



Australian Government

Comcare

GUIDE TO WORK HEALTH AND SAFETY UNDERTAKINGS

*Part 11 Work Health
and Safety Act 2011
(Cth)*

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PURPOSE

1. To provide guidelines in relation to Comcare's acceptance of Work Health and Safety (WHS) undertakings (**WHS undertakings**) under the *Work Health and Safety Act 2011* (Cth) (**WHS Act**).

BACKGROUND

2. A WHS undertaking is a legally binding written commitment given by a person conducting a business or undertaking (**PCBU**) to implement effective health and safety initiatives that are designed to deliver tangible benefits for workers, industry and the community.
3. A WHS undertaking that is accepted by Comcare can operate as an alternative to a court-imposed sanction for an alleged contravention. Comcare can enforce compliance with accepted undertakings through court orders. However, Comcare cannot pursue court proceedings against a person in relation to an alleged contravention, if an undertaking has been accepted and is in effect.¹ A WHS Undertaking does not constitute an admission of guilt by the person giving an undertaking in relation to the alleged contravention.²
4. A WHS undertaking may be accepted if Comcare is satisfied that it is appropriate in the circumstances and is likely to deliver superior work health and safety outcomes to a court sanction. To promote openness and transparency, the factors considered before accepting an WHS undertaking are set out below.

GUIDELINES FOR ACCEPTANCE

When will a WHS undertaking not be accepted?

5. Comcare assesses each proposed WHS undertaking on its individual merits.
6. However, Comcare:
 - a. cannot accept a WHS undertaking for a contravention or alleged contravention that is a Category 1 offence;³
 - b. considers that WHS undertakings will not usually be appropriate where any of the following circumstances exist:
 - i. if the alleged failure to comply with a health and safety duty results in the death of an individual; or
 - ii. if the alleged failure to comply with a health and safety duty results in a 'very serious injury';⁴ or
 - iii. where the applicant has a prior conviction or finding of guilt under the WHS Act (or State equivalent) which was connected to the death of a person (whether directly or indirectly) unless the prior matter was more than five years prior to the contravention that is the subject of the proposed WHS Undertaking; or
 - iv. where the applicant has two or more prior convictions or findings of guilt against the WHS Act, unless the most recent prior matter concluded more than five years prior to the contravention that is the subject of the proposed WHS undertaking.

1 WHS Act, section 222(1).

2 WHS Act, section s 216(3).

3 WHS Act, section 216(2). A Category 1 offence is one where a person engages in conduct that exposes an individual to a risk of death or serious injury or illness and the person is reckless in that risk.

4 This term is not defined in the WHS Act; it is used within this document to refer in a non-exhaustive way to an injury that has caused nervous system damage liable to lead to mental incapacity or permanent restriction of mobility or involves a major amputation of a limb or parts of the body, for example, amputation above the knee or elbow.

7. If any of the circumstances described in paragraph 6b exist, an application for a WHS undertaking may still be made. However, the applicant must address why a WHS undertaking should still be considered despite the existence of one or more circumstances described in paragraph 6b. Comcare will consider such applications on a case-by-case basis.
8. Comcare will treat all WHS undertaking discussions and negotiations on a without prejudice basis, and these negotiations will not be used by either party in criminal proceedings if commenced under the WHS Act.

What factors are considered before accepting a WHS undertaking?

9. When deciding whether to accept a WHS undertaking, Comcare considers a number of factors, which may encompass one or more of the following:
 - a. the objective gravity of the alleged contravention and the nature of the applicant's alleged conduct;
 - b. the quality of the undertakings offered as compared to the seriousness of the contravention or the alleged contravention;
 - c. the merits and benefits of the proposed undertaking having regard to:
 - i. the nature and extent of the act or omission giving rise to the alleged contravention;
 - ii. the quality of the strategies proposed and the extent to which they are likely to achieve measurable workplace, industry and community benefits; and
 - iii. the degree to which the undertaking delivers benefits to health and safety beyond minimum compliance with the law;
 - d. the applicant's financial ability to meet the terms of the proposed undertaking;
 - e. the significance of the commitments compared to the capability of the applicant;
 - f. the applicant's past performance and history of compliance with work health and safety laws;
 - g. the support the applicant has provided, and has committed to provide into the future to any injured persons or their dependants (e.g. status of recovery and rehabilitation program/s; current employment status and future work capacity; quality of life since the incident);
 - h. input from injured persons, next of kin or guardians (as relevant);
 - i. community expectations and the public interest;⁵
 - j. whether the person proposing the WHS undertaking has consulted within the workplace regarding the proposal of a WHS Undertaking;
 - k. whether the proposed undertakings include clear methods for compliance and assessment;
 - l. whether the person proposing the WHS undertaking has accepted responsibility and clearly articulated an acknowledgment of the alleged contravention together with a statement of regret;
 - m. the extent to which accepting the WHS undertaking will be a more effective means of specifically and generally deterring future contraventions than court proceedings;
 - n. the likely outcome should the matter be dealt with through legal proceedings;
 - o. if the incident involves a fatality or a very serious injury or where prior convictions exist, any exceptional circumstances detailed by the applicant; and
 - p. any other matter which Comcare considers relevant.

⁵ Public interest factors may include the seriousness of the alleged offence, mitigating or aggravating circumstances, the degree of culpability of the alleged offender and the actual or potential harm occasioned to an individual. A more comprehensive list of factors relevant to the public interest is set out in Comcare's Regulatory Guide – Prosecutions.

PROCEDURE FOR GIVING A WHS UNDERTAKING

When can a WHS undertaking be proposed?

10. A WHS undertaking can be proposed at any time, before or after court proceedings have commenced in relation to a contravention. However, in order to enable sufficient time for a proposed undertaking to be considered, Comcare will generally not accept a proposal that is received within three months of a scheduled contested hearing date.
11. The filing of charges under the WHS Act does not preclude any discussions between Comcare and the applicant regarding a WHS undertaking from continuing (or from commencing). If Comcare considers that a proposed WHS undertaking is acceptable after charges have been filed, it will take all reasonable steps to have the proceedings discontinued as soon as possible, noting paragraph 12 below.⁶
12. The decision to discontinue proceedings ultimately lies with the CDPP. Applicants should refer to the Prosecution Policy of the Commonwealth for information in relation to the circumstances under which the Commonwealth Director of Public Prosecutions will discontinue a prosecution (<https://www.cdpp.gov.au/publications/prosecution-policy-commonwealth>).

Is there a form for a proposed WHS undertaking?

13. To allow for the timely development and effective monitoring of a WHS undertaking, Comcare has developed a template form for WHS undertakings at Annexure A.
14. A proposed WHS undertaking must address the 'factors for consideration' as outlined in paragraph 9 above.
15. A proposed WHS undertaking must also include (in addition to the undertakings offered by the applicant) the following general and 'enforceable terms':
 - a. a commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur;
 - b. a statement of regret for the alleged behaviour and its impact on workers and/or other persons;
 - c. a commitment to future effective management of risks;
 - d. a commitment to disseminate information about the WHS undertaking to workers and other relevant parties (which may include Health and Safety Representatives) and in the annual report or equivalent publication;
 - e. a commitment to participate constructively in compliance monitoring activities and strategies that will deliver worker, industry and community benefits;
 - f. an agreement to pay Comcare's costs (as agreed) associated with the WHS undertaking (for example investigation costs, legal and administrative costs, projected costs for monitoring compliance and publishing costs);
 - g. a commitment that where a person seeks to promote the benefits of a WHS undertaking, it is made clear that any such benefits arose as a result of the WHS undertaking;
 - h. a commitment to establish or maintain a work health and safety management system (WHSMS);
 - i. a commitment to ensure the WHS undertaking is audited by a third-party auditor, with a copy of the audit report (accompanied by a letter certifying audit reports have not been changed since receipt from the auditor) provided to Comcare. This includes a commitment to implement audit recommendations.

⁶ WHS Act, section 222(4).

What supporting information should accompany a proposed WHS undertaking?

16. A WHS undertaking should be accompanied by a statutory declaration with any details of prior WHS convictions or findings of guilt under WHS legislation, subject to any local legal constraints such as spent conviction legislation.
17. A person giving a WHS undertaking may choose to give any other supporting information that they think is relevant to the factors Comcare considers when deciding whether to accept a WHS undertaking (listed above).

Who at Comcare receives proposed WHS undertakings and supporting information?

18. A proposed WHS undertaking and supporting information should be sent via email to Comcare's Legal Group at the following address: WHSundertaking@comcare.gov.au.
19. Any questions or queries in relation to a proposed WHS undertaking may also be forwarded to this email address.

What happens if Comcare does not accept a proposed WHS undertaking?

20. Should Comcare intend to reject a proposed WHS undertaking, the applicant will be provided a reasonable opportunity to address the reasons prior to a final decision by Comcare.
21. If Comcare decides not to accept a WHS undertaking, it will provide the applicant with written reasons for its decision.

What happens if Comcare accepts a WHS undertaking?

22. If Comcare decides to accept a WHS undertaking, it will provide the applicant with notice of that decision and publish notice of its reasons on its website.

POST-ACCEPTANCE OF WHS UNDERTAKINGS

Compliance monitoring

23. Comcare will monitor compliance with the WHS undertaking and will not accept an undertaking that does not include methods of compliance and assessment. All costs associated with monitoring compliance will be recovered from the person who is subject to the WHS undertaking.
24. Comcare will monitor and assess compliance in accordance with Comcare's Compliance and Enforcement Policy. For example, verification inspection and/or investigation activities, and/or assessment of third-party audit findings and implemented actions to ensure compliance with the terms and deliverables of the WHS undertaking.

Can a WHS undertaking be withdrawn or varied?

25. If a WHS undertaking has been accepted by Comcare, the person cannot withdraw or vary the WHS undertaking without the written agreement of Comcare.⁷
26. Comcare cannot vary an accepted undertaking to provide for a different alleged contravention of the WHS Act.⁸
27. Should Comcare agree to vary or withdraw an accepted WHS undertaking, Comcare must publish on its website, notice of the withdrawal or variation.⁹

Failure to comply with a WHS undertaking

28. Once a WHS undertaking is accepted, its terms must be complied with.¹⁰ Non-compliance with a WHS undertaking is enforceable by a court and may result in the following orders:¹¹
- > a direction to comply with the WHS undertaking and/or discharge of the WHS undertaking;
 - > monetary fines (maximum penalty includes \$50 000 for an individual and \$250 000 for a body corporate);¹² and
 - > an order to pay Comcare's court costs in relation to non-compliance with a WHS undertaking and/or for monitoring compliance with the WHS undertaking.
29. In addition, Comcare may commence proceedings for an alleged contravention where a WHS undertaking has been contravened and the WHS undertaking has been discharged.¹³

FURTHER INFORMATION

30. For further information, please contact WHSundertaking@comcare.gov.au

7 WHS Act, section 221(1).

8 WHS Act, section 221(2).

9 WHS Act, section 221(3).

10 WHS Act, section 219.

11 WHS Act, sections 220(2) and (3).

12 WHS Act, section 219.

13 WHS Act, section 220(4).

ENFORCEABLE UNDERTAKING

PART 11

Work Health and Safety Act 2011 (Cth)

[insert submission date]

The commitments in this enforceable undertaking
are offered to Comcare

By

[insert *the person*]

[insert ACN or ABN]

PRIVACY STATEMENT

Your privacy is important to us. We will only collect, use or disclose personal information in accordance with the *Privacy Act 1988* (Cth) and if it is reasonably necessary for, or directly related to, one or more of our functions, powers and/or activities. These include functions and activities under the *Safety, Rehabilitation and Compensation Act 1988* (Cth), the *WHS Act*, the *Seafarer's Rehabilitation and Compensation Act 1992* (Cth), and the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* (Cth). If Comcare does not collect personal information from you, for the purposes of its legislated functions or related functions, we may not be able to respond appropriately.

Comcare is the Commonwealth agency authorised by the *WHS Act* to collect personal information relevant to the exercise of functions and powers under the *WHS Act*, *Work Health and Safety Regulations 2011* and the administration and evaluation of Comcare's *WHS* programs. Any personal information collected in these forms will be used for those purposes.

In exercising our functions and powers, we may disclose personal information, subject to confidentiality of information provisions under the *WHS Act*, to the following bodies and agencies, including but not limited to:

- Comcare's internal and external legal advisers
- the Safety, Rehabilitation and Compensation Commission
- a court or tribunal
- state or territory work health and safety regulatory agencies
- personnel engaged by Comcare to conduct research related activities
- enforcement agencies or bodies
- state and territory Coroners
- Commonwealth, state or territory industry regulators
- any other person assisting Comcare in the performance of its functions or exercise of its powers, including contractors and consultants
- any other person where there is an obligation under law to do so (for example but not limited to, responding to the direction of a court to produce documentation).

For further information on how Comcare handles personal information, please read our Privacy Policy on our website. To request a change to your personal information or to make a complaint, please phone or email us at privacy@comcare.gov.au.

ENFORCEABLE UNDERTAKING

Purpose

The purpose of this enforceable undertaking is to document the undertakings offered to Comcare pursuant to Part 11 of the *Work Health and Safety Act 2011* (Cth) (**WHS Act**) in connection with matters relating to alleged contraventions of the WHS Act or the *Work Health and Safety Regulations 2011* (Cth) (**WHS Regulations**).

1. SECTION 1: GENERAL INFORMATION

1.1. Details of the person proposing the undertaking

[ABBREVIATED ENTITY NAME] (ACN/ABN XXX XXX XXX – if applicable) is: -

Registered address – Head Office:	[insert address]
Postal address:	[insert address]
Telephone contact:	[insert telephone contact number(s)]
Email address:	[insert email address]
Status under the WHS Act:	[Premium Paying Agency / Licensee]
Legal structure:	[insert legal structure]
Type of business:	[insert type of business]
Commencement date of the entity:	[insert date]
Number of workers (full-time; part-time; casual):	[insert number of workers by type]
Products and/or services:	[insert brief description of products and/or services]
Comments:	[insert comments]

1.2. Details of the alleged contravention(s)

As a result of Comcare’s investigation, it is alleged that on [insert incident date] [ABBREVIATED ENTITY NAME] failed to discharge its obligations as a person conducting a business or undertaking under [section/regulation] [insert section/regulation] of the [WHS Act/WHS Regulations], in that it did not ensure so far as reasonably practicable the health and safety of workers, namely:

- i. [Describe alleged contravention]

1.3. Details of the events surrounding the alleged contravention e.g. incident details

On [DATE] [... *Include information about the incident, facts and circumstances which may have caused or contributed to the incident; any injuries involved; the person's relationship to the incident.*
DO NOT include personal information or reference to gender and avoid including opinion on how/why the incident occurred].

1.4. Acknowledgement that Comcare alleged a contravention has occurred

It is acknowledged that Comcare has alleged that [ABBREVIATED ENTITY NAME] has contravened [section(s)/regulation(s)] of the [WHS Act/WHS Regulations].

1.5. Details of any injury that arose from the alleged contravention

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

1.6. 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 or Prohibited Activity:	
Action taken in response to notice:	

[For any additional notices, please attach a separate sheet]

Additional notices issued? [YES / NO]

When an alleged contravention is associated with an injury/illness

1.7. Details of the workers' compensation or other benefits provided

[DO NOT include personal information or reference to gender]

[ABBREVIATED ENTITY NAME] has provided the following workers' compensation to the injured person/s:

Date	Description of compensation
[insert date]	[insert details of the type of workers compensation provided (if the injured person(s) is a worker of the person)]

[If more than one injured person, please attach a separate sheet]

More than one person injured? [YES / NO]

1.8. Details of the support provided or proposed to the injured person

Does the alleged contravention involve injury to a person?

No

or

Yes

The injured person is ***[DO NOT include personal information or reference to gender]***:

An employee of the entity:	[YES / NO]
A self-employed person:	[YES / NO]
Other (please specify):	[insert classification]
Not applicable:	[Not applicable]

[ABBREVIATED ENTITY NAME] has provided the following support to the injured person/s or next of kin or guardian (as relevant) ***[DO NOT include personal information or reference to gender]***:

Date	Description of support	Comments

1.9. If the matter involves a death or very serious injury, or where the applicant has relevant prior convictions under the WHS Act, a claim to demonstrate that exceptional circumstances exist that the WHS undertaking is a more appropriate response than pursuing prosecution

Does the contravention involve a death or very serious injury?

No Yes

Does the applicant have relevant prior convictions under the WHS Act within the preceding 5 years of the alleged contravention/incident:

No Yes

If yes, provide details to demonstrate that exceptional circumstances exist.

[insert exceptional circumstances (if applicable)]

1.10. 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)]:

[ABBREVIATED 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

[ABBREVIATED 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

[ABBREVIATED ENTITY NAME] does not have an accredited WHSMS.

1.11. Consultation within the workplace

As a result of the alleged contravention [ABBREVIATED ENTITY NAME] has consulted within the workplace regarding the proposal of a WHS undertaking in the following manner:

[insert any workers; worker groups; contractors; work health and safety representatives; committees etc. as well as how the consultation has occurred (i.e. through what mechanisms and when)].

1.12. A statement of regret that the incident occurred

[ABBREVIATED ENTITY NAME] regrets that the incident on [insert incident date] occurred and the [worker/workers] sustained injury(s) as a result of the incident]. (This should not include an admission of guilt).

1.13. Details of the rectifications to the workplace or work practices made as a result of the alleged contravention

As a result of the alleged contravention [ABBREVIATED ENTITY NAME] has made the following rectifications within the workplace:

[insert rectifications]

Total amount spent on rectifications within the workplace, as outlined above:

\$ [insert dollar amount]

1.14. Statement of assurance about future work health and safety behaviour

[ABBREVIATED ENTITY NAME] is committed to complying with its obligations under the [WHS Act/WHS Regulations] and ensuring, so far as reasonably practicable the health and safety of all workers and other persons who may be affected by its business or undertakings.

1.15. Statement of commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

[ABBREVIATED ENTITY NAME] commits that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence of this type of incident.

1.16. Statement of commitment to the ongoing effective management of work health and safety risks

[ABBREVIATED ENTITY NAME] commits that it will exercise its best endeavours to the ongoing effective management of work health and safety risks.

1.17. Statement of ability to comply with the terms of the WHS undertaking and meet the projected costs of the activities

[ABBREVIATED ENTITY NAME] acknowledges that it has the financial ability to comply with the terms of the enforceable undertaking and has provided evidence with this proposal to support this declaration.

1.18. Details of any prior work health and safety convictions

Comcare 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 [ABBREVIATED ENTITY NAME] has had no prior work health and safety convictions.

or

Yes The list is attached as an annexure.

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

1.19. Statement of assurance relationships with beneficiaries (of donations or scholarship or financial benefit contained in this undertaking)

[ABBREVIATED ENTITY NAME] acknowledges there are no known current relationships with any of the beneficiaries outlined in the enforceable undertaking, other than the current workers of [ABBREVIATED ENTITY NAME] and the injured worker/workers.

or

[ABBREVIATED 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/beneficiaries].

1.20. Statement regarding Intellectual Property Licence

[ABBREVIATED ENTITY NAME] grants Comcare a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence to use, reproduce, distribute, electronically transmit, electronically distribute, adapt and modify any materials developed as a result of this enforceable undertaking.

1.21. Acknowledgement of WHS undertakings guidelines

[ABBREVIATED ENTITY NAME] has read and understood Comcare's enforceable undertaking guidelines for proposing a WHS undertaking and any other identified information [insert other information (if applicable)].

2. SECTION 2: ENFORCEABLE TERMS

2.1 Acknowledgement that the WHS undertaking will be published and publicised

[ABBREVIATED ENTITY NAME] acknowledges that the enforceable undertaking will be published on Comcare's internet site and may be referenced in Comcare's publications.

[ABBREVIATED 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.

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].

2.2 A commitment regarding linking the strategy and promotion of benefits to the WHS undertaking

[ABBREVIATED 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.

2.3 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)

[ABBREVIATED 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 [ABBREVIATED 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]:
[ABBREVIATED 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. [ABBREVIATED ENTITY NAME] 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]:
[ABBREVIATED ENTITY NAME] is not required to publish an annual report.

[ABBREVIATED ENTITY NAME] commits that any strategies that involve safety information being provided to the industry and/or community will be subject to Comcare's review and approval of the content prior to dissemination.

2.4 A commitment to participate constructively in all compliance monitoring activities of the undertaking

[ABBREVIATED 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 Comcare by the due date for the term.

[ABBREVIATED ENTITY NAME] acknowledges that Comcare 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 Comcare that the undertaking has been completely discharged.

[ABBREVIATED ENTITY NAME] acknowledges that Comcare may initiate additional compliance monitoring activities, such as verification inspections, as considered necessary at Comcare's expense.

2.5 Undertakings that will deliver benefits for workplace, industry and community

[Undertakings 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.]

Undertakings 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.

Undertakings related to the alleged contravention are to be included in the enforceable undertaking. e.g. if the incident related to an apprentice who was injured in a 'confined space' incident, a strategy for improved work procedures to reduce the risk of working within confined spaces or to improve safety outcomes for and vulnerable workers.

The undertakings 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].

➤ **Undertakings that will deliver workplace benefits**

Insert title of undertaking

Scope:

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

Target issue:

Please describe the issue that this undertaking 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 undertaking, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable with an agreed process for monitoring and compliance by Comcare.

Audience / beneficiaries:

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

Delivery method:

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

Timeframes:

Please articulate when the undertaking 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 undertaking if it 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 undertaking. 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

➤ **Undertakings that will deliver industry benefits**

Insert title of undertaking

Scope:

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

Target issue:

Please describe the issue that this undertaking 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 undertaking, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable with an agreed process for monitoring and compliance by Comcare.

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

Timeframes:

Please articulate when the undertaking 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 undertaking if it 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

➤ **Undertakings that will deliver community benefits**

Insert title of undertaking

Scope:

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

Target issue:

Please describe the issue that this undertaking 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 undertaking, i.e. the specific product/s and/or service/s that will be produced and/or delivered. Outputs must be clear, specific and measurable with an agreed process for monitoring and compliance by Comcare.

Audience / beneficiaries:

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

Delivery method:

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

Timeframes:

Please articulate when the undertaking 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 undertaking if it 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

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

[Please choose the statement that is most appropriate]:

[ABBREVIATED ENTITY NAME] is committed to establishing a WHSMS system acceptable to Comcare, 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.

[ABBREVIATED ENTITY NAME] acknowledges that the WHSMS will be maintained in accordance with the standard.

or

[ABBREVIATED 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.

[ABBREVIATED ENTITY NAME] acknowledges that the WHSMS will be maintained in accordance with the standard.

2.7 A commitment to ensure the WHSMS is audited by third-party auditors

[ABBREVIATED 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 Comcare.

[ABBREVIATED 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.

[ABBREVIATED ENTITY NAME] acknowledges that details of the auditors' qualifications against the stated requirements will be provided with audit reports submitted to Comcare.

[ABBREVIATED 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.

2.8 A commitment to provide a copy of each finalised WHSMS audit report to Comcare

[ABBREVIATED ENTITY NAME] acknowledges that audit reports received from the auditor will be sent to Comcare, 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.

[ABBREVIATED ENTITY NAME] acknowledges that within [insert timeframe] of receipt of the auditor's written report, Comcare will be advised of the intended action in addressing each of the report's recommendations.

2.9 A commitment to implement the recommendations from these audits (unless otherwise negotiated with Comcare)

[ABBREVIATED 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 Comcare.

2.10 Minimum spend

[insert the person's commitment to a minimum spend for the undertaking, inclusive of Comcare's recoverable costs.

The breakdown should include the activities and any estimated costs].

3. OTHER ENFORCEABLE TERMS

3.1 Term

The deliverables proposed by the undertaking must be met by [agreed date]

This undertaking will conclude when Comcare confirms in writing that all terms have been fully met (within the agreed term of the undertaking), and all undertakings are completely discharged.

3.2 Reporting

[ABBREVIATED ENTITY NAME] must:

- i. provide a formal report to Comcare, on the first working day of each calendar month, on the development and/or implementation of any measures it has committed to develop and/or implement in accordance with this undertaking;
- ii. provide all documents and information requested by Comcare from time to time for the purpose of enabling Comcare to monitor compliance with this undertaking;
- iii. develop and provide to Comcare, within one calendar month of the formal acceptance of this undertaking, procedures which will ensure that [ABBREVIATED ENTITY NAME], its board and senior management, and any workers or other persons affected by this undertaking (including any affected person/s or their family) are regularly informed on the implementation of measures described in or effected in accordance with this undertaking.

3.3 Costs

[ABBREVIATED ENTITY NAME] agrees and undertakes to bear, reimburse, and/or indemnify Comcare for any costs, fees or expenses incurred by Comcare as a result or in respect of its investigation into the incident or the negotiation of the proposed undertaking, as agreed between Comcare and the proposer of the undertaking.

3.4 Variation

If [ABBREVIATED ENTITY NAME] proposes to vary this undertaking, then:

- i. [ABBREVIATED ENTITY NAME] will submit its request to vary this undertaking in writing to Comcare, giving reasons for the request
- ii. upon receipt of the request, Comcare, in its absolute discretion, may decide whether or not to allow a variation to this undertaking
- iii. Comcare's written approval of any request to vary this undertaking, including but not limited to a letter or an instrument of variation, constitutes a variation to this undertaking.

3.5 Enforceability

[ABBREVIATED ENTITY NAME] acknowledges that this undertaking is enforceable at law and that it may be subject to penalties if it does not comply with this undertaking.

Without limiting the generality of this clause, Comcare may, in its absolute discretion, deem any finding by the auditor that [ABBREVIATED ENTITY NAME] has failed to give full effect to any provisions of this undertaking to be a breach of this undertaking.

Without limiting any other power, right, authority, or privilege it may enjoy, Comcare may, in proceedings arising from any breach or anticipated breach of this undertaking, among other things:

- i. apply for the imposition of a penalty
- ii. apply for an order directing compliance with the undertaking
- iii. apply for an order discharging this undertaking and pursue or recommence the proceedings, or if no proceedings are on foot, commence proceedings against [ABBREVIATED ENTITY NAME] in respect of the alleged contravention or any matters dealt with in the [report of investigation/inspector's report]
- iv. apply for an order directing [ABBREVIATED ENTITY NAME] to pay the costs of the proceedings to the Commonwealth
- v. apply for an order directing [ABBREVIATED ENTITY NAME] to pay Comcare's reasonable costs in monitoring compliance with this undertaking in the future, to the Commonwealth
- vi. apply for any further order it considers appropriate.
- vii. if [ABBREVIATED ENTITY NAME] fails to comply, or proposes a failure to comply, or withdraws this undertaking then Comcare may apply for an order discharging this undertaking and:
 - a. may pursue or recommence the proceedings, or
 - b. if no proceedings are on foot, commence proceedings against [ABBREVIATED ENTITY NAME] in respect of the alleged contravention resulting from the incident or any matter dealt with in the [report of investigation/inspector's report], and
 - c. in any such proceedings [ABBREVIATED ENTITY NAME] cannot object to Comcare tendering this undertaking.

Any act or omission by [ABBREVIATED ENTITY NAME] which is inconsistent with or in contravention of this undertaking is and may be deemed by Comcare to be a breach of this undertaking.

[ABBREVIATED ENTITY NAME] acknowledges that it will bear the costs of the proceedings incurred as at the undertaking date or any other action taken by Comcare in accordance with or pursuant to this clause.

3.6 Acknowledgements

[ABBREVIATED ENTITY NAME] acknowledges that:

- i. Comcare's acceptance of this undertaking does not affect Comcare's:
 - a. power to investigate or pursue civil or criminal proceedings in respect of similar or related incidents or injuries; or
 - b. authorities, powers, and obligations in respect of any conduct of [ABBREVIATED ENTITY NAME] which is not the conduct which gave rise to the incident.

- ii. This undertaking in no way derogates from the rights and remedies available to any other person or entity other than [ABBREVIATED ENTITY NAME] and Comcare arising from any conduct described in this undertaking or arising from future conduct.
- iii. This undertaking has no operative force until accepted in writing by Comcare.

5 Section 3: Offer of undertaking

As a duly authorised person of	(insert person)	_____
I offer this undertaking and	(insert person)	_____
commit		_____
to the terms herein, to be completed on or before	/	/

Signed: _____
Person OR Duly authorised person *Print name*

Position: _____ Dated at: _____
this day of _____, 20

6 Section 4: Comcare'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 Comcare. The enforceable undertaking will be concluded on written advice from Comcare when all requirements of the undertaking have been satisfactorily executed.

I accept this undertaking as an enforceable undertaking under section 216 of the *Work Health and Safety Act 2011*.

Signed: _____
Person OR Duly authorised person *Print name*

Position: _____ Dated at: _____
this day of _____, 20

Annexure 1 – Public Notice of Comcare’s acceptance of undertaking

Notice of Acceptance of an Enforceable Undertaking under Part 11 of the *Work Health and Safety Act 2011* (Cth) (WHS Act).

On [insert incident date], [Briefly describe the incident, e.g. a worker performing a business or undertaking for [insert PCBU name], suffered injuries while [insert work activity being performed] at [insert location].

Comcare investigated the incident and subsequently alleged that [insert entity name] contravened [insert section/regulation] of the [*Work Health and Safety Act 2011/Work Health and Safety Regulations 2011*].

This notice has been placed under the terms of an enforceable undertaking and acknowledges acceptance of an undertaking, that is enforceable under the WHS Act, from [insert entity name], [insert ACN/ABN] as finalisation of the abovementioned alleged contravention.

[statement of regret]

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.comcare.gov.au.