

# **ENFORCEABLE UNDERTAKING**

Part 11, Work Health and Safety Act 2011

The commitments in this undertaking are offered to the regulator by

**BE Steel Fixing Pty Ltd**

**ACN 612 614 230**

## 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](http://www.worksafe.qld.gov.au).

## SECTION 1: GENERAL INFORMATION

### 1.1 Details of the person giving the undertaking

**Nominated person:** BE Steel Fixing Pty Ltd  
**Street address:** 1100 New Cleveland Road, Gumdale QLD 4154  
**Mailing address:** 1100 New Cleveland Road, Gumdale QLD 4154  
**Telephone:** 07 3286 7321  
**Email address:** info@besteelfixing.com.au  
**Legal structure:** Company  
**Type of business:** Building and Construction  
**Commencement date:** 26 May 2016  
**Workers:** Full time: 15  
Part time: 10  
Casual: 10  
**Products and services:** Steel Fixing and Concrete Reinforcement Installation

#### Comments:

BE Steel Fixing Pty Ltd ('BE Steel') operates a specialist Steel Reinforcement business that provides reinforcement fixing services in civil, mining and commercial sectors of the construction industry throughout regional and metropolitan regions of eastern Australia. Originally started as a family business in 2016 by Stephen Boland and Mark Ennis, BE Steel has employed a core group of fifteen (15) employees for the last eight (8) years. Under the ASIC definition, BE Steel is a small business engaging Part-time and Casual workers to meet project demands with total number of workers ranging between 15-50.

BE Steel work across a wide and varied array of government infrastructure projects throughout Queensland and New South Wales. The business has successfully tendered for work on large projects as a subcontractor under the projects Principal Contractor or Major Subcontractors on projects such as the Cross River Rail project in Brisbane, various renewable energy projects including windfarms and the Sydney Metro.

### 1.2 Detail the contravention

BE Steel was conducting a business or undertaking that manufactures structures, and held a health and safety duty, namely a duty pursuant to section 23(2) of the *Work Health and Safety Act 2011*, to ensure so far as is reasonably practicable, the structure was manufactured to be without risks to the health and safety of persons who construct the structure at a workplace and or persons who carry out any reasonably foreseeable activity at a workplace in relation to the assembly of the structure, and failed to comply with the said duty, and the failure exposed an individual to a risk of death or serious injury, contrary to section 32 of the *Work Health and Safety Act 2011*.



### 1.3 Detail the events surrounding the contravention

1. BE Steel was at all material times a company incorporated according to law.
2. The business or undertaking of BE Steel was steel fixing and manufacture of steel reinforcing mats at a construction project, namely the Toowoomba Second Range Crossing construction project.
3. The Toowoomba Second Range Crossing was a construction project within the meaning of section 292 of the *Work Health and Safety Regulation 2011*.
4. On or about 21 August 2015, the State of Queensland appointed the 'principal contractor' for the Toowoomba Second Range Crossing pursuant to s.293 of the *Work Health and Safety Regulation 2011*.
5. On or about 21 August 2015, 'principal contractor' and another third-party company were appointed the design and construction subcontractors for the construction project.
6. The principal contractor and the third-party company contracted BE Steel by way of a Supply Agreement to provide steel fixing services and the manufacture of reinforcing steel mats at the construction project. BE Steel executed the supply agreement on 18 December 2017. The principal contractor and the third-party company executed the supply agreement on 18 June 2018.
7. BE Steel manufactured two reinforcing steel mesh mats at the Toowoomba Second Range Crossing construction project.
8. On or about 26 April 2018, the two steel mesh mats were transported from their location of manufacture to adjacent to Pier 2 of the Viaduct for the construction, assembly or use of the mesh mats on the construction of Pier 3.
9. On or about 27 April 2018, the two steel mesh mats were moved by crane to the base of Pier 3 and between Pier 3 and Pier 4 in a horizontal orientation.
10. One of the steel mesh mats was connected to a designated lifting points and lifted off the ground in a vertical orientation.
11. Two steel reinforcing bars fell from the mesh mat, exposing an individual to the risk of death or serious injury.
12. BE Steel did not ensure so far as is reasonably practicable, the structures were without risks to the health and safety of persons who construct the structure at a workplace and or persons who carry out any reasonably foreseeable activity at a workplace in relation to the assembly of the structure.

### 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
27/4/2018	Improvement Notice	1028427	s300 Compliance with safe work method statement (1) A person conducting a business or undertaking that includes the carrying out of high-risk construction work must put in place arrangements for ensuring that high risk construction work is carried out in accordance with the safe work method statement for the work.	Develop, implement and maintain a system to ensure SWMS are complied with, in particular the inspection of steel mat before the lifting operations.  Refer to Item 1.11 – (4) Inspection and Test Plan (ITP).

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
27/4/2018	Prohibition Notice	1018587	s19 Primary Duty of Care s32 Failure to comply with health and safety duty—category 2	Direction was to stop the activity of lifting steel mats without an inspection until an inspector is satisfied that the risk has been remedied with a system in place to prevent falling objects being a risk to workers and others.  Refer to Item 1.11 – (4) Inspection and Test Plan (ITP).

**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**

No injuries or illnesses were suffered by the worker/s or other/s as a consequence of the contravention detailed in term 1.2

**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  
☒ not applicable

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

Date	Description of support	Comments
	Not applicable – Refer to Term 1.5 above	

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

BE Steel acknowledges that there is no formal documented OHSMS in place.

BE Steel maintains a Safety Management Plan for Project Works, which includes:

- Safe Work Method Statements
- Mobile Plant pre-start inspections
- Worker consultation including Toolbox Meetings
- Worker qualifications and training
- Plant and equipment servicing and maintenance
- Statutory inspections including Fire Safety, Test and Tag
- Provision of Personal Protective Equipment
- First Aid and Emergency Response Planning.

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

BE Steel 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
- Mobile Plant pre-start inspections
- Statutory inspections including Fire Safety, Test and Tag
- Inspection and Test Plans (ITP)

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

BE Steel has consulted with key internal personnel in relation to this WHS undertaking and the proposed activities, namely:

- Company Directors
- Operations Manager
- Contracts Manager

BE Steel has consulted with an external OHS Consultant in relation to the development of this WHS undertaking and the proposed activities.

BE Steel has consulted with a reputable law practitioner who specializes in work, health and safety matters in relation to the development of this WHS undertaking and the proposed activities.

BE Steel has consulted internally with workers (by way of toolbox meeting) and other managements staff, as to the issues which arise on work sites and the best methods of avoiding such issues in the future, and the development of systems which would ensure compliance with health and safety standards and for the benefit of the workers on site.

BE Steel proposes to undertake consultation with:

- All employees 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**

On the day of the incident (27 April 2018), BE Steel immediately undertook the following steps:

1. Exclusion zones established.
2. All works on site ceased until a full investigation was conducted internally by BE Steel in consultation with the Principal Contractor.
3. BE Steel directors and management staff attended the work site in order to fully understand the reasons behind the incident, consult with the Principal Contractor and to make observations which would later be incorporated into future safety measures in order to avoid similar incidents from occurring within the construction industry.

During the next few weeks after the incident:

4. A work practice was created as a result of consultations with Workplace Health and Safety Queensland, third party industry specialist, employees and managements staff of BE Steel. The Consultations were undertaken to develop and implement an Inspection and Test Plan, including a step-by-step guide for tasks to be completed.
5. The Inspection and Test Plan has been implemented for all current projects of BE Steel to continue operating under approved standards of health and safety.



6. Additional Safety measures implemented included:

- a. Spray painting steel fixings at hoist points which would prevent hoisting at invalid and/or unsafe hoist points.
  - b. Paper tags added on steel fixings which would require inspecting steel fixings to make sure that they are not damaged and can be safely hoisted.
  - c. Internal response measure whereby employees of BE Steel, or other contractors / subcontractors can contact a BE Steel representative in case hoist points cannot be located, the steel fixings are damaged and should not be lifted, or other safety hazards associated with the steel fixings, or the work site exist.
  - d. The workers and employees of BE Steel were notified and trained in these measures during an employee site meeting / briefing.
7. BE Steel directors and management staff gave full and frank interviews to the Office of Industrial Relations – Workplace Health and Safety Queensland, in an effort to discern and understand the reasons behind the occurrence of the incident.
8. BE Steel has developed and implemented a Welding Procedure including Testing of Welders.
9. BE Steel has reviewed and updated the SWMS.
10. An independent OHS Consultant was engaged to conduct a workplace inspection, gap analysis of the OHSMS and provide recommendations for health and safety improvements.

**Total amount spent on rectifications      \$15,000**

## **SECTION 2: GENERAL TERMS**

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

### **2.1 Acknowledgement that the regulator alleges a contravention occurred as detailed in term 1.2**

BE Steel acknowledges that the regulator has alleged a contravention by BE Steel as detailed above in term 1.2 of this undertaking.

### **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**

BE Steel is committed to ensuring the safety, health and wellbeing of its workers and the industry. It is therefore deeply regretful that the incident occurred and that BE Steel employees and other industry workers were exposed to risk as a result of it.

BE Steel believes that the safety initiatives proposed in this undertaking will safeguard against similar incidents occurring on work sites and cause a positive shift in safety outcomes on construction sites which involve lifting of dangerous items, creating exclusion zones, and conducting due and proper inspections of work sites prior to commencement of work.

BE Steel believes that the proposed initiatives set out in this undertaking outweigh the benefits that could be achieved by a court-imposed sanction on BE Steel.

### **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**

BE Steel is committed to improving its safety standards and has implemented a number of measures as described in Item 1.11, to ensure that the factors which led to the alleged contravention will be prevented and will not occur again.

Dedicated to improving its safety standard, BE Steel is certain that these measures and those proposed in this undertaking will 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: NOVEMBER 2017

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

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

2.5.2 BE Steel 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 BE Steel has the financial ability to comply with the terms of this undertaking and have provided evidence by way of a letter from an accountant of BE Steel 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, BE Steel 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 BE Steel has no commercial or other relationships with any corporations, officers, employees, contractors or proposed beneficiaries of donations or scholarships or other recipient of financial benefit contained in this undertaking.

2.7.2 BE Steel acknowledge, 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 is a previous or existing relationship.

## **2.8 Statement regarding Intellectual Property License**

BE Steel, 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 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**

BE Steel FIXING PTY 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 and certified to *ISO 45001:2018 OHS Management Systems* 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**

BE Steel acknowledges that the proposed activities in this WHS undertaking may promote or benefit BE Steel. BE Steel commits to linking any promotion or benefit to BE Steel to this WHS undertaking.

# **SECTION 3: ENFORCEABLE TERMS**

The person acknowledges all activities set forth in the enforceable terms below must be auditable and include a date for completion and a minimum cost for each activity. The person commits to performing the activities below diligently, competently and by the respective completion date.

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

Employees will be informed via email, notices on our Construction Site notice boards, and BE Steel agrees to make a copy of the undertaking readily available for all employees and other relevant parties to view on the company website. A workplace health and safety meeting will be delivered by BE Steel Senior Management team and Directors with all employees to explain the undertaking and the benefits for the workers. 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 <b>Online OHS Management System</b></p> <p>BE Steel to engage an external OHS Consultant to develop and implement an online OHS Management System consistent with <i>ISO 45001:2018 OHS Management Systems</i>.</p> <p>As identified in item 1.8, the company acknowledges that it maintains a Safety Management Plan for Project Works but there is no formal documented OHSMS in place. This deliverable will provide for a formal OHSMS that will enable process within the business to manage health and safety, including the development of an Integrated Project Safety Management Plan for each project.</p> <p>The online system will ensure OHS documented information is available to all workers via mobile devices to access information and to report hazards and incidents.</p> <p>Minimum costs include:</p> <ul style="list-style-type: none"> <li>• Development of OHS documented information, including policy, procedures, forms and templates, including template for the Integrated Project Safety Management Plan</li> <li>• IT Development Project for the online information management system to share OHS, documented information and maintain records within an online integrated HSEQ management system.</li> <li>• OHS Consultancy support for the implementation of the online OHSMS, including support WHSO with ongoing OHSMS activities (as per item 3.2.3)</li> </ul> <p>BE Steel may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Summary report of the OHSMS demonstrating the online functions and OHS documented information.</li> <li>• Receipts of expenditure for the OHSMS development and implementation support.</li> </ul>	<p>\$20,000</p>	<p>This deliverable will be completed within 12 months from acceptance of this undertaking.</p>



Activities	Minimum cost	Timeframe
<p>3.2.2 <b>Audits of OHS Management System</b></p> <p>BE Steel will engage a certified third-party OHSMS auditor to conduct the initial audit of the OHSMS against <i>ISO 45001:2018 OHS Management Systems</i> as detailed in Items 3.8.6.</p> <p>a) The initial audit (OHSMS) will be conducted within 6 months from acceptance of the undertaking.</p> <p>BE Steel will engage a certified third-party OHSMS auditor to conduct the two subsequent audit of the OHSMS against <i>ISO 45001:2018 OHS Management Systems</i> as detailed in Item 3.8.7.</p> <p>Timeframes for scheduling the OHSMS audits to meet the commitment as detailed in Items 3.8.7, as follows:</p> <p>b) Second audit within 18 months from acceptance of this undertaking.</p> <p>c) Third audit within 30 months from acceptance of this undertaking.</p> <p>Auditors engaged by BE Steel will be certified by a certification body accredited by JAS-ANZ to <i>ISO/IEG 17024:2003, General requirements for bodies operating the certification of persons</i>.</p> <p>BE Steel may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the (a) Initial OHSMS Audit Report including details of the auditors' qualifications.</li> <li>• Copies of the (b) OHSMS Audit Report including details of the auditors' qualifications</li> <li>• Copies of the (c) OHSMS Audit Report including details of the auditors' qualifications</li> <li>• Copies of Action Plans arising from Audit Report recommendations.</li> <li>• Invoice Receipts for Audits.</li> </ul>	\$20,000	This deliverable will commence within 6 months from acceptance of this undertaking.



Activities		Minimum cost	Timeframe
3.2.3	<p><b>Part-time WHSO</b></p> <p>BE Steel will employ a suitably qualified person to undertake the role of Work Health and Safety Officer (WHSO) in a part-time position for a minimum of 2 years. The minimum costs will cover up to 50% of the wages for the position for the duration of 2 years from commencement. The WHSO will help to build capability within the business during the enforceable undertaking by assisting with the implementation of the EU deliverables including the OHSMS and long-term safety initiatives in the workplace. WHSO Role Responsibilities will include:</p> <ul style="list-style-type: none"> <li>• identify hazards and risks to health and safety arising from the work</li> <li>• notify BE Steel management any incident that has occurred or any immediate or imminent risk to health and safety</li> <li>• investigate, or assist in the investigation of, any incidents</li> <li>• establish WHS training programs where required</li> <li>• assess WHS risks annually and provide an assessment report to BE Steel Management.</li> </ul> <p>BE Steel may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Position Description and Employment Contract.</li> <li>• 2-year summary of wages paid.</li> </ul>	\$60,000	This deliverable will commence within 6 months from acceptance of this undertaking and will be completed within 24 months from commencement.
3.2.4	<p><b>HSEQ for Managers and Supervisors</b></p> <p>BE Steel will develop and implement HSEQ for all Directors, Managers and Supervisors internal training course following the implementation of the HSEQ Management System. The course outline will include:</p> <ul style="list-style-type: none"> <li>• Understanding WHS Laws and Duties</li> <li>• Roles and responsibilities (Director, Manager &amp; Supervisor)</li> <li>• Due Diligence and Managing HSEQ at BE Steel Fixing</li> <li>• Effective consultation and communication in the workplace</li> <li>• How to plan for and manage risk on-the-job</li> <li>• Managing sub-contractors to ensure shared duties (consultation, coordination and cooperation).</li> </ul> <p>This custom-built internal course will equip managers and supervisors to improve health and safety on the work site, and to assist BE Steel in maintaining and improving their HSEQ Management System.</p> <p>The minimum costs include the development and delivery of HSEQ for all Managers and Supervisors training course by an external Consultant. Cost of lost work time while undertaking the above courses has not been included in the total cost for this initiative.</p> <p>BE Steel may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the training course materials and invoice receipt.</li> <li>• Training records of completed course</li> </ul>	\$5,000	This deliverable will be completed within 18 months from acceptance of this undertaking.
<b>Total minimum cost of benefits for workers/others</b>		<b>\$105,000</b>	

### 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 <b>Occupational Hygiene Research Project</b></p> <p>BE Steel will participate in an Industry Occupational Hygiene Research Project conducted by the University of Queensland. The industry project is part of the Master of Occupational Hygiene and the Dual Master of Occupational Hygiene and Master of OHS Science Programs at UQ. The course requirements include the completion of an occupational hygiene research project in industry over 240 hours in one semester (two days a week for 16 weeks). The students will plan, execute, interpret, and report on the collection of occupational hygiene data, including designing a control strategy.</p> <p>The gap analysis conducted during the development of this undertaking identified the presence of physical hazards including noise, vibration, heat/cold, and hazardous manual tasks. Upon commencement of the research, the company, University Supervisor and Student will determine the most appropriate hazard to research.</p> <p>Following the completion of the research and design of the control strategy, the company commits to a minimum spend of \$5000 to implement controls or priority actions recommended from the study.</p> <p>Minimum costs for this deliverable include the purchase of consumable items such as pre-weighed filter papers, sample transport and laboratory analysis. Equipment hire (if necessary) and/or the cost of calibration of UQ owned equipment. Student travel costs from UQ St Lucia to BE Steel Fixing Project Site for the duration of the project. The Occupational Hygiene Research Project will commence within 12 months from acceptance of this undertaking pending UQ program availability. The timeframe for completion is within 24 months from acceptance of this undertaking.</p> <p>BE Steel may provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copies of the Occupational Hygiene Research Project Report and/or Control Strategy.</li> <li>• Invoice Receipts for associated costs for research.</li> <li>• Invoice Receipts for controls / priority actions implemented.</li> </ul>	<p>\$ 15,000</p>	<p>This deliverable will commence within 12 months from acceptance of this undertaking.</p>



Activities	Minimum cost	Timeframe
<p>3.3.2 <b>Small/Medium-sized Construction Business OHS Forum</b></p> <p>Through this experience BE Steel reflected on how Safe Work Method Statements are used differently among the construction industry which can create difficulty for small/medium-sized construction businesses and sub-contractors and inconsistency in how Consultation, Cooperation and Coordination of Shared Duties is achieved.</p> <p>To discuss these and other key topics to clarify requirements to meet these legal obligations, BE Steel will engage the Queensland Branch of the Australian Institute of Health and Safety (AIHS) to conduct a Small/Medium-sized Construction Business OHS Forum in Brisbane.</p> <p>The event will include speakers who will present on key topics relevant to construction businesses, including:</p> <ul style="list-style-type: none"> <li>• Safe Work Method Statements</li> <li>• Consultation, Cooperation and Coordination – Shared Duties</li> <li>• Implementing an online OHS Management System (BE Steel Case Study)</li> <li>• Lessons from the Occ Hygiene Research Project</li> <li>• Mental Health in Construction</li> </ul> <p>The target audience for this forum is small/medium-sized construction businesses owners and/or health and safety representatives. Promotion of the forum will be through construction and OHS networks. The company will also invite its sub-contractors and suppliers.</p> <p>BE Steel will invite OIR representatives from the Construction Unit to attend the event.</p> <p>Minimum costs include:</p> <ul style="list-style-type: none"> <li>• Venue hire</li> <li>• Forum materials</li> <li>• Speaker expenses</li> </ul> <p>BE Steel will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the forum materials.</li> <li>• Invitation to attend the forum.</li> <li>• Invoice receipts for associated costs.</li> </ul>	<p>\$10,000</p>	<p>This deliverable will be completed within 24 months from acceptance of this undertaking.</p>
<b>Total minimum cost of benefits for industry</b>	<b>\$25,000</b>	



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

Activities		Minimum cost	Timeframe
3.4.1	<p><b>Charity Donation</b></p> <p>BE Steel will donate \$5,000.00 to TIACS.</p> <p>TIACS is a not-for-profit company that provides free and confidential chat, text and call-back service, providing early-intervention mental health support for Australia's truckies, tradies, blue collar workers and those who care about them.</p> <p>The donation will go towards TIACS goal of funding over 8000 more hours of free clinical support. Every dollar donated to TIACS goes straight towards TIACS clinicians and allows TIACS to provide more support to those who need it. A letter will be provided by TIACS outlining how the donation will be used in order to improve the quality of workers mental health in the industry and the community.</p> <p>BE Steel will provide the regulator with evidence of the donation.</p>	\$ 5,000	This deliverable will be completed within 12 months from acceptance of this undertaking.
<b>Total estimated cost of benefits for the community</b>		<b>\$5,000</b>	

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

3.5.1 BE Steel 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
<b>Total of OIR recoverable costs</b>	<b>\$10,724</b>

### 3.6 Minimum spend

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

Estimated total value of	Minimum spend
Benefits to workers/others	\$105,000
Benefits to industry	\$25,000
Benefits to community	\$5,000
OIR recoverable costs	\$10,724
<b>Estimated total minimum spend for the undertaking</b>	<b>\$145,724</b>

3.6.2 BE Steel 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 BE Steel acknowledges that there is no formal documented OHSMS in place.

3.7.2 BE Steel commits to ensuring that an OHSMS acceptable to the regulator that satisfies the principles of *ISO 45001:20018 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 BE Steel acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.

3.8.2 BE Steel commits to ensuring the OHSMS will be audited by certified third party auditors.

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

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

3.8.5 BE Steel commits to ensuring the OHSMS will be audited against criteria that meets the principles of *ISO 45001:20018 Occupational health and safety management systems*, to verify the OHSMS meets the principles of *ISO 45001:2018*.

3.8.6 BE Steel acknowledges that the proposed OHSMS, as detailed in term 3.7.1 is acceptable to the regulator and commits to ensuring that an initial third-party audit will be undertaken within six months of this undertaking being accepted.

3.8.7 BE Steel commits to ensuring at least two further third-party audits of the OHSMS 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 BE Steel 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 BE Steel 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 BE Steel 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 BE Steel commits to providing a detailed action plan or statutory declaration by an authorised officer of the BE Steel 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.  
(Select from the following execution clauses and delete those that do not apply)

THE COMMON SEAL of

(Affix common seal)

**BE Steelfixing Pty Ltd**

-----  
Company name

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

**Stephen A Boland**

-----  
Name of Director

-----  
Signature of Director

on the 20th of July 2022

## SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the 23<sup>rd</sup> day of September, 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**

<b>Event Number</b>	257787
<b>Entity</b>	BE Steel Fixing Pty Ltd (BE Steel)
<b>ACN</b>	612 614 230
<b>Entity Address</b>	1100 New Cleveland Road, Gumdale QLD 4154
<b>Location of Incident</b>	Second Toowoomba Range Crossing
<b>Date of Incident</b>	27 April 2018

#### **1 History of the application**

- 1.1 The undertaking given by BE Steel relates to an alleged contravention (incident) that occurred during the Second Toowoomba Range Crossing Project (project).
- 1.2 Part of the project included constructing an 800m long viaduct running east from the New England Highway. The viaduct consisted of a number of piers joined by the roadway structure.
- 1.3 On 18 December 2017, BE Steel entered into a supply agreement with the principal contractor and a third-party company to provide steel fixing services and the manufacture of reinforcing steel mats for the project.
- 1.4 Prior to 26 April 2018, two reinforcing steel mesh mats were fabricated at a holding yard near the project.
- 1.5 On or about 26 April 2018, the mats were transported from their location of manufacture to adjacent to Pier 2.
- 1.6 On 27 April 2018, the two mats were moved by crane, in a horizontal orientation to the base of Pier 3 and between Pier 3 and Pier 4.
- 1.7 Following a visual check by the dogman, one of the steel mesh mats was connected to designated lifting points and lifted by crane in a vertical orientation to place on the top of Pier 3.
- 1.8 As the mat was being lifted, two steel reinforcing bars (approx. 35kgs each and 6.8 metres long) fell from the mesh mat.
- 1.9 Both bars struck a work vehicle adjacent to the lift area and one of the bars brushed the dogman's arm.
- 1.10 No injury or illness was sustained as a result of the incident.
- 1.11 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 BE Steel, who had a health and safety duty pursuant to section 23(2) 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.
- 1.12 On 8 April 2021, BE Steel notified the Office of Industrial Relations (OIR) Enforceable Undertakings (EU) Unit of their intention to give a WHS undertaking (undertaking) for this matter.
- 1.13 On 10 June 2021, following submissions of the first draft of the undertaking and subsequent feedback provided by the EU Unit, BE Steel withdrew from the EU process.



- 1.14 On 24 June 2021, BE Steel notified their intention to recommence with the giving of an WHS undertaking for this matter.
- 1.15 On 13 June 2022, an Evaluation Panel (panel) consisting of a senior public servant and two external, independent persons evaluated BE Steel's undertaking.
- 1.16 The panel were not willing to recommend acceptance of the initial undertaking and provided feedback on 22 June 2022 to BE Steel, with the opportunity to resubmit a revised undertaking for further evaluation.
- 1.17 On 20 July 2022, BE Steel submitted a revised and updated undertaking and supporting documentation that addressed and implemented the panel's feedback.
- 1.18 On 16 August 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 BE Steel, who had a health and safety duty pursuant to section 23(2) 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. WHS undertaking dated 18 July 2022.
  - 3.1.4. Complaint and Summons dated 20 January 2020.
  - 3.1.5. Improvement Notice - 1028427 dated 22 April 2018.
  - 3.1.6. Prohibition Notice -1018587 dated 24 April 2018.
  - 3.1.7. Statements of Facts
  - 3.1.8. OIR's Statement of compliance history dated 26 April 2022.
  - 3.1.9. ASIC Report dated 16 February 2022.
  - 3.1.10. Financial capacity letter dated 23 February 2022
  - 3.1.11. Third party supporting letter (Terms 3.2.1 and 3.2.4) dated 1 July 22.
  - 3.1.12. Third party conflict of interest declaration dated 11 March 2022
  - 3.1.13. Third party supporting letter (Terms 3.2.2) dated 19 July 22.
  - 3.1.14. Third party supporting letter (Term 3.3.1) dated 14 February 22.

- 3.1.15. Third party supporting letter (Term 3.3.2) dated 18 February 2022.
- 3.1.16. Third party supporting letter dated (Term 3.4.1) 15 February 2022.
- 3.1.17. EU Unit Chronology Statement dated 19 August 2022.
- 3.1.18. Initial Evaluation Panel feedback dated 22 June 2022.
- 3.1.19. Return Evaluation Panel Assessment dated 8 August 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 BE Steel 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 BE Steel 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'.
- 4.6. I find the quantum of the undertaking and the respective financial commitments of BE Steel are proportionate to the objective gravity of the alleged contraventions by BE Steel and account for the benefits that would accrue to them through avoiding prosecution.
- 4.7. I find that BE Steel have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.8. I find that BE Steel, 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 BE Steel 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 BE Steel 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 BE Steel are committing to:
  - 4.11.1. Disseminating information about this undertaking to employees by email, on noticeboards and via a WHS meeting that will be delivered by BE Steel senior executives. The undertaking will also be available to view on the company website for all employees and relevant parties.
  - 4.11.2. Engaging an external WHS consultant to develop and implement an online Occupational Health and Safety Management System (OHSMS) consistent with *ISO 45001:2018 OHS Management Systems*.
  - 4.11.3. 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..
  - 4.11.4. Employing a suitably qualified WHS Officer (WHSO) in a part time position for a minimum of two years (minimum cost will cover up to 50 per cent of wages) to assist in building capabilities within the business and implementing the EU deliverables.

- 4.11.5. Engaging an external WHS consultant to develop, implement and deliver a health and safety, environmental and quality (HSEQ) internal training course for all company Directors, Managers and Supervisors to improve health and safety on the work site and to assist in maintaining and improving the OHSMS.
- 4.11.6. Participating in and providing funding to the University of Queensland (UQ) for students to complete an Industry Occupational Hygiene Research Project as part of the Master of Occupational Hygiene and the Dual Master of Occupational Hygiene and Master of OHS Science Programs at UQ. Following completion of the research and design of the control strategy, BE Steel have committed additional funds to implement controls or priority actions recommended from the study within the workplace.
- 4.11.7. Engaging the Queensland Branch of the Australian Institute of Health and Safety (AIHS) to conduct a Small/Medium-Sized Construction Business OHS Forum in Brisbane that will focus on key topics including presentations on Safe Work Method Statements (SWMS), shared duties and obligations, implementing the online OHSMS, lessons learnt from the hygiene research project and mental health within construction.
- 4.11.8. Donating \$5,000 to the non-profit company, This Is A Conversation Starter Foundation Ltd (TIACS) to assist in improving the quality of workers mental health in the industry and the community
- 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 BE Steel 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 BE Steel 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 BE Steel, 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**  
23/09/2022