

11 January 2024

## ENFORCEABLE UNDERTAKING

Part 11

*Work Health and Safety Act 2011*

The commitments in this enforceable undertaking  
are given by

**Mr Alistair Macdonald**

to SafeWork NSW and accepted by SafeWork NSW

### **Privacy statement**

*SafeWork NSW respects your privacy and is committed to protecting personal information. The information provided on this document is for the purpose of making an undertaking to SafeWork NSW given for the purposes of part 11 of the WHS Act. This information will be managed within the requirements of the current state government privacy regime.*

*SafeWork NSW may publish the undertaking and the information contained in it for purposes identified in the undertaking or for other appropriate legal purposes in various publications such as newspapers and on its website. SafeWork NSW may be required to disclose personal information to other regulatory agencies in accordance with other law enforcement activities which may be conducted as part of an investigation. Further information on our privacy policy is available at [safework.nsw.gov.au](https://safework.nsw.gov.au).*

## Purpose

The purpose of this enforceable undertaking is to document the undertakings given to SafeWork NSW and accepted by SafeWork NSW pursuant to Part 11 of the Work Health and Safety Act 2011 (**WHS Act**) in connection with matters relating to alleged contraventions of the WHS Act or the Work Health and Safety Regulations 2011 (**the Regulations**). The Agreed Terms of the Enforceable Undertaking are set out below.

## Section 1 – General information

### a. Details of the person giving the undertaking

<b>Name:</b>	Mr Alistair Macdonald
<b>Registered Address:</b>	[REDACTED] Coleambally NSW 2707
<b>Postal address:</b>	Same as Registered Address above
<b>Telephone contact:</b>	[REDACTED]
<b>Email address:</b>	[REDACTED]@killoranag.com.au
<b>Legal structure:</b>	Individual
<b>Commencement date of the entity:</b>	22 September 2020
<b>Comments:</b>	Mr Alistair Macdonald conducted a mixed farming and contracting business in partnership with [REDACTED] trading as Killoran Agriculture. That business has now been transferred to the Killoran Agriculture Family Trust and Killoran Ag Pty Ltd (ACN 644 545 031).

### b. Commencement

This Undertaking comes into effect when:

- i. the Undertaking is executed by Mr Alistair Macdonald;
- ii. SafeWork NSW accepts the executed Undertaking (**Commencement Date**).

### c. Duration

- i. Section 5 identifies timeframes for the completion of each strategy identified in this enforceable undertaking;
- ii. the enforceable undertaking will be concluded on written advice from SafeWork NSW to Mr Alistair Macdonald when all requirements of the undertaking have been satisfactorily executed.

## Section 2 – The alleged contravention

### a. Details of the alleged contravention

It is alleged by SafeWork NSW that on 13 October 2020, Mr Alistair Macdonald failed to discharge his obligations as a person conducting a business or undertaking under section 19(1) and 32 of the WHS Act in that he did not ensure so far as reasonably practicable the health and safety of workers and/or others.

### b. Details of the events surrounding the alleged contravention

The alleged contravention took place at a broiler chicken farm. Straw chopping work was being done at one of the sheds, which involved a telehandler moving bales of hay. While employees had been instructed that an exclusion zone existed around the area in which the telehandler was operating, no physical barriers were in place.

The worker was crossing the worksite and walked through the exclusion zone while the telehandler was reversing. The telehandler subsequently ran over the worker, resulting in fatal injuries.

### c. The details of any injury that arose from the alleged contravention

The worker suffered serious blunt force and crush injuries that ultimately proved fatal.

### d. An acknowledgement that SafeWork NSW alleged a contravention has occurred

It is acknowledged by Mr Alistair Macdonald that SafeWork NSW has alleged that Mr Alistair Macdonald has contravened sections 19(1) and 32 of the WHS Act.

### e. A statement of regret that the incident occurred

Mr Alistair Macdonald regrets that the incident on 13 October 2020 occurred and the Worker sustained fatal injuries as a result of the incident.

Note: the above is not an admission of guilt

### f. Prior work health and safety convictions

Mr Alistair Macdonald has had no prior work health and safety convictions in NSW or other work health safety jurisdictions.

## When an alleged contravention is associated with an injury/illness

### g. The details of the type of workers compensation provided

The Worker's family were provided with the required amount of workers compensation payments through Mr Alistair Macdonald's workers compensation policy.

### h. The details of the support provided, and proposed to be provided

The worker was employed by Killoran Agriculture at the time of the incident.

The following support has been provided to the family:

Date	Brief description of support provided
Continuous	On-going support and contact with the deceased worker's partner and family. Such contact varies from social to emotional support. Contact has been, and remains significant. The partner of the deceased worker also attends the site each year and interacts with Alistair Macdonald and workers who knew the deceased.
	Involving the deceased worker's partner in shaping and participating in aspects of the undertaking.

### Section 3 – Enforcement Notices and Rectifications

a. The details of any enforcement notices issued that relate to the alleged contravention

Date issued	Notice type	Notice number	Contravention	Action taken in response to notice
15 October 2020	Improvement Notice	7-384226	Related to the alleged contravention	A review of all existing procedures around the alleged contravention was undertaken and staff were re-trained on the updated procedures.

b. Any rectifications or changes made to work health and safety systems and/or practices as a result of the alleged contravention

Description	\$ Amount
Comprehensive amendments to the system of work were made, which included the introduction of demarcated exclusion zones, greater use of worker communication, and retraining of workers on the enhanced system.	

**TOTAL AMOUNT SPENT ON RECTIFICATIONS**

**APPROX. \$21,000**

### Section 4 – Statements, commitments, and acknowledgements

a. A commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

Mr Alistair Macdonald commits that the behaviour that led to the alleged contravention has ceased. The business is now operating through an incorporated entity, of which Mr MacDonald is a director, and it will take all reasonably practicable steps to prevent recurrence of this type of incident.

b. A statement of assurance about future work health and safety behaviour

Mr Alistair Macdonald is committed to complying with his obligations under the WHS Act and ensuring, so far as reasonably practicable, the health and safety of all workers and those who may be affected by his business or undertakings.

c. A commitment to the ongoing effective management of work health and safety risks

Mr Alistair Macdonald commits that he will, so far as reasonably practicable, maintain ongoing effective management of work health and safety risks.

**d. An acknowledgement that the enforceable undertaking will be published and publicised**

Mr Alistair Macdonald acknowledges that the enforceable undertaking will be published on SafeWork NSW's internet site until the completion of the enforceable terms and may be referenced in SafeWork NSW's publications.

**e. A statement of ability to comply with the terms of the enforceable undertaking**

Mr Alistair Macdonald acknowledges that he has the financial ability to comply with the terms of this enforceable undertaking and has provided evidence with this undertaking to support this declaration.

**f. An acknowledgement consultation has occurred within the workplace regarding the proposal of an enforceable undertaking**

Mr Alistair Macdonald acknowledges that he has consulted within the workplace in relation to the development of the enforceable undertaking proposal, including consultation with fellow senior management, as well as a variety of other workers including leading hands on site.

**g. Statement regarding relationships with other parties**

Mr Alistair Macdonald advises that there is an existing relationship held with the director of the engineering company to be retained for Strategy Number 5. The director of that engineering company is a personal friend of Mr Alistair Macdonald. Mr Alistair Macdonald gains no benefit from this association. The director of the engineering company to be retained for strategy Number 5 gains no personal benefit. The benefit in retaining the engineering company for Strategy Number 5 goes directly to that business.

**h. Intellectual property licence**

Mr Alistair Macdonald grants SafeWork NSW a permanent, irrevocable, royalty-free, worldwide, non-exclusive license to use, reproduce, distribute, electronically transmit, electronically distribute, adapt, and modify any materials developed as a result of this enforceable undertaking.

**i. A commitment to participate constructively in all compliance monitoring activities of the undertaking**

Mr Alistair Macdonald acknowledges that the responsibility for demonstrating compliance with this undertaking rests with Mr Alistair Macdonald. Evidence to demonstrate compliance with the terms will be provided to SafeWork NSW by the due date for each Strategy item identified in Section 5.

Mr Alistair Macdonald acknowledges that SafeWork NSW may undertake other compliance monitoring activities to verify the evidence that is provided for each Strategy item identified in Section 5. The evidence provided to demonstrate compliance with the undertaking will be retained by Mr Alistair Macdonald until advised by SafeWork NSW that the undertaking has been completely discharged.

Mr Alistair Macdonald acknowledges that SafeWork NSW may initiate additional compliance monitoring activities, such as inspections, as considered necessary.

Mr Alistair Macdonald acknowledges that should there be any delay in the delivery or compliance of the Enforceable Undertaking this will be subject to mutual agreement (confirmed in writing) between Mr Alistair Macdonald and SafeWork NSW.

**j. A commitment regarding linking the strategy and promotion of benefits to the enforceable undertaking**

Mr Alistair Macdonald is committed to ensuring that any real or perceived promotion of a benefit arising from this enforceable undertaking will clearly link the benefit to the enforceable undertaking and that the enforceable undertaking was entered into as a result of the alleged contravention identified in section 2 above.

Where products or other deliverables are externally promoted or have a direct link to the enforceable undertaking Mr Alistair Macdonald will include the following statement:

*This (insert product or service) has been (produced, held) pursuant to an enforceable undertaking between Mr Alistair Macdonald and SafeWork NSW entered into on (insert DATE EU commenced).*

Any variation to the above statement requires prior written agreement between Mr Alistair Macdonald and SafeWork NSW.

**k. A commitment to gain review and approval for industry and/or community safety information**

Mr Alistair Macdonald commits that any strategies to be implemented by Mr Alistair Macdonald in compliance with this Enforceable Undertaking that involve safety information being provided to the industry and/or community will be subject to SafeWork NSW's review and approval of the content prior to dissemination.

**l. Inconsistent Statements**

Mr Alistair Macdonald commits that he will not make any statement or otherwise imply anything that is inconsistent with the statements, commitments or acknowledgements contained in this Undertaking and will take steps to ensure his representatives, employees and officers do not make any such statements.

**m. Reliance on Commitments**

Mr Alistair Macdonald acknowledges that SafeWork NSW may rely upon the commitments and statements set out in Section 4 (a), (b) and (c) above when making decisions regarding enforcement action if Mr Alistair Macdonald fails to comply with his work health and safety obligations in the future, including but not limited to any failure to comply with his obligations under this Undertaking.

**n. Withdrawal or variation**

Mr Alistair Macdonald may with the written agreement of SafeWork NSW withdraw or vary the undertaking in accordance with section 221 of the *Work Health and Safety Act 2011*.

**o. Acknowledgement of Enforceable Undertakings Guidelines and Contravention of the Undertaking**

Mr Alistair Macdonald has read and understood SafeWork NSW *Enforceable Undertakings Guidelines*.

Mr Alistair Macdonald acknowledges that if Mr Alistair Macdonald contravenes any of the terms of this Enforceable Undertaking, SafeWork NSW may apply to the District Court for an order in accordance with section 220 of the *Work Health and Safety Act 2011*.

## Section 5 – Strategies

Mr Alistair Macdonald undertakes to deliver the following Strategies.

Each strategy in the enforceable undertaking aims to provide lasting work health and safety benefits across the workplace, the industry, and the community, or a combination of these.

### Strategies that relate to the dissemination of information in relation to the enforceable undertaking

#### Strategy 1 – Enforceable undertaking public notice

**Summary:**

Mr Alistair Macdonald will place a public notice advising of the enforceable undertaking with SafeWork NSW.

**WHS outcome and beneficiaries:**

The public notice serves to advise the general public about the enforceable undertaking and serves as a form of both education and deterrence for industry.

**Strategy delivery and verification:**

The strategy will be delivered and verified by SafeWork NSW in accordance with the table below.

How is it occurring	When will it happen	Position Title(s) or Area responsible and/or involved	Evidence that will be provided to SafeWork NSW
Mr Alistair Macdonald will cause a public notice to be published in <i>The Irrigator</i> using the script provided in Annexure 1. The notice in <i>The Irrigator</i> will be 1/8 of a page in size. The script for the notices must be approved by SafeWork NSW prior to the public notice being published. Failure to adhere to these conditions may result in SafeWork NSW requesting another public notice be published.	Within 30 days of the Commencement Date of the enforceable undertaking but not prior to SafeWork NSW publishing a copy of the enforceable undertaking on its website.	Mr Alistair Macdonald	Within 7 days of placing the published notices Mr Alistair Macdonald will provide SafeWork NSW with the following evidence of placement:  A copy of the full page of <i>The Irrigator</i> showing the public notice and the name and date of the publication.

## Strategy 2 – Dissemination of information about the enforceable undertaking

### Summary:

Mr Alistair Macdonald agrees to disseminate information about the enforceable undertaking with SafeWork NSW within his workplace, including workers, the members of any health and safety committee, health and safety representatives and all subcontractors working for Mr Alistair Macdonald and to any other relevant parties.

### WHS outcome and beneficiaries:

The dissemination of information about the enforceable undertaking is an important step in maintaining effective dialogue with the workforce about the enforceable undertaking and safety more broadly.

### Strategy delivery and verification:

The strategy will be delivered and verified by SafeWork NSW in accordance with the table below.

How is it occurring	When will it happen	Position Title(s) or Area responsible and/or involved	Evidence that will be provided to SafeWork NSW
Mr Alistair Macdonald's legal representative will attend the farm site and speak with management and all workers about the content of the undertaking, its importance, and what can be expected.	Within 1 month of the Commencement Date of the enforceable undertaking.	Mr Alistair Macdonald	Within 7 days of the attendance, SafeWork will be provided with the record of attendance noting the full names and positions of everyone in attendance.

## Strategies that will deliver benefits to the workplace, industry and the community

### Strategy 3 – Hay Run safety initiative

#### Summary:

Farmers across rural NSW are continually faced with harsh climates. The Lions Club, specifically a subsidiary group within Lions, the Need for Feed, organise charitable hay runs to rural areas of NSW to assist farmers during periods of drought. Need for Feed is responsible for sourcing volunteers and mobile plant for the hay runs. Such hay runs were a much-loved event for the deceased worker. In 2022, Mr Alistair Macdonald collaborated with the wife of the deceased worker and the Lions Club of Yanko to hold a hay run in the deceased worker's name.

This initiative will see Mr Alistair Macdonald partner with Need for Feed to develop and implement a safe system of work for charitable hay runs. Mr Alistair Macdonald will collaborate with Need for Feed, and a suitably qualified WHS consultant to develop and implement safety



systems, procedures and training for future hay runs. A safety pack will be developed and provided to Need for Feed, along with comprehensive training on the systems of work for hay run organisers and volunteers at Need for Feed.

**WHS outcome and beneficiaries:**

This initiative will ensure that future hay runs are delivered using safe systems of work and those participating are trained in the safety risks present during hay runs, such as loading and unloading, interaction of people and plant, managing hay bales and other general work health and safety risks. The initiative will aid in ensuring the safety of the many farmers and other volunteers who take part in hay runs across rural NSW.

As a result of this strategy WHS benefits are expected in the:

- Workplace
- Industry
- Community

**Strategy delivery and verification:**

The strategy will be delivered and verified by SafeWork NSW in accordance with the below table.

What is happening	How is it occurring	When will it happen	Position Title(s) or Area responsible and/or involved	Evidence that will be provided to SafeWork NSW
Engagement of a WHS consultant	Engage a suitably qualified WHS consultant to consult with on the initiative.	Within 1 month of the commencement date of enforceable undertaking	Mr Alistair Macdonald	A copy of a signed contract or agreed quote for services between Mr Alistair Macdonald and the selected WHS consultant.
Consultation between Mr Alistair Macdonald, the wife of the deceased worker, Need for Feed and the selected WHS consultant on the risks associated with hay runs	Meeting(s) to consult on the risks associated with a hay run. Meeting to include organisers and volunteers such as drivers assisting in hay runs to ensure all risks are considered.	Within 3 months of the commencement date of enforceable undertaking	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• The wife of the deceased worker</li> <li>• Need for Feed representatives</li> <li>• WHS consultant</li> </ul>	A copy of the meeting agenda, documented minutes and attendance records
Complete a comprehensive risk assessment of the hay run process	Conducted by the selected WHS consultant and in consultation with Mr Alistair Macdonald and Need for Feed.	Within 4 months of the commencement date of the enforceable undertaking.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• Need for Feed representatives</li> <li>• WHS consultant</li> </ul>	A copy of the risk assessment will be provided to SafeWork NSW.
Document a safety system to manage the identified risks involved in the hay run process	Completed by the selected WHS consultant in consultation with Mr Alistair Macdonald and Need for Feed.	Within 6 months of the commencement date of the enforceable undertaking.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• Need for Feed representatives</li> </ul>	An electronic copy of the safety system will be provided to SafeWork NSW.

			<ul style="list-style-type: none"> <li>• WHS consultant</li> </ul>	
Test the safety system and controls identified to manage the risks involved in hay runs	In consultation with Need for Feed and using the first available hay run in this period to test the safety system and controls. From testing stage onwards all relevant signage will be in place on the truck, both with respect to the initiative itself and in memory of the deceased worker.	Within 8 months of the commencement date of the enforceable undertaking and on the basis that such hay run is planned within that period. If not, the first available hay run following this period.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• The wife of the deceased worker</li> <li>• Need for Feed representatives</li> <li>• WHS consultant</li> </ul>	A letter from Need for Feed confirming the hay run has been completed utilising the safety system. Photos of the truck showing signage and tribute to deceased worker.
Update safety system as required to capture any improvements after above hay run	Completed by the selected WHS consultant in consultation with Mr Alistair Macdonald and Need for Feed.	Within 4 weeks of the above event.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• Need for Feed representatives</li> <li>• WHS consultant</li> </ul>	A copy of any updated system will be sent to SafeWork NSW.
Develop a safety pack for Need for Feed that can be distributed to organisers and volunteers undertaking hay runs	In consultation with Need for Feed and the WHS consultant develop a safety pack containing: <ul style="list-style-type: none"> <li>• Information on loading and unloading of vehicles</li> <li>• Relevant SWMSs</li> <li>• Toolbox talk proformas</li> <li>• Risk assessment templates</li> <li>• SafeWork's 'Safety around your vehicle' glovebox guide for drivers.</li> </ul>	Within 2 weeks of the above event.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• The wife of the deceased worker</li> <li>• Need for Feed representatives</li> <li>• WHS consultant</li> </ul>	An example of the pack will be provided to SafeWork NSW.
SafeWork NSW review of safety pack	Safety pack provided to SafeWork NSW via the allocated verifying inspector to allow SafeWork NSW to review and provide feedback.	Within 1 week of safety pack being finalised.	Mr Alistair Macdonald	Copy of full safety pack allowing SafeWork NSW review.
Training provided to Need for Feed on the safety system and safety pack for future hay runs	Training provided to all volunteers and truck drivers, and will include: <ul style="list-style-type: none"> <li>• Train the trainer</li> <li>• How to conduct a risk assessment</li> <li>• Understanding and following safety procedures</li> <li>• The contents of the safety pack</li> </ul>	Within 8 weeks of the safety pack being finalised and reviewed by SafeWork NSW.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• The wife of the deceased worker</li> <li>• Need for Feed representatives</li> <li>• WHS consultant</li> </ul>	A copy of the training register will be provided to SafeWork NSW.

	<ul style="list-style-type: none"> <li>• Toolbox talks and reassessing risks.</li> </ul>			
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**Cost:**

Description	\$ Amount
Cost to engage work health and safety consultant	██████████
Cost to provide services and equipment for hay run	██████████ for hay and freight.
Other administrative costs associated with the strategy (travel, accommodation, materials, etc)	██████████
<b>Total estimated costs</b>	<b>\$28,000 - \$40,000</b>

## Strategy 4 – Safety grants for local apprentices

**Summary:**

Mr Alistair Macdonald will collaborate with Leeton TAFE to provide an annual award grant to a fourth-year apprentice, who is considered to have demonstrated the highest approach to safety throughout the course of their study in that year. The grant will be given on an annual basis for three years. In short, one grant will be offered each year, over three years, three grants in total.

The grants will be made in honour of the deceased worker. Each year the awarding of the grant will be publicised in the local newspaper and will provide details of the recipient, the basis for the grant, circumstances that brought about the grant, and a tribute to the deceased worker.

**WHS outcome and beneficiaries:**

This initiative will help to promote the importance of safety more broadly across the agricultural industry and in the local community, and particularly to vulnerable workers completing apprenticeships.

As a result of this strategy WHS benefits are expected in the:

- Workplace
- Industry
- Community

**Strategy delivery and verification:**

The strategy will be delivered and verified by SafeWork NSW in accordance with the below table.

What is happening	How is it occurring	When will it happen	Position Title(s) or Area responsible and/or involved	Evidence that will be provided to SafeWork NSW
Engage with Leeton TAFE	Engage with Leeton TAFE to develop terms of reference for the annual grants, including selection criteria, timeframes, method of presentation, details of annual awards, and other associated administrative tasks.	Within 6 weeks of the commencement date of enforceable undertaking	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• Leeton TAFE representative(s)</li> </ul>	A copy of the signed terms of reference for the annual grants between Mr Alistair Macdonald and Leeton TAFE.
Presentation of year 1, 2 and 3 grants	Mr Alistair Macdonald to make annual presentation of the grant at the end of 2024, 2025 and 2026 academic years. Each annual presentation will include: <ul style="list-style-type: none"> <li>• A summary from Mr Alistair Macdonald about the circumstances that led to the grants</li> <li>• A tribute to the deceased worker</li> <li>• A \$5,000 voucher for each recipient to purchase tools and/or safety equipment.</li> <li>• A photo of each recipient receiving the grant.</li> </ul>	Annually at the end of the 2024, 2025 and 2026 academic TAFE year.	<ul style="list-style-type: none"> <li>• Mr Alistair Macdonald</li> <li>• Leeton TAFE representative(s)</li> </ul>	A copy of presentation speech from Mr Alistair Macdonald and photo of each recipient receiving the grant.  A copy of any grant documentation provided to each recipient.
Publicity of annual grants in local newspaper	A quarter-page article in the local newspaper, <i>The Irrigator</i> , each year in 2024, 2025 and 2026 that includes: <ul style="list-style-type: none"> <li>• A photo of the recipients</li> <li>• The basis for awarding the grants</li> <li>• An explanation of the circumstances that brought about the grant</li> <li>• A tribute to the deceased worker.</li> </ul>	Annually in 2024, 2025 and 2026 and within 4 weeks of the grant being presented.	Mr Alistair Macdonald	A copy of the newspaper article clearly identifying the name of the newspaper, and the date and page number of the article.

**Cost:**

Description	\$ Amount
One annual grant per year for three years	
Other administrative costs associated with the grants	
<b>Total estimated costs</b>	<b>\$20,000</b>

## **Strategy 5 – Safety innovation for handling baled hay in a tracking system**

**Summary:**

The handling, loading, transport and unloading of hay bales from trailers presents multiple risks to farm workers, operators of mobile plant, and truck drivers. When hay bales are loaded onto trailers, they are stacked to a height that greatly reduces, if not removes altogether, visibility of workers and plant movement around a trailer.

While it is necessary, and critical in some instances, to transport large amounts of hay on trailers, loading and unloading of bales can lead to circumstances in which hay bales fall from height on any side of the trailer without the loaders' knowledge of the position of each worker or mobile plant around the trailer (**Risk**).

Co-ordinating loading and unloading of bales onto trailers is often reliant on administrative controls such as the placement of spotters and designated exclusion zones around a trailer for workers and mobile plant. While such measures remain an essential part of the loading, transport and unloading of hay bales, the presence of higher order engineering controls in this process will further minimize the Risks.

Mr Alistair Macdonald proposes to work closely with an Orange-based engineering consultant to undertake a three (3) part approach to addressing this significant industry risk. The aim is to design and manufacture an engineered automated load restraint so as to remove the need for a worker to manually apply straps when fixing the load to a trailer. This includes large semi-trailers and smaller trailers used internally around farms.

This process includes (1) consultation with workers and preliminary gathering of data in relation to the task and the Risk; (2) considering various engineering control options and developing potentially suitable engineering measures (before nominating a final option); and (3) the final design, development, and manufacture of that engineering control. The intention is to install the final selected control on trailers used by Alistair Macdonald to transport hay.

**WHS outcome and beneficiaries:**

While the final design may include various components, it is envisaged that the engineering control will be designed principally for installation on trailers as a measure to greatly reduce the Risk. Such a measure will minimize the risk and consequently benefit farm workers working in and around hay trucks, workers operating mobile plant loading and unloading bales onto trailers, and truck drivers.

As a result of this strategy WHS benefits are expected in the:

- ✓ Workplace
- ✓ Industry
- Community

**Strategy delivery and verification:**

The strategy will be delivered and verified by SafeWork NSW in accordance with the below table.

What is happening	How is it occurring	When will it happen	Position Title(s) or Area responsible and/or involved	Evidence that will be provided to SafeWork NSW
<p>Part 1:</p> <p>Engineering consultants will assess the trailers and activity and consult with workers in relation to the risks associated with the loading and unloading of hay bales. Preliminary data will be gathered and assessed.</p>	<p>Engineering consultants will attend site, potentially on multiple occasions.</p>	<p>Within 3 months of the commencement date of enforceable undertaking.</p>	<p>Engineering consultants and Mr Alistair Macdonald.</p>	<p>Copies of consultation notes; risk assessments and an index of material gathered will be provided to SafeWork.</p>
<p>Part 2:</p> <p>Once preliminary data is analysed, as against the information provided and gathered during Part 1, the engineering consultants will then prepare engineering concept designs of various control options. This process will also include a preliminary safety in design review of those control options.</p> <p>Following further review and consultation with Mr Alistair Macdonald, a preferred engineering control in relation to the task of loading, transporting, and unloading hay bales</p>	<p>Determination of final engineering control to be determined by engineering consultants, manufacturing consultants and Mr Alistair Macdonald.</p>	<p>Within 12 months of the commencement date of enforceable undertaking</p>	<p>Engineering consultants, manufacturing consultants and Mr Alistair Macdonald.</p>	<p>Copies of engineering concept designs and preliminary safety in design reviews will be provided to SafeWork when completed in Part 2 of the process.</p> <p>When engineering control determined, final engineering design, including engineering certification and safety in design review will be provided to SafeWork.</p>

will be determined. The final engineering control will then undergo detailed engineering design, including engineering certification and final safety in design review.				
Part 3: The engineering and manufacturing consultants will then proceed to Part 3, which is the creation of detailed fabrication workshop drawings, the manufacture of the designed engineering control measure, and installation.	Design and manufacture process to be project managed by engineering consultants, manufacturing consultants and Mr Alistair Macdonald.	Within 36 months of the commencement date of enforceable undertaking	Alistair Macdonald, engineering consultants and manufacturing consultants.	SafeWork will be provided with the final fabrication workshop drawings, as well as photographs of the installed engineering controls.
Promotion of the final installed control to industry	Mr Alistair Macdonald, in consultation with the manufacturer, will identify a suitable industry event, such as the Henty Field Day or Agquip, to display the final installed control to industry	Within 12 months of the final control being installed	Alistair Macdonald and control manufacturer	An invite to SafeWork NSW to attend the selected industry event.  A photo of the installed engineering control on display at the selected industry event.

**Cost:**

Description	\$ Amount
Parts 1 and 2 as stated above	██████████
Part 3	██████████
<b>Total estimated costs</b>	<b>\$235,000 - \$295,000</b>

**Strategy 6 – Targeted audit strategy – Interaction between people and mobile plant**

**Summary:**

**The targeted audit will** Identify and detail gaps in the management of the interaction between people and mobile plant by determining the level of conformance with and implementation of existing systems and procedures against WHS legislation and Mr Alistair Macdonald's operative requirements, focusing on the following areas:"

- the design and use of exclusion zones
- traffic management practices
- the use of higher-level controls to separate people and mobile plant
- loading and unloading controls around trailers when stacking hay

Mr Alistair Macdonald commits that the audit will be a program that conforms with AS/NZS ISO 19011 – Guidelines for auditing management systems.

The audit will ensure Mr Alistair Macdonald has an adequate safety system to manage the above focus areas and that system is enforced. Mr Alistair Macdonald will then develop and implement a corrective actions plan based on the audit findings.

That process will Identify and detail improvement suggestions (based on identified gaps) to assist Mr Alistair Macdonald's development of a corrective action plan focused on improved performance across Mr Alistair Macdonald's operations in:

- the separation of people and mobile plant
- traffic management
- loading and unloading controls around trailers when stacking hay

**WHS outcome and beneficiaries:**

The focus of the audit will be to assess the current level of safety performance across the business, investigate what higher level controls can be implemented to improve the management of the risk of people interacting with mobile plant, and implement the most appropriate controls. Such a targeted audit will result in improved levels of safety for workers, contractors and other visitors in which Mr Alistair Macdonald operates.

As a result of this strategy WHS benefits are expected in the:

- ✓ Workplace
- ✓ Industry
- Community

**Strategy delivery and verification:**

The strategy will be delivered and verified by SafeWork NSW in accordance with the below table.

What is happening	How is it occurring	When will it happen	Position Title(s) or Area responsible and/or involved	Evidence that will be provided to SafeWork NSW
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Safety consultant to attend site to assess site and gather information and current systems	Safety consultant to be engaged by Mr Alistair Macdonald and attend site to gather information	Within 2 months of the Commencement Date of the enforceable undertaking	Mr Alistair Macdonald Selected auditor	Evidence of auditor engaged including the relevant qualifications of the auditor, scope of the audit, any invoices, quotes, emails and meeting minutes.
The audit will review those systems currently in place, including those enhanced systems implemented following the incident as against current best practice.	Safety audit to occur. Audit to include site visit(s), staff interviews, observations, reviews of existing systems	Within 4 months of the Commencement Date of the enforceable undertaking	Mr Alistair Macdonald Selected auditor	Copy of final audit plan certified by the auditor as an unaltered copy of the original.
Once considered, the safety consultant will provide recommendations on safety system development and implementation.	In consultation with Mr Alistair Macdonald the safety consultant will develop an agreed corrective actions plan that outlines corrective actions to be implemented, people responsible and timeframes allocated for implementation	Within 5 months of the Commencement Date of the enforceable undertaking.	Mr Alistair Macdonald Selected auditor	Copy of the corrective actions plan to implement the audit recommendations including actions required, people responsible and timeframes.
Mr Alistair Macdonald commits to fully implementing the intended actions arising from the audit unless otherwise agreed by SafeWork NSW	All agreed corrective actions will be implemented in accordance with the above final corrective actions plan	Within 24 months of the Commencement Date of the enforceable undertaking.	Mr Alistair Macdonald and any other parties listed in the corrective actions plan	Quarterly updates provided to SafeWork NSW including evidence for the completion of each corrective action outlined in the plan.

**Cost:**

Description	\$ Amount
Cost of external auditor	[REDACTED]
Estimated costs to action audit recommendations	Unable to be determined until audit conducted
<b>Total estimated costs</b>	<b>\$5,000 - \$10,000</b>

**TOTAL ESTIMATED VALUE OF THE UNDERTAKING**

**APPROX. \$303,000 - \$380,000, plus costs of audit recommendations**

## Section 6 – Execution of Undertaking

Mr Alistair Macdonald give this undertaking and commit to the terms herein.

Signed: 

Name: Alistair Macdonald

Position: Partner

Dated at Jerilderie this 11th day of January, 2024

Witnessed in the presence of:

Signed: 

Name: 

Dated at Jerilderie this 11th day of January, 2024

## Section 7 – SafeWork NSW's acceptance of undertaking

I accept this undertaking as an enforceable undertaking under section 216 of the WHS Act.

  
Signed:

Name: Andrew Gavrielatos

Position: Executive Director, Strategy and Programs.

Authorised delegate for SafeWork NSW, an agency within the Department of Customer Service.

Dated at Sydney this 9th day of February, 2024

## Annexure 1 – Public Notice of SafeWork NSW’s acceptance of undertaking

### Notice of Acceptance of an Enforceable Undertaking under Part 11 of the Work Health and Safety Act 2011.

On 13 October 2020 straw chopping work was being done in a shed at a broiler chicken farm, which involved a telehandler moving bales of hay. While employees had been instructed that an exclusion zone existed around the area in which the telehandler was operating, no physical barriers were in place.

The worker was crossing the worksite and walked through the exclusion zone while the telehandler was reversing. The telehandler subsequently ran over the worker, resulting in fatal injuries.

SafeWork NSW investigated the incident and subsequently alleged that Mr Alistair Macdonald contravened section 19(1) and 32 of the Work Health and Safety Act 2011.

SafeWork NSW has accepted an enforceable undertaking from Mr Alistair Macdonald, in accordance with Part 11 of the Work Health and Safety Act 2011 in relation to the abovementioned alleged contravention. This notice has been placed under the terms of the Enforceable Undertaking and acknowledges acceptance of the Enforceable Undertaking by Mr Alistair Macdonald.

The undertaking requires the following actions:

- the development and implementation of safe systems of work and training for volunteers and truck drivers undertaking rural charitable hay runs;
- the creation of an annual grant (for a period of 3 years) for students of a regional TAFE, considered to have demonstrated the highest attitude towards safety in the workplace;
- the development, manufacture and implementation of an engineering load restraint control on truck trailers, obviating the need for workers to work in and around a trailer when loading, securing, and unloading hay bales.
- a targeted workplace safety audit focussed on the risks associated with people interacting with mobile plant, including the implementation of corrective actions identified in the audit.

The full undertaking and general information about enforceable undertakings is available at [safework.nsw.gov.au](https://safework.nsw.gov.au).