

ENFORCEABLE UNDERTAKING

Part 11, Work Health and Safety Act 2011

The commitments in this undertaking are offered to the regulator by

WILMAR SUGAR PTY LTD

(the person)

ACN 081 051 792

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 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:	Wilmar Sugar Pty Ltd (Wilmar)
Street address:	Level 22, 300 Queen Street, Brisbane, Queensland 4000
Mailing address:	As above
Telephone:	(07) 4722 1988
Email address:	legal@au.wilmar-intl.com
Legal structure:	Australian proprietary company, limited by shares.
Type of business:	Sugar mill
Commencement date:	15 December 1997
Workers:	<p>Given seasonal nature of Wilmar's business, the number of workers fluctuates during the year.</p> <p>During crushing season, when the Plane Creek Mill is operational, there are approximately:</p> <ul style="list-style-type: none">• 134 full time employees, including a number of apprentices (approximately 18); and• 53 seasonal employees, including approximately 16 fixed term employees.
Products and services:	Transport and crushing of sugar cane billets and manufacture of raw sugar.
Comments:	Wilmar is Australia's leading sugar and renewable energy company that owns and operates eight sugar mills in central and northern Queensland, including the Plane Creek Mill in Sarina. Together, these sugar mills produce approximately half of Australia's raw sugar.

1.2 Detail the contravention

It is alleged that on 27 May 2017, at the cane rail line described as the Mt Christian siding, main line southern corridor cane rail section, Bruce Highway, via Koumala in the State of Queensland, Wilmar failed to comply with the health and safety duty under section 19 of the *Work Health and Safety Act 2011* (Qld) (**Act**) to ensure, so far as is reasonably practicable, the health and safety of a worker, contrary to section 32 of the Act.

1.3 Detail the events surrounding the contravention

- On 27 May 2017, the worker was performing ballast laying on the cane rail line.
- The work activity required ballast bins to be pulled or pushed by a locomotive along the area of cane rail track requiring maintenance.
- The ballast is released from the bin via three doors located at the bottom of the rear of the bin as the locomotive travels forwards.

- d) The doors are opened by turning a release wheel which in turn operates a rack and pinion gear arrangement to lift/lower the door.
- e) The door release wheel requires a steel bar to be placed into it to permit workers to apply leverage to 'crack' the door to open it.
- f) It was usual practice for workers to also utilise the steel bar to disturb the ballast through the open door to promote flow when it became impeded.
- g) While performing ballast laying, the worker observed the ballast flow from the middle door of the ballast bin had become impeded. At this time, the locomotive was travelling at walking pace.
- h) The worker stepped onto the rear of the platform of the ballast bin to reach the ballast door.
- i) The worker slipped and was dislodged from the platform. The worker's body was drawn under and the worker became caught by the following ballast bin.

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
30.05.2017	Prohibition Notice	1012152	Ballast surfacing where workers working alongside moving plant – Ballast wagons propelled by a locomotive are not in a clearly maintained line of sight of the locomotive operator	Process involving operation of spreading ballast was amended to specifically require: <ul style="list-style-type: none"> two persons in the locomotive, one being the driver and another as spotter so as to maintain a clear line of sight of ground personnel at all times; additional personnel and/or communication where a clear line of sight is not capable of being maintained e.g. for when working around curves.

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

The worker sustained injuries which included multiple crush, fracture and de-gloving injuries.

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

The worker detailed is:

- an employee/s of the entity ☒
- a self-employed worker/s ☐
- other ☐

- not applicable

Γ

Status: Wilmar is self-insured in accordance with the terms of the statutory workers' compensation insurance scheme operating in Queensland under the *Workers' Compensation and Rehabilitation Act 2003* (Qld). The injured worker received compensation benefits in accordance with the statutory scheme and Wilmar's workers' compensation policy, and continues to receive compensation benefits since ceasing employment with Wilmar.

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

Date	Description of support	Comments
27 May 2017 – 2 June 2017	Following the incident, Wilmar arranged for and funded all transport and accommodation, both local and non-local, for the worker's family to visit the worker in hospital.	
Immediately following incident	Following the incident, Wilmar offered the use of Wilmar's Employee Assistance Program to the workers' immediate family.	
From the date of incident	Wilmar held debriefings with workers after the incident and made counselling available to workers.	
Ongoing since June 2017	Wilmar funds accommodation and travel costs incurred by the worker in attending medical appointments, including for a family member accompanying the worker.	A further medical appointment is to take place later in the year and Wilmar will fund the costs associated with that appointment.
6 July 2017 – 17 August 2017	Wilmar provided funding for the worker to enter and undertake inpatient rehabilitation at the local Rehabilitation Hospital.	
August 2017	Wilmar engaged and funded a private Rehabilitation Company for Injury Management and workplace rehabilitation. Still active.	
August/September 2017	Wilmar provided in-home support to the worker, including home modifications and the provision of assistance equipment.	
Ongoing since August 2017	Wilmar has continued to provide funding for the worker to attend ongoing appointments with various treatment providers.	
Ongoing since July 2018	Wilmar provides funding for the worker to attend regular sessions with a psychologist.	The worker's last session was a number of months ago.
Ongoing since August 2018	Wilmar provides funding for personal trainers and gym memberships for the worker.	
Ongoing from date of incident	Wilmar has maintained ongoing engagement with the worker's treatment providers to regarding the status and progress of the worker's treatment and wellbeing, as well as regular dialogue with the worker.	

1.8 Detail any current OHSMS implemented and maintained by the person

Wilmar has safety as one of its core values and strives to ensure that its people return home as healthy as when they start each day. To assist Wilmar to achieve this, the business has an existing environment, health and safety framework (**EHS Framework**) in place to manage environmental

impacts and health and safety risks at all sites in the group. The EHS Framework applied by Wilmar is regularly audited and aligns with Wilmar's EHS Integrated Management System and the following standards: *ISO14001:2015 (or AS/NZS 14001:2016) Environmental Management Systems*; and *ISO45001:2018 Occupational Health and Safety Management Systems – Requirements with guidance for use*.

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

Internal and external auditing is undertaken by Wilmar as per the Wilmar Cane Products EHS Audit Management Procedure [DMSID-185-692] detailed below:

Audit/Inspection/Assessment Type	Internal/External	Minimum Audit Frequency
EHS Framework Procedures, Standards and Compliance Guides	Internal	8 times per year
National Self-Insurer OHS Management System Audit Tool (NAT Audit) based on AS4801; AS4804; AS ISO 19011	Internal and external	Every 3 years

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

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

- Senior Leadership Team, including General Counsel and Company Secretary, Executive General Manager Business Development and Strategy, and Executive General Manager North Queensland;
- ANZ EHS Team and Cane Products Leadership Team, including General Manager EHS, General Manager Operations and General Manager Cane Supply and Grower Relations;
- Plane Creek Site Management Team, including its Work Health and Safety Officers;
- Information Technology Team and Senior engineers.

Wilmar is also in the process of engaging with 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

Wilmar has, and had at the time of the incident, safe work methods for ballasting operations.

Since the incident, Wilmar has undertaken a project through its Track and Civil Best Practice Forum (BPF) to review and improve its documented ballasting procedure, work instructions and job safety and environmental analysis (JSEAs) being used across the 8 mills in Queensland (Project).

In undertaking this project through its BPF, Wilmar engaged and consulted with various regional stakeholders, including Wilmar's Civil Asset Manager, Rail Infrastructure Engineer, Cane Railway Superintendents, and various civil works personnel.

The following updated documents were published by Wilmar as a result of the project:

Procedure:

- Load and Spread Ballast Procedure (DMSID-316-20)

Work instructions:

- Ground Operated Ballast Wagons (DMSID-316-12)
- Platform Operated Ballast Wagons (DMSID-316-14)
- QR Style Ground Operated Ballast Wagons (DMSID-316-16)

JSEAs:

- Ground Operated Ballast Wagons (DMSID-316-17)
- Platform Operated Ballast Wagons (DMSID-316-17)
- QR Style Ground Operated Ballast Wagons.

Training in relation to the above updated procedures, work instructions and JSEAs was delivered to all relevant personnel at Wilmar sites, which included:

- Cane Supply Managers;
- Cane Railway Superintendents;
- Civil Works Coordinators; and
- Civil Works Gangers and Crew Members.

Wilmar also engineered and implemented various modifications to each type of ballast wagon used across its Queensland mills to prevent interaction between workers and moving or open parts of plant.

These modifications included:

- repositioning of the ballast door;
- implementing a locking mechanism to ensure ballast doors are held in open position;
- positioning operating controls for locking mechanisms outside of the wagon frame;
- introducing chain barriers to enclose the platform from which workers operate the wagon; and
- erecting signage or physical barriers prohibiting access between wagon carriages.

Total amount spent on rectifications

\$ 159,000

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

Wilmar acknowledges that the regulator alleges a contravention by Wilmar as detailed above in term 1.2.

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

Wilmar deeply regrets that the incident occurred and resulted in injuries to the worker. Wilmar considers that through the implementation of the activities listed in this WHS undertaking, it will ensure that a similar incident will be avoided at the Plane Creek Mill and other mills under Wilmar's control.

The completion of the activities proposed in this WHS undertaking will result in improved safety outcomes across Wilmar's operations as well as the wider industry and community than would be achieved with 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

Wilmar, through the actions outlined in term 1.11 above, has ensured the likelihood of a repetition of the incident has been substantially reduced to the extent reasonably practicable.

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

I have read and understood:

Guidelines for the acceptance of an enforceable undertaking

Version: 1

Dated: November 2017

2.5 Acknowledgement that this undertaking may be published and publicised

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

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

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

Wilmar 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

2.8.1 Subject to terms 2.8.2 and 2.8.3, Wilmar grants OIR a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce, publish, distribute, electronically transmit, electronically distribute, adapt and modify materials developed as a result of this undertaking.

2.8.2 The licence granted by Wilmar under term 2.8.1 does not extend to granting a licence to use third party proprietary material that may be required to use or operate the material developed by Wilmar as a result of this WHS undertaking.

2.8.3 The licence granted by Wilmar under term 2.8.1 does not extend to granting a licence to the OIR in respect of the Maintenance App or the Worker Safety App set out at terms 3.2.1 – 3.2.3.

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

Wilmar has in place comprehensive systems to address risks to health and safety at the Plane Creek Mill and across all of its Australian operations.

Wilmar's health and safety system is consistent across all sites and is continually reviewed and developed to ensure best practice. In addition to its proactive approach to health and safety systems, Wilmar demonstrates its ongoing commitment to safety through its Executive and Senior Leadership teams. Wilmar has had in place for a number of years an EHS Committee which is a formally established Board Committee of the holding company in Australia, Wilmar Sugar Australia Limited (**WSAL**). This committee has responsibility for the formal oversight of the EHS systems and implementation for the Group in Australia. The permanent members consist of the Australian based directors, the CEO for Sugar Australia, General Counsel and Company Secretary and the National and Group EHS Manager. The Committee meets 4 times per year at different sites and each meeting is 1 – 2 days in duration.

In addition to the Board Committee, Wilmar has also established a working group that reports to the Board Committee, being the EHS Leadership Network. This group is responsible for reporting and making EHS recommendations to the Board Committee and implementing decisions of the Board Committee. This Network meets face to face 4 times per year at different sites with each meeting being 2 days in duration and also meets an additional 4 times per year by teleconference/videoconference. The Network is chaired by the Executive General Manager North Queensland, a director of WSAL, and the other members include the National and Group EHS Manager, Cane Products EHS Manager, General Counsel and Company Secretary and other operational General Managers across the entire Australian and New Zealand businesses.

In addition to these EHS specific committees, Wilmar also has a number of operation specific leadership teams consisting of relevant Executive General Managers, General Managers and Managers who meet on a regular basis, mainly once per month. Health and Safety is core to these meetings. Initiatives from the EHS Leadership Network are implemented at this level as well as operation specific health and safety initiatives.

Wilmar will continue to use these systems and improve upon them by implementing the activities set out in this WHS undertaking in order to appropriately manage the risks to workers arising from the operation of the Plane Creek Mill.

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

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

Dissemination of the undertaking will be achieved by the following:

- a) Wilmar shall disseminate information about this WHS undertaking by circulating copies of the undertaking and delivering formal presentations about the activities proposed therein and the benefits of those activities to the:
 - (i) Senior Leadership Team;
 - (ii) ANZ EHS Team;
 - (iii) Cane Products Leadership Team; and
 - (iv) Plane Creek Site Management Team.
- b) Plane Creek site workers will be informed of this WHS undertaking through workplace health and safety committee meetings and presentations at toolbox meetings.

Dissemination will occur by the abovementioned means within 3 months of the date of acceptance of this WHS 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 Mills Mobility Pilot Solution – Development and implementation of Plant Maintenance Notification App (Maintenance App) and Worker Safety App</p> <p>Maintenance App</p> <ul style="list-style-type: none"> a) Wilmar has been on an automation journey for a number years, having realised the benefits for productivity and safety in being able to use technology to streamline work health and safety processes at sites. b) Wilmar will develop a Maintenance App, which will enable Wilmar to electronically capture, record and action all information required for plant maintenance notification through a mobile device that is integrated with Wilmar's existing SAP system for maintenance. c) The Maintenance App has been developed and trialled at Wilmar's Invicta Mill. The trial was successfully completed and Wilmar has now commenced an implementation phase to implement the Maintenance App throughout all Wilmar's Queensland mills and farms. <p>Delivery of benefits to workers</p> <ul style="list-style-type: none"> d) The current industry practice is to use paper-based systems to report, manage and record plant maintenance. Paper-based systems are cumbersome 	<p>No costs are being attributed to this undertaking for this initiative.</p>	<p>The Maintenance App has been developed and trialled throughout the proposal phase for this undertaking.</p> <p>The Maintenance App will be implemented at all Wilmar's Queensland mills and farms within 18 months of acceptance of this undertaking.</p> <p>The Worker Safety App will be developed and trialled within 6 months of acceptance of this undertaking.</p> <p>Upon the trial of the Worker Safety</p>

	<p>and susceptible to delay, data loss and human error, which exposes workers to risk of injury in the event that communication of plant safety issues and completion of maintenance is delayed or missed.</p> <p>e) The development and implementation of the Maintenance App will deliver safety benefits to workers by providing a more reliable and faster methodology for Wilmar to ensure plant maintenance is up-to-date and effective in order to ensure plant is safe when used. This will be achieved by:</p> <ul style="list-style-type: none"> • Ensuring that all plant on site is safe when used; • Using electronic solutions which minimise delays, prevent data loss, remove human error and thereby reduce the risk of injury to workers; • Consulting with harvesters and growers through face-to-face engagement to incorporate stakeholder insight and input into the carrying out and recording of risk assessments electronically; • Improving accuracy in the capture of plant maintenance notification information (going from paper-based work orders to electronically submitted orders which can be completed at the source of the defect – orders will no longer need to be manually entered into the SAP system after the defect has been identified); • Providing the ability to have additional notification information to assist in the creation of accurate work orders (e.g. photo of equipment and defects can be captured at the source of the defect and included in the electronic notification – paper-based work orders do not capture this information); • Improving speed in the identification and capture of plant maintenance notification information and thus the carrying out of plant maintenance (ability to instantly submit electronic work orders from the field or remote work areas – removing delay in getting paper-based work orders manually entered and actioned); • Allowing data regarding the history of plant maintenance, including the identification of plant hazards and the implementation of appropriate control measures, to be communicated to workers; • Reliably capturing and recording data to make records more readily auditable to ensure compliance with plant maintenance. <p>f) Supervisors will also be able to monitor completed/incomplete notifications, improving their ability to oversee maintenance activities and the safe use of plant and equipment.</p> <p><u>Worker Safety App</u></p> <p>a) In addition to the development of the Maintenance App, Wilmar will also develop and implement a Worker Safety App which will enable Wilmar to better safeguard workers working remotely.</p>	<p>App being successfully completed to Wilmar's satisfaction, the Worker Safety App will be implemented at all Wilmar's Queensland mills and farms within 18 months of acceptance of this undertaking.</p> <p>The OIR can be informed and updated in relation to the progress of the Apps' development and implementation by way of screen captured images of the Apps at each stage or demonstration of the respective App at each stage.</p>
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b) The Worker Safety App will be developed and trialled in the Burdekin Region. Subject to the trial being successfully completed to Wilmar's satisfaction, the Worker Safety App will be implemented throughout all Wilmar's Queensland mills and farms.

c) The current industry practice is for remote workers to report in via radio or telephone communication. The current practice can potentially lead to long delays before notification and corrective measures be acted on.

Delivery of benefits to workers

d) The development and implementation of the Worker Safety App will deliver safety benefits to workers by:

- Ensuring emergency contacts are notified of 'Worker-down' detection;
- The features may include –
 - Automatic call backs;
 - Scheduled check-ins;
 - Automatic big fall detection.

Commitments made by Wilmar

a) **Stage 1** \$280,000 – estimated costs of development of the Maintenance App and Worker Safety App and costs of the App trials for:

- site network hardware and installation for establishment of wireless networks;
- purchase of 20 tablet computers; and
- project management and labour to carry out the trials.

b) **Stage 2** \$420,000 – estimated costs of installing and establishing WIFI networks across all Wilmar's Queensland mills and farms for the implementation of the Maintenance App and Worker Safety App.

3.2.2	<p>Mills Mobility Pilot Solution – Purchase of technology hardware</p> <p>a) Wilmar will purchase approximately 177 tablet computers for the implementation and operation of the Maintenance App and Worker Safety App.</p> <p>Commitments made by Wilmar</p> <p>b) Stage 3 \$250,000 – estimated costs for:</p> <ul style="list-style-type: none"> • purchase of tablet computers; and • device configuration, management and support to implement the Apps at all Queensland mills and farms. 	No costs are being attributed to this undertaking for this initiative.	<p>Technology hardware will be purchased for the implementation and operation of the Maintenance App and Worker Safety App within 12 months of acceptance of this undertaking.</p> <p>Device configuration and support will be ongoing through the implementation phase of the Maintenance App and Worker Safety App.</p>
3.2.3	<p>Mills Mobility Pilot Solution – Training</p> <p>a) Wilmar will, as part of the implementation phase, deliver training to relevant personnel across all Wilmar's Queensland mills and farms in relation to the operation of the Maintenance App and Worker Safety App.</p> <p>Commitments made by Wilmar</p> <p>b) Stage 4 \$20,000 – estimated costs of delivering training.</p>	No costs are being attributed to this undertaking for this initiative.	<p>Training to relevant personnel will be delivered as part of the implementation of the Maintenance App and Worker Safety App.</p> <p>A copy of training materials and attendance can be provided to the OIR upon the completion of training.</p>

3.2.4	<p>'Not on my shift' Agreement</p> <ul style="list-style-type: none"> a) Wilmar currently has in place a safety health and environment (SHE) Walk Program for personnel from Site Work Coordinator level through to Senior Executives at Board level. The program involves participating in site walks, ranging from at least one site walk per quarter for Senior Executives through to daily site walks for Site Work Coordinators, which focus on identifying and understanding critical risks on site, the management and control of risks, and safety behaviours. b) In consultation with a consultant, Wilmar has developed a framework for extending the SHE Walk Program to workers below Site Work Coordinators, called the 'Not on my shift' Agreement. c) As part of this WHS Undertaking, Wilmar will complete the development of the 'Not on my shift' Agreement program, and deliver the program to all workers on Wilmar's Queensland mills. d) The 'Not on my shift' Agreement will involve delivering workshops aimed at ensuring that all workers are able to identify and understand risks on site, and specifically within their workgroup, engage in discussion with their workgroups and supervisors in relation to the management and control of those risks and make a commitment to safer work practices as a workgroup. <p>Delivery of benefits to workers</p> <p>The 'Not on my shift' Agreement will deliver benefits to workers by:</p> <ul style="list-style-type: none"> e) facilitating a safety culture whereby workers are encouraged to actively participate in risk identification, management and control, including by raising awareness of risks with fellow workers and supervisors; and f) creating ownership for safety by encouraging workers to be part of solutions and make a commitment to their workgroup that they will both engage in safe work practices identified by the workgroup and not accept unsafe behaviours at work. <p>Commitments made by Wilmar</p> <ul style="list-style-type: none"> g) \$374,000 – estimated costs to the business to deliver the 'Not on my shift Agreement' to all workers across all Wilmar's Queensland mills as follows: <ul style="list-style-type: none"> • through workshops expected to be four hours in duration (approximately 1700 workers at a cost to Wilmar of \$55 per hour for each worker); and • time for delivery of this initiative is allocated to a training cost code within the business, which is funded through a specific training budget allocation and considered a hard dollar cost to the business. 	No costs are being attributed to this undertaking for this initiative.	<p>Roll out of 'Not on my shift' Agreement to commence within 12 months of acceptance of this WHS undertaking.</p> <p>A copy of the training program can be provided to the OIR.</p>
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3.2.5	<p>Ballast Wagon Upgrade</p> <p>a) Currently, there are 38 ballast wagons in use across Wilmar's Queensland mills comprised of a variety of different control systems.</p> <p>b) The design of the current ballast wagons at the Plane Creek Mill:</p> <ul style="list-style-type: none"> • require the operator to walk beside the wagon and manually turn a wheel handle to open and close the ballast doors; and • has the impact that the line of sight between the locomotive driver and the operator is not assured. <p>c) Wilmar will discard the ballast wagons at Plane Creek Mill, refurbish and upgrade the 21 ballast wagons at six of Wilmar's other mills and redistribute the upgraded ballast wagons across those sites and Plane Creek Mill.</p> <p>d) The ballast wagon upgrade will involve fitting all wagons with the same hydraulic controls for opening ballast doors which are operated from a platform with railing protection.</p> <p>e) Wilmar will develop new work instructions and provide training to operators on the operation of the upgraded ballast wagons.</p> <p>Delivery of benefits to workers</p> <p>The ballast wagon upgrade will deliver benefit to workers by:</p> <p>h) eliminating manual handling;</p> <p>i) eliminating worker and plant interaction by eliminating the need for workers to walk beside moving ballast wagons; and</p> <p>j) ensuring a line of sight between the locomotive driver and the operator.</p>	\$355,000 (estimated costs of the refurbishment and upgrades to 21 ballast wagons)	The ballast wagon upgrade will be completed within 12 months of acceptance of this undertaking.
3.2.6	<p>Ballast Wagon Audit</p> <p>a) Upon completion of the ballast wagon upgrade, Wilmar will engage a third party to carry out an audit to ensure that the infrastructure and processes associated with the upgraded ballast wagons are adequate to ensure the safety of workers in accordance with Wilmar's OHSMS.</p>	\$10,000 (estimated costs of engaging a third party to carry out the audit over approximately 4 days)	<p>The ballast wagon audit will be carried out within 12 months of completion of the ballast wagon upgrade.</p> <p>The outcomes of the audit will be provided to the OIR within 1 month of completion of the audit.</p>
<p>Total minimum cost of benefits for workers/others \$365,000</p>			

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>Sharing of lessons learnt in relation to incident</p> <p>a) Wilmar will develop and deliver to the ASMC a presentation focused on sharing the lessons learnt as a result of the incident and operational changes that Wilmar has made following the incident, such as rectifications to ballast wagons across all Queensland mills.</p> <p>b) In delivering this presentation to industry, Wilmar will inform the ASMC that it is part of commitments given by Wilmar under this WHS undertaking.</p> <p>Delivery of benefits to industry</p> <p>c) Presentation to industry will raise awareness of hazards and risks associated with ballast wagons and the carrying out of ballasting operations, and share operational rectifications that can be implemented to control those risks.</p>	\$3,000	<p>Within 18 months of acceptance of this WHS undertaking.</p> <p>Presentation materials and attendee register will be provided to the OIR upon delivery of the presentation.</p>
3.3.2	<p>Sharing of Mills Mobility Pilot Solution technology with stakeholders through Australian Sugar Milling Council (ASMC)</p> <p>a) Wilmar will present to the ASMC regarding the development and implementation of the Mills Mobility Pilot Solution, and the learnings and outcomes for Wilmar.</p> <p>b) In delivering this presentation to industry, Wilmar will inform the ASMC that it is part of commitments given by Wilmar under this WHS undertaking.</p> <p>Delivery of benefits to industry</p> <p>c) Presentation to industry will allow businesses in the industry to gain insight into how automation and technology can improve work health and safety.</p>	\$3,000	<p>Within 18 months of acceptance of this undertaking.</p> <p>Presentation materials and attendee register will be provided to the OIR upon delivery of the presentation.</p>
Total minimum cost of benefits for industry		\$6,000	

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

Activities	Minimum cost	Timeframe
<p>3.4.1 Developing and implementing a heavy industry risk identification and management skills training program (Program) in conjunction with the Department of Education and Training (DET)</p> <p>a) Wilmar has previously worked with DET to develop and implement a Program at Proserpine State High School.</p> <p>b) Wilmar will now work with DET (Organisational Safety and Wellbeing Unit) to develop and implement a Program at Sarina State High School or, if Sarina State High School is unwilling or unable to host the Program, another school in the area.</p> <p>c) The Program will involve delivery of a 2 day course per year that includes workshops and on-site experience at the Plane Creek Mill.</p> <p>d) The number of students participating in the course will depend on how many students are following a trade stream at the school at the time, however it is anticipated that approximately 12 students will participate in the Program each year.</p> <p>e) Wilmar undertakes to provide \$15,000 in funding towards the delivery of the Program over the next 2 years.</p> <p>Delivery of benefits to the community</p> <p>f) The Program is specifically aimed at young workers, who have a unique risk profile in the workplace.</p> <p>g) The Program aims to educate students about work health and safety processes and outcomes with the aim of instilling leadership and behaviours that positively value such processes and outcomes.</p> <p>h) The Program is not intended to replace job-specific instruction and training, but provides participants with a base level of knowledge that will assist and empower young workers entering the workforce, across all industries.</p>	\$15,000	<p>Confirmation of the participating school will be provided to the OIR within 3 months of acceptance of this WHS undertaking.</p> <p>Program to be developed within 12 months of acceptance of this WHS undertaking and a copy of the Program outline provided to the OIR prior to the delivery of the program.</p> <p>Program to be delivered at Sarina State High School, or, if Sarina State High School is unwilling or unable to host the Program, another school in the area, for 2 years.</p> <p>A list of students who complete the Program will be provided to the OIR within 3 months after the students' completion of the Program.</p>
<p>3.4.2 Developing and administering a community grant scheme – First grant</p> <p>a) Wilmar undertakes to grant \$10,000 to selected community groups in Queensland for three years following acceptance of this</p>	\$10,000	<p>The first grant will be made within 12 months of acceptance of this WHS</p>

	<p>WHS Undertaking.</p> <p>b) The grant nomination and selection process will be facilitated by Wilmar to ensure that funds are specifically directed to improving work health and safety in the community.</p> <p>c) Wilmar will set up a panel of workers and senior managers to facilitate a selection process for the grant. The selection criteria to be used by the panel will be provided to the EU Unit for review prior to selection of community groups by the panel.</p>		undertaking.
3.4.3	<p>Developing and administering a community grant scheme – Second grant</p> <p>a) Wilmar undertakes to grant \$10,000 to selected community groups in Queensland for three years following acceptance of this WHS Undertaking.</p> <p>b) The grant nomination and selection process will be facilitated by Wilmar to ensure that funds are specifically directed to improving work health and safety in the community.</p> <p>c) Wilmar will set up a panel of workers and senior managers to facilitate a selection process for the grant. The selection criteria to be used by the panel will be provided to the EU Unit for review prior to selection of community groups by the panel.</p>	\$10,000	The second grant will be made within 12 months after the first grant.
3.4.4	<p>Developing and administering a community grant scheme – Third grant</p> <p>a) Wilmar undertakes to grant \$10,000 to selected community groups in Queensland for three years following acceptance of this WHS Undertaking.</p> <p>b) The grant nomination and selection process will be facilitated by Wilmar to ensure that funds are specifically directed to improving work health and safety in the community.</p> <p>c) Wilmar will set up a panel of workers and senior managers to facilitate a selection process for the grant. The selection criteria to be used by the panel will be provided to the EU Unit for review prior to selection of community groups by the panel.</p>	\$10,000	The third grant will be made within 12 months after the second grant.
Total estimated cost of benefits for the community		\$45,000	

3.5 Agreement to pay the OIR's recoverable costs

3.5.1 Wilmar 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	\$830
Total of OIR recoverable costs	\$9,554

3.6 Minimum spend

3.6.1 Wilmar acknowledges the minimum spend for this undertaking will comprise of the: *(The amounts below should correspond with total amounts from terms 3.2–3.5 above)*

Estimated total value of	Minimum spend
Benefits to workers/others	\$365,000
Benefits to industry	\$6,000
Benefits to community	\$45,000
OIR recoverable costs	\$9,554
Estimated total minimum spend for the undertaking	\$425,554

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

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

- 3.8.1 Wilmar acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.
- 3.8.2 Wilmar commits to ensuring the OHSMS will be audited by certified third party auditors.
- 3.8.3 Wilmar acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.8.4 Wilmar acknowledges that costs associated with these audits will be met by Wilmar as part of the undertaking.
- 3.8.5 Wilmar commits to ensuring the OHSMS will be audited in accordance with the Wilmar Cane Products EHS Audit Management Procedure [DMSID-185-692], against the National Self-Insurer OHS Management System Audit Tool (NAT Audit).
- 3.8.6 Wilmar acknowledges that the current OHSMS in place, as detailed in term 3.7.1 is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken at Plane Creek Mill within six months of this undertaking being accepted, and a second third party audit will be carried out at Plane Creek Mill approximately twelve months after completion of the initial third party 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 in respect of Plane Creek Mill 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 Wilmar 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 Wilmar commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.9.2 will be fully implemented within six months of receiving the second audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.3 Wilmar commits to providing a detailed action plan or statutory declaration by an authorised officer of Wilmar confirming recommendations arising from the second audit have been fully implemented, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.4 OIR may grant an extension of time for Wilmar to implement recommendations resulting from OHSMS audits where Wilmar is unable to implement those recommendations within the above timeframes.

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.

EXECUTED BY

WILMAR SUGAR PTY LTD

in accordance with section 127 of the
Corporations Act 2001 by

John Pratt

.....
Director



Signature of Director

Rees Fleming

.....
Secretary



Signature of Secretary

on the 18th day of October 2019

SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the

day of

17th / 12 / 2019



Signature of regulator

CRAIG ALLEN

Name of regulator

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

OIR EU Program Timeframes/Service Standards

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

Please note: The level of commitment shown in meeting these timeframes will be taken into consideration by the regulator when making a decision.

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

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

Work Health and Safety Act 2011

Part 11 Enforceable Undertakings

REASONS FOR DECISION

Event No. 243124
Entity Wilmar Sugar Pty Ltd (Wilmar)
ABN/ACN 44 081 051 792
Entity Address L22, 300 Queen Street, Brisbane, Queensland 4000
Location of Incident Mt Christian Siding, cane rail section, Bruce Highway, via Koumala Queensland.
Date of Incident 27 May 2017

1 History of the Application

- 1.1 The undertaking relates to a workplace incident that occurred on 27 May 2017 at Mt Christian Siding, cane rail section, Bruce Highway, via Koumala Queensland.
- 1.2 The injured worker had been employed by Wilmar as a labourer on a seasonal basis.
- 1.3 On the date of the incident, the injured worker was assisting in laying of ballast (a broken rock mixture that sits underneath train rails between sleepers) onto the cane rail tracks.
- 1.4 Ballast is transported in hoppers on the train line and pulled along by a locomotive. The ballast hoppers have doors located at the bottom of the bin that are manually opened by turning a release wheel and allowing the ballast to fall onto the tracks while the train is moving at a walking pace. The door release wheel requires a steel bar to be placed into the wheel for leverage, allowing the doors to be 'cracked' open.
- 1.5 The workers role was to partially open the doors of the hopper using a metal pole for leverage to 'crack' the door open to allow the ballast to fall onto the tracks. If the ballast gets stuck and is impeded, the worker utilises the same steel bar to disturb and assist the ballast to flow through the open doors. This is done while the train is still moving.
- 1.6 To do this, the worker stepped onto the back of the hopper while the train was moving. When the worker stepped back down from the hopper, the worker lost their footing, fell under the still moving hopper and was drawn under the wheels of the following ballast bin.
- 1.7 The worker sustained three broken bones in the left leg and degloving of the left heel that have required multiple surgeries, including having steel rods inserted into the left leg and skin grafts.
- 1.8 Following an investigation by Workplace Health and Safety Queensland (WHSQ) inspectors, prosecution action was commenced on 23 August 2018 (by complaint and summons) against Wilmar, who had a health and safety duty under 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 said WHS Act.
- 1.9 On 18 December 2018, Wilmar notified the Enforceable Undertakings (EU) Unit of their intention to give a WHS undertaking (undertaking) for this matter.
- 1.10 On 6 June 2019, a final draft of the undertaking (initial) was received from Wilmar.
- 1.11 On 11 June 2019, an Evaluation Panel (the panel) consisting of a senior public servant and two external, independent persons evaluated the final draft undertaking and were not willing to recommend acceptance of the undertaking at this time, providing suggested recommendations to Wilmar to amend the undertaking and resubmit for re-evaluation.

- 1.12 On 25 June 2019, the EU Unit provided Wilmar with evaluation feedback from the panel with the panel's suggested amendments noted.
- 1.13 On 13 September 2019, the EU Unit received a signed version of the undertaking dated 13 September 2019 with confirmation that recommendations provided by the panel had been implemented.
- 1.14 On 26 September 2019, the panel evaluated the final draft undertaking and were willing to recommend acceptance of the undertaking subject to specified amendments to the undertaking.
- 1.15 On 9 October 2019, the EU Unit provided Wilmar with evaluation feedback from the panel with the panel's suggested amendments noted.
- 1.16 On 18 October 2019, an amended and final signed version of the undertaking dated 18 October 2019 was received by the EU Unit with confirmation that the recommendations provided by the panel had been implemented.

2 Legislation and Policy

- 2.1. It is alleged that Wilmar failed to comply with section 32 of the WHS Act.
- 2.2. An undertaking was given in accordance with section 216 of the WHS Act that provides, the 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 regulator by the Governor in Council under Schedule 2, Part 1 of the WHS Act.
- 2.4. OIR provided the relevant publications outlining information regarding the EU Program and the regulator's expectations for giving an undertaking.
- 2.5. The *Guidelines for the acceptance of an enforceable undertaking* dated August 2017 is a publication provided to assist duty holders in preparing an undertaking for consideration pursuant to section 230(3) of the WHS Act.
- 2.6. In determining whether to accept the undertaking as an EU, the regulator has considered the provisions of section 217 of the WHS Act that provides the regulator must give the person seeking to give an undertaking written notice of the regulator's decision to accept or reject the undertaking and of the reasons for the decision.

3 Material and evidence considered by the regulator

- 3.1. In making a decision regarding this matter, the regulator has given consideration to the following documents.
- 3.2. *Work Health and Safety Act 2011*.
- 3.3. *Guidelines for the acceptance of an enforceable undertaking* - dated August 2017.
- 3.4. EU material published on the WHSQ website - <https://www.worksafe.qld.gov.au/laws-and-compliance/enforceable-undertakings>.
- 3.5. Complaint - General Purposes - Made, and Summons dated 23 August 2018.
- 3.6. OIR Investigation Report – dated 10 October 2017.
- 3.7. OIR's Regional Director Statement of compliance history dated 4 June 2019.
- 3.8. Statement by the OIR's Prosecution Services dated 17 January 2019.
- 3.9. Injured Worker statement dated 12 February 2019.
- 3.10. WHSQ Prohibition Notice P1012152 dated 30 May 2017.
- 3.11. Workers Compensation Report dated 15 January 2019.
- 3.12. Letter from Wilmar Sugar to OIR's Self Insurer Licensing Unit - Return to Work assistance advice received 6 February 2019.

- 3.13. Financial Capacity Statement provided by Wilmar dated 6 June 2019.
- 3.14. Initial EU Evaluation Panel Assessment - Wilmar dated 11 June 2019.
- 3.15. Initial Evaluation Feedback – Wilmar dated 25 June 2019.
- 3.16. Revised undertaking – Wilmar dated 13 September 2019.
- 3.17. Return EU Evaluation Panel Assessment - Wilmar dated 26 September 2019.
- 3.18. Panel Evaluation Feedback - Wilmar dated 26 September 2019.
- 3.19. Evaluation Panel Feedback - Wilmar dated 26 September 2019.
- 3.20. EU Unit Chronology – Wilmar dated 21 October 2019.
- 3.21. Signed final version of WHS undertaking – Wilmar dated 18 October 2019.

4 Findings on material questions of fact

- 4.1 I regard the *Guidelines for the acceptance of an enforceable undertaking* dated August 2017, publication as containing considerations which are relevant and appropriate to my decision.
- 4.2 I find the undertaking given by Wilmar 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 Wilmar's proposed undertaking.
- 4.4 I find that the procedural history relating to the proposed undertaking is set out in section 1 above.
- 4.5 I accept the objective gravity of the matter has been assessed as a 'Medium/High' level, which takes into consideration the nature and circumstance of the incident, the culpability of the person, the presence of any aggravating or mitigating factors relevant to the alleged offence and any prior prosecution action by the State against the person.
- 4.6 I find that Wilmar does not have a previous conviction under the WHS Act.
- 4.7 I find that Wilmar has been subject to a previous EU accepted by the former regulator on 30 September 2013 with respect to alleged contraventions that occurred at the Proserpine Mill before Wilmar purchased the Proserpine Mill. I find that Wilmar remained compliant with the EU throughout its term and the EU was finalised on 2 February 2018.
- 4.8 I find the quantum of the undertaking as a proportionate amount relevant to the objective gravity, considering the Financial Capacity Statement provided by Wilmar and the estimated total value of the undertaking.
- 4.9 I find the significance of the commitment in the undertaking is comparable to the capability of the person, taking into account the Financial Capacity Statement provided by Wilmar and the estimated total value of the undertaking.
- 4.10 I find that Wilmar have acknowledged the alleged contravention and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.11 I find that Wilmar, who had a health and safety duty under section 19(1) of the WHS Act failed to comply, so far as reasonably practicable, with that duty contrary to section 32 of the WHS Act.
- 4.12 I acknowledge the assurance given by Wilmar 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.
- 4.13 I find the undertaking commits the person to a standard that is higher than the recognised compliance for the activity and/or to activities over and beyond recognised compliance levels.

- 4.14 I find the undertaking would constitute tangible benefits for workers / industry and the community as Wilmar are committing to:
- 4.14.1 Maintaining their Occupational Health and Safety Management System for the term of the EU and undergoing third party auditing to ensure compliance is met.
 - 4.14.2 Developing and implementing two mobile applications (App) for plant maintenance notifications and worker safety (the Mills Mobility Pilot Solution) including the purchase of technology hardware and training staff:
 - 4.14.2.1 The Maintenance App will provide a more reliable and faster methodology to ensure plant maintenance is up to date and effective. The Maintenance App will be implemented at all of Wilmar's Mills and farms within Queensland.
 - 4.14.1.2 The Worker Safety App will enable Wilmar to better safeguard workers working remotely through ensuring emergency contacts are notified of 'worker-down' detection and potential functionality for automatic call backs, scheduled check-ins and automatic big fall detection. Subject to a successful trial this App will be implemented at all of Wilmar's Mills and farms within Queensland.
 - 4.14.3 Facilitating a safety culture and creating ownership for safety amongst workers by completing the development and delivery of the 'Not on my shift' Agreement Program through workshops to all workers at Wilmar's Queensland mills. The program is aimed at ensuring all workers can:
 - 4.14.3.1 identify and understand risks on site;
 - 4.14.3.2 engage in discussion with workgroups and supervisors regarding the management and control of those risks; and
 - 4.14.3.3 commit to safer work practices as a workgroup.
 - 4.14.4 Upgrading 21 ballast wagons across Wilmar's Queensland mills by fitting all ballast wagons with hydraulic-controls for opening ballast doors which are operated from a platform with railing protection. This will eliminate or reduce worker and plant interaction, eliminate manual handling and ensuring a line of sight between the locomotive driver and the operator. Following completion of the upgrade, a third-party audit will be conducted on the effectiveness of the infrastructure and new processes with the outcome provided to OIR for review.
 - 4.14.5 Sharing lessons learnt from the incident and operational changes made following the incident via a presentation to the Australian Sugar Milling Council (ASMC);
 - 4.14.6 Sharing the Mills Mobility Pilot Solution technology with stakeholders through the ASMC.
 - 4.14.7 Developing and implementing a heavy industry risk identification and management skills training program in conjunction with the Department of Education via a local high school to educate students about work health and safety processes and outcomes.
 - 4.14.8 Administering a community grant scheme consisting of three grants over three years to selected community groups that will be directed to improving work health and safety in the community.
- 4.15 I acknowledge that all panel members have recommended acceptance of the undertaking as the preferred enforcement outcome in the circumstances of this case.

5 Decision

- 5.1 Because the proposed undertaking meets the formal requirements of the WHS Act and policy requirements, my discretion whether to accept the undertaking under section 216 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 Wilmar is an appropriate enforcement option in regard to this case.
- 5.3 I have concluded that an EU is the preferred enforcement option to continuing the prosecution due to the opportunity to provide lasting organisational change within Wilmar and the implementation of monitored and targeted health and safety improvements, which would not be achieved by prosecution.
- 5.4 Under section 216 of the WHS Act, it is my decision to accept this undertaking as an EU and the effect of this decision is that the prosecution proceedings shall be discontinued.



Craig Allen
Deputy Director-General
Office of Industrial Relations

17/12/2019