



Office of
Industrial Relations

Department of Education

To Whom It May Concern,

The Work Health and Safety Regulator has accepted an enforceable undertaking (EU) provided by Acciona Infrastructure Australia Pty Ltd (AIA) pursuant to section 216(1) of the *Work Health and Safety Act 2011(Qld)* (WHS Act). The EU relates to alleged contraventions of the WHS Act (contrary to section 32) that occurred between 15 August 2017 and 27 April 2018 during the Toowoomba Second Range Crossing Project.

No injuries or illnesses were sustained as a consequence of the alleged contraventions.

Proceedings commenced against AIA by the Work Health and Safety Prosecutor in respect of the alleged contraventions have been discontinued.

The giving of an EU does not constitute an admission of guilt and AIA has not been found guilty by any Court of the alleged contraventions.

Yours sincerely,

Mark Barber
Manager
Enforceable Undertakings Unit
Office of Industrial Relations

23 / 01 / 2023

ENFORCEABLE UNDERTAKING

Part 11, Work Health and Safety Act 2011

The commitments in this undertaking are offered to the regulator by

ACCIONA INFRASTRUCTURE AUSTRALIA PTY LTD

ABN 52 140 915 251

This undertaking is being given by Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251). The entity Acciona Infrastructure Australia Pty Ltd (the subject of the Complaints and Summonses referred to in section 1.2) continues to operate in a very limited capacity to close out the Toowoomba Second Range Project. Acciona Construction Australia Pty Ltd (ABN 66 618 030 872) is the entity through which new construction project contracts are entered into. Accordingly, and for the purpose of this undertaking, whilst Acciona Infrastructure Australia Pty Ltd is the entity giving the undertaking, the initiatives and activities described in this undertaking will be performed and delivered by Acciona Construction Australia Pty Ltd (**ACA**). ACA will provide evidence to the OIR to satisfy the completion of initiatives and/or activities contemplated in this 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 AIA from the date it is given.

DEFINITIONS

ACA means Acciona Construction Australia Pty Ltd (ABN 66 618 030 872)

Acciona for the purposes of this undertaking, means the wider group of Acciona entities operating across Australia and New Zealand and includes AIA and ACA.

AIA means Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251)

Contravention means an alleged contravention.

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.

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*.

WHSQ means Work Health and Safety Queensland.

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 AIA 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 Queensland 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.

SECTION 1: GENERAL INFORMATION

1.1 Details of the person giving the undertaking

Nominated person:	Acciona Infrastructure Australia Pty Ltd
Street address:	174 Turner Street, Port Melbourne, Victoria 3207
Mailing address:	174 Turner Street, Port Melbourne, Victoria 3207
Telephone:	+61 3 9624 4200
Email address:	Info.au@acciona.com
Legal structure:	Australian proprietary company limited by shares
Type of business:	Construction
Commencement date:	3 December 2009

Workers (ACA): AIA has no employees. For ACA:

Full time: 1700

Part time: 103

Casual: 40

Products and services: Acciona is a global company dedicated to the development of infrastructure and renewable energy solutions. It operates in three primary sectors across Australia and New Zealand – energy, water and infrastructure. Acciona is focussed on providing sustainable infrastructure solutions for a better planet through renewable and clean energy projects including wind and solar, and also lead water treatment solutions through the design, construction and operation of water treatment plants, wastewater treatment plants and reverse osmosis desalination plants.

AIA is Acciona's original infrastructure and construction business, established in 2009 responsible for delivery of major infrastructure projects such as the Toowoomba Second Range Crossing project.

ACA is Acciona's infrastructure and construction business through which new construction projects are entered into, providing sustainable infrastructure solutions through the design, construction and operation of roads, highways and motorways, bridges, tunnels, heavy and light rail transport solutions.

Comments: N/A

1.2 Detail the Alleged Contraventions

Three Complaints and Summonses have been issued against AIA in relation to work at the Toowoomba Second Range Crossing (Project).

Complaint and Summons One

The Complaint and Summons made 13 August 2019 alleges that AIA had a health and safety duty under section 19(1) of the *Work Health and Safety Act 2011* (Qld) (**WHS Act**) and that it failed to comply with the duty contrary to section 32 of the WHS Act.

Complaint and Summons Two

The Complaint and Summons made 20 January 2020 alleges that AIA had a health and safety duty under sections 19(1) and 19(2) of the WHS Act and that it failed to comply with those duties contrary to section 32 of the WHS Act.

Complaint and Summons Three

The Complaint and Summons made 20 January 2020 alleges that AIA had a health and safety duty under sections 19(1) and 19(2) of the WHS Act and that it failed to comply with those duties contrary to section 32 of the WHS Act.

No injuries or illnesses were sustained or suffered as a consequence of the alleged contraventions.

1.3 Detail the events surrounding the Alleged Contraventions

Complaint and Summons One

AIA was a party to a joint venture (JV) with another company (**JV Partner Company**). The JV entity was the Head Contractor for the purposes of delivery of the Project. The JV Partner Company was the appointed principal contractor for the Project.

A third party concreting contractor entered into a plant hire agreement with AIA and the JV Partner Company.

On 15 August 2017¹, a 60m concrete boom truck owned and operated by the third party concreting contractor started to set up on a crane pad adjacent to structure 020B outlet. A short time later, it was determined that the boom could not quite reach the concrete pour location, so the crane was re-positioned to a closer pad that was designed to accommodate a smaller 42 metre concrete boom truck. To overcome this, the 60 metre boom truck was positioned facing downhill on an angle of 5.5 degrees to fit on the pad. The outriggers were raised on (uneven) dunnage to level out the boom truck within the manufacturer's specifications (0-3 degrees). A short time later, while extending the boom outwards on set up, the back-right outrigger slightly lifted off the ground. The operator immediately compensated and slewed left to place more weight on the front left outrigger. The weight then distributed to the left front outrigger which contributed to the stored energy within the right-hand outrigger leg being released. This caused the right front outrigger to move forward and slide off the dunnage. The loss of the stable right-hand outrigger caused a chain reaction as the remainder of the outriggers came off level pads onto sloping ground >5 degrees. The sloping ground caused the rear of the truck to tip in the air and the 60 metre boom to come down to the ground.

Complaint and Summons One alleges that AIA exposed workers to risk if the concrete boom truck was not set up in a location which was a clear, level area of ground with a firm base capable of supporting the pump unit.

No injuries or illnesses were sustained as a consequence of the alleged contravention.

¹ Paragraphs 4 and 7 of the Complaint refer to 15 August 2019; they should read 'on or about 15 August 2017'.

Complaint and Summons Two

AIA was a party to a JV with the JV Partner Company. The JV entity, was the Head Contractor for the purposes of delivery of the Project. The JV Partner Company was the appointed principal contractor for the Project.

AIA and the JV Partner Company engaged a third party steel fixing contractor for the provision of steel fixing services for the Project.

Charges One and Two

On or about 26 April 2018, the third party steel fixing contractor transported two steel mesh mats from their location of manufacture to adjacent to Pier 2 of the Viaduct. On or about 27 April 2018, the two steel mesh mats were moved by crane (operated by a third party crane operator) to the base of Pier 3 and between Pier 3 and Pier 4 in a horizontal orientation. One of the steel mesh mats was connected to designated lifting points and lifted off the ground in a vertical orientation. Two steel reinforcing bars fell from the mesh mat (which was less than one metre high).

Charges One and Two of Complaint and Summons Two allege that AIA exposed workers to risk by permitting work to be undertaken without appropriate controls in place.

No injuries or illnesses were sustained as a consequence of the alleged contraventions.

Complaint and Summons Three

AIA was a party to a JV with the JV Partner Company. The JV entity, was the Head Contractor for the purposes of delivery of the Project. The JV Partner Company was the appointed principal contractor for the Project.

AIA and the JV Partner Company engaged two third party formwork, concreting and scaffolding sub-contractors on the Project.

Charges One and Two

On or about 13 February 2018, an inspector from WHSQ attended the viaduct bridge construction (Piers 19, 20 and 21) and identified risks to persons including the risk of falls from one level to another, the risk of objects falling on or otherwise hitting persons during the work and the risk to health and safety of persons at the viaduct bridges from inadequate emergency access and egress systems.

On or about 1 March 2018, an inspector from WHSQ attended the viaduct bridge construction (Pier 3) for the purpose of a compliance assessment and identified risks to persons outlined below:

- (a) the risk of falls from one level to another, specifically:
 - (i) the access ladder from the mid working deck to the upper working deck was not secured;
 - (ii) falling through the void created at the access ladder from the mid working deck to the upper working deck;
 - (iii) internal and external voids in the formwork were measured greater than 225mm with the risk of falls from one level to another of approximately 3.1m;
 - (iv) falling through the void created at the eastern ladder trap door as it could not be closed (due to a 'Z bar' locking the trap door in an open position); and
 - (v) edge protection missing bottom rails;
- (b) the risk of objects falling on or otherwise hitting persons during the work; and
- (c) the risk to the health and safety of persons at the viaduct bridges from inadequate emergency access and egress systems, namely the hoist lift was not operational.

Charges One and Two of Complaint and Summons Three allege that AIA exposed workers and other persons to risk by permitting them to enter Pier 3 of the viaduct construction on or about 1 March 2019 (sic).²

No injuries or illnesses were sustained as a consequence of the alleged contraventions.

Charges Three and Four

On or about 23 April 2018, inspectors from WHSQ attended the viaduct bridge construction (Pier 2) and identified risks to persons including:

- (d) the risk of falls from one level to another, specifically:
 - (i) falling internally in the formworking decks from missing bottom rail and/or toe board;
 - (ii) falling into the internal pier void;
 - (iii) falling from a platform in the internal pier void further into the internal pier void;
 - (iv) falling from an unsecured ladder in the internal pier void;
 - (v) edge protection missing mid rail and unsecured bottom rail;
 - (vi) unsecured scaffold rail and absent posts;
 - (vii) poorly marked trapdoor in formworking platform;
- (e) the risk of objects falling on or otherwise hitting persons during the work from missing toe boards;
- (f) the risk of objects falling on or otherwise hitting persons during the work from missing or improperly secured perimeter screening;
- (g) the risk of objects falling on or otherwise hitting persons during the work from gaps in the formworking platform; and
- (h) the risk of injury from uncapped vertical steel reinforcing bars.

Charges Three and Four of Complaint and Summons Three allege that AIA exposed workers and other persons to risk by permitting them to enter Pier 2 of the viaduct construction between 21 April 2018 and 23 April 2018.

No injuries or illnesses were sustained as a consequence of the alleged contraventions.

1.4 Detail the enforcement notices issued that relate to the Alleged Contraventions detailed in term 1.2

☐ Not Applicable

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
15 Aug 2017	Non-disturbance	1011802	Zone 3 Fill 22 (Everdigm 60m MCP 33Q), failing to be erected to prevent unauthorised access to the area #Everdigm 60m MCP33Q. No persons is to interfere	<ul style="list-style-type: none"> The notice was complied with. Stop Works issued immediately (Project Wide).

² This is an error in the Complaint; it should read 'on or about 1 March 2018'.

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
			with the concrete pump until WHSQ has finished its inquiries and inspection. The concrete placing boom truck is not to be righted until a methodology has been developed by a competent person and approved by principal Contractor.	<ul style="list-style-type: none"> Updated the Work Health & Safety Management Plan to include the incorporation of a concrete pump checklist. Revised the Project Risk Register to include a new category for pump stability. Training provided to engineers & supervisors on the Concrete Pumping checklist. Conducted two toolbox talks on the day of the incident in relation to the stop work. Communicated the incident to all workers on the day of the incident advising that 'safety reset' toolboxes would be held the next day in the east, central and west areas of site. Work stopped site-wide in preparation for these toolboxes. These toolboxes addressed the Project's expectations regarding safety and encouraged discussion on what needed to be done to improve safety. Communicated the incident to all workers in the Daily Safety Message Developed the Concrete Pumping Checklist (TSRC-HS-FOR-0316) which had to be completed prior to operating a concrete boom on site to check safety documentation, ground details, pump set-up and operation before undertaking work.
17 Aug 2017	Prohibition	1018579	Operating mobile plant where ground conditions have not been suitably assessed. Until the risk of death of serious injury associated with operation of mobile plant on unusable ground has been eliminated or minimised so far as is reasonably practicable. Mobile plant is operated daily by workers and/or in	The notice was complied with. Response actions taken in accordance with Notice 1011802, outlined above.

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
			vicinity of workers on ground that has not been suitably accessed or caused to be assessed by the principal contractor as being adequate to prevent the overturning of mobile plant.	
17 Aug 2017	Improvement	1028411	Mobile plant is operated daily by workers and/or in vicinity of workers on ground that has not been suitably accessed or caused to be assessed by the principal contractor as being adequate to prevent the overturning of mobile plant. Direction issued that the person in control of the business or undertaking is to develop, implement and maintain a system to ensure mobile plant is operated on ground that has been assessed as suitably compliant with the manufacturers' specifications so far as is reasonably practicable. Investigations have revealed that plant is allowed to be operated in areas where ground compaction has not been assessed and gradients of the ground are outside the plant manufacturers' specifications which has resulted in plant rollovers.	The notice was complied with. Response actions taken in accordance with Notice 1011802, outlined above.

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

Not applicable – no injuries or illnesses sustained.

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

Not applicable – no injuries or illnesses sustained.

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

Whilst no-one was injured as a result of the alleged contraventions, the following support was provided to workers and the workforce:

1. Stop Works issued immediately (Project wide) by the Project Director following the concrete pump incident;
2. Training provided to engineers and supervisors for new processes and checklists developed as a result

- of lessons learned and continuous improvement initiatives;
3. Consultation with the Project workforce and employees through safety reset toolboxes;
 4. Communications to the workforce addressing the Project's expectations regarding safety and encouraging two-way discussion of safety improvements; and
 5. Communications to the Project in relation to the incidents to all workers through the Daily Safety Message.

1.8 Detail any current OHSMS implemented and maintained by the person

- (a) Acciona operates and maintains an accredited AS/NZS ISO 45001 (superseding AS/NZS ISO 4801) OHSMS referred to as Acciona's Integrated Management System (**AIMS**).
- (b) AIMS applies to current and future projects tendered and awarded to Acciona. AIMS was not utilised on this Project on the basis that AIA was not the Principal Contractor within the meaning of the *Work Health and Safety Act 2011* (Qld).
- (c) AIMS combines core safety, environmental, quality and sustainability management systems and procedures into a combined management tool. AIMS is based on the 'Plan-Do-Check-Act' continuous improvement model and is comprised of the elements below:
 - (i) Leadership and commitment
 - (ii) Policy and strategic objectives
 - (iii) Organisational Roles
 - (iv) Risk, Planning, Evaluation and Management
 - (v) Implementation and monitoring
 - (vi) Auditing and Improvement
- (d) AIMS is accredited to the Office of the Federal Safety Commissioner (**OFSC**) – Australian Government building and construction Work Health and Safety (WHS) Accreditation Scheme.
- (e) This accreditation is maintained annually via external and independent auditing of the implementation of the OHSMSs.

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

Current auditing practices

AIMS is accredited to the Australian and New Zealand Standards (AS/NZS) and International Standards Organisation (ISO) requirements for Quality, Environment and Occupational Health and Safety requirements, ISO 9001, 14001, 45001 respectively. AIMS is routinely audited internally and externally in accordance with the AS/NZS ISO requirements.

Internal Audits

Routine internal audits are also conducted to determine whether AIMS conforms to the requirements of ISO 9001, ISO 14001, ISO 45001 Standards and internal requirements and that it has been effectively implemented.

Audits are carried out through an annual cycle and conducted at a frequency dependent on project phase and/or risk level, and can be quarterly, six monthly or annually. Audits are conducted by trained personnel who are separate to those who perform the activity being audited (where resources permit). The internal auditing procedures include the responsibilities and requirements for planning, conducting audits, ensuring their independence, recording results and reporting to management. Management accountable for the area being audited is responsible for ensuring that actions are taken without undue delay to eliminate detected non-conformities and their causes.

Acciona develops the internal audit schedule annually, taking into consideration the status and importance of the activities and areas to be audited as well as the results of previous audits. The audit schedule is revised annually (at a minimum) through a risk assessment and updated as required. The internal audit risk assessment process is conducted by using competent and experienced personnel, who are aware of the business risks and operational scope, to assess and classify the hazards and risks utilising the following methodology:

- (a) Regulatory and Certification requirements.
- (b) Existing Deficiencies.
- (c) Risk to the business and the system.
- (d) Existing documentation and compliance.
- (e) Documentation required.
- (f) Resources available and required.
- (g) Non-conformance and Audit results.

External Audits

Acciona commissions a third-party auditor (**Third Party Auditor**) to annually audit and monitor the implementation of the health, safety, environmental and quality aspects of AIMS in line with the requirements of the Australian and international standards.

The third party audits are conducted through annual surveillance audits and a three yearly re-certification audit. The external audits cover a snapshot of projects across Australia and typically span two weeks every year.

The three year re-certification audit focusses specifically on Acciona's performance against the standards and Acciona's systems compliance.

The audits conducted by Acciona's Third Party Auditor are led by highly experienced professionals accredited to lead the audit across safety, quality and environment aspects of AIMS.

In addition to this, ACA and its projects are also subject to external and independent annual audits through the OFSC in maintaining its national accreditation.

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

The details and commitment within this undertaking have been discussed with various levels of senior management at Acciona. This includes Acciona's Chief Executive Officer, AIA Directors, ACA's Executive General Manager, ACA Executive Regional Manager and the senior ACA operational managers within the Queensland (Northern Region) business unit.

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

	Rectification Action	Approximate cost
a)	Organisational changes were made in May 2018 with a focus on renewed Safety Leadership through the appointment of a Project Director and a Health and Safety Manager.	No additional cost
b)	Instituted monthly safety meetings which were attended by WHSQ.	12 Monthly meetings

	Rectification Action	Approximate cost
		Personnel costs: \$146,250
c)	<p>Launching Safe Run Home Program (SRHP) which involved a reset and refresh of the Project's safety objectives. The objectives of the SRHP were:</p> <ul style="list-style-type: none"> (A) engaging the workforce to encourage people to speak up and to take the initiative with workplace hazard identification and risk management; (B) improving the quality of pre-start and toolbox meeting delivery to ensure open, honest and meaningful consultation; (C) re-emphasising the Project non-negotiables surrounding vehicle and mobile powered plant; (D) providing an open forum for workers to workshop their feedback on what the Project should stop, start and keep doing regarding workplace health and safety; and (E) engendering unity across the Project. 	<p>SRHP development costs and implementation</p> <p>TOTAL: \$600,000 (broken down below)</p> <p>in addition to:</p> <p>Personal Protective Equipment Safe Run Home branded shirts: \$15,000</p>
	The SRHP started with a three day intensive campaign facilitated by a third party training group in late July 2018, involving all workers and sub-contractors, focussing on the key areas of risk assessments, workplace health and safety legislation, plant safety awareness and worker feedback (opportunities to improve).	Approximately \$450,000
	The third party training group developed a number of targeted skills development sessions to address the key themes of the feedback.	\$50,000 for focused training days
	The third party training group was also engaged to provide training on prestart meetings, which consisted of 3-4 half day sessions.	Safety training days approximately \$100,000
d)	In May 2018 , the JV entity developed a Structures Safety Improvement Plan in the spirit of continuous improvement with respect to control measures in place on the Project (SSIP).	<p>Development Costs (1 month)</p> <p>Cost of relevant personnel</p> <p>Total: \$78,000</p>
	The SSIP brought together all of the procedures and checklists for working at height and on a structure, and compiled them into the one document for improved visibility as to how the controls worked together. SSIP was implemented by two area managers who had	<p>Implementation</p> <p>Cost of relevant personnel</p>

	Rectification Action	Approximate cost
	structures in the area of their responsibility. The operation of the SSIP flowed down to the supervisors, the engineers and safety personnel for the structures, and then also the sub-contractors.	Total: ~\$175,000
e)	In July 2018 , the JV Entity also developed a Plant Safety Improvement Plan (PSIP) which (among other things) was to improve visibility as to how the control measures on the Project worked together.	Development (2 month) Total: \$112,500
	The PSIP applied to all workers on the Project and was rolled out in a series of training sessions.	Implementation Cost of relevant personnel \$295,000
f)	In addition, the following Project safety initiatives were implemented through the AIA safety leadership team:	
	(i) Introduction of good industry practice learnings at other projects. These learnings were rolled out in toolbox meetings.	Relevant personnel costs Cost \$438,000
	(ii) Senior leadership safety review programs which focused on time with the workforce in the field.	N/A
	(iii) Incorporated lessons learnt reviews and taking the learnings forward by sharing across the whole Project (not just the affected workgroup) using Collective Insights as a tool to capture innovation and best practice. The Project issued a Daily Safety Message (DSM) to all subcontractor organisations and staff that included alerts, best practice summaries together with the relevant updates of changes to access points etc. The DSM and any attachments were also posted in crib-sheds and used at pre-start shifts.	Cost \$45,000
	(iv) Engaged subject matter experts into the safety team to assist with education, training and mentoring.	N/A
	(v) Reward and recognition programs for safe work practices	N/A
	(vi) Project safety lessons learnt session lead by a third party workplace health and safety consultant to capture lessons from the Project to ensure continuous improvement within Acciona's safety systems knowledge transfer within its business.	Lesson Learnt session Cost \$220,000 (comprising \$20,000 direct cost)
g)	Further, organisational changes at Acciona have aligned the safety systems and improvements including incorporating the lessons from the Project. Some of these include:	
	(i) Acciona's ' Foundation 12' Operational Minimum Requirements (OMR) that focus on its critical risks, including but not limited to plant and people, working at heights, temporary works, lifting operations;	Development \$50,000

	Rectification Action	Approximate cost
	(ii) Visual safety leadership onsite through the Safety Leadership Team;	One year total: \$18,000
	(iii) Developing collaborative industry partnerships with external stakeholders, in particular, Acciona is a proactive member of industry associations;	Membership fees \$20,000
	(iv) Utilisation of a Fair and Just Culture model ;	Monthly review \$25,000
	(v) Reviewing SWMS for improved workforce understanding .	No additional cost
	(vi) Safety reset which is something that has been used on other projects.	N/A
Total amount spent on rectifications		\$ 2,237,750* *(This is an estimate only and may be more or less – difficult to quantify internal systems changes).

SECTION 2: GENERAL TERMS

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

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

It is acknowledged that the Regulator has alleged that AIA contravened the WHS Act as detailed in section 1.2.

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

AIA sincerely regrets that the Alleged Contraventions occurred. AIA is committed to ensuring the ongoing health and safety of its workers and others, so far as is reasonably practicable. The implementation of the activities in this undertaking will assist in ensuring similar incidents do not occur.

This undertaking provides AIA (through ACA) with an ability to make significant improvements in relation to the health and safety in its business, and more broadly the business of Acciona, over and above the minimum standards required by legislation, and to contribute to the industry and broader community. These positive outcomes for the workers, industry and community would not be achieved by prosecution.

2.3 Statement of commitment that the behaviour, activities and other factors which caused or led to the Alleged Contraventions have ceased and will not reoccur

AIA is committed to complying with its obligations under the WHS Act and to ensuring best practice within its business to ensure the health and safety of all persons involved in it, as far as reasonably practicable.

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 PN11783 Version 1 dated November 2017.

2.5 Acknowledgement that this undertaking may be published and publicised

2.5.1 AIA acknowledges that the undertaking may be published on the OIR's website and referenced in OIR material.

2.5.2 AIA 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 AIA has the financial ability to comply with the terms of this undertaking and has provided evidence by way of a letter from its Chief Financial Officer with this undertaking to support this declaration.

2.6.2 In the event of impending liquidation or sale of the entity, AIA 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

AIA has no relationship with the parties who will receive benefits under this enforceable undertaking, other than as an employer and member of the industry and community.

AIA has a professional relationship with its Third Party Auditor, who provides external auditing of the AIMS on an ongoing basis.

2.8 Statement regarding Intellectual Property Licence

AIA 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, subject to any local legal constraints such as spent conviction legislation, 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 AIA.

2.10.2 Evidence to demonstrate compliance with the terms will be provided to OIR by the due date for each term. Such evidence may be provided by a representative of ACA as the entity undertaking the initiative(s).

2.10.3 The evidence provided to demonstrate compliance with this undertaking will be retained by AIA 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.

2.11 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

AIA and its officers are committed to meeting their obligations under the WHS Act and ensuring risks to health and safety are managed through AIMS which is specifically tailored to Acciona's operations. Acciona now has locally based safety professionals overseeing the effective deployment of safety system on all projects.

AIA (through ACA) commits to performing the activities below diligently, competently and by the respective completion date.

AIA will ensure effective management of WHS risks through the safety leadership initiatives and programs in place at Acciona, including:

- (a) established safety committees;
- (b) reporting to the Board;
- (c) specifically assigned safety roles and safety leadership programs; and
- (d) site safety updates/alerts toolbox talks and training.

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

AIA and its officers commit to the promotion of benefits under this undertaking and will disseminate the information in accordance with section 3.1 and 3.2 below.

SECTION 3: ENFORCEABLE TERMS

AIA 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.

AIA (through ACA) commits to ensuring the performance of 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

Dissemination of information regarding this undertaking will be achieved by:

1. Distribution of an initial alert (by email and posted on project notice boards) to all ACA workers in Queensland outlining at a high level the terms of this undertaking. This will occur within 3 months of this undertaking being accepted.
2. Initial meetings with the ACA senior leadership teams (SLT), HSRs and workers (where relevant to the Pilot training program and other initiatives included in this undertaking) to explain the terms of this undertaking and how the commitments made will improve the safety of all persons performing work in the business. This will occur within 3 months of this undertaking being accepted.
3. Evidence of meetings providing ongoing updates to the ACA SLT, HSRs and workers (where relevant to the Pilot training program and other initiatives in this undertaking) in respect of this undertaking will be provided yearly for the life of this undertaking.
4. Conducting progress update meetings with ACA Executive General Manager and ACA SLT, in addition to the consultation outlined in Section 1.10, evidence of which will be provided yearly for the life of this undertaking.

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

ACA is structured through a territory or regionally based operation with separate reporting lines for Northern (QLD/NT/WA), Central (NSW/ACT), Southern (VIC/SA/TAS) and NZ.

ACA in Queensland is delivering and tendering a number of significant infrastructure projects.

The following table outlines the activities ACA will undertake to promote the objects of the Safety Acts that will deliver benefits for workers/others:

Activities	Minimum cost	Timeframe
3.2.1 Safety Foundations Pilot Program <ul style="list-style-type: none">o ACA will develop a Safety Foundations Pilot Program (Pilot Program).o The Pilot Program will develop safety essentials training for new entrants to the industry and development courses focused on prevention for ACA's workers, subcontractors and project partners as relevant. A third party consultant is intended to be engaged to assist in developing and managing the Pilot Program.o Objectives of the course are to reduce the occurrence of safety incidents and increase workforce (employees, subcontractors and	\$ 365,000 See below for detailed breakdown of estimate of costs.	Within 26 months of this undertaking being accepted. Phase 1: Within 6 months of the undertaking being accepted. Phase 2: Within 3 months of Phase 1 being completed.

Activities	Minimum cost	Timeframe
<p>project partners), understanding of workplace health and safety legislation, risk management and communication skills.</p> <ul style="list-style-type: none"> ○ The Pilot Program will build upon traditional learning programs through the use of virtual reality and interactive based learning activities; including, simulation of hazards commonly found on construction sites. Examples of the potential types of simulations will include: <ul style="list-style-type: none"> ▪ Objects falling from above ▪ Heavy equipment colliding ▪ Scaffold collapse ▪ Crane lifting operations ▪ Working in proximity to live traffic. ○ Workers will be placed in a controlled environment, taking the training from theory to a practical real-life experience. ○ The implementation of the Pilot Program at ACA worksites in Queensland will involve approximately 50-100 (no less than 50) workers and will be reviewed following development and feedback of the Pilot Program. ○ A series of toolboxes will be created to promote the program and a summary of the learning content. These will be shared internally on noticeboards and the AIMS dashboard and externally through participation in safety forums and via shared alliances as appropriate. <p>The Pilot Program will be developed to include the following Modules:</p> <p>Module 1: Aiming High in Risk Management</p> <ul style="list-style-type: none"> ○ The objective of Module 1 is to provide workers with a more informed understanding of WHS legislation, risk management principles including hierarchy of controls, SWMS development and task communication. ○ Through the use of multimedia and toolbox talks workers will gain increased awareness through a method of delivery that is not constrained to a classroom environment or off site facility. The toolboxes will have an innovative approach, to engage the audience through use of interactive training including but not limited to: <ul style="list-style-type: none"> ▪ QR codes for short videos ▪ Push notifications ▪ Augmented Reality (AR) learning ▪ Interactive simulation exercises ▪ 3D puzzles ○ Examples of toolbox topics content will be: <ul style="list-style-type: none"> ▪ Objects falling from above ▪ Heavy equipment colliding ▪ Scaffold collapse 		<p>Phase 3: Within 3 months of Phase 2 being completed.</p> <p>Phase 4: Within 12 months of Phase 3 being completed.</p> <p>Phase 5: Within 2 months of Phase 4 being completed.</p>

Activities	Minimum cost	Timeframe
<ul style="list-style-type: none"> ▪ Crane lifting operations ▪ Working in proximity to live traffic. <p>Toolboxes would be distributed internally and externally as outlined above.</p> <p>Module 2: Safety Foundations (Green Hat)</p> <ul style="list-style-type: none"> ○ The Safety Foundations (Green Hat) module is targeted towards participants identified by a training needs assessor through the induction and onboarding process (i.e. through a training needs assessment) as someone who would benefit from attending, taking into account matters such as their experience and qualifications in the construction industry. ○ It is proposed that this module will commence with onboarding the new entrant onsite. ○ The module will include specialist and targeted training to educate young workers and those new entrants to the construction industry. ○ Targeted assessment of our priority workforce will also include those that are new to the industry or less adaptable to change. ○ Focus will be on initiatives and expectations for health and safety on large projects including skills such as communicating with supervisors, raising health and safety concerns/issues, WHS law, SWMS, Take 5 process (or similar) and PPE selection. ○ Focus will be on topics associated with the injuries that workers new to the construction industry are most vulnerable to, including for example: <ul style="list-style-type: none"> ▪ Operating plant and machinery ▪ Using hand tools and knives ▪ Musculoskeletal injuries ▪ Power tools and equipment ▪ Health hazard exposures i.e. silica ▪ Working on or around vehicles ▪ Working at heights ▪ Mental health and wellbeing. <p>Module 3: Frontline Leaders</p> <ul style="list-style-type: none"> ○ Frontline structured safety training for Supervisors and Managers. ○ Focus will be on how to effectively manage safety risks and contribute to better health and wellbeing, job satisfaction and productivity. Supervisors will be trained to use the 'Tell me, Show me, Watch me' approach when undertaking task-specific induction and training. ○ Focus will be on frontline leadership field staff supervisors/leading hand level. ○ Module will cover supervisor training in communication skills, planning and delivering effective prestart meetings, communicating with workers and methods to increase engagement and consultation with workers. 		

Activities		Minimum cost	Timeframe
	<p><i>Benefits - Workers/Workplace</i></p> <p>The Pilot Program is aimed at delivering the following benefits to workers:</p> <ul style="list-style-type: none"> o Practical hands-on, experience-based training that is usable, meaningful and more easily retained, leading to a more skilled and aware workplace. o Increased safety culture within a worksite/workplace. o Faster and more effective uptake on minimum site safety standards. o Better accountability amongst workforce and across levels. o Increased industry upskill and better transferable skill set for new and local employees. o Increased skill level within the construction industry. o Increased consultation within the workforce on the safety standards expected from a Tier 1 contractors. o Focus on safety positives, a proactive approach increasing safety culture on projects. o Potential to reduce injuries on the work site. o Enhanced relationships between older and younger workers. o Increased capacity of our senior managers and supervisors to engage the work force to understand the safety expectations. o Better delivery in construction communications with workforce on requirements. o Removed silos and better accountability across disciplines. 		
3.2.1a	<p>Phase 1 - Pilot Program Development</p> <ul style="list-style-type: none"> o Develop detailed implementation plan (including Gantt chart, budget etc.) o Engage external providers, project management costs o Develop training and multi-media for modules and training resources required including toolboxes, e-learning platform, training aids, virtual reality (VR) development and interactive media o Establish and engage working group (includes key stakeholders both internal and external) to review. o Develop training program. <p>Evidence:</p> <ul style="list-style-type: none"> o A copy of the training program and/or modules; 	<p>\$260,000 total</p> <p>Development and external provider costs including:</p> <p>\$50,000 – Content Design and Development</p> <p>\$75,000 Multi-media Development (Module 1)</p> <p>\$60,000 Multi-media development (module 2)</p>	<p>Within 6 months of the undertaking being accepted</p>

Activities		Minimum cost	Timeframe
	<ul style="list-style-type: none"> o Invoices from the external training provider; and o (As applicable) Screenshots showing how tool box information has been shared, will be provided to the OIR at the completion of this phase. 	\$75,000 multimedia development (module 3)	
3.2.1b	<p>Phase 2 – Trial Pilot Program Delivery and Evaluation (Round 1)</p> <ul style="list-style-type: none"> o Delivery of Pilot Program for a selected group on a selected project (to be confirmed). o Collate participant feedback (i.e. immediately after attendance and several weeks after via survey etc.) o Review success of pilot program and review with Working Group. <p>Evidence:</p> <ul style="list-style-type: none"> o A copy of the attendance records, minutes and/or feedback; o Invoices from the external training provider; and o (As applicable) Screenshots showing how tool box information has been shared, will be provided to the OIR at the completion of this phase. 	<p>\$20,000 total</p> <p>\$15,000 external training provider costs</p> <p>\$5,000 feedback and updates to the working group</p>	Within 3 months of Phase 1 being completed.
3.2.1c	<p>Phase 3 – Pilot Program Amendment and Delivery Planning</p> <ul style="list-style-type: none"> o Develop training program advertising campaign and implement to advertise the initiative across Queensland projects. o Complete any required amendments to the training packages. o Develop Pilot Program Delivery Diary. o Develop Pilot Program Delivery KPIs to monitor. <p>Evidence:</p> <ul style="list-style-type: none"> o A copy of the program advertising campaign (e.g. promotional video/poster); o A copy of the revised training program and/or modules; o Invoices from the external training provider; and o (As applicable) Screenshots showing how tool box information has been shared, will be provided to the OIR at the completion of this phase. 	<p>\$10,000 total</p> <p>External training provider costs.</p>	Within 3 months of Phase 2 being completed.
3.2.1d	<p>Phase 4 – Pilot Program Delivery (Round 2)</p> <ul style="list-style-type: none"> o Launch Pilot Program based advertising campaign to create awareness of the training initiative amongst site workers 	<p>\$60,000 total</p> <p>External training facilitator and delivery</p>	Within 12 months of Phase 3 being completed.

Activities		Minimum cost	Timeframe
	<ul style="list-style-type: none"> Deliver Pilot Program – projects to be confirmed Select 1 project to implement Pilot Program. Scope to include 3 deliveries of the Pilot Program on the selected project over 12 months. Monthly Progress Report provided to Stakeholders. Report to include progress against established KPIs. <p>Evidence:</p> <ul style="list-style-type: none"> Copies of monthly progress reports or training attendance records; Invoices from the external training provider; and (As applicable) Screenshots showing how tool box information has been shared, <p>will be provided to the OIR at the completion of this phase</p>	of training provider costs.	
3.2.1e	<p>Phase 5 – Pilot Program Evaluation Review (Round 2)</p> <ul style="list-style-type: none"> At the completion of the training initiative (Phase 4) all feedback received to be consolidated into Pilot Program Report and circulated/presented to key internal stakeholders for review and for consideration of rollout across all ACA worksites in Queensland. <p>Evidence:</p> <ul style="list-style-type: none"> A copy of the Pilot Program Report; Invoices from external training provider; (As applicable) Screenshots showing how tool box information has been shared, <p>will be provided to the OIR at the completion of this phase</p>	<p>\$15,000</p> <p>External training provider costs, including:</p> <p>Formal review and report</p>	Within 2 months of Phase 4 being completed.
3.2.2a	<p>Lessons learnt initiative – Safety Supply Chain Forum (pre-contracts phase)</p> <ul style="list-style-type: none"> ACA propose to establish a quarterly supply chain engagement forum involving a number of potential suppliers, contractors and project partners. The forums will be used as an opportunity for to complete market sounding, tendering strategies, evaluation processes and to seek involvement from local and regional industry. These will be safety orientated forums to share lessons learnt from projects and ACA's expectations of its supply chain particularly the importance of health and safety on our projects. A presentation briefing will be developed along with a video on the expectations of safety on our 	<p>\$15,000 total</p> <p>\$5,000 internal costs/ time development of a lessons learnt and supply chain briefing presentation.</p> <p>\$5,000 engagement of external consultant (if required) for development of presentation or facilitation services</p> <p>\$5,000 procurement of promotional materials such as</p>	<p>A draft presentation will be prepared within 6 months from the undertaking being accepted</p> <p>A draft presentation to be provided to OIR for review within 6 months of this undertaking being accepted.</p> <p>The presentation will be rolled out within 12 months from the</p>

Activities		Minimum cost	Timeframe
	<p>projects, our safety culture and the importance of our supply partners embracing this.</p> <ul style="list-style-type: none"> ○ The presentation and industry briefing content will be developed as a template so that project teams can tailor to suit their specific projects requirements and audience. ○ This initiative is targeted at projects that require early engagement of the supply chain where an established pool of contractors does not exist and to specifically test the market and capabilities of local industries. <p>Evidence: ACA to provide draft presentation to OIR within 6 months of this undertaking being accepted.</p> <p>ACA to provide to OIR the detail of industry participation in the presentation and invoices for the external consultant at the end of the 12 months following the development of the presentation.</p>	posters, video and other	acceptance of this EU via a quarterly engagement with industry.
3.2.2b	<p>Prequalification System Review</p> <ul style="list-style-type: none"> ○ Acciona currently has in place a subcontractor pre-qualification system. ○ To ensure this system continues to meet WHS requirements, a review of Acciona's current subcontractor prequalification system and onboarding process will be undertaken via the Third Party Auditor in addition to the annual third party accreditation audit performed by the Third Party Auditor. <p>Evidence: ACA to provide a copy of the third party audit of the subcontractor prequalification system, along with actions taken or proposed actions to address any areas identified for improvement and confirmation of implementation of actions.</p>	\$5,000 engagement of Third Party Auditor to conduct a review of current prequalification systems.	Review of the subcontractor prequalification system will be conducted concurrently with the third party audit of AIMS, within 12 months of acceptance
3.2.3	<p>Additional Third Party OHSMS Review</p> <ul style="list-style-type: none"> ○ Acciona conducts annual third-party accreditation audits of its AIMS. This is a business as usual activity and is not included in the cost of the EU. ○ In addition to this audit, there will be a further third party review undertaken by the Third Party Auditor to ensure consistency between AIMS and legacy work health and safety systems applying to legacy projects following acquisition. ○ This review will consider policies and procedures, implementation and opportunities for continuous improvement. ○ The scope of this review will include: <ul style="list-style-type: none"> 1. Desktop review: covering current industry standards and legislative requirements 	<p>\$18,000</p> <p>Cost include, 5 day desktop and 3 day implementation review.</p>	Within 12 months of this undertaking being accepted.

Activities		Minimum cost	Timeframe
	<p>2. Implementation review: Selecting project sample(s) review, testing and verification of the implemented AIMS system.</p> <ul style="list-style-type: none"> The scope of the review will be in addition to the annual third-party AS/NZS ISO45001 OHSMS audit undertaken by the Third Party Auditor. The outcome of the review will be communicated back to all projects including the Project. <p>Evidence: ACA to provide a copy of the third party audit to OIR along with actions taken or proposed actions to address any areas identified for improvement and confirmation of implementation of actions.</p>		
3.2.4	<p>Mental health and wellbeing partnership</p> <ul style="list-style-type: none"> ACA will establish a mental health and wellbeing partnership with a mental health advocate to support, promote and enhance safety in the workplace by developing and delivering a 'mental health in construction' program. The partnership proposes to include a contribution to raising awareness, training, and establishing better links to resources and better support structures for mental health support. <p><i>Benefits for workers:</i></p> <ul style="list-style-type: none"> Raise awareness and establish better support structures for mental health and wellbeing support on construction sites. Provide ACA and its workers evidence-based tools and resources to support their workforce. Deliver Mental Health awareness training to workers. Update and provide workers access to mental health research. <p>Evidence: MOU or other partnership agreement with mental health advocate.</p>	<p>\$50,000</p> <p>Costs include annual partnership for 12 months to be established within 6 months of this undertaking being accepted.</p>	Within 6 months of this undertaking being accepted.
Total minimum cost of benefits for workers/others		\$453,000	

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

Activities		Minimum cost	Timeframe
3.3.1	<p>Industry Guidance – Practical Guide Temporary works for working at heights</p> <ul style="list-style-type: none"> ACA commits to developing an industry standard or guidance document that documents key attributes of temporary works management for working at heights. 	<p>\$50,000 total</p> <p>Phase 1 – Formulate scope and engage with University \$10,000</p>	Within 24 months of this undertaking being accepted.

Activities	Minimum cost	Timeframe
<ul style="list-style-type: none"> o The correct design and execution of temporary works is an essential element of engineered risk prevention and mitigation in construction. o The aim of producing this guidance document is to improve wider industry knowledge of temporary works processes and engineering solutions, resulting in improved outcomes for workers undertaking work at height. o The focus of the guidance document will be in the management of temporary work for activities associated with working at heights with a specific focus on edge protection, and encapsulation, including but not limited to: <ul style="list-style-type: none"> ▪ Preconstruction/Planning – Resource allocation, including technical specialists' resources and a dedicated team for Safety in Design Review processes ▪ Design Phase – Set up of projects, structure, plans and processes, review processes and escalation structures for temporary works design process ▪ Construction Phase – Dedicated resources, best practice process and lessons for the management of temporary works. o ACA will collaborate with a Queensland University in developing the guidance document. As the guide relates to an engineering process, the input from the University's engineering faculty will be valuable. ACA will coordinate the development of the guide utilising internal subject matter experts in collaboration with the University. o ACA will also liaise, consult and seek feedback from a State industry association that covers regional areas o ACA will work with industry groups to distribute the guidance document to industry (e.g. through industry forums). <p><i>Benefits for industry:</i></p> <ul style="list-style-type: none"> o Consistent and improved industry approach to temporary works, through documented processes such as temporary works plans, permitting process flows and release and verification processes. o Shared lessons learnt o Raising awareness of impacts from shortfalls in temporary works o Better guidance provided to industry on standard requirements. <p>Evidence: ACA to provide invoices from the external consultants (if required); a final copy of the guide and evidence of distribution of the guide through known industry associations.</p>	<p>Phase 2 – Organise site visits for University partner to demonstrate best practices \$15,000</p> <p>Phase 3 - Finalise draft document and consult, peer review, including a relevant industry group \$15,000</p> <p>Phase 4 – Provide to Industry Group/place on website \$10,000</p> <p>Costs will include university partnership costs, external consultants' costs (if required) for development of guideline.</p>	

Activities	Minimum cost	Timeframe
Total minimum cost of benefits for industry	\$50,000	

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

Activities	Minimum cost	Timeframe
<p>3.4.1 Donation</p> <ul style="list-style-type: none"> ACA will donate \$25,000 to a mental health organisation. The donation will be given to help the continued roll out of mental health support services initiatives. ACA has obtained a pre-agreement with a mental health organisation on how these funds will support their initiatives. A letter from this mental health organisation is provided alongside this undertaking, which provides more detail about how these funds will be utilised. <p><i>Benefits for community:</i></p> <ul style="list-style-type: none"> Increased capacity for the mental health organisation to provide mental health, wellbeing and suicide prevention advice and support. <p>Evidence: receipt of donation</p>	<p>\$25,000</p> <p>Costs will initially go towards a training and awareness and other support services.</p>	<p>Within 12 months of this undertaking being accepted.</p>
<p>3.4.2 Donation</p> <ul style="list-style-type: none"> ACA will donate \$25,000 to a crisis support service. The donation will be given to help the roll out of mental health and suicide prevention initiatives. ACA has obtained a pre-agreement with the organisation on how these funds will support their initiatives. A letter is provided alongside this undertaking, which provides more detail about how these funds will be utilised. <p><i>Benefits for community:</i></p> <ul style="list-style-type: none"> Increased capacity for the mental health and suicide prevention initiatives and support. <p>Evidence: receipt of donation</p>	<p>\$25,000</p> <p>Costs will initially go towards a training and awareness and other support services.</p>	<p>Within 12 months of this undertaking being accepted.</p>
Total estimated cost of benefits for the community	\$50,000	

3.5 Agreement to pay the OIR's recoverable costs

- 3.5.1 AIA 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:

Recoverable costs	Amount
Administrative costs	\$3,814
Legal costs	\$1,500
Compliance monitoring costs	\$3,410
Publication costs	\$2,000
Total of OIR recoverable costs	\$10,724

3.6 Minimum spend

3.6.1 AIA acknowledges the minimum spend for this undertaking will comprise of the:

Estimated total value of	Minimum spend
Benefits to workers/others	\$453,000
Benefits to industry	\$50,000
Benefits to community	\$50,000
OIR recoverable costs	\$10,724
Estimated total minimum spend for the undertaking	\$563,724

3.6.2 AIA 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 maintain an OHSMS

3.7.1 AIA 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 (AIMS).

3.7.2 AIA 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*.

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

3.8.1 AIA acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.

3.8.2 AIA commits to ensuring the OHSMS (AIMS) will be audited by certified third party auditors.

3.8.3 AIA acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.

3.8.4 AIA acknowledges that costs associated with these audits will be met by Acciona as part of the undertaking.

3.8.5 AIA commits to ensuring AIMS will be audited against criteria that meets the principles of *AS/NZS ISO 45001:2018 Occupational Health and Safety Management Systems – Requirements 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 AIA acknowledges that the current OHSMS in place (AIMS), as detailed in term 3.7.1 is acceptable to the regulator and commits to ensuring that an initial third party audit by the Third Party Auditor will be undertaken within 12 months of this undertaking being accepted. A second audit will be undertaken within 12 months of the first audit being undertaken. A third audit will be undertaken within 12 months of

the second audit being undertaken.

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 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.

3.10 A commitment to implement the recommendations from third party audits

- 3.10.1 AIA commits to ensuring the recommendations resulting from the first OHMS audit, as detailed in 3.8.6 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 AIA commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.8.6 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 AIA commits to ensuring the recommendations resulting from the third party audit report, as detailed in 3.8.6 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 AIA commits to providing a detailed action plan or statutory declaration by an authorised officer of AIA confirming recommendations arising from the third audit have been fully implemented, unless OIR grants an exemption due to the actions being unreasonable.

SECTION 4: EXECUTION

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

THE COMMON SEAL of Acciona
Infrastructure Australia Pty Ltd ABN 52
140 915 251 was affixed in accordance
with the *Corporations Act 2001* (Cth) in the
presence of:

(Affix common seal)

Fernando Fajardo Gerez

Name of Director

Signature of Director

And

Angel Fernandez De La Pradilla

Name of Director

Signature of Director

on the 11/4/2022

before me:

Signature of Witness

Name of Witness in full

Witness address

SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the 4 day of July, 2022

Signature of regulator

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*.

Work Health and Safety Act 2011

Part 11 Enforceable Undertakings

REASONS FOR DECISION

Event Numbers	247435, 257784, 257785, 257787
Entity	Acciona Infrastructure Australia Pty Ltd (AIA)
ABN	52 140 915 251
Entity Address	174 Turner Street, Port Melbourne, Victoria 3207
Location of Incidents	Second Toowoomba Range Crossing (project)
Date of Incidents	15 August 2017 – 27 April 2018

1 History of the application

- 1.1 The undertaking given by AIA relates to the following seven alleged contraventions (incidents) that occurred during the Second Toowoomba Range Crossing Project (project):
 - 1.1.1 Incident one (E247435) - On 15 August 2017, a truck mounted mobile concrete pump operated by a subcontractor was set up at a location that did not have a clear level area of ground or firm base capable of supporting the pump unit. As the stabilising boom was extended, the pump unit became unbalanced and tipped over.
 - 1.1.2 Incidents two and three (E257784) - On 1 March 2018, while working on Pier 3, 19, 20 and 21, subcontracted workers were exposed to a number of risks when entering an area of the viaduct bridge construction which included falls risks and emergency access and egress risks due to non-operational hoist lift used for workers.
 - 1.1.3 Incidents four and five (E257785) – On or about 21 and 23 April 2018 while working at Pier 2 and 3 of the project, subcontracted workers were exposed to the risk of falls and object falling or hitting workers, improperly secured perimeter screening, gaps in working platforms and the risk of injury from an uncapped vertical steel reinforcing bar.
 - 1.1.4 Incidents six and seven (E257787) – On 27 April 2018, a subcontractor was lifting steel mesh mat with a crane to Pier 3 of the project when two steel reinforcing bars separated from the mat and fell to the ground, exposing workers to the risk of injury. One of the bars struck a stationary vehicle located in an exclusion zone and the second brushed the arm of a dogman.
- 1.2 No injuries or illnesses were sustained or suffered in the incidents outlined in 1.1.
- 1.3 Following investigations by Workplace Health and Safety Queensland (WHSQ) inspectors, prosecution action was commenced by the Work Health and Safety Prosecutor (by complaint and summons) against AIA, who had a health and safety duty under the *Work Health and Safety Act 2011* (WHS Act), for failing to comply, so far as reasonably practicable, with the duty contrary to section 32 of the said WHS Act.
- 1.4 On 30 September 2020, AIA notified the Office of Industrial Relations (OIR) Enforceable Undertakings (EU) Unit of their intention to give a WHS undertaking (undertaking) for this matter.
- 1.5 As part of their proposal, AIA have advised that AIA continues to operate in a very limited capacity to close out the project. Acciona Construction Australia Pty Ltd (ABN 66 618 030 872) (ACA) is the entity through which new construction project contracts are entered into. Accordingly, and for the purpose of this undertaking, whilst AIA is

the entity giving the undertaking, the initiatives and activities described in the undertaking will be performed and delivered by ACA. ACA will provide evidence to the Office of Industrial Relations (OIR) to satisfy compliance of initiatives and/or activities proposed in the undertaking.

- 1.6 On 1 November 2021, an Evaluation Panel (panel) consisting of a senior public servant and two external, independent persons evaluated AIA's initial undertaking.
- 1.7 The panel were not willing to recommend acceptance of the initial undertaking. The panel provided feedback to AIA on 17 January 2022 and provided AIA with the opportunity to resubmit a revised undertaking for further evaluation.
- 1.8 On 21 April 2022, AIA submitted a revised undertaking that implemented the panel's feedback.
- 1.9 On 27 May 2021 the panel completed an evaluation of the revised undertaking and based on the amendments made to the undertaking and supporting documentation received, panel members unanimously recommended the revised undertaking be considered for acceptance as an EU.

2 Legislation and Policy

- 2.1. It is alleged that AIA, who had health and safety duties under the WHS Act failed to comply, so far as reasonably practicable, with those duties contrary to section 32 of the WHS Act.
- 2.2. Pursuant to section 216 (1) of the WHS Act the WHS regulator may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the WHS Act.
- 2.3. The Deputy Director-General (DDG), OIR has been appointed as the WHS regulator by the Governor in Council under Schedule 2, Part 1 of the WHS Act.
- 2.4. OIR provided AIA with the relevant publications outlining information regarding the OIR EU Program and the WHS regulator's expectations for giving an undertaking.
- 2.5. Pursuant to section 216(4) of the WHS Act, the WHS regulator must issue, and publish on the WHS regulator's website, general guidelines in relation to the acceptance of WHS undertakings under the WHS Act.
- 2.6. Section 217(1) of the WHS Act provides that the WHS regulator must give the person seeking to give an undertaking written notice of the decision to accept or reject the undertaking and the reasons for the decision.

3 Material and evidence considered by the WHS regulator

- 3.1. In making a decision regarding this matter, the WHS regulator has considered the following documents:
 - 3.1.1. *Work Health and Safety Act 2011, [Part 11; section 3].*
 - 3.1.2. *Guidelines for the acceptance of an enforceable undertaking* - dated November 2017.
 - 3.1.3. Letter from Acciona dated 8 April 2022.
 - 3.1.4. Revised WHS undertaking dated 11 April 2022.
 - 3.1.5. Complaint and Summons (E247435) dated 13 August 2019.
 - 3.1.6. Complaint and Summons (E247784, E257785) dated 20 January 2020.
 - 3.1.7. Complaint and Summons (E247787) dated 20 January 2020.
 - 3.1.8. Non-disturbance Notice – 1011802 (E247435) dated 15 August 2017
 - 3.1.9. Prohibition Notice -1018579 (E247435) dated 17 August 2017.
 - 3.1.10. Improvement Notice - 1028411 (E247435) dated 17 August 2017.

- 3.1.11. Statements of Facts (E247435, E257784, E257785, E257787).
- 3.1.12. OIR's Statement of compliance history dated 6 April 2021.
- 3.1.13. AIA Financial capacity letter dated 10 March 2022.
- 3.1.14. Third party supporting letter dated 3 March 22.
- 3.1.15. Third party supporting letter dated 5 April 22.
- 3.1.16. Third party supporting letter dated 22 April 22.
- 3.1.17. Third party supporting letter dated 28 March 2022.
- 3.1.18. Third party supporting letter dated 11 March 2022.
- 3.1.19. Third party supporting letter dated 4 March 2022.
- 3.1.20. EU Unit Chronology Statement dated 11 May 2022.
- 3.1.21. Initial Evaluation Panel feedback dated 17 January 2022.
- 3.1.22. Final Evaluation Panel Assessment dated 13 May 2022.

4 Findings on material questions of fact

- 4.1. I regard the *Guidelines for the acceptance of an enforceable undertaking* dated November 2017, contains considerations which are relevant and appropriate to my decision.
- 4.2. I find the undertaking given by AIA satisfies the formal requirements of the WHS Act and the policy requirements discussed above with respect to the operation of Part 11 of the WHS Act as they have been published.
- 4.3. I find the factual background to the alleged contravention is set out in section 1 of the AIA undertaking.
- 4.4. I find that the procedural history relating to the undertaking is set out in paragraph 1 above.
- 4.5. I find the objective gravity of the matters, taken together is 'Medium'.
- 4.6. I find the quantum of the undertaking and the respective financial commitments of AIA are proportionate to the objective gravity of the alleged contraventions by AIA and account for the benefits that would accrue to them through avoiding prosecution.
- 4.7. I find that AIA have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.8. I find that AIA, who had a health and safety duty under the WHS Act failed to comply, so far as reasonably practicable, with that duty contrary to section 32 of the WHS Act.
- 4.9. I acknowledge the assurance given by AIA that the behaviour that led to the alleged contravention has ceased and the commitment to ensuring the ongoing effective management of risks to health and safety in the future.
- 4.10. I find the undertaking commits AIA to a standard that is higher than the recognised compliance for the activity and/or to activities over and beyond recognised compliance levels.
- 4.11. I find the undertaking would constitute tangible benefits for workers, industry and the community as AIA, through ACA are committing to:
 - 4.11.1. Disseminating information about this undertaking to:
 - 4.11.1.1. all ACA workers in Queensland via an email and notice board initial alert; and
 - 4.11.1.2. ACA's senior leadership teams, Health and Safety Representatives and workers via initial and ongoing meetings to explain the terms, expected outcomes and progress of the EU.

- 4.11.2. Engaging a third-party consultant to assist in the development, implementation and management of a Safety Foundations Pilot Program (program) that will include safety essentials training for new entrants to the industry and development courses focused on prevention for ACA's workers, subcontractors and project partners. Following an evaluation of the program and if successful, the program will be rolled out across all ACA worksites.
- 4.11.3. Establishing a quarterly Safety Supply Chain Forum involving a number of potential suppliers, contractors and project partners. This will be used to share lessons learnt from projects, the importance of health and safety and complete market sounding, tendering strategies, evaluation processes with involvement from local and regional industry.
- 4.11.4. Maintaining the Acciona Integrated Management System (AIMS) for the term of the EU and undergoing third party accreditation auditing to ensure compliance against the principles of *AS/NZS ISO 45001:2018 Occupational Health and Safety Management Systems - Requirements with guidance for use* currently in place.
- 4.11.5. Engaging a third-party auditor to conduct an additional audit and provide recommendations for improvement of:
 - 4.11.5.1. Acciona's current subcontractor prequalification system and onboarding process to ensure they continue to meet WHS requirements.
 - 4.11.5.2. The AIMS to ensure consistency between the current system and legacy work health and safety systems that applied to legacy projects.
 - 4.11.5.3. Establishing a mental health and wellbeing partnership with a mental health advocate to support, promote and enhance safety in the workplace by developing and delivering a 'mental health in construction' program.
- 4.11.6. Collaborating with a Queensland University and consulting with State Industry Associations to develop a practical 'Temporary works for working at heights' guide, to improve wider industry knowledge of temporary works processes and engineering solutions. On completion and with the assistance of a third-party construction association, the guide will be distributed to industry.
- 4.11.7. Donating \$25,000 to a mental health organisation to assist with the continued roll out of mental health support services initiatives.
- 4.11.8. Donating \$25,000 to a crisis support service to assist with the continued roll out of mental and suicide prevention initiatives
- 4.11.9. Agreeing to pay OIR's recoverable costs.
- 4.12 I acknowledge that all panel members have recommended acceptance of the undertaking as an appropriate enforcement outcome in the circumstances of this case.

5 Decision

- 5.1 In making my decision, I have considered and had regard to the evidence and other material referred to in paragraph 3 above, and to the facts I have found referred to in paragraph 4 above.
- 5.1 Because the proposed undertaking given by AIA meets the formal requirements of the WHS Act and policy requirements, my discretion whether to accept the undertaking under section 216(1) of the WHS Act is enlivened.
- 5.2 Based on the evidence, findings and having regard to the objects of the WHS Act, I have carefully considered this matter and am of the opinion that the undertaking given by AIA is an appropriate enforcement option in regard to this case.

- 5.3 I have concluded that an EU is the preferred enforcement option, rather than continuing with the prosecutions, due to the opportunity to provide lasting organisational change within the Acciona group of entities operating across Australia and New Zealand (including AIA and ACA), and the implementation of monitored and targeted health and safety improvements that will deliver benefits to workers, industry and the community, which may not be achieved by prosecution.
- 5.4 Under section 216(1) of the WHS Act, it is my decision to accept this undertaking as an EU.



A J (Tony) James
Acting Deputy Director-General
Office of Industrial Relations

4/7/ 2022