

ENFORCEABLE UNDERTAKING

Part 11, Work Health and Safety Act 2011

The commitments in this undertaking are offered to the regulator by

USG Boral Building Products Pty Limited

(the person)

ACN 004 231 976

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* 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 an injury that has caused nervous system damage liable to lead to mental incapacity or permanent restriction of mobility or involves 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.

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*. 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:	USG Boral Building Products Pty Limited (USG Boral)
Street address:	3 Thackeray Street Camellia 2142
Mailing address:	PO Box 106, Parramatta NSW 2142
Telephone:	+61 2 9638 0571
Email address:	safety.au@usgboral.com

Legal structure:	Australian proprietary company, limited by shares
Type of business:	Manufacturer and supplier of building products
Commencement date:	24 April 1939
Workers¹:	
Full time:	661
Part time:	12
Casual:	5
Products and services:	Gypsum-based wall and ceiling products and related compounds.

Comments:

USG Boral is a leading manufacturer and supplier of wall and ceiling solutions. It has plasterboard manufacturing plants in Queensland, New South Wales and Victoria and also has a specialty plasters and jointing compounds plant in Victoria and cornice plants in Queensland and Victoria. In addition to its manufacturing plants, USG Boral operates bulk distribution centres and a national network of approx. 37 specialist trade stores (with 14 trade stores managed through its Queensland operations). USG Boral also operates a residential wall and ceiling installation service, USG Boral Linings.

1.2 Detail the Contravention

It is alleged that on 2 May 2018, at Burleigh Heads Queensland, USG Boral failed to comply with its duty pursuant to section 19(1) of the *Work Health and Safety Act 2011* to ensure, so far as reasonably practicable, the health and safety of workers whose activities in carrying out work were influenced or directed by it, while the workers were at work in the business of USG Boral and that the failure exposed an individual to a risk of death or serious injury, contrary to section 32 of the *Work Health and Safety Act 2011*.

1.3 Detail the events surrounding the Contravention

- a) On 2 May 2018 a worker suffered serious fracture injuries whilst working at a warehouse in Burleigh Heads.
- b) The warehouse consisted of shed and a large concreted courtyard. Product was stored on large racks in the courtyard.
- c) The worker was working in the courtyard, as was another worker who was driving a forklift (**forklift operator**) and using it to move product from a rack in the courtyard.
- d) Whilst the forklift was stationary facing the rack, the worker approached the forklift, climbed onto it briefly from behind, and removed a clipboard that was stored on the forklift.
- e) The worker then moved away to the rear right of the forklift and stopped, approximately four metres away from the forklift, stood still and read something from the clip board.
- f) As the worker was standing behind the forklift, the forklift operator began reversing the forklift, driving backwards and turning slightly right.
- g) The forklift struck the worker, who became lodged underneath it.

¹ As at April 2021

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
4 May 2018	Improvement	11042463	Section 19(3)(c) - Failure to maintain safe system of work arising from worker and others encroaching 3 metre clearance whilst forklift was in operation with a risk of reoccurrence due to no observed delineation where the incident occurred.	See item 1.11.

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 received fractures to the ankle, shoulder, rib cage and spinal vertebrae.

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 - an employee of a contractor to USG Boral
- not applicable

Status: The injured worker has received, and is continuing to receive, workers compensation under the *Workers' Compensation and Rehabilitation Act 2003 (Qld)*.

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
2 May 2018	Following the incident, USG Boral provided immediate first aid and arranged for emergency treatment at the local hospital.	

Immediately following the incident	USG Boral offered the use of its Employee Assistance Program to the worker (who was an employee of a third-party contractor to USG Boral)	
Immediately following the incident	USG Boral offered the use of its Employee Assistance Program to all workers (employees and contractor staff) who may have been impacted by the incident.	
Following the incident	Representatives of USG Boral management visited the injured worker in hospital and remained in contact with while consistent with the injured worker's wishes.	

1.8 Detail any current OHSMS implemented and maintained by the person

At USG Boral protecting the safety and welfare of our people is a core value. We are committed to operating our business in a manner which ensures that all of our employees, contractors, visitors and the communities in which we operate are free from harm, injury and illness as a result of our activities. To assist in meeting our zero-harm goal USG Boral has developed and maintains a structured OHSMS which we refer to as Health Safety Environment and Quality Management system (HSEQ). The HSEQ provides a framework for effective hazard identification and risk management.

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

USG Boral conducts the following regular audits:

- **Self-assessments** – conducted by local business representatives
- **Internal audits** – conducted by duly qualified persons on company operations or activities

Self-assessments are completed on a risk-based schedule using a standard template.

Internal audits are completed using a standardized audit tool and are conducted on the basis of an annual audit schedule across representative sites. Unscheduled audits are also undertaken. Findings are communicated to the National Environment Health and Safety Manager to share learnings.

The frequency and scope of audits is determined by reference to a range of factors including level of risk associated with a particular activity, process or Health Safety Environment Quality element being audited, results of previous audits, reviews of incident and other performance reports, changes to legislation and/or regulations, operational changes and other relevant information.

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

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

- The Executive leadership team, including the Senior Vice President Asia Pacific, the Sales Operations Director Australia, Manufacturing Director Australia, National Environment Health and Safety Manager, General Counsel.
- Regional Managers for all States.
- National Environment Health and Safety team.

- Safety committees

USG Boral 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

USG Boral has, and at the time of the incident had, in place safe work methods for operating forklifts, loading trucks and customer vehicles.

Following the incident, USG Boral took steps to better separate interaction between pedestrians and moving forklifts, loading trucks and customer vehicles through:

- erecting additional physical barriers in the loading/unloading area to supplement the physical barriers that were already in place prior to the incident to prevent visitors from entering the loading/unloading area;
- repainting of the vehicle loading/unloading area (exclusion zones) at the Burleigh Head site;
- installation of a motorised gate opener (UV and solar powered) which is remote activated to eliminate the need for a pedestrian to enter the loading/unloading area to open/close the secondary gate for larger vehicle access/egress.

The risk assessment of traffic management on the site was revised and updated which resulted in further controls being implemented at Burleigh Heads (see below) and changes to the associated traffic management plan.

USG Boral also ran further awareness training on the behaviours of a forklift operator and associated critical controls to keep pedestrians safe.

It also conducted safety workshops based on the Kaizen business philosophy of continuous improvement both at the Burleigh Heads site and at all trade stores nationally to identify further measures to assist in controlling the interaction between forklifts and pedestrians in restricted areas.

Kaizen is a Japanese term meaning "change for the better" or "continuous improvement." It is a Japanese business philosophy regarding the processes that continuously improve operations and involve all employees. Kaizen sees any improvement as a gradual and methodical process. Kaizens can be applied to improve any business function.

These led to further safety improvements to the Burleigh Heads and other sites as follows:

- **People:** relaunch of Safety Absolutes training using a newly developed online module.
- **Policy:** Additional traffic management measures implemented nationally (boom gates, line marking, electronic remote access gates, impact barricades and bollards).
- **Process:** National Kaizen workshops, new forklift start up processes, increased leadership walks, increased safety conversations, worker involvement in CCTV review process.
- **Plant:** installation of additional CCTVs at sites, handheld radios for better site communications.

These Kaizen workshops were run at all trade store locations so that opportunities were identified with local trade store teams. These actions were collated, resources were made available and tracked to action completion by the senior management team. Examples of improvements included: lighting; visitor signage; driver waiting areas; additional impact protected barriers, racking, PA systems, powered remote activated boom gates, powered remote activated fences, line marking and installation of additional cameras.

Total amount spent on rectifications

\$830,943

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

USG Boral acknowledges that the regulator alleges a contravention of the WHS Act by USG Boral 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

USG Boral deeply regrets that the incident occurred and resulted in injuries to the worker. USG Boral considers that through the implementation of the activities in this WHS undertaking, the safety of workers at Burleigh Heads and other trade stores will be improved.

Completion of the activities proposed in this WHS undertaking will result in improved safety outcomes across USG Boral's operations as well as benefiting the wider industry and community in a manner that would not be achieved by a Court imposed sanction.

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

USG Boral is committed to ensuring that the behaviours, activities and other factors that caused or led to the alleged contravention will not reoccur. This commitment is demonstrated through the actions USG Boral has already taken, as outlined in term 1.11 above, and the further actions specified in this undertaking, to substantially reduce, to the extent reasonably practicable, the likelihood of a similar incident happening.

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

I have read and understood:

Guidelines for the acceptance of an enforceable undertaking

Version: PN11783 Version 1 Dated: November 2017

2.5 Acknowledgement that this undertaking may be published and publicised

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

2.5.2 USG Boral 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 USG Boral has the financial ability to comply with the terms of this undertaking and has provided evidence by way of a letter from USG Boral's Finance Director with this undertaking to support this declaration.

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

USG Boral has no commercial or other relations 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 USG Boral 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.

2.8.2 The licence granted by USG Boral 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 USG Boral as a result of this undertaking.

2.8.3 The licence granted by USG Boral under term 2.8.1 does not extend to granting a licence to OIR in respect of the AI system solution (referred to in clause 3.2.5) or any material developed in collaboration with the Queensland TAFE (as referred to in clause 3.3.1).

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

USG Boral and its officers are committed to meeting their obligations under the WHS Act and ensuring, so far as is reasonably practicable, that risks to health and safety are managed through USG Boral's OHSMS.

USG Boral has in place comprehensive systems to address risk to health and safety across all of its Australian operations. USG Boral is committed to providing a safe work environment and strives for Zero Harm. The incident at Burleigh Heads led to an ongoing continuous improvement program with substantial improvements having been made already. A number of these improvements have been outlined above in term 1.11 above.

USG Boral and its officers will ensure the ongoing effective management of risks to health and safety in the future conduct of its business through:

1. **Traffic Management Plan:** A comprehensive traffic management plan, reviewed and updated following the incident.
2. **Induction and Training:**
 - a. A comprehensive induction and training in the traffic management plan.
 - b. Training for operators on safe operation of a forklift.
 - c. Training for managers of forklift operators on effective communication.
 - d. Other training by way of toolbox talks and site meetings.
 - e. CONNECT leadership development program for managers.
3. **Physical measures:**
 - a. Physical barriers, including fixed steel pedestrian barrier to prevent pedestrians from entering the warehouse inadvertently and moveable barriers to separate the visitor carpark from the warehouse loading/unloading area.
 - b. Painted concrete to assist with visual management of the restricted area.
4. **Safety measures on mobile plant:** Various safety installations on mobile plant, including forklift, to help prevent forklift operators from physically interacting with pedestrians (e.g. reversing buzzer, green or orange flashing lighting for pedestrians when hand brake is engaged, fish eye mirrors, flashing cab-mounted light, blue forward and rear projected spot lights to assist pedestrians with the identification of moving forklifts behind blind corners.
5. **Licensing Requirements:** Mobile plant licensing requirements for operators.
6. **Routine Safety Audits:** Routine auditing of sites as well as activity monitoring of site actions against planned activities which are linked to Health Safety Environment Quality system

requirements.

7. **CCTV reviews for safety and governance** – The monitoring of activities and safety behaviours through the review of CCTV footage, which has become a core component of USG Boral's system of governance. These are tracked at the senior level.
8. Other improvements outlined in term 1.11 above.

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

USG Boral acknowledges that the proposed activities in this WHS undertaking may benefit USG Boral and commits to linking those benefits to this 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 will be achieved by circulating copies of the undertaking and delivering formal presentations about the activities proposed and the benefits of those activities to:

- The Executive leadership team.
- Regional Managers for all States.
- National Environment Health and Safety team.
- Safety committees

USG Boral will also develop an employee awareness campaign relating to the undertaking. This will be undertaken through standard communications channels such as the internal intranet site, bulletin board posters, toolbox talks and the internal newsletter.

Dissemination will occur 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</p>	<p>People:</p> <p>Develop and rollout in trade stores managed through its Queensland operations, a SafeStart program tailored for USG Boral trade stores that focuses on broader behavioural changes.</p> <p>SafeStart program</p> <ul style="list-style-type: none"> • SafeSTART is a safety behaviour program developed and facilitated by external providers targeting inattentiveness. • With more than 90% of incidents involving human error, SafeSTART provides a framework for all levels of the organisation to learn the states of mind (fatigue, rushing, frustration and complacency) which are associated with increasing human error risk due to inattentiveness. • The program will involve a facilitated online course consisting of 3 modules. These are held two weeks apart with participants required to practice techniques and reinforce learned behaviors. • All Queensland managed trade store employees (currently 74 staff across 14 trade stores) will be encouraged to participate in the program, with a KPI of at least 90% participation. • 12 months after completion of the Queensland roll out, USG Boral will assess the effectiveness of the program having regard to training content, the method of delivery, costs and evidence of behavioural changes through reduction in reported incident rates. <p>This will allow the program to be refined, and if considered sufficiently effective, progressive rollout to all staff in trade stores in other States.</p> <p>Benefits</p> <ul style="list-style-type: none"> • SafeSTART will deliver safety benefits to staff by providing each person with tools and techniques to practice the identification of these states of mind and train them, over time, to respond instinctively by building healthier and safer habits. • Sites and course participants will also receive communication material, passports and workbooks <p>Evidence</p> <p>USG Boral will provide the following at the completion of this deliverable:</p> <ul style="list-style-type: none"> • Copies of training materials • Written confirmation of the number of people who have completed the training • Copies of invoices from external suppliers • Report assessing effectiveness of program 	<p>\$60,000</p> <p>Costs will include:</p> <p>Development of training program by an external training expert</p> <p>Online delivery by external training facilitator to the approx. 74 staff across 14 trade stores managed through Queensland operations</p> <p>Provision of training materials</p> <p>Technology upgrades to sites to enable online training delivery (e.g. equipping the sites with technology to facilitate the online learning experience (e.g. cameras etc.)</p> <p>Queensland rollout to be completed 12 months from acceptance</p> <p>Effectiveness to be assessed 12 months after rollout is completed.</p>

3.2.2	<p>Policy:</p> <p>Independent assessment of the effectiveness of risk controls</p> <p>WHS consultant to review and assess the effectiveness of traffic management risk controls (including rectifications to the workplace and work practices referred to in paragraph 1.11),</p> <p>The review will be conducted in respect of:</p> <ul style="list-style-type: none"> • Burleigh Heads site • 2 additional representative trade stores in Queensland where rectifications were undertaken • new bulk distribution facility in Queensland. <p>In addition to upgrading existing trade stores following the incident, USG Boral has modified its business operations to better separate interaction between pedestrians and moving vehicles by moving some of the activities associated with 'make up' of customer orders from trade stores to purpose built bulk distribution facilities, USG Boral has had regard to the output of the various Kaizens conducted as referred to in paragraph 1.11 in designing the traffic management plans for new distribution sites</p> <p>For each site, the assessment will review:</p> <ul style="list-style-type: none"> • The steps taken to separate interaction between pedestrians and moving forklifts, loading trucks and customer vehicles, highlighting the traffic management measures and controls implemented on site • The effectiveness of those engineering and other controls • Identify gaps in implementation of controls • Identify any additional opportunities to reduce risk and recommend action to do so. <p><u>Benefits</u></p> <p>The report will deliver safety benefits by:</p> <ul style="list-style-type: none"> • Enabling USG Boral management to ensure existing controls are effective • Enabling identification of any new risks or control gaps <p><u>Evidence</u></p> <p>USG Boral will provide the following information in relation to this deliverable:</p> <ul style="list-style-type: none"> • Copy of report within 1 month of receipt • Copies of auditor invoice • Copies of intended action reports 	<p>\$100,000</p> <p>Costs include the costs of WHS consultant/auditor under Term 3.2.2 and Term 3.2.3 and costs of actioning any recommendations to close gaps or non-compliance identified at all impacted sites</p>	<p>To be conducted within 6 months from acceptance of this undertaking</p>
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<p>3.2.3</p>	<p>Policy:</p> <p>Third party audit of USG Boral's OHSMS</p> <p>Year 1:</p> <ol style="list-style-type: none"> 1. Independent verification that the USG Boral Australia Management System complies with all relevant WHS legal requirements. 2. Full management system audits and workplace inspection of 2 x trade stores in the Sydney metropolitan area. <p>Note: The trade store audits will include assessment of the effectiveness of traffic management risk controls (including any rectification activities referred to in paragraph 1.11 undertaken at that site addressing the matters set out in paragraph 3.2.2).</p> <p>Year 2:</p> <p>Full management system audit and workplace inspection of Pinkenba Queensland manufacturing site and 2x Queensland trade stores.</p> <p>Note 1: The trade store audits will include assessment of the effectiveness of traffic management risk controls (including any rectification activities referred to in paragraph 1.11 undertaken at that site addressing the matters set out in paragraph 3.2.2).</p> <p>Note 2: The Year 2 audit will also include the auditor revisiting the sites assessed under 3.2.2 and confirming that recommendations have been actioned,</p> <p>Year 3:</p> <p>Full management system audit and workplace inspection of Camelia NSW manufacturing site and 2x VIC trade stores.</p> <p>Note1: The trade store audits will include assessment of the effectiveness of traffic management risk controls (including any rectification activities referred to in paragraph 1.11 undertaken at that site addressing the matters set out in paragraph 3.2.2).</p> <p>Note 2: The Year 3 audit will also include the auditor revisiting the sites assessed in the Year 2 audit and confirming that recommendations made have been actioned,</p> <p>Audits will be conducted and actioned in accordance with clauses 3.8 to 3.9 of this undertaking.</p>	<p>Included in Term 3.2.2</p>	<p>Year 1 audit to be conducted within 6 months from acceptance of this undertaking</p> <p>Year 2 audit to be conducted within 18 months from acceptance of this undertaking</p> <p>Year 3 audit to be conducted within 30 months from acceptance of this undertaking</p>
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Benefits

Independent audits will deliver safety benefits by:

- Enabling USG Boral management to ensure existing controls are effective
- Enabling identification of any new risks or control gaps

Evidence

USG Boral will provide the following information in relation to this deliverable:

- Copy of each audit report, within 1 month of receipt
- Copies of auditor's invoices
- Copies of intended action reports

<p>3.2.4</p>	<p>Process:</p> <p>Development and rollout of a CCTV review program for USG Boral's trade store network in Queensland</p> <ul style="list-style-type: none"> • Currently local management randomly select CCTV video footage to review current practices with members of staff. This enables identification of instances where behaviours have not met acceptable standards and identification of additional hazards within the facility. • This program will be further developed by focusing each review on a specific topic. Teams will look for specific behaviours which have led to incidents. Video footage will be used to contextualise the unsafe human behaviours. Focusing on specific topics allows problem-based learning to occur. Care will be taken to ensure that reviews focus on addressing learnings at an organizational level rather than individuals involved to minimize the potential for unintentionally creating a blame culture. • For example, if the focus area was forklift driver behaviour, the types of practices that might be reviewed include safe exiting from forklifts - three points of contact and exiting backwards, safe tine height when traveling, forklift pack position when turning, the checking of blind spots prior to reversing, safe manual handling techniques, safe use of dedicated walkways etc. <p>Benefits</p> <p>The CCTV review program delivers safety benefits through using an objective technological review tool to support the workforce in identifying when behaviours contribute to safety issues, thereby engaging them to change behaviour and reduce human error.</p> <p>Evidence</p> <p>USG Boral will provide the following information in relation to this deliverable:</p> <ul style="list-style-type: none"> • Presentation materials giving instructions on conducting the reviews and associated supporting materials 	<p>While no costs have been attributed to the development and rollout of the program for the purposes of the undertaking, some costs may arise from implementing suggested improvements that are identified.</p>	<p>12 months from acceptance</p>
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3.2.6	<p>Plant:</p> <p>Roll out new equipment to national trade store network to reduce manual handling and separate pedestrians and forklifts.</p> <ul style="list-style-type: none"> • Delivery of products to customers at trade stores necessitates removing the product from the warehouse and loading into the customer's vehicle. This is a predominately manual task. • A risk assessment has identified that items such as board trolleys and bucket lifters would be suitable controls to reduce the risk of strains associated with vehicle loading. • This initiative involves the rollout across the national trade store network of new equipment (lifters and trolleys). <p>Benefits</p> <p>Roll out of new equipment will deliver safety benefits by assisting with reducing musculoskeletal disease related injuries as well as providing a traffic management benefit. Separating pedestrians and forklifts i.e. keeping members of the public and their vehicles outside of the working area in which forklifts operate.</p> <p>Evidence</p> <p>USG Boral will provide the following information in relation to this deliverable</p> <ul style="list-style-type: none"> • Copies of equipment purchase invoices. 	<p>Compound trolley (\$1700 x 26)</p> <p>Board Trolley (\$280 x 36)</p> <p>Total \$54,280</p>	6 months from acceptance
Total minimum cost of benefits for workers/others		\$489,330	

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

Activities	Minimum cost	Timeframe
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3.3.1	<p>Partner with TAFE Queensland to promote and enhance safety in the workplace.</p> <ul style="list-style-type: none"> • USG Boral will partner with TAFE Queensland to develop and deliver a non-immersive game style virtual reality safety training program with potential application across a variety of platforms and formats. The game will be informed through the construct of a case study that reflects the incident within a broader multi-variate environment. • The engagement with TAFE Queensland is proposed to be a work integrated learning project for gaming students, with the selected media output being integrated into learning environments and delivered to trade and transport students. • It is expected that by taking a work integrated learning approach, gaming students will be provided a brief on the context and goals of the game. Supported by their educators and in line with their training plan, students will be able to apply their skills to a real-world context. This will raise their personal awareness of safety whilst also giving them an environment to think about how to communicate safety to others. • The considered approach is a competitive pitch opportunity that simulates the gaming work environment, enabling students to develop and pitch their ideas. Through the pitch, it is anticipated that a wide variety of thinking will be revealed on how to think about safety awareness which is valuable in and of itself. The winning team will be identified using transparent assessment criteria who will then continue to develop a non-immersive game as a key contribution to their final assessment in their training. • It is expected that the resulting gaming output will be able to be utilized by TAFE Queensland and integrated into aspects of training in both transport and logistics training programs and their relevant school-based training programs offered through VET in School delivered for Years 10,11 and 12. Integration with other training programs such as manufacturing, are also being considered. 	\$20,000	24 months from acceptance
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	<ul style="list-style-type: none"> • As a preface to the game, a pre-recorded video introduction and testimony would be provided by representatives of USG Boral. This will provide a differentiated theme and further ground the program in a real world application that emphasizes the ongoing need for safety awareness and education. • Further opportunities being considered to amplify the message include application through safety week and the use of social media with unique and relevant hashtags to encourage sharing and safety conversations. • The program would also be made available to participants in the manufacturing and warehouse industries for use within their workforce. <p><u>Benefits to Community</u></p> <p>Involving gaming students in developing the program will raise awareness of safety risks in the workplace and the role each individual has in creating a safe workplace. As the students might work in any industry, the safety consciousness created will be across industries. This also allows them to further refine this application for safety-based training in other industries.</p> <p>It is envisaged elements of the safety training game would be incorporated into a TAFE Queensland statewide safety awareness program. Safety First is a key value of TAFE Queensland, and a safety training game to support awareness across TAFE Queensland. The game would be incorporated at staff induction and student orientation.</p> <p>The school-based program exposure provides the ability to influence students pursuing a career in the industry with regard to a safety mindset long before they step foot onto a site, better preparing them with the right safety focus. In addition, with many employers implementing safe work practices and focus, this exposure will benefit the school students when progressing into their careers.</p> <p>Trade and transport students will benefit from a new form of training that is more engaging and be introduced to the importance of safety at an early stage in their working life. By creating a mindset of safety awareness, students will be able to use this as a transferrable skill.</p>		
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	<p>Benefits to Industry</p> <p>Maintaining safe interaction between pedestrians and forklifts is a critical issue for participants in manufacturing and warehousing environments. Providing a new form of training that is more engaging and, allows more frequent assessment, will raise safety awareness. The media will enable broad sharing and integration into a wide range of training platforms, accelerated by the content upgrade needed for the revision to the WH&S training package. The partnership with TAFE Queensland will also enable reach to a large number of students.</p> <p>Evidence</p> <ul style="list-style-type: none"> • TAFE letter endorsing the collaboration in line with our shared values of safety and collaboration. • Screen shots of the program. • Screen shots of the social media campaign • Data on number of students involved. 		
<p>3.3.2</p>	<p>Industry presentation – Sharing lessons learned</p> <p>USG Boral will present at a Gypsum Board Manufacturing Association meeting to share with industry the lessons learned arising out of the incident and promote the benefits and outcomes of this undertaking, including the outcomes and benefits of the CCTV review program and the virtual reality training program.</p> <p>Prior to finalization, a copy of the presentation will be provided to the OIR.</p> <p>Benefits to industry</p> <p>Safe forklift operation is an issue across the gypsum board manufacturing industry. This presentation will generate both awareness of safety risks and new ways of raising forklift safety across the industry.</p> <p>Evidence</p> <p>Attendance lists or presentation programmes</p> <p>Invoices for travel, accommodation meals, and other external costs.</p>	<p>No costs attributed to these presentations for the purposes of the undertaking.</p>	<p>Within 24 months of the date of acceptance of this undertaking.</p> <p>Prior to finalization, a copy of the presentation will be provided to the OIR.</p>
<p>Total estimated cost of benefits for the community and industry \$20,000</p>			

3.4 Agreement to pay the OIR’s recoverable costs

3.4.1 USG Boral 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	\$583
Total of OIR recoverable costs	\$9,307

3.5 Minimum spend

3.5.1 USG Boral acknowledges the minimum spend for this undertaking will comprise of the:

Estimated total value of	Minimum spend
Benefits to workers/others	\$489,330
Benefits to industry and community	\$20,000
OIR recoverable costs	\$9,307
Estimated total minimum spend for the undertaking	\$518,637

3.5.2 USG Boral 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.

3.6 A commitment to maintain an OHSMS

3.6.1 USG Boral 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.

3.6.2 USG Boral 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*.

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

3.7.1 USG Boral acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.

3.7.2 USG Boral commits to ensuring the OHSMS will be audited by certified third party auditors.

3.7.3 USG Boral acknowledges that details of the auditors’ qualifications will be provided with audit reports submitted to OIR.

3.7.4 USG Boral acknowledges that costs associated with these audits will be met by USG Boral as part of the undertaking.

3.7.5 USG Boral commits to ensuring the OHSMS will be audited against criteria that meets the principles of *AS/NZS 4801:2001 Occupational Health and Safety Management Systems – Specification with guidance for use, to verify the OHSMS meets the principles of AS/NZS 4804:2001 Occupational health and safety management systems – General guidelines on principles, systems and*

supporting techniques.

- 3.7.6 USG Boral acknowledges that the current OHSMS in place, as detailed in term 3.6.1 is acceptable to the regulator and commits to ensuring that an initial third-party audit will be undertaken within six months of this undertaking being accepted.
- 3.7.7 USG Boral commits to ensuring two further third-party audits will be undertaken as detailed in term 3.2.3.

3.8 A commitment to provide a copy of each finalised OHSMS audit report to OIR

- 3.8.1 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.
- 3.8.2 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.

3.9 A commitment to implement the recommendations from third party audits

- 3.9.1 USG Boral commits to ensuring the recommendations resulting from the independent assessment of the effectiveness of traffic management risk controls conducted as detailed in 3.2.2 will be fully implemented, unless OIR grants an exemption due to the actions being unreasonable.
- 3.9.2 USG Boral commits to ensuring the recommendations resulting from the first OHSMS audit, as detailed in 3.2.3 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.
- 3.9.3 USG Boral commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.2.3 will be fully implemented and recorded as actioned by the auditor within the third OHSMS audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.9.4 USG Boral commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.2.3 will be fully implemented within six months of receiving the third OHSMS report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.9.5 USG Boral commits to providing a detailed action plan or statutory declaration by an authorised officer of USG Boral 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.

Executed by

USG Boral Building Products Pty Limited

In accordance with section 127(1) of the
Corporations Act 2001 in the presence of

Tony Charnock

.....
Name of Director



.....
Signature of Director

Trevor Fox

.....
Name of Secretary



.....
Signature of Secretary

on the 5th day of August, 2021

SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the 9th day of September, 2021.



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*.

Work Health and Safety Act 2011

Part 11 Enforceable Undertakings

REASONS FOR DECISION

Event No.	256511
Entity	USG Boral Building Products Pty Limited (USG Boral)
ACN	004 231 976
Entity Address	3 Thackeray Street, Camellia, New South Wales, 2141
Location of Incident	8 Junction Road, Burleigh Heads, Queensland, 4220
Date of Incident	2 May 2018

1 History of the application

- 1.1 The undertaking relates to a workplace incident on 2 May 2018 at a USG Boral warehouse located in Burleigh Heads, Queensland where a worker was injured.
- 1.2 The injured worker (worker) was employed by a third-party transport company that had an agreement with USG boral to provide labour and delivery services at the warehouse.
- 1.3 On the 2 May 2018, the worker was working in the warehouse courtyard, as was another worker who was operating a forklift (forklift operator) to move product from a rack in the courtyard.
- 1.4 While the forklift was stationery and facing the rack, the worker approached and climbed up the rear of the forklift and removed a clipboard that was stored on the forklift.
- 1.5 The worker then moved away to the rear right of the forklift, stopped approximately four metres facing away from the forklift, stood still and read something from the clipboard.
- 1.6 As the forklift operator began reversing the forklift, driving backwards and turning slightly right, the forklift struck the worker who became lodged underneath.
- 1.7 As a result, the worker sustained fractures to the ankle, shoulder, rib cage and spine.
- 1.8 Following an investigation by Workplace Health and Safety Queensland (WHSQ) inspectors, prosecution action was commenced by the Work Health and Safety Prosecutor on 5 May 2020 (by complaint and summons) against USG Boral 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 4 September 2020, USG Boral notified the Office of Industrial Relations (OIR) Enforceable Undertakings (EU) Unit of their intention to give a WHS undertaking (undertaking) for this matter.
- 1.10 On 4 May 2021, a final draft of the undertaking (initial) was received from USG Boral.
- 1.11 On 18 May 2021, an Evaluation Panel (the panel) consisting of a senior public servant and two external, independent persons completed an evaluation of the undertaking and supporting documentation, noting they were not willing to recommend acceptance of the undertaking at this time.
- 1.12 On 11 June 2021, the EU Unit provided USG Boral with the panel's feedback and an opportunity for USG Boral to resubmit a revised undertaking for re-evaluation.
- 1.13 On 6 August 2021, the EU Unit received a revised undertaking from USG Boral that implemented the panel's feedback.

- 1.14 On 26 August 2021, the panel completed an evaluation of the revised undertaking. 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 USG Boral failed to comply with section 32 of the WHS Act.
- 2.2. Pursuant to section 216 of the WHS Act the WHS regulator may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the WHS Act.
- 2.3. The Deputy Director-General (DDG), OIR has been appointed as the WHS regulator by the Governor in Council under Schedule 2, Part 1 of the WHS Act.
- 2.4. OIR provided USG Boral with the relevant publications outlining information regarding the OIR EU Program and the WHS regulator's expectations for giving an undertaking.
- 2.5. Pursuant to section 216(4) of the WHS Act, the WHS regulator must issue, and publish on the WHS regulator's website, general guidelines in relation to the acceptance of WHS undertakings under the WHS Act.
- 2.6. Section 217 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. Cover letter to EU Evaluation Panel dated 4 August 2021
 - 3.1.4. Revised WHS undertaking dated 5 August 2021
 - 3.1.5. Complaint - General Purposes - Made, and Summons dated 5 May 2020.
 - 3.1.6. OIR Improvement Notice- I1042463 dated 4 May 2018
 - 3.1.7. Statement of Facts and Particulars – Guilfoyle v USG Boral
 - 3.1.8. OIR's Statement of compliance history dated 8 September 2020.
 - 3.1.9. OIR letter to injured worker dated 8 September 2020
 - 3.1.10. Workers Compensation Report dated 30 September 2020.
 - 3.1.11. USG Boral Financial Statement dated 30 April 2021.
 - 3.1.12. Letter of support- Tafe Queensland dated 26 April 2021.
 - 3.1.13. EU Initial WHS undertaking dated 4 May 2021.
 - 3.1.14. EU Initial Evaluation Panel Assessment 18 May 2021.
 - 3.1.15. EU Initial Evaluation Panel Feedback dated 11 June 2021.
 - 3.1.16. Return Evaluation Panel Assessment dated 12 August 2021.
 - 3.1.17. EU Unit Chronology dated 11 August 2021.

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 USG Boral 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 USG Boral 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 at the level of 'Medium', which takes into consideration the circumstances of the incident and the presence of any aggravating or mitigating factors relevant to the alleged offence.
- 4.6 I find the quantum of the undertaking as a proportionate amount relevant to the objective gravity, considering the Financial Statement provided by USG Boral and the estimated total value of the undertaking.
- 4.7 I find the significance of the commitment in the undertaking is comparable to the capability of the person, taking into account the Financial Statement provided by USG Boral and the estimated total value of the undertaking.
- 4.8 I find that USG Boral have acknowledged the alleged contravention and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.9 I find that USG Boral, 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.
- 4.10 I acknowledge the assurance given by USG Boral 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.
- 4.11 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.
- 4.12 I find the undertaking would constitute tangible benefits for workers, industry and the community as USG Boral are committing to:
 - 4.12.1 Disseminating information about this undertaking to workers, and other relevant parties.
 - 4.12.2 Maintaining the USG Boral Occupational Health and Safety Management System for the term of the EU and undergoing accredited third-party auditing to ensure compliance is met.
 - 4.12.3 Developing and implementing a safety behaviour program (SafeStart Program) that focuses on educating all levels of the organisation on factors associated with increasing human error risk due to inattentiveness. The SafeStart Program will be implemented in all Queensland USG Boral trade stores. If effective, the program will be progressively rolled out to staff in trade stores in other States.
 - 4.12.4 Engaging a consultant to review and complete an assessment on the effectiveness of traffic management risk controls implemented following the incident.
 - 4.12.5 Developing and implementing a closed-circuit television (CCTV) review program for all USG Boral trade stores network in Queensland.
 - 4.12.6 Implementing an artificial intelligence (AI) solution to monitor dynamic exclusion zones in real time around forklifts at USG Boral Queensland trade stores.
 - 4.12.7 Purchasing and implementing new equipment throughout USG Boral's national trade store network to reduce manual handling and separate forklifts from pedestrians.

- 4.12.8 Partnering with Tafe Queensland to promote and enhance safety in the workplace through the development of a non-immersive game style virtual reality safety training program.
- 4.12.9 Presenting on the lessons learnt from the incident and the outcomes of this undertaking at a Gypsum Board Manufacturing Association meeting.
- 4.13 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 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 USG Boral 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 USG Boral is an appropriate enforcement option in regard to this case.
- 5.3 I have concluded that an EU is the preferred enforcement option, rather than continuing the prosecution, due to the opportunity to provide lasting organisational change within USG Boral and the implementation of monitored and targeted health and safety improvements that will deliver benefits to workers, industry and the community, which may not be achieved by prosecution.
- 5.4 Under section 216 of the WHS Act, it is my decision to accept this undertaking as an EU.



Craig Allen
Deputy Director-General
Office of Industrial Relations

09/09/2021