

# ENFORCEABLE UNDERTAKING

## Part 11

### *Work Health and Safety Act 2011*

The commitments in this enforceable undertaking  
are offered to SafeWork NSW

by

**Merrywinebone Pty Limited**

ACN 000 937 824

#### **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 [www.SafeWork.nsw.gov.au](http://www.SafeWork.nsw.gov.au)*

## Enforceable Undertaking

### Purpose

The purpose of this enforceable undertaking is to document the undertakings offered to 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**).

### Section 1 – General information

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

<b>Registered Address:</b>	<b>43 Auburn Street MOREE NSW 2400</b>
<b>Postal address:</b>	As above
<b>Telephone contact:</b>	██████████
<b>Email address:</b>	████████████████████
<b>Legal structure:</b>	Corporation
<b>Type of business:</b>	Farming
<b>Commencement date of the entity:</b>	27 August 1971
<b>Number of workers:</b>	Full-time: 30 (approx.) Casual: 30 – 60 (approx.)
<b>Products and/or services:</b>	Dry land and irrigated cropping
<b>Comments:</b>	Merrywinebone is a partner in the farming/agricultural partnership known as "Avondale Ag" and was formerly a partner in the farming/agricultural partnership known as "Greentree Farming". Greentree Farming carried on farming and agriculture activities on aggregations in North Western NSW. Greentree Farming was wound-up in 2019. Avondale Ag now carries on farming activities on certain aggregations formerly farmed by Greentree Farming. Avondale Ag is a major employer in Moree and surrounding districts, employing approximately 30 employees on a full-time basis and between 30 and 60 employees during harvest periods.

**b. Details of the alleged contravention**

It is alleged by SafeWork NSW that on 17 May 2018, Merrywinebone Pty Limited (**Merrywinebone**) failed to discharge its obligations as a person conducting a business or undertaking under sections 38(1) and 43(2) of the WHS Act in that it did not ensure so far as reasonably practicable the health and safety of workers.

**c. Details of the events surrounding the alleged contravention**

The worker was employed as a farmhand by Greentree Farming. The worker, along with other workers, was directed by a farm manager to clean-up a work yard including being directed to move lengths of steel using a mobile crane. None of the workers involved in cleaning up the yard held appropriate licences to operate the mobile crane and were left unsupervised by the farm manager.

During the process of moving the lengths of steel, the steel slipped through the chains used to attach the steel to the crane causing the worker to sustain serious injuries.

The workers involved in the incident (not including the injured worker) were offered and took leave for the remainder of the day and the whole of the day following the incident (approximated).

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

It is acknowledged that SafeWork NSW has alleged that Merrywinebone has contravened sections 38(1) and 43(2) of the WHS Act.

**e. The details of any injury that arose from the alleged contravention**

[REDACTED]

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

Were enforcement notices received?

Yes

Date issued	Notice type	Notice number	Contravention	Action taken in response to notice
28/06/2018	Improvement Notice	7-333614	WHS Act 2011, section 19, WHS Regulation 2017, clause 35.	Developed a Safe Work Procedure for safe operation of the mobile crane and trained workers in its use.
28/06/2018	Improvement Notice	7-333605	WHS Act 2011, section 19, WHS Regulation 2017, clause 81.	Developed and implemented a policy to ensure all high risk work was undertaken by a worker holding the relevant high risk work licence and the details of such employees were sent to the relevant inspector.

28/06/2018	Improvement Notice	7-333607	WHS Act 2011, section 38	Developed and implemented a new "WHS Accident Policy" which included an express notification requirement and detailed procedure for notifying SafeWork NSW of incidents and attached a copy of SafeWork Australia Incident Notification Information Sheet.
28/06/2018	Improvement Notice	7-333599	WHS Act 2011, section 19, WHS Regulation 2017, clause 81.	Developed and implemented a new "WHS Accident Policy" which included an express notification requirement and detailed procedure for notifying SafeWork NSW of incidents and attached a copy of SafeWork Australia Incident Notification Information Sheet.
28/06/2018	Improvement Notice	7-333597	WHS Act 2011, section 21, WHS Regulation 2017, clause 213.	The mobile crane was inspected and subsequent removed from operation and from the site after inspection revealed a number of mechanical and structural issues with the crane.
20/07/2018	Improvement Notice	7-335214	WHS Act 2011, section 19, WHS Regulation 2017, clause 213.	A competent person inspected all slings on site, purchased new slings and created a sling register.
20/07/2018	Improvement Notice	7-335212	WHS Act 2011, section 19, WHS Regulation 2017, clause 85.	Obtained High Risk Work Licences for workers employed on the site who were required to operate a forklift.

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

Merrywinebone is committed to complying with its 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 its business or undertakings.

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

**h. The details of the type of workers compensation provided (if the injured person(s) is a worker of the person)**

Merrywinebone is not aware of the details of the workers compensation provided to the worker, as he was an employee of Greentree Farming. Any dealings with the employee regarding the incident were between employees of the former Greentree Farming Partnership, none of whom are employed by Merrywinebone/Avondale Ag.

- i. **The details of the support provided, and proposed to be provided, to the injured person(s) to overcome the injury/illness**

Does the alleged contravention involve injury to a person?

Yes

The worker was employed by Greentree Farming at the time of the incident.

Based on information provided by the former farm manager employed by Greentree Farming, Merrywinebone understands that the following support was provided to the worker and/or their family at the time of, or shortly after the incident:

Date	Description of support	Comments
June/July 2018	The worker was offered alternative work	The worker was offered and accepted light duties upon his return to work.

- j. **The details of any existing work health and safety management system (WHSMS) at the workplace including the level of auditing currently undertaken**

Merrywinebone has an existing WHSMS but this has not been assessed against the principles of AS/NZS 4801:2001.

- k. **The details of any consultation undertaken within the workplace regarding the proposal of an enforceable undertaking**

Merrywinebone has consulted with its shareholders, partners in the Avondale Ag partnership and farm managers of the aggregations farmed by Avondale Ag regarding the proposal of an enforceable undertaking. The key people involved are the partners and the farm managers of the farming aggregations farmed by Avondale Ag.

- l. **A statement of regret that the incident occurred (i.e. not an admission of guilt)**

Merrywinebone regrets that the incident on 17 May 2018 occurred and the Worker sustained injuries as a result of the incident.

- m. **Any rectifications made as a result of the alleged contravention**

Description	\$ Amount
Any rectifications were not undertaken by Merrywinebone, as response to the incident was undertaken by the controlling partner.	
The mobile crane used in the incident was disposed of.	

**TOTAL AMOUNT SPENT ON RECTIFICATIONS**

**0.00**

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

Merrywinebone commits that the behaviour that lead to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence of this type of incident.

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

Merrywinebone commits that it will exercise its best endeavours to the ongoing effective management of work health and safety risks.

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

Merrywinebone acknowledges that it has the financial ability to comply with the terms of this enforceable undertaking and has provided evidence with this undertaking to support this declaration.

**q. The person is required to provide information regarding any prior work health and safety convictions**

SafeWork NSW requests a list outlining details of any prior work health and safety convictions or findings of guilt under work health and safety legislation<sup>2</sup> or work health and safety related legislation.

The list is attached as an annexure and marked "A".

**r. Statement regarding relationships with beneficiaries**

Merrywinebone acknowledges there are no known current relationships with any of the beneficiaries outlined in the enforceable undertaking, other than the current employees of Merrywinebone and the injured worker.

**s. Intellectual property licence**

Merrywinebone 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.

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

Merrywinebone acknowledges that the responsibility for demonstrating compliance with this undertaking rests with the person who has given this undertaking. Evidence to demonstrate compliance with the terms will be provided to SafeWork NSW by the due date for the term.

Merrywinebone acknowledges that SafeWork NSW may undertake other compliance monitoring activities to verify the evidence that is provided and compliance with the relevant term. The evidence provided to demonstrate compliance with the undertaking will be retained by the person who has given this undertaking until advised by SafeWork NSW that the undertaking has been completely discharged.

Merrywinebone acknowledges that SafeWork NSW may initiate additional compliance monitoring activities, such as inspections, as considered necessary at SafeWork NSW's expense.

Merrywinebone acknowledges that should there be any delay in the commencement/delivery of the Enforceable Undertaking based on current community and workplace health and safety concerns and related business continuity disruption caused by COVID-19, this will be subject to mutual agreement (confirmed in writing) between Merrywinebone and SafeWork NSW.

**u. Acknowledgement of enforceable undertakings guidelines**

Merrywinebone has read and understood SafeWork NSW Enforceable Undertakings Guidelines and Enforceable Undertakings Customer Service Standard.

## Section 2 – Enforceable Terms

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

Merrywinebone acknowledges that the enforceable undertaking will be published on SafeWork NSW's internet site and may be referenced in SafeWork NSW's publications.

Merrywinebone will, within thirty (30) days of the date of acceptance of this enforceable undertaking, cause a public notice to be published in the The Land, which will be drafted using the script provided in Annexure 1.

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

Merrywinebone is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking will clearly link the benefit to the undertaking and that the undertaking was entered into as a result of the alleged contravention.

**x. A commitment to disseminate information about the undertaking to workers, and other relevant parties (which may include work health and safety representatives), and in the annual report (if applicable)**

Senior management, including all farm managers, will be provided with a copy of the enforceable undertaking, and its terms and effect discussed once the enforceable undertaking is published. This will be provided to senior management by way of email and discussed at a staff meeting once the enforceable undertaking is published.

Farm employees, other than senior management and administration staff, will be informed that an enforceable undertaking has been entered into and will be provided with general details of the undertaking once it is published. This information will be disseminated via toolbox talks once the enforceable undertaking is published.

Evidence of this will be in the form of the email circulated to senior management and by way of sign off form from farm managers that they have advised staff of the enforceable undertaking during toolbox talks.

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

**a. Strategies that will deliver workplace benefits**

**1. WHS training for farm managers and establishment of a Safety Management Team.**

**Scope:**

The farming operations undertaken by Avondale Ag are conducted on aggregations located throughout north western New South Wales. Each aggregation has a small permanent workforce with a transient workforce that peaks during harvest time. Each aggregation is managed and supervised by a farm manager and other permanent staff. Avondale Ag consider it essential that there are consistent WHS policies and procedures applied and observed across all aggregations.

Avondale Ag is committed to following SafeWork's agricultural work health and safety sector plan across all of its aggregations.

**This will include:**

- **having its farm managers undertake a unit of competency "contribute to WHS processes" with Tocal College, describing the skills and knowledge required to carry out WHS policies and procedures; and**
- **establishing a Safety Management Team, comprising of each of Avondale Ag's farm managers and senior management, which will meet on a monthly basis to:**
  - (a) **identify any WHS issues arising on any of the aggregations and across Avondale Ag's operations; and**
  - (b) **identifying changes to Avondale Ag's WHS policies and procedures to ensure their currency and suitability to SafeWork.**

**Target issue:**

The distance between Avondale Ag's aggregations creates challenges in maintaining a strong and effective safety culture across the farm. Merrywinebone aims to have a strong 'top down' safety culture that ensures safety leadership across the Avondale Ag aggregations, with consultation and group measures as an integral part of everyday activity for the partners of Avondale Ag and workers.

**Tangible outputs / deliverables:**

- (a) **Arrange for all farm managers (6) to undertake 'Contribute to work health and safety processes' unit of competency through Tocal College. The unit of competency guide and the expectation of deliverables regarding the WHS policies and learning outcomes have been provided to SafeWork NSW.**
- (b) **Confirmation of attendance and successful completion of the unit of competency by all attendees, will be provided to SafeWork within one month of attendance.**
- (c) **Establish a Safety Management Team comprised of farm managers and senior management of Avondale Ag (7). Senior management of Avondale Ag will include/comprise the Director and/or Avondale Ag's WHS officer.**



- (d) Ensure the Safety Management Team meets on a monthly basis, or a minimum of 10 times per calendar year. Occurrence of and attendance at the meetings will be recorded and confirmed by minutes of meeting.
- (e) Monitoring of WHS issues across the Avondale Ag aggregations;
- (f) Reporting of any WHS issues identified across the Avondale Ag aggregations to senior management for rectification/remedial action.
- (g) Minutes from these meetings will be produced as evidence, including records of any WHS issues identified, monitoring of these issues and any proposed corrective action. During the 12-month period from the commencement of this enforceable undertaking, minutes of these meetings will be provided to SafeWork within one month of the relevant meeting

**Audience / beneficiaries:**

- Senior management and farm managers.
- All Avondale Ag workers as well as contractors who visit the site as they will benefit from uniform safety management practices across Avondale Ag's aggregations.

**Delivery method:**

- Delivery of the "contribute to WHS processes" unit of competency referred to above will involve attendance of farm managers engaging in face-to face training with Tocal College.
- The establishment of a Safety Management Team to be attended by farm managers and senior management in person or virtually on a regular basis (10 x monthly basis).

**Timeframes:**

**It is intended:**

- (a) Enrolment of farm managers in the 'Contribute to work health and safety processes' unit of competency to be delivered by Tocal College within two months of acceptance of the enforceable undertaking and to be completed by all farm managers (6) within six months of acceptance of the enforceable undertaking.
- (b) Establishment of a Safety Management Team to comprise farm managers and senior management of Avondale Ag (7) within two months of acceptance of the enforceable undertaking.
- (c) Holding of meeting of the Safety Management Team on a monthly basis commencing within two months of acceptance of the enforceable undertaking.

**Work health and safety outcome:**

By focusing on leadership 'top down' approach, all workers will feel empowered to raise awareness and be involved in the continual improvement of work health and safety on Avondale Ag.

**Cost Breakdown:**

Description	\$ Amount
Staff time (8 hours) for a minimum of 6 people to attend training course @ \$50 hr.	\$2,400
Staff time (2.5 hours) for a minimum of 6 people to attend monthly meetings of the Safety Management Team @ \$50hr.	\$7,500
Administration materials.	\$200
Total College (anticipated minimum spend).	\$5,000

**Total estimated cost: \$15,100**

**b. Strategies that will deliver industry benefits**

**2. Virtual Farm Safety – online learning experience.**

**Scope:**

Merrywinebone will fund (in the amount of \$15,000) a review of the interactive online learning experience known as "Virtual Farm Safety".

**Target issue:**

The heavy reliance of the agriculture/farming sector on transient workers presents significant safety risks within the sector, those risks significantly increased during peak seasons. There are no formal training or qualification requirements for seasonal/transient workers within the sector and most training is on-the-job training. The resources required to train seasonal workers are high and the sector will benefit from targeted training resources which focus on the common risks of and/or associated with on-farm work.

**Tangible outputs / deliverables:**

- Merrywinebone will make payments, on approval from SafeWork NSW, to the developer in the amount of \$15,000 towards the upgrade of Virtual Farm Safety, an online learning experience.
- All full-time employees employed by Avondale Ag engaged in farming and/or agricultural activities (approximately 25) (excluding administrative staff) will undertake the Virtual Farm Safety experience within 12 months of acceptance of the enforceable undertaking.
- All seasonal/itinerant workers engaged by Avondale Ag (approximately 30) will undertake the Virtual Farm Safety experience as part of their induction.
- Evidence of completion of the Virtual Farm Safety experience will be provided to SafeWork as follows:
  - (a) all employees of Avondale Ag employed at the date of publication of this undertaking will complete the Virtual Farm Safety experience within three months of publication of the undertaking. An email certificate (provided to each participant on completion of the Virtual Farm Safety experience) will be provided within one month of the end of that period;
  - (b) any employees of Avondale Ag employed after the date of publication of this undertaking will complete the Virtual Farm Safety experience as part of their induction with Avondale

Ag. An email certificate (as noted above), will be provided within three months of the respective employee completing the experience.

**Audience / beneficiaries:**

- Seasonal/itinerant workers engaged by Avondale Ag
- The industry as a whole will benefit from a free, industry specific training tool

**Delivery method:**

Merrywinebone will fund the review of the Virtual Farm Safety experience and make completion of the Virtual Farm Safety experience a requirement of induction of seasonal/itinerant staff of Avondale Ag.

**Timeframes:**

- Merrywinebone will make payments to the developer on approval from SafeWork NSW, to the amount of \$15,000 within 3 months of acceptance of the enforceable undertaking, or as otherwise agreed between the parties.
- Avondale Ag will require all new seasonal/itinerant staff engaged after the enforceable undertaking is accepted to complete the Virtual Farm Safety experience. This obligation will remain in place for all seasonal/itinerant staff engaged within 12 months of this undertaking being accepted by SafeWork.

**Work health and safety outcome:**

All new employees of Avondale Ag undertake a two-stage induction process. The first stage is a general induction which applies to all employees of Avondale Ag by which employees are inducted into Avondale Ag's general operations, its WHS and other policies and procedures. Employees then undertake a "site" specific induction by which they are inducted into the specific farm at which they are employed to work. Induction is tailored to the workers specific role on each farm and includes the provision of information relating to the equipment the employee will be required to use and/or interact with. Further training is required on an as needs basis.

The Virtual Farm Safety experience will be included as part of the first stage general induction of all new employees with existing employees being required to complete the experience within three months of publication of the undertaking. This induction process will ensure all employees, including seasonal and itinerant staff will be provided with information which will result in increased awareness of the common dangers associated with undertaking work in the agricultural/farming sector.

**Cost Breakdown:**

Description	\$ Amount
Financial contribution to upgrade the Virtual Farm Safety online learning experience	\$15,000
Staff costs – estimated for 55 staff at \$25 hr (x 2 hrs)	\$2,750

**Total estimated cost: \$17,750**



### Section 3 – Offer of undertaking

As a duly authorised person of Merrywinebone Pty Limited, I offer this undertaking and commit to the terms herein.

Signed: [Redacted Signature]

Name: [Redacted Name]

Position: Director, Merrywinebone Pty Limited

Dated at Insert suburb this Choose number day

of Insert month, Insert year

Rowena NSW

8<sup>th</sup> July 2021.

### Section 4 – SafeWork NSW’s acceptance of undertaking

*The duration of an enforceable undertaking is determined by the content of the agreed terms. An enforceable undertaking commences and is enforceable once accepted by SafeWork NSW. The enforceable undertaking will be concluded on written advice from SafeWork NSW when all requirements of the undertaking have been satisfactorily executed.*

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

Signed: [Redacted Signature]

Name: Valerie Griswold

Position: Executive Director, Investigations and Enforcement.

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

Dated at Sydney this 2<sup>nd</sup> of July 2021  
[suburb] [month] [year]

## 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 17 May 2018, a farmhand employed by Greentree Farming was directed by a farm manager to clean-up a work yard including moving lengths of steel using a mobile crane. Various workers were involved in cleaning up the yard, however, none held appropriate licences to operate the mobile crane and were left unsupervised. During the process of moving the lengths of steel, the steel slipped through the chains used to attach the steel to the crane, causing one of the workers to sustain serious injuries.

SafeWork NSW investigated the incident and subsequently alleged that Merrywinebone Pty Limited contravened section 38(1) and 43(2) of the Work Health and Safety Act 2011.

This notice has been placed under the terms of an enforceable undertaking and acknowledges acceptance of an undertaking, that is enforceable under the Act, from Merrywinebone Pty Limited, ACN: 000 937 824 as finalisation of the abovementioned alleged contravention.

The undertaking requires the following actions:

- WHS training for farm managers and establishment of a Safety Management Team.
- Fund a review of the Virtual Farm Safety online learning experience.
- Make completion of the Virtual Farm Safety online learning experience, a requirement of induction for seasonal/itinerant staff and current full time employees who are engaged in farming activities, across Avondale Ag.

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

Annexure A

Section 1 q. Information regarding prior Work Health & Safety convictions

Date	Conviction	Details
22.09.2015	Conviction that contrary to section 8 1 of the <i>Occupational Health and Safety Act 2000 (Repealed)</i> , Merrywinebone failed to ensure that health safety and welfare at work of it's employees [REDACTED]	Conviction entered In the District Court on a plea of guilty. No penalty imposed with an order that Merrywinebone pay prosecutor's costs in the sum of \$20,677.98. Decision published see <i>SafeWork NSW v Merrywinebone Pty Ltd</i> [2015] NSWDC 229.