:
  - the workers and/or workplace
  - industry
  - community.
5. The regulator also requires a person giving an undertaking to have an Occupational Health and Safety Management System (OHSMS) acceptable to the regulator in place or alternatively commit to implementing one as part of the terms of an undertaking. This must include third party auditing of the OHSMS that is acceptable to the regulator.
6. When deciding whether to accept an undertaking, the regulator will consider a number of factors, including:
  - the objective gravity of the contravention and the nature of the applicant's alleged misconduct (the greater the gravity of the contravention, the less likely the undertaking being given will be accepted)
  - submissions received from any relevant party, including any injured worker/s or next of kin, in relation to the contravention
  - the person's conduct in respect of mitigation and remedial action, regarding both the contravention and any person effected by the contravention
  - the applicant's past performance and history of compliance with the safety Acts, including the management of workers' compensation
  - any other matter which the regulator considers relevant.

## Further information

The OIR EU Unit offers an advisory service to a person giving an undertaking. The advisory service is considered by OIR as being beneficial as it allows the person giving the undertaking to better determine if an EU is a feasible and appropriate alternative to prosecution for a contravention of the safety Acts.

The advisory service can also provide a person giving an undertaking the opportunity to liaise directly with relevant business areas within OIR and/or external bodies to develop particular aspects of the undertaking. All communication with the advisory service is on a without prejudice basis and will be conducted directly with the person or giving an undertaking or the person's legal representatives, if preferred.

Any decision made regarding the acceptance of an EU rests solely with the regulator. To reach a decision the regulator will independently exercise decision making powers under the safety Acts.

For further information regarding EUs or to access the advisory service, please contact the EU Unit at [enforceableundertaking@justice.qld.gov.au](mailto:enforceableundertaking@justice.qld.gov.au).

OIR Disclosure Log

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## ENFORCEABLE UNDERTAKING

*[insert one the following references]*

Part 11, *Work Health and Safety Act 2011*

or

Part 3, *Electrical Safety Act 2002*

or

Part 4, *Safety in Recreational Water Activities Act 2011*

The commitments in this undertaking are offered to the regulator by

**[Insert person/entity name]**

(the person)

**ABN / ACN [Insert person/entity ABN/ACN]**

## 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.

## DEFINITIONS

**Contravention** means an alleged contravention

**Electrical safety undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 3 of the *Electrical Safety Act 2002* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Electrical Safety Act 2002* and includes all of the contents of that document including the general information, general and enforceable terms.

**OIR** means the Office of Industrial Relations.

**OHSMS** means an Occupational Health and Safety Management System

**person** means an individual who or a legal entity which has a duty under the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002* or the *Safety in Recreational Water Activities Act 2011* and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, individuals or corporations as trustees of trusts, statutory corporations, public authorities, the State of Queensland, the Commonwealth of Australia and other Australian states and territories.

**Recreational water activities health and safety undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 4 of the *Safety in Recreational Water Activities Act 2011* (in conjunction with Part 11 of the *Work Health and Safety Act 2011*) by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Safety in Recreational Water Activities Act 2011* and includes all of the contents of that document including the general information, general and enforceable terms.

**regulator** means the Deputy Director-General, Office of Industrial Relations, being the person appointed by the Governor in Council as regulator under the Safety Acts.

**safety Acts** means *Work Health and Safety Act 2011*, *Electrical Safety Act 2002* and *Safety in Recreational Water Activities Act 2011*

**WHS undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 11 of the *Work Health and Safety Act 2011* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Work Health and Safety Act 2011* and includes all of the contents of that document including the general information, general and enforceable terms.

## PRIVACY STATEMENT

The OIR respects your privacy and is committed to protecting personal information. 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 2011*, Part 3 of the *Electrical Safety Act 2002* or Part 4 of the *Safety in Recreational Water Activities Act 2011*. This information will be managed within the requirements of the current state government privacy regime.

The OIR may publish the undertaking and information contained in it for purposes identified in the undertaking or for other appropriate purposes in publications such as newspapers and on its website. The OIR may be required to disclose personal information to other agencies such as the Queensland Police Service and WorkCover in accordance with enforcement activities that may be conducted as part of an investigation. Information on our privacy policy is available at [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au).

## SECTION 1: GENERAL INFORMATION

### 1.1 Details of the person giving the undertaking

**Nominated person:** [Enter details here] *(Point of contact for OIR communications)*  
**Street address:** [Enter details here]  
**Mailing address:** [Enter details here]  
**Telephone:** [Enter details here]  
**Email address:** [Enter details here]  
**Legal structure:** [Enter details here]  
**Type of business:** [Enter details here]  
**Commencement date:** [Enter details here]  
**Workers:** Full time: [Enter number]  
                   Part time: [Enter number]  
                   Casual: [Enter number]  
**Products and services:** [Enter details here]  
**Comments:** [Enter comments here]

### 1.2 Detail the contravention

*(This should reflect the details of the Complaint and Summons, omitting personal details and reference to gender)*

[Enter details here]

### 1.3 Detail the events surrounding the contravention

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

[Enter details here]

### 1.4 Detail the enforcement notices issued that relate to the contravention detailed in term 1.2

Not Applicable

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 contravention detailed in term 1.2**

[Enter details here]

**1.6 Detail the workers' compensation or other insurance benefits paid to the worker/s who sustained injury or suffered illness as detailed in term 1.5 or to the beneficiaries of deceased persons**

The person/s detailed is:

- an employee/s of the entity
- a self-employed person/s
- other
- not applicable

(please specify)

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[Enter details here]

**1.7 Detail the support provided or proposed by the person to the injured worker/s, other/s or families**

DATE	DESCRIPTION OF SUPPORT	COMMENTS
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

**1.8 Detail any current OHSMS implemented and maintained by the person**

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

[Enter details here]

**1.9 Detail the level of auditing undertaken on the OHSMS referred to in term 1.8, including compliance audits and audit frequency**

[Enter details here]

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

[Enter details here]

**1.11 Detail the rectifications to the workplace or work practices made as a result of the contravention and events detailed in terms 1.2 and 1.3 and the enforcement notices issued as detailed in term 1.4**

[Enter details here]

Total amount spent on rectifications

\$

## 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**

[Enter statement here]

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

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

[Enter statement here]

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

[Enter statement here]

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

I have read and understood:

*Guidelines for the acceptance of an enforceable undertaking*

Version:            Dated:

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

2.5.1 [insert person] acknowledges that the undertaking may be published on the OIR's website and referenced in OIR material.

2.5.2 [insert person] acknowledges that the undertaking may be publicised in newspapers. [Insert case, if any, for why the regulator would not publish and/or publicise the undertaking]

**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 [insert person] has the financial ability to comply with the terms of this undertaking and have provided evidence by way of [insert 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, [insert person] will advise OIR 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**

[Enter statement here]

**2.8 Statement regarding Intellectual Property Licence**

[Insert person], grants OIR 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**

OIR has requested a statutory declaration outlining details of any prior convictions<sup>1</sup> or findings of guilt under the safety Acts.

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 responsibility for demonstrating compliance with this undertaking rests with the person.

2.10.2 Evidence to demonstrate compliance with the terms will be provided to OIR by the due date for each term.

2.10.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the regulator, that this undertaking has been completely discharged.

2.10.4 It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.

2.10.5 It is acknowledged that OIR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to OIR.

2.10.6 It is acknowledged that OIR may initiate additional compliance monitoring activities, such as inspections, as considered necessary at OIR's expense.

2.10.7 It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to OIR, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

<sup>1</sup> Subject to any local legal constraints such as spent conviction legislation.

## 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 an estimated cost for each activity.

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

**3.1 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)*

[Enter details here]

**3.2 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties**

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

Dissemination will be achieved by doing the following:

[Enter details here]

Dissemination will occur by: [Enter time frame here]

**3.3 Activities to be undertaken to promote the objects of the safety Acts that will deliver benefits for workers/others**

ACTIVITIES		COST	TIMEFRAME
3.3.1		\$	
3.3.2		\$	
3.3.3		\$	
<b>Total estimated cost of benefits for workers/others</b>		<b>\$</b>	

**3.4 Activities to be undertaken to promote the objects of the safety Acts that will deliver benefits for industry**

ACTIVITIES		COST	TIMEFRAME
3.4.1		\$	
3.4.2		\$	
<b>Total estimated cost of benefits for industry</b>		<b>\$</b>	

**3.5 Activities to be undertaken to promote the objects of the safety Acts that will deliver benefits for community**

ACTIVITIES		COST	TIMEFRAME
3.5.1		\$	
3.5.2		\$	
<b>Total estimated cost of benefits for the community</b>		<b>\$</b>	

**3.6 Agreement to pay the OIR’s recoverable costs**

*(These amounts will be provided by the EU Unit)*

[Insert person] agrees to pay OIR’s costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the OIR invoice:

- administrative costs \$
- legal costs \$
- compliance monitoring costs \$
- publication costs \$
- Total recoverable costs \$**

**3.7 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)*

[Enter statement here]

**3.8 A commitment to [establish and maintain OR maintain] an OHSMS**

*(Delete the irrelevant terms below. If required contact OIR to determine which option is appropriate)*

- 3.8.1 [Insert person] acknowledges there is no formal documented OHSMS in place.
- 3.8.2 [Insert person] commits to ensuring that an OHSMS acceptable to the regulator that satisfies the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques will be implemented within 12 months of the acceptance of this undertaking.

or

- 3.8.1 [Insert person] acknowledges there is a formal documented OHSMS acceptable to the regulator that satisfies the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques, currently in place.
- 3.8.2 [Insert person] commits to ensuring that the OHSMS remains compliant with the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques.

or

- 3.8.1 [Insert person] commits to ensuring that within 12 months of the acceptance of this undertaking the OHSMS shall be compliant with the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.
- 3.8.2 [Insert person] acknowledges that the OHSMS will be maintained in accordance with *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

### **3.9 A commitment to ensure the OHSMS is audited by third party auditors**

*(Delete the irrelevant terms below. If required contact OIR to determine which option is appropriate)*

- 3.9.1 [Insert person] acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.
- 3.9.2 [Insert person] commits to ensuring the OHSMS will be audited by certified third party auditors.
- 3.9.3 [Insert person] acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.9.4 [Insert person] acknowledges that costs associated with these audits will be met by [Insert person] as part of the undertaking.
- 3.9.5 [Insert person] commits to ensuring the OHSMS will be audited against criteria that meets the principles of *AS/NZS 4801:2001 Occupational Health and Safety Management Systems – Specification with guidance for use*, to verify the OHSMS meets the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.
- 3.9.6 [Insert person] acknowledges that the current OHSMS in place, as detailed in term 3.8.1 is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within three months of this undertaking being accepted.

or

- 3.9.6 [Insert person] acknowledges that there is no OHSMS in place, as detailed in term 3.8.1 that is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within six months of this undertaking being accepted.
- 3.9.7 [Insert person] commits to ensuring at least two further third party audits will be undertaken at 12 month intervals, commencing 12 months after the initial audit.

### **3.10 A commitment to provide a copy of each finalised OHSMS audit report to OIR**

- 3.10.1 It is acknowledged that audit reports received from the auditor will be sent to OIR within 30 days of the audit along with written confirmation that the report has not been altered from the copy provided to the person by the auditor.
- 3.10.2 It is acknowledged that within 30 days of receipt of the auditor's written report, OIR will be advised of the intended actions for addressing each of the report's recommendations.

### **3.11 A commitment to implement the recommendations from third party audits**

[Insert person] commits to ensuring the recommendations resulting from the OHSMS audits will be fully implemented within six months of receiving the audit report, unless OIR grants an exemption due to the actions being unreasonable.

### 3.12 Minimum spend

3.12.1 [Insert person] commits to a minimum spend of [Insert \$ minimum spend] for this undertaking.

3.12.2 [Insert person] agrees to spend any residual amount arising from an original term not being completed or being less costly than estimated in this undertaking. Agreement on how to spend this residual will be sought from the regulator.

3.12.3 [Insert person] acknowledges the minimum spend comprises of the:

- Total value of benefits to workers/others [Insert \$ minimum spend]
- Total value of benefits to industry [Insert \$ minimum spend]
- Total value of benefits to community [Insert \$ minimum spend]
- OIR's recoverable costs [Insert \$ minimum spend]

**Estimated total value of the undertaking [Insert \$ value]**

OIR Disclosure Log

## SECTION 4: EXECUTION

This undertaking is given by the person on the date it is accepted by the regulator as set forth in section 5 below.

*(Select from the following execution clauses and delete those that do not apply)*

*(INDIVIDUAL)*

**SIGNED** by the person

[Insert person]

on the [DAY] day of [MONTH], 20[YEAR]

before me:

\_\_\_\_\_  
Signature of person

\_\_\_\_\_  
Witness signature

[Insert witness name]

\_\_\_\_\_  
Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

\_\_\_\_\_  
Witness address



(PARTNERSHIP)

**SIGNED** by the persons

[Insert partner name] and \_\_\_\_\_

[Insert partner name] and \_\_\_\_\_

[Insert partner name] \_\_\_\_\_

on the [DAY] day of [MONTH], 20[YEAR]

before me:

\_\_\_\_\_  
Signature of persons

\_\_\_\_\_  
Witness signature

[Insert witness name]

\_\_\_\_\_  
Witness name in full

[Insert witness address]

\_\_\_\_\_

[Insert witness address]

\_\_\_\_\_

[Insert witness address]

\_\_\_\_\_

Witness address

OIR Disclosure Log

(INDIVIDUAL TRUSTEE OF A TRUST)

**SIGNED** by the person

[Insert Trustee name] in their own right  
and in their capacity as trustee of the  
[Insert Trust name].

on the [DAY] day of [MONTH], 20[YEAR]

before me:

\_\_\_\_\_  
Signature of person

\_\_\_\_\_  
Witness signature

[Insert witness name]

\_\_\_\_\_  
Witness name in full

[Insert witness address]

\_\_\_\_\_  
[Insert witness address]

[Insert witness address]

\_\_\_\_\_  
Witness address

OIR Disclosure Log

(COMPANY)

**THE COMMON SEAL** of

(Affix common seal)

**[Insert Company name]**

was affixed in accordance with the  
*Corporations Act 2001* in the presence of

[Insert director name] and

[Insert director/secretary name]

on the [DAY] day of [MONTH], 20[YEAR]

before me:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / secretary

\_\_\_\_\_  
Witness signature

[Insert witness name]

\_\_\_\_\_  
Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

\_\_\_\_\_  
Witness address

(COMPANY AS TRUSTEE OF A TRUST)

**THE COMMON SEAL** of

(Affix common seal)

**[Insert Company name]**

was affixed in accordance with the  
*Corporations Act 2001* in the presence of

[Insert director name] and

[Insert director/secretary name]

In its own right and in its capacity as  
trustee of [Insert trust name]

\_\_\_\_\_  
Signature of director

on the [DAY] day of [MONTH], 20[YEAR]

before me:

\_\_\_\_\_  
Signature of director / secretary

\_\_\_\_\_  
Witness signature

[Insert witness name]

\_\_\_\_\_  
Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

\_\_\_\_\_  
Witness address

## SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the       day of

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of regulator)

Appointed by the Governor in Council as regulator under Schedule 2, Part 1 of the *Work Health and Safety Act 2011*, Schedule 2 of the *Electrical Safety Act 2002* and section 32 of the *Safety in Recreational Water Activities Act 2011*.

OIR Disclosure Log

## OIR EU Program Timeframes/Service Standards

The following timeframes/service standards table has been provided as a guide for the Office of Industrial Relations (OIR), the person giving an undertaking and/or their representative to ensure each phase of the EU Program is progressed and completed in a timely manner. There is an expectation that if the following timeframes/service standards cannot be met the responsible party will contact and seek to renegotiate a timeframe/service standard suitable to all parties.

EU Timeframe/Service Standards		
Event	Person/Representative	OIR
Initial request for EU advisory service	After an alleged contravention or complaint and summons.	
Introductory email regarding EU process and EU advisory service		7 days from initial request
Meeting between person/representative and EU Unit (EUU)		14 days from initial request
Notification of interest to give an undertaking	7 days from meeting with EUU	
Acknowledge receipt of notification		7 days from receipt of notification of interest
Injured person(s)/Next of Kin letter		7 days from receipt of the notification of interest
Draft undertaking (undertaking) (Version 1) (template example at Annexure A)	21 days from receipt of the notification of interest	
EUU review and initial feedback of undertaking (Version 1)		14 days from receipt of undertaking (Version 1)
Resubmission of revised undertaking (Version 2)	14 days from receipt of initial feedback	
EUU feedback of Version 2 and any subsequent versions of undertaking	7 days from feedback	7 days from resubmission
Final version of undertaking for evaluation by EU Panel (EUP)	7 days from EUU feedback on resubmission/s	
EUP meeting to evaluate final undertaking		28 days from receipt of final undertaking
EUP evaluation feedback or recommendation to accept or reject		7 days from EUP evaluation meeting
Re-submission of final undertaking for EUP return evaluation	14 days from receipt of EUP feedback	
EUP return evaluation feedback or recommendation to accept or reject		7 days from resubmission
Submission of signed final undertaking for decision by regulator	7 days from receipt of EUP recommendation	
Request for a decision by the regulator		14 days from submission of signed final undertaking
Regulator makes a decision* on whether to accept or reject		28 days from request of decision
Letter advising of decision and reasons for decision		7 days from decision being made
Publication of EU and reason for decision if accepted		28 days from decision

**Decision\*** - If the regulator intends to reject, the person giving the undertaking will be provided an opportunity to make a final submission addressing the regulators reasons for decision prior to a final decision being made. Timeframes for this process will be negotiated between OIR and the person or representative.

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*Electrical Safety Act 2002*

*Safety in Recreational Water Activities Act 2011*

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Dated this 2nd day of August 2017

 .....

Dr Simon Blackwood

Deputy Director General (regulator appointed for the purposes of the safety Acts)

Office of Industrial Relations



## Preamble

EUs are high level sanctions for contraventions of the safety Acts.

EUs are prescribed under the safety Acts and governed by provisions of those Acts.

An undertaking cannot be accepted as an EU for a contravention that is a category 1 offence (as defined in the safety Acts).

The regulator, under the safety Acts is the person occupying the position of Deputy Director-General, Office of Industrial Relations (OIR).

The regulator is the only person who can accept an undertaking. Once accepted, the undertaking becomes an EU. The regulator or a delegate of the regulator can allow an EU to be withdrawn or varied, by agreement.

An EU is a written, legally-binding commitment to implement effective health and safety initiatives that are designed to deliver tangible benefits for workers, industry, and the community as a whole.

An EU operates as an alternative to a court imposed sanction for a contravention, without the recording of a conviction or a finding of guilt against the person. Details of an EU may however form part of the work health and safety compliance record of a person.

An EU does not constitute an admission of guilt by the person giving an undertaking in relation to the contravention.

Court proceedings cannot be brought against a person for the contravention to which an EU relates if it is in effect and is being complied with or has been completely discharged. However, it is an offence for a person to contravene (not comply with) an EU.

Most undertakings are given after a legal proceeding (also called a prosecution) for the offence has been commenced. If an undertaking is accepted as an EU after a prosecution has been commenced the proceedings will be discontinued. However, a person may give an undertaking in relation to the contravention irrespective of whether a legal proceeding has been commenced for the contravention.

Once a decision has been made by the regulator, the relevant person will be given written notice and the reasons for the decision.

If the undertaking is not accepted by the regulator, or the undertaking is withdrawn by the person prior to the regulator making a decision, legal proceedings for the contravention will continue.

The regulator will publish the EU and the reasons for decision on the regulator's website as is required by law.

This document sets out the regulator's general guidelines for the acceptance of an EU in order to promote openness and transparency about prosecutions and the EU acceptance process.

## General exclusions

1. The regulator considers EUs will usually not be appropriate where any of the following circumstances exist:
  - Fatalities – the contravention is connected to the death of a person, whether or not the contravention can be said to have caused the death
  - Very Serious Injury – the contravention is connected to a person sustaining a very serious injury, whether or not the contravention can be said to have caused the very serious injury
  - Recent Criminal History:
    - the person giving an undertaking has a recent prior conviction or finding of guilt against the Safety Acts which was connected to the death of a person, whether or not the prior matter is said to have caused the death, unless the prior matter was more than five years prior to the contravention the subject of the undertaking; or
    - the person giving the undertaking has more than two recent prior convictions or findings of guilt against the Safety Acts arising from separate investigations, unless the last prior matter concluded more than five years prior to the contravention subject to the undertaking.

Very Serious Injury – for these guidelines, is an injury that has caused nervous system damage liable to lead to mental incapacity or permanent restriction of mobility or involves a major amputation of a limb or parts of the body – for example amputation above the knee or elbow.

### Preliminary process for matters within General Exclusions

1. This process is in place to save the person giving the undertaking from unnecessary investment into an undertaking which falls into one of the general exclusion areas and therefore could be rejected by the regulator.
2. If the contravention to which the undertaking relates falls into any of the categories of general exclusion, the person giving the undertaking will be informed in writing of the relevant category of general exclusion applicable to the undertaking. The person giving the undertaking will be provided the opportunity to address those issues and demonstrate that there are exceptional circumstances that apply to the case such that the undertaking should be accepted. The submission from the person giving the undertaking should identify any exceptional circumstances that clearly demonstrate why the EU would be a more appropriate enforcement option than a prosecution of the contravention.
3. If the regulator is not satisfied that exceptional circumstances have been demonstrated the person giving the undertaking will be advised of that decision, with reasons.
4. The regulator may decide not to reject the undertaking after consideration of the submission and the process will continue.



## Guidelines for acceptance

1. To allow for the timely development and effective monitoring of an EU, it needs to be in a written format that covers essential details of both a procedural and substantive nature. Details of the types of procedural matters the regulator requires are shown within the EU template at Annexure A and the OIR EU Program Timeframes/Service Standards at Annexure B.
2. Where an undertaking being given is an alternative to prosecution, the quantum or effect of the undertaking must be commensurate with, and also account for, the benefits that accrue to the applicant due to the prosecution being discontinued. The benefits of avoiding court proceedings, including obviating a possible recorded conviction and other sentencing outcomes, must be reflected in the quantum or effect of the undertaking, that is, those non-tangible benefits of avoiding prosecution must be reflected in the tangible benefits required as part of the undertaking.
3. All persons are obliged to comply with their duties under the safety Acts. Therefore, any term of an EU that merely represents ordinary expected compliance with the safety Acts cannot be considered for the purposes of an EU.
4. For an undertaking to be accepted, the regulator requires terms that promote the objects or purposes of the safety Acts for the benefit of one or more of the following:
  - a. the workers and/or workplace
  - b. industry
  - c. community.
5. The regulator also requires a person giving an undertaking to have an Occupational Health and Safety Management System (OHSMS) acceptable to the regulator in place or alternatively commit to implementing one as part of the terms of an undertaking. This must include third party auditing of the OHSMS that is acceptable to the regulator.
6. When deciding whether to accept an undertaking, the regulator will consider a number of factors, including:
  - a. the objective gravity of the contravention and the nature of the applicant's alleged misconduct (the greater the gravity of the contravention, the less likely the undertaking being given will be accepted)
  - b. submissions received from any relevant party, including any injured worker/s or next of kin, in relation to the contravention
  - c. the person's conduct in respect of mitigation and remedial action, regarding both the contravention and any person effected by the contravention
  - d. the applicant's past performance and history of compliance with the safety Acts, including the management of workers' compensation
  - e. any other matter which the regulator considers relevant.

## Further information

The OIR EU Unit offers an advisory service to a person giving an undertaking. The advisory service is considered by OIR as being beneficial as it allows the person giving the undertaking to better determine if an EU is a feasible and appropriate alternative to prosecution for a contravention of the safety Acts.

The advisory service can also provide a person giving an undertaking the opportunity to liaise directly with relevant business areas within OIR and/or external bodies to develop particular aspects of the undertaking. All communication with the advisory service is on a without prejudice basis and will be conducted directly with the person or giving an undertaking or the person's legal representatives, if preferred.

Any decision made regarding the acceptance of an EU rests solely with the regulator. To reach a decision the regulator will independently exercise decision making powers under the safety Acts.

For further information regarding EUs or to access the advisory service, please contact the EU Unit at [enforceableundertaking@justice.qld.gov.au](mailto:enforceableundertaking@justice.qld.gov.au).

OIR Disclosure Log

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Office of Industrial Relations

Guidelines for the acceptance of an enforceable undertaking

PN 11783 Version 1 Last updated August 2017

RTI 210342

Annexure A

This annexure depicts a suggested format for an enforceable undertaking

## ENFORCEABLE UNDERTAKING

*[insert one the following references]*

Part 11, *Work Health and Safety Act 2011*

or

Part 3, *Electrical Safety Act 2002*

or

Part 4, *Safety in Recreational Water Activities Act 2011*

The commitments in this undertaking are offered to the regulator by

**[Insert person/entity name]**

(the person)

**ABN / ACN [Insert person/entity ABN/ACN]**



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.

## DEFINITIONS

**Contravention** means an alleged contravention.

**Electrical safety undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 3 of the *Electrical Safety Act 2002* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Electrical Safety Act 2002* and includes all of the contents of that document including the general information, general and enforceable terms.

**OIR** means the Office of Industrial Relations.

**OHSMS** means an Occupational Health and Safety Management System.

**person** means an individual who or a legal entity which has a duty under the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002* or the *Safety in Recreational Water Activities Act 2011* and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, individuals or corporations as trustees of trusts, statutory corporations, public authorities, the State of Queensland, the Commonwealth of Australia and other Australian states and territories.

**Recreational water activities health and safety undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 4 of the *Safety in Recreational Water Activities Act 2011* (in conjunction with Part 11 of the *Work Health and Safety Act 2011*) by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Safety in Recreational Water Activities Act 2011* and includes all of the contents of that document including the general information, general and enforceable terms.

**regulator** means the Deputy Director-General, Office of Industrial Relations, being the person appointed by the Governor in Council as regulator under the Safety Acts.

**safety Acts** means *Work Health and Safety Act 2011*, *Electrical Safety Act 2002* and *Safety in Recreational Water Activities Act 2011*.

**Very Serious Injury** means, for this publication, is an injury that has caused nervous system damage liable to lead to mental incapacity or permanent restriction of mobility or involves a major amputation a major amputation of a limb or part of the body – for example amputation above the knee or elbow.

**WHS undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 11 of the *Work Health and Safety Act 2011* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Work Health and Safety Act 2011* and includes all of the contents of that document including the general information, general and enforceable terms.

The OIR respects your privacy and is committed to protecting personal information. 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 2011*, Part 3 of the *Electrical Safety Act 2002* or Part 4 of the *Safety in Recreational Water Activities Act 2011*. This information will be managed within the requirements of the current state government privacy regime.

The OIR may publish the undertaking and information contained in it for purposes identified in the undertaking or for other appropriate purposes in publications such as newspapers and on its website. The OIR may be required to disclose personal information to other agencies such as the Queensland Police Service and WorkCover in accordance with enforcement activities that may be conducted as part of an investigation. Information on our privacy policy is available at [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au).

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

### 1.1 Details of the person giving the undertaking

Nominated person: [Enter details here] *(Point of contact for OIR communications)*  
Street address: [Enter details here]  
Mailing address: [Enter details here]  
Telephone: [Enter details here]  
Email address: [Enter details here]  
Legal structure: [Enter details here]  
Type of business: [Enter details here]  
Commencement date: [Enter details here]  
Workers: Full time: [Enter number]  
Part time: [Enter number]  
Casual: [Enter number]  
Products and services: [Enter details here]  
Comments: [Enter comments here]

### 1.2 Detail the contravention

*(This should reflect the details of the Complaint and Summons, omitting personal details and reference to gender)*

[Enter details here]

### 1.3 Detail the events surrounding the contravention

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

[Enter details here]

### 1.4 Detail the enforcement notices issued that relate to the contravention detailed in term 1.2

Not Applicable

DATE ISSUED	NOTICE TYPE	NOTICE NUMBER	CONTRAVENTION OR PROHIBITED ACTIVITY	ACTION TAKEN IN RESPONSE TO NOTICE

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>



**1.5 Detail the injury sustained or illness suffered by worker/s or other/s as a consequence of the contravention detailed in term 1.2**

[Enter details here]

**1.6 Detail the workers' compensation or other insurance benefits paid to the worker/s who sustained injury or suffered illness as detailed in term 1.5 or to the beneficiaries of deceased persons**

The person/s detailed is:

- an employee/s of the entity
- a self-employed person/s
- other  (please specify) \_\_\_\_\_
- not applicable

[Enter details here]

**1.7 Detail the support provided or proposed by the person to the injured worker/s, other/s or families**

DATE	DESCRIPTION OF SUPPORT	COMMENTS

**1.8 Detail any current OHSMS implemented and maintained by the person**  
*(Describe how health and safety risks are managed, including types of procedures or policies or standards)*

[Enter details here]

**1.9 Detail the level of auditing undertaken on the OHSMS referred to in term 1.8, including compliance audits and audit frequency**

[Enter details here]

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

[Enter details here]

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>



**1.11 Detail the rectifications to the workplace or work practices made as a result of the contravention and events detailed in terms 1.2 and 1.3 and the enforcement notices issued as detailed in term 1.4**

[Enter details here]

Total amount spent on rectifications

\$

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**

[Enter statement here]

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

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

[Enter statement here]

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

[Enter statement here]

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

I have read and understood:

*Guidelines for the acceptance of an enforceable undertaking*

Version:            Dated:

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

2.5.1 [insert person] acknowledges that the undertaking may be published on the OIR's website and referenced in OIR material.

2.5.2 [insert person] acknowledges that the undertaking may be publicised in newspapers. [Insert case, if any, for why the regulator would not publish and/or publicise the undertaking]

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

**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 [insert person] has the financial ability to comply with the terms of this undertaking and have provided evidence by way of [insert 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, [insert person] will advise OIR 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**

[Enter statement here]

**2.8 Statement regarding Intellectual Property Licence**

[Insert person], grants OIR 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**

OIR has requested a statutory declaration outlining details of any prior convictions<sup>1</sup> or findings of guilt under the safety Acts.

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 responsibility for demonstrating compliance with this undertaking rests with the person.
- 2.10.2 Evidence to demonstrate compliance with the terms will be provided to OIR by the due date for each term.
- 2.10.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the regulator, that this undertaking has been completely discharged.
- 2.10.4 It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.
- 2.10.5 It is acknowledged that OIR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to OIR.
- 2.10.6 It is acknowledged that OIR may initiate additional compliance monitoring activities, such as inspections, as considered necessary at OIR's expense.

<sup>1</sup> Subject to any local legal constraints such as spent conviction legislation.

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>



2.10.7 It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to OIR, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

**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)*

[Enter details here]

**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)*

[Enter statement here]

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

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

**3.1 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties**

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

Dissemination will be achieved by doing the following:

[Enter details here]

Dissemination will occur by: [Enter time frame here]

**3.2 Activities to be undertaken to promote the objects of the safety Acts that will deliver benefits for workers/others**

ACTIVITIES		COST	TIMEFRAME
3.2.1		\$	
3.2.2		\$	
3.2.3		\$	
<b>Total estimated cost of benefits for workers/others</b>		<b>\$</b>	

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

**3.3 Activities to be undertaken to promote the objects of the safety Acts that will deliver benefits for industry**

ACTIVITIES		COST	TIMEFRAME
3.3.1		\$	
3.3.2		\$	
Total estimated cost of benefits for industry		\$	

**3.4 Activities to be undertaken to promote the objects of the safety Acts that will deliver benefits for community**

ACTIVITIES		COST	TIMEFRAME
3.4.1		\$	
3.4.2		\$	
Total estimated cost of benefits for the community		\$	

**3.5 Agreement to pay the OIR's recoverable costs**

*(These amounts will be provided by the EU Unit)*

[Insert person] agrees to pay OIR's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the OIR invoice:

- administrative costs \$
- legal costs \$
- compliance monitoring costs \$
- publication costs \$
- Total recoverable costs \$**

**3.6 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)*

[Enter statement here]

**3.7 A commitment to [establish and maintain OR maintain] an OHSMS**

*(Delete the irrelevant terms below. If required contact OIR to determine which option is appropriate)*

- 3.7.1 [Insert person] acknowledges there is no formal documented OHSMS in place.
- 3.7.2 [Insert person] commits to ensuring that an OHSMS acceptable to the regulator that satisfies the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques will be implemented within 12 months of the acceptance of this undertaking.

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>



or

- 3.7.1 [Insert person] acknowledges there is a formal documented OHSMS acceptable to the regulator that satisfies the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*, currently in place.
- 3.7.2 [Insert person] commits to ensuring that the OHSMS remains compliant with the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

or

- 3.7.1 [Insert person] commits to ensuring that within 12 months of the acceptance of this undertaking the OHSMS shall be compliant with the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.
- 3.7.2 [Insert person] acknowledges that the OHSMS will be maintained in accordance with *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

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

*(Delete the irrelevant terms below. If required contact OIR to determine which option is appropriate)*

- 3.8.1 [Insert person] acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.
- 3.8.2 [Insert person] commits to ensuring the OHSMS will be audited by certified third party auditors.
- 3.8.3 [Insert person] acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.8.4 [Insert person] acknowledges that costs associated with these audits will be met by [Insert person] as part of the undertaking.
- 3.8.5 [Insert person] commits to ensuring the OHSMS will be audited against criteria that meets the principles of *AS/NZS 4801:2001 Occupational Health and Safety Management Systems – Specification with guidance for use*, to verify the OHSMS meets the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.
- 3.8.6 [Insert person] acknowledges that the current OHSMS in place, as detailed in term 3.7.1 is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within three months of this undertaking being accepted.

or

- 3.8.6 [Insert person] acknowledges that there is no OHSMS in place, as detailed in term 3.7.1 that is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within six months of this undertaking being accepted.
- 3.8.7 [Insert person] commits to ensuring at least two further third party audits will be undertaken at 12 month intervals, commencing 12 months after the initial audit.

### **3.9 A commitment to provide a copy of each finalised OHSMS audit report to OIR**

- 3.9.1 It is acknowledged that audit reports received from the auditor will be sent to OIR within 30 days of the audit along with written confirmation 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, OIR will be advised of the intended actions for addressing each of the report's recommendations.

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

### 3.10 A commitment to implement the recommendations from third party audits

- 3.10.1 [Insert person] commits to ensuring the recommendations resulting from the first OHSMS audit, as detailed in 3.8.2 will be fully implemented and recorded as actioned by the auditor within the second OHSMS audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.2 [Insert person] commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.8.2 will be fully implemented and recorded as actioned by the auditor within the third OHSMS audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.3 [Insert person] commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.8.2 will be fully implemented within six months of receiving the third OHSMS report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.4 [Insert person] commits to providing a detailed action plan or statutory declaration by an authorised officer of the [Insert person] confirming recommendations arising from the third audit have been fully implemented, unless OIR grants an exemption due to the actions being unreasonable.

### 3.11 Minimum spend

- 3.11.1 [Insert person] commits to a minimum spend of [Insert \$ minimum spend] for this undertaking.
  - 3.11.2 [Insert person] agrees to spend any residual amount arising from the minimum spend value not being met. Agreement on how to spend this residual will be sought from the regulator.
  - 3.11.3 [Insert person] acknowledges the minimum spend comprises of the:
    - Estimated value of benefits to workers/others [Insert \$ minimum spend]
    - Estimated value of benefits to industry [Insert \$ minimum spend]
    - Estimated value of benefits to community [Insert \$ minimum spend]
    - OIR's recoverable costs [Insert \$ minimum spend]
- Estimated total value of the undertaking [Insert \$ value]**

This undertaking is given by the person on the date it is accepted by the regulator as set forth in section 5 below.

*(Select from the following execution clauses and delete those that do not apply)*

*(INDIVIDUAL)*

**SIGNED** by the person

[Insert person]

on the [DAY] day of [MONTH], 20[YEAR]

before me:

Signature of person

Witness signature

[Insert witness name]

Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

Witness address

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

RTI 210342



(PARTNERSHIP)

**SIGNED** by the persons

[Insert partner name] and

[Insert partner name] and

[Insert partner name]

on the [DAY] day of [MONTH], 20[YEAR]

before me:

Signature of persons

Witness signature

[Insert witness name]

Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

Witness address

OIR Disclosure Log

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

RTI 210342



(INDIVIDUAL TRUSTEE OF A TRUST)

**SIGNED** by the person

[Insert Trustee name] in their own right  
and in their capacity as trustee of the  
[Insert Trust name].

on the [DAY] day of [MONTH], 20[YEAR]

before me:

-----  
Signature of person

-----  
Witness signature

[Insert witness name]

-----  
Witness name in full

[Insert witness address]

-----  
[Insert witness address]

[Insert witness address]

-----  
Witness address

OIR Disclosure Log

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<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

RTI 210342

120 of 180

Page 13 of 16

Office of Industrial Relations

(COMPANY)

THE COMMON SEAL of

(Affix common seal)

[Insert Company name]

was affixed in accordance with the  
*Corporations Act 2001* in the presence of

[Insert director name] and

[Insert director/secretary name]

on the [DAY] day of [MONTH], 20[YEAR]

before me:

.....  
Signature of director

.....  
Signature of director / secretary

.....  
Witness signature

[Insert witness name]

.....  
Witness name in full

[Insert witness address]

.....  
[Insert witness address]

[Insert witness address]

.....  
Witness address

---

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

RTI 210342

(COMPANY AS TRUSTEE OF A TRUST)

**THE COMMON SEAL** of

(Affix common seal)

**[Insert Company name]**

was affixed in accordance with the  
*Corporations Act 2001* in the presence of

[Insert director name] and

[Insert director/secretary name]

In its own right and in its capacity as  
trustee of [Insert trust name]

.....  
Signature of director

on the [DAY] day of [MONTH], 20[YEAR]

before me:

.....  
Signature of director / secretary

.....  
Witness signature

[Insert witness name]

.....  
Witness name in full

[Insert witness address]

.....  
[Insert witness address]

[Insert witness address]

.....  
Witness address

---

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

RTI 210342

122 of 180

Page 15 of 16

Office of Industrial Relations

This undertaking is accepted by the regulator on the            day of

.....  
(signature)

.....  
(name of regulator)

Appointed by the Governor in Council as regulator under Schedule 2, Part 1 of the *Work Health and Safety Act 2011*, Schedule 2 of the *Electrical Safety Act 2002* and section 32 of the *Safety in Recreational Water Activities Act 2011*.

OIR Disclosure Log

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

RTI 210342



Annexure B

## OIR EU Program Timeframes/Service Standards

The following timeframes/service standards table has been provided as a guide for the Office of Industrial Relations (OIR), the person giving an undertaking and/or their representative to ensure each phase of the EU Program is progressed and completed in a timely manner. There is an expectation that if the following timeframes/service standards cannot be met the responsible party will contact and seek to renegotiate a timeframe/service standard suitable to all parties.

EU Timeframe/Service Standards		
Event	Person/Representative	OIR
Initial request for EU advisory service	After an alleged contravention or complaint and summons.	
Introductory email regarding EU process and EU advisory service		7 days from initial request
Meeting between person/representative and EU Unit (EUU)		14 days from initial request
Notification of interest to give an undertaking	7 days from meeting with EUU	
Acknowledge receipt of notification		7 days from receipt of notification of interest
Injured person(s)/Next of Kin letter		7 days from receipt of the notification of interest
Draft undertaking (undertaking) (Version 1) (template example at Annexure A)	21 days from receipt of the notification of interest	
EUU review and initial feedback of undertaking (Version 1)		14 days from receipt of undertaking (Version 1)
Resubmission of revised undertaking (Version 2)	14 days from receipt of initial feedback	
EUU feedback of Version 2 and any subsequent versions of undertaking	7 days from feedback	7 days from resubmission
Final version of undertaking for evaluation by EU Panel (EUP)	7 days from EUU feedback on resubmission/s	
EUP meeting to evaluate final undertaking		28 days from receipt of final undertaking
EUP evaluation feedback or recommendation to accept or reject		7 days from EUP evaluation meeting
Re-submission of final undertaking for EUP return evaluation	14 days from receipt of EUP feedback	
EUP return evaluation feedback or recommendation to accept or reject		7 days from resubmission
Submission of signed final undertaking for decision by regulator	7 days from receipt of EUP recommendation	
Request for a decision by the regulator		14 days from submission of signed final undertaking
Regulator makes a decision* on whether to accept or reject		28 days from request of decision
Letter advising of decision and reasons for decision		7 days from decision being made
Publication of EU and reason for decision if accepted		28 days from decision

**Decision\*** - If the regulator intends to reject, the person giving the undertaking will be provided an opportunity to make a final submission addressing the regulators reasons for decision prior to a final decision being made. Timeframes for this process will be negotiated between OIR and the person or representative.