

ENFORCEABLE UNDERTAKING

Part 11, Work Health and Safety Act 2011

The commitments in this undertaking are offered to the regulator by

XYCON Pty Ltd trading as JD Constructions

ACN 107 735 839

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.

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*.

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.

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 Qld 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:	XYCON Pty Ltd T/as JD Constructions (JD Constructions)
Street address:	7 Beckmans Road, Tewantin, QLD 4565
Mailing address:	PO Box 1256, Noosaville QLD 4566
Telephone:	0409 873 958
Email address:	jdconstruct@bigpond.com
Legal structure:	Australian Proprietary Limited Company
Type of business:	Residential Construction
Commencement date:	23 January 2004
Workers:	Full time: 5
	Part time: 0
	Casual: 0
Products and services:	Residential Construction

Comments:

Founder of XYCON Pty Ltd trading as JD Constructions, Mr Fitzpatrick has been in the construction industry for 39 years and started JD Constructions in 2004. The company is a member of the Housing Industry Association (HIA) and has been building residential homes in the Noosa area for 27 years. JD Constructions offers personalised service and quality construction for new homes, residential renovations and maintenance works.

JD Constructions is a family business employing the Fitzpatrick sons, a project manager and a long-standing subcontractor who works exclusively for the company. They engage local tradespeople and sub-contractors that have a high attention to detail and people skills to ensure quality workmanship and a good onsite working culture.

The Fitzpatrick family have been involved in the local community and the Noosa Tigers Australian Football Club (AFC) for many years as dedicated volunteers and sponsors of the club. The existing clubhouse was built with in-kind support from JD Constructions in the form of materials and labour.

1.2 Detail the contravention

It is alleged that on or about the 25 April 2020, JD Constructions ('the company') was conducting a business or undertaking, and held a health and safety duty, namely a duty pursuant to section 19(1) of the *Work Health & Safety Act 2011* ('WHS Act') to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by it or workers whose activities were directed or influenced by it while the workers were at work in the business or undertaking, and failed to comply with the said duty, and the failure exposed an individual to the risk of death or serious injury, contrary to section 32 of the WHS Act.

1.3 Detail the events surrounding the contravention

As of 23 April 2020, the company was engaged to replace the rear roof and 2 existing sky lights, and install several more sky lights, at a domestic dwelling located at Peregrin Beach ('the workplace'). The company was the principal contractor and subcontracted a Site Manager (a Qualified Carpenter) for the works to be undertaken. The company subcontracted a specialist roofing company (subcontractor 1) to undertake work as part of the roof construction and renovation works being undertaken.

On 23 April 2020, the Site Manager placed 2 pieces of plywood over the Alsynite (a polycarbonate, translucent and clear, roofing product) sheeting located on the front roof immediately adjacent to a ridge cap at the apex of the roof. Workers engaged by Subcontractor 1 attended the workplace to undertake repairs to the rear roof of the dwelling. Prior to work commencing at the workplace, the Site Manager

advised some of the workers of the presence of the Alsynite sheeting to the front roof and to stay away from the front roof.

During the morning, other workers from subcontractor 1 attended the workplace to undertake the repairs to the roof of the dwelling. The Site Manager advised these workers about the presence of the Alsynite sheeting in the front roof and to stay away from the front roof. Workers from the company and Subcontractor 1 undertook the roofing repairs on the rear roof of the dwelling. While the works were being undertaken, Subcontractor 1 workers removed the ridge cap at the apex of the roof.

Prior to finishing works for the day, the Site Manager removed the pieces of plywood to permit workers from Subcontractor 1 to reinstall the ridge cap. The Site Manager advised some of the workers from Subcontractor 1 that the plywood covering the Alsynite sheeting had been removed. Before or around the time of the incident, one of the Subcontractor 1 workers was wearing sunglasses that were in poor condition. While replacing the roof cap on the apex of the roof, the worker placed a foot on the Alsynite sheeting. The sheeting broke and the worker fell approximately 5.0 metres through the Alsynite sheeting to the ground.

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
23 April 2020	Non disturbance Notice	NDI1023301	<p>On 23 April 2020 at 15:38 the company was required to preserve the site at which notifiable incident has occurred.</p> <p>The issue of this notice did not prevent the company from taking the following actions (as listed on the notice):</p> <ul style="list-style-type: none"> • to assist an injured person; or • to remove a deceased person; or • that is essential to make the site safe or to prevent a further incident; or • that is associated with a police investigation; or • for which an inspector has given permission. 	<p>The company was directed to not disturb the incident scene. Conversation with the Inspector confirmed work had stopped. Conversation with the Inspector confirmed no additional risk / hazard due to incident.</p> <p>The non-disturbance notice was in force for 24 hours.</p>

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
24 April 2020	Prohibition Notice	P1006434	<p>Direction to stop the activity of accessing a work area without controls in place to manage the risk to health and safety associated with a fall by a person from one level to another that is reasonably likely to cause injury to the person any other person.</p> <p>This activity is likely to be contravening a provision of the: WHS Act 2011, section 19(3)(A), 33.</p> <p>WHS Regulation 2011, section 78 (1). A person conducting a business or undertaking at a workplace must, under part 3.1, manage risks to health and safety associated with a fall by a person from one level to another that is reasonably likely to cause injury to the person or any other person.</p>	<p>All work activity was ceased until appropriate access and egress to the roof was installed.</p> <p>Work did not commence until an inspector was satisfied that the risk was remedied.</p> <p>Confirmed by Inspector on 27 April 2020.</p>
24 April 2020	Prohibition Notice	P1006435	<p>Direction to stop the activity of access to work area without appropriate edge protection in place to exclude a risk to the health and safety of workers until an inspector is satisfied that the matters that will give rise to the risk have been remedied.</p> <p>WHS Regulation 2011, section 306C (4).</p> <p>Risk of fall of less than 3m in housing construction work or less than 2m in other construction work or construction work on roof with slope not over 26°</p> <p>(4) If a person conducting a business or undertaking uses a control measure mentioned in this subdivision, the control measure and the use of the control measure must comply with this subdivision.</p>	<p>All work activity was ceased until edge protection was installed by a competent person that extended to all hazard areas of the work area.</p> <p>Work did not commence until an inspector was satisfied that the risk was remedied.</p> <p>Confirmed by Inspector on 27 April 2020.</p>

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
24 April 2020	Improvement Notice	I2008117	<p>Scaffold in place on the northern and southern elevation of the residential structure that was being used as an edge protection, did not extend to all hazard areas of the work area, verification received scaffold had not been installed by a competent person.</p> <p>WHS Regulation 2011, section 306C (4).</p> <p>(as described above in P1006435)</p>	<p>As described in P1006435.</p> <p>Confirmed by Inspector on 27 April 2020.</p>
24 April 2020	Improvement Notice	I2008118	<p>PCBU did not identify a new relevant hazard or risk presented by the presence of Alsynite roof sheet.</p> <p>WHS Regulation 2011, section 302.</p> <p>Review of SWMS A person conducting a business or undertaking must ensure that a safe work method statement is reviewed and, as necessary, revised if relevant control measures are revised under section 38.</p>	<p>The SWMS was reviewed and updated to include hazard and risks of accessing and egressing roof, location of Alsynite and the provisions of controls to address the risk of falls including edge protection, secure access/egress point and Alsynite fall protection cover.</p> <p>Confirmed by Inspector on 27 April 2020.</p>

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
24 April 2020	Improvement Notice	I2008119	<p>The PCBU has not managed risks to health and safety associated with the storage movement and disposal of construction materials and waste at the workplace in that I observed and photographed construction waste in a variety of locations in proximity of common areas and access egress ways without controls to exclude persons from inadvertent contact with the waste.</p> <p>This activity is likely to be contravening a provision of the: WHS Act 2011, section 20(2), 33.</p> <p>WHS Regulation 2011, section 315 (a).</p> <p>Further health and safety duties—specific risks The principal contractor for a construction project must under part 3.1 manage risks to health and safety associated with the following— (a) the storage, movement and disposal of construction materials and waste at the workplace.</p>	<p>Removal of construction waste within the work site and in the proximity of residents and access ways.</p> <p>Confirmed by Inspector on 27 April 2020.</p>
24 April 2020	Improvement Notice	I2008120	<p>The PCBU has not managed risks to health and safety associated with an object falling on a person if the falling object is reasonably likely to injure the person in that I observed and photographed work area of roof without controls in place to restrict access to hazard area by residents.</p> <p>This activity is likely to be contravening a provision of the: WHS Act 2011, section 19(2), 33.</p> <p>WHS Regulation 2011, section 54.</p> <p>Management of risk of falling objects A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with an object falling on a person if the falling object is reasonably likely to injure the person.</p>	<p>Exclusion Zone Controls were implemented to restrict access to hazardous work area.</p> <p>Confirmed by Inspector on 27 April 2020.</p>

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

The worker sustained fractures to the right femur, right foot, right hip, fractures of lower vertebrae, a broken wrist and dislocated fingers. The worker required surgery and was hospitalised for two weeks.

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

The worker/s detailed is:

- an employee/s of the entity
- a self-employed worker/s
- other - employee/ subcontractor of a subcontractor of the company
- not applicable

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

As detailed in Term 1.6, the injured worker was an employee of subcontractor 1 engaged by the company. The company regularly inquired about the worker with the employer during their hospitalisation and recovery. Since then, the company has checked in on the worker and understands the worker has begun working again.

1.8 Detail any current OHSMS implemented and maintained by the person

The company has a WHS Management Plan which is a templated document that has been prepared by HIA Safety Services to reflect acceptable WHS practices and applicable laws. However, it is a generic management plan that has been customised on 15 June 2020 for the company.

The company develops its own SWMS for high-risk construction work and has a basic process for subcontractor approval and site induction. The company provides adequate emergency and first aid provisions on site and maintains hardcopy records in the site office.

In November 2020, the company employed a project manager who has a commercial construction background. The employee earlier in their career has completed some basic health and safety training and since starting with the company has been helping to improve WHS management, inductions, site consultation, cooperation and coordination.

The company acknowledges the WHS Management Plan, requires further assessment, customisation and implementation to ensure its applicability and suitability. These activities are proposed in Term 3.2.1.

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

The company acknowledges that there is no formal audit schedule in place. To meet duties under the *Work Health and Safety Act 2011*, the Company monitors and reviews controls through the following activities:

- Review of Safe Work Method Statements
- Site Establishment / Pre-Commencement Checklists

General workplace inspections are undertaken to promote awareness of WHS procedures among workers and other PCBU's via continual and casual conversations.

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

Following the incident, the company consulted with all workers and key subcontractors by way of toolbox meeting, as to the hazards and risks on work sites and the controls to be implemented.

In the development of this undertaking, the company and an external OHS Consultant has consulted with all workers and key subcontractors on the proposed activities, including the development of systems which would ensure compliance with health and safety standards and for the benefit of the workers on site.

The company proposes to undertake further consultation with:

- All employees/subcontractors to provide an overview of the WHS undertaking and the Company's commitment to improving health and safety in the workplace.
- Third parties proposed to be involved in the activities proposed in this WHS undertaking.

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

Following the incident, the company immediately undertook the following steps:

- Confirmed with the Inspector that work had stopped, there was no additional risk / hazard due to incident and the site was not disturbed for 24 hours as per the Non disturbance Notice-NDI1023301
- All works on site ceased until a full investigation was conducted.
- Exclusion zones established as per Improvement Notice I2008120.
- SWMS was reviewed and updated as per Improvement Notice I2008118.
- Construction waste was removed, and site housekeeping completed as per Improvement Notice I2008119.
- Roof access and egress was secured, and additional edge protection installed by a competent person as per Prohibition Notices P1006434, P1006435 and Improvement Notice I2008117.

Post Incident, the company has undertaken the following improvement steps:

- The company has reviewed management processes for working on roofs, edge protection and scaffolding.
- The company considered ownership of scaffolding and edge protection equipment, as well as staff undertaking specific training to be qualified and hold Scaffold Licence. Management decision was to not undertake erection and dismantling of scaffold, rather to engage qualified licenced scaffolding specialist contractors for future projects.
- The company has developed and implemented a WHS Management Plan and Site Emergency Management Plan.
- The company has employed a Project Manager with health and safety experience who provides increased supervision on site and ensures exclusion zones are established and maintained (not included in total amount spent on rectifications).
- The Project Manager has implemented the WHS Management Plan as detailed in Term 1.8, including improvements to sub-contractor management, inductions, site housekeeping and waste management and removal (not included in total amount spent on rectifications).
- The company has implemented the use of container storage for tools, equipment and smaller materials while on project sites (Cost is project related and not included in total amount spent on rectifications).
- The company engages licenced scaffolders to supply and erect scaffolding and edge protection as required on projects (Cost is project related and not included in total amount spent on rectifications).
- The company has engaged an independent OHS Consultant to conduct a workplace inspection, gap analysis of the OHSMS and provide recommendations for further health and safety improvements.

Total amount spent on rectifications

\$27,500

SECTION 2: GENERAL TERMS

The company 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

The company acknowledges that the Regulator alleges a contravention occurred as detailed in Clause 1.2.

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

As a small family-owned business committed to quality workmanship, a good onsite working culture and ensuring the health and safety of its workers and others, the company is deeply regretful that the incident occurred and resulted in injuries to one of its subcontractor's employees.

The company considers that the activities proposed in this undertaking will not only ensure that a similar incident can be avoided on its controlled work sites, but they will also result in improved safety outcomes for the residential construction industry and the local community. The company believes such benefits far outweigh the benefits that could be achieved by a court-imposed sanction.

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

The company confirms that the behaviour activities and other factors which caused or lead to the contravention, have ceased and will not reoccur due to the rectifications and improvement to the workplace or work practices made as a result of the contravention as detailed in Term 1.11. Through the activities proposed in this undertaking, the company will continue to demonstrate a commitment to improving safety outcomes.

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: PN11783 Dated: 22 November 2017

2.5 Acknowledgement that this undertaking may be published and publicised

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

2.5.2 The company 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 The company has the financial ability to comply with the terms of this undertaking and have provided evidence by way of a letter from the company's financial accountant with this undertaking to support this declaration.

2.6.2 In the event of loss or withdrawal of a required industry specific license, impending liquidation or sale of the entity, the company 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

- 2.7.1 The company has no commercial or other relationships with any corporations, officers, employees, contractors or other recipient of financial benefit contained in this undertaking with regard to deliverables proposed in section 3.2.
- 2.7.2 It is acknowledged, given the nature of an Industry benefit, that beneficiaries of deliverables proposed in section 3.3, may include third parties associated with the Company’s supply chain in which there may be a previous or existing relationship.
- 2.7.3 It is acknowledged, that the proposed beneficiary of the community deliverable proposed in section 3.4, involves a not-for-profit organisation with which there is an existing philanthropic relationship with the Company’s management.

2.8 Statement regarding Intellectual Property Licence

The company, 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 NOT APPLICABLE

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.

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

The company is committed to meeting their obligations under the *Work Health and Safety Act 2011*, and ensuring, so far as is reasonably practicable, that risks to health and safety are managed, maintained and continually improved through the implementation of a formal OHSMS as per Term 3.7, audits as per Term 3.8 and expert advice and support to ensure the ongoing effective management of risks to health and safety in the future conduct of the Company.

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

The company acknowledges that the proposed activities in this WHS undertaking may promote or benefit the company, and therefore, commits to linking any promotion or benefit to the company to this WHS undertaking.

SECTION 3: ENFORCEABLE TERMS

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

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

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

Dissemination will be achieved by doing the following:

All employees/subcontractors will be informed about this undertaking in a special toolbox talk that will discuss the deliverables and their proposed benefits with copies of the undertaking provided to all attendees. A copy of the undertaking will be available to view on the company webpage.

Dissemination will occur within 3 months from the acceptance of the undertaking.

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

Activities	Minimum cost	Timeframe
<p>3.2.1 Upgrade WHS Management Plan to OHSMS</p> <p>The company will upgrade the existing WHS Management Plan into an OHS Management System accessible for all workers online using mobile devices to access information and to report hazards and incidents. The OHSMS will provide systemic management of OHS within the company and continue to ensure an adequate Site WHS Management Plan is developed for each project.</p> <p>The upgrade will include the purchase of an onsite tablet for the Project Manager and/or Site Supervisor to conduct inspections, onsite training and record OHS information electronically. This will reduce the reliance on hardcopy records which are prone to damage from wet weather, dust and handling.</p> <p>The OHS Management System consistent with <i>ISO 45001:2018 OHS Management Systems</i>. The OHSMS upgrade will be implemented within 12 months from acceptance of this undertaking.</p> <p>Minimum costs include:</p> <ul style="list-style-type: none"> • Assessment of the existing WHS Management Plan, customization of OHS documented information, policy, procedures, forms and templates for all hazards and risks identified including but not limited to: <ul style="list-style-type: none"> ○ Working at heights ○ Working on Brittle roofs ○ Scaffolding ○ Housekeeping ○ Waste Management ○ Inductions and Training ○ Contractor Management • Upgrade of existing hardcopy of forms, templates and registers into online e-forms and registers for electronic information management. • Purchase of Tablet and industrial-strength protective case. • OHS Consultancy support for the upgrade and implementation of the OHSMS, including training and handover of the OHSMS to the Project Manager for maintaining as described in Term 1.8. <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Copy of the OHSMS documented information and report demonstrating the online e-forms and registers functions. • Receipt of expenditure for the upgrade WHS Management Plan to OHSMS and implementation support. 	<p>\$ 13,849</p>	<p>This deliverable will be completed within 12 months from acceptance of this undertaking</p>

3.2.2	<p>Working on Roofs/Heights Risk Management & Training</p> <p>The company will engage a Height Safety specialist to review the company's current risk management practices for working on roofs/heights and develop dedicated Safe Working at Heights and Safe Working on Roof Procedures within the OHSMS.</p> <p>Following the assessment:</p> <ul style="list-style-type: none"> • All workers will complete RIIWHS204E - Work safely at heights Training available for the construction industry. • A Height Safety specialist will conduct a dedicated Safe Working at Heights and on Roofs Toolbox with all employees to implement the risk management procedure and increase their knowledge and skills for how to safely at heights and on roofs. <p>All existing workers (5) will be required to complete the RIIWHS204E - Work safely at heights Training. This deliverable will be completed within 12 months from acceptance of this undertaking, in alignment with the upgrade of the OHSMS.</p> <p>Minimum costs for this deliverable include the costs for the Height Safety Specialist to conduct the Working on Roofs/Heights Risk Management Review, Procedure development and Toolbox.</p> <p>The remaining costs will be allocated to purchasing higher-order controls for working at heights and/or implementing priority actions arising from the assessment to reduce the risks identified with working at heights.</p> <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Copy of the Safe Working at Heights and Safe Working on Roof Procedures. • Copy of the Safe Working at Heights and on Roofs Toolbox with attendance records. • RIIWHS204E – Statement of Attainment for all workers (5) • Receipt of expenditure for consultancy services for the completion of Working on Roofs/Heights Risk Management Review, Safe Working at Heights and on Roofs Procedures and implementation. • Receipt of expenditure for purchasing higher-order controls and/or implementation of priority actions. 	\$ 10,000	This deliverable will be completed within 12 months from acceptance of this undertaking.
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3.2.3	<p>Contractor Management & WHS for Managers & Supervisors</p> <p>The company acknowledges as detailed in Term 1.3, the events surrounding the contravention involved the engagement of sub-contractors on a project site. In addition to the upgrade of the WHS Management Plan to an OHSMS, as detailed in Term 3.2.1, the Company will have all Managers and Supervisors undertake Contractor Management and WHS training in the implementation of the OHSMS and the WHS Management Plan to ensure sub-contractors are appropriately managed and supervised and that arrangements are in place, between any PCBUs at the workplace where the construction project is being undertaken, for consultation, cooperation and the coordination of activities in relation to compliance with their duties.</p> <p>The training will include:</p> <ul style="list-style-type: none"> • WHS laws, duties, and regulations • Principal Contractor role and responsibilities • Sub-contractor role and responsibilities • Managing any work health and safety incidents • General site health and safety rules, and ensuring that all persons at the workplace are informed of these rules • Collection and any assessment, monitoring and review of safe work method statements • Review and revision of Site WHS Management Plans and change management processes including ensuring that the relevant people are informed of the changes to the Plan. <p>Minimum costs for this deliverable include the development and delivery of the training for all Managers and Supervisors by an external Consultant and WHS Lawyer. Cost of lost work time while undertaking the above courses has not been included in the total cost for this initiative.</p> <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Copy of the training course materials and invoice receipt. • Training records of completed course. 	\$ 1,250	This deliverable will be completed within 12 months from acceptance of this undertaking.
3.2.4	<p>Director OHS Due Diligence Coaching</p> <p>The Company Director will complete a 12-month Director OHS Due Diligence Coaching Program to teach and support the Director to understand their duties as an officer under the WHS Act. The program is a commitment to monthly coaching session where the Director will establish an Annual OHS Due Diligence Plan and learn to complete activities associated with taking reasonable steps to ensure XYCON Pty Ltd is meeting its duty.</p> <p>The Company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Copy of the Annual OHS Due Diligence Plan. • Copy of the Director OHS Coaching Program Plan and invoice receipt. 	\$2,750	This deliverable will commence within 3 months from acceptance of this undertaking.

3.2.5	<p>Silica in Residential Construction – Controls Impact Assessment and Priority Setting (CIAPS) Program</p> <p>Construction of luxury homes generally involves the cutting and installation of building materials such as natural stone, engineered stone, tiles and other dust generating activities such as concrete cutting and grinding. These materials and activities are known to introduce hazardous chemicals and particulates such as respirable crystalline silica into the atmosphere and in a worker’s breathing zone. The company has recently invested in FESTOOL equipment which are engineering dust controls for cutting building materials. However, without air monitoring the effectiveness of the controls is uncertain.</p> <p>The company will engage a specialist company who provide a Controls Impact Assessment and Priority Setting (CIAPS) Program which uses a real-time monitoring platform to manage, monitor and measure the effectiveness of dust controls on site. The minimum costs for this deliverable include the cost for 1-year neXtrack subscription and the CIAPS Program which includes:</p> <ul style="list-style-type: none"> • Occupational Hygienist personal air monitoring • Baseline controls monitoring • Enclosure and Monitoring Equipment Hire • e-Learning Courses in neXtrack Academy. <p>Following the results of the CIAPS program, the Company will make an assessment for ongoing use of real time monitoring on future project sites. The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Copy of the CIAPS Report • Invoice Receipts for CIAPS Program 	\$10,000	This deliverable will be completed within 12 months from acceptance of this undertaking.
3.2.6	<p>Young Worker Workshop</p> <p>The company currently employs two young workers and engages subcontractors who also employ young workers. The company recognises that young workers are over-represented in injury statistics compared to older and more experienced workers, and that young workers have a unique risk profile especially in the construction industry.</p> <p>The company will download the young worker safety toolkit and with the assistance of a workshop facilitator, they will use the range of resources such as films, presentation templates and checklists to complete a half-day Young Worker Workshop. All employees will complete the workshop, including the young workers and the experienced supervisor, manager and director.</p> <p>The minimum costs for this deliverable include the Workshop Facilitator and materials.</p> <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Invoice Receipts for Workshop facilitation • Record of attendance and copies of training materials and information provided. 	\$1,400	This deliverable will be completed within 12 months from acceptance of this undertaking.

3.2.7	<p>Mental Health Workshop</p> <p>At the time of the incident, two workers provided first aid to the injured worker. During the consultation for this undertaking, the workers and those who witnessed the incident spoke of how they are dealing with the experience. Research shows the wellbeing of workers involved in incidents, 'second victims' is often overlooked but can leave workers lacking confidence, unable to perform their job, requiring time off, or leaving their profession. There is existing evidence on the importance and effectiveness of support programmes for workers and their potential to counter the negative impact to result in more positive impact.</p> <p>The company also recognises mental health and wellbeing in the construction industry remains a challenge as workers find it difficult to discuss feelings and emotions with mates at work, and the nature of the work makes social support more difficult. As such the company will engage a specialist workplace mental health counsellor to conduct a minimum of 2 x mental health workshops for all workers. The workshops will be designed to enhance the emotional and psychological wellbeing of the workers and support the resolution of workplace experiences that may adversely impact upon their general wellbeing and work performance.</p> <p>The minimum costs include costs for delivery of 2 x Mental Health Workshops (2 x \$2000) and information resources. The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Invoice Receipts for Workshops • Copy of any training materials and information provided to the workers 	\$4,000	This deliverable will be completed within 6 months from acceptance of this undertaking.
3.2.8	<p>Audits of OHS Management System</p> <p>The company will engage a certified third-party auditor to conduct three audits of the OHSMS against <i>ISO 45001:2018 OHS Management Systems</i> as detailed in Terms 3.8.1 through to 3.8.3 of this Undertaking.</p> <p>Auditor will be certified by a certification body accredited by <i>JAS-ANZ to ISO/IEG 17024:2003, General requirements for bodies operating the certification of persons</i>. Timeframes for scheduling the audits to meet the commitment as detailed in Terms 3.8.6 and 3.8.7, is as follows:</p> <ol style="list-style-type: none"> a) Initial audit within 6 months from acceptance of this undertaking b) Second audit within 18 months from acceptance of this undertaking c) Third audit within 30 months from acceptance of this undertaking <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Copies of the OHSMS Audit Report including details of the auditors' qualifications and additional evidence as required under Term 3.10 • Invoice Receipts for OHSMS Audits 	\$10,000	This deliverable will commence within 6 months from acceptance of this undertaking
Total minimum cost of benefits for workers/others		\$53,249	

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

Activities	Minimum cost	Timeframe
<p>3.3.1 Young Workers in Residential Construction</p> <p>The company uses JD Constructions Social Media accounts (Facebook and Instagram) to share their work and craftsmanship with followers. The company has currently over 800 followers across its various social media accounts. The company will seek further sharing of the videos through its industry and community networks.</p> <p>The company will develop a social media video about young workers in construction utilising the Young Workers Safety Toolkit resources available from the worksafe.qld.gov.au website. The video will encourage actions that build the capabilities of young workers to be safe and productive at work, rather than just relying on them to speak up or ask the right questions.</p> <p>The minimum costs for this deliverable include video production and editing.</p> <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Receipts for Video production and editing • Copy of the Video 	\$1400	This deliverable will be completed within 12 months from acceptance of this undertaking.
<p>3.3.2 Silica in Residential Construction – Short Story</p> <p>The company will develop a short story about managing the risk of respirable crystalline silica in residential construction utilising resources available from the Safe Work Australia Clean Air. Clean Lung & worksafe.qld.gov.au website and experience from undertaking the CIAPS Program as detailed in Term 3.2.5. The short story will for either an article published in an industry magazine (e.g., HIA Magazine) or published as a video on JD Constructions Social Media accounts and publicly available for sharing among the industry.</p> <p>The article/video will encourage viewers to visit the websites to download resources and view other videos available from Safe Work Australia Clean Air. Clean Lung & worksafe.qld.gov.au websites.</p> <p>The minimum cost for this deliverable includes development of the short story and/or video production and editing. Remaining costs will be used to promote the story such as social media boosting (advertising) and/or publishing expenses.</p> <p>The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Receipts for article/video production and editing • Copy of the published article or video 	\$3000	This deliverable will be completed within 12 months from acceptance of this undertaking.

3.3.3	<p>RPE Fit-Testing ‘Pop-up’ centre for local construction workers</p> <p>The company recognises with the implementation of the new Code of Practice for <i>Managing RCS dust exposure in construction and manufacturing of construction elements</i>, that many workers and small business may not be aware of the need for workers to be fit-tested for their RPE.</p> <p>The company will engage a certified RPE Fit-Testing provider to set up a 1-day RPE Fit-Testing ‘Pop-up’ centre in Noosa for local workers to book in for a free RPE fit-test. The company aims to provide spaces for up to 40 individuals to be fit tested at a local community facility (e.g., Noosa Tigers AFC clubhouse).</p> <p>All individuals will be provided with information about RPE including the WHSQ <i>Fit-testing requirements for tight-fitting respirators</i> flyer and other information available on the OIR website.</p> <p>Through its connections with neXtrack, engaged consultants, sub-contractors and the HIA, the company will target its engagement of workers in the local community who work in dusty work environments, including engineered stone workers, concrete cutters/grinders, bricklayers and tilers. The company will also promote the pop-up centre on its social media.</p> <p>The minimum costs for this deliverable include engagement a certified RPE Fit-Testing specialist through neXtrack. The company may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> • Receipts for certified RPE Fit-Testing provider • Attendance Report • Invitation for OIR to attend the event • Copies of event promotional activities/materials. 	\$2000	This deliverable will be completed within 12 months from acceptance of this undertaking.
Total minimum cost of benefits for industry		\$6400	

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 In-kind donation Noosa Tigers AFC Health and Wellbeing Centre including a Mental Health Hub and facilities for female, junior and AFL inclusion teams</p> <p>Noosa Tigers AFC has a 51-year history in the community. In 2020, the club established a Colts and an AFLW team and has in excess of 400 footballers of all ages play at Noosa Tigers AFC every week. It has been identified that there are deficient levels of facilities meeting the AFL Queensland’s facility guidelines, and in particular for female, junior and inclusion teams. The addition of these facilities ensures players and spectators of all ages, genders and ability the opportunity to be active in a safe and inclusive environment at Noosa Tigers.</p> <p>The club has plans for a new building which will be a Health and Wellbeing Centre. The club is working with government and other stakeholders to provide a facility that is inclusive and also provides for community benefits including a Mental Health Community Hub. The planned timeline for the facility is by end of 2023 with a funding target of \$1.4 million.</p> <p>In addition to provide safe and secure facilities for people of all ages, genders and ability, the company believes there is significant value in this deliverable in promote the objects of the WHS Act by helping to bring the Mental Health Community Hub as part of the Health and Wellbeing Centre to the broader community. Especially, to assist with mental health challenges and the prevention of suicide among young people and especially men in the community. A challenge that is also experienced in construction industry.</p> <p>This assistance will be provided through the Mental Health Community Hub that will have educational facilities, counselling suites and structures for information/education for schools and other community groups.</p> <p>The Company Director is a dedicated volunteer to the club, and the company is a minor sponsor of the club. The company has previously provided in-kind support of materials and labour for the existing clubhouse built more than 10 years ago.</p> <p>The Company proposes through this undertaking in-kind support of materials for the new Noosa Tigers AFC Health and Wellbeing Centre. The Company may provide the regulator with evidence of the in-kind support through receipts for expenses incurred along with photos. The company may invite an OIR representative to tour the facility upon completion.</p>	<p>\$ 32,000</p>	<p>This deliverable will be completed within 30 months from acceptance of this undertaking.</p>
<p>Total estimated cost of benefits for the community</p>	<p>\$32,000</p>	

3.5 Agreement to pay the OIR's recoverable costs

3.5.1 The company 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	\$ 500
Total of OIR recoverable costs	\$ 9,224

3.6 Minimum spend

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

Estimated total value of	Minimum spend
Benefits to workers/others	\$53,249
Benefits to industry	\$6,400
Benefits to community	\$32,000
OIR recoverable costs	\$ 9,224
Estimated total minimum spend for the undertaking	\$100,873

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

3.7 A commitment to establish and maintain an OHSMS

3.7.1 The company acknowledges there is no formal documented OHSMS in place.

3.7.2 The company commits to ensuring that an OHSMS acceptable to the regulator that satisfies the principles of *ISO 45001:2018 Occupational health and safety management systems* will be implemented within 12 months of the acceptance of this undertaking.

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

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

3.8.2 The company commits to ensuring the OHSMS will be audited by certified third party auditors.

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

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

3.8.5 The company commits to ensuring the OHSMS will be audited against criteria that meets the principles of *ISO 45001:2018 Occupational health and safety management systems*, to verify the OHSMS meets the principles of *ISO 45001:2018 Occupational health and safety management systems*.

3.8.6 The company 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 The company 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.

3.10 A commitment to implement the recommendations from third party audits

3.10.1 The company commits to ensuring the recommendations resulting from the first OHSMS audit, as detailed in 3.9.2 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 The company commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.9.2 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 The company commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.9.2 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 The company commits to providing a detailed action plan or statutory declaration by an authorised officer of the company 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 the person on the date it is accepted by the regulator as set forth in section 5 below.

THE COMMON SEAL of

(Affix common seal)

Xycon P/L

Company name

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

Anthony Fitzpatrick

Name of Director

Signature of Director

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

21st August 2022

before me:

Signature of Witness

Name of Witness in full


Witness address

Witness address

Witness address

SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the 14 day of October, 2022



Signature of regulator

Kym Bancroft

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 Number	285969
Entity	XYCON Pty Ltd trading as JD Constructions (XYCON)
ACN	107 735 839
Entity Address	7 Beckmans Road, Tewantin, QLD, 4565
Location of Incident	Peregian Beach, QLD, 4573
Date of Incident	23 April 2020

1 History of the application

- 1.1 The undertaking given by XYCON relates to an alleged contravention (incident) that occurred during construction work to replace two skylights and the entire rear roof on a domestic dwelling at Peregian Beach (workplace).
- 1.2 As of 23 April 2020, XYCON was the principal contractor for roof construction and renovation works at the workplace, with a worksite manager (qualified carpenter) and a third-party roofing company subcontracted to manage and complete the works.
- 1.3 On 23 April 2020, towards the end of the working day, the worksite manager removed two pieces of unsecured plywood that had been placed on the roof over some Alsynite sheeting (sheeting) to mitigate the risk that the brittle sheeting was unable to withstand bodyweight.
- 1.4 The worksite manager advised the roofing contractor workers that the plywood had been removed and to avoid this area.
- 1.5 One of the roofing contractor workers was completing work for the day on the roof to replace ridge caps on the apex of the roof near the sheeting, when the worker accidentally placed a foot on the sheeting.
- 1.6 The sheeting broke and the worker fell approximately 5.1 metres to the ground, sustaining fractures to the workers legs, foot, right hip, a broken wrist and dislocated fingers.
- 1.7 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 XYCON, who had a health and safety duty pursuant to section 19(1) of 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 WHS Act.
- 1.8 On 19 October 2021, XYCON notified the Office of Industrial Relations (OIR) Enforceable Undertakings (EU) Unit of their intention to give a WHS undertaking (undertaking) for this matter.
- 1.9 On 27 June 2022, an Evaluation Panel (panel) consisting of a senior public servant and two external, independent persons evaluated XYCON's undertaking.
- 1.10 The panel were not willing to recommend acceptance of the initial undertaking and provided feedback on 15 August 2022 to XYCON, with the opportunity to resubmit a revised undertaking for further evaluation.
- 1.11 On 26 August 2022, XYCON submitted a revised and updated undertaking and supporting documentation that addressed and implemented the panel's feedback.
- 1.12 On 4 October 2022 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 XYCON, who had a health and safety duty pursuant to section 19(1) of the WHS Act failed to comply, so far as reasonably practicable, with the duty 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. 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.
- 2.5. 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. Supporting letter – XYCON 25 August 2022
 - 3.1.4. WHS undertaking dated 20 August 2022.
 - 3.1.5. Complaint and Summons dated 7 May 2021.
 - 3.1.6. Statements of Facts
 - 3.1.7. Non- disturbance Notice - NDI1023301 dated 23 April 2020
 - 3.1.8. Prohibition Notice – P1006434 dated 24 April 2020
 - 3.1.9. Prohibition Notice – P1006435 dated 24 April 2020
 - 3.1.10. Improvement Notice – I2008117 dated 24 April 2020
 - 3.1.11. Improvement Notice – I2008118 dated 24 April 2020
 - 3.1.12. Improvement Notice – I2008119 dated 24 April 2020
 - 3.1.13. Improvement Notice – I2008120 dated 24 April 2020
 - 3.1.14. OIR's Statement of compliance history dated 13 April 2022.
 - 3.1.15. Workers Compensation Information dated 19 April 2022
 - 3.1.16. ASIC Report dated 8 April 2022.
 - 3.1.17. Letter to injured worker dated 3 June 2022
 - 3.1.18. Financial capacity letter dated 14 May 2022
 - 3.1.19. Third party conflict of interest declaration letter dated 14 Mar 2022
 - 3.1.20. Third party supporting letter (term 3.2.1,3.2.3-4, 3.3.2) dated 22 August 2022
 - 3.1.21. Third party supporting letter (Terms 3.2.2) dated 25 August 2022.
 - 3.1.22. Third party supporting letter (Term 3.2.6, 3.3.1) dated 11 March 2022.

- 3.1.23. Third party proposal (Term 3.2.5,3.3.3) dated 22 August 2022.
- 3.1.24. Third party supporting letter (Term 3.2.7) dated 14 March 2022.
- 3.1.25. Third party supporting letter (Term 3.2.8) dated 14 March 2022
- 3.1.26. Third party supporting letter and plan (Term 3.4.1) dated 14 March 2022
- 3.1.27. EU Unit Chronology Statement dated 15 September 2022.
- 3.1.28. Initial Evaluation Panel feedback dated 15 August 2022.
- 3.1.29. Return Evaluation Panel Assessment dated 16 September 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 XYCON 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 XYCON 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 matter is 'Medium/High'.
- 4.6. I find the quantum of the undertaking and the respective financial commitments of XYCON are proportionate to the objective gravity of the alleged contraventions by XYCON and account for the benefits that would accrue to them through avoiding prosecution.
- 4.7. I find that XYCON have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.8. I find that XYCON, who had a health and safety duty under the WHS Act, has 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 XYCON 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 XYCON 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 XYCON are committing to:
 - 4.11.1. Disseminating information about the undertaking to all employees/subcontractors via a special toolbox talk. The undertaking will also be published on the company's website.
 - 4.11.2. Engaging an external WHS consultant to:
 - 4.11.2.1. Upgrade XYCON's WHS Management plan into an Occupational Health and Safety Management System (OHSMS) consistent with ISO 45001:2018 OHS Management Systems.
 - 4.11.2.2. Develop and deliver contractor management and WHS training to Managers and Supervisors in the implementation of the OHSMS and the WHS Management Plan to ensure subcontractors are appropriately managed and supervised.

- 4.11.2.3. Deliver an OHS Due Diligence Coaching Program to the Director through monthly coaching sessions over 12 months. As part of the program, the Director will establish an Annual OHS Due Diligence Plan and learn to complete activities associated with taking reasonable steps to ensure XYCON is meeting its duty.
- 4.11.2.4. Write and/or produce a short story for an article or video about managing the risk of respirable crystalline silica in residential construction, utilising resources available from the Safe Work Australia website (*Clean Air. Clean Lungs.*), OIRs website, and XYCON's experience from undertaking the Controls Impact Assessment and Priority Setting (CIAPS) Program as part of the undertaking. The final product will either be published in an industry magazine or published as a video on JD Constructions Social Media accounts and publicly available for sharing among the industry.
- 4.11.3. Engaging an external height safety specialist consultant to:
 - 4.11.3.1. review the company's current risk management practices for working on roofs/heights and develop dedicated Safe Working at Heights and Safe Working on Roof (SWHSWR) Procedures within the OHSMS, and
 - 4.11.3.2. conduct a dedicated SWHSWR toolbox talk with all employees to implement the risk management procedure and increase their knowledge and skills for how to safely at heights and on roofs.
- 4.11.4. Purchasing higher-order safety controls for working at heights and/or implementing priority actions arising from the SWHSWR assessment to reduce the risks identified with working at heights.
- 4.11.5. Ensuring all workers complete the Queensland Government funded RIIWHS204E - Work Safely at Heights Training through Construction Skills Queensland.
- 4.11.6. Engaging an external specialist company to provide:
 - 4.11.6.1. a CIAPS Program that will manage, monitor and measure, the effectiveness of dust controls on XYCON project sites over a 12-month period. Following the results of the CIAPS program, XYCON will assess if ongoing use of real time monitoring on future project sites is required, and
 - 4.11.6.2. a one-day Respiratory Protective Equipment (RPE) Testing 'Pop-up' centre for up to 40 local workers to book in for a free RPE fit-test at a local community facility in the Noosa area.
- 4.11.7. Engaging an external WHS consultant to:
 - 4.11.7.1. deliver a half day young worker workshop to all employees to assist in learning and understanding the unique risk profile of young worker, especially in the construction industry, and
 - 4.11.7.2. develop and publish a video about young workers in construction, utilising the OIR Young Workers Safety Toolkit resources, on XYCON's social media accounts and through their industry and community networks.
- 4.11.8. Engaging an external mental health consultant to deliver a minimum of two mental health workshops for all workers.
- 4.11.9. Engaging a certified third-party auditor to conduct three audits of the OHSMS over the life of the undertaking. All audit reports, intended actions and actions implemented as a result of the three audits, will be provided to OIR.
- 4.11.10. Donating \$32,000 in building materials to assist in the construction of the Noosa Tigers Australian Football Club's new Health and Wellbeing Centre

which will include a Mental Health Hub and facilities for female, junior and Australian Football League inclusion.

4.11.11. 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 XYCON 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 XYCON 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 XYCON, 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.



Kym Bancroft
Deputy Director-General
Office of Industrial Relations

14/10/2022