

ENFORCEABLE UNDERTAKING

Part 11, *Work Health and Safety Act 2011*

The commitments in this undertaking are offered to the regulator by

MSF Sugar Pty Ltd (the person)

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.

MSF's Safety Management System mean the safe system of work which has been implemented by MSF Sugar.

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 Act means the *Work Health and Safety Act 2011* (Qld).

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 Work Cover 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:	MSF Sugar Pty Ltd (MSF Sugar)
Street Address:	47 Gordon Street, Gordonvale, Queensland, 4865
Mailing Address:	PO Box 21, Gordonvale, Queensland 4865
Telephone:	+61 7 4043 3333
Email Address:	msf@msfsugar.com.au
Legal Structure:	An Australian private company
Type of Business:	Sugar Milling Company
Commencement Date:	1893
Workers:	MSF Sugar Group: covers 3 mills plus South Johnstone farms 241 Wages Employees 134 Salaried Employees 227 Seasonal Employees (Typically from June to November) 37 fixed term Employees - maintenance season (Feb to June)
Products and services:	MSF Sugar's operation at the Mulgrave Sugar Mill which is located at 47 Gordon Street, Gordonvale entails the collection, transportation and processing of sugar cane to produce raw sugar, sugar by-products and electricity.
Comments:	The Mulgrave Mill is a long-established business which commenced operations in 1896. Up until 2008, Mulgrave Mill was owned and operated as a grower owned co-operative. In 2008, the Mulgrave Mill was purchased by Maryborough Sugar Factory Limited (now MSF Sugar Pty Ltd). On the Mulgrave Mill site, the physical assets are owned by Mulgrave Central Mill Company Pty Ltd, however, all employees are employed by MSF Sugar Pty Ltd. MSF Sugar Pty Ltd also employs workers at South Johnstone and Tableland Mills.

1.2 Detail the contravention

It is alleged that on 6 July 2019, MSF Sugar failed to comply with its health and safety duty under section 19(1) of the WHS Act to ensure so far as reasonably practicable the health and safety of a worker, contrary to section 32 of the WHS Act.

1.3 Detail the events surrounding the contravention

- a) On 6 July 2019, the worker was undertaking a maintenance task of clearing a blockage within a U-tube, which connects to a flash tank.
- b) It is understood that whilst undertaking this maintenance task, the worker opened a flange and upon doing so, hot sand material began to flow from the pipe onto the worker and caused scald burns to 25% of the worker's total body surface area.

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

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
07-JUL 2019	Improvement notice	12031051	Failure to ensure, so far as is reasonably practicable, the provision and maintenance of safe systems of work. A worker received serious burns when the worker opened a pipe flange under the Flash tank at the Mill.	<ul style="list-style-type: none"> MSF Sugar created safe work instructions in consultation with the employees involved in the tasks. These SWI's are (i) Flash Tank - SOP Entry-Flange Removal; and (ii) Flash Tank - SOP Spear Plate Removal. MSF Sugar installed engineered sight glasses/windows to enable visual inspection of tank contents and extra flushing points were installed onto the flash tank to provide additional means by which blockages are able to be flushed. The diameter of the drainpipe was increased and the drainpipe reorientated so as to discharge into a bunded area so it could be observed to establish whether the pipe was discharging.
07-JUL 2019	Prohibition notice	P1029562	A worker received serious burns when the worker opened a pipe flange under the Flash tank at the Mill. MSF Sugar was directed to stop the activity of allowing workers to open live lines around the Flash tank without controls in place to minimise the chance of serious injury or death.	MSF Sugar re-engineered the U-tube by creating a new design which did not contain a flange or spear assembly. By eliminating these elements of the design, the incident cannot be repeated, thus eliminating the hazard as per the hierarchy of control.

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 burns to 25% of the worker's total body surface area including burns to the worker's back, arms, right leg and face. Subsequently, the injured worker has been diagnosed with a secondary psychological condition of post-traumatic stress disorder.

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 ☐

Status: The worker received compensation benefits in accordance with Queensland workers' compensation legislation and MSF Sugar's workers' compensation policy, including rehabilitation. The worker was offered a return-to-work program, however the worker's most recent work capacity certificate has not cleared the worker to return to work. At the time of the completion of this document, the worker remains unfit for duty, according to the work capacity certificate that has been provided to the employer.

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
Commencing 7 July 2019	MSF Sugar conducted various wellbeing checks with the injured worker.	<ul style="list-style-type: none"> When the worker was in hospital in Brisbane, the worker was visited by MSF's Group Safety Manager. In August 2019, the mill manager, HR representative and company executive attended at the residence of the worker to check on the worker's condition and offer support. MSF Sugar employees contacted the worker to check on their wellbeing and offer support on various occasions via telephone.
18.09.2019	MSF Sugar provided yard maintenance of the worker's residence, including lawn mowing, whipper snipping, general garden maintenance and tree trimming.	
06.02.2020	A return-to-work program with suitable duties was proposed.	<p>On or about 6 February 2020, MSF Sugar offered the worker a return-to-work program which had been developed by a company manager in consultation with the worker. This was done with the intention of assisting the worker to return to a normal working life with the necessary modifications to cater for the worker's particular requirements, such as no working in the sun, working in air-conditioning, sedentary duties (project coordination role) which was a new role created for the worker, as distinct from requiring the worker to return to the worker's former role as a boilermaker.</p> <p>However, on or about 12 February 2020, MSF Sugar received notice that the worker would not be returning to work on the basis that the claim of the worker had changed from physical injury to psychological injury.</p>
Current	MSF proposes to continue to develop a suitable return to work program in conjunction with the worker once the worker feels they can return to work.	With the change of claim from the physical injury to secondary psychological injury, the advice from the Work Cover Qld case manager was not to directly engage with the worker in establishing a return-to-work program until the worker is ready.

1.8 Detail any current OHSMS implemented and maintained by the person

MSF Sugar has a comprehensive documented occupational health and safety management system (OHSMS). The OHSMS is implemented by dedicated safety managers who are stationed at the various sugar mills which the company operates. The OHSMS is monitored and reviewed by a Group Safety Committee, which was established in April 2020 and is comprised of mill managers, safety personnel and the company secretary. The OHSMS is approved by the MSF Sugar Board. The OHSMS

incorporates mechanisms for the formulation, development, amendment and implementation of a range of procedures, checklists and forms, including the following:

- Golden Rules Policy. The Golden Rules Policy dictates that Health and Safety at MSF Sugar is the company's first priority. It is the first consideration prior to starting work and needs to remain at the forefront of our thinking. MSF Sugar has introduced the Golden Rules to support this priority. They are a mandatory employment requirement for all employees and contractors.
- Contractor management procedures.
- Risk management processes - General risk assessment, safe work method statement (SWMS).
- Isolation and tagging procedure.
- Incident management procedure.
- Lifting operation procedure.
- Drug and alcohol procedure.
- Safe Work Method Statements and General Risk Assessments.
- Safe work permit system - Hot work permit, working near waterways permit, working at heights permit, confined space permit, excavation permit, high risk crane works permit.
- Traffic management plan.
- Induction processes - MSF Sugar generic safety induction and the Mulgrave Mill site specific induction. MSF Sugar provides yearly inductions to all employees (and inductions on a needs' basis intermittently when new staff join the company) as well as regular toolbox talks in which additional, topical and ongoing information, instruction, training and supervision is provided in relation to safety issues.
- Access to codes of practice and the AS/NZ Standards.
- Safe Work instructions for specific tasks such as the chemical cleaning of evaporators, chemical cleaning of heaters, flash tank flange removal, flash tank spear plate removal.
- toolbox talks and pre-start meetings.
- MSF Sugar is currently developing a safety management system framework that is based on *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*, and *AS/NZS ISO 45001:2018 Occupational health and safety management systems - Requirements with guidance for use and when implemented*, which is anticipated to be developed before 31 December 2021 and will provide the overarching link between the Safety Policy and the developed documents.

The framework will explain the approach to risk management and MSF Sugar's compliance with WHS requirements. Development of the framework is part of MSF Sugar's ongoing commitment to improving its documented OHSMS. MSF Sugar's OHSMS is aligned to industry specific Codes of Practice, which are expressly recognised by the WHS Act. These include the "*Sugar Industry Code of Practice 2005*", "*Sugar mill safety – A supplement to the Sugar industry Code of Practice 2005*" and "*Cane rail safety – A supplement to the Sugar Industry Code of Practice 2005*".

MSF Sugar's OHSMS, which is authorised by executive management, is founded on a commitment to safety as a first priority. The OHSMS incorporates documented processes for planning, reporting, measurement and evaluation of safety objectives and targets. The OHSMS provides for hazard identification, emergency response and health surveillance. MSF Sugar's OHSMS incorporates a document control and management reporting function which is a paid subscription service (STEMS) for the collation and dissemination of safety information and statistics within the organisation. As set out in paragraph 3.8.5, from the inception of this Enforceable Undertaking, MSF Sugar commits to taking steps to implement, as part of its existing OHSMS, new audit criterion that is consistent with the principles of *AS/NZS 4804:2001* and *AS/NZS ISO 45001:2018*.

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

MSF Sugar's OHSMS system has been audited internally and externally periodically in the past. For instance, on 9 September 2019, a gap analysis of the OHSMS against codes of practice was conducted by an external auditor. The results of previous audits, such as the gap analysis, have been used to improve and refine the overall safety management system. While it is the case that external audits have been undertaken relatively infrequently in the past, since the establishment of the Group Safety

Committee in April 2020, there has been a marked increase in MSF Sugar's internal audit function.

There are various types of internal & external (third party) audits undertaken by MSF Sugar which are audited to Australian Standards where applicable:

- Weekly Safe Act Observations (SAO's) comprising written safety observations which are typically completed by supervisors and managers. All workers are able to undertake a SAO. In any given year hundreds of SAOs are completed within the company. The information contained in SAOs comprise the observer's observations of the tasks which are being completed by another worker, the safety measures that are in place (including whether a general risk assessment or Safe Work Method Statement (SWMS) has been completed by the worker undertaking the task, in addition to observations as to whether there are any deficiencies identified with respect to safety and what is required to address any such deficiencies.
- First aid kits are audited monthly.
- Workplace inspections are conducted monthly.
- Three monthly lifting equipment audits and tagging.
- Six monthly audits are conducted on height safety equipment, portable electrical items and gas monitoring equipment.
- The confined space audit, hazard risk profile and gap analysis regarding codes of practice are reviewed biannually.
- Annual audits are conducted on ladders, safety showers, lifting devices and flashback arrestors.
- Nonspecific periodic audits are undertaken in relation to stairs, floors, noise, guarding, asbestos and signage as required.
- In addition to the above, the Group Safety Committee has undertaken regular auditing and amendment of various safety policies, which is a process that remains ongoing and forms part of the company's commitment to continuous improvement. The table below evinces various policies which have been updated since the establishment of the Committee in April 2020.

Safety Policy Name	Original Version Date	Revision Date
Golden Rules Policy	May 2018	February 2022 Replaced by Safety Essentials
Hot Work Procedure	N/A	January 2022
Hot Work Permit	May 2018	January 2022
Incident Management	Oct 2017	31 January 2022
Safe working from heights	June 2017	January 2022
Working at Heights Permit	N/A	January 2022
Excavation Procedure	N/A	January 2022
Excavation Permit	N/A	January 2022
Incident Management Procedure	N/A	ETA March 2022
Scaffolding Procedure	N/A	January 2022
Scaffold Handover Certificate	N/A	January 2022
Isolation and Tagging	September 2018	ETA April 2022
Coronavirus Policy	March 2020	13 March 2020, 16 March 2020, 1 June 2020, 17 Dec. 2020, 7 January 2022, 14 January 2022, 25 January 2022

- The Committee continues to audit each policy that comprises the company's safe system of work on an ongoing basis and therefore in the coming months the policies listed above will continue to be audited and revised, and this will also invariably be the case with regard to other safety policies that may require amendment from time to time (as identified as part of the audit process).
- MFS Sugar will report on the qualitative improvements to policies and procedures comprising its safe system of work as part of its audit function, whose auditing criteria shall be consistent with Australian Standards.

These initiatives have been developed by MSF Sugar as part of its ongoing approach to measuring the performance of the safety management system and ensuring continuous improvement. MSF Sugar is in the process of refining its OHSMS so as to incorporate an overarching safety management system framework that is consistent with *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*, and AS/NZS ISO 45001:2018 Occupational health and safety management systems - Requirements with guidance for use. The updated safety management system will incorporate auditing criteria that is consistent with the Australian Standards. The initiative will invariably result in an increase in quality of investigations and risk management processes within the organisation.

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

MSF Sugar has consulted with key internal personnel and workers in relation to the factors that have given rise to this undertaking, in addition to consulting with respect to the nature and principles of enforceable undertakings more generally, comprising consultation with:

- Group Safety Committee
- Mulgrave Mill Management team, including Mill Manager, Engineering Manager, Assistant Production Manager, Electrical Engineering Superintendent, Safety and Environment Coordinator, Management Accountant/Business Analyst.
- MSF Sugar Executive/Management Leadership team, including Interim MSF Sugar CEO and Designated Director, CFO, Company Secretary and General Counsel, Head of Production
- Site Safety Committee, including elected HSR's
- Work Execution Superintendents, Process, Milling, Steam and Power
- Shift Supervisors
- Effet Operators
- Shift Tradespersons
- Operational and maintenance workers
- Project Engineer - Mulgrave
- SRI/QUT Design Engineers

The enforceable undertaking, if granted, will be addressed by each of the committees and the requirements of the enforceable undertaking will be communicated to the workforce by means of published safety alerts, toolbox talks, as well as by other means as may be warranted depending on the nature and requirements of the enforceable undertaking.

In addition, HSR's will continue to consult with their work groups in an independent manner, as distinct from being under the supervision or direction of the company's safety managers.

The occupational health and safety management system that is to be established pursuant to AS/NZS 4804 and ISO 45001 will prescribe individual and collective responsibility for safety of all workers as well as describe the hierarchy for safety managers and safety committees to formally report up to the board.

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 contravention and events detailed in terms 1.2 and 1.3 MSF Sugar has completed the following:

1. A safe work instruction was developed for the removal of the entry flange. The safe work instruction (SWI) detailed the process for the safe removal of the entry flange so as not to expose a worker to the potential of the flange coming off the pipe and hot product engulfing the worker.
2. A safe work instruction was developed to remove the spear plate. This SWI detailed the process for the safe removal of the spear plate to allow workers to unblock the pipework behind the plate without exposing them to the potential of engulfment by hot product. The SWI (as pertains to the spear plate) is now redundant due to the modifications that are described below. The redundancy of the SWI (as it applied with respect to the now-defunct spear) was communicated to the workers who were subject to the requirements of the SWI via prestart meetings where the modification of the plant (described below) and the resultant redundancy of the SWI as it pertained to the removal of the spear was communicated to incoming work crews. The SWI, with respect to the opening the manhole to check tank levels, remains applicable and is not redundant, although the need to do so has been mitigated by the installation of sight glasses in the side of the tank.
3. The flash tank U-tube (including flange and spear) has been removed and replaced with a reengineered curved pipe. The replacement U-tube does not have a flange or spear. In the new configuration it is not expected that blockages will occur due to the increased fluid velocity in the pipework. Following reengineering and replacement of the pipework there have been no blockages to the flash tank U-tube in the 2020 crushing season and to date in the 2021 crushing season. The task of undoing the flange and removing the spear has been eliminated.
4. The flash tank has been modified to include two sight glasses in the vessel. These sight glasses allow the level within the tank to be physically checked without having to open the manhole in the flash tank. The sight glasses are 30cm x 10cm windows that are fixed onto the side of the vessel. Opening the manhole to check the level in the tank was the normal practice previously when there was a blockage.
5. Modifications to the drainpipe line were added so that in the event the pipe line from the flash tank to the clarifier needs to be emptied, a valve can be opened and the contents of the pipe can be observed to be flowing through the drain line to a secure containment vessel and subsequently returned to process.

Total amount spent on rectifications (items 1 to 5 above)

\$ 68,000

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

It is acknowledged that the regulator has alleged a contravention by MSF Sugar as detailed 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

MSF Sugar sincerely regrets that the incident occurred and resulted in injuries to one of its workers. MSF Sugar considers that this undertaking is a more appropriate response to the contravention than a court-imposed sanction as it provides MSF Sugar with an opportunity to proactively pursue initiatives that are not only beneficial to its workforce and will prevent a similar incident occurring in the future, but will also result in improved safety outcomes for the sugar industry more generally and the greater community. MSF Sugar considers that the benefits derived from the initiatives proposed as part of this undertaking far outweigh the benefits that could be obtained from 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

MSF Sugar has reengineered the flash tank U-tube. The new configuration does not have a flange and spear assembly to open and/or clean. MSF Sugar, via the actions outlined in item 1.11 above, has ensured that the activity that led to the contravention is no longer possible to perform and as a consequence the risk has been eliminated.

Shortly after the incident a SWI was published that addressed safe spear removal and clearing of blockages. It was communicated to the workers via prestart meetings. Subsequently, upon the reengineering of the flash tank U-tube, the resultant redundancy of the SWI as it pertained to the removal of the spear was communicated to incoming work crews.

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

Version1: Dated: November 2017

2.5 Acknowledgement that this undertaking may be published and publicised

- MSF Sugar acknowledges that the undertaking may be published on the OIR's website and referenced in OIR material.
- MSF Sugar 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

- MSF Sugar has the financial ability to comply with the terms of this undertaking and has provided evidence by way of a letter from MSF Sugar's Chief Financial Officer with this undertaking to support this declaration.
- In the event of impending liquidation or sale of the entity, MSF Sugar 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

MSF Sugar 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.

2.8 Statement regarding Intellectual Property Licence

MSF Sugar, 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

- It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
- Evidence to demonstrate compliance with the terms will be provided to OIR by the due date for each term.
- 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.
- 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.
- 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.
- It is acknowledged that OIR may initiate additional compliance monitoring activities, such as inspections, as considered necessary at OIR's expense.
- 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

MSF Sugar undertakes to implement each of the initiatives set out in Section 3 below.

MSF Sugar is committed to ensuring that risks to health and safety will continue to be effectively managed in accordance with the MSF Sugar risk management procedure and MSF's Safety Management System. MSF Sugar and its officers will ensure the ongoing effective management of risks to health and safety in the future conduct of its undertaking via:

- Maintaining the Group Safety Committee, which reports to the Board;
- Maintaining site-specific safety committees, which are tasked with identifying and addressing safety issues;
- Safety advisors regularly maintaining and reviewing site risk hazard profiles;
- HSR's elected by work groups are trained and form part of the site safety committee and a site HSR committee.
- All managers have safety KPIs as part of their annual performance reviews;
- Maintaining hazard registers, in which hazards are identified and controlled;
- Regularly reviewing and updating safety policies and procedures;
- Maintaining a commitment to carrying out safety inductions and training as part of MSF's Safety Management System;
- Recording and actioning safety incidents and outcomes;
- All worker position descriptions to include their WHS duties under the legislation.
- Share learnings from the specific incident with the sugar industry within Queensland and nationally.
- Ensure other mills under the control of MFS Sugar, as well as industry groups such as the Australian Sugar Milling Council, are notified and have this issue or similar issues addressed (if applicable).
- MSF Sugar's safety management system is to incorporate provision for auditing that is consistent with AS 4804 and ISO 45001.

- Participating in industry-wide Australian Sugar Milling Council and Australian Society of Sugar Cane Technologists safety conferences.

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

MSF Sugar commits to linking the promotion of the benefits provided pursuant to this undertaking to the 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

MSF Sugar commits to disseminating information about this undertaking. Dissemination will be achieved by doing the following:

- MSF Sugar's executives and board will be informed regarding the undertaking and its requirements. MSF Sugar's general counsel / company secretary will deliver a presentation regarding the enforceable undertaking at executive/board meetings. A copy of the EU, the company secretary's presentation and an extract of the minutes of the executive/board meetings will be published on the company's intranet.
- All MSF Sugar employees and contractors will be informed regarding the undertaking and its contents at toolbox talks and WHS Committee meetings as well as through designated training.
- Dissemination will occur: within 2 months after the date of this undertaking being accepted.
- Records of toolbox meetings with attendees' signatures will be provided as evidence.

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 Automation of Juice System</p> <p>The current operation of the juice system, including the flash tank operation, is a combination of manual and automatic controls. The system requires extensive manual operator intervention for the system to function, particularly on start up, shutdown, heater cleaning, and heater changeover.</p> <p>The other two mills in the MSF Sugar group have more advanced automation than Mulgrave. The operator at these mills invariably does not leave the confines of a control room for starting up and shutting down the juice system. The plan for Mulgrave automation would be to replicate as far as practicable at the Tableland Mill operation. However, there are some unique differences with the Mulgrave configuration that will require a local solution. E.g. the flash tank and the clarifier at both South Johnstone and the Tablelands is different from Mulgrave in that the flash tank is higher and the outlet is regulated by a control valve and there is no U-Tube.</p> <p>The automation plan proposed at Mulgrave would have the operator control the process from an airconditioned control room. There would be minimal interaction with the plant and therefore potential for injuries to occur.</p> <p>Operators would be consulted and trained in the new operational system. They would have direct input to programming and the HMI interface.</p>	<p>\$396,000 (which is comprised of the costings for each of the phasings described below)</p>	<p>Within 36 months of acceptance of the enforceable undertaking. MSF Sugar has estimated the timeframes for completion of each of the phases described below.</p>
<p><u>Phase 1</u></p> <p>Preliminary design, piping, and instrumentation diagram of existing infrastructure and proposed upgrade. This stage would also include extensive consultation with process operators, shift trades, shift supervisors and process engineers. Assessment of current DCS capacity and develop instrumentation list. Executive Management and Board approval.</p>	<p>\$20,000</p>	<p>6 months</p>
<p><u>Phase 2</u></p> <p>Detailed design – functional description, electrical design, DCS Module inc ESB nodes, comms module, digital and analogue IO modules, relay boards and signal cables. Functional safety requirements. Bill of materials Programming/Engineering/Graphics – Operator /</p>	<p>\$70,000</p>	<p>10 months</p>

	<ul style="list-style-type: none"> • copies of invoices; • proof of payment; • photographic evidence; and • employee training records. • copy of project audit 		
3.2.2	<p>Supervisor Training</p> <p>MSF Sugar will arrange for supervisors from all mills in the group to attend training to continue to upskill them in the areas of safety management for their teams. MSF Sugar is aware of industry leading competencies used in the mining industry that will provide essential skills and knowledge to MSF Sugar's workers beyond the minimum training required for basic competency. This includes the following training programs:</p> <ul style="list-style-type: none"> • RIIRIS301E – Apply Risk Management Processes (G1) • RIWHS301E – Conduct Safety & Health Investigations (G8) • RIICOM301E – Communicate in the workplace (G9) <p>Training will be tailored to the MSF Sugar requirements and not 'off the shelf'. This training will be delivered by an accredited Registered Training Organisation provider (Dawsons) and tailored to the sugar industry. This training is typically used in the mining industry in Queensland, MSF Sugar considers that the principles contained in this type of training can be equally/relevantly applied to its operations.</p> <p>MSF Sugar proposes to ensure this training is completed by a group of supervisors each year over a two-year period. Supervisor training will be provided across <u>all</u> MSF sites for <u>all</u> frontline supervisors.</p> <p>Executive Training</p> <p>The accredited training by Dawsons (above) will be extended to include all Senior Executives and Australian-based Board Members. There are seven Senior Executives and Australian-based Board Members who would attend the training. In addition, there are a number of dedicated due diligence courses which are provided by various safety training consultants. MSF Sugar will engage one of these organisations to provide dedicated due diligence training for all Senior Executives and Australian-based Board Members.</p>	<p>\$30,000 based on:</p> <ul style="list-style-type: none"> • \$300 per course (3 courses) for a total of 32 participants= \$28,800; and • \$200 for incidental costs during training such as stationary and food (not including wages or travel expenses). <p>\$7,000 (Dawsons) based on:</p> <ul style="list-style-type: none"> • \$900 per person (7 people) = \$6,300; and • \$700 for travel expenses for the various executives to attend. <p>\$3,000 (Safety Australia –</p>	<p>Within 12 months of acceptance of the enforceable undertaking, training is provided to an initial 12 key frontline supervisors.</p> <p>Within 24 months of acceptance of the enforceable undertaking, training will be provided to the balance of MSF Sugar frontline supervisors (approximately 20).</p> <p>Within 24 months of acceptance of the enforceable undertaking,</p>

		<p>dedicated due diligence module) based on:</p> <ul style="list-style-type: none"> • course cost of \$1,895.00 + GST (\$2,084.50); and • \$915.50 allowed for trainer's travel time from Brisbane (\$75 per hour), accommodation, meal allowance of \$66, car hire and fuel, taxis, flights and parking costs. 	
3.2.3	<p>Customised Manual Handling Training</p> <p>The Participative Ergonomics for Manual Tasks (PERforM) program is a simplified manual task risk management program that involves workplace-based teams devising manual tasks solutions for their high-risk manual tasks. It is not intended to replace existing systems or management processes but serves as a framework for identifying and controlling manual tasks risks. The PERforM program was developed by Workplace Health and Safety Queensland (WHSQ) in conjunction with the University of Queensland and the Curtin University of Technology.</p> <p>MSF Sugar currently recognises that hazardous manual handling tasks are an ongoing safety concern. Workers are currently informed via the induction process and at Toolbox Talks. hazardous manual handling has been recognised as a cause of injury to workers on all sites and currently included in the risk assessment process, where tasks are identified and control measures are implemented preventing or reducing the effect of the hazardous manual handling, these measures are continually reviewed.</p> <p>MSF addresses manual handling procedures and how to minimise the risk of musculoskeletal injuries as part of its induction programme, but does not currently have standalone structured program of the standard of PERforM.</p> <p>In order to align with the current national WHS strategy Australian Work Health and Safety Strategy 2012-2022 Safe Work Australia, MSF</p>	<p>\$26,035.00. The costs for this initiative will comprise:</p> <ul style="list-style-type: none"> • \$16,035.00 (Kinnect training program); and • \$10,000 (allocated to implementing controls identified through the training program). 	<p>Within 12 months of the acceptance of the enforceable undertaking, reviews of all workgroups conducted and customised training package developed by Kinnect.</p> <p>Within 18 months of acceptance of the enforceable undertaking, customised training delivered to all workgroups and reports provided.</p> <p>Within 30 months of acceptance of the enforceable undertaking, any controls and improvements identified in reports will be implemented or otherwise addressed.</p>

<p>Sugar will engage a third party WHS Consultant/Ergonomist (Kinnect) to deliver customised manual handling training aligned with the PErforM program. The training will be tailored to, and provided to, the following workgroups:</p> <ul style="list-style-type: none"> • Cane Rail Maintenance/Navvies; • Workshop and Apprentices; • Locomotive Drivers; and • Operators. <p>The ergonomic training session will also be provided to office-based staff.</p> <p>The third party provider will undertake the following scope of work as part of delivering the customised manual handling training:</p> <ul style="list-style-type: none"> • two day onsite review of the four workgroups at the Mulgrave Mill; • one day onsite review of the four workgroups (to ensure hazardous manual tasks are consistent between mills and all site-specific manual tasks are identified and reviewed); • development and customisation of a manual handling and ergonomic training program; • deliver one manual handling training session delivered for each workgroup at the Mulgrave Mill (four sessions in total, with up to 20 workers per session); • deliver one manual handling training session delivered for each workgroup at the South Johnstone Mill (four sessions in total, with up to 20 workers per session); • deliver one ergonomic training session at the Mulgrave Mill (with up to 20 workers per session); • deliver one ergonomic training session at the South Johnstone Mill (with up to 20 workers per session); and • summary report of attendance at training, key learnings, recommendations regarding future controls and competency assessment outcomes. <p>MSF will consider and implement (as far as practicable), or otherwise address, any control recommendations and improvements identified in the summary report within 12 months of receiving the summary report.</p> <p>Benefits of managing health and safety Overall, managing health and safety, including manual tasks risks, makes good business sense because it can:</p>		
---	--	--

	<ul style="list-style-type: none"> • increase productivity so workers can work 'smarter rather than harder' • increase quality as there may be fewer errors and subsequently less waste • increase morale as it may improve the work environment and the workers feel that their employer cares about their work conditions, health and wellbeing • increase recruitment and retention as workers may be more selective about who they work for and workplaces with good health and safety practices may be more attractive to workers • decrease injuries and absenteeism which both impact on productivity and result in increased costs (i.e. for hiring and training new staff, workers compensation premiums, and common law claims) not to mention the pain and suffering caused to the injured worker and their families. <p>Evidence</p> <p>MSF will provide documented evidence to the regulator at the completion of this deliverable including:</p> <ul style="list-style-type: none"> • employee training records; • copies of training material and summary report produced by Kinnect (to the extent permissible under the terms of the engagement with Kinnect); • reporting on the outcomes of the training program and controls implemented as a result of the program (to be provided within 12 months of reports being provided by Kinnect). 		
3.2.4	<p>Third party auditing</p> <p>In accordance with 3.8.2 and 3.8.4 herein, MSF Sugar commits to ensuring MSF Sugar's Group Safety Management System, which is the system used at all three sites, will be audited by certified third party auditors at all three sites and that the costs associated with these audits at each of the three sites will be met by MSF Sugar as part of the undertaking.</p>	\$30,000	Three separate audits in 12-month intervals over 36 months.
Total minimum cost of benefits for workers/others		\$492,035	

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

Activities	Minimum cost	Timeframe
------------	--------------	-----------

3.3.1	<p>Industry Presentation</p> <p>MSF Sugar will prepare and deliver a presentation to the Australian Sugar Milling Council Safety Conference about the incident and the modifications that were completed on the flash tank / clarifier piping following the incident, including describing the safety and operational benefits that the modifications delivered and other learnings from the incident. A commitment is made to share lessons learnt and the outcomes from the EU as part of the presentation if accepted. The presentation will also contain a component covering legal liability, mitigation of risk and legal compliance.</p> <p>Benefit</p> <p>Industry would gain Information and training regarding risk factors that may not have been identified at other locations, which will enable the industry to apply rectification measures based on MSF Sugar's experience.</p> <p>Evidence</p> <p>MSF Sugar will provide documented evidence to the regulator at the completion of these deliverables including:</p> <ul style="list-style-type: none"> • copies of presentation • proof of expenses • industry record presentation • feedback from participants 	<p>\$9,500</p> <p>The costs for the Industry Presentation will comprise:</p> <ul style="list-style-type: none"> - labour to prepare and present (\$6,000); - travel and hotel costs (\$3,500). 	<p>Within 24 months from acceptance</p>
3.3.2	<p>Industry Presentation/Training focused on logistics safety and social responsibility</p> <p>MSF Sugar's safety advisor's and company secretary will provide safety and compliance focused presentations/training to businesses within MSF Sugar's supply chain. This will focus on industry-specific safety issues, such as, firstly, legal rights and obligations for key stakeholders in the Chain of Responsibility that is established under the Heavy Vehicle National Law, and secondly and separately, with regard to the social duty and legal responsibility to reduce the risk of harm to individuals that arises in the context of forced/unskilled labour in supply chains.</p> <p>The Chain of Responsibility obligations under the Heavy Vehicle National Law are assumed by all participants in the supply chain, including canefarmers, harvesters, sugar millers, as well as the trucking companies who transport (i) harvested cane billets from farms to the mill; (ii) refined sugar from the mill to shipping terminals; and (iii) sugar mill by-products from sugar mills to various customers and locations.</p>	<p>The costs for the Industry Presentation/ Training focused on logistics safety and social responsibility will comprise labour to prepare and present (\$7,000).</p>	<p>Within 24 months from acceptance.</p> <p>One workshop will be held within each of the following mill areas; Mulgrave, Tableland and South Johnstone.</p> <p>It is estimated that up to 30 persons will be in attendance at each workshop.</p>

	<p>Benefit</p> <p>Industry would gain an appreciation of legal rights and obligations relating to supply chain safety and training regarding risk factors that may not have been identified in other forums, which will enable the industry to assess its current level of compliance, implement systems and processes as necessary and apply rectification measures, based on MSF Sugar's experience.</p> <p>Evidence</p> <p>MSF Sugar will provide documented evidence to the regulator at the completion of these deliverables including:</p> <ul style="list-style-type: none"> • copies of presentation • proof of expenses • industry record presentation • feedback from participants 		
3.3.3	<p>Sugar Mill Engineering Forum</p> <p>MSF Sugar will host the local North Queensland Institute of Sugar Mill Engineers to a professionally facilitated one day forum on the topic of Engineering Design, Build and Operator Safety.</p> <p>The purpose of the forum is to improve plant design, installation and maintenance from the point of view of worker safety. The forum will focus on the need to complete a Hazard and Operability study on any installation no matter how small in order to properly understand and manage risk.</p> <p>A commitment is made to share lessons learnt and the outcomes from the EU as part of the Forum if accepted.</p> <p>Benefit</p> <p>Workers will gain a valuable understanding into how careful thought into projects (no matter how small) can provide a much safer work environment for the operators and maintenance employees.</p> <p>Evidence</p> <p>MSF will provide documented evidence to the regulator at the completion of this deliverable including:</p> <ul style="list-style-type: none"> • copies of presentation • proof of expenses • industry record presentation. • feedback from participants 	<p>The costs for the Engineering Forum will comprise:</p> <ul style="list-style-type: none"> - labour to prepare and present (\$3,000); - consultant fees to facilitate forum (\$5,000); - venue hire (\$2,500). 	Within 24 months of acceptance.
Total minimum cost of benefits for industry		\$27,000	

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

Activities		Minimum cost	Timeframe
3.4.1	<p>Community CPR Training</p> <p>MSF Sugar will provide CPR training free of charge for up to 200 members of the local communities in the three MSF Sugar mill areas. This will be advertised locally with community groups, men's sheds, farmers and other members of the local community invited to participate in the program. The program will extend over a 36-month period. Local Registered Training Organisations will be engaged to provide this training.</p>	\$10,000 (\$50 per person)	Within 36 months from acceptance
3.4.2	<p>Donation to local Men's Shed Programs</p> <p>MSF Sugar recognises the importance of mental health in the local community. Mens Shed aims to improve the health and wellbeing of members and reduce the number of men who are at risk from preventable health issues that may emanate from isolation. MSF Sugar will undertake to make a cash donation to local branches of the Australian Men's Shed Association in MSF Sugars cane growing areas.</p> <p>Edmonton - \$2,000 Gordonvale – \$2,000 Babinda - \$2,000 Innisfail - \$2,000 Mareeba - \$2,000</p> <p>Evidence</p> <p>MSF will provide documented evidence to the regulator at the completion of this deliverable.</p> <ul style="list-style-type: none"> Record of donation to respective Men's Sheds 	\$10,000	Within 12 Months from the acceptance of the EU.
3.4.3	<p>Television Cane Rail Safety Commercial</p> <p>MSF Sugar will undertake a heightened community awareness intervention for cane rail safety during the cane harvesting seasons. This will include additional promotion on TV, or the introduction of promotion on a new medium such radio or social media (beyond MSF Sugar's normal campaign). MSF Sugar's current yearly spend is \$20,000. It is proposed to spend an additional \$5,000 per year, so that MSF Sugar's annual spend will be \$25,000 per year.</p> <p>Benefit</p> <ul style="list-style-type: none"> Safety awareness would be provided to community members and individuals. 	\$15,000	\$5,000 per year over 36 months.

	Evidence MSF will provide documented evidence to the regulator at the completion of this deliverable including copies of invoices.		
Total estimated cost of benefits for the community		\$35,000	

3.5 Agreement to pay the OIR's recoverable costs

(These amounts will be provided by OIR once a notification to proceed is provided. Amounts are only payable if the undertaking is accepted as an EU by the regulator)

3.5.1 MSF Sugar 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	\$600
Total of OIR recoverable costs	\$9,324

3.6 Minimum spend

3.6.1 MSF Sugar acknowledges the minimum spend for this undertaking will comprise of the following:

Estimated total value of	Minimum spend
Benefits to workers/others	\$492,035
Benefits to industry	\$ 27,000
Benefits to community	\$ 35,000
OIR recoverable costs	\$9,324
Estimated total minimum spend for the undertaking	\$563,359

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

3.7 A commitment to maintain an OHSMS

3.7.1 MSF Sugar will ensure that by the end of the EU audit program that its Safety Management

System satisfies the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques and AS/NZS ISO 45001:2018 Occupational health and safety management systems - Requirements with guidance for use.

- 3.7.2 MSF Sugar commits to ensuring that, after the end of the EU audit program, MSF's Safety Management System will remain compliant with the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques and AS/NZS ISO 45001:2018 Occupational health and safety management systems - Requirements with guidance for use.

3.8 A commitment to ensure the OHSMS is audited by third party auditors at all three mill sites

- 3.8.1 MSF Sugar acknowledges that the auditors selected to perform MSF's Safety Management System audits must meet the qualification requirements as set by the regulator.
- 3.8.2 MSF Sugar commits to ensuring MSF's Safety Management System will be audited by certified third party auditors.
- 3.8.3 MSF Sugar acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.8.4 MSF Sugar acknowledges that costs associated with these audits will be met by MSF Sugar as part of the undertaking.
- 3.8.5 MSF Sugar commits to ensuring the MSF's Safety Management System will be audited against criteria that meets the principles of AS/NZS ISO 45001:2018 - Occupational health and safety management systems - Requirements with guidance for use..
- 3.8.6 MSF Sugar commits to ensuring that by the end of the EU audit program that the Safety Management System will be audited against criteria that meets the principles of the AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques.

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 MSF Sugar commits to ensuring the recommendations resulting from the first MSF's Safety Management System audit, as detailed in 3.9.2 will be duly considered at the executive management level and to the extent that those recommendations are considered to be reasonably practicable will be implemented and recorded as actioned by the auditor within the second MSF's Safety Management System audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.2 MSF Sugar commits to ensuring the recommendations resulting from the second MSF's Safety Management System audit, as detailed in 3.9.2 will be duly considered at the executive management level and to the extent that those recommendations are considered to be reasonably practicable will be fully implemented and recorded as actioned by the auditor within the third MSF's Safety Management System audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.3 MSF Sugar commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.9.2 will be duly considered at the executive management level and to the extent that those recommendations are considered to be reasonably practicable will be fully implemented within six months of receiving the third MSF's Safety Management System report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.4 MSF Sugar commits to providing a detailed action plan or statutory declaration by an authorised

officer of Mulgrave Mill 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.

(COMPANY)

THE COMMON SEAL of

MSF Sugar Pty Ltd



Company name

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

Thitichaya Poontanasombat

Name of Director

Signature of Director

And

Bradley James Egerton

Name of Director/Secretary

Signature of Director/Secretary

on the 14th day of September, 2022

before me:

Signature of Witness

Trace Cargill

Name of Witness in full

Witness address

Witness address

SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the 1 Day of December 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 274020
Entity MSF Sugar Pty Ltd (MSF)
ABN 14 009 657 032
Entity Address 47 Gordon Street, Gordonvale, Queensland, 4865
Location of Incident 47 Gordon Street, Gordonvale, Queensland, 4865
Date of Incident 06 July 2019

1 History of the application

- 1.1 The Gordonvale Sugar Mill (also known as the Mulgrave Sugar Mill) (the mill) is a long-established business which commenced operations in 1896. Operations at the mill include the collection, transportation and processing of sugar cane to produce raw sugar, sugar by-products and electricity. Up until 2008, the mill was owned and operated as a grower owned co-operative. In 2008, the mill was purchased by Maryborough Sugar Factory Limited, now MSF Sugar Pty Ltd (MSF).
- 1.2 The physical assets/plant at the mill, South Johnstone Mill, Tableland Mill and the South Johnstone farms are owned by the Mulgrave Central Mill Company Pty Ltd (Mulgrave). Operations and work activities at the mills and farm are managed by MSF and all employees at the mills and farms are employed by MSF.
- 1.3 On 6 July 2019, a workplace incident occurred in the evaporator area of the mill where a worker was injured. The evaporator area takes the crushed sugar juice, processes it, treats it, balances it with lime, heats and removes the impurities, boils it down to a sugar syrup which is sent to another area of the mill for further processing
- 1.4 At the time of the incident, the worker was attempting to clear a blockage within the u-tube that sits below a flash tank. While opening a flange attached to the u-tube, there was a sudden surge and hot material began flowing out of the opening onto the worker.
- 1.5 As the flow strengthened and the heat became worse, the worker became pinned in a corner and had to force through the hot material to escape.
- 1.6 As a result, the worker sustained burns to 25 per cent of the body and a secondary psychological condition of post-traumatic stress disorder.
- 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 MSF, 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 14 December 2020, MSF 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 9 May 2022, an Evaluation Panel (panel) consisting of a senior public servant and two external, independent persons evaluated MSF's undertaking.
- 1.10 The panel were not willing to recommend acceptance of the initial undertaking and provided feedback on 24 June 2022 to MSF, with the opportunity to resubmit a revised undertaking for further evaluation.

- 1.11 On 26 August 2022, MSF submitted a revised and updated undertaking and supporting documentation that addressed and implemented the panel's feedback.
- 1.12 On 6 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 MSF, 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. WHS undertaking dated 14 September 2022.
 - 3.1.4. Complaint and Summons dated 21 July 20 and 5 July 2021.
 - 3.1.5. Statements of Facts.
 - 3.1.6. Improvement Notice – I2031051 dated 8 July 2019.
 - 3.1.7. Prohibition Notice – P1029562 dated 8 July 2019.
 - 3.1.8. OIR's Statement of compliance history dated 31 May 2021.
 - 3.1.9. Workers Compensation Information dated 27 April 2022
 - 3.1.10. ASIC Report dated 16 February 2022.
 - 3.1.11. Letter to injured worker and response dated 17 November 2021
 - 3.1.12. Financial capacity letter dated 14 September 2022.
 - 3.1.13. Third party supporting letter (term 3.2.1) dated 26 July 2022.
 - 3.1.14. Third party training quote (terms 3.2.2) dated 22 August 2022.
 - 3.1.15. Third party training quote (term 3.2.2).
 - 3.1.16. Third party training quote (term 3.2.3) dated 1 August 2022.
 - 3.1.17. Third party supporting letter (term 3.3.1) dated 28 March 2022.
 - 3.1.18. Third party supporting letter (term 3.3.2) dated 28 March 2022.
 - 3.1.19. Third party supporting letter (term 3.3.2) dated 30 March 2022.

- 3.1.20. Third party supporting letter (term 3.3.3) dated 28 March 2022.
- 3.1.21. Third party training quote (term 3.4.1) dated 25 July 2022.
- 3.1.22. Third party supporting letter (term 3.4.2) dated 8 August 2022.
- 3.1.23. EU Unit Chronology Statement dated 28 October 2022.
- 3.1.24. Initial Evaluation Panel feedback dated 24 June 2022.
- 3.1.25. Return Evaluation Panel Assessment dated 6 October 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 MSF 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 MSF 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 MSF are proportionate to the objective gravity of the alleged contraventions by MSF and account for the benefits that would accrue to them through avoiding prosecution.
- 4.7. I find that MSF have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.8. I find that MSF, 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 MSF 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 MSF 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 MSF are committing to:
 - 4.11.1. Disseminating information about the undertaking via a presentation to board members and executives and via toolbox talks to all employees and contractors. The undertaking, presentation and extracts of the minutes from the board/executive meeting will also be published on the company's intranet.
 - 4.11.2. Automating the Juice System at the mill which will reduce the requirement of operators to physically interact with plant, remove the physical interaction between workers and the juice heating and clarification process and allow operators to fully control the process from an airconditioned control room.
 - 4.11.3. Engaging a Registered Training Organisation (RTO), to deliver bespoke training in the areas of safety management to MSF supervisors, senior executives and Australian based board members.
 - 4.11.4. Engaging an external WHS Consultant, to deliver due diligence training to MSF Senior Executives and Australian based board members.

- 4.11.5. Engaging an external WHS/Ergonomist Consultant to review four work groups at the mill and then develop and deliver a customised manual handling training program that is aligned with OIR's Participative Ergonomics for Manual tasks (PERforM) Program to all three sugar mills operated by the MSF Sugar Group.
- 4.11.6. Engaging a certified third-party auditor to conduct three audits of the MSF Sugar Group's Safety Management System over the life of the undertaking. All audit reports, intended actions and actions implemented as a result of the audits, will be provided to OIR.
- 4.11.7. Preparing and delivering an industry presentation at the Australian Sugar Milling Council Safety Conference that will include lessons learnt from the incident, outcomes from the undertaking, legal liability, risk mitigation and legal compliance.
- 4.11.8. Providing safety and compliance presentations/training to businesses within MSF's supply chain that will focus on industry-specific safety issues such as legal rights and obligations for key stakeholders in the Chain of Responsibility and social duty/legal responsibility to reduce the risk of harm to individuals in the context of forced/unskilled labour in supply chains.
- 4.11.9. Hosting and facilitating a forum for the local North Queensland Institute of Sugar Mill Engineers on the topic of Engineering Design, Build and Operator Safety to improve worker safety around plant design, installation and maintenance and to share lessons learnt from the incident and outcomes from the EU.
- 4.11.10. Engaging an RTO, to provide Cardiopulmonary Resuscitation (CPR) training, free of charge to a minimum value of \$10,000, for up to 200 local community members within the areas that MSF operate their three sugar mills.
- 4.11.11. Donating \$2,000 to five local Men's Shed Programs (total \$10,000) to improve the health and wellbeing of members and reduce the number of men who are at risk from preventable health issues that may emanate from isolation.
- 4.11.12. Spending an additional \$5000 per year over three years (total \$15,000) towards a Television (TV) Cane Rail Safety Commercial to heighten community awareness and intervention for cane rail safety during the cane harvesting seasons. This may include additional promotion on TV or the introduction of promotion through radio or social media.
- 4.11.13. 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 MSF 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 The injuries sustained by the worker and the objective gravity of this matter are a serious concern which tend against the acceptance of the undertaking. However, based on the evidence, findings, in particular those at paragraph 4.11 above, and having regard to the objects of the WHS Act I am of the opinion that, on balance, the undertaking given by MSF is an appropriate enforcement option in 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 MSF, and the implementation of monitored and targeted health and safety

improvements that will deliver benefits to workers, industry and the community, that would 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

01/12/2022