

# **ENFORCEABLE UNDERTAKING**

*Part 11, Work Health and Safety Act 2011*

The commitments in this undertaking are offered to the regulator by

**Premier Ducts (Qld) Pty Ltd**

**ABN 27609565862**

**and**

**Sau Van Tran**

## 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.

**Electrical safety undertaking or undertaking or enforceable undertaking** means a written undertaking given under Part 3 of the *Electrical Safety Act 2002* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Electrical Safety Act 2002* and includes all of the contents of that document including the general information, general and enforceable terms.

**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 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.

**WHSQ** means Work Health and Safety Queensland

## 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 Queensland in accordance with enforcement activities that may be conducted as part of an investigation. Information on our privacy policy is available at [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au).

## SECTION 1: GENERAL INFORMATION

### 1.1 Details of the person giving the undertaking

<b>Nominated person:</b>	Sau Van Tran
<b>Street address:</b>	33 Moreton St, Heathwood, Queensland, 4110
<b>Mailing address:</b>	33 Moreton S, Heathwood, Queensland, 4110
<b>Telephone:</b>	[REDACTED]
<b>Email address:</b>	account@premierducts.com.au
<b>Legal structure:</b>	Company
<b>Type of business:</b>	Manufacturing
<b>Commencement date:</b>	13 November 2015
<b>Workers:</b>	
Full time:	23
Casual:	15
<b>Products and services:</b>	Manufacturer Commercial Air-Conditioning Ducting

#### Comments:

- 1.1.1. Premier Ducts (Qld) Pty Ltd is an Australian Private Company being registered with the Australian Business Number of 27609565862. Premier Ducts (Qld) Pty Ltd is located in Heathwood, QUEENSLAND, Australia and is part of the Services to Buildings and Dwellings Industry.
- 1.1.2. Premier Ducts (Qld) are a manufacturer of air conditioning ductwork from sheet metal and parts to finished products for the commercial market. Our customer base targets Mechanical Contractors as well as Commercial and Industrial Builders. Premier Ducts (Qld) annual turnover for the 2020-2021 FY was \$4.5M.
- 1.1.3. The Premier Ducts corporate family includes Premier Ducts (Qld) Pty Ltd and Premier Ducts (NSW) Pty Ltd. There is a 72 total employees across the Queensland and New South Wales businesses which will benefit from this undertaking.
- 1.1.4. The Premier Ducts corporate family workforce is predominantly Vietnamese with only a minimal number of employees able to speak and understand English.

### 1.2 Detail the contravention

- 1.2.1 It is alleged that between the 1<sup>st</sup> day of October 2017 and the 30<sup>th</sup> day of August 2019, at Heathwood, Premier Ducts (Qld) Pty Ltd being a corporation on which an OHS obligation prescribed by section 19(1) of the *Work Health and Safety Act 2011* had a duty to ensure so far as reasonably practicable, the health and safety of workers whose activities in carrying out work were influenced or directed by Premier Ducts (Qld) Pty Ltd while the workers were at work in the business or undertaking, and that it failed to comply with that duty 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*.

- 1.2.2 It is alleged that between the 5<sup>th</sup> day of March 2019 and the 30<sup>th</sup> August 2019 at Heathwood, Sau van Tran, being an executive officer of a corporation, on which an OHS obligation prescribed by section 27 of the *Work Health and Safety Act 2011* had a duty to exercise due diligence to ensure that the PCBU complies with their duties, and that they failed to exercise due diligence 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

- 1.3.1 At all material times, Premier Duct (Qld) Pty Ltd (“the company”) was a company duly incorporated which conducted a business or undertaking which included the manufacture of air-conditioning ducting from its business premises at 33 Moreton Street, Heathwood in the State of Queensland.
- 1.3.2 At all material times the company had management and control of the plant used in the business or undertaking.
- 1.3.3 At all material times, the worker was caused to be engaged by the company in its business or undertaking and was influenced or directed by the company in that regard. The worker was employed as a factory worker. As part of their work, the worker was required to assist in the folding of sheet metal. That task required the operation of a Formtek B&K Pan Brake.
- 1.3.4 On Thursday, 29 August 2019 at approximately 3.45pm, the worker was folding sheet metal on the Formtek B&K Pan Brake. The worker observed that the folding blocks of the Formtek B&K Pan Brake machine were not aligned. The worker placed their left hand under the press in an attempt to align the rear folding block with the front block. As the worker commenced moving the rear block, they accidentally placed their foot on the foot pedal which activated the folding blocks in a downwards stroke. This caused a large laceration and crush injuries to the worker’s left hand.

**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
30 August 2019	Prohibition Notice	P1025700	Stop the Activity of using the Formtek B&K Pan Brake without controls in place to prevent body parts being caught between the blade and the stationary bed until an inspector is satisfied that the matters that will give rise to the risk have been remedied.	<p>The company conducted its own investigations into the incident and the following corrective actions were taken:</p> <ul style="list-style-type: none"> <li>• Production Supervisor conducted a Toolbox Meeting with all production workers.</li> <li>• Rectifications (refer to item 1.11)</li> <li>• Update of the SWMS to include changes to the Formtek B&amp;K Pan Brake</li> <li>• All production workers were re-trained in the new SWMS and operation of the Formtek B&amp;K Pan Brake following rectifications.</li> </ul> <p>WHSQ Inspector acknowledged the work completed as part of rectifications and signed off the Prohibition Notice P1025700 to allow the Formtek B&amp;K Pan Brake folder to resume operations.</p>

**1.5 Detail the injury sustained, or illness suffered by worker/s or other/s as a consequence of the contravention detailed in term 1.2**

A large laceration and crush injuries to the worker's left hand.

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

The worker/s detailed is:

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

**Status:** Worker's compensation to the injured worker was provided through the Premier Ducts (Qld) Pty Ltd's Workcover Policy.

The worker did not return to work following the incident.

**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
29 August 2019	a) Immediate medical attention on site by the company's qualified first aider. Another worker called 000. b) Due to a significant QAS delay, the Production Supervisor and first aider, with the consent of the injured worker agreed for the Company's Station Leader, to drive the injured worker to the QE2 hospital with the first aider accompanying them to monitor the injured worker.	
Post-Incident	c) Many of the workers, including the Company director Mr Tran, visited the injured worker at Hospital while undergoing treatment and recovery and have remained in contact consistent with the injured worker's wishes. d) Close workmates have spent many days after work and weekends with the injured worker while in hospital.	
Following the incident and to date	e) The injured worker remains in close contact with workmates and has attended many social events with the workers. f) The Company Director, Mr Tran has personally followed up with the injured worker on at least 6 occasions to see how the injured worker is recovering and continues to provide support and guidance to assist the injured worker. g) The injured worker is now studying IT to advance a new career path.	

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

- 1.8.1 Premier Ducts (Qld) Pty Ltd acknowledges that there is no formal OHSMS in place.
- 1.8.2 To meet duties under the *Work Health and Safety Act 2011*, the Company conducts and maintains records of the following activities:
- Safe Work Method Statements
  - Mobile Plant pre-start inspections
  - Provision of WHS information
  - Hazard and Incident Reporting
  - Worker consultation including Toolbox Meetings
  - Worker qualifications and training
  - Plant and equipment servicing and maintenance
  - Statutory inspections including Fire Safety, Test and Tag
  - Provision of Personal Protective Equipment
  - First Aid and Emergency Response Planning
  - COVID-Safe Workplace Management

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

1.9.1 Premier Ducts (Qld) Pty Ltd acknowledges that there is no formal audit schedule in place. To meet duties under the *Work Health and Safety Act 2011*, the Company monitors and reviews controls through the following activities:

- Review of Safe Work Method Statements
- Mobile Plant pre-start inspections
- Statutory inspections including Fire Safety, Test and Tag
- General workshop supervision and informal inspections

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

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

- Company Director
- General Manager
- Operations Manager
- Production Manager

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

1.10.3 The company proposes to undertake consultation with:

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

## **1.11 Detail the rectifications to the workplace or work practices made as a result of the contravention and events detailed in terms 1.2 and 1.3 and the enforcement notices issued as detailed in term 1.4**

1.11.1 The Company completed rectifications to the Formtek B&K Pan Brake in accordance with the Prohibition Notice (P1025700) issued on 30 August 2019. These rectifications addressed the hazards and risks associated with the Formtek B&K Pan Brake that were deemed a causal factor of the incident.

The Formtek B&K Pan Brake is a pneumatic operated machine which rolls flanges onto ductwork. It has a pneumatic drive folding beam with safety interlock controls and 3 pedal operation - close the blade, actuate the bend, open the blade. The rectifications included:

- Automatic mechanical release when the pedal is not pressed to open the blade.
- Converted 1 of the foot pedal operation to a hand operation (button) which separates the action and prevents the operator from accidentally pressing the wrong pedal.
- Refitted 2 operations into 1 operation and fixed that foot pendant into the floor and away from the folding space in front and to the right side of the machine.
- New air fitting for pneumatics.

- 1.11.2 The Production Supervisor updated the SWMS to include changes to plant as detailed above in 1.11.1.
- 1.11.3 The Production Supervisor conducted a Toolbox Meeting with all production workers to consult with workers on the updated SWMS.
- 1.11.4 All production workers were re-trained according to the updated SWMS and operation of the plant following the changes to plant as detailed above in 1.11.1.
- 1.11.5 Records of attendance at Toolbox meetings and on-the-job training are now kept.
- 1.11.6 An independent OHS Consultant was engaged to conduct a workplace inspection, gap analysis of the OHSMS and provide recommendations for health and safety improvements.

**Total amount spent on rectifications: \$32,500**

## 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

- 2.1.1 Premier Ducts (Qld) Pty Ltd acknowledges that the regulator alleges a contravention of the *Work Health and Safety Act 2011*, as detailed in term 1.2.1.
- 2.1.2 Sau Van Tran acknowledges that the regulator alleges a contravention of the *Work Health and Safety Act 2011*, as detailed in term 1.2.2.

### 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

- 2.2.1 Premier Ducts (Qld) Pty Ltd deeply regrets that the incident occurred and resulted in injuries to the worker.
- 2.2.2 The Company considers that through the implementation of the activities in this WHS undertaking, the health and safety of workers at in our workplaces will be improved through the implementation of a formal OHSMS and risk prevention strategies. Completion of the activities proposed in this WHS undertaking will result in improved safety outcomes across Premier Ducts (Qld) Pty Ltd operations as well as benefiting Premier Ducts (NSW) Pty Ltd operations and the wider industry and community in a manner that would not be achieved by a Court imposed sanction.
- 2.2.3 I, Sau Van Tran, Executive Officer of Premier Ducts (Qld) Pty Ltd, sincerely regret that an incident of this serious nature occurred resulting in injuries to a worker.
- 2.2.3 I, Sau Van Tran, consider this WHS undertaking as a more appropriate response to the contravention than a court-imposed sanction as it will improve health and safety in our workplaces through the implementation of a formal OHSMS translated into Vietnamese for greater understanding by workers who have English as a second language, including myself. I



also consider the provision of advice from suitably qualified persons from the completion of the activities proposed in this WHS undertaking will enable management to verify the provision and use of the resources and processes for managing compliance and the health and safety of workers, so far as reasonably practicable.

### **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**

- 2.3.1 Premier Ducts (Qld) Pty Ltd immediately suspended the use of the pan brake folder in accordance with the Prohibition Notice and completed the necessary rectifications to the plant to ensure adequate safety controls. These steps ensure the practice that led to the injury would not occur again.
- 2.3.2 The Company is committed to ensuring health and safety hazards and risk are identified and controls implemented, including ensuring plant and equipment is compliant with adequate safety controls and is operated and maintained in a safe manner.
- 2.3.3 I, Sau Van Tran, am committed to improving my understanding of managing health and safety through the implementation of an OHSMS translated into Vietnamese, and by seeking advice from suitably qualified persons to ensure I exercise due diligence and take reasonable steps to verify the provision and use of the resources and processes for managing compliance and the health and safety of workers, so far as 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: PN11783 Version 1 Dated: 1 November 2017

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

- 2.5.1 Premier Ducts (Qld) Pty Ltd and Sau Van Tran both acknowledge that the undertaking may be published on the OIR's website and referenced in OIR material.
- 2.5.2 Premier Ducts (Qld) Pty Ltd and Sau Van Tran both acknowledge that the WHS 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 Premier Ducts (Qld) Pty Ltd has the financial ability to comply with the terms of this undertaking and have provided evidence by way of a letter from the Company Financial Accountant with this undertaking to support this declaration.
- 2.6.2 Sau Van Tran has the financial ability to comply with the terms of this undertaking and has provided evidence by way of a letter from the Financial Accountant with this undertaking to support this declaration.
- 2.6.3 In the event of loss or withdrawal of a required industry specific license, impending liquidation or sale of the entity, Premier Ducts (Qld) Pty Ltd will advise OIR of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

**2.7 Statement regarding person's relationship with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking**

- 2.7.1 Premier Ducts (Qld) Pty Ltd has no relationship with any third parties involved in the completion of the activities proposed in this WHS undertaking.
- 2.7.2 Sau Van Tran has no relationship with any third parties involved in the completion of the activities proposed in this WHS undertaking.
- 2.7.3 Premier Ducts (Qld) Pty Ltd and Sau Van Tran both acknowledge, given the nature of an Industry benefit, that beneficiaries of deliverables proposed in section 3.3, may include third parties associated with the Company's supply chain in which there is a previous or existing relationship.
- 2.7.4 Premier Ducts (Qld) Pty Ltd and Sau Van Tran both acknowledge, given the nature of a Community benefit, that proposed beneficiaries of deliverables proposed in section 3.4, may include parties that have a relationship with the Company's management or employees within the Vietnamese community.

**2.8 Statement regarding Intellectual Property Licence**

- 2.8.1 Premier Ducts (Qld) Pty Ltd grant 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 Sau Van Tran grant OIR a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce, publish, distribute, electronically transmit, electronically distribute, adapt and modify any materials developed as a result of this undertaking.

**2.9 Acknowledgement that the person may be required to provide a statutory declaration**

OIR has requested a statutory declaration outlining details of any prior convictions, subject to any local legal constraints such as spent conviction legislation, or findings of guilt under the safety Acts.

YES  NO

**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/s.
- 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/s 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**

- 2.11.1 Premier Ducts (Qld) Pty Ltd and Sau Van Tran are committed to meeting their obligations under the *Work Health and Safety Act 2011*, and ensuring, so far as is reasonably practicable, that risks to health and safety are managed, maintained and continually improved through the implementation of a formal OHSMS and the resourcing of a Work Health and Safety Officer (WHSO) to ensure the ongoing effective management of risks to health and safety in the future conduct of the Company.

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

- 2.12.1 Premier Ducts (Qld) Pty Ltd acknowledges that the proposed activities in this WHS undertaking may benefit Premier Ducts (Qld) Pty Ltd and commits to linking those benefits to this undertaking.
- 2.12.2 Sau Van Tran acknowledges that the proposed activities in this WHS undertaking may benefit themselves 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

- 3.1.1 Premier Ducts (Qld) Pty Ltd will disseminate information about this undertaking to workers through a dedicated toolbox meeting to explain the undertaking and the benefits for the workers.
- 3.1.2 Sau Van Tran will present information to the management and leadership of Premier Ducts (Qld) Pty Ltd about this undertaking and activities to be undertaken by both parties to promote the objects of the Act that will deliver benefits for workers, others, the industry and community.
- 3.1.3 Dissemination will occur within 3 months from the acceptance of the undertaking.

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

Activities to be undertaken by Premier Ducts (Qld) Pty Ltd		Minimum cost	Timeframe
3.2.1	<p><b>OHS Management System - Bilingual</b></p> <p>Premier Ducts (Qld) Pty Ltd to engage an external OHS Consultant to develop and implement an online OHS Management System consistent with <i>ISO 45001:2018 OHS Management Systems</i> and compliant with harmonised WHS laws. The documented information will be available to workers in both English and Vietnamese and designed to meet the needs and address the varying literacy levels among the workforce.</p> <p>The OHSMS will be developed and implemented within 12 months from acceptance of this undertaking.</p> <p>Minimum costs include:</p> <ul style="list-style-type: none"> <li>• A literacy assessment will be undertaken to establish literacy levels across the workforce</li> <li>• Development of OHS documented information in English and translation to Vietnamese.</li> <li>• IT Development of online information management system to share OHS documented information and maintain OHS records.</li> <li>• OHS Consultancy support for the implementation of the online OHSMS in both Premier Ducts (Qld) Pty Ltd and Premier Ducts (NSW) Pty Ltd.</li> </ul> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Summary report of the OHSMS demonstrating the online functions and OHS documented information.</li> </ul>	\$45,000	This deliverable will be completed within 12 months from acceptance of this undertaking.

	<ul style="list-style-type: none"> <li>• Receipt of expenditure for OHSMS development and implementation support.</li> </ul>		
3.2.2	<p><b>WHSO &amp; RRTWC Employee Development</b></p> <p>Premier Ducts (Qld) Pty Ltd to employ a full-time administrative officer in a 50:50 hybrid role with WHS responsibilities 50% and Office Administration 50%.</p> <p>The employee will undertake the two vocational health and safety-related courses:</p> <ul style="list-style-type: none"> <li>• Certificate IV in Workplace Health and Safety</li> <li>• Workplace Rehabilitation and Return to Work Coordinator Course (Worksafe Qld approved)</li> </ul> <p>During the initial 12 months, while undertaking the above training, an external OHS consultant will mentor and coach the employee in OHS. The outcome of the mentoring and coaching program is to improve their health and safety knowledge and capability to maintain the OHSMS and enable continued improvement without the reliance on external consultants.</p> <p>Under the mentoring and coaching program, the employee will develop an OHS Management Procedure &amp; Training materials. The OHS Management Procedure and Training is to ensure the WHSO role is implemented effectively and supported by the company and Director in the future, should there be a change to the person employed in the role.</p> <p>On successful completion the administrative officer will perform the role Work Health and Safety Officer (WHSO) and Rehabilitation and Return to Work Coordinator (RRTWC).</p> <p>WHS/RRTWC Role Responsibilities will include:</p> <ul style="list-style-type: none"> <li>• Coordinating implementation of the OHSMS.</li> <li>• Develop OHS Communications, Toolbox Talks and assist management with worker consultation.</li> <li>• Maintain WHS training calendar and assist management in developing training for health and safety issues.</li> <li>• Assist management with OHS risk management and incident investigation.</li> <li>• Maintain online WHS records including a register of incidents and injuries.</li> <li>• Monitoring OHS compliance (Inspections)</li> <li>• Reporting of OHS performance to management.</li> <li>• Coordinating Workers' Compensation claims, rehabilitation and return to work.</li> </ul> <p>Minimum costs include 50% of the wages for the position for the duration of 3 years from commencement, and costs associated with the listed items (a) to (d).</p>	\$105,000	This deliverable will commence within 6 months from acceptance of this undertaking.

	<p>Timeframes for each element are proposed as follows:</p> <ul style="list-style-type: none"> <li>a) Recruitment will be undertaken within 6 months from acceptance of this undertaking.</li> <li>b) Certificate IV in WHS will be undertaken within 6 months from the administrative officer commencement date.</li> <li>c) Workplace Rehabilitation and Return to Work Coordinator (WorkSafe Qld approved) Course will be undertaken within 12 months from the administrative officer commencement date.</li> <li>d) OHS mentoring and coaching 12-month program will commence upon successful completion of the employment probation period and within 3 months from the administrative officer commencement date.</li> </ul> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Position Description and Employment Contract.</li> <li>• Certificate IV in WHS enrolment acceptance notice, copy of the Statement of Attainment and invoice receipt.</li> <li>• Workplace Rehabilitation and Return to Work Coordinator Course enrolment acceptance notice and invoice receipt.</li> <li>• OHS mentoring and coaching plan, OHS Management Procedure &amp; Training Materials and invoice receipt.</li> <li>• 3-year Summary of wages paid.</li> </ul>		
3.2.3	<p><b>Core OHS Induction and Training - Bilingual</b></p> <p>Premier Ducts (Qld) Pty Ltd will engage an external OHS Consultant to develop core OHS training for workers.</p> <p>Each OHS Training module will be developed in English and Vietnamese and designed to meet the needs and address the varying literacy levels among the workforce.</p> <p>Core OHS Training will include the following modules:</p> <ul style="list-style-type: none"> <li>• OHS Induction</li> <li>• Hazard Identification and Controlling Risks</li> <li>• Emergency Evacuation and Response</li> <li>• Housekeeping</li> <li>• Traffic Management</li> <li>• Personal Protective Equipment</li> <li>• Performing Manual Tasks Safely</li> </ul> <p>A literacy assessment will be undertaken to establish literacy levels across the workforce. All existing and any new employees will be required to complete the Core OHS Induction and Training modules and competency assessment.</p> <p>The Core OHS Induction and Training modules will be developed within 12 months from acceptance of this undertaking, in alignment</p>	\$20,000	This deliverable will be completed within 12 months from acceptance of this undertaking.

	<p>with the development of the OHSMS.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the literacy assessment report.</li> <li>• Copy of each training module and invoice receipt.</li> <li>• Training records of completed modules.</li> </ul>		
3.2.4	<p><b>Hazardous Manual Tasks Assessment &amp; Training</b></p> <p>Premier Ducts (Qld) Pty Ltd will engage an external OHS/Ergonomics Consultant to undertake a hazardous manual tasks assessment of activities associated with handling fabricated products, including when moving products around the workshop and loading finished products for delivery</p> <p>Following the assessment, the consultant will develop and deliver a custom Hazardous Manual Tasks Training course to implement and embed knowledge and skills for how to safely handle fabricated products. This training will be informed by the literacy assessment reported to be completed for items 3.2.1 and 3.2.3.</p> <p>All existing and any new production employees will be required to complete the Hazardous Manual Tasks Training.</p> <p>The Hazardous Manual Tasks Assessment &amp; Training will be developed within 12 months from acceptance of this undertaking, in alignment with the development of the OHSMS.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Hazardous Manual Tasks Assessment and invoice receipt.</li> <li>• Copy of the Hazardous Manual Tasks Training course</li> <li>• Training attendance records.</li> </ul>	\$5,000	This deliverable will be completed within 12 months from acceptance of this undertaking.
3.2.5	<p><b>Traffic Management Assessment</b></p> <p>Premier Ducts (Qld) Pty Ltd will engage an external OHS/Traffic Management Consultant to undertake Traffic Management Assessment of the Heathwood Workplace and the activities associated with operation of 3 forklifts in the workplace.</p> <p>Following the assessment, the consultant will provide a Traffic Management Action Plan to reduce hazards and risks identified.</p> <p>Minimum costs for this deliverable include the costs for the Traffic Management Assessment and Action Plan, with the remaining costs allocated to implementing priority actions.</p> <p>The Traffic Management Assessment, Action Plan and implementation of priority actions will be completed within 12 months from acceptance of this undertaking, in alignment with the development of the OHSMS.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Traffic Management Assessment, Action Plan and invoice receipt.</li> </ul>	\$10,000	This deliverable will be completed within 12 months from acceptance of this undertaking.

	<ul style="list-style-type: none"> <li>Receipt of expenditure for traffic management actions.</li> </ul>		
3.2.6	<p><b>Audits of OHS Management System</b></p> <p>Premier Ducts (Qld) Pty Ltd will engage a certified third-party auditor to conduct three audits of the OHSMS against <i>ISO 45001:2018 OHS Management Systems</i> as detailed in Items 3.8.1 through to 3.8.3 of this Undertaking. Auditor will be certified by a certification body accredited by <i>JAS-ANZ to ISO/IEG 17024:2003, General requirements for bodies operating the certification of persons.</i></p> <p>Timeframes for scheduling the audits to meet the commitment as detailed in Items 3.8.6 and 3.8.7, is as follows:</p> <ol style="list-style-type: none"> <li>Initial audit within 12 months* from acceptance of this undertaking</li> <li>Second audit within 24 months from acceptance of this undertaking</li> <li>Third audit within 36 months from acceptance of this undertaking</li> </ol> <p>* An independent OHS Consultant was engaged during the development of this undertaking to conduct a workplace inspection and gap analysis of the OHSMS. No formal OHSMS was identified, and it was therefore recommended to allow 12 months for establishment of a bilingual OHSMS before conducting the initial audit as detailed in Item 3.8.6.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>Copies of the OHSMS Audit Report including details of the auditors' qualifications.</li> <li>Invoice Receipts for OHSMS Audits</li> </ul>	\$30,000	This deliverable will commence within 12 months from acceptance of this undertaking.
3.2.7	<p><b>Heavy Vehicle Load Management Assessment</b></p> <p>Premier Ducts (Qld) Pty Ltd will engage an external OHS Consultant to undertake Heavy Vehicle Load Management Assessment of the activities associated with loading, unloading and operation of 2 Flatbed Heavy Rigid Vehicles. Following the assessment, the consultant will provide a Heavy Vehicle Load Management Plan to reduce hazards and risks identified. Minimum costs for this deliverable include the costs for the Heavy Vehicle Load Management Assessment and Management Plan, with the remaining costs allocated to implementing priority actions arising from assessment.</p> <p>The Heavy Vehicle Load Management Assessment and Plan will be completed within 24 months from acceptance of this undertaking.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>Heavy Vehicle Load Management Assessment, Management Plan and invoice receipt.</li> <li>Receipt of expenditure for HV load management actions</li> </ul>	\$15,000	This deliverable will be completed within 24 months from acceptance of this undertaking.
<b>Total minimum cost of activities to be undertaken by Premier Ducts (Qld) Pty Ltd for the benefit of workers/others</b>		<b>\$224,000</b>	



<b>Activities to be undertaken by Sau Van Tran</b>		<b>Minimum cost</b>	<b>Timeframe</b>
3.2.8	<p><b>Director OHS Coaching Program</b></p> <p>Sau Van Tran will engage an external OHS consultant for a 12-month Director OHS Coaching Program.</p> <p>The program is a commitment to monthly coaching session where the Director will establish an Annual OHS Due Diligence Plan and learn to complete activities associated with taking reasonable steps to ensure Premier Ducts (Qld) Pty Ltd is meeting its duty.</p> <p>The 12-month coaching program is intended to teach and support Sau Van Tran, whom English is a second language, to understand their duties as an officer under the Safety Laws and the importance of occupational health and safety in the Australian culture. The outcome of the program is to improve their safety leadership capability and enable continued management focus without the reliance on external consultants.</p> <p>Sau Van Tran will commence the Director OHS Coaching Program within 3 months from the acceptance of this undertaking.</p> <p>Sau Van Tran will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the Annual OHS Due Diligence Plan.</li> <li>• Copy of the Director OHS Coaching Program Plan and invoice receipt.</li> </ul>	\$7,260	This deliverable will commence within 3 months from acceptance of this undertaking.
3.2.9	<p><b>Plant &amp; Equipment Risk Assessments</b></p> <p>Sau Van Tran will engage an external OHS Consultant / Safety Engineer to undertake Plant &amp; Equipment Risk Assessments at the Heathwood Workplace on major production plant and equipment.</p> <p>Following the completion of the plant and equipment risk assessments, the SWMS for the Plant and Equipment will be updated. Sau Van Tran will review and approve updated SWMS for the Plant and Equipment.</p> <p>Minimum costs for this deliverable include the costs for the external Consultant to undertake the Plant &amp; Equipment Risk Assessments. The costs do not include the commitment of Sau Van Tran's time associated with this deliverable.</p> <p>The Plant &amp; Equipment Risk Assessments will be completed within 18 months from acceptance of this undertaking.</p> <p>Sau Van Tran will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copies of Plant &amp; Equipment Risk Assessments and invoice.</li> <li>• Evidence of approved SWMS.</li> </ul>	\$15,000	This deliverable will be completed within 18 months from acceptance of this undertaking.
<b>Total minimum cost of activities to be undertaken by Sau Van Tran for the benefit of workers/others</b>		<b>\$22,260</b>	

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

Activities to be undertaken by Premier Ducts (Qld) Pty Ltd		Minimum cost	Timeframe
3.3.1	<p><b>Occupational Hygiene Research Projects</b></p> <p>Premier Ducts (Qld) Pty Ltd will participate in Industry Occupational Hygiene Research Projects conducted by the University of Queensland. The industry projects are part of the Master of Occupational Hygiene and the Dual Master of Occupational Hygiene and Master of OHS Science Programs at UQ.</p> <p>The course requirements include the completion of an occupational hygiene research project in industry over 240 hours in one semester (two days a week for 16 weeks).</p> <p>The students will plan, execute, interpret, and report on the collection of occupational hygiene data, including designing a control strategy for a chemical, physical, or biological hazards.</p> <p>The gap analysis conducted during the development of this undertaking identified the presence of physical hazards including noise, vibration, radiation, heat/cold, and lighting; and chemical hazards including dusts, fibres, fumes, gases or vapours.</p> <p>Minimum costs for this deliverable include:</p> <ul style="list-style-type: none"> <li>• Purchase of consumables items such as pre-weighed filter papers, sample transport and laboratory analysis.</li> <li>• Equipment hire (if necessary) and/or the cost of calibration of UQ owned equipment.</li> <li>• Student travel costs from UQ St Lucia to Heathwood for the duration of the project.</li> <li>• with the remaining costs allocated to implementing priority actions arising from the research findings.</li> </ul> <p>Premier Ducts (Qld) Pty Ltd commits to participating in minimum of 2 Occupational Hygiene Research Projects with the first project to commence within 12 months from acceptance of this undertaking pending UQ program availability.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copies of the Occupational Hygiene Research Project Reports.</li> <li>• Receipt of expenditure for improvement actions.</li> </ul>	\$ 30,000	This deliverable will commence within 12 months from acceptance of this undertaking.
3.3.2	<p><b>Supply Chain Forum</b></p> <p>Premier Ducts (Qld) Pty Ltd will host a Supply Chain Forum in the Heathwood Business Precinct in which the General Manager will present on the lessons learned arising from this undertaking, including:</p> <ul style="list-style-type: none"> <li>• Managing of health and safety – developing an OHSMS and core training modules to meet language and literacy needs, and the benefits of employing a WHSO as per items 3.2.1 - 3.2.3.</li> </ul>	\$15,000	This deliverable will commence within 24 months from acceptance of

	<ul style="list-style-type: none"> <li>• Hazardous Manual Tasks &amp; Traffic Management Assessment findings, training and outcomes as per items 3.2.4 &amp; 3.2.5.</li> <li>• Heavy Vehicle Load Management Assessment, findings and outcomes as per item 3.2.7.</li> </ul> <p>The forum will include a guest speaker from Industry who will also speak about Health and Safety Responsibilities within the Supply Chain, including WHS and NHVR compliance obligations.</p> <p>The minimum costs for this deliverable include:</p> <ul style="list-style-type: none"> <li>• Venue and catering for the forum.</li> <li>• Guest Speaker fees</li> <li>• Costs for forum materials and advertising</li> </ul> <p>This Supply Chain Forum will be completed within 24 months from acceptance of this undertaking.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the forum materials.</li> <li>• Invitation to attend the forum.</li> </ul> <p>Invoice receipts for associated costs.</p>		this undertaking.
<b>Total minimum cost of activities to be undertaken by Premier Ducts (Qld) Pty Ltd for the benefit of industry</b>			<b>\$45,000</b>

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

<b>Activities to be undertaken by Premier Ducts (Qld) Pty Ltd</b>		<b>Minimum cost</b>	<b>Timeframe</b>
3.4.1	<p><b>Việt Kiều Brisbane Business Forum</b></p> <p>Communities of overseas Vietnamese may be referred to as Việt Kiều. About 1.4% of the Australian population is Vietnamese and Brisbane’s Vietnamese Community makes up approximately 1% of the Brisbane population.</p> <p>Premier Ducts (Qld) Pty Ltd will host a Việt Kiều Brisbane Business Forum in which the General Manager will present on the managing of health and safety and the lessons learned arising from this undertaking, including Traffic Management &amp; NHVR obligations – with lesson learned from the Heavy Vehicle Load Management Assessment, findings and outcomes as per item 3.2.7.</p> <p>The forum will include a notable guest Vietnamese speaker from the broader Australian Vietnamese Community who will also speak about Business Management Mindset and safe working environments.</p> <p>Premier Ducts (Qld) Pty Ltd will also provide copies of the relevant Core OHS Training modules as detailed for development in Item 3.2.3, including:</p>	\$30,000	This deliverable will be completed within 24 months from acceptance of this undertaking.

	<ul style="list-style-type: none"> <li>• Hazard Identification and Controlling Risks</li> <li>• Housekeeping</li> <li>• Personal Protective Equipment</li> </ul> <p>The minimum costs for this deliverable include:</p> <ul style="list-style-type: none"> <li>• Venue and catering for the forum.</li> <li>• Guest Speaker fees</li> <li>• Costs for forum materials and advertising</li> </ul> <p>This Việt Kiều Brisbane Business Forum will be completed within 24 months from acceptance of this undertaking.</p> <p>Premier Ducts (Qld) Pty Ltd will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the forum materials.</li> <li>• Invitation to attend the forum.</li> <li>• Invoice Receipts for associated costs.</li> </ul>		
<b>Total minimum cost of activities to be undertaken by Premier Ducts (Qld) Pty Ltd for the benefit of community</b>			<b>\$30,000</b>

<b>Activities to be undertaken by Sau Van Tran</b>		<b>Minimum cost</b>	<b>Timeframe</b>
3.4.2	<p><b>Keynote Speaker - Việt Kiều Brisbane Business Forum</b></p> <p>Sau Van Tran will present a keynote at the Việt Kiều Brisbane Business Forum the importance of exercising due diligence and the lessons learned arising from this undertaking and the completion of the Director OHS Coaching Program.</p> <p>Minimum costs for this deliverable are included in Item 3.4.1. The costs do not include the commitment of Sau Van Tran's time associated with this deliverable.</p> <p>This Việt Kiều Brisbane Business Forum will be completed within 24 months from acceptance of this undertaking.</p> <p>Sau Van Tran will provide the regulator with the following evidence for this deliverable:</p> <ul style="list-style-type: none"> <li>• Copy of the presentation.</li> </ul>	<p>Refer to Item 3.4.1</p> <p>The costs do not include the commitment of Sau Van Tran's time associated with this deliverable.</p>	<p>This deliverable will be completed within 24 months from acceptance of this undertaking.</p>
<b>Total minimum cost of activities to be undertaken by Sau Van Tran for the benefit of community</b>			<b>\$ n/a</b>

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

3.5.1 Premier Ducts (Qld) Pty Ltd 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:

<b>Recoverable costs</b>	<b>Amount</b>
Administrative costs	\$3,814
Legal costs	\$1,500
Compliance monitoring costs	\$3,410
Publication costs	\$2,000
<b>Total of OIR recoverable costs</b>	<b>\$10,724</b>

### 3.6 Minimum spend

3.6.1 Premier Ducts (Qld) Pty Ltd acknowledges the minimum spend for this undertaking will comprise of the:

<b>Estimated total value of</b>	<b>Minimum spend</b>
Benefits to workers/others	\$224,000
Benefits to industry	\$45,000
Benefits to community	\$30,000
OIR recoverable costs	\$10,724
<b>Estimated total minimum spend for the undertaking</b>	<b>\$309,724</b>

3.6.2 Sau Van Tran acknowledges the minimum spend for this undertaking will comprise of the:

<b>Estimated total value of</b>	<b>Minimum spend</b>
Benefits to workers/others	\$22,260
Benefits to community	n/a
<b>Estimated total minimum spend for the undertaking</b>	<b>\$22,260</b>

3.6.3 Premier Ducts (Qld) Pty Ltd and Sau Van Tran agrees to spend any residual amount arising from the total minimum spend value of this undertaking (\$331,984) not being met. Agreement on how to spend this residual will be sought from the regulator.

### 3.7 A commitment to establish and maintain an OHSMS

3.7.1 Premier Ducts (Qld) Pty Ltd acknowledges there is no formal documented OHSMS in place.

3.7.2 Premier Ducts (Qld) Pty Ltd commits to ensuring that an OHSMS acceptable to the regulator that satisfies the principles of *ISO 45001:2018 Occupational health and safety management systems* will be established within 12 months of the acceptance of this undertaking.

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

3.8.1 Premier Ducts (Qld) Pty Ltd acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.

- 3.8.2 Premier Ducts (Qld) Pty Ltd commits to ensuring the OHSMS will be audited by certified third party auditors.
- 3.8.3 Premier Ducts (Qld) Pty Ltd acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.8.4 Premier Ducts (Qld) Pty Ltd acknowledges that costs associated with these audits will be met by Premier Ducts (Qld) Pty Ltd as part of the undertaking.
- 3.8.5 Premier Ducts (Qld) Pty Ltd commits to ensuring the OHSMS will be audited against criteria that meets the principles of *ISO 45001:2018 Occupational Health and Safety Management Systems* to verify the OHSMS meets the principles of *ISO 45001:2018*.
- 3.8.6 Premier Ducts (Qld) Pty Ltd acknowledges that there is no OHSMS in place, as detailed in term 3.7.1 that is acceptable to the regulator and commits to ensuring that an initial third-party audit will be undertaken within twelve months of this undertaking being accepted.
- 3.8.7 Premier Ducts (Qld) Pty Ltd commits to ensuring at least two further third-party OHSMS audits will be undertaken at 12 month intervals, commencing 12 months after the initial audit.

### **3.9 A commitment to provide a copy of each finalised OHSMS audit report to OIR**

- 3.9.1 It is acknowledged that audit reports received from the auditor will be sent to OIR within 30 days of the audit along with written confirmation that the report has not been altered from the copy provided to the person by the auditor.
- 3.9.2 It is acknowledged that within 30 days of receipt of the auditor's written report, OIR will be advised of the intended actions for addressing each of the report's recommendations.

### **3.10 A commitment to implement the recommendations from third party audits**

- 3.10.1 Premier Ducts (Qld) Pty Ltd 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 Premier Ducts (Qld) Pty Ltd commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.9.2 will be fully implemented and recorded as actioned by the auditor within the third OHSMS audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.3 Premier Ducts (Qld) Pty Ltd commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.9.2 will be fully implemented within six months of receiving the third OHSMS report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.4 Premier Ducts (Qld) Pty Ltd commits to providing a detailed action plan or statutory declaration by an authorised officer of the Premier Ducts (Qld) Pty Ltd confirming recommendations arising from the third audit have been fully implemented, unless OIR grants an exemption due to the actions being unreasonable.

**SECTION 4: EXECUTION**

This undertaking is given by the person on the date it is accepted by the regulator as set forth in section 5 below.  
*(Select from the following execution clauses and delete those that do not apply)*

*(INDIVIDUAL)*

**SIGNED** by the person

Sau Van Tran

-----  
Name of person



-----  
Signature of person

on the 29 day of 03, 2022

before me:



-----  
Signature of Witness

Phuong Nguyen

-----  
Name of Witness in full



Witness address

-----  
Witness address

-----  
Witness address

(COMPANY)

THE COMMON SEAL of

(Affix common seal)

Premier Ducts QLD Pty Ltd

Company name

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

Sau Van Tran

Name of Director

Signature of Director

And

Name of Director/Secretary

Signature of Director/Secretary

on the 29 day of 03, 2022

before

Signature of Witness

Phuong Nguyen

Name of Witness in full

Witness address

Witness address

Witness address



## SECTION 5: ACCEPTANCE

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



-----  
Signature of regulator

Tony James

-----  
Name of regulator

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

# **Work Health and Safety Act 2011**

## *Part 11 Enforceable Undertakings*

### **REASONS FOR DECISION**

<b>Event Number</b>	276792
<b>Entity</b>	Premier Ducts (Qld) Pty Ltd (Premier) and Mr Sau Van Tran (Mr Tran)
<b>ABN</b>	27609565862
<b>Entity Address</b>	33 Moreton St, Heathwood, Queensland, 4110
<b>Location of alleged contravention</b>	33 Moreton St, Heathwood, Queensland, 4110
<b>Dates of alleged contravention</b>	Premier – between 1 October 2017 and 30 August 2019 Mr Tran – between 6 March 2019 – 30 August 2019

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

- 1.1 The undertaking given by Premier and its director Mr Tran relates to alleged contraventions of the *Work Health and Safety Act 2011* on the dates referred to above that exposed workers to a risk of death or serious injury. The risk was realised in an incident on 29 August 2019, where a worker sustained laceration and crush injuries to the left hand while operating a piece of plant known as the Formtek B&K Pan Brake that was used to fold sheet metal.
- 1.2 While attempting to align the folding blocks on the plant the worker placed the left hand under the press to align the rear folding block with the front block. As the worker commenced moving the rear block the press activated in a downward stroke crushing the worker's hand.
- 1.3 Following investigations by Workplace Health and Safety Queensland (WHSQ) inspectors, prosecution action was commenced by the Work Health and Safety Prosecutor (by complaint and summons) against both Premier and Mr Tran, for failing to comply, so far as reasonably practicable, with their respective health and safety duties, contrary to section 32 of the WHS Act.
- 1.4 On 7 September 2022, Premier and Mr Tran notified the Office of Industrial Relations (OIR) Enforceable Undertakings (EU) Unit of their intention to give a combined WHS undertaking (undertaking) for this matter.
- 1.5 On 10 March 2022 and 31 March 2022, an Evaluation Panel (panel) consisting of a senior public servant and two external, independent persons evaluated Premier and Mr Tran's initial undertaking and subsequent revised undertaking including all supporting documentation.
- 1.6 Initially, the panel were not willing to recommend acceptance of the undertaking. The panel provided Premier and Mr Tran with written feedback and advised they were willing to recommend acceptance to the regulator, if a revised undertaking was received that appropriately addressed the feedback.
- 1.7 On 29 March 22, Premier and Mr Tran submitted a revised undertaking and updated supporting documents.
- 1.8 On 3-5 April 2022, following a return evaluation, the panel unanimously recommended the revised undertaking be considered for acceptance as an EU.

## **2 Legislation and Policy**

- 2.1. It is alleged that Premier and Mr Tran each failed to comply with section 32 of the WHS Act.
- 2.2. Pursuant to section 216 (1) of the WHS Act the WHS regulator may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the WHS Act.
- 2.3. The Deputy Director-General (DDG), OIR has been appointed as the WHS regulator by the Governor in Council under Schedule 2, Part 1 of the WHS Act.
- 2.4. OIR provided Premier and Mr Tran 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(1) of the WHS Act provides that the WHS regulator must give the person/s 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. Revised WHS undertaking dated 29 March 2022.
  - 3.1.4. Complaint and Summons for Premier and Mr Tran dated 29 August 2021.
  - 3.1.5. Statements of Facts – Premier and Mr Tran.
  - 3.1.6. Prohibition Notice -1025700 - Premier dated 30 August 2019.
  - 3.1.7. OIR's Statement of compliance history dated 6 November 2020.
  - 3.1.8. Workers Compensation Information - Premier – dated 21 February 2022.
  - 3.1.9. ASIC Report – Premier dated 16 February 2022.
  - 3.1.10. Accountant letter – Liberty Wealth Group - Premier dated 14 February 2022.
  - 3.1.11. Letter of support and emails – Safe Expectations dated 11 February- 11 March 2022.
  - 3.1.12. Letter of support and proposal – ACTUM Solutions dated 10 February 2022 March 2021.
  - 3.1.13. Letter of support and scope of work – HSE Global dated 28 February 2022.
  - 3.1.14. Letter of support – University of Queensland dated 11 February 2022.
  - 3.1.15. Initial Evaluation Panel feedback dated 24 March 2022.
  - 3.1.16. Return Evaluation Panel Assessment dated 31 March 2022
  - 3.1.17. EU Unit chronology dated 5 April 2022.

#### **4 Findings on material questions of fact**

- 4.1. I regard the *Guidelines for the acceptance of an enforceable undertaking* dated November 2017, contains considerations which are relevant and appropriate to my decision.
- 4.2. I find the undertaking given by Premier and Mr Tran 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 contraventions is as set out in section 1 of the undertaking given by Premier and Mr Tran.
- 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 alleged contravention by Premier is 'medium/high'. I find the objective gravity of the alleged contravention by Mr Tran is 'medium/high'.
- 4.6. I find the quantum of the undertaking and the respective financial commitments of Premier and Mr Tran are proportionate to the objective gravity of the alleged contraventions by Premier and Mr Tran and account for the benefits that would accrue to them through avoiding prosecution.
- 4.7. I find that Premier and Mr Tran have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contraventions.
- 4.8. I find that Premier and Mr Tran, who each had a health and safety duty under the WHS Act failed to comply, so far as reasonably practicable, with that duty contrary to section 32 of the WHS Act.
- 4.9. I acknowledge the assurance given by Premier and Mr Tran that the behaviour that led to the alleged contravention has ceased and the commitment to ensuring the ongoing effective management of risks to health and safety in the future.
- 4.10. I find the undertaking commits Premier and Mr Tran to a standard that is higher than the recognised compliance for the activity and to activities over and beyond recognised compliance levels.
- 4.11. I find the undertaking would constitute tangible benefits for workers, industry and the community as Premier and Mr Tran are committing to:
  - 4.11.1. Disseminating information about this undertaking to Premier's workers, management and leadership.
  - 4.11.2. Employing an administrative officer as the WHS Officer (WHSO) and Rehabilitation and Return to Work Co-ordinator (RRTWC), who will complete a Certificate IV in WHS and Workplace Rehabilitation and a Return-to-Work Co-Ordinator Course. The officer will be mentored and coached by an OHS consultant in Occupational Health and Safety (OHS), and they will develop an OHS Management Procedure and training materials.
  - 4.11.3. Engaging an external OHS consultant to:
    - 4.11.3.1. Develop and implement an online bilingual OHS Management System. The documented information will be available to workers in both English and Vietnamese and designed to meet the needs and address the varying literacy levels among the workforce.

- 4.11.3.2. Mentor and coach the new WHSO and RRTWC to improve their health and safety knowledge and capability to maintain the OHSMS and enable Premier's continued improvement without the reliance on external consultants in the future.
  - 4.11.3.3. Develop and deliver core OHS induction and training for workers in English and Vietnamese and conduct a literacy assessment to ensure the training meets worker needs.
  - 4.11.3.4. Engage an ergonomics consultant to undertake a hazardous manual tasks assessment and then develop and deliver a custom hazardous manual tasks training course to all employees, whilst ensuring literacy levels are taken into consideration.
  - 4.11.3.5. Provide a Directors OHS Coaching Program with monthly coaching sessions for Mr Tran with the intention to teach and support Mr Tran, for whom English is a second language, to understand his duties as an officer under the Safety Laws and the importance of OHS.
- 4.11.4. Engaging an external OHS consultant to undertake a:
- 4.11.4.1. Traffic management assessment of the Heathwood workplace and activities associated with the operation of three forklifts. Following the assessment, a traffic management assessment and action plan will be provided to implement priority actions.
  - 4.11.4.2. Heavy vehicle load management assessment of the activities associated with loading, unloading and operation of two flatbed heavy rigid vehicles. Following the assessment, a heavy vehicle load management plan will be provided to reduce hazards and the risks identified.
  - 4.11.4.3. Plant and equipment assessment at the Heathwood workplace on major production plant and equipment and on completion, the safe work method statements for the plant and equipment will be updated. Mr Tran will review and approve updated SWMS for all plant and equipment.
- 4.11.5. Engaging a certified third-party auditor to conduct three independent audits of Premier's OHSMS over the life of the undertaking and ensure any recommendations identified within the audits are recorded as actioned and implemented.
- 4.11.6. Participating in industry occupational hygiene research projects conducted by the University of Queensland and provide funds for students to visit Premier's worksite and plan, execute, interpret, and report on the collection of occupational hygiene data, including designing a control strategy for a chemical, physical, or biological hazards.
- 4.11.7. Hosting a supply chain forum in the Heathwood Business Precinct in which Mr Tran will present on the lessons learnt and initiatives arising from this undertaking.
- 4.11.8. Hosting a Vietnamese Brisbane Business Forum in which Mr Tran, will present on managing health and safety, lessons learned and specified initiatives arising from this undertaking. The forum will also include a notable guest Vietnamese speaker from the broader Australian Vietnamese Community who will also speak about Business Management Mindset and safe working environments.

4.11.9. maintain the OHSMS that will be established under this undertaking.

4.11.10. pay OIR's recoverable costs associated with this undertaking.

4.12. I find the commitments referred to in paragraphs 4.11.3.5 and 4.11.4.3 above are personal financial commitments made by Mr Tran under the undertaking. I find the commitment in paragraph 4.11.8 to present at the Vietnamese Brisbane Business Forum is a personal commitment of Mr Tran.

4.13. I acknowledge that all panel members have recommended acceptance of the undertaking as an appropriate enforcement outcome in the circumstances of this case.

## **5 Decision**

5.1 In making my decision, I have considered and had regard to the evidence and other material referred to in paragraph 3 above, and to the facts I have found referred to in paragraph 4 above.

5.1 Because the proposed undertaking given by Premier and Mr Tran meets the formal requirements of the WHS Act and policy requirements, my discretion whether to accept the undertaking under section 216(1) of the WHS Act is enlivened.

5.2 Based on the evidence, findings and having regard to the objects of the WHS Act, I have carefully considered this matter and am of the opinion that the undertaking given by Premier and Mr Tran is an appropriate enforcement option in regard to this case.

5.3 I have concluded that an EU is the preferred enforcement option, rather than continuing with the prosecutions, due to the opportunity to provide lasting organisational change within Premier and the implementation of monitored and targeted health and safety improvements that will deliver benefits to workers, industry and the community, which may not be achieved by prosecution.

5.4 Under section 216(1) of the WHS Act, it is my decision to accept this undertaking as an EU.



**A J (Tony) James**  
**Acting Deputy Director-General**  
**Office of Industrial Relations**

14/04/2022