

SafeWork NSW Enforceable Undertakings Program Evaluation. FINAL REPORT

June 2020

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Executive summary

Since its introduction in 2012, SafeWork NSW's enforceable undertakings (EU) program has accepted 50 EUs from 101 applications. Nexus was engaged by SafeWork NSW to conduct an evaluation of the program to:

- a) assess the extent to which EUs have led to improvements in work health and safety outcomes (i.e. an outcomes evaluation)
- b) identify strengths and potential improvements in the EU program (i.e. a process evaluation).

The evaluation included:

- analysis of SafeWork NSW data on the EU program
- an online survey of 24 businesses that have been approved for an EU since January 2018
- 18 interviews with businesses that have completed or are substantially advanced in their EU
- a series of individual and group consultations with SafeWork NSW staff involved in the EU program.

The EUs are required to deliver three sets of outcomes:

- at the individual workplace level
- at the relevant industry level
- at the community-wide level.

The evaluation found the strongest evidence for achievement of outcomes at the workplace level. 17 of the 18 businesses we interviewed that had completed or significantly advanced their EU demonstrated that the EU had led to changes in their workplaces that gave rise to the alleged breach. These same 17 businesses were also able to identify longer-term changes in their business and improvements in the workplace health and safety culture.

In general, the business representatives saw EUs as shifting the focus from an individual incident to systemic workplace issues and culture and therefore requires an ongoing commitment. This was a primary reason why 13 of the 18 businesses (72%) we interviewed would advise another company of a similar size to enter into an EU if faced with similar circumstances. Moreover, 14 of the 18 (78%) saw EUs as an effective alternative to prosecution, which was commonly seen as a one-off penalty that did not necessarily translate into longer-term workplace health and safety outcomes. Indeed, a number of stakeholders challenged the perception of some stakeholders that enforceable undertakings are a soft option when compared with prosecution. Our conclusion is that this view is

misplaced as the evaluation has documented a number of significant outcomes at the workplace, industry and, to a lesser extent, community levels.

The extent of this longer-term commitment is reflected in financial terms: the median cost of the completed and significantly advanced EUs is \$337,290. This figure may in fact under-represent the actual cost as a majority (72%) of the consulted businesses stated that the cost of EUs was greater than they had estimated, especially for the management and staff time required for implementation of the EU commitments.

One key theme that emerged from the evaluation concerned the scope of the workplace commitments in EUs. In general, it was agreed that they should extend beyond what was commonly referred to as ‘mere compliance’; that is, beyond obligations that PCBUs should have already been meeting under the legislation. Extending beyond mere compliance, however, does still allow for the inclusion of commitments that produce longer-term and sustained work health and safety outcomes in individual workplaces. Such outcomes are consistent with the objectives of the EU program. Accordingly, the evaluation recommends that workplace strategies remain core to the EU, so long as they encompass more than prescribed statutory requirements.

The evidence on the achievement of industry and community outcomes was less compelling. Business representatives and SafeWork NSW officers noted the difficulty of developing strategies that achieve significant and measurable outcomes at these two levels. Nevertheless, the evaluation has documented some significant instances of industry outcomes and, to a lesser extent, community outcomes.

Because of the challenges of identifying and implementing industry and community strategies, the evaluation recommends that the requirement that EUs must contain strategies at all three levels be relaxed and that the collective impact of strategies be used as the test in determining if an EU should be accepted. Under this approach, which appears to have already been adopted in practice for some EUs, draft EUs that have combined industry/community strategies could be deemed as acceptable, as could ones that are likely to achieve significant outcomes across an industry sector.

Smaller businesses are under-represented in the EU program: only three of the 50 accepted EUs have been for businesses employing less than 20 employees. Moreover, smaller businesses have higher rejection rates for EU applications: 13 of 23 (57%) for businesses with less than 20 employees versus 21 of 76 (28%) for businesses with more than 20 employees. In addition to the recommendation about relaxing the requirement to develop strategies on

three levels, the evaluation makes other recommendations to increase smaller businesses' involvement in the EU program, including the development of a suite of strategies that better accommodate their particular needs.

The evaluation has identified a number of strengths of the EU program:

- the tailoring of the EUs to the specific circumstances and capability of individual businesses
- the program 'architecture' comprising an advisory service, a decision-making panel and a verification process to ensure that the legal commitments entered into in an EU are upheld – functions that involve separate SafeWork NSW officers
- the communication and support provided by SafeWork NSW was, in general, seen favourably by businesses.

This evaluation is the third external review conducted of the EU program which demonstrates SafeWork NSW's willingness to adapt the program, as reflected in establishment in January 2018 of a two-stage process involving an eligibility assessment prior to an evaluation phase. The two-stage process has reduced the average time from application for an EU to a formal decision by 29% from 346 to 246 days.

However, the length of the life-cycle from lodgement of an application for an EU, the eligibility decision and the evaluation panel's decision whether to approve an EU remains a major concern of the businesses and SafeWork NSW representatives we consulted. The evaluation has identified some potential process improvements to reduce the time and recommends that SafeWork NSW:

- continue to draw on the specialist expertise across SafeWork NSW in identifying potential strategies for inclusion in EUs
- explore opportunities to leverage off tools and resources developed in EUs for possible application by SafeWork NSW across industry sectors
- enhance the resources and tools it provides, including the suite of strategies that it makes available to PCBU's that have been deemed eligible to apply for an EU
- examine the appropriateness of introducing a new streamlined EU template along the lines of the form used by the Queensland work health and safety regulator
- engage the Behavioural Insights Unit to advise on process improvements, including the redesign of the EU program forms
- expand the involvement of verifying inspectors in reviewing draft EU strategies about whether they can be objectively verified

- scope the specifications for an integrated case management system that spans the life cycle of an EU and facilitates improved reporting.

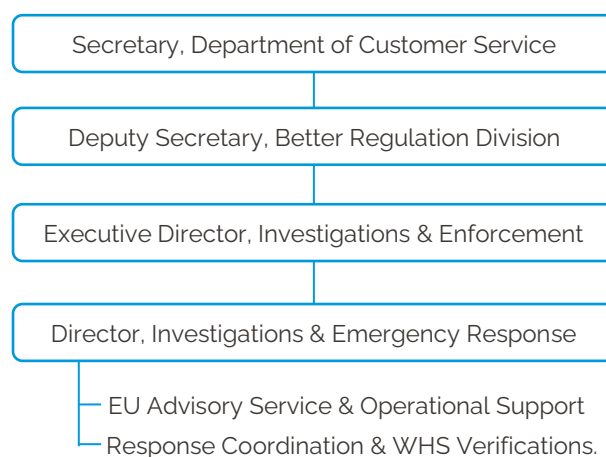
Implementation of these recommendations will build upon the inherent strengths of the EU program and enable it to continue to deliver workplace health and safety outcomes across New South Wales.

1. Introduction

SafeWork NSW, the state's work health and safety regulator, is part of the Better Regulation Division of the NSW Department of Customer Service. SafeWork NSW works with individuals, businesses and the community to reduce work related fatalities, serious injuries and illnesses. To achieve this, laws provide SafeWork NSW with a range of functions including monitoring and enforcing compliance with legal requirements relating to work health and safety (WHS) practices by individuals and business across NSW. SafeWork NSW apply these laws by taking enforcement action and issuing improvement and prohibition notices and sanctions based on the seriousness of the risk and/or offence, and the potential for harm in the workplace.

Included in these functions is the management of the Enforceable Undertakings (EU) program. An EU is a public and legally binding alternative to prosecution, which may be proposed by an individual or business that is alleged to have contravened the *Work Health and Safety Act 2011* (WHS Act 2011)¹. An EU legally obliges the individual or business to carry out specific activities which are intended to improve not only health and safety at the workplace, but also deliver health and safety initiatives to the relevant industry and the broader community. The EU program is administered by the EU Advisory Service and Operational Support unit of the Investigations and Emergency Response Directorate of SafeWork NSW, as depicted in Figure 1. The program includes inspectors from Response Coordination and WHS Verifications who conduct verifications of EUs.

Figure 1. Macro organisation structure for the EU program



¹ in this report, the terms PCBU (persons conducting a business undertaking), business and employer are used interchangeably and will cover both businesses and individuals, noting that the vast majority of EUs have been approved for businesses rather than individuals.

Since its introduction in January 2012, SafeWork NSW has accepted 50 enforceable undertakings (including one with a worker), resulting in \$20.4 million committed to work health and safety improvements.

Nexus was engaged to conduct an independent evaluation of the Enforceable Undertakings program.

1.1 Terms of Reference

The aims of the evaluation were to:

- a) assess the extent to which EUs have led to improvements in work health and safety outcomes (i.e. an outcomes evaluation)
- b) identify strengths and potential improvements in the EU program (i.e. a process evaluation).

More specifically, the evaluation was required to address the following key evaluation questions:

1. Have businesses that have entered an EU met their obligations under the EU?
2. Have businesses who entered EUs achieved sustained compliance with their work health and safety obligations?
3. Have EUs led to work health and safety benefits in related industry sectors and the broader community?
4. Are EUs appropriate for small businesses?
5. What possible improvements could be made to the EU program?

1.2 Methods

The evaluation involved four components:

- analysis of SafeWork NSW data on the EU program
- an online survey of 24 businesses that have been approved for an EU since January 2018 (out of a total of 34 that were approached – a response rate of 70%) – see Appendix 1 for the survey methods and results
- 18 interviews with businesses that have completed or are substantially advanced in their EU (out of a total of 29 that were approached – a response rate of 62%) – see Appendix 2 for a summary of the key themes emerging from these interviews
- a series of individual and group consultations with SafeWork NSW staff – see Appendix 3 for a summary of the key themes emerging from these consultations.

1.3 Evaluation governance

An evaluation steering committee was formed to oversight the project consisting of SafeWork NSW staff from the EU Advisory Service and Operational Support, Response Coordination and WHS Undertakings and Research and Evaluation units. Appendix 4 contains a list of the steering committee members. The project sponsor was the Director, Investigations and Emergency Response.

Meetings were held regularly with the steering committee and project sponsor throughout the duration of the evaluation and a draft report was presented to the steering committee for discussion and feedback.

1.4 This report

This final report, which incorporates feedback from the steering committee, presents the evaluation findings and recommendations. The report is structured as follows:

- **section 2** provides an overview of EU program
- **sections 3-5** discuss EU outcomes at workplaces, industry and community levels respectively
- **section 6** discusses the EU program and micro and small businesses
- **section 7** proposes a series of process improvements to the program
- **section 8** provides a brief conclusion
- **section 9** lists the recommendations from the previous sections.

1.5 Acknowledgments

This evaluation was undertaken by Gregory Masters, Simon Thomas and Francesca Searle of Nexus Management Consulting.

We would like to acknowledge the assistance of the members of the steering committee (see Appendix 4) who provided support and direction to the evaluation. In particular we would like to thank Callista Kent, the Manager of the EU Advisory Service for her stewardship of the evaluation and operational support and Michelle Cuthbertson, Project Officer, Enforceable Undertakings for her tireless support in responding to our data and information requests.

2. The EU program: an overview

An EU is a legally binding agreement entered into as an alternative to having an alleged breach decided through legal proceedings following an intention to initiate prosecution by SafeWork NSW. An EU provides an opportunity for significant work health and safety reform to be undertaken by an individual or business by completing agreed activities within a particular timeframe. Consistent with restorative justice principles, as opposed to retributive justice principles, the activities required under an EU include specific initiatives to be undertaken by a person or business that will deliver significant safety benefits to the workplace, as well as benefits which extend to the industry and community. The effort and commitment required in delivering the initiatives within an EU to completion are proportionate to the resources and capability of the individual or organisation.

The EU process is described in more detail in Appendix 5.

2.1 Program Logic

A program logic sets out a cause-effect chain linking a program's activities with its outputs, intermediate and longer-term outcomes, and therefore provides a framework for designing an evaluation. The EU program logic shown in figure 2, developed as part of this evaluation in consultation with the steering committee, identifies the key end-of-program outcomes that contribute to SafeWork NSW's broader goals of improved work health and safety outcomes for businesses across NSW, and to establish healthy, safe and productive lives.

The program logic provided the basis for developing the five evaluation questions discussed in section 1.

2.2 Enforceable Undertakings since 2012

Table 1 shows the number of EUs applications since the EU program began in 2012 until March 2020, broken down by small businesses (<20 employees), >20 workers and single worker agreements and categorised into accepted, rejected and withdrawn (see Appendix 6 for this information broken down by year). The table shows that there have been 101 EU applications since 2012, of which approximately half (n=50) have been accepted.

Figure 2. Enforceable Undertaking program logic

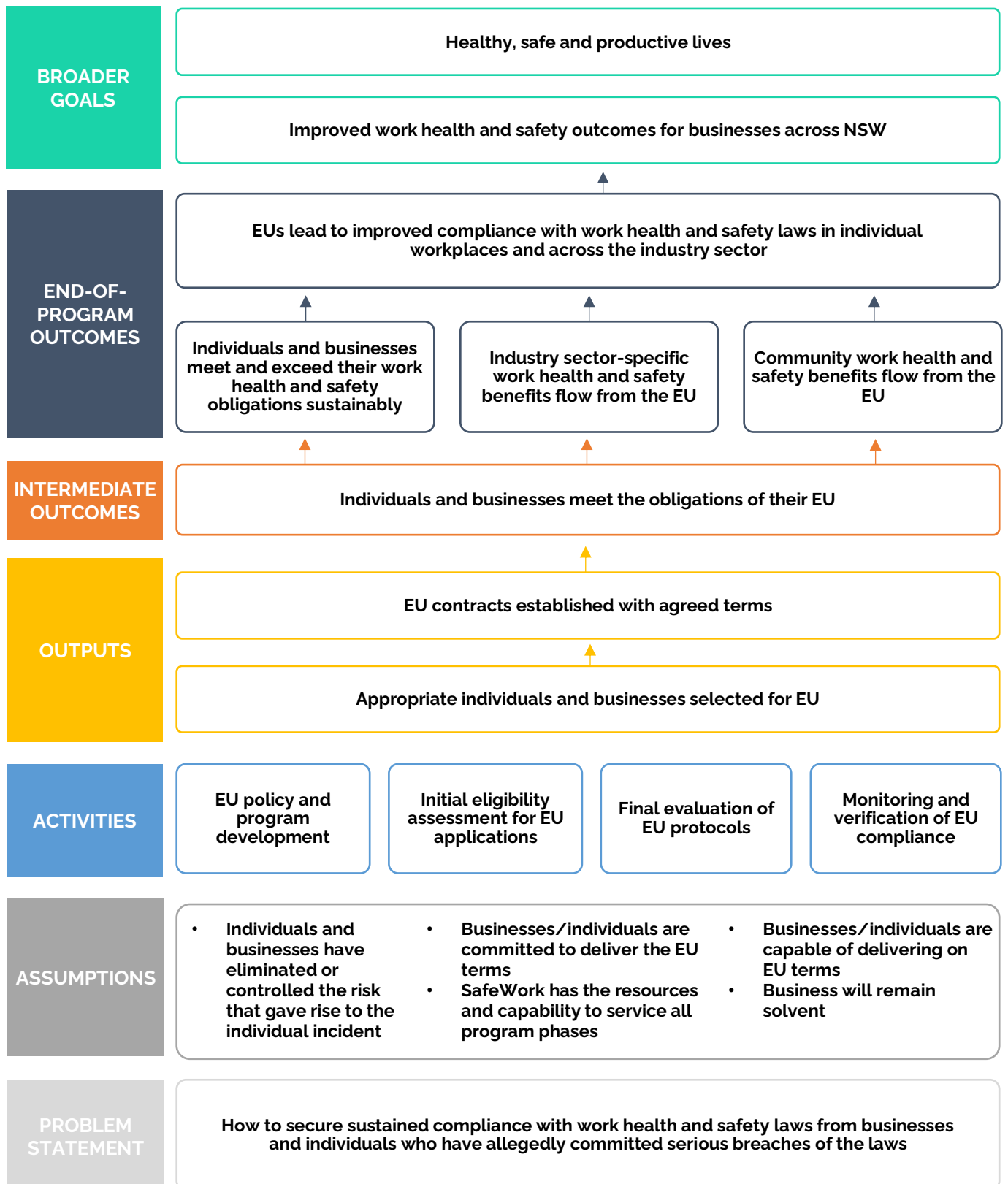


Table 1. EU applications since 2012

Category	Small (<20)	>20 employees	Worker	Total	%
Accepted	3	46	1	50	49.5
Rejected	13	21	0	34	33.7
Withdrawn	7	9	1	17	16.8
Total Applications	23	76	2	101	100.0

Table 2 shows the status of these 50 accepted EUs, categorised into completed, significantly advanced and closed as taken from the SafeWork NSW website. Each of the 19 completed EUs was approved prior to the introduction of the two-stage process (availability and evaluation stages) introduced in January 2018.

Table 2. Status of accepted EUs

Status	No.	%
Completed	19	38
Significantly advanced	29	58
Closed	2	4
TOTAL	50	100

Table 3 shows the type of injury for the 50 accepted EUs respectively and underscores the significance of the alleged breaches that included four fatalities and 33 serious injuries,

Table 3. Type of injury for accepted EUs

Type	No.	%
Serious injury	33	66
Dangerous occurrence	13	26
Fatality	4	8
TOTAL	50	100

Appendix 7 contains more detailed data on the 50 accepted EUs and the 29 EUs that have been completed (n=19) or significantly advanced (n=10).

3. Workplace outcomes

This section of the report draws on SafeWork NSW data analysis and consultations with businesses and SafeWork NSW officers to address the first two evaluation questions:

- *Have businesses that have entered an EU met their obligations under the EU?*
- *Have businesses who entered EUs achieved sustained compliance with their work health and safety obligations?*

A key strength of the EU program, identified through our consultations with business representatives and SafeWork NSW staff, is that it has a verification process to ensure that the legal commitments entered into in an EU are upheld. The legislation also provides for sanctions if these commitments are not met. Given that none of these sanctions have been utilised to date, this would suggest completed EUs have met the workplace obligations specified within the requirements of their EU. Moreover, our consultations with the inspectors indicated that completed EUs have delivered on their commitments at the workplace level.

This is confirmed by the table in Appendix 7, which lists the workplace strategies for all 29 completed and significantly advanced EUs. Some caution should be exercised in interpreting this information, however, because a consolidated set of strategies at the workplace level (and industry and community levels) was not readily available to the evaluation and required piecing together data from three separate sources: the EU verification plans (EUVPs) that are prepared by inspectors, PDFs of the original signed EUs and the 'strategies tool', a document prepared by the EU Advisory Service and Operational Support Team to assist PCBUs in developing strategies for inclusion in their EUs².

The most common workplace strategies contained in the table in Appendix 7 for the 29 completed and significantly advanced EUs were:

- additional WHS training to staff and improvements on current safety processes
- obtaining WHS certification for senior managers
- development of internal WHS guides and safety awareness programs
- third party audits of WHS systems
- updates to equipment.

² In section 7, we discuss the need for an improved EU program data collection system that captures and reports basic EU program data.

Our consultations with businesses that have completed or are significantly advanced in completing an EU also provides evidence that the EUs, in general, have achieved outcomes at the workplace level:

- all but one of the 18 businesses consulted indicated that the EU has led to changes in their businesses related to the alleged breach
- these same 17 businesses stated that the EU had led to longer-term changes in their business and improvements in the workplace culture regarding work health and safety, as reflected in the following quotes.

'Once the EU stops, it does not mean that you stop improving safety'

'Our internal strategies from the EU are still in place, and we have improved them over time'

'Implementing the EU' ... is not an isolated initiative, but now a long-term project'

That is, EUs were commonly seen by the business representatives to have shifted the focus from an individual incident to securing improvements more broadly and contributing to changes in workplace culture. For this reason, the majority (13 of 18 or 72%) of business representatives we interviewed would advise another company of a similar size to enter into an EU if faced with similar circumstances and 14 of 18 (78%) also saw EUs as an effective alternative to prosecution because EUs require an ongoing commitment to improving work health and safety in businesses. By contrast, prosecutions were seen as one-off and less likely to achieve long-term change as the resulting fines were not directed at workplace health and safety improvements.

This view that EUs can affect sustained work health and safety improvements at the workplace level was strongly endorsed by all groups of SafeWork NSW staff we consulted. In the right circumstances they see EUs as an effective regulatory intervention that is more likely to embed positive cultural change than a one-off prosecution, because the EU commitments force businesses to remain focused on safety during the term of the EU, an obligation reinforced by the verification process.

Further, as shown in table 4, completed and significantly advanced EUs have involved a substantial financial commitment for PCBU's, a median of \$337,290. This level of resourcing is formally incorporated in the EU and necessitates significant and sustained commitment to implementing the undertakings, a point that consistently emerged from the consultations with business representatives. In fact: 13 of the 18 businesses (72%) we consulted that had completed their EUs indicated that the EU cost more than originally set out in their proposal and that, in particular, the management and staff time involved in implementation had been

more resource-intensive than anticipated. That is, the figure of \$337,290 may represent an under-estimate of the actual cost of completed and advanced EUs.

Box 1: Examples of workplace outcomes in completed and significantly advanced EUs

- ▶ One company implemented a leadership training program to strengthen the organisation's safety and compliance culture. The program sought to ensure work health and safety awareness and practices were embedded through all levels of the business and the system was subsequently adopted throughout Australia. Previously the WHS measures were directed predominantly at the frontline staff level, rather than being instituted as a key business process from the executive level flowing down through the business.
- ▶ One EU required the business to review and restructure their WHS management system and as a result they achieved certification to AS/NZS 4801:2001 OHSMS. This included the implementation of a culture change strategy to implement 'non-negotiable safety rules' across the organisation, based on the critical risk issues identified via an EU-instituted audit at the company's work sites.
- ▶ One company had what they described as an 'antiquated' work health and safety management process in place before the incident giving rise to the alleged breach. As a result of the EU, they overhauled their WHS system to facilitate a change in the workplace safety culture. This included a 'safe level of English' program to enable multicultural staff, predominantly Vietnamese and Mandarin speakers, to understand and promote work health and safety practices and procedures.
- ▶ One medium-size company had an injury involving a forklift and apart from specific action to update the equipment that gave rise the incident, they developed a broader safety campaign incorporating monthly safety messages, first aid training to all employees, provision of safety messages on their external invoices to contractors and a company-wide focus on safety. Safety is now seen to be embedded in the organisation culture.

Table 4. Resource commitments in completed and advanced EUs

EU status	Range	Median
Completed (n=19)	\$51,050 - \$805,500	\$297,488
Advanced (n=10)	\$189,815 - \$1,505,000	\$365,185
All (n=29)	\$51,050 - \$1,505,000	\$337,290

Notwithstanding these achievements, one of the key issues that emerged from our consultations with SafeWork NSW staff was the contention that the EU workplace commitments should extend beyond 'mere compliance'; that is, EUs should aim to secure action above and beyond PCBUs' legal obligations. In this context a number of stakeholders consulted argued that the workplace actions and strategies contained in some approved EUs include requirements that should already be mandatory for workplaces to meet their obligations under the Act. Examples of these include:

- development of a work health and safety education program for managers, team leaders, supervisors and staff
- documentation and auditing of WHS processes and systems
- practices to ensure subcontractors and third-party providers comply with the organisation's WHS requirements
- development and updating of WHS induction training and modules
- workplace-specific WHS procedures such as toolbox talks, PPE compliance procedures and risk assessment measures.

The need to ensure that the workplace strategies in EUs went beyond 'mere compliance' led some SafeWork NSW stakeholders consulted during the evaluation, notably some of the inspectors, to argue that workplace component of EUs could be de-emphasised, allowing for greater attention to be focused upon industry and community strategies. Indeed, during the group consultation with inspectors, it was even posited that workplace strategy benefits could be excluded from the contractual undertakings.

In contrast to this view, other SafeWork NSW officers, including the Enforceable Undertakings Advisory Service and Operational Support staff accepted that EUs should require more than what a PCBU is legally required to do and they argued that in recent years the evaluation panel had operated on this principle. They drew a distinction between meeting prescribed statutory requirements (e.g. work health and safety training, toolbox talks) and broader compliance with work health and safety obligations. That is, extending beyond merely meeting prescribed statutory requirements did not preclude EUs including

outcomes directed at the individual workplace because EUs can and have secured significant and sustained improvements in work health and safety culture and systems for participating PCBUs. Indeed, as noted in Box 1 and Appendix 7, the completed and significantly advanced EUs have secured significant outcomes in individual workplace work health and safety systems, culture and performance. These outcomes represent public value and are entirely consistent with the objects of the EU program.

Recommendation 1: It is recommended that workplace strategies remain central to the EU program and that these extend beyond meeting prescribed statutory requirements.

In remaining core to the program, however, the workplace strategies need to be congruent with the work health and safety sophistication of individual businesses and should therefore not adopt a one size fits all philosophy, especially for micro and small businesses. For some businesses, the workplace undertakings may extend beyond the risks and factors that gave rise to the alleged breach, as has occurred for a number of the completed EUs. For other businesses, it may be appropriate to focus on more fundamental work health and safety outcomes that are closely associated with the breach or alleged breach and serve to create sustained work health and safety improvements for that business.

Recommendation 2: It is recommended that in evaluating draft EUs, SafeWork NSW take account of the size of the business, its capability and current work health and safety culture in determining whether the workplace commitments in the EU should extend beyond issues relating to the alleged breach.

4. Industry outcomes

This section of the report addresses that part of the third evaluation question relating to industry-wide benefits of EUs:

- *Have EUs led to work health and safety benefits in related industry sectors and the broader community?*

Appendix 7 summarises strategies across the 29 completed and significantly advanced EUs. Each of these EUs included industry strategies although for two companies there were combined industry and community strategies. The two most common industry strategies were:

- development of equipment safety guides
- industry presentations or forums

15 of the 18 businesses (83%) we interviewed that have completed or significantly advanced their EUs stated that the EU had led to overall benefits to their industry sector and some impressive achievements were identified by the businesses and by SafeWork NSW officers. Box 2 summarises some of these significant industry outcomes.

However, it was noted by some businesses and SafeWork NSW staff that some industry undertakings were quite superficial and unlikely to lead to significant work health and safety outcomes across the respective industry sector. In fact, a common theme of the consultations with businesses and SafeWork NSW officers was that businesses often find it difficult to develop industry strategies and this was especially true for micro and small businesses that often do not have the scale and resources to secure industry-wide change.

Similarly, it was noted by some businesses in our consultations that it was difficult to specify longer-term industry strategies in EUs given that circumstances can change over time. For example, some business cited examples where third parties who had previously agreed to be involved in partnering on an EU industry-level initiative had changes in personnel and subsequently withdrawn their agreement thus necessitating a variation to the EU which, in turn, requires the approval of the evaluation panel.

Box 2: Examples of industry outcomes contained in completed and significantly advanced EUs

- ▶ One company extended its workplace obligations by establishing planning workshops for all its high-risk construction activities. These workshops involve the compulsory attendance of all stakeholders, including contractors and third-party providers, to plan sequencing and control systems in detail. Moreover, these workshops are reconvened whenever a variation to the agreed protocol is required. This business also developed a practical guide for the safe use of the machinery that was involved in their incident. The guide was developed in collaboration with the industry association to ensure a diversity of experience and best practice methods were instilled in this document. The new guidelines were sent to all industry association members and to the Australian Contractors Association, which distributed the document across the industry. The principles contained within the guide were subsequently adopted as an Australian Standard for structural steel fabrication and erection (AS/NZS 5131:2016).
- ▶ One company was required as part of their EU to present their experience at the Master Builders Association, allowing others in their industry to learn from their story, and to stress the importance of safety. They sponsored an injured worker to attend and make a presentation, allowing other people to hear first-hand the impacts of an incident on a worker, their peers, and the business.
- ▶ One company developed content for an industry website that provides information on asbestos risks in non-residential buildings and the legal obligations of building owners and managers. This website was promoted to peak industry organisations in the non-residential building sector. The business further promoted asbestos risk and safety practices through an awareness campaign which was implemented nationally via a mobile asbestos awareness van, and shared content with a significant range of stakeholders and interested parties such as local councils, property councils, masonry and construction businesses and peak bodies.
- ▶ As a result of its EU, one company developed a mobile application to be used for contractor work health and safety management. The app is free, and can be downloaded for use across all industries, not just its own. The app can be installed on hand-held mobile devices and smart watches, and allows businesses to monitor their contractor work health and safety practices to ensure that safe work procedures are being used for tasks and jobs performed by contractors.

Another consistent theme emerging from the industry consultations was that a number of businesses stated that they would have preferred more direction from SafeWork NSW in formulating industry (and community) strategies. In section 7 we discuss the issue of support to PCBUs in developing EUs in more detail, but in relation to the industry-wide strategies in EUs it is important to note that the EU Advisory Service and Operational Support unit does provide significant support to individual businesses; support that has increased substantially since the inception of the program. Apart from individual consultations, the support includes providing PCBUs with an EU strategies tool, which is essentially a summary of the strategies in previously accepted proposals in the form of an Excel spreadsheet. Some stakeholders indicated that in identifying potential industry strategies they drew heavily on the strategies tool as well as reviewing accepted EUs on the website. This is possibly reflected in the high degree of commonality of strategies.

SafeWork NSW staff also noted that efforts have been made to draw on the specialist and technical knowledge of other parts of SafeWork NSW in identifying strategies for possible inclusion in EUs. There was strong support for this internal partnership so that potential EU industry strategies could be aligned to broader SafeWork NSW priorities such as:

- the [SafeWork NSW roadmap](#) and other priority initiatives
- strategies in industry sector plans or state-wide strategies, such as the *Mentally Healthy Workplaces Strategy*.

Recommendation 3: It is recommended that the EU Advisory Service continue to draw on specialist expertise across SafeWork NSW in identifying potential industry strategies for inclusion in EUs.

In addition, some stakeholders noted the potential for SafeWork NSW to leverage off tools and resources that had been developed in EUs. These resources (e.g. auditing tools to assess industry-specific work health and safety systems and resources developed for targeted sectors with a traditionally poor work health and safety performance, such as agriculture and farming) are the intellectual property of SafeWork NSW and could be used for its own work across specific industry sectors,

Recommendation 4: It is recommended that SafeWork NSW explore opportunities to leverage off tools and resources developed in EUs for possible application by SafeWork NSW across industry sectors.

5. Community outcomes

This section of the report addresses that part of the third evaluation question relating to community outcomes delivered by EUs:

- *Have EUs led to work health and safety benefits in related industry sectors and the broader community?*

Appendix 7 provides a summary of the community strategies in completed and significantly advanced EUs, of which the most common were:

- charitable donation or fundraiser
- educational scholarship or work experience
- community safety training, public education program or awareness campaigns.

The consensus from our consultations with businesses and SafeWork NSW officers was that the development of strategies to achieve community benefits was the most difficult part of the EU template to complete. This was especially true for micro and small businesses, which are often ill-equipped to secure broader community benefits. One third of the 18 businesses we interviewed that had completed or significantly advanced their EUs were unsure whether community benefits had flowed from the EU (n=5) or did not believe there were any community outcomes from their EU (n=1). Although this meant that 12 out of the 18 interviewed (67%) stated that their EU had indeed delivered community outcomes, this was the lowest rate across the three strategies. Moreover, a number of the interviewed businesses felt that the community undertakings would have had, at best, a marginal impact and had only been included because they were a requirement for the EU to be approved.

Nevertheless, the evaluation did highlight some examples of significant community outcomes, including those presented in Box 3.

One issue that emerged from our consultations was the extent to which the community strategies should relate to the original incident that gave rise to the alleged breach. While this would appear to be a sound principle, it was noted that for a number of the earliest EUs, which includes all of those that have been completed or significantly advanced, the commitments had little relationship to the initial incident, such as donations to charity or engagement in charitable fundraising activities noted above.

On the other hand, business representatives and SafeWork NSW staff argued that is not always possible to identify community strategies directly related to the alleged breach and

argued that strategies that contributed to broader work health and safety benefits in the community were appropriate.

Box 3: Examples of community outcomes in completed and significantly advanced EUs

- ▶ The community obligations of some EUs involved the funding of graduate scholarships. For example, one business funded a university scholarship and after completing his studies, the graduate was employed by the company. He continues to work with the company, some years after the completion of the EU. Another company offered three internships within their business to university students, to provide industry experience to young people within their community and as an opportunity to educate the next generation about safety management in the workplace. The interns worked on a project which was aligned with the *Australian Work Health and Safety Strategy 2012-2022*. Following graduation, one of the interns was employed by the industry and remains working there after the completion of the EU.
- ▶ As part of their EU, and to coincide with SafeWork Month, one recreation company ran a digital marketing campaign with in-venue promotions and the development of marketing material across Australia and New Zealand. The company utilised its communication platform to promote safety via a video, which was published across their social media websites as well as on posters and a community venue. This first video of a campaign mascot received over one million views.
- ▶ One business designed, developed and delivered a safety awareness campaign which targeted non-English speaking workers. Given the diverse workforce engaged by the business, many of the employees spoke English as a second language, presenting problems with respect to the availability and accessibility of WHS information and awareness. The business had also identified that many of their workers did not receive information from traditional, English speaking media outlets and channels. Consequently, the business engaged a specialist media agency to develop work health and safety content and distribution strategies/media formats to optimally target young non-English speaking workers, and to raise awareness regarding work of and safety risks to the non-English speaking community more generally.

Because of the common difficulty of developing strategies that have a demonstrable impact on the community, especially for smaller businesses, some SafeWork NSW staff we

consulted challenged the need for all EUs to include community strategies. That is, rather than requiring all EUs to have workplace, industry and community strategies, it was proposed that the approval process take account of the collective impact across the various domains or, alternatively, provide for combined industry–community strategies. For example, an EU without specific community strategies could be deemed appropriate if it is likely to deliver very significant workplace and industry-wide benefits, especially if the latter may have some flow on effects to the broader community, as has occurred with some completed EUs (e.g. fire safety awareness and training, asbestos management). Similarly, some regional and rural smaller businesses may have greater influence in their local community and be able to deliver community outcomes more readily than achieving an industry-wide impact.

Recommendation 5: It is recommended that the requirement for all EUs to include strategies to deliver community outcomes be relaxed and that the approval process take account of the total impact across the workplace, industry and community domains.

However, it is important to note that for some PCBUs, especially larger ones, community undertakings will remain a feature of EUs. That is, the starting point is that strategies to address community outcomes should be included unless SafeWork NSW concludes that the business is reasonably unable to identify potential strategies and the likely impact of strategies in the other two domains are themselves significant.

Further, consistent with the restorative justice principles underpinning the EU program mentioned in section 2, it is important that these community-wide undertakings have either some relationship to the incident that gave rise to the original alleged breach or, where this is not possible, to broader work health and safety matters.

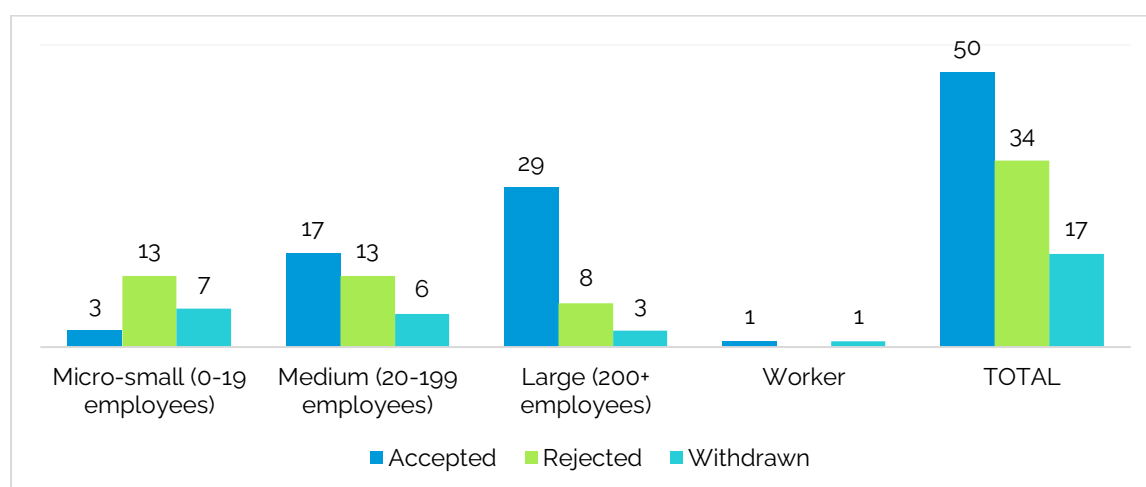
Recommendation 6: It is recommended that the strategies to achieve community benefits in EUs relate to the incident that gave rise to the alleged breach or, if that is not viable, to promoting work health and safety outcomes in general.

This recommendation would rule out strategies that have other community benefits that are beyond the remit of SafeWork NSW as the work health and safety regulator.

6. The EU program & small business

One of the issues this evaluation was tasked to explore was the viability of the program for small businesses. To date, involvement in EUs has largely been confined to medium and large businesses – as shown in figure 3, only three of the 50 accepted EUs (6%) have been for companies with less than 20 employees. This is despite the fact that the vast majority of businesses in NSW are sole proprietors or those with 5-19 employees³.

Figure 3. EU applications x size of industry, 2012-2020



The figure also shows that not only do fewer micro and small businesses apply for EUs, they have higher rejection rates: only three of the 23 (13%) have been accepted compared with 46 of the 76 (61%) of those businesses with more than 20 employees.

The involvement of small businesses in the EU program was therefore a focus in our consultations and the online survey. In general, while there was widespread agreement that the current EU process is more accessible to larger organisations, there was also consensus that micro and small businesses should as a matter of principle have the opportunity to enter into EUs; that is, the EU program should not be the province of larger organisations. To achieve greater involvement of the small business sector, a number of barriers for small business involvement in the program would have to be overcome, some of which were cited in the previous sections:

³ https://www.industry.nsw.gov.au/_data/assets/pdf_file/0009/233487/Business-Size-Report.pdf

- the requirements for the workplace outcomes to go above and beyond compliance in identifying workplace improvement may be setting too high a bar for some small businesses
- many small businesses have neither the capability nor the resources to achieve significant industry-wide or community outcomes.

The recommendations in the previous sections may help address these issues:

- the proposal to take a more flexible approach to the evaluation of the workplace commitments in draft EUs by taking account of the size of the business, its capability and current work health and safety culture (recommendation 2)
- similarly, the proposal to relax the requirement to include all three outcome areas (workplace, industry, community) in all EUs may facilitate increased involvement of micro and small businesses in the EU program (recommendation 6).

More broadly, it may be appropriate for SafeWork NSW to rethink the approach for micro and small businesses. Rather than requiring the businesses themselves to identify strategies, SafeWork NSW could develop and promulgate a suite of potential strategies or actions to help smaller employers nominate undertakings. While this may seem a departure from a tenet of the EU program that PCBUs are to set the undertakings themselves, the suggested shift in approach reflects what is largely occurring in practice and is an elaboration of the existing strategies tool. That is, our consultations suggest that smaller businesses are already heavily reliant on EU Advisory and Operational Support unit staff in formulating actions for inclusion in EUs.

Recommendation 7: It is recommended that SafeWork NSW develop a suite of strategies that could be offered to micro and small businesses in developing an EU.

Potential items suggested during the evaluation for inclusion in such a suite of strategies include participation in the SafeWork NSW Small Business Mentor Program and using small businesses as SafeWork NSW ambassadors.

Of course, this suite would only be available to those businesses that have made it through the eligibility phase of the two-stage EU process and have thus demonstrated they are eligible to submit an EU proposal. Also, it is imperative that those strategies that are incorporated in an EU reflect the industry context and unique circumstances of each individual business.

7. Process improvements

Following a consideration of the strengths of the EU program, this section considers the final evaluation question:

- *What possible improvements could be made to the EU program?*

7.1 Strengths of the EU program

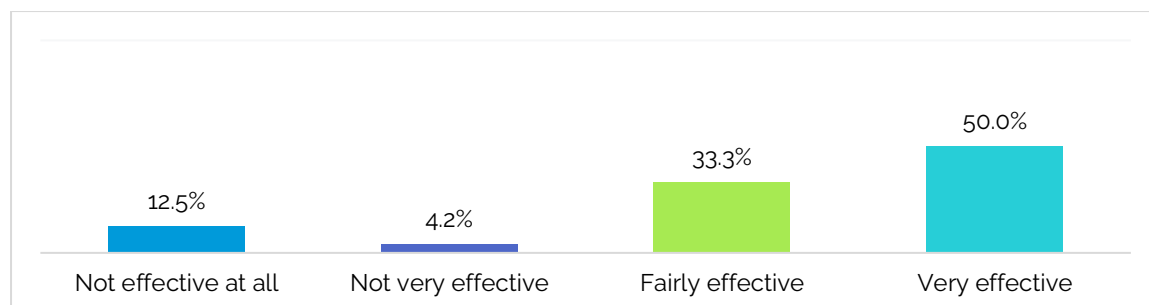
The results from the online survey and consultations with business representatives and SafeWork NSW staff identified a number of strengths of the EU program.

Firstly, an inherent strength of the program noted by business representatives and SafeWork NSW staff was the fact that the EUs are tailored to the specific needs and circumstances of individual businesses.

The overall 'architecture' of the EU program was seen as sound, combining three elements with separate staffing: an advisory service that provides the policy direction for the program and supports individual businesses in applying for EUs, a decision-making panel to recommend the approval or rejection of the EUs and a verification process conducted by inspectors. The diversity of the panel membership was highlighted by current and former panel members as contributing to robust discussion and thoughtful decision-making. Similarly, in general, the business representatives that we interviewed who had completed or significantly advanced their EU rated SafeWork NSW's administration of the program favourably and a number commented on the benefits of having one verification officer throughout the term of the EUs. The professionalism of the inspectors in working with businesses while maintaining a disciplined approach to the verification process was also noted.

As shown in figure 4, businesses that applied for an EU after the establishment of the two-stage process were, in general, satisfied with SafeWork NSW's communication: the vast majority (83% or 20 of 24) found the communication very effective (n=12) or fairly effective (n=8).

Figure 4. Online survey question: In general, how effective has the communication about your EU been between SafeWork NSW and your business?



Similarly, the online survey respondents were also generally clear about the EU process itself:

- as shown in figure 5, there was a very high proportion of agreement across all groups that the two-stage process was very clear (15/24 or 63%) or fairly clear (8/24 or 33%).
- figure 6 shows that the majority 24 respondents (82.6%) found the template very easy to understand and use (n=9) or fairly easy to understand and use (n=10).

Figure 5. Online survey question: There are two stages in applying for an EU. Was the distinction between these two stages of applying for an EU clear to you at the start of the process?

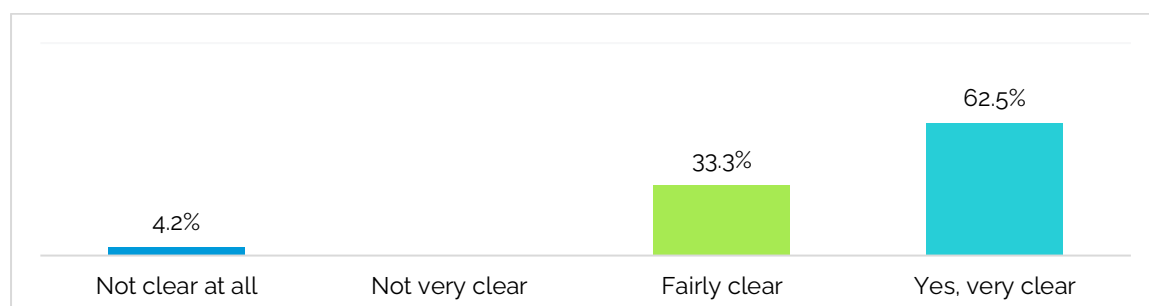
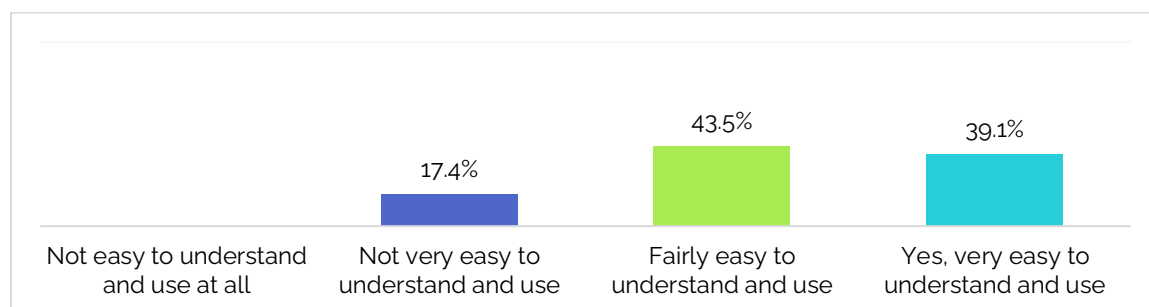


Figure 6. Online survey question: Did you find the SafeWork NSW's EU proposal template easy to understand and use?



SafeWork NSW staff stated that the introduction of the two-stage process from January 2018 had been an improvement to the program in leading to faster and more efficient decision-making. The time between a PCBU confirming it wishes to enter into an EU negotiation and a final decision by the regulator, regardless of the outcome, has been reduced as follows:

- pre-January 2018, the average was 346 days for 38 PCBUs (range from 110-722 days)
- post-January 2018, the average was 246 days for 36 PCBUs (range from 45-515 days).

This reduction of 100 days or 29% in the average time has occurred because under the EU guidelines from January 2018, EUs are only accepted from those businesses that have been deemed eligible (i.e. passed the first stage). Those applicants that are rejected at the eligibility phase have therefore not expended effort in completing the EU template and negotiating the terms of a potential EU that did not eventuate.

These program strengths underpin the work health and safety outcomes that were described in the previous sections and provide a sound basis for implementing some process improvements identified in this evaluation. These process improvements fall into three categories:

- initiating an EU
- negotiating an EU
- verification of an EU.

7.2 Initiating an EU

As noted in section 2, EUs are offered as a potential regulatory option following a decision by SafeWork NSW to initiate prosecution⁴. PCBUs are then advised in the form letter shown in Appendix 8 that was introduced in August 2019 by SafeWork NSW:

Should you wish to consider approaching SafeWork NSW regarding a potential enforceable undertaking in relation to this alleged contravention of the Act we refer you to www.safework.nsw.gov.au/compliance-and-prosecutions/enforceable-undertakings for further information. Additionally, you can make contact with SafeWork NSW via enforceable.undertakings@safework.nsw.gov.au to discuss the process.

That is, a premise of the EU program is that the PCBUs initiate the EU process in response to this letter; unlike many other regulatory interventions, the regulator does not initiate the action. This raises the question as to whether there are PCBUs that could have applied for an

⁴ Although this is generally the process, there have been one or two exceptions since the inception of the EU program. Because they are relatively rare occurrences, this section discusses the usual method of entering into an EU.

EU and ultimately been deemed eligible but did not realise EUs were an option or lacked an understanding of what an EU entailed as an alternative to prosecution. This may have been especially the case prior to the introduction of the form letter. It was beyond the scope of this evaluation to explore this issue, however our consultations with businesses who have completed or significantly advanced their EUs do provide some insight into this issue (noting, that all 29 of these companies negotiated EUs in the early days of the program, prior to the two-stage process and prior to the introduction of the form letter). A number of the business representatives indicated that external legal firms or internal legal teams advised them about the potential of EUs (while a number of representatives could not recall what led them to pursue an EU). Smaller businesses, especially micro businesses, may not have the financial resources to access legal advice and therefore may not be as aware that an EU is an alternative to prosecution.

Given that this issue concerns the equity of access to a government program it would be instructive for SafeWork NSW to conduct or commission research on whether PCBUs that have been prosecuted understood that the EU process was an option for them to explore and/or made a deliberate decision not pursue that avenue. It would make sense for this research to be restricted to PCBUs that have been prosecuted since August 2019 as it will provide insight into whether the letter effectively communicates the option to businesses to apply for an EU.

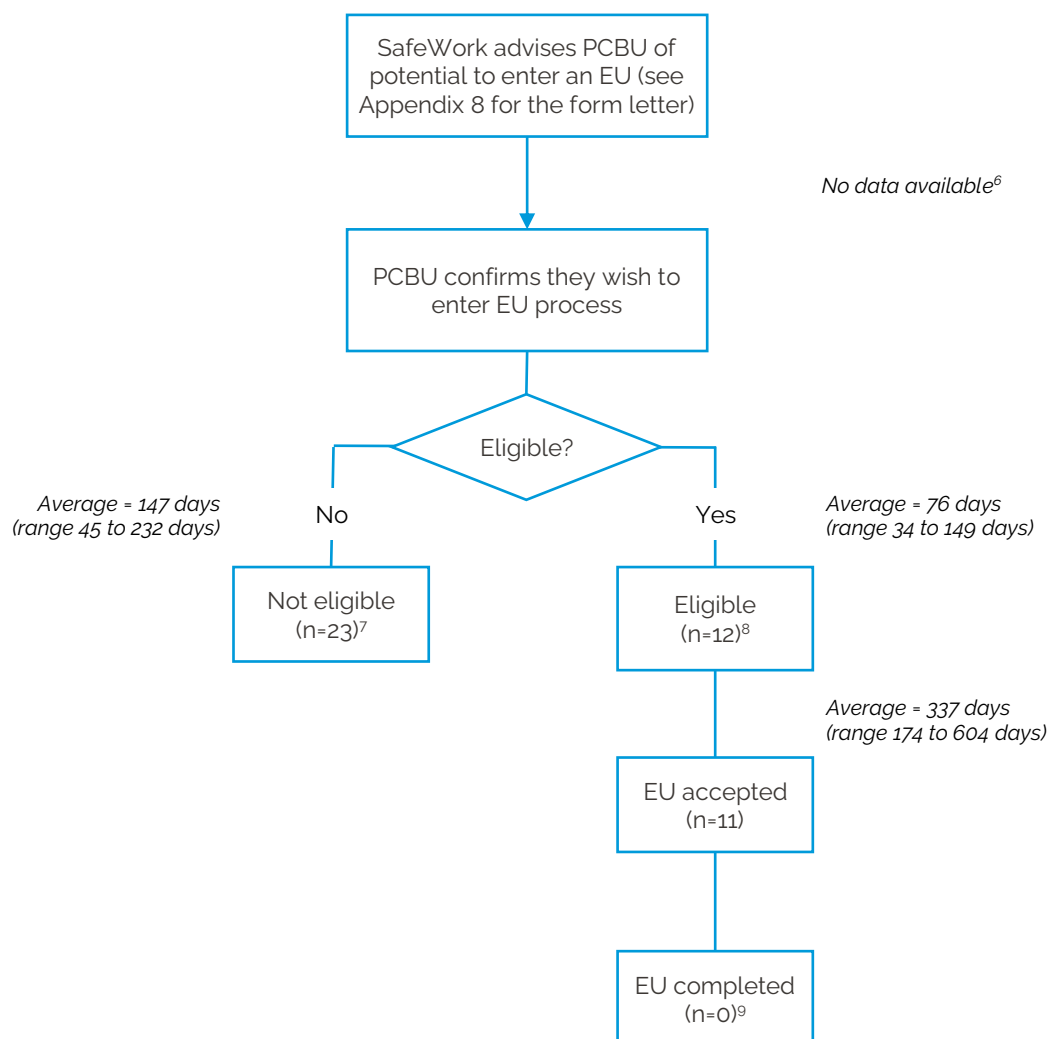
Recommendation 8: It is recommended that SafeWork NSW conduct or commission research on whether PCBUs that have been prosecuted for alleged breaches of the legislation since the introduction of the form letter were aware of and understood the possibility of applying for an enforceable undertaking as an alternative to prosecution.

7.3 Negotiating an EU

The major concern that emerged with the current EU process from the business survey and consultations with business representatives and SafeWork NSW staff was the time taken in negotiating an EU. A number of businesses commented that the development of proposals could involve multiple iterations and was slow and, at times, was perceived as pedantic. In addition, while the District Court has not does not specify a timeframe for EU applications to be finalised (i.e. accepted or rejected), a practice note does state that the PCBU needs to make contact with SafeWork in a timely manner and SafeWork NSW staff report that the courts have become impatient with delays in finalising EUs.

The data presented in figure 7 confirm the long lead times involved. From approaching SafeWork NSW to being deemed eligible takes an average of 76 days and the average time between a PCBU being deemed eligible and approval is a further 337 days meaning that, on average, there are approximately 414 days, or one year and one and a half months, across the two phases from approaching SafeWork NSW to final approval. This is before implementation of the undertakings even commences.

Figure 7. Average times for steps in the EU process since January 2018⁵



⁵ The average and median are similar for all intervals – hence only the average is shown.

⁶ EU Advisory Service does not have this information as letters are sent from the legal department.

⁷ This excluded the one EU rejected at the evaluation stage (515 days).

⁸ One outlier EU for an individual has been excluded

⁹ No EUs have been completed since the establishment of the two-stage process in January 2018

Our consultations indicate that one of the contributors to delays was businesses' lack of clarity about the expectations of SafeWork NSW about the scale and content of the EU. It should be noted, however, that all of these businesses entered their EU in the early days of the program and it was acknowledged by SafeWork NSW staff that the regulator itself was then in a process of learning. Since that time, SafeWork NSW has built up a body of experience in managing the program and now provides significantly more guidance to businesses in negotiating an EU. Nevertheless, a common suggestion from business representatives, including those that have applied for EUs more recently, was that they would welcome more direction from SafeWork NSW in formulating strategies.

However, the extent to which SafeWork NSW assists PCBUs identify potential strategies and guides their development is a vexed issue. On the one hand, it is a design feature of the program that the PCBU initiate and drive the development and implementation of the undertakings, which need to reflect their individual business circumstances. Moreover, as the regulator, there is a potential conflict for SafeWork NSW officers to be both involved in formulating strategies for inclusion in EUs and verifying whether these have been achieved (even if different parts of the organisation are involved in the approval and verification processes).

On the other hand, under the current operating model SafeWork NSW does indeed provide considerable support and guidance to individual businesses in developing their EUs. In fact, one of the primary roles of the EU Advisory Service and Operational Support is to provide such assistance, which can be time-consuming and resource intensive. Accordingly, SafeWork NSW will continue to have a major role to play in supporting businesses throughout the development of their EUs. To this end, it would be beneficial to review the resources and tools that are made available to businesses to help them select actions for inclusion in an EU. For example, the strategy tool, which is currently an Excel spreadsheet, could be upgraded and made more user-friendly as part of a broader suite of guidance resources.

Recommendation 9: It is recommended that SafeWork NSW review and develop the resources and tools it provides to businesses that have been deemed eligible to apply for an EU.

This proposed review of resources could take into account the specific needs of micro and small businesses (see recommendation 7).

One additional proposal that SafeWork NSW may wish to explore is simplifying the EU template (see Appendix 9) which is a long and complex document. While, as shown in figure 6, the majority of the 24 respondents (82.6%) found the template very easy to understand and use (n=9) or fairly easy to understand and use (n=10), our consultations did highlight some concerns with the time taken to finalise EUs. A number of business representatives noted that the template obliges an EU proposal to detail, for example, what specific actions are to be delivered by when over the term of the EU, which usually extends for some years. As discussed in section 4, it can be difficult to specify longer-term undertakings given that circumstances can change over time, especially for the industry and community strategies which are subject to external factors, such as involvement of third parties. Similarly, because of the requirement for WHS actions and strategies to be approved in advance, business representatives noted that it was often difficult to cost the strategies set out in the EU, some of which would be occurring potentially two or more years after approval.

To address this concern, one approach suggested by SafeWork NSW staff was adopting a more streamlined document along the lines of the form used by the Queensland regulator (see Appendix 10). Essentially, this could entail a head of contract together with annexures that set out the undertakings for the individual enterprise. Rather than being overly prescriptive about, for example, the exact timing, numbers, duration and audience of training sessions, the contractual commitment could be to deliver a prescribed number of training sessions to a category of audience by a certain date. These commitments would then be elaborated in consultation with inspectors and, of course, they would be auditable as part of the verification process. The intention would be to provide sufficient specificity in the EU that it can be verified whilst reducing the need for multiple and protracted interactions between the two parties, especially over commitments that are some years out.

One advantage of this approach is that it would also reduce the need for the evaluation panel to formally review and approve proposed variations that may not fundamentally change the spirit or content of the EU. This would further help reduce delays in implementation of EUs that can occur while PCBU's are waiting on a decision from the evaluation panel about requests for variation.

In our consultations however, the inspectors expressed reservations with a more streamlined EU template. Their concern was that, as a legally enforceable contract, it was imperative that EUs contain sufficient specificity of the approved undertakings to provide a basis for verification.

Nevertheless, there is merit in examining the practice in Queensland and other jurisdictions in considering the potential for reforms to the template. The policies and guidelines of regulators in other policy areas (e.g. mining safety; environmental protection; financial services) that employ EUs could also be explored, including other regulators in the NSW Department of Customer Service.

Recommendation 10: It is recommended that SafeWork NSW examine the appropriateness of introducing a new streamlined enforceable undertaking application template, drawing on the experience of work health and safety regulators in other jurisdictions and other regulators that use EUs as a regulatory intervention.

Similarly, it is also proposed that SafeWork NSW approach the Behavioural Insights Unit (BIU) to advise on potential improvements to the program processes. The BIU, which is also part of the Department of Customer Service, works with NSW government agencies in designing interventions based on behavioural economics and it has substantial experience in collaborating on the redesign of regulatory programs in securing desirable behaviour change. Their experience could be useful in identifying ways the EU process could be modified to reduce cycle times and streamline processes. They also have expertise in redesigning official forms and documents in plain English to make them more user-friendly.

Recommendation 11: It is recommended that SafeWork NSW engage the Behavioural Insights Unit to advise on process improvements, including the redesign of the EU program forms.

The involvement of the inspectors in reviewing draft EUs to determine if the proposed undertakings are suitable for verification was seen as contributing to the quality of decision-making. It is proposed that their involvement be continued as part of an attempt to reduce the time involved between acceptance and approval. To ensure proper separation of the advisory and verification roles, however, the input of the inspectors should continue to be restricted to commentary on whether draft strategies are verifiable.

Recommendation 12: It is recommended that SafeWork NSW explore options for the inspectors to maintain increased involvement in advising on whether draft strategies in enforceable undertakings are framed so that they can be objectively verified.

Similarly, as discussed in section 4 on industry strategies, there may be opportunities to further engage with technical staff across SafeWork NSW in identifying potential strategies for inclusion in EUs. In addition, these areas could advise on how to leverage products and resources developed in EUs in promoting SafeWork NSW priorities and advancing sector plans (recommendations 3 and 4).

7.4 Verification of an EU

It was beyond the scope of the evaluation to undertake a detailed examination of the verification process and, accordingly, we are not well placed to recommend reform of the current approach. Nevertheless, some key themes emerged from our consultations:

- the verification process is an integral part of the EU program as it provides the basis for ensuring that PCBU's meet the legal commitments in their EUs
- a number of businesses we consulted commented on the professionalism and rigour of the inspectors and they appreciated the opportunity to work with the same inspector over time
- there were concerns expressed about the timeliness of responses from SafeWork NSW in relation to the approval to release public facing content as part of the undertakings (e.g. manuals, external forums, conferences or advertising campaigns).

From the inspectors' point of view, the key issues that emerged were:

- concerns that some workplace commitments do not extend beyond mere compliance – as noted in section 3, this is a threshold issue for the program and subject to other recommendations
- the lack of specificity in some EUs rendering verification difficult – recommendation 12 above will help address this issue
- a concern that not one PCBU had been sanctioned as a result of non-compliance with their EU.

As noted in our discussion on the outcomes of EUs at the workplace, industry and community level (sections 3-5), the evaluation was hampered by the difficulty of accessing timely and reliable SafeWork NSW data on the EU program. The data contained in the primary tool used by SafeWork NSW in verifying whether the EU commitments have been implemented, the EUVPs, were difficult to interpret and extract information about the respective strategies. Further, the EUVPs use an unsophisticated Excel tool that resides on a stand-alone system separate from the EU Advisory Service data.

More broadly, it was a concern that relatively straightforward data requests could sometimes only be met after time-consuming and detailed interrogation of EU records and indeed on occasions we were provided revised figures for such basic information such as the number of EU applications over time. The difficulty in producing accurate and timely data on the EU program is a fundamental weakness of the existing program and points to the need for a more sophisticated data collection and reporting system. This was acknowledged in our consultations with SafeWork NSW staff who proposed the establishment of an integrated case management system. Such a system could span the program as a whole, from application through to verification and finalisation.

Recommendation 13: It is recommended that the EU program scope the specifications for an integrated case management system that facilitates simpler reporting and contains information across the EU process from application through verification and finalisation.

This scoping could explore the potential use of devices (e.g. tablets) for use by inspectors in site visits for real-time uploading of information to the integrated system.

8. Conclusion

In our consultations during this evaluation, a number of stakeholders commented that enforceable undertakings are often seen by some stakeholders as a soft option when compared with prosecution. Our conclusion is that this view is misplaced as the evaluation has documented a number of significant outcomes at the workplace, industry and, to a lesser extent, community levels at considerable expense to these businesses: a median figure of \$337,920. For 13 of 18 companies (72.2%), the financial commitment exceeded what they anticipated, often by a significant amount.

The consultations with these companies indicate that, in general, they have not only delivered on their legal obligations under the EU commitments, but many have secured longer-term change beyond the life of the EU. Indeed, two thirds of the companies (12 of the 18 that had finalised their EUs) made the point that the EU process was more effective in securing work health and safety benefits than a one-off prosecution which results in fines being directed towards the government's consolidated revenue fund. As one representative noted: *'paying a fine, and then business as usual was not to anyone's benefit'*.

The evaluation concludes that SafeWork NSW's administration of the program is sound, comprising an integrated suite of resources – program development, decision-making and verification processes that are staffed separately. In addition, SafeWork NSW has shown a preparedness to be self-critical about the program and adapt it over time; for example, a previous process evaluation led to the introduction of the two-stage process that has reduced the time from application for an EU to final decision-making.

This evaluation provides another opportunity for SafeWork NSW to introduce some program improvements in responding to some key issues that emerged; most particularly the low participation rate of micro and small businesses in the program and the long intervals between acceptance and approval of EUs. To address these issues, the evaluation makes a series of recommendations to improve some key program processes:

- applications for EUs
- the approval of EUs
- the verification of the EUs.

Implementation of these recommendations, which are listed in the next section, will enable the program to build upon its achievements to date of delivering significant workplace health and safety outcomes.

9. List of recommendations

Recommendation 1: It is recommended that workplace undertakings remain central to the EU program and that these extend beyond meeting prescribed statutory requirements.

Recommendation 2: It is recommended that in evaluating draft EUs, SafeWork NSW take account of the size of the business, its capability and current work health and safety culture in determining whether the workplace commitments in the EU should extend beyond issues relating to the alleged breach.

Recommendation 3: It is recommended that the EU Advisory Service continue to draw on specialist expertise across SafeWork NSW in identifying potential industry strategies for inclusion in EUs.

Recommendation 4: It is recommended that SafeWork NSW explore opportunities to leverage off tools and resources developed in EUs for possible application by SafeWork NSW across industry sectors.

Recommendation 5: It is recommended that the requirement for all EUs to include strategies to deliver community outcomes be relaxed and that the approval process take account of the total impact across the workplace, industry and community domains.

Recommendation 6: It is recommended that the strategies to achieve community benefits in EUs relate to the incident that gave rise to the alleged breach or, if that is not viable, to work health and safety outcomes in general.

Recommendation 7: It is recommended that SafeWork NSW develop a suite of strategies that could be offered to micro and small businesses in negotiating an EU.

Recommendation 8: It is recommended that SafeWork NSW conduct or commission research on whether PCBU's that have been prosecuted for alleged breaches of the legislation since the introduction of the form letter were aware of and understood the possibility of applying for an enforceable undertaking as an alternative to prosecution.

Recommendation 9: It is recommended that SafeWork NSW review and develop the resources and tools it provides to businesses that have been deemed eligible to apply for an EU.

Recommendation 10: It is recommended that SafeWork NSW examine the appropriateness of introducing a new streamlined enforceable undertaking template, drawing on the experience of work health and safety regulators in other jurisdictions and other regulators that use EUs as a regulatory intervention.

Recommendation 11: It is recommended that SafeWork NSW engage the Behavioural Insights Unit to advise on process improvements, including the redesign of the EU program forms.

Recommendation 12: It is recommended that SafeWork NSW explore options for the inspectors to maintain increased involvement in advising on whether draft strategies in enforceable undertakings are framed so that they can be objectively verified.

Recommendation 13: It is recommended that the EU program scope the specifications for an integrated case management system that facilitates simpler reporting and contains information across the EU process from application through verification and finalisation.

Glossary of terms

The Act	The <i>Work Health and Safety Act 2011</i>
Eligibility stage	<p>After an individual or business submits expression of interest in entering an EU, an evaluation panel assesses the eligibility of the business against three criteria:</p> <ul style="list-style-type: none"> • the level of alleged culpability of the business or person • the degree of risk arising from the alleged breach • WHS compliance history. <p>If a business or individual meets the criteria, they progress to the evaluation stage (see below).</p>
Enforceable Undertaking	An Enforceable Undertaking (EU) is a public and legally binding alternative to prosecution, which may be proposed by an individual or business, that is alleged to have contravened the Act. An EU legally obliges the individual or business to carry out specific activities and strategies, which are intended to improve not only health and safety at the workplace, but also deliver health and safety initiatives to the relevant industry and the broader community.
EUVP	The Enforceable Undertaking Verification Plan (EUVP) is prepared by SafeWork NSW verifying inspectors to ensure the strategies in the EU have been met.
Evaluation stage	If deemed eligible at the eligibility stage (see above), the individual or business must submit an EU proposal to SafeWork NSW using a template for the strategies they plan to undertake to meet their EU requirements. The EU evaluation panel considers the merits and makes a recommendation to either accept or reject the proposal.
PCBU	Persons conducting a business undertaking, encompassing individuals and businesses.
Restorative Justice	Restorative Justice works to bring together all those involved in a specific offence to collectively identify and address the harms, needs and obligations, by placing the victim at the centre of the process of justice.
Retributive Justice	Retributive justice is offender and law focused, based on the proportional punishment of an offender as a form of criminal justice.
The SafeWork NSW roadmap	The Work Health and Safety Roadmap for 2022 is the SafeWork NSW six-year strategy that aims to protect workers from harm, reduce unnecessary compliance costs and secure safety standards in NSW workplaces.
Two-stage process	In determining whether a PCBU could enter into an EU, a two-stage process was established in January 2018 comprising an eligibility stage (see above) and an evaluation stage (see above),
WHS	Work health and safety.

Appendix 1 Online survey of businesses

49 businesses that had applied for an EU since the introduction of the two-stage process in January 2018 were sent introductory emails from SafeWork NSW to invite their participation in the EU evaluation via an online survey. Nexus subsequently sent individual follow-up emails containing a link to the online instrument. As shown in table 5, of these 49 potential respondents only 34 were in fact eligible to participate:

- of the 10 accepted businesses on the list provided by SafeWork NSW, the emails to two of the businesses bounced back and were unable to be contacted by other means and hence only 8 received the email with a link to the survey
- of the 13 in the evaluation stage on the list, two emails bounced and they were unable to be contacted by other means – hence only 11 received the email
- of the 20 businesses whose EUs had been rejected, only 9 received the email as 8 businesses did not have contactable emails provided, 2 businesses were repeated from the ones in the evaluation stage list and so had already been contacted and one email was rejected – thus nine businesses received emails.

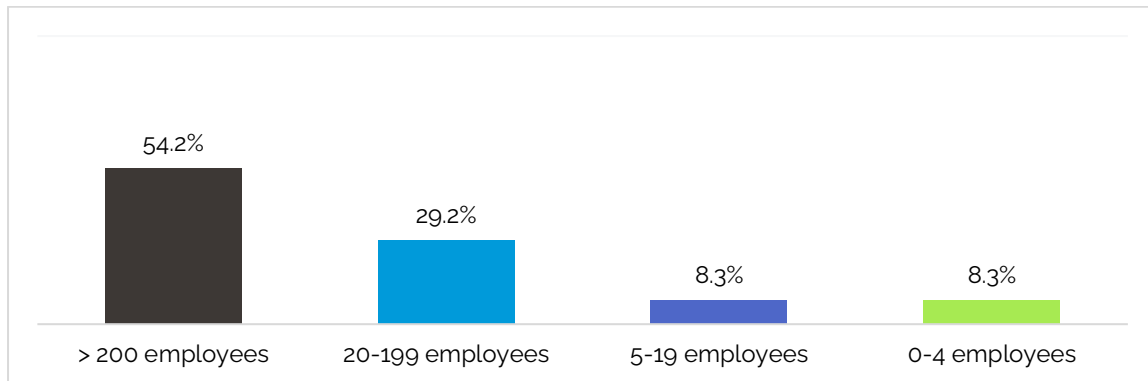
Of the 34 PCBU's who were emailed, 24 completed the survey, a response rate of 70.6%, with all four categories of respondents having over 60% response rates.

Table 5: Online survey responses

	Potential respondents	Emailed	Completed Survey	%
EU accepted	10	8	6	75.0%
EU in evaluation stage	13	11	7	63.6%
Rejected	22	9	6	66.7%
Legal representatives	6	6	5	83.3%
TOTAL	49	34	24	70.6%

Figure 9 shows the proportion of the 24 respondents by size of business. A majority (54.2%) were from businesses with over 200 employees and only four respondents had 5-19 employees (n=2) or 0-4 employees (n=2).

Figure 9: Proportion of respondents to online survey by business size



Five of the six accepted businesses had more than 200 employees (83.3%) and the other one had 20-199 employees. All seven businesses still in the evaluation stage who completed the survey had either 20-199 employee (n=4) or more than 200 employees (n=3) and the rejected group consisted of more small sized businesses (2/6 having 0-4 employees) and one having 5-19 employees.

The online survey is shown in the following box.



SafeWork NSW Enforceable Undertakings program evaluation

Nexus has been contracted to conduct an evaluation of the Enforceable Undertakings (EU) program on behalf of SafeWork NSW (SafeWork) and the evaluation includes a survey of businesses (and legal representatives) that have applied for, or entered into an EU. Please note that your individual survey results will be kept confidential. We will prepare a summary report on the analysis of the survey results, which will not identify individual businesses or legal representatives.

For each question, please select the statement that best reflects your views.

1. There are two stages in applying for an EU: an eligibility assessment by SafeWork then, an evaluation of the EU proposal. Was the distinction between these two stages of applying for an EU clear to you at the start of the process?

- ☐ Yes, very clear
- ☐ Fairly clear
- ☐ Not very clear
- ☐ Not clear at all
- ☐ Unsure

2. About the eligibility assessment, would you please share your views, on what works and what needs improvement?

What works:

What needs improvement:

3. About the evaluation phase, would you please share your views, on what works and what needs improvement?

What works:

What needs improvement:



SafeWork NSW Enforceable Undertakings program evaluation

4. In general, how effective has the communication about your EU been between SafeWork and your business?

- ☐ Very effective
- ☐ Fairly effective
- ☐ Not very effective
- ☐ Not effective at all
- ☐ Unsure

5. Do you have any comments on SafeWork's EU guidelines and customer service standard?

6. Did you find the SafeWork's EU proposal template easy to understand and use?

- ☐ Yes, very easy to understand and use
- ☐ Fairly easy to understand and use
- ☐ Not very easy to understand and use
- ☐ Not easy to understand and use at all
- ☐ Unsure



SafeWork NSW Enforceable Undertakings program evaluation

7. Would paying an application fee to be considered for an EU have prevented you from applying?

- ☐ Yes, definitely
- ☐ Possibly
- ☐ No
- ☐ Unsure

8. Is there anything further you wish to add to your feedback?

9. What is the size of your business?

- ☐ 0-4 employees
- ☐ 5-19 employees
- ☐ 20-199 employees
- ☐ > 200 employees



SafeWork NSW Enforceable Undertakings program evaluation

The following section is optional. If completed, you may be contacted by a Nexus consultant.

10. Name (optional)

11. Email (optional)

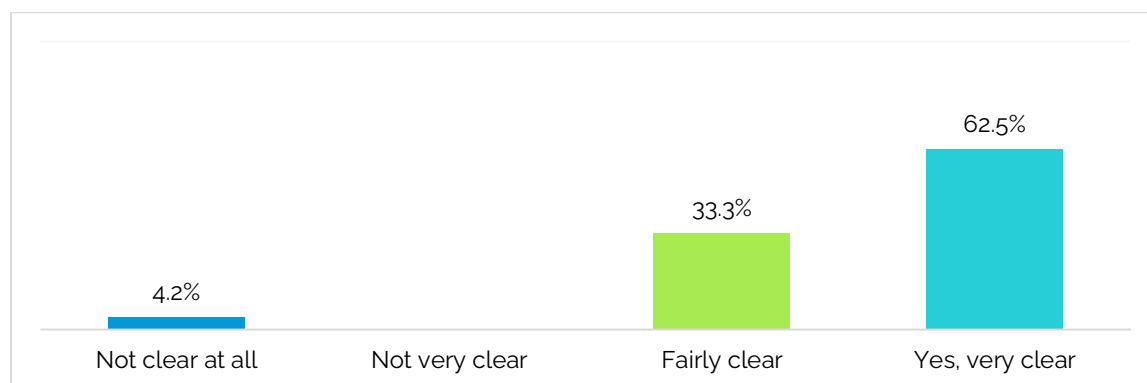
12. Phone (optional)

Thank you

Quantitative results

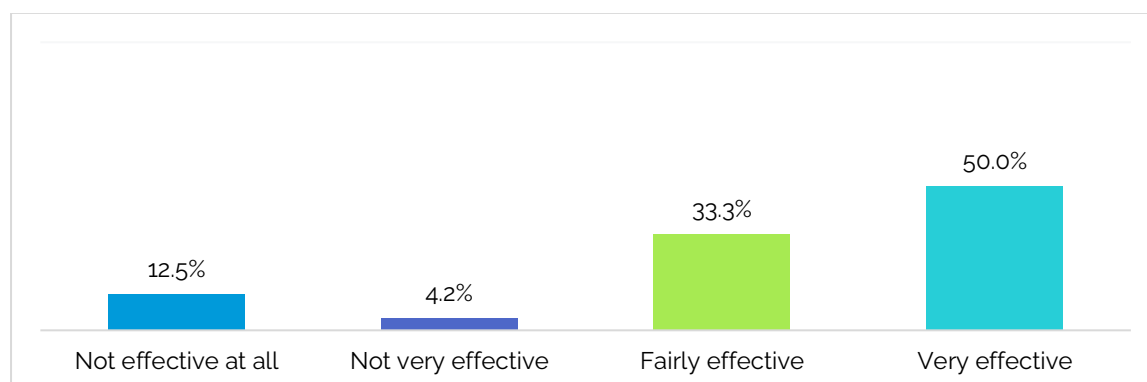
There were four multiple-choice questions in the online survey.

Q1. There are two stages in applying for an EU: an eligibility assessment by SafeWork then an evaluation of the EU proposal. Was the distinction between these two stages of applying for an EU clear to you at the start of the process?



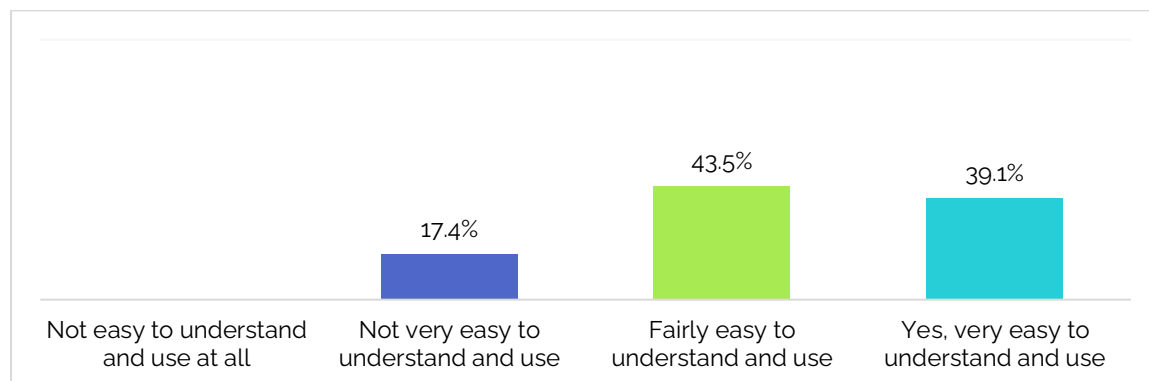
- there was a high proportion of agreement across all groups that the two-stage process was very clear (15/24 or 62.5%), with the exception of the rejected EU group in which 5/6 (83%) considered the process fairly clear, and 1/6 (16.7%) not clear at all

Q4. In general, how effective has the communication about your EU been between SafeWork and your business?



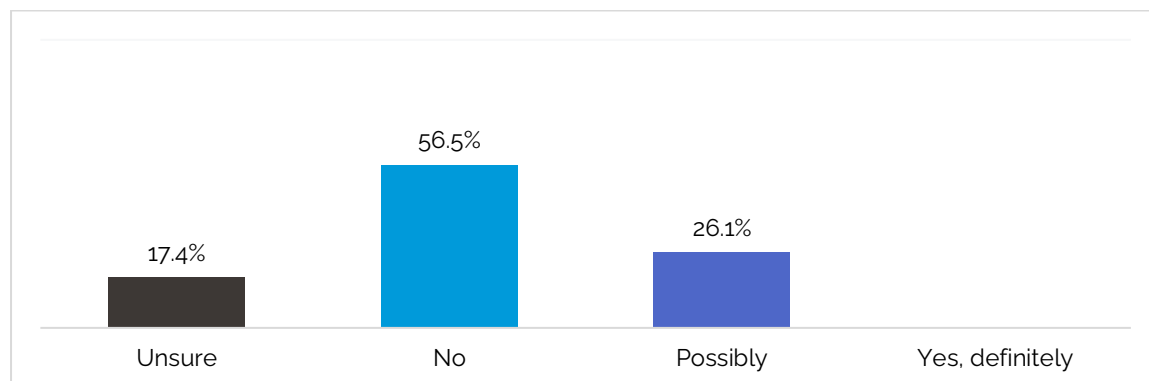
- the vast majority (83% or 20 of 24) found the communication very effective (n=12) or fairly effective (n=8)
- however, a majority of the rejected group found the communication not effective at all (3/6 or 50%) or not very effective (1/6 or 16.7%)

Q6. Did you find the SafeWork's EU proposal template easy to understand and use?



- the majority of the 24 respondents (82.6%) found the template very easy to understand and use (n=9) or fairly easy to understand and use (n=10)
- 4 of the 5 legal (80%) representatives found the template very easy to use.

Q7. Would paying an application fee to be considered for an EU have prevented you from applying?



- a majority of the respondents (56.5%) stated that paying an application fee would not have prevented them from applying for an EU
- not one of the 23 respondents who answered the question stated that the payment of a fee would have prevented them from applying.

It should be noted, however, that in hindsight this question was poorly worded and may have been misinterpreted so that a 'no' response may in fact indicate an unwillingness to pay a fee, at least for a proportion of the respondents.

Qualitative results

In relation to the eligibility assessment phase of the EU process (Q2 on the survey), commonly identified strengths identified were:

- good communication and guidance provided by SafeWork NSW (10/17 or 59%)
- good reinforcement of making meaningful and relevant improvements to the industry (one EA response)
- 'it is good that not every business is eligible' (one legal representative response).

The most commonly identified areas for possible improvement were:

- greater communication and information regarding the program purpose (3/17 or 18%)
- more communication (ideally face to face) with SafeWork NSW to effectively argue for their eligibility for an EU (3/6 responses from the rejected category)
- three of the four legal representatives indicated that overall timeframes could be improved and one stated that SafeWork NSW has too much discretion in its decision-making.

In relation to the evaluation phase (Q3), commonly identified strengths were:

- communication and feedback between SafeWork NSW and the applicant (7/18 or 39%)
- the meetings between SafeWork NSW and the EU applicants (4/18 or 22%)
- multiple opportunities to discuss proposals (2/4 Accepted responses, 1/6 in the eligibility assessment phase).

The most commonly identified areas for possible improvement were:

- the time taken to complete the evaluation phase (4/20 or 20%)
- clearer articulation of the program objectives and requirements (3/20 or 15%)
- an increased frequency of meetings with SafeWork NSW was suggested by three businesses.

In relation to SafeWork NSW's EU guidelines and customer service standard (Q5), 5/5 Accepted (one chose to skip this question) and 4/6 Evaluation Accepted businesses stated they were satisfied with the customer service from SafeWork NSW. One suggestion from a legal representative was that there should be opportunities to gain feedback before formal meetings.

One legal representative gave some detailed feedback on the viability of EU use for smaller businesses:

I think the EU system is geared towards larger companies who have more money and human resources to throw behind their undertakings. It's very hard for a small business to dedicate the hours and money required for an EU – the EUs seem to be becoming more about how much money can be thrown at the EU (or how much money you can make it look like you are throwing at the EU) as opposed to quality projects (there are exceptions) – this makes it easier for large companies to "delegate" the EU to a safety resource or HR manager and move on.... this seems at odds with the original excellent objects and purposes of an EU – to stop companies just throwing money at a fine and moving on without thought or proper action.'

Appendix 2 Business consultations

SafeWork NSW sent introductory emails to the 29 business that have either completed (n=19) or are significantly advanced (n=10) in their EUs to invite their participation in the evaluation via individual interviews. Nexus subsequently sent emails to these businesses set up appointments and, as shown in table 6, 18 of the 29 (62%) companies were interviewed, including two small businesses. The reasons the remaining 11 did not participate were as follows:

- six businesses were contacted multiple times but did not respond
- three businesses had arranged times for a consultation, but did not attend their assigned time, and a new time could not be re-arranged
- one business declined due to the impact of COVID-19
- one business replied to arrange a meeting but failed to agree to a time.

Table 6: Business representatives interviewed

	Approached	Interviewed	%
Completed EU	19	12	63.2%
Advanced EU	10	6	60.0%
TOTAL	29	18	62.0%

The interviews lasted approximately 30 minutes and were informed by the semi-structured interview schedule shown in the box below.

EU evaluation - PCBU interview schedule

Background

Firstly, could you tell me a bit about your role in the company and your involvement in the EU?

1. How did your company become aware of the EU as a potential option?

Outcomes

2. As a result of the EU, what did your business do in relation to the risk that gave rise to the incident?

3. How will/has the EU led to longer-term changes in your business? Please give examples.
4. How will/has the EU led to changes in the general culture and approach to work, health and safety in your business?
5. How has your EU contributed to improvements in work health and safety across your industry sector?
6. How has the EU contributed to benefits for the broader community?

The EU process

7. How did the cost of the whole EU (i.e. including meeting the obligations under the EU) for your business compare with what you originally thought it would cost?
8. Do you think an EU is viable option for a micro and small businesses (<20 employees)?
9. If another company was confronted by similar circumstances to yours, would you advise it to enter into an EU? Why?
10. Do you think that EUs are an appropriate enforcement alternative to prosecutions? Why?
11. Overall, the strengths of the EU process are?
12. Overall, what improvements to the EU process would you recommend?
13. Any other comments?

For a number of questions (Qs 3, 4, 5, 6, 7, 8, 9, 10), summary quantitative results could be calculated – these are presented firstly, followed by discussion of the key themes that emerged from consultations.

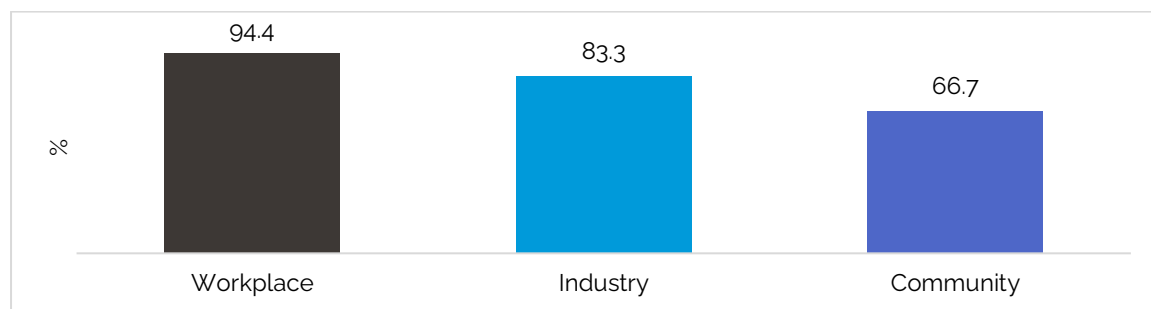
It should be noted that all of these 29 discussed commenced their EUs in the earlier days of the program and before the introduction of the two-stage process in January 2018. Accordingly, some of the issues and concerns raised in the interviews have been subsequently addressed and there was an acknowledgement by a number of the business representatives that all parties, including SafeWork NSW itself, were on a learning curve in these early days of the program.

Quantitative results

17 of the 18 businesses (94.4%) indicated that they had made changes in their workplaces directly related to the incident that gave rise to the alleged breach. In addition, as shown in figure 10:

- these same 17 businesses also stated that the EU program had led to long-term changes to workplace health and safety in their business (n=17 or 94.4%)
- 15 of the 18 businesses indicated that the EU had led to overall benefits to their industry (n=15 or 83.3%)
- 12 of the 18 businesses indicated that community benefits had flowed from the EU, 5 were unsure and 1 did not believe there were direct improvements.

Figure 10: % of respondents reporting long-term changes in their workplace



The other summary quantitative results were as follows:

- 13 of the 18 businesses (72.2%) stated that the EU cost more than originally outlined within their proposal.
- the majority (13 or 72.2%) would advise another company of a similar size to enter an EU if faced with similar circumstances
- 14 businesses (77.8%) agreed that an EU is an appropriate alternative to prosecution with 3 unsure and 1 not believing it was appropriate
- 10 businesses (55.5%) stated that the EU process is viable for small/micro businesses with 4 being unsure and not believing that an EU is viable for that business size.

Key themes – qualitative analysis

In general, business representatives saw EUs as an effective alternative to prosecution as they require an ongoing commitment to improving work health and safety in businesses. The EUs were seen to have shifted the focus from an individual incident to securing improvements more broadly and changing the workplace culture. By contrast, prosecutions

were seen as less likely to achieve long-term change and the resulting fines were not directed at work health and safety improvements.

In general, the businesses rated SafeWork NSW's administration of the program favourably and a number commented on the benefits of having one verification officer throughout the life of the EUs. The professionalism of the inspectors in working with businesses while maintaining a disciplined approach to the verification process was noted.

The consultations also offered suggestions for program improvements and the most commonly identified were:

- Communication
 - the need for better communication from SafeWork NSW, especially for more timely feedback from SafeWork NSW after submitting reports and information for verification – sometimes delays in feedback slowed down implementation of EU commitments
 - the verification of the EU initiatives, especially for the industry and community strategies can be difficult and subjective.
 - a need for greater clarity about expectations of an EU's scope and size.
- Length of Process
 - the time needed to finalise the EU – a number of businesses commented that the development of proposals could involve multiple iterations and was slow and, at times, pedantic
 - it was difficult to specify longer-term undertakings in EUs given that circumstances can change over time (e.g. some business cited examples where third parties who had previously agreed to be involved in partnering on an EU initiative had changes in personnel and withdrawn their agreement) – this can lead to protracted negotiation with SafeWork NSW.
- Cost
 - similarly, because of the requirement for WHS actions and strategies to be approved in advance, it was often difficult to cost the strategies outlined in the EU, some of which would be occurring potentially two or more years after approval
 - in addition to the direct costs associated with an EU, there are substantial indirect costs associated with management and staff time in implementing the commitments – these costs were seen as more likely to be able to be absorbed by larger businesses than smaller ones.

Three other key themes that emerged from the business consultations were:

- in general, EUs were positively regarded by the business representatives, however it was noted that the time and resource commitment had detrimental effects on normal business operations, especially for smaller businesses
- a number of businesses were unable to recall how they first learned about the possibility of an EU – one of the more commonly identified sources was from external legal firms or the internal legal branch of larger companies
- the negotiation of EUs tended to occur more smoothly when work health and safety staff/managers were centrally involved in the process in contrast to when legal representatives played a dominant role.

Appendix 3 SafeWork NSW consultations

A series of individual and group consultations were held with senior SafeWork NSW staff involved in the EU program. The individual interviews were held with:

- the Director, Investigations and Emergency Response
- Deputy General Counsel and chair of the EU panel
- a former chair of the EU panel.

Three online group consultations were held with:

- the manager and staff of the Advisory Service and Operational Support unit
- inspectors from Response Coordination and WHS Verifications who conduct verifications of EUs
- staff of the Department of Customer Service's Legal Branch.

The consultations were informed by a semi-structured interview schedule which, broadly covered:

- the strengths and weaknesses of EUs as a regulatory tool
- the perceived outcomes of EUs across the workplace, industry and community domains
- the viability of EUs for micro and small businesses
- potential improvements to EU processes.

In addition, there was a meeting of the evaluation steering committee (see appendix 4) to discuss a draft report and draft recommendations.

Strengths of EUs

In general, there was strong agreement that EUs are an effective regulatory intervention for SafeWork NSW in the right circumstances. They were commonly seen as more likely to embed a work health and safety culture than a one-off prosecution, as the commitments force businesses to remain focused on safety during the term of the EU and subject to independent verification. The tailoring of the undertakings to the particular needs of the business and industry sector was also seen as a program design strength.

The two-stage process that was introduced from January 2018 was also perceived as having made a positive change by those staff that had been involved with the program prior to this change. The two-stage process enables SafeWork NSW to identify those businesses that meet the eligibility criteria and are therefore most appropriate to enter an evaluation phase

and begin to develop strategies. Moreover, the two-stage process avoids protracted negotiations of draft EU proposals with PCBU's that may never have passed the eligibility stage – an evaluation phase and begin to develop strategies. It thus saves time and resources for both SafeWork NSW and individual businesses.

Similarly, the overall 'architecture' of the EU program was seen as a strength, combining an advisory service that provides the policy direction for the program and supports individual businesses in applying for EUs, and an independent panel to recommend the approval or rejection of the EUs and a verification process. The diversity of the panel membership was highlighted by current and former panel members as contributing to robust discussion and thoughtful decision-making and the fact that a number of the inspectors involved in verifications had worked on the program for some time enabled them to build experience and expertise in EUs and build credible relationships with EU applicants.

Perceived outcomes

In general, there was a perception that the EU program had delivered improved work health and safety outcomes, especially at the workplace level.

However, some of the inspectors felt that the EU process was too strongly oriented towards workplace outcomes at the expense of industry and community outcomes. During the group consultation with inspectors, it was even argued that workplace benefits should be excluded from contractual undertakings for two reasons:

- some EUs incorporated commitments that reinforced compliance with obligations – that is, merely required the companies to do what they were already legally obliged
- there could be the perception that those businesses that had committed an alleged breach were obtaining workplace benefits as a result of the regulator's action.

In contrast, the EU Advisory Service team agreed that it was an appropriate outcome for some businesses, especially smaller ones, to bring them to compliance if it led to sustained improvements in their workplace health and safety.

In general, the consultations pointed to the difficulties of designing industry and community undertakings, especially for small businesses, and this was reflected in the large amount of time spent by EU Advisory staff in supporting and guiding businesses, especially smaller businesses, in developing their EU.

EUs & Small Business

As noted above, the consultations with SafeWork NSW staff highlighted a number of challenges for small businesses, including the concern among some stakeholders that workplace outcomes do not extend above and beyond compliance and the difficulties in identifying strategies at the industry and community level. Other issues particularly relevant to the small business sector that were identified include:

- the relative expense of an EU, including its impact of negotiating and implementing an EU, on the business operations of micro and small businesses
- the difficulty smaller businesses have in influencing industry and community-wide outcomes
- the likelihood that small businesses may be less aware of the options of an EU as they may not have the same access to legal advice as larger companies
- the involvement of lawyers to assist in drafting an EU – this imposes an additional cost on small business and, on occasions, these lawyers are not experienced in enforceable undertakings and take an adversarial approach to the negotiations
- the risk that overly onerous EU obligations may threaten the very viability of small businesses.

In short, SafeWork NSW stakeholders concluded that many small businesses do not have the time, resources or expertise to prepare an EU and are therefore heavily reliant on resource-intensive support from SafeWork NSW officers. Despite this fundamental challenge, however, there was an overwhelming consensus that the EU program should continue to be available to the micro and small business sector and there was therefore a general acknowledgement that aspects of the program design need refreshing for greater uptake by the sector. Specific proposals that were put forward include:

- SafeWork NSW preparing resources or guidelines that set clear expectations of what a 'scaled down' EU could look like for a small business
- relaxing the requirement that all EUs address all three benefit domains and that there be the option of introducing a combined industry and community benefit – noting that some small rural businesses may have more influence in the community activities
- revising official documents so they are less legalistic, use plain English and are less intimidating.

Potential process improvements

In addition to identifying potential program modifications to increase involvement of micro and small businesses, the consultations with SafeWork NSW staff also identified a number of other general potential program enhancements:

- streamlining the EU contract, possibly along the lines of the model used by the Queensland regulator
- drawing on the technical input from other parts of SafeWork NSW to advise on suitable strategies for inclusion in EUs that are evidence-based and align with SafeWork NSW strategic directions
- exploring more opportunities to leverage the resources and tools developed as part of an EU, given that SafeWork NSW owns the intellectual property
- continuing to involve inspectors early in the development of EUs so that they can advise on proposed undertakings and, in particular, whether they are able to be verified
- establishing a new database – a case management system – that spans the complete life cycle of an EU from application through approval, verification and closure, and also provides improved reporting functionality
- exploring the potential of having combined industry and community initiatives where they may have greater impact.

Appendix 4 EU Steering Committee Members

- Callista Kent, Manager, EU Advisory Service & Operational Support Team, Investigations & Emergency Response Directorate
- David Wilson, Manager, Response Coordination & WHS Undertakings, Investigations & Emergency Response Directorate
- Florent Gomez, Manager, Evaluation, Research & Evaluation Unit, Community Engagement Branch
- Margaret Moon, Senior Project Officer, Research & Evaluation Unit, Community Engagement Branch
- Treena Stobo, Project Officer, Research & Evaluation Unit, Community Engagement Branch
- Michelle Cuthbertson, Project Officer, EU Advisory Service & Operational Support Team, Investigations & Emergency Response Directorate.

Appendix 5 The EU process

External reviews of the EU program conducted in 2015 and 2017 resulted in several changes to program management and administration. Of particular interest was the establishment in January 2018 of a two-stage process (an eligibility assessment stage and evaluation assessment stage), replacing the previous approach of a single and lengthier process from the initial consultation to the application decision stage.

The Eligibility Phase

- **Eligibility** – an individual or business must outline an expression of interest to SafeWork NSW about the possibility of an EU. SafeWork NSW will consider if an EU is an appropriate enforcement measure, examining the specific workplace incident resulting in a breach or alleged breach of the Act. In assessing whether a matter may be determined as eligible for an EU, SafeWork NSW will consider three factors:
 - the level of alleged culpability of the business or person
 - the degree of risk arising from the alleged breach
 - work health safety compliance history.

An assessment of submissions is undertaken by an evaluation panel of five individuals consisting of senior NSW Department of Customer Service staff.

The Evaluation Phase

- **Evaluation** – if deemed eligible, the individual or business must submit an EU proposal to SafeWork NSW using a template. The EU evaluation panel considers the merits and makes a recommendation to either accept or reject the proposal based on the following criteria:
 - the degree to which the EU strengthens compliance and/or builds sustainable performance, beyond the individuals' or businesses' obligations to comply with the Act
 - whether the EU offers long term, sustainable, measurable and tangible work health and safety benefits to the workplace, the industry and the community, as reflected in the program logic in figure 2
 - the extent that the strategies proposed link to the alleged contravention and the work health and safety duties of the individual or business
 - the individuals' or businesses' conduct in respect of mitigation and remedial action regarding both the alleged contravention and any person affected by the alleged contravention.

Based on the EU panel's recommendation, the Executive Director, Investigations and Enforcement, Better Regulation Division of the Department of Customer Service SafeWork NSW makes a decision whether to **accept** or **reject** the EU. If rejected, the applicant will be provided with written reasons, and given an opportunity to address the reasons prior to a final decision by SafeWork NSW. If accepted, the EU is a legally binding agreement, enforceable in court, and published on the SafeWork NSW website, including the reasons for acceptance.

Based on the EU panel recommendation, the Executive Director, Investigations and Enforcement, Better Regulation Division makes a decision whether to **accept** or **reject** the EU. If rejected, the applicant will be provided with written reasons, and given an opportunity to address the reasons prior to a final decision recommended by the EU panel to the Executive Director. If the EU is accepted, the EU is a legally binding agreement, enforceable in court, and published on the SafeWork NSW website, including the reasons for acceptance. If rejected, EU discussions are terminated and proceedings commenced for the alleged contravention.

In addition to being accepted or rejected, EU applications may be **withdrawn**, either by the individual, or business, or SafeWork NSW, prior to a decision being made by the panel. An accepted EU application may subsequently be **closed** by SafeWork NSW due to reasons such as the business no longer operating.

For further detail regarding the submission and consideration of EU applications, including practical and policy issues, please refer to the [Enforceable Undertaking \(EU\) Guidelines](#). A summary explanation of what EUs are and how they are formed is included in the [Enforceable Undertakings: Customer Service Standard](#).

Verification of an EU

Following acceptance of an EU, a SafeWork NSW inspector is allocated to work with businesses and individuals to verify that the specific activities outlined in the undertaking have been completed. This involves:

- regular dialogue between the inspector and the business or individual who proposed the undertaking with a particular focus on clarifying and resolving issues at the earliest opportunity
- the business or individual providing periodic updates and evidence to the verifying inspector outlining progress and demonstrating completion of the specific activities contained in the undertaking

- consultation and agreement with SafeWork NSW prior the release of all public facing content (e.g. manuals, external forums, conferences or advertising campaigns).

The assessment of the progress of the activities and strategies outlined within each EU is monitored and recorded internally through EU verification plans (EUVPs). After acceptance of an EU, planned WHS undertakings may only be varied or withdrawn as a formal decision of the evaluation panel and as a legal amendment to the original EU application. Some less significant amendments can be approved administratively by the head of the verifying inspectors, such as a change in the deadline for a particular EU strategy due to unforeseen circumstances,

An alleged breach of an EU involves failure to comply with the terms of the EU. As an EU is enforceable by the court, an alleged breach may result in significant penalties including:

- a direction to comply with the EU
- discharge of the EU
- monetary fines
- court costs
- SafeWork NSW costs in monitoring compliance with the enforceable undertaking in the future
- commencement of proceedings for the original alleged contravention.

Appendix 6 EU Applications since 2012

Table 7: EU applications since 2012

Year (EU Decision Date)	Accepted	Rejected	Withdrawn	Total
2012	0	0	0	0
2013	1	0	1	2
2014	3	1	1	5
2015	9	1	1	11
2016	11	4	4	19
2017	7	1	2	10
2018	4	6	3	13
2019	12	14	3	29
2020 (March)	3	7	2	12
TOTAL	50	34	17	101

Appendix 7 Summary of Completed and Advanced Stage EU strategies

Strategies Summary Table

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
AGT Foods (formerly Australia Milling Group)	Completed	August 2015	Transport and Storage	Being trapped by moving machinery	Large	<ul style="list-style-type: none"> - Training to Operation Managers and WHS Coordinators (Cert 4 in WHS) - Third Party audit of current WHS systems - Developed a Certified WHS management system - Training to Senior Executives and Managers in WHS - Developed a WHS Due Diligence Guideline 	<ul style="list-style-type: none"> - Updated an existing induction program for carriers and producers at all sites - Developed a case study to be published in industry magazine 	<ul style="list-style-type: none"> - Regional Television Campaign
Great Northern Hotel	Completed	May 2016	Retail	Exposure to chemical	Small	<ul style="list-style-type: none"> - Training and Compliance modules to all staff - Updated equipment and equipment cleaning procedures 	<ul style="list-style-type: none"> - Industry Cellar Safety Awareness 	<ul style="list-style-type: none"> - Charitable donation
Boom Logistics	Completed	August 2016	Property and Business Services	Being hit by moving objects	Large	<ul style="list-style-type: none"> - Leadership Training program in WHS compliance culture 	<ul style="list-style-type: none"> - Lifting gear selection tool and training program for application 	<ul style="list-style-type: none"> - Charitable sponsorship

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
Brookfield Multiplex	Completed	October 2015	Construction	Being hit by falling objects	Large	<ul style="list-style-type: none"> - Developed, evaluated and distributed a guide to steel erection and produced a training video - Conducted due diligence refresher trainings for executive groups 	<ul style="list-style-type: none"> - Developed a critical review of a practical guide of safe erection of steel structures for industry - Presented a paper at the Australian Steel Institute National Convention and at a separate session 	<ul style="list-style-type: none"> - Funded a WHS education university scholarship at two universities
Caltex	Completed	October 2015	Manufacturing	Exposure to chemical	Large	<ul style="list-style-type: none"> - Progressed internal WHS initiatives - Progressed internal management training 	<ul style="list-style-type: none"> - Developed a mobile application for contractor management, available to all Australians businesses in any industry - Facilitated webinar training in the use of petrochemicals 	<ul style="list-style-type: none"> - Funded training of fire fighters in USA for advanced petroleum fire-fighting
Cape Cod	Completed	November 2015	Construction	Being hit by falling objects	Small	<ul style="list-style-type: none"> - Employed a WHS Coordinator - Developed and implemented an annual safety seminar for employees and subcontractors - Increased the training program of apprentices 	(Combined industry and community strategy) <ul style="list-style-type: none"> - Developed and implemented an online safety documentation system for small builders/contractors 	
Hume Doors and Timber	Completed	January 2015	Manufacturing	Being hit by falling objects	Large	<ul style="list-style-type: none"> - Conducted an annual Load Restraint Refresher Course 	<ul style="list-style-type: none"> - Developed and delivered a risk assessment and best practice machine 	<ul style="list-style-type: none"> - Hosted a community safety day with the NRL

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
						<ul style="list-style-type: none"> - Provided and installed GPS Vehicle Tracking and a fleet management system - Designed and installed Safety Notice Boards - Upgraded company website - Undertook a 'Safe Level' of English project - Provided training for supervisors and leading hands - Established an accredited OHSMS and third-party audits of this system 	guarding manual for the timber industry	<ul style="list-style-type: none"> - Work experience opportunities were offered for local high schools and job search agencies
Ingredion ANZ	Completed	September 2017	Manufacturing	Being trapped by moving machinery	Medium	<ul style="list-style-type: none"> - Enhancement of behavioural based safety processes - Process Workplace Strategy and machine safety audit program - Hand safety awareness program 	<ul style="list-style-type: none"> - WHS industry best practise sharing seminars for hand safety awareness campaign and permit to work - Farm safety outreach program 	<ul style="list-style-type: none"> - WHS educational support and practical training
Lend Lease	Completed	August 2017	Construction	Exposure to environmental heat	Large		(Combined workplace, industry and community strategy) <ul style="list-style-type: none"> - Developed an Emergence, Fire Preparedness and Evacuation Management Guideline and supporting materials 	

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
							to identify and manage emergency related hazards, risk and requirements	
NORCO	Completed	April 2015	Manufacturing	Being trapped between stationary and moving objects	Large	<ul style="list-style-type: none"> - Conducted Executive WHS workshops - Developed online WHS and Human Resources induction modules for staff - Implemented a Human Resources Information system with WHS and training modules - Established an accredited OHSMS and third-party audits of this system 	<ul style="list-style-type: none"> - Coordinated and participate in five farm safety field days in Northern NSW 	<ul style="list-style-type: none"> - Developed a two-part Farm Safety for Children video
Northern Sydney Local Health District	Completed	June 2016	Health and Community Services	Contact with, or exposure to, biological factors	Large	<ul style="list-style-type: none"> - Developed and implemented a physical fitness program for aging workers 	<ul style="list-style-type: none"> - Shared the learnings from the incident in a Safety Risk and Injury Management Coalition - Presentation of fitness program to Health Risk Managers Committee 	<ul style="list-style-type: none"> - DIY information and awareness sessions on asbestos for home renovators
Origin Energy	Completed	March 216	Transport and Storage	Other and unspecified contact with chemical or substance	Medium	<ul style="list-style-type: none"> - Presentations on Leadership Development - Installation of Scavenger Tank System 	<ul style="list-style-type: none"> - Created two safety videos 	<ul style="list-style-type: none"> - Worked with Concord Hospital Burns Unit

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
Proway Livestock	Completed	December 2015	Manufacturing	Unspecified mechanisms of injury	Medium	<ul style="list-style-type: none"> - Provided further WHS training to current and future employees - Established an accredited OHSMS 	<ul style="list-style-type: none"> - Produced a safety media campaign and case study - Presented information sessions on dangers at TAFE 	<ul style="list-style-type: none"> - Gave a donation to the Sydney Burns Fund to support a PHD students' burns research
Shamrock	Completed	January 2016	Construction	Long term contact with chemical or substances	Small	<ul style="list-style-type: none"> - Conducted additional WHS training for all staff - Further developed and enhanced workplace safety culture through workshops, surveys, brandings an incentive scheme and improved consultation - Established an accredited OHSMS 	<ul style="list-style-type: none"> - Hosted an industry forum for electrical contractors - Presentation of a case study at an industry forum - Published an article about the outcomes of the industry forum 	<ul style="list-style-type: none"> - Donation to the Asbestos Diseases Research Institute
SHAPE (ISIS)	Completed	October 2015	Construction	Long term contact with chemical or substances	Large	<ul style="list-style-type: none"> - Attendance at the nationally accredited "Course in Asbestos Awareness" by all operations staff and Senior Management - All new Operations staff had to attend the nationally accredited "Course in Asbestos Awareness" - Developed updated asbestos awareness training to be delivered to subcontractor workers on NSW construction sites 	<ul style="list-style-type: none"> - Developed content for an industry website that provides information on asbestos risks - Promoted an asbestos awareness website to peak industry organisations 	<ul style="list-style-type: none"> - Organised a project based on events in support of National Asbestos Awareness Month to promote awareness - Charitable donation to 'Mates in Construction' a mental health awareness charity

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
SITA (Suez)	Completed	September 2014	Wholesale Trade	Falls from a height	Large	<ul style="list-style-type: none"> - Expanded the Executive Management Due Diligence Review Program nationally for high risk activity reviews - Developed an individual toolbox talk sessions for life saving rules for high risk activities and updated the content of the Online Induction Program - Supervision Development Program including National Safety Leadership Training Package for managers and supervisors, e-learning module and fact sheet on supervision - Third party audits of existing OHSMS 	<ul style="list-style-type: none"> - Developed a due diligence publication - Presentation on due diligence and lessons learnt to an industry forum 	<ul style="list-style-type: none"> - Funded an educational scholarship and work placement offer - Knowledge sharing through a small business assistance program - Developed a health and safety awareness module for community facility tours
St Charbels college	Completed	August 2014	Education	Falls from a height	Medium	<ul style="list-style-type: none"> - Provided training for duty holders in WHS for staff and neighbouring schools - Provided training for the Facilities Manager in Certificate IV WHS - Implemented monthly tool box meetings for the maintenance team - Implemented WHS training via an eLearning module 	<ul style="list-style-type: none"> - Hosted an industry conference on the incident and lessons learnt - Case study of the incident 	<ul style="list-style-type: none"> - Coordinated a poster design competition with a WHS theme for students and their families - Developed and implemented a unit of teaching on WHS for pre-work experience students and

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
						<ul style="list-style-type: none"> - Reviewed current WHS induction training for contractors and visitors - Reviewed existing safety system and implement the Catholic Schools WHS system 		students leaving school
Toplace	Completed	April 2018	Construction	Falls from a height	Medium	<ul style="list-style-type: none"> - Managers Safety Leadership Development Program - Managers and Contractors Safety Leadership Development - Scaffold Audit program 	<ul style="list-style-type: none"> - WHS Conference for the Arabic speaking community in the construction industry - Advanced Virtual Gamification Technology - Hazard and Risk Awareness 	<ul style="list-style-type: none"> - Funded a Case Manager at MATES in Construction - Admissions to Foundation House 28- day Rehabilitation Program - Translation Services of promotional and marketing material
Veolia (Dalkia)	Completed	December 2013	Manufacturing	Falls from a height	Large	<ul style="list-style-type: none"> - Implemented an incident and non-conformance management software with mobile - Improved their WHS online induction and refresher training applications and reporting in real time - Certification and third party audits of OHSMS to comply with AS/NZS 4801 and BS OHSAS 1800. 	<ul style="list-style-type: none"> - Presentation on 'lessons learnt' to industry groups - Donation to Air-conditioning and Mechanical Contractors Association (AMCA) in support of their Annual Safety Week - Developed a safety calendar for distribution to AMCA industry association members - Knowledge shared with small business 	<ul style="list-style-type: none"> - Knowledge shared with the wider community in relation to safety processes and procedures - Donation to local SES for the purchase of safety equipment - Donation to KIDSAFE for expenditure on child injury prevention - Donation to the Central Coast Surf

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
							in the industry around safety processes and procedures	Life Saving Club for expenditure on safety equipment - Donation to Spinal Cord Injuries Australia to support attendance at the upcoming Expo for persons affected with spinal cord injuries, including travel costs for carers and family
AGL Macquarie	Advanced Verification	April 2018	Electricity, Gas and Water Supply	Contact with electricity	Large	<ul style="list-style-type: none"> - Developed and delivered of Critical risks - Working on or in the vicinity of electrical apparatus training program and safety forum - Safety Leadership and Culture Program - Third party audits of existing WHS Management System 	- Arc Flash Guidance Material for Industry	- Community Electrical Safety Awareness campaign
Atlas Steel	Advanced Verification	April 2018	Manufacturing	Being hit by moving objects	Medium	<ul style="list-style-type: none"> - Safety Culture Development - Site Traffic Safety Program - Safety Training Program - Independent Audit 	<ul style="list-style-type: none"> - Forklift hazard awareness program - Injured Worker Presentation to ASSDA members 	<ul style="list-style-type: none"> - Supply of rehabilitation equipment and courses to Camden hospital - Published SafeWork NSW approved medial materials online and in magazines

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
BC Sands	Advanced Verification	Jan 2016	Retail and Wholesale	Being hit by moving objects	Medium	<ul style="list-style-type: none"> - Provided additional, enhanced toolbox meetings, incorporating safety stories from external guest speakers - Implemented an electronic software program to assist in developing an improved induction program - Provided first aid training to all existing full time employees - Replaced existing forklifts with five upgraded forklifts fitted with quality safety features 	<ul style="list-style-type: none"> - Implemented a safety campaign including calendars, company website, on hold messages, social and print media - Presentation at the Master Builders Association Divisional Information Night and sponsor an injured worker to attend and present 	<ul style="list-style-type: none"> - Provided a work experience opportunity for a person with a disability and/or mental illness - Billboard Promotion Slogan
BORG	Advanced Verification	July 2017	Manufacturing	Being hit by moving objects	Large	<ul style="list-style-type: none"> - Extension of machine safety program to all NSW manufacturing sites. - External party completed a machine safety gap analysis and conducted verification audit following implementation of recommendations. - Worker training on safe use of plant/equipment. - Developed and delivered an education/capability building program for 	<ul style="list-style-type: none"> - Sponsored, developed and implemented an online workplace industry specific induction program to be available on the leading industry body website. 	<ul style="list-style-type: none"> - Community workplace safety campaign (Safe by Choice, Not by Chance) including safety messaging on trucks and merchandise, workplace safety radio advertisements and sporting team sponsorship.

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
						leadership team focusing on WHS. - Truck Safety Program consisting of the investigation and implementation of the most appropriate equipment and procedures to reduce manual handling incidents/injuries associated with trucks.		
Bowling Centres	Advanced Verification	December 2016	Cultural and Recreational Services	Being trapped by moving machinery	Large	- Equipment Upgrades - Technician Training Budget - Accredited Safety Qualifications	- Ten Pin Bowling Industry Safety Forum	- Public Education Program
Primo Moraitis	Advanced Verification	June 2017	Manufacturing	Being hit by moving objects	Medium	- Rolled out customised WHS education programs specific to various key groups throughout organisation. - Development and implementation of Non-Negotiable Safety Rules to strengthen organisational safety culture. - Reviewed and developed traffic management arrangements through focus groups and specialist consultant. - Improved and implemented existing	- Broadened of approved supplier auditing program to promote WHS in the horticultural industry. - Detailed case study presented at a national peak industry body convention over two period. System and training materials available at convention stall and online.	- External media/advertising agency designed, developed and delivered a safety focussed awareness campaign targeting non-English speaking workers.

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
						WHSMS to meet and achieve compliance with AS/NZS 4801:2001.		
Seeley International	Advanced Verification	March 2017	Manufacturing	Being hit by moving machinery	Large	<ul style="list-style-type: none"> - Developed and documented comprehensive safety management system for all aspects of business and ensured all workers (including executive) were suitably trained on new safety system and respective roles/obligations. - Implemented a safety campaign at the Albury Manufacturing Facility to increase positive focus of safety of workers. This included an introduction of a safety logo, Safety Awareness Posters, creation of Leadership in Safety Award Program, and annual Safety Days. - Machine safety audit conducted by external third party auditor. - Conducted a gap analysis audit of existing OHSMS. - Produced an external audit report assessing revised safety system 	<ul style="list-style-type: none"> - Engaged external subject matter specialist to develop safety presentations for regional dealer forums during the course of the undertaking. - Designed and produced simple safety messages on product packaging - Held a local industry safety briefing (possible in conjunction with an employer association) to increase focus and understanding of safety obligations by local industry. 	- TV Commercial

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
						and provided this to SafeWork NSW.		
Sundance	Advanced Verification	November 2016	Manufacturing	Falls from a height	Medium	<ul style="list-style-type: none"> - Enhanced working at heights and fall prevention training - Enhanced Team Leader Training on Safety and Risk - Developed Best Practice Workplace Manuals and short safety films - Enhanced training of key personnel – Cert 4 in OHS 	<ul style="list-style-type: none"> - Development of fall prevention methods and equipment - Development of educational video 	<ul style="list-style-type: none"> - Donation of harness and working at heights and first aid equipment to local SES
Terex	Advanced Verification	July 2014	Manufacturing	Falls from a height	Large	<ul style="list-style-type: none"> - Introduced working at heights solutions for the production assembly and servicing - Designed and developed a counterweight sensing device for cranes - Designed and developed a Load Moment Indicator system - Designed and developed a boom raise warning alarm system - Existing OHSMS and integrated environmental system 	<ul style="list-style-type: none"> - Presented on work safety at a leading Australian crane industry conference - Shared information about the benefits and outcomes from the crane safety design projects with the crane industry 	<ul style="list-style-type: none"> - Participated in a university linked training program which provided an engineering student with the opportunity to complete an industry-based project

Company	Level	Month/Year of EU decision	Industry	Mechanism of Injury	Business size	Workplace	Industry	Community
						were certified and third party audited		
Wood Group	Advanced Verification	November 2016	Construction	Single contact with chemical or substance	Large	<ul style="list-style-type: none"> - Supervision Upskilling Program to advance safety practises - Implementation of Smart Card Training and Competency management process - Worker Wellbeing Program - Produced two process safety educational videos to assist the onsite leadership and workers and make available to the wider industry 	<ul style="list-style-type: none"> - Worker Well-Being Program - Process safety initiative for wider industry 	<ul style="list-style-type: none"> - Formalised an internship for a NSW based student to gain practical HSE experience

Appendix 8 Form Letter from SafeWork NSW



Customer
Service

McKell Building
Level 7, 24 Rawson Place
Sydney NSW 2000
GPO Box 2677, SYDNEY NSW 2001
ABN 81 913 830 179 | www.finance.nsw.gov.au

Our Ref:

The Proper Officer
ADDRESS

Sensitive: Legal

By process server

Dear Sir/Madam

**SafeWork NSW v
District Court Proceedings:**

We act on behalf of SafeWork NSW and enclose, by way of service, the following:

1. Application to Commence Proceedings, Statement of Facts and Summons for an offence under sections 19(1)/32 of the *Work Health and Safety Act 2011*;
2. District Court Practice Note 16 – Work Health and Safety Act Prosecutions; and
3. A blank Notice of Appearance which you or your legal representatives are required to file with the court and serve on the prosecutor within seven days of service of the enclosed summons.

The proceedings are first listed before the District Court of New South Wales on **Monday 4 May 2020 at 9:30am**. Please note that you and/or your legal representative are required to attend court on that occasion.

Should you wish to consider approaching SafeWork NSW regarding a potential enforceable undertaking in relation to this alleged contravention of the Act we refer you to www.safework.nsw.gov.au/compliance-and-prosecutions/enforceable-undertakings for further information. Additionally, you can make contact with SafeWork NSW via enforceable.undertakings@safework.nsw.gov.au to discuss the process.

Yours sincerely

**Principal Lawyer, Legal
Department of Customer Service**

Appendix 9 SafeWork NSW EU Proposal Template



SafeWork NSW

Insert submission date

ENFORCEABLE UNDERTAKING

Part 11

Work Health and Safety Act 2011

The commitments in this enforceable undertaking
are offered to SafeWork NSW

by

Insert entity name

Insert ACN (or ABN if no ACN)

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



SafeWork NSW

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

Registered Address:	Insert address line 1 Insert address line 2 Insert address line 3
Postal address:	Insert address line 1 Insert address line 2
Telephone contact:	Insert telephone number
Email address:	Insert email address
Legal structure:	Insert legal structure
Type of business:	Insert type of business
Commencement date of the entity:	Insert date
Number of workers:	Full-time: Insert number Part-time: Insert number Casual: Insert number
Products and/or services:	Briefly describe products and/or services
Comments:	Insert comments


SafeWork NSW
b. Details of the alleged contravention

It is alleged by SafeWork NSW that on Insert incident date, Insert entity name failed to discharge its obligations as a person conducting a business or undertaking under section Insert section/s 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

Include one to two paragraphs that describe the factual details of the incident. Do not include individuals' names or gender; instead use suitable terms that best describe the person's relationship to the incident such as the injured worker, a member of the public, or the site or workshop supervisor. Avoid including opinion on how the incident occurred.

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

It is acknowledged that SafeWork NSW has alleged that Entity name has contravened sections Insert section/s of the WHS Act.

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

Specify what injuries occurred as a result of the alleged contravention.

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

Were enforcement notices received?

No ☐

or

Yes ☐ *Please provide details in the table below.*

Date issued	Notice type	Notice number	Contravention	Action taken in response to notice

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

Insert entity name 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)


SafeWork NSW

The enforceable undertaking must identify the type of workers' compensation provided to any injured persons associated with the alleged contravention.

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?

No ☐

or

Yes ☐ The worker was employed by Insert name of employer at the time of the incident.

The following support has been provided to the worker and/or their family:

Date	Description of support	Comments

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

Please choose one of the following paragraphs that most accurately describes the level of auditing currently undertaken (if any):

Insert entity name has an existing WHSMS compliant with AS/NZS 4801:2001. Third party auditing of the workplace against AS/NZS 4801:2001 is conducted on a Insert frequency basis.

or

Insert entity name has an existing WHSMS but this has not been assessed against the principles of AS/NZS 4801:2001. Please describe the auditing arrangement.

or

Insert entity name does not have an accredited WHSMS.

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

Please provide details of the consultation that has occurred within the workplace in relation to development of the enforceable undertaking proposal, who has been consulted i.e. specify the employees, employee groups, contractors, work health and safety representatives, committees e.t.c. as well as how consultation has occurred i.e. through what mechanisms and when.

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


SafeWork NSW

Insert entity name regrets that the incident on Insert incident date occurred and the Choose an item sustained injuries as a result of the incident.

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

Description	\$ Amount

TOTAL AMOUNT SPENT ON RECTIFICATIONS

Insert \$ amount

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

Insert entity name 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

Insert entity name 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

Insert entity name 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 legislation² or work health and safety related legislation.

No ☐ Insert entity name has had no prior work health and safety convictions.

or

Yes ☐ The list is attached as an annexure.

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

r. Statement regarding relationships with beneficiaries

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

or



SafeWork NSW

☐ Insert entity name advises that there is an existing relationship held with Insert name who is a beneficiary of describe benefit contained within the strategy described in Section 2 of this enforceable undertaking. Please provide details of the relationship and how the reason for this benefit will be communicated to the beneficiary.

s. Intellectual property licence

Insert entity name 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

Insert entity name 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.

Insert entity name 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.

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

Insert entity name 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 Insert entity name and SafeWork NSW.

u. Acknowledgement of enforceable undertakings guidelines

Insert entity name has read and understood SafeWork NSW Enforceable Undertakings Guidelines and Enforceable Undertakings Customer Service Standard.

Section 2 – Enforceable Terms

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

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

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

Insert entity name acknowledges that the public notice will be published in a mainstream daily newspaper, will be 1/8 of a page in size and the script will be approved by SafeWork NSW prior to the



SafeWork NSW

public notice being published. Failure to adhere to these conditions may result in SafeWork NSW requesting another public notice be published.

or

If you do not agree to publish a public notice, please provide reasons here as to why the enforceable undertaking should not be published and/or publicised.

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

Insert entity name 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.

c. 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)

Insert entity name agrees to disseminate information about the enforceable undertaking within the workplace, including to the members of any health and safety committee, health and safety representatives and all subcontractors working for Insert entity name. This information will be disseminated through please state how the dissemination will occur and will be completed within insert timeframe from the date of acceptance of the enforceable undertaking.

If the person is a body corporate or a crown/public authority, please state:

Insert entity name commits that it will publish details of the enforceable undertaking in the first annual report due after the date the undertaking is accepted. Insert entity name's annual report is published by Insert day and month each year.

or

If the person is not a body corporate or a crown/public authority, please state:

Insert entity name is not required to publish an annual report.

Insert entity name commits that any strategies 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.

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

Strategies proposed must aim to deliver long term, widespread, sustainable and measurable improvements to work health and safety in the workplace, industry and the community that go beyond compliance with legislation.

Strategies must provide a clear scope that is measurable, achieves a tangible output and/or outcome and shows a clear understanding of the costs claimed in association with the strategy.

Strategies related to the alleged contravention are to be included in the enforceable undertaking. e.g. if the incident related to a young apprentice who was injured in a fall from heights incident, a strategy for improved work procedures to reduce the risk of working at heights or to improve safety outcomes for young and vulnerable workers.


SafeWork NSW

The strategies proposed are to be strategies planned for development and delivery as part of the undertaking during the term of the undertaking. These cannot be strategies already underway or implemented.

d. Strategies that will deliver workplace benefits

To add additional strategies, please highlight from “Insert title of strategy” down to “Total estimated cost” and copy and paste this entire section as many times as required.

1. Insert title of strategy

Scope:

Please outline the objective/s of the strategy and an overview of what product/s or service/s will be delivered.

Target issue:

Please describe the issue that this strategy will address, why this is an issue and, if appropriate, please provide evidence that the issue exists.

Tangible outputs / deliverables:

Please describe exactly what will be produced as a result of this strategy, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable. It may be also be helpful to consider what evidence would be provided to an Inspector in order to verify that this strategy has been delivered. Include an evaluation component to measure the impact and safety outcomes of this strategy.

Audience / beneficiaries:

Please describe who the intended audience is for this strategy and/or who will benefit. Please also provide the number of people if appropriate.

Delivery method:

Please describe how this strategy will be developed, implemented, communicated and evaluated. Please include a communication strategy if appropriate.

Timeframes:

Please articulate when the strategy will commence and finish i.e. ... will commence within x months and be completed within x months of acceptance of the enforceable undertaking. Please provide a timeframe for each component of the strategy if the strategy has multiple elements and/or key milestones.

Work health and safety outcome:

Please describe what people will see, hear, feel or do differently as a result of the successful delivery of this strategy. Explain how these changes may impact safety behaviour and address the target issue described above.

Cost Breakdown:

Add additional rows as required

Description	\$ Amount

Total estimated cost: Insert \$ amount

Total estimated cost of workplace benefits Insert \$ amount



2. **[insert specific audit type ie. Machine Guarding] Audit Strategy**
[REMOVE this section if no specific audit strategy is being undertaken and complete general audit section at g-j.]

Scope:

Please outline the objective/s of the audit and an overview of what service/s will be delivered.

Suggested wording: “To evaluate the capability of (Insert audit focus area/s and system/s to be audited) to meet specific WHS legislative requirements”.

What is the extent or range of the audit? i.e. number of physical locations; what organisational units will this encompass (factory/office etc); what activities and/or processes will be audited.

Target issue:

Please describe the issue that this audit will address, why this is an issue and, if appropriate, please provide evidence that the issue exists.

Reference against which conformity/compliance measure is being used i.e legal requirements, code of practice, standards, procedures, system requirements.

Suggested wording: “Identify and detail gaps in (Insert specific audit focus area/s i.e. traffic management, specific plant usage etc) by determining the level of conformance with and implementation of current (Insert current systems/procedures related to the specific audit focus areas) against WHS legislative and <insert entity name>’s operative requirements, focusing on the following areas:”

-
-

Develop a corrective actions plan based on audit findings.

Suggested wording: “Identify and detail improvement suggestions (based on identified gaps) to assist <insert entity name>’s development of a corrective action plan focused on improved performance across <insert entity name>’s operations in:

-
-

Tangible outputs / deliverables:

Please describe exactly what will be produced as a result of this strategy, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable. It may be also be helpful to consider what evidence would be provided to an Inspector in order to verify that this strategy has been delivered. i.e. Detail the action/s to be taken as a result of the corrective actions plan.

-
-

- Insert entity name acknowledges that audit reports received from the auditor will be sent to SafeWork NSW, within Insert timeframe of the audit along with a letter certifying that the report has not been altered from the copy provided to the person by the auditor.
- Insert entity name acknowledges that within Insert timeframe of receipt of the auditor’s written report, SafeWork NSW will be advised of the intended action in addressing each of the report’s recommendations.

Insert entity name commits to fully implementing the intended actions arising from the audit within Insert timeframe from receiving the audit report from the WHSMS auditor unless otherwise agreed by SafeWork NSW.

Audience / beneficiaries:



SafeWork NSW

Please describe who the intended audience is for this strategy and/or who will benefit. Please also provide the number of people if appropriate.

Delivery method:

Please describe how this strategy will be developed, implemented, communicated and evaluated. Please include a communication strategy if appropriate.

Timeframes:

Please articulate when the strategy will commence and finish i.e. ... will commence within x months and be completed within x months of acceptance of the enforceable undertaking. Please provide a timeframe for each component of the strategy if the strategy has multiple elements and/or key milestones.

Action	Commencement	Completion
<i>i.e. Engage an independent, suitably qualified external auditor</i>	<i>i.e. Upon acceptance of the enforceable undertaking</i>	<i>i.e. within 3 months of acceptance of the enforceable undertaking</i>

Work health and safety outcome:

Please describe what people will see, hear, feel or do differently as a result of the successful delivery of this strategy. Explain how these changes may impact safety behaviour and address the target issue described above.

Cost Breakdown:

Add additional rows as required

Description	\$ Amount

Total estimated cost:

e. Strategies that will deliver industry benefits

3. Insert title of strategy

Scope:

Please outline the objective/s of the strategy and an overview of what product/s or service/s will be delivered.

Target issue:

Please describe the issue that this strategy will address, why this is an issue and, if appropriate, please provide evidence that the issue exists.

Tangible outputs / deliverables:

Please describe exactly what will be produced as a result of this strategy, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable. It may be also be helpful to consider what evidence would be provided to an Inspector



SafeWork NSW

in order to verify that this strategy has been delivered. Include an evaluation component to measure the impact and safety outcomes of this strategy.

Audience / beneficiaries:

Please describe who the intended audience is for this strategy and/or who will benefit. Please also provide the number of people if appropriate.

Delivery method:

Please describe how this strategy will be developed, implemented and communicated. Please include a communication strategy if appropriate.

Timeframes:

Please articulate when the strategy will commence and finish i.e. ... will commence within x months and be completed within x months of acceptance of the enforceable undertaking. Please provide a timeframe for each component of the strategy if the strategy has multiple elements and/or key milestones.

Work health and safety outcome:

Please describe what people will see, hear, feel or do differently as a result of the successful delivery of this strategy. Explain how these changes may impact safety behaviour and address the target issue described above.

Cost Breakdown:

Add additional rows as required

Description	\$ Amount

Total estimated cost: **Insert \$ amount**

Total estimated cost of industry benefits **Insert \$ amount**

f. Strategies that will deliver community benefits

4. Insert title of strategy

Scope:

Please outline the objective/s of the strategy and an overview of what product/s or service/s will be delivered.

Target issue:

Please describe the issue that this strategy will address, why this is an issue and, if appropriate, please provide evidence that the issue exists.

Tangible outputs / deliverables:

Please describe exactly what will be produced as a result of this strategy, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable. It may be also be helpful to consider what evidence would be provided to an Inspector in order to verify that this strategy has been delivered. Include an evaluation component to measure the impact and safety outcomes of this strategy

Audience / beneficiaries:

Please describe who the intended audience is for this strategy and/or who will benefit. Please also provide the number of people if appropriate.



SafeWork NSW

Delivery method:

Please describe how this strategy will be developed, implemented and communicated. Please include a communication strategy if appropriate.

Timeframes:

Please articulate when the strategy will commence and finish i.e. ... will commence within x months and be completed within x months of acceptance of the enforceable undertaking. Please provide a timeframe for each component of the strategy if the strategy has multiple elements and/or key milestones.

Work health and safety outcome:

Please describe what people will see, hear, feel or do differently as a result of the successful delivery of this strategy. Explain how these changes may impact safety behaviour and address the target issue described above.

Cost Breakdown:

Add additional rows as required

Description	\$ Amount

Total estimated cost: Insert \$ amount

Total estimated cost of community benefits Insert \$ amount

TOTAL ESTIMATED VALUE OF THE UNDERTAKING Insert \$ amount

Where appropriate (g-j) **REMOVE q-j if specific audit strategy is included in Workplace Strategies in Section 2.11**

g. A commitment to establish and maintain (or maintain if a system already exists) a WHSMS

Please choose the statement that is most appropriate:

Insert entity name is committed to establishing a WHSMS system acceptable to SafeWork NSW, that satisfies the principles of AS/NZS 4804: 2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques will be implemented within Insert timeframe from the date the enforceable undertaking is accepted.

Insert entity name acknowledges that the WHSMS will be maintained in accordance with the standard.

or

Insert entity name is committed to ensuring their existing WHSMS complies with the principles of AS/NZS 4804: 2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques and ensuring compliance within Insert timeframe from the date the enforceable undertaking is accepted.

Insert entity name acknowledges that the WHSMS will be maintained in accordance with the standard.

h. A commitment to ensure the WHSMS is audited by third party auditors

Insert entity name commits to ensuring the WHSMS will be audited by accredited third party auditors to meet the requirements of AS/NZS 4801: 2001 Occupational Health and Safety Management



Systems – Specification with guidance for use, in accordance with established timeframes as set by SafeWork NSW.

Insert entity name acknowledges that the third party auditors selected to perform WHSMS audits must be certified by a certification body accredited by JAS-ANZ to ISO/IEC 17024: 2004 General requirements for bodies operating certification of persons.

Insert entity name acknowledges that details of the auditors' qualifications against the stated requirements will be provided with audit reports submitted to SafeWork NSW.

Insert entity name acknowledges that an initial third party audit will be undertaken within Insert timeframe and two further third party audits will be undertaken during the course of the undertaking, Insert timeframe and Insert timeframe following the date of acceptance of the enforceable undertaking.

i. A commitment to provide a copy of each finalised WHSMS audit report to SafeWork NSW

Insert entity name acknowledges that audit reports received from the auditor will be sent to SafeWork NSW, within Insert timeframe of the audit along with a letter certifying that the report has not been altered from the copy provided to the person by the auditor.

Insert entity name acknowledges that within Insert timeframe of receipt of the auditor's written report, SafeWork NSW will be advised of the intended action in addressing each of the report's recommendations.

j. A commitment to implement the recommendations from these audits (unless otherwise negotiated with SafeWork NSW)

Insert entity name commits to fully implementing the intended actions arising from the audit within Insert timeframe from receiving the audit report from the WHSMS auditor unless otherwise agreed by SafeWork NSW.


SafeWork NSW

Section 3 – Offer of undertaking

OR

I offer this undertaking and commit to the terms herein.

Signed:

[Person]

Name: Insert name of signatory

Position: Insert title of signatory

Dated at Insert suburb this Choose number day

of Insert month, Insert year

As a duly authorised person of Insert entity name, I offer this undertaking and commit to the terms herein.

Signed:

[Duly authorised person]

Name: Insert name of signatory

Position: Insert title of signatory

Dated at Insert suburb this Choose number day

of Insert month, Insert year

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:

Name:

Position: Executive Director, Investigations and Enforcement.

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

Dated at this day of
[suburb] [month] [year]

**SafeWork NSW**

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 Insert incident date, Briefly describe the incident, e.g. a worker employed by XYZ Building products Pty Ltd, suffered injuries while operating the radial arm saw at the company’s Long Street premises, Suburb.

SafeWork NSW investigated the incident and subsequently alleged that Insert entity name contravened section Insert section/s 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 Insert entity name, Insert ACN (or ABN if no ACN) as finalisation of the abovementioned alleged contravention.

The undertaking requires the following actions:

- Please briefly list key strategies in bullet point format

The full undertaking and general information about enforceable undertakings is available at www.safework.nsw.gov.au.

Appendix 10 Template from Queensland Regulator

Annexure A

This annexure depicts a suggested format for an enforceable undertaking

ENFORCEABLE UNDERTAKING

[insert one the following references]

Part 11, Work Health and Safety Act 2011

or

Part 3, Electrical Safety Act 2002

or

Part 4, Safety in Recreational Water Activities Act 2011

The commitments in this undertaking are offered to the regulator by

[Insert person/entity name]

(the person)

ABN / ACN [Insert person/entity ABN/ACN]

COMMENCEMENT OF UNDERTAKING

This enforceable undertaking is given on the day and date that it is accepted and signed by the regulator. The undertaking and its enforceable terms will commence to operate as a legally binding commitment on the part of the person from the date it is given.

DEFINITIONS

Contravention means an alleged contravention.

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

OIR means the Office of Industrial Relations.

OHSMS means an Occupational Health and Safety Management System.

person means an individual who or a legal entity which has a duty under the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002* or the *Safety in Recreational Water Activities Act 2011* and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, individuals or corporations as trustees of trusts, statutory corporations, public authorities, the State of Queensland, the Commonwealth of Australia and other Australian states and territories.

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.

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.

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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SECTION 1: GENERAL INFORMATION

1.1 Details of the person giving the undertaking

Nominated person: [Enter details here] *(Point of contact for OIR communications)*
Street address: [Enter details here]
Mailing address: [Enter details here]
Telephone: [Enter details here]
Email address: [Enter details here]
Legal structure: [Enter details here]
Type of business: [Enter details here]
Commencement date: [Enter details here]
Workers: Full time: [Enter number]
 Part time: [Enter number]
 Casual: [Enter number]
Products and services: [Enter details here]
Comments: [Enter comments here]

1.2 Detail the contravention

(This should reflect the details of the Complaint and Summons, omitting personal details and reference to gender)

[Enter details here]

1.3 Detail the events surrounding the contravention

(Generally includes factual incident details and avoids blame or opinions)

[Enter details here]

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
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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

[Enter details here]

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 ☐

[Enter details here]

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

DATE	DESCRIPTION OF SUPPORT	COMMENTS

1.8 Detail any current OHSMS implemented and maintained by the person
(Describe how health and safety risks are managed, including types of procedures or policies or standards)

[Enter details here]

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

[Enter details here]

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

[Enter details here]

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

- 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**

[Enter details here]

Total amount spent on rectifications

\$ []

SECTION 2: GENERAL TERMS

The person acknowledges and commits to the general terms set forth in the sub-terms below.

- 2.1 Acknowledgement that the regulator alleges a contravention occurred as detailed in term 1.2**

[Enter statement here]

- 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**
(This should not include an admission of guilt)

[Enter statement here]

- 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**

[Enter statement here]

- 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: Dated:

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

2.5.1 [insert person] acknowledges that the undertaking may be published on the OIR's website and referenced in OIR material.

2.5.2 [insert person] acknowledges that the undertaking may be publicised in newspapers.
[Insert case, if any, for why the regulator would not publish and/or publicise the undertaking]

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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 [insert person] has the financial ability to comply with the terms of this undertaking and have provided evidence by way of [insert type of evidence provided] with this undertaking to support this declaration.
- 2.6.2 In the event of impending liquidation or sale of the entity, [insert person] 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

[Enter statement here]

2.8 Statement regarding Intellectual Property Licence

[Insert person], 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

The statutory declaration is attached (if applicable)

☐ YES

☐ NO

2.10 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

- 2.10.1 It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
- 2.10.2 Evidence to demonstrate compliance with the terms will be provided to OIR by the due date for each term.
- 2.10.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the regulator, that this undertaking has been completely discharged.
- 2.10.4 It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.
- 2.10.5 It is acknowledged that OIR may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to OIR.
- 2.10.6 It is acknowledged that OIR may initiate additional compliance monitoring activities, such as inspections, as considered necessary at OIR's expense.

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

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

- 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

(Detail the management strategies to be employed that will satisfy and demonstrate to officer/s of the person that this commitment is being met)

[Enter details here]

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

(Activities that may promote or benefit the person need to link the activity/benefit to this undertaking)

[Enter statement here]

SECTION 3: ENFORCEABLE TERMS

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

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

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

(This may include to work health and safety representatives and in the annual report, if applicable)

Dissemination will be achieved by doing the following:

[Enter details here]

Dissemination will occur by: [Enter time frame here]

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		\$	
3.2.2		\$	
3.2.3		\$	
Total estimated cost of benefits for workers/others		\$	

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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

ACTIVITIES		COST	TIMEFRAME
3.3.1		\$	
3.3.2		\$	
Total estimated cost of benefits for industry		\$	

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		\$	
3.4.2		\$	
Total estimated cost of benefits for the community		\$	

3.5 Agreement to pay the OIR's recoverable costs

(These amounts will be provided by the EU Unit)

[Insert person] 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	\$
• legal costs	\$
• compliance monitoring costs	\$
• publication costs	\$
Total recoverable costs	\$

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

(Activities that may promote or benefit the person need to link the activity/benefit to this undertaking)

[Enter statement here]

3.7 A commitment to [establish and maintain OR maintain] an OHSMS

(Delete the irrelevant terms below. If required contact OIR to determine which option is appropriate)

- 3.7.1 [Insert person] acknowledges there is no formal documented OHSMS in place.
- 3.7.2 [Insert person] commits to ensuring that an OHSMS acceptable to the regulator that satisfies the principles of AS/NZS 4804:2001 *Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques* will be implemented within 12 months of the acceptance of this undertaking.

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

or

- 3.7.1 [Insert person] acknowledges there is a formal documented OHSMS acceptable to the regulator that satisfies the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*, currently in place.
- 3.7.2 [Insert person] commits to ensuring that the OHSMS remains compliant with the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

or

- 3.7.1 [Insert person] commits to ensuring that within 12 months of the acceptance of this undertaking the OHSMS shall be compliant with the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.
- 3.7.2 [Insert person] acknowledges that the OHSMS will be maintained in accordance with *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

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

(Delete the irrelevant terms below. If required contact OIR to determine which option is appropriate)

- 3.8.1 [Insert person] acknowledges that the auditors selected to perform OHSMS audits must meet the qualification requirements as set by the regulator.
- 3.8.2 [Insert person] commits to ensuring the OHSMS will be audited by certified third party auditors.
- 3.8.3 [Insert person] acknowledges that details of the auditors' qualifications will be provided with audit reports submitted to OIR.
- 3.8.4 [Insert person] acknowledges that costs associated with these audits will be met by [Insert person] as part of the undertaking.
- 3.8.5 [Insert person] commits to ensuring the OHSMS will be audited against criteria that meets the principles of *AS/NZS 4801:2001 Occupational Health and Safety Management Systems – Specification with guidance for use*, to verify the OHSMS meets the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.
- 3.8.6 [Insert person] 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 three months of this undertaking being accepted.

or

- 3.8.6 [Insert person] acknowledges that there is no OHSMS in place, as detailed in term 3.7.1 that is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within six months of this undertaking being accepted.
- 3.8.7 [Insert person] commits to ensuring at least two further third party audits will be undertaken at 12 month intervals, commencing 12 months after the initial audit.

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

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

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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3.10 A commitment to implement the recommendations from third party audits

- 3.10.1 [Insert person] commits to ensuring the recommendations resulting from the first OHSMS audit, as detailed in 3.8.2 will be fully implemented and recorded as actioned by the auditor within the second OHSMS audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.2 [Insert person] commits to ensuring the recommendations resulting from the second OHSMS audit, as detailed in 3.8.2 will be fully implemented and recorded as actioned by the auditor within the third OHSMS audit report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.3 [Insert person] commits to ensuring the recommendations resulting from the third audit report, as detailed in 3.8.2 will be fully implemented within six months of receiving the third OHSMS report, unless OIR grants an exemption due to the actions being unreasonable.
- 3.10.4 [Insert person] commits to providing a detailed action plan or statutory declaration by an authorised officer of the [Insert person] confirming recommendations arising from the third audit have been fully implemented, unless OIR grants an exemption due to the actions being unreasonable.

3.11 Minimum spend

- 3.11.1 [Insert person] commits to a minimum spend of [Insert \$ minimum spend] for this undertaking.
- 3.11.2 [Insert person] agrees to spend any residual amount arising from the minimum spend value not being met. Agreement on how to spend this residual will be sought from the regulator.
- 3.11.3 [Insert person] acknowledges the minimum spend comprises of the:
- Estimated value of benefits to workers/others [Insert \$ minimum spend]
 - Estimated value of benefits to industry [Insert \$ minimum spend]
 - Estimated value of benefits to community [Insert \$ minimum spend]
 - OIR's recoverable costs [Insert \$ minimum spend]
- Estimated total value of the undertaking [Insert \$ value]**

<Insert entity name>
 Version: <Insert version number>
 Date: <Insert date>

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SECTION 4: EXECUTION

This undertaking is given by the person on the date it is accepted by the regulator as set forth in section 5 below.

(Select from the following execution clauses and delete those that do not apply)

(INDIVIDUAL)

SIGNED by the person

[Insert person]

on the [Day] day of [Month], 20[Year]

before me:

Signature of person

Witness signature

[Insert witness name]

Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

Witness address

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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(PARTNERSHIP)

SIGNED by the persons

[Insert partner name] and

[Insert partner name] and

[Insert partner name]

on the [Day] day of [Month], 20[Year]

before me:

Signature of persons

Witness signature

[Insert witness name]

Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

Witness address

*(INDIVIDUAL TRUSTEE OF A TRUST)***SIGNED** by the person

[Insert Trustee name] in their own right
and in their capacity as trustee of the
[Insert Trust name].

on the [Day] day of [Month], 20[Year]

before me:

Signature of person

Witness signature

[Insert witness name]

Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

Witness address

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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(COMPANY)

THE COMMON SEAL of

(Affix common seal)

[Insert Company name]

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

[Insert director name] and

[Insert director/secretary name]

on the [Day] day of [Month], 20[Year]

before me:

Signature of director

Signature of director / secretary

Witness signature

[Insert witness address]

Witness name in full

[Insert witness address]

[Insert witness address]

[Insert witness address]

Witness address

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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(COMPANY AS TRUSTEE OF A TRUST)

THE COMMON SEAL of

(Affix common seal)

[Insert Company name]

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

[Insert director name] and

[Insert director/secretary name]

In its own right and in its capacity as
trustee of [Insert trust name]

Signature of director

on the [Day] day of [Month], 20[Year]

before me:

Signature of director / secretary

Witness signature

[Insert witness name]

Witness name in full

[Insert witness address]

-]

[Insert witness address]

[Insert witness address]

Witness address

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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SECTION 5: ACCEPTANCE

This undertaking is accepted by the regulator on the day of

(signature)

(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*.

<Insert entity name>

Version: <Insert version number>

Date: <Insert date>

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Annexure B

OIR EU Program Timeframes/Service Standards

The following timeframes/service standards table has been provided as a guide for the Office of Industrial Relations (OIR), the person giving an undertaking and/or their representative to ensure each phase of the EU Program is progressed and completed in a timely manner. There is an expectation that if the following timeframes/service standards cannot be met, the responsible party will contact and seek to renegotiate a timeframe/service standard suitable to all parties. **Please note:** The level of commitment shown in meeting these timeframes will be taken into consideration by the regulator when making a decision.

EU Timeframe/Service Standards		
Event	Person/Representative	OIR
Initial request for EU advisory service	After an alleged contravention or Complaint and Summons.	
Introductory email regarding EU process and EU advisory service		7 days from initial request
Meeting between person/representative and EU Unit		14 days from initial request
Notification of interest to give an undertaking	7 days from meeting with EU Unit	
Acknowledge receipt of notification		7 days from receipt of notification of interest
Injured person(s) letter		7 days from receipt of the notification of interest
Draft undertaking (undertaking) (Version 1) (template example at Annexure A)	21 days from receipt of the notification of interest	
EU Unit review and initial feedback of undertaking (Version 1)		14 days from receipt of undertaking (Version 1)
Resubmission of revised undertaking (Version 2)	14 days from receipt of initial feedback	
EU Unit feedback of Version 2 and any subsequent versions of undertaking	7 days from feedback	7 days from resubmission
Final version of undertaking for evaluation by EU Panel	7 days from EU Unit feedback on resubmission/s	
EU Panel meeting to evaluate final undertaking		28 days from receipt of final undertaking
EU Panel evaluation feedback or recommendation to accept or reject		7 days from EU Panel evaluation meeting
Re-submission of final undertaking for EUP return evaluation	14 days from receipt of EU Panel feedback	
EU Panel return evaluation feedback or recommendation to accept or reject		7 days from resubmission
Submission of signed final undertaking for decision by regulator	7 days from receipt of EU Panel recommendation	
Request for a decision by the regulator		14 days from submission of signed final undertaking
Regulator makes a decision* on whether to accept or reject		28 days from request of decision
Letter advising of decision and reasons for decision		7 days from decision being made
Publication of EU and reason for decision if accepted		28 days from decision

Decision* - If the regulator intends to reject, the person giving the undertaking will be provided an opportunity to make a final submission addressing the regulators reasons for decision prior to a final decision being made. Timeframes for this process will be negotiated between OIR and the person or representative.