

Annexure A

ENFORCEABLE UNDERTAKING

Part 11, Work Health and Safety Act 2011

The commitments in this undertaking are offered to the regulator by

**Ferrovial Construction
(Australia) Pty Ltd**
(the person)

ACN 98 150 820 116

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 Ferrovia Construction (Australia) Pty Ltd (formerly Ferrovia Agroman (Australia) Pty Ltd) 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.

Recreational water activities health and safety undertaking or undertaking or enforceable undertaking means a written undertaking given under Part 4 of the *Safety in Recreational Water Activities Act 2011* (in conjunction with 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 *Safety in Recreational Water Activities Act 2011* and includes all of the contents of that document including the general information, general and enforceable terms.

regulator means the Deputy Director-General, Office of Industrial Relations, being the person appointed by the Governor in Council as regulator under the Safety Acts.

safety Acts means *Work Health and Safety Act 2011*, *Electrical Safety Act 2002* and *Safety in Recreational Water Activities Act 2011*.

Very serious injury means, for this publication, is an injury that has caused nervous system damage liable to lead to mental incapacity or permanent restriction of mobility or involves a major amputation a major amputation of a limb or part of the body – for example amputation above the knee or elbow.

WHS undertaking or undertaking or enforceable undertaking means a written undertaking given under Part 11 of the *Work Health and Safety Act 2011* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Work Health and Safety Act 2011* and includes all of the contents of that document including the general information, general and enforceable terms.

WHSQ means Workplace 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 Qld in accordance with enforcement activities that may be conducted as part of an investigation. Information on our privacy policy is available at www.worksafe.qld.gov.au.

SECTION 1: GENERAL INFORMATION

1.1 Details of the person giving the undertaking

Nominated person:	Ferrovial Construction (Australia) Pty Ltd (formerly Ferrovial Agroman (Australia) Pty Ltd) (Company) (The Company nominates Stef Jang, Senior Legal Counsel as its contact person for the purpose of this undertaking)
Street address:	Level 9, 65 Berry Street, North Sydney, New South Wales, 2060
Mailing address:	Level 9, 65 Berry Street, North Sydney, New South Wales, 2060
Telephone:	(02) 8736 9600
Email address:	ferrovial@ferrovial.com.au
Legal structure:	Australian Proprietary Company, Limited By Shares
Type of business:	Construction
Commencement date:	2011
Workers:	Full time: 37 Part time: 1 Casual: 4
Products and services:	Construction services
Comments:	<p>The Company is a leader in design-build construction projects in Australia and New Zealand.</p> <p>The Company's primary business activities focus on the development, design and construction of civil engineering and industrial works, including highways, railways, airports, and other infrastructures which are key for the mobility and transportation of people and cargo in the industrial sector.</p> <p>Consistent with its primary business activities, the Company was appointed as part of a joint venture to design and construct the Toowoomba Second Range Crossing Project (Project), the largest infrastructure project completed in Queensland.</p> <p>The Company has a commitment to continuous improvement on health and safety matters. This undertaking provided by the Company reflects its commitment to continuous improvement and is directly informed by the learnings of the Company arising from the high degree of expertise, complexity and scale involved in the Project. To this end, this undertaking seeks to develop and expand the Company's learnings with the expert assistance of the beneficiaries to this undertaking. The intention underlying this undertaking is for those existing and further learnings to be shared across the industry and community for the benefit of construction workers and other industry participants.</p> <p>At present, the Company does not have any construction projects on foot in Queensland, although it is in the process of tendering for construction projects in Queensland.</p>

1.2 Detail the contravention

The regulator has alleged that the Company, as a person who was conducting a business or undertaking, failed to comply with the *Work Health and Safety Act 2011* (Qld) (**Act**) on four occasions during the construction of the Project. Specifically it is alleged that:

- (a) On **15 August 2017**, the Company breached section 19(1) of the Act in that it failed to ensure, so far as was reasonably practicable, the health and safety of workers engaged or caused to be engaged by the Company and whose activities were influenced or directed by the Company. The charge alleges that on 15 August 2017, a truck mounted mobile concrete pump was not set-up in a location which was a clear level area of ground with a firm base capable of supporting the pump unit, and that there was therefore a risk of death or serious injury which materialised when the boom was extended, causing the pump unit to tip over.
- (b) On **1 March 2018**, the Company breached section 20 of the Act in that, as a person with management or control of a workplace (the Project), it failed to ensure so far as was reasonably practicable, the workplace and anything arising from it were without risks to the health and safety of any person. The charge alleges that on 1 March 2019 (sic) the Company exposed persons to risk by permitting them to enter an area of the viaduct bridge construction (Pier 3) where there were fall and emergency access and egress risks (such risks were identified by an inspector from WHSQ during a compliance assessment on 1 March 2018).
- (c) Between **21 April 2018 and 23 April 2018**, the Company breached section 20 of the Act in that, as a person with management or control of a workplace (the Project), it failed to ensure so far as was reasonably practicable, the workplace and anything arising from it were without risks to the health and safety of any person. The charge alleges that on 21 to 23 April 2018 the Company exposed persons to risk by permitting them to enter an area of the viaduct bridge construction (Pier 2) where there were fall risks and a risk from injury from uncapped vertical steel reinforcing bars (such risks were identified by an WHSQ inspector during a compliance assessment on 23 April 2018).
- (d) On **27 April 2018**, the Company breached section 20 of the Act in that, as a person with management or control of a workplace (the Project), it failed to ensure so far as was reasonably practicable, the workplace and anything arising from it were without risks to the health and safety of any person. The charge alleges that on 27 April 2018 the Company exposed persons to risk when two steel reinforcing bars separated from a steel mesh mat and fell while in the process of being lifted.

No injuries or illnesses were sustained or suffered as a consequence of the alleged failings.

1.3 Detail the events surrounding the contravention

The Company entered into a joint venture with another company, and together they were contracted by 'Project Co' to design and construct the Project. 'Project Co' had been contracted by the Department of Main Roads and Transport to deliver the Project.

Construction of the Project commenced on 21 August 2015 and was opened to the public on 7-8 September 2019.

Details of the events surrounding the alleged contraventions are as follows:

(a) 15 August 2017

Nexus Delivery engaged Subcontractor 1 for wet hire of plant and equipment. Nexus Delivery engaged Subcontractor 1 because of its expertise and specialisation in concrete pumping.

On 15 August 2017, a 60 metre mobile concrete pump was being set-up by workers employed by Subcontractor 1 at embankment 22. During the set-up and upon extension of the boom, the mobile concrete pump became unbalanced and subsequently tipped over.

No injuries or illnesses were sustained by any worker or other person arising from these circumstances.

(b) 1 March 2018

Nexus Delivery engaged Subcontractor 2 for form, reo and pour works. Nexus Delivery engaged

Subcontractor 2 because of its expertise and specialisation in concreting and formwork.

Subcontractor 2's tasks included closing, levelling and squaring formwork, as well as preparing for and pouring concrete for pier lifts.

On 1 March 2018, a daily prestart was conducted to discuss work to be carried out at the viaduct Pier 3. Workers employed by Subcontractor 2 attended the daily prestart and had signed the applicable safe work method statement. At approximately 7 am, a WHSQ inspector attended site and proceeded to inspect a number of work areas. At approximately 11.30 am, the WHSQ inspector inspected Pier 3. During the inspection, the WHSQ inspector formed the view that there were a number of fall risks, and that the hoist lift (which formed part of the emergency access and egress arrangements) was not operational. As a result of these identified risks, access to Pier 3 was closed.

No injuries or illnesses were sustained by any worker or other person arising from these circumstances.

(c) 21-23 April 2018

Subcontractor 2 was working at Pier 2 at the viaduct on 21 and 23 April 2018. Subcontractor 3 was also working at Pier 2 on these days.

Subcontractor 3 had been engaged by Nexus Delivery because of its expertise and specialisation in providing and erecting scaffolding. Their tasks included the design and supply of pier formwork and headstock falsework.

On 23 April 2018, a daily prestart was conducted to discuss work to be carried out that day. Subcontractor 2 was working under the same safe work method statement that applied on 1 March 2018. Subcontractor 3 was working under its own safe work method statement.

At approximately 9 am, a WHSQ inspector from the regulator attended the site and proceeded to inspect Pier 3 and then Pier 2. During the inspection, the WHSQ inspector formed the view that there were fall risks and the risk of injury from an uncapped vertical steel reinforcing bar. As a result of these observations, the WHSQ inspector issued a direction for work to stop. Work stopped in accordance with the direction.

No injuries or illnesses were sustained by any worker or other person arising from these circumstances.

(d) 27 April 2018

Nexus Delivery engaged Subcontractor 4 because of its expertise and specialisation in providing steel manufacturing and fixing services. In particular, Subcontractor 4 was engaged to manufacture steel mesh mats used to reinforce the piers being constructed in advance of concrete being poured.

On 27 April 2018, Subcontractor 4 was engaged in lifting steel mesh mats at Pier 3. Flagged tape was used to create an exclusion zone, with the only authorised exception being a dogman employed by another subcontractor. The steel mesh mats had been preassembled by Subcontractor 4 in the weeks prior and were transported to the relevant area on the day of the lift.

Two lifting cranes were attached to the steel mesh mat and, as it was being lifted into a vertical position, two dummy steel reinforcing bars separated from the mat which was still in contact with the ground. One bar separated from the steel mesh mat and struck a vehicle that was parked in the exclusion zone, and the other bar brushed the arm of the dogman.

Although it is reported that one of the bars brushed the arm of the dogman, there was no injury sustained by the dogman. Accordingly, no injuries or illnesses were sustained by any other worker or other person arising from these circumstances.

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

☐ Not Applicable

DATE ISSUED	NOTICE TYPE	NOTICE NUMBER	CONTRAVENTION OR PROHIBITED ACTIVITY	ACTION TAKEN IN RESPONSE TO NOTICE
17.08.17	Prohibition	1018579	Operating mobile plant where ground conditions have not been suitably assessed.	The Company complied with this Prohibition Notice and only operated mobile plant once ground conditions were suitably assessed.
17.08.17	Improvement	1028411	Mobile plant is operated daily by workers and/or in vicinity of workers on ground that has not been suitably assessed or caused to be assessed by the principal contractor as being adequate to prevent the overturning of mobile plant.	The Company complied with this Improvement Notice and only operated mobile plant once ground conditions have been suitably assessed as being adequate to prevent the overturning of mobile plant. A Concrete Pumping Checklist (TSRC-HS-FOR-0316) was developed to check safety documentation, ground details, pump set-up and operation.
02.03.18	Prohibition	1004891	Allowing workers on formwork systems containing fall risks.	The Company complied with this Prohibition Notice as fall risks arising from the formwork were remedied and a further inspection by the issuing WHSQ inspector was conducted to confirm that the fall risks had been remedied.
24.04.18	Prohibition	1004892	Performing work at height where there is an uncontrolled risk of fall from one level to another.	The Company complied with this Prohibition Notice and it did not allow work to be performed at height where there is an uncontrolled risk of a fall from one level to another.
24.04.18	Prohibition	1004893	Performing work where it is reasonably likely that falling objects could cause injury to a person.	The Company complied with this Prohibition Notice and it did not allow work to be performed where it is reasonably likely that falling objects could cause injury to a person.

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

There were no injuries or illnesses sustained or suffered by any worker or other person as a result of the alleged contraventions.

1.6 Detail the workers' compensation or other insurance benefits paid to the worker/s who sustained injury or suffered illness as detailed in term 1.5 or to the beneficiaries of deceased persons

The person/s detailed is:

- an employee/s of the entity ☐
- a self-employed person/s ☐
- other ☐ (please specify) _____
- not applicable ☒

1.7 Detail the support provided or proposed by the person to the injured worker/s, other/s or families

Not applicable as there were no injuries or illnesses sustained by any worker or other person as a result of the alleged contraventions.

1.8 Detail any current OHSMS implemented and maintained by the person

The Company has a work health and safety management system for eliminating, or otherwise minimising risks to health and safety, so far as is reasonably practicable. The system consists of policies, including a health and safety policy, plans, procedures, standards, guidelines, forms and registers.

The system is certified against AS/NZS ISO 45001:2018 (*Occupational health and safety management systems - Requirements with guidance for use*) and OHSAS 18001:2007. The system is also accredited under the Office of the Federal Safety Commissioner's (**OFSC**) Work Health and Safety Accreditation Scheme.

This system is subject to scheduled internal reviews and updated as required. Recent improvements include introducing a more robust, digitised process for cross-checking documentary evidence received by the Company against requirements of the work health and safety management system.

The system can also be subject to external reviews, including by SGS Consultants and clients.

The Company is firmly committed to continuous improvement in its health and safety practices. A clear example of this is how, as the Project evolved, the Company progressively reviewed and revised its practices to incorporate a significant number of initiatives designed to strengthen its work health and safety management system, and to respond to the challenges on site. Examples of these measures are:

- Established a Safety Improvement Committee in August 2017 with the aim of improving safety on the Project and operating at a higher strategy and guidance level. It was made up of senior management representatives from both parent companies and from the Project.
- Invested in cultural change, including introducing a project realignment strategy to bring about cultural change and commissioning an independent safety culture review which involved assessing documents, interviewing workers and conducting site safety walks with the purpose of identifying areas for improvement. The Company also engaged a Safety Culture Improvement Advisor for the Project from September 2017.
- Increased the number of experienced work health and safety professionals on the Project and reinforced the safety team with a new H&S Compliance Advisor, H&S Administrator, Senior Training,

Assessment and Compliance Officer and Safe Operations Manager.

- Implemented changes to key leadership roles on site, including a new Health and Safety Manager and Project Director.
- Reviewed the qualifications of workers, including the engagement of an independent third party (Advanced Solutions) to audit the verification of competency (**VoC**) processes of mobile plant operators on site. This work involved reviewing the Project's VoC processes and then meeting with the Project's main contractors using mobile plant and reviewing their VoC processes.
- Provided targeted training to workers including delivering safety culture training for workers who carry out high-risk work (for example working at heights and crane operations) and holding a Project-wide Safety Focus Day on 27 September 2017.
- Implemented numerous improvements to systems and processes, for example by:
 - Introducing Plant Safety Crews to focus on site conditions for safe plant and vehicle operations.
 - Introducing a '7-9 Rule' which required members of the construction, safety, environmental and quality teams to be on site between 7 am and 9 am daily, interacting with workers and checking that work could be safely progressed; and
 - Introducing plant specific processes within the site procedures for vehicles, mobile plant and equipment.
- Developed a Structures Safety Improvement Plan & Plant Safety Improvement Plan in May 2018 to provide added visibility to the control measures in place on the Project. This was supported by detailed policies, procedures and records in the Project's Work Health and Safety Plan.
- Corresponded with all contractors to confirm the requirement to ensure all plant and equipment operators comply with the OEM Operator's Manual for their plant and equipment.
- Implemented a 3-day site-wide safety reset workshop 'Safe Run Home', to restate and reinforce the Project's safety values.
- Introduced an 'Exclusion Zone Access Permit' which required a worker, or work groups to hold a permit before they could gain entry to a Permanent Exclusion Zone (deemed to be any area beneath a structure).
- Engaged further additional resources, including a Plant Manager as part of the Project's Health and Safety Team.
- Undertook formal Subcontractor Compliance Audits and Subcontractor Onboarding Sessions which involved one-on-one meetings with subcontractors to emphasise the Project's requirements and the consequences for non-compliance.
- Engaged the assistance of external providers, for example the Australian Workplace Training Group (to deliver training on risk management for supervisors and engineers) and SafeAssure (to conduct ongoing site reviews on a bi-monthly basis).
- Increased the number of inspections following the Project's partial opening on 8 December 2018; and
- Delivered toolbox talks at the start of 2019 to all remaining subcontractors and Nexus Delivery personnel in the Project's Critical Rules and General Site Rules.

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

The OHSMS is regularly audited, including by the OFSC who conducts external and independent safety audits as part of the accreditation and re-accreditation process.

Internal audits are conducted on a quarterly and annual basis. Audits conducted on a quarterly basis are field and desktop audits, which cover the implementation of, and compliance with, the OHSMS. Audits conducted annually are by SGS Consultants against AS/NZS ISO 45001:2018 (*Occupational health and safety management systems - Requirements with guidance for use*). In addition to these internal audits, client audits and project verifier audits are also conducted of the OHSMS, when deemed appropriate.

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

The Company has carried out extensive consultation in relation to this undertaking.

The Company has consulted with the beneficiaries named in this undertaking, and key internal personnel at the Office of Industrial Relations, including the Director of Construction, Compliance and Field Services.

To assist with the identification of appropriate audiences for the Company to share its learnings and insights from the Project, consultation occurred with the Australian Constructors Association, Queensland Major Contractors Association, the Civil Contractors Federation and the Master Builders Association Queensland.

Internally, key Company personnel have contributed to this undertaking, including the Company's Managing Director who has had an active role in its development.

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

The Company took action in response to each of the alleged contraventions to ensure that risks to health and safety were being managed and to alleviate all concerns expressed by WHSQ inspectors.

The Company also consulted with the subcontractors involved in each of the alleged contraventions as to actions they were each taking in response, which involved ensuring that their actions were not inconsistent with those being taken by the Company.

In response to each of the alleged contraventions, the Company response is outlined below:

(a) 15 August 2017

- Conducted two toolbox talks on the day of the incident in relation to the stop work.
- Communicated the incident to all workers on the day of the incident advising that 'safety reset' toolboxes would be held the next day in the east, central and west areas of site. Work stopped site-wide in preparation for these toolboxes. These toolboxes addressed the Project's expectations regarding safety and encouraged discussion on what needs to be done to improve safety.
- Communicated the incident to all workers in the Daily Safety Message on 16 August 2017.
- Developed the Concrete Pumping Checklist (TSRC-HS-FOR-0316) which was required to be completed prior to operating a concrete boom on site. The purpose of the checklist was to check the safety documentation, ground details, pump set-up and operation before undertaking work.

(b) 1 March 2018

- In conjunction with one of two subcontractors involved with the alleged contravention:
 - i. Completed housekeeping at Pier 3.
 - ii. Replaced the walkway above the working deck.
 - iii. Closed all gaps and holes.
 - iv. Completed scaffolding.
 - v. Closed all penetration doors and secured where needed; and
 - vi. Removed ladders to stop unauthorised entry to the decks above.
- Allocated a new supervisor to the two subcontractors involved with the alleged contravention.
- Reduced the number of open work fronts, from six piers to three piers and four headstocks to two headstocks. This resulted in a reduction to the number of workers working at any one

time, however the supervision levels remained unchanged (leading to increased supervision ratios).

- Required leading hands to be responsible for a work area and to carry out inspections and complete the Daily Prestart Checklist (TSRC-HS-FOR-0303) for that work area.

(c) 23 April 2018

- Consulted with workers about the alleged contravention and control measures to put in place.
- Revised the applicable construction methodology and safe work method statements (FRP All Piers (TSRC-HS-SWMS-0057-G) and Headstock Installation (TSRC-HS-SWMS-0069-F)).
- Developed multiple checklists to reflect the revised construction methodology, including the control measures to be put in place between the differing trades (Jump Formwork Handover Checklist (TSRC-HS-FOR-1107), Formwork Soffit Lifting Checklist (TSRC-HS-FOR-1106) and Reinforcement Steel Bundle Lifting Checklist (TSRC-HS-FOR-1109). Toolbox talks were conducted upon the introduction of these checklists.
- Increased the ratio of supervisors to one supervisor for every six employees employed by a subcontractor and the number of mandatory site inspections by introducing a daily inspection roster for the Project's Health and Safety Advisors, Engineers and Leading Hand Supervisors.
- Allocated a new Health and Safety Advisor specifically to Piers 2 and 3.

(d) 27 April 2018

- Issued a Safety Alert the day after the incident. This Safety Alert addressed a description of the incident, photographs and preliminary actions being taken in response to the incident.
- Developed the Prefabricated Wall Mat Lifting Checklist (TSCR-HS-FOR-1105) which was required to be completed before a lift is performed. The purpose of this checklist was to ensure that the procedures relating to these lifts are properly verified. This checklist was released side-wide on 4 May 2018 and toolbox talks were subsequently held. This checklist formed part of the Safety Structures Improvement Plan (TSRC-HS-SSI-PLA) that was also introduced on site.
- Amended the applicable safe work method statement (Prefabricating, Lifting and Relocating Steel Cages (TSRC-HS-SWMS-0064)) to incorporate the completion and sign-off of the above checklist and to introduce standards for the storage and handling of prefabricated steel mesh mats.
- Allocated a new Health and Safety Advisor specifically to the viaduct.

Total amount spent on rectifications (estimated)

\$ 750,000

SECTION 2: GENERAL TERMS

The Company 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

The Company acknowledges that the regulator alleges that contraventions have occurred as detailed 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

The Company deeply regrets that the incidents leading to the alleged contraventions occurred.

The Company has always been committed to ensuring the health and safety of workers, including subcontractors, and that the health and safety of other persons is not put at risk from work carried out by the Company, so far as is reasonably practicable. The Company understands its legal obligations, and that in some cases punitive measures, such as a court-imposed sanction may encourage compliance with obligations under the WHS Act. However, this is not such a case. The Company does not need punitive measures to encourage it to comply with its obligations under the WHS Act, and sees this undertaking as a long term and positive approach to improving safety culture within the Company and an opportunity to continue to improve and commit to work health and safety well into the future.

The Company has a proactive approach to safety. In this context, the range of safety initiatives which the Company adopted at the Project were substantial and, after the date of the first alleged contravention of 15 August 2017, included the steps outlined in terms 1.8 and 1.11 above.

This undertaking provides benefits to workers, the community and most significantly the construction industry. As noted above, the Project involved the coming together of experts from a wide variety of fields (including, as relevant to the alleged contraventions, the Company, Subcontractor 1, Subcontractor 2, Subcontractor 3 and Subcontractor 4). As also noted above, the undertaking provided by the Company reflects and is directly informed by the learnings of the Company arising from the high degree of complexity, scale and expertise involved in the Project. This undertaking seeks to develop those learnings further with the expert assistance of the beneficiaries to this undertaking with the intention for maximum exposure across industry and the community.

The construction industry is a high-risk industry, and the undertaking delivers long term benefits. This undertaking provides the Company with an opportunity to support the construction industry in Queensland and nationally, and build on the learnings and insights as a result of the Project being the largest infrastructure project in Queensland to date and through the proposed undertakings with Griffith University and Safekon. It is notable that following the Project, the regulator has also changed its approach to monitoring and enforcing compliance with the work health and safety laws for similar projects going forward.

As mental health is an area of growing concern in the construction industry, undertakings for the benefit of the industry and community have more broadly focused on assisting organisations who provide support services in this area.

For the above reasons, this undertaking is a more appropriate response to the alleged contraventions and provides benefits that would otherwise not be achieved with a court-imposed sanction.

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

The Company took the actions detailed in term 1.11 in response to each of the alleged contraventions to cease the behaviour, activities and other factors which caused or led to the alleged contraventions.

The above rectifications detailed in term 1.11 are in addition to various other initiatives taken on site in relation to work health and safety, including but not limited to the development of a Plant Safety Improvement Plan (TSRC-HS-PSI-PLA), a Safety Structures Improvement Plan (TSRC-HS-SSI-PLA) and the roll-out of a 'Safe Run Home' safety reset campaign which was conducted over three days and involved a progressive shut down of site works within each of the disciplines – Structures, Earthworks and Pavements. Over 900 workers, including subcontractors, attended the campaign. A representative from the regulator was also in attendance.

Since the time when these alleged contraventions occurred, construction on the Project has finished and the Project opened to the public.

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

I have read and understood:

Guidelines for the acceptance of an enforceable undertaking

Version: 1 Dated: November 2017

2.5 Acknowledgement that this undertaking may be published and publicised

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

2.5.2 The Company 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 The Company has the financial ability to comply with the terms of this undertaking and has provided evidence by way of letters from the Company's Finance Director and the Company's parent company with this undertaking to support this declaration.

2.6.2 In the event of loss or withdrawal of a required industry specific licences, impending liquidation and/or sale of the entity, the Company 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

The Company does not have any relationships with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarships or other recipient of financial benefit contained in this undertaking, other than as an employer and member of the construction industry and community.

2.8 Statement regarding Intellectual Property Licence

The Company grants OIR a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce, publish, distribute, electronically transmit, electronically distribute, adapt and modify any materials developed as a result of this undertaking.

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

OIR has requested a statutory declaration outlining details of any prior convictions¹ or findings of guilt under the safety Acts.

☐ YES

☒ NO

¹ Subject to any local legal constraints such as spent conviction legislation.

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 Company.
- 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 Company 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

The Company is committed to performing activities that will ensure the ongoing effective management of risks to health and safety in the future conduct of its business or undertaking.

As detailed in term 1.8, the Company has a work health and safety management system for eliminating, or otherwise minimising risks to health and safety, so far as is reasonably practicable. The system is certified against AS/NZS ISO 45001:2018 (*Occupational health and safety management systems - Requirements with guidance for use*) and OHSAS 18001:2007. The system is also accredited under the OFSC's Work Health and Safety Accreditation Scheme.

The system is subject to scheduled internal reviews and updated as required. Recent improvements include introducing a more robust, digitised process for cross-checking documentary evidence received by the Company against requirements of the work health and safety management system.

The system can also be subject to external reviews, including by SGS Consultants and clients.

The nature and frequency of the Company's audit program is set out in term 1.2 above. The proposed further auditing of the system in this undertaking set out in term 3.2.1 below will assist the Company to ensure the ongoing effective management of risks to health and safety in the future, as will the proposed research by Griffith University and work by Safekon.

In addition to the system, the Company has Monthly Management Meetings. The Company's Managing Director and Senior Legal Counsel attend these meetings, among others. At these meetings, work health and safety generally and at any construction projects when on foot, are reported on. When construction projects are on foot, steering committees are held at which representatives from the companies involved attend. Work health and safety is a standing agenda item at these meetings. Representatives from the

Company would also attend the Monthly Safety Committee Meetings.

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

The Company is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking will be linked to this undertaking.

SECTION 3: ENFORCEABLE TERMS

The Company acknowledges all activities set forth in the enforceable terms below must be auditable and include a date for completion and an estimated cost for each activity.

The Company commits to performing the activities below diligently, competently and by the respective completion date.

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

Dissemination of information about this undertaking will be achieved by doing the following:

- (a) The Company's Senior Legal Counsel will present information about this undertaking at a Monthly Management Meeting. A copy of the undertaking will also be circulated to attendees.
- (b) The Company's Senior Legal Counsel will share information about this undertaking with the Corporate Health and Safety Director of the Company's parent company. A copy of the undertaking will also be provided.
- (c) For any construction project on foot, the Company's Senior Legal Counsel will also present information about this undertaking to the construction project's Leadership Team, including the Project Director and Health and Safety Manager as well as to workers, including subcontractors.

Dissemination will occur for term 3.1(a)-(b) within 3 months, and for term 3.1(c) within 36 months, of the date of acceptance of this undertaking.

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

ACTIVITIES		COST	TIMEFRAME
3.2.1	<p>Third party audits</p> <p>The Company will engage an independent third-party auditor who is certified to audit the Company's work health and safety management system for compliance against AS/NZS ISO 45001:2018 (<i>Occupational health and safety management systems - Requirements with guidance for use</i>) and the Office of the Federal Safety Commissioner Audit Criteria. Each time the auditor is engaged, they will prepare a detailed analysis and mapping matrix in the form of a report which will then be provided to the regulator.</p> <p>The first audit would be a desktop audit conducted within six months of the date of acceptance of this undertaking. Two further audits will be conducted, each being 12 months apart. Provided a construction project is on foot at the time and the Company's system is the basis for the work health and safety management system used at the construction project (and not that of another company), those audits would be of the construction project's work health and safety management system. Construction projects can adopt the Company's system and then tailor it to the construction project.</p>	\$35,000	Over a 30 month period from the date of acceptance of this undertaking. The first audit will commence within six months from the date of acceptance.

ACTIVITIES		COST	TIMEFRAME
	<p>Costs</p> <p>\$15,000 for the first audit and \$10,000 for the subsequent audits.</p> <p>Benefits to the worker</p> <p>The audits are in addition to the Company's existing audit program, under which the Company's work health and safety management system in Australia is audited annually.</p>		
3.2.2	<p>Due Diligence Workshop</p> <p>The Company will conduct a workshop at its Head Office in North Sydney for the senior managers within the Company, including the Managing Director, on the officers' duty of due diligence. The workshop will be led by Dr Tristan Casey, currently from the Safety Science Innovation Lab at Griffith University, with the assistance of external legal providers.</p> <p>The workshop will be interactive in nature, with an approximate timeframe of 3 hours. Due to Dr Tristan Casey's upcoming role within the Department of Management, Leadership and Organisations at Middlesex University in the United Kingdom, where he will be based, Dr Tristan Casey will work on and deliver this workshop remotely.</p> <p>If a construction project is on foot, the Company will extend an invitation to the project's senior management personnel.</p> <p>Costs</p> <p>\$12,500 for engaging speakers, including Dr Tristan Casey (\$4,750) and external legal providers, delivering one workshop. The cost covers preparation by the speakers who will consult with each other as well as the Company ahead of the workshop to finalise the workshop material.</p> <p>A letter setting out Dr Tristan Casey's costs and the intended workshop objectives has been provided as part of the Company's supporting documentation. A letter from the external legal providers setting out their costs has also been provided.</p> <p>Benefits to the workers</p> <p>The workshop will continue the senior managers, including the Managing Director's, learning and experience in relation to the officer's duty of due diligence and will be informed by research undertaken in respect of safety leadership by Dr Tristan Casey. This will be rolled out to other contractors engaged by the Company where a construction project is on foot.</p>	\$12,500	Within 12 months from the date of acceptance of this undertaking
Total estimated cost of benefits for workers/others		\$47,500	

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

ACTIVITIES	COST	TIMEFRAME
<p>3.3.1 Research grant to Griffith University</p> <p>The Company will engage the Safety Science Innovation Lab at Griffith University to conduct a research project in relation to mobile plant with the overall goal to improve the effectiveness of safety management for heavy vehicle movements and lifting operations on construction sites.</p> <p>The research will examine the following questions:</p> <ol style="list-style-type: none"> 1. What is the current state of knowledge about managing safety of high-risk mobile plant in industries other than construction? 2. How and to what extent does this knowledge translate to the use of high-risk mobile plant in construction? 3. What specific controls are desirable for implementation for high-risk mobile plant in construction? <p>The first question will be addressed primarily through a state-of-the-art review. The second question will be addressed through qualitative research using case studies of incidents and interviews in construction organisations. The third question will be addressed through a limited field trial.</p> <p><i>State-of-the-art review (0-8 months)</i></p> <p>The primary goal of the review will be to establish a comprehensive taxonomy of safety interventions for high-risk mobile plant. The scope and nature of this review will be shaped by the following considerations:</p> <ol style="list-style-type: none"> 1. The review will not be limited to engineering controls, since most interventions involve a combination of changes to policy, equipment, and desired behaviours. However, the review will focus on interventions that involve some application of novel technology. 2. To the extent that novel technology is covered by scientific literature, it is more likely to appear in industry-specific venues rather than generic safety venues, and more likely to appear in conferences than journals. The review will aim to achieve broad coverage, including grey literature and marketing material where appropriate, rather than applying strict inclusion criteria. 3. Given the risk of controls that have been adopted by industry, but not covered by scientific literature, the review will not be limited to published literature, but will include 	<p>\$200,000</p>	<p>Within 24 months from the date of acceptance of this undertaking</p>

ACTIVITIES	COST	TIMEFRAME
<p>consultations with existing industry partners. This will increase the time and cost of the review, but will ensure a much more practically-focussed deliverable.</p> <p><i>Translation to construction (6-12 months)</i></p> <p>The state-of-the-art review will cover existing controls used within the construction industry, as well as controls that are used in other industries. There are a number of reasons why controls that are applicable in other industries cannot be directly applied on construction projects. These include, but are not limited to:</p> <ol style="list-style-type: none"> 1. The nature of contracting and subcontracting arrangements on construction projects. These arrangements frequently mean that there are workers who are only on each site for a short amount of time. 2. The balance of planned and unplanned work on construction projects. 3. The changing mix of people, plant, and even organisations at different stages of the construction life-cycle. 4. The frequent use of hired plant, or of subcontractors who use their own specialised tools and plant. <p>The primary goal of this phase of the project will be to understand the relationship between construction project constraints and conditions, the hazards presented by high-risk mobile plant, and the suitability of controls documented in the state-of-the-art review.</p> <p>The translation phase will adopt a mix of qualitative approaches.</p> <p>The first approach will be to examine case studies of previous mobile plant incidents and injuries. Within the limits of subjectivity and hindsight bias, the research will assess the extent to which different controls could have influenced the events in question.</p> <p>The second approach will look forward, directly asking workers, supervisors and safety practitioners about the desirability of controls and control strategies. As well as directly informing control selection, this work will attempt to uncover the underlying factors that influence participants' opinions of the controls.</p> <p>The results of both phases will be integrated and published as a freely available dissemination report, and will be presented at a practitioner-focussed conference such as the annual Australian Institute of Health and Safety (AIHS) Queensland 'Visions' conference. It will also be submitted for publication in a peer-reviewed journal.</p>		

ACTIVITIES	COST	TIMEFRAME
<p><i>Field trial (12-24 months)</i></p> <p>Technology selection for the field trial will be informed by the first two phases of this project. The equipment described in this phase is for measurement and evaluation of the efficacy of the control, and is not the control itself.</p> <p>The purpose of this phase is to independently verify that one or more selected controls are having the intended effect. If phase one is 'What is available?'; and phase two is 'What is expected to work?'; phase three is 'What actually works?'. A 'before/after' trial will be used to establish a baseline of measurement before the control is implemented, and seeks to detect variation or improvement after the control is in place.</p> <p>The precise design of this trial depends on the selection of control, but a preliminary design is provided here for budgeting purposes. The dependent variable is the movement of pedestrians and plant. This will be measured using GPS & Bluetooth beacons on the plant, and wearable devices on the pedestrians. Together, these allow measurement of:</p> <ul style="list-style-type: none"> • Where the plant is across time; • Where the people are across time; and • When and where the people are in close proximity to the plant. <p>The trial will collect two weeks of data immediately before the implementation of the control, and for two weeks immediately after. If practicable, the design will be interleaved A-B-A-B so that measurement occurs without the control, then with the control, then without the control, then with the control.</p> <p><i>Dissemination</i></p> <p>This research project will have the following deliverables:</p> <ol style="list-style-type: none"> 1. A publicly available, written technical report for each phase. These reports will be in language and format suitable for industry readers. <ul style="list-style-type: none"> • The phase 1 technical report will discuss technological solutions and safety management guidelines from other industries and mobile plant hazards that may be suitable for adaption for the construction industry • The phase 2 technical report will provide guidance on the safety of high-risk mobile plant for large infrastructure construction projects, including: <ul style="list-style-type: none"> ○ Planning; ○ Selection of technology 		

ACTIVITIES	COST	TIMEFRAME
<p>(engineering controls);</p> <ul style="list-style-type: none"> ○ Set-up; ○ Operations; ○ Variation and unplanned work; and ○ Tracking and performance measurement of safety. <ul style="list-style-type: none"> • The phase 3 technical report will provide details about the efficacy of one or more specific technological controls for high-risk plant on construction projects <p>2. A publicly available, written dissemination report describing:</p> <ul style="list-style-type: none"> • The activities that have been undertaken to share the research across all three phases; • Feedback that has been received in response to these activities; and • How the feedback has been incorporated into the conduct of the research and the deliverables. <p>In addition to these deliverables, the researchers will also:</p> <ol style="list-style-type: none"> 1. Present the work at conferences with industry attendees. The AIHS Queensland 'Visions' conference is offered as a likely venue, but the goal will be to present the work at three different conferences to reach as wide an audience as possible. 2. Submit at least one academic paper for peer-reviewed publication from the work. 3. Discuss the work in other industry-accessible forums such as the 'Safety of Work' podcast and the WHS industry forums. <p>Costs</p> <p>\$200,000</p> <p>The breakdown for each phase is as follows:</p> <ul style="list-style-type: none"> • State-of-the-art review: \$53,500 • Translation to construction: \$71,500 • Field trial: \$75,000 <p>A letter setting out details of the research project from the Safety Science Innovation Lab at Griffith University has been provided as part of the Company's supporting documentation.</p>		

ACTIVITIES		COST	TIMEFRAME
	<p><i>Benefits to the industry</i></p> <p>This research project will benefit the Company and the construction industry nationally. The intended outcomes for the research project include an increased understanding of the available technological solutions for high-risk mobile plant hazards, the readiness of these solutions for application, and the current evidence of efficacy of these solutions.</p>		
3.3.2	<p>Safety management system for mobile plant</p> <p>The Company will engage Safekon to design and develop a safety management system for mobile plant for use in the construction industry.</p> <p><i>Planning and inputs (2.5 months)</i></p> <p>Safekon will undertake a planning phase and consider inputs from a range of sources as part of scoping the extent and varying elements of the mobile plant safety management system. Consideration will include the following:</p> <ol style="list-style-type: none"> 1. <i>Learnings from the Project.</i> Safekon will review the various mobile plant related incidents that occurred at the Project, causal factors and the preventative and corrective actions taken as a result of those incidents. This review will include incident information, safety alerts, project safety messages, improvements plans, toolbox talks and associated checklists/assurance tools implemented in relation to those incidents. This aspect will specifically assist to identify and confirm aspects of a mobile plant safety management system that are essential for construction projects and larger scale, complex infrastructure undertakings. 2. <i>Written technical report by Griffith University.</i> Safekon will review the report which will be completed by Griffith University in the first phase of the research undertaking in relation to mobile plant at term 3.3.1. 3. <i>Current regulatory guidance information.</i> Safekon will review and consider the range of current regulatory guidance information that is available via Safe Work Australia and various state, territory and industry associations relating to powered mobile plant. This will assist Safekon to confirm existing mobile plant safety management system resources and content as part of the development process. 4. <i>Industry and user input.</i> Safekon will consult with various parts of the construction industry known to the Company and Safekon. This will include subcontracted plant operators, 	\$95,400	Within 17.5 months from the date of acceptance of this undertaking

ACTIVITIES	COST	TIMEFRAME
<p>principal contractors, plant suppliers and electronic plant management software system representatives, among others. This will assist Safekon to understand the views of industry participants and various duty holders, especially in relation to mobile plant safety management system aspects working well, emerging or that require specific attention or improvement.</p> <p>The above phase is targeted at reviewing and appraising the extent and breadth of mobile plant safety management system content, approaches and opportunities enabling an effective and improve mobile plant safety management system to be designed and developed.</p> <p><i>Design and development of mobile plant safety management system (4 months)</i></p> <p>Safekon will apply a traditional, systems based approach to the design and development of the mobile plant safety management system. The approach will follow the concept of 'Plan-Do-Check-Act' as modelled in AS/NZS ISO 45001:2018 - <i>Occupational health and safety management systems - Requirements with guidance for use standard</i>.</p> <p>As part of the design and development stage, Safekon will also consider:</p> <ol style="list-style-type: none"> 1. Management of subcontracted plant activities and protocols for principal contractors aimed at achieving consistency of plant standards across projects; 2. Varying approaches, innovations and ways of working that are used across the construction industry (and wider industry settings) so the content is not focused on minimum requirements, but rather to broaden industry knowledge in relation to mobile plant hazards and control strategies; 3. A focus on diagrammatic, pictorial and image-focused outputs, where possible; and 4. Content relating to current electronic plant management systems and approaches available in the market to potentially assist plant users across the construction industry. <p><i>Consultation and refinement (1 month)</i></p> <p>In addition to consultation and liaison with the Company, industry representatives, plant subcontractors and principal contractors that will be undertaken in the first two phases of the project, Safekon will also consult with the OIR.</p> <p>Safekon commits to consulting with the OIR for a review and ultimate endorsement of the mobile plant safety management system and its various elements</p>		

ACTIVITIES	COST	TIMEFRAME
<p>before it is made available to the construction industry.</p> <p>Costs</p> <p>\$95,400</p> <p>The breakdown for each stage is as follows:</p> <ul style="list-style-type: none"> • Planning and inputs: \$21,600 • Design and development of mobile plant safety management system: \$59,400 • Consultation refinement: \$14,400 <p>A letter setting out details of the project from Safekon has been provided as part of the Company's supporting documentation.</p> <p>The undertaking will commence upon completion of the 'State-of-the-art' review by Griffith University as part of the research undertaking in relation to mobile plant at term 3.3.1. A copy of the publicly available written technical report to be prepared by Griffith University once the state-of-the-art review has been completed will be provided to Safekon.</p> <p>Upon completion of the mobile plant safety management system, the Company will approach construction industry bodies (e.g. the Australian Constructors Association) to identify one or more mechanisms for making the system available to construction industry participants. Distribution will be the responsibility of the Company and subject to consultation with the OIR. Two months is anticipated for dissemination. The time of the Company's personnel is not included in the assessment of the cost and will be complimentary.</p> <p>The Company will also review the mobile plant safety management system designed and developed by Safekon and consider where improvements could be incorporated within its own work health and safety management system (and in particular, the Company's operational standards). This will occur within the same two months used for dissemination of the mobile plant safety management system to the construction industry.</p> <p>Benefits to the industry</p> <p>At the time, the Project was the largest infrastructure project in Queensland and there are learnings from the mobile plant incidents that occurred that would benefit other construction projects, and the construction industry generally. The safety management system for mobile plant that will be designed and developed by Safekon will consolidate and contribute to those learnings and be made available to construction industry participants.</p>		

ACTIVITIES		COST	TIMEFRAME
3.3.3	<p>Research grant to Professor Richard Johnstone</p> <p>The Company will commission an academic paper on legal and policy issues involved in the use of ‘pure risk’ prosecutions under the Australian WHS Acts by Professor Richard Johnstone who is currently based in the School of Law at the Queensland University of Technology.</p> <p>The term ‘pure risk’ prosecutions refers to ‘all prosecutions for a breach of a risk-based activity arising from circumstances that do not involve death, injury, illness or a near miss.’² The key provisions in the WHS Acts are the general duties, and particularly the primary duty of care in section 19 which requires the duty holder to eliminate risks to health and safety as far as is reasonably practicable, and if it is not reasonably practicable to eliminate those risks, minimise those risks so far as is reasonably practicable. The regulations supplement this by mandating a risk management process for hazards covered by regulations. The courts have made it clear that the primary duty is a continuous duty (<i>Williamson v Betterlay Brick and Block Laying Pty Ltd</i> [2020] QCA 52 at [54], [64]) and that there is a breach of the primary duty if a worker is exposed to a risk which can be eliminated (or minimised) by reasonably practicable controls. The Victorian Court of Appeal (<i>DPP v Vibro-Pile (Aust) Pty Ltd</i> (2016) 49 VR 676 at [3]) has taken to labelling the general duties as creating ‘risk-based offences’ (to be contrasted with ‘outcome-based offences’ requiring harm to occur before there is a breach).</p> <p>From a policy perspective, ‘pure risk’ prosecutions are significant to reinforce the preventative nature of WHS regulation. The argument is that regulators should initiate prosecutions for breaches of the general duties (as well as for breaches of provisions in the regulations that require duty holders to eliminate/minimise risks) before an incident and any injury, illness or near miss occurs; rather than reacting to incidents. Pure risk prosecutions seek to reinforce the proactive and preventative focus of the general duties and the standards in the regulations – the regulator prosecutes before anything happens; specific and general deterrence is aimed at reinforcing that there must be compliance before anything happens; by convicting and imposing penalties the courts signal societal disapproval for persons conducting businesses or undertakings that exposure workers to risks that could be addressed with reasonably practicable controls; and the enforcement pyramid can operate effectively because regulators can escalate to the top of the pyramid before any injury, illness or near miss occurs,</p>	\$22,000	Within 36 months from the date of acceptance of this undertaking

² The term was first used in N Gunningham and R Johnstone, *Regulating Workplace Safety: Systems and Sanctions*, OUP, 1999, 207-210.

ACTIVITIES	COST	TIMEFRAME
<p>rather than having a 'split pyramid'.³</p> <p>The paper will examine the consequences of the current practice of mainly focusing prosecutions on events resulting in injuries, fatalities or near misses. It will explore the legal and policy justifications for the use of pure risk prosecutions (the preventative focus of WHS regulation, as discussed above) and obstacles to the increased use of pure risk prosecutions (which include the challenges of gathering evidence where there is not an 'event' to focus on; and the perception of many that penalties should be lower if no harm has resulted from a breach). The paper will also review current WHS sentencing principles to assess whether they are consistent with the preventative aims of pure risk prosecutions. The paper will, to the extent possible, provide examples in the construction industry and refer to the role of principal contractors for construction projects.</p> <p>The scope for this paper will be confirmed by Professor Richard Johnstone and provided to the OIR before work commences. It has been proposed that a copy of the academic paper will also be provided to the OIR once it has been finalised, and Professor Johnstone will present the paper in an hour long seminar organised by the Company. He will submit a revised version of the paper to a refereed academic journal, and a short version of the paper to at least one trade journal. After the presentation to the OIR, Professor Johnstone will present at two industry forums for up to one hour each. The identity of the industry forums will be confirmed in consultation with the OIR. The short version of the paper will also be provided to members of the Queensland Work Health and Safety Board and the Company's senior managers, including the Managing Director. The expectation is that throughout and after the project Professor Johnstone's independence will be maintained.</p> <p>Professor Johnstone was the founding director of the National Research Centre for Occupational Health and Safety Regulation at the Australian National University and is a current member of the Queensland Work Health and Safety Board. He has written extensively on work health and safety regulation, having completed eight major empirical studies and authored or co-authored at least five books and many articles and book chapters on work health and safety regulation. He has also authored or co-authored research reports and papers for work health and safety regulators and policy makers in Australia and internationally.</p> <p>Costs</p> <p>\$22,000</p>		

³ See N Gunningham and R Johnstone, *Regulating Workplace Safety: Systems and Sanctions*, OUP 1999, 206-209 and 121-123.

ACTIVITIES		COST	TIMEFRAME
	<p>A letter of support from Professor Johnstone has been provided as part of the Company's supporting documentation.</p> <p><i>Benefits to the industry</i></p> <p>This academic paper will benefit all industries, including the construction industry. It will also benefit work health and safety regulators and policy makers in Australia. As the paper will include examples from the construction industry to the extent possible, the paper will highlight the importance of managing exposure to risks to health and safety on site given the preventative nature of work health and safety regulation and how that in turn can impact on the duties of principal contractors.</p>		
Total estimated cost of benefits for industry		\$317,400	

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

ACTIVITIES		COST	TIMEFRAME
3.4.1	<p>Funding to Landcare Australia for the development of online WHS training resources</p> <p>The Company will provide funding to Landcare Australia for the development of online WHS training resources to support Landcare Australia's community volunteer groups. Landcare Australia is a national not-for-profit organisation that engages communities in sustainable land management and conservation activities.</p> <p>This undertaking will involve improving the current training resources available and creating digital content to make the training resources more readily accessible for Landcare Australia's volunteers.</p> <p>Specifically, the Company will engage a WHS consultant to assist Landcare Australia with the development of its online content and to recommend improvements.</p> <p>Landcare Australia has identified a third party to assist with the creation of three short videos, which will cover three of the following topics:</p> <ul style="list-style-type: none"> • Tool use; • Manual weed control and chemical use; • Revegetation; • Working on uneven ground/slips, trips and falls; and • Rubbish removal and sharps disposal. <p>Upon completion of the undertaking, Landcare Australia will publish on its website how this work has</p>	\$45,000	Within 12 months from the date of acceptance of this undertaking

ACTIVITIES	COST	TIMEFRAME
<p>improved their online WHS training resources, including how the changes have been disseminated. A copy of this report will be provided to the OIR.</p> <p>Costs</p> <p>\$35,000</p> <p>The breakdown for the work is as follows:</p> <ul style="list-style-type: none"> • Review of current training resources by a WHS consultant: \$5,000 • Resourcing the development of the content: \$10,000 • Creating the safe work method videos: \$20,000 <p>The time of the Company's personnel is not included in this assessment of the cost and will be complimentary.</p> <p>A proposal setting out details of the project from Landcare Australia, and a letter of support from a WHS consultant, has been provided as part of the Company's supporting documentation.</p> <p>A further \$10,000 will be donated to assist Landcare Australia with its national bushfire recovery programs.</p> <p>Benefits to the community</p> <p>The undertaking is consistent with the objects of the Act to protect workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work and to promote the provision of advice, information, education and training in relation to work health and safety. The undertaking aims to assist Landcare Australia support volunteers to carry out work safely and to make work health and safety resources more readily accessible to them.</p>		
<p>3.4.2 Funding to Suicide Prevention Australia for a workplace suicide prevention project</p> <p>The Company will provide funding to Suicide Prevention Australia for the development of a project that builds on Suicide Prevention Australia's 2016 Position Statement on Workplace Suicide, with a focus on suicide prevention among men and male-dominated communities. It will also build on and extend the current work by the Commonwealth Mental Health Commission to create a framework for better mental health in the workplace. It will consider the position and publications of various workplace health and safety regulators regarding the psychosocial work environment.</p> <p>The project will have four deliverables:</p> <ul style="list-style-type: none"> • A workable definition for work related suicide; • A risk assessment tool for workplace suicide 	\$50,000	Within 18 months from the date of acceptance of this undertaking

ACTIVITIES		COST	TIMEFRAME
	<p>hazards;</p> <ul style="list-style-type: none"> • A hazard mitigation strategy; and • A guide for best practice workplace suicide prevention. <p>The results of this work will become valuable tools within the proposed Commonwealth Mental Health Commission framework for mentally healthier workplaces. They will also support State, Territory and Commonwealth guidance material around the psychosocial work environment and will provide information and support for regulators in dealing with work related suicides.</p> <p>The tools will be made available via Suicide Prevention Australia's website and social channels. The tools will also be promoted to its members via the monthly Member Brief.</p> <p>Suicide Prevention Australia is the national peak body for the suicide prevention sector. It exists to provide a clear, collective voice for suicide prevention and it believes that through collaboration and a shared purpose, it can work towards the ambition of a world without suicide.</p> <p>Costs</p> <p>\$50,000</p> <p>The breakdown for the project is as follows:</p> <ul style="list-style-type: none"> • Stakeholder engagement and consultation: \$15,000 • Research: \$5,000 • Marketing and communications: \$5,000 • Project Officer: \$25,000 <p>A letter from Suicide Prevention Australia setting out details of the project has been provided as part of the Company's supporting documentation.</p> <p>Benefits to the community</p> <p>Members of Suicide Prevention Australia work in a variety of industries, including construction, and will be able to benefit from the outcomes of this work. This undertaking will also benefit the community more broadly as the outcomes of the work will be made publicly available.</p>		
3.4.3	<p>Donation to Hope Assistance Local Tradies (HALT)</p> <p>The Company will make a donation to HALT.</p> <p>HALT is a national grass-roots suicide charity that conducts 'Save Your Bacon' brekkies and other events for tradies and apprentices at workplaces, including small and large building sites, factories, hardware stores, sporting clubs, Men's Sheds and TAFEs</p>	\$50,000	Within 12 months from the date of acceptance of this undertaking

ACTIVITIES	COST	TIMEFRAME
<p>across Australia. These events provide tradies and apprentices with the tools to start having conversations about mental health. HALT's focus is on open conversations and breaking through the stigma attached to mental health.</p> <p>HALT also runs a 'Friendly Clinics' program to complement its outreach work with trades and apprentices. The program aims to directly link tradies and apprentices with general practitioners and psychologist clinics in their local area who have a specific interest, knowledge and skills in men's mental health and suicide prevention.</p> <p>The donation will assist HALT with its current work, and in particular, will be targeted towards funding a Project Worker to be available to tradies and apprentices in a new community not yet covered by HALT for up to one year.</p> <p>HALT's vision is that every tradie in Australia knows how to look after their mental health and wellbeing.</p> <p>HALT will provide a report to the Company within 6 months of the donation on how the funding has been used to date. Upon completion of the undertaking, HALT will provide a second report to the Company of the same kind. Copies of the reports will be provided to the OIR upon receipt.</p> <p>Costs</p> <p>\$50,000</p> <p>A letter of support from HALT has been provided as part of the Company's supporting documentation.</p> <p>Benefits for the community</p> <p>This undertaking will support HALT's ongoing work of raising awareness of mental health and connecting tradies and apprentices with local and national support services.</p>		
<p align="right">Total estimated cost of benefits for the community \$145,000</p>		

3.5 Agreement to pay the OIR's recoverable costs

The Company 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:

- administrative costs \$3,814
- legal costs \$1,500
- compliance monitoring costs \$3,410

• publication costs	\$2,000
Total recoverable costs	\$10,724

3.6 A commitment to maintain an OHSMS

- 3.6.1 The Company acknowledges that there is a formal documented OHSMS acceptable to the regulator that satisfies the principles of AS/NZS ISO 45001:2018 *Occupational health and safety management systems—Requirements with guidance for use*, currently in place.
- 3.6.2 The Company commits to ensuring that the OHSMS remains compliant with the principles of AS/NZS ISO 45001:2018 *Occupational health and safety management systems—Requirements with guidance for use*.

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

- 3.7.1 The Company acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.
- 3.7.2 The Company commits to ensuring the OHSMS will be audited by certified third party auditors.
- 3.7.3 The Company acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.7.4 The Company acknowledges that costs associated with these audits will be met by the Company as part of the undertaking.
- 3.7.5 The Company commits to ensuring the OHSMS will be audited against criteria that meets the principles of AS/NZS ISO 45001:2018 *Occupational Health and Safety Management Systems – Requirements with guidance for use*, to verify that the OHSMS meets the principles of AS/NZS ISO 45001:2018 *Occupational health and safety management systems—Requirements with guidance for use*.
- 3.7.6 The Company acknowledges that the current OHSMS in place, as detailed in term 3.7.1 is acceptable to the regulator and commits to ensuring that an initial third-party audit will be undertaken within six months of this undertaking being accepted.

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 The Company commits to ensuring the recommendations resulting from the first OHSMS audit, as detailed in 3.8.2 to 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.
- 3.9.2 The Company commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.8.2 to 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.
- 3.9.3 The Company commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.8.2 to be fully implemented within six months of receiving the third OHSMS report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.9.4 The Company commits to providing a detailed action plan or statutory declaration by an authorised officer of the Company confirming recommendations arising from the third audit have

been fully implemented, unless OIR grants an exemption due to the actions being unreasonable.

3.10 Minimum spend

- 3.10.1 The Company commits to a minimum spend of \$520,624 for this undertaking.
- 3.10.2 The Company agrees to spend any residual amount arising from the minimum spend value not being met. Agreement on how to spend this residual amount will be sought from the regulator.
- 3.10.3 The Company acknowledges the minimum spend comprises of the:
- Estimated value of benefits to workers/others \$47,500
 - Estimated value of benefits to industry \$317,400
 - Estimated value of benefits to community \$145,000
 - OIR's recoverable costs \$10,724
- Estimated total value of the undertaking \$520,624**

SECTION 4: EXECUTION

Signed, sealed and delivered for
Ferrovial Construction (Australia) Pty
Ltd

on 6 August 2021 under power of
attorney dated 6 July 2021 which at this
time has not been revoked



Signature of Attorney

Enrique Blanco

Name in full of Attorney

In the presence of:



Witness signature

ANDRÉS CHECA SACAÑA

Witness name in full

LEVEL 9, 65 BERRY ST

NSW 2060 NORTH SYDNEY

Witness address

SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the 29th day of November 2021



(signature)

A J (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

Event Numbers	247435, 257784, 257785, 257787
Entity	Ferrovial Construction (Australia) Pty Ltd (FCA) (formerly Ferrovial Agroman (Australia) Pty Ltd (FAA))
ACN	004 231 976
Entity Address	Level 9, 65 Berry Street, North Sydney, New South Wales, 2060
Location of Incidents	Second Toowoomba Range Crossing (project)
Date of Incidents	15 August 2017 – 27 April 2018

1 History of the application

- 1.1 The undertaking given by FCA relates to the following four alleged contraventions (incidents) that occurred during the Second Toowoomba Range Crossing Project (project):
 - 1.1.1 Incident 1 (E247435) - On 15 August 2017, a truck mounted mobile concrete pump operated by a subcontractor was set up at a location that did not have a clear level area of ground or firm base capable of supporting the pump unit. As the stabilising boom was extended, the pump unit became unbalanced and tipped over.
 - 1.1.2 Incident 2 (E257784) - On 1 March 2018, subcontracted workers were exposed to a number of risks when entering an area of the viaduct bridge construction which included falls risks and emergency access and egress risks due to non-operational hoist lift used for workers.
 - 1.1.3 Incident 3 (E257785) – Between 21-23 April 2018 while working at Pier 2 and 3 of the project, subcontracted workers were exposed to a number of falls risks and the risk of injury from an uncapped vertical steel reinforcing bar.
 - 1.1.4 Incident 4 (E257787) – On 27 April 2018, a subcontractor was lifting steel mesh mat with a crane to Pier 3 of the project when two steel reinforcing bars separated from the mat and fell to the ground, exposing workers to the risk of injury. One of the bars struck a stationary vehicle located in an exclusion zone and the second brushed the arm of a dogman.
- 1.2 No injuries or illnesses were sustained or suffered as a consequence of the above incidents.
- 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 FAA, who had a health and safety duty under 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.
- 1.4 On 16 March 2020, FAA notified the Office of Industrial Relations (OIR) Enforceable Undertakings (EU) Unit of their intention to give a WHS undertaking (undertaking) for this matter.
- 1.5 On 20 July 2020, FCA's legal representative advised OIR, of a change to the FAA company name on 25 June 2020 and the undertaking would be given by FCA.

- 1.6 On 10 December 2020 and 28 April 2021, an Evaluation Panel (panel) consisting of a senior public servant and two external, independent persons evaluated FCA's initial undertaking and subsequent revised undertaking including all supporting documentation.
- 1.7 On both occasions, the panel were not willing to recommend acceptance of the undertaking, providing feedback on 4 February 2021 and 25 June 2021 to FCA, with the opportunity to resubmit a revised undertaking for further evaluation.
- 1.8 On 6 August 2021, FCA submitted a final revised undertaking that implemented the panel's feedback.
- 1.9 On 19 September 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 FAA 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 FAA 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 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. Letter Corrs Chambers Westgarth to the WHS regulator dated 6 August 2021.
 - 3.1.4. Revised WHS undertaking dated 6 August 2021.
 - 3.1.5. Email and ASIC Report dated 20 July 2020
 - 3.1.6. Complaint and Summons (E247435) dated 13 August 2019.
 - 3.1.7. Complaint and Summons (E247784, E257785) dated 20 January 2020.
 - 3.1.8. Complaint and Summons (E247787) dated 20 January 2020.
 - 3.1.9. Prohibition Notice -1018579 (E247435) dated 17 August 2017.
 - 3.1.10. Improvement Notice - 1028411 (E247435) dated 17 August 2017.
 - 3.1.11. Prohibition Notice – 10044891 (E257784) dated 2 March 2018.
 - 3.1.12. Prohibition Notice – 1004892 (E2247785) dated 24 April 2018.
 - 3.1.13. Prohibition Notice – 1004893 (E257785) dated 24 April 2018.

- 3.1.14. Statements of Facts – Guilfoyle v FAA - (E247435, E257784, E257785, E257787).
- 3.1.15. OIR's Statement of compliance history dated 6 November 2020.
- 3.1.16. FCA Financial statements dated 13 May 2020 and 10 June 2020.
- 3.1.17. Letter of support – Dr T Casey dated 5 August 2021.
- 3.1.18. Letter of support – External legal provider dated 26 March 2021.
- 3.1.19. Research proposal – Griffith University dated 12 March 2021
- 3.1.20. Services proposal – Safekon dated 29 July 2021
- 3.1.21. Letter of support – Prof. R Johnstone dated 19 Jul 2021
- 3.1.22. Proposal – Landcare Australia dated 26 March 2021
- 3.1.23. Letter of support – SafeAssure dated 28 July 2021
- 3.1.24. Letter of support – Suicide Prevention Australia dated 9 March 2021
- 3.1.25. Letter of support – HALT dated 17 March 2021
- 3.1.26. Return Evaluation Panel feedback dated 25 June 2021
- 3.1.27. Final Evaluation Panel Assessment dated 25 August 2021
- 3.1.28. EU Unit chronology statement dated 19 September 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 FCA 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 FCA 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 matters, taken together is 'Medium'.
- 4.6. I find the quantum of the undertaking is a proportionate amount relevant to the objective gravity, considering the financial statements provided by FCA 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, considering the financial statements provided by FCA and the estimated total value of the undertaking.
- 4.8. I find that FCA have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.9. I find that FCA, who 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.
- 4.10. I acknowledge the assurance given by FCA 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 FCA are committing to:

- 4.12.1. Disseminating information about this undertaking to workers, and other relevant parties.
- 4.12.2. Maintaining the FCA Occupational Health and Safety Management System (OHSMS) for the term of the EU and undergoing accredited third-party auditing to ensure compliance is met.
- 4.12.3. Engaging Dr Tristan Casey through and an external legal provider , to conduct due diligence workshops for all senior managers, including the Managing Director within the company. If a construction project is on foot, an invitation will be extended to the project's senior management personnel to attend these workshops.
- 4.12.4. Engaging Dr Drew Ray from the Safety Science Laboratory, Griffith University to conduct a research project relating to mobile plant with the overall goal to improve the effectiveness of safety management for heavy vehicle movements and lifting operations on construction sites.
- 4.12.5. Publishing the results of the Griffith University research project freely and submitting it for publication to a peer reviewed journal and presenting the results at a minimum of three different conferences focussed on industry and/or practitioners to reach as wide an audience as possible.
- 4.12.6. Engaging Safekon Consulting Pty Ltd, to design and develop a mobile plant safety management system for use in the construction industry and upon completion:
 - 4.12.6.1. identifying and implementing improvements within FCA's OHSMS and operational standards, and
 - 4.12.6.2. making the system available to construction industry participants through construction industry bodies (e.g. the Australian Constructors Association).
- 4.12.7. Commissioning Professor Richard Johnstone from the School of Law at the Queensland University of Technology to complete an academic paper on legal and policy issues involved in the use of 'pure risk' prosecutions under the WHS Act. On completion and once finalised:
 - 4.12.7.1. the academic paper will be provided to the Office of Industrial Relations (OIR) and a shortened version to the Queensland Work Health and Safety Board and FCA's senior managers;
 - 4.12.7.2. Professor Johnstone will present the paper in an hour long seminar to OIR, organised by FCA, and two industry forums; and
 - 4.12.7.3. a revised version of the paper will be submitted to a refereed academic journal and a shortened version submitted for publication to at least one trade journal.
- 4.12.8. Funding an external consultant, SafeAssure Pty Ltd, to assist Landcare Australia (Landcare) in developing and recommending improvements to Landcare's online WHS training resources used to support their community volunteer groups.
- 4.12.9. Funding to Suicide Prevention Australia (SPA) to assist with a workplace suicide prevention project. Tools developed as part of this project will be made available via SPA's website and social channels and promoted to its members via the Monthly Member Brief.
- 4.12.10. Donating \$50,000 to Hope Assistance Local Tradies (HALT) to assist with its current work, and in particular, targeted towards funding a Project Worker to be available to tradesmen and apprentices in a new community not yet covered by HALT for up to one year.
- 4.12.11. Agreeing to pay OIR's recoverable costs.

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 FCA 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 FCA 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 FCA 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
A/Deputy Director-General
Office of Industrial Relations
29/11/2021