

## Enforceable Undertaking



Access  
Canberra.

**WORKSAFE ACT**

*Work Health and Safety Act 2011 (WHS Act) –  
Work Health and Safety Regulation 2011 (WHS Regulation)*

Enforceable Undertaking

Date: 18 September 2019

Undertaking to – WorkSafe ACT - given for the purposes of part 11 of the *Work Health and Safety Act 2011 (WHS Act)*.

Section 216.

By: Hindmarsh Construction Australia Pty Ltd

ACN 126 578 176

### Privacy statement

WorkSafe ACT 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 the WorkSafe ACT given for the purposes of part 11 of the WHS Act. This information will be managed within the requirements of the current ACT government privacy policy.

The department 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. The department 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 can be found at <http://www.cmtedd.act.gov.au/legal/privacy>.

## Enforceable Undertaking

### SECTION 1 - GENERAL INFORMATION

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

Residential address:	Level 1, 41/65 Constitution Avenue, Campbell ACT 2612
Postal address (if different from residential address):	
Telephone contact number:	+61 2 6129 1500
Mobile contact number:	
Email address:	act@hindmarsh.com.au
Legal structure:	Proprietary Limited Company ACN 126 578 176
Type of business:	Construction
Commencement date of the entity:	14 <sup>th</sup> August 2007
Number of workers: (Full Time / Part Time)	203
Products and Services:	Residential, retail, government, industrial and commercial property development and construction management
Comments:	

#### b. Details of the alleged contravention

It is alleged by WorkSafe ACT that on 11 October 2017 at Marigal Gardens Project Site, Block 4 Section 239, Kambah in the ACT (**Marigal Gardens Site**) that Hindmarsh Construction Australia Pty Ltd (**Hindmarsh**) had a health and safety duty within the meaning of section 30(a) of the *Work Health and Safety Act 2011 (WHS Act)*, specifically the primary duty of care required by section 19 of the WHS Act, and it failed to comply with that duty.

#### c. Details of the events surrounding the alleged contravention, e.g. incident details

On 11 October 2017 a CAT skid steer loader (the bobcat) conducting excavation works at the Marigal Gardens Site reversed into a shallow plumbing trench.

There were two workers undertaking plumbing works in the trench at the time. One of the workers was pinned under the bobcat and sustained injuries requiring hospitalisation. Hindmarsh understand the second worker received minor injuries.

WorkSafe ACT alleges that Hindmarsh did not comply with its primary health and safety duty pursuant to section 19 of the WHS Act as it did not do all that was reasonably practicable to ensure the health and safety of its workers and others by:

- Failing to have sufficient controls to prevent workers working near items of mobile plant.
- Failing to ensure the worksite had physical barricades and physical exclusion zones.

#### d. An acknowledgement that WorkSafe ACT alleged a contravention has occurred

Hindmarsh acknowledges that WorkSafe ACT has alleged it has contravened the WHS Act.

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

Two workers were injured. Hindmarsh understands that the first worker sustained a fracture, laceration and puncture wound to leg and the second worker sustained superficial lacerations.

## Enforceable Undertaking

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

Notices received:

Yes (provide details)       No

Date issued	Notice type	Notice number	Contravention	Action taken
11.10.17	Non Disturbance Notice	N 05771-7	As a result of an incident that occurred on 11 October 2017 where a CAT skid steer loader maneuvering onsite entered a trench where two workers were undertaking work. The skid steer loader on impacting the workers caused injuries. Notifiable Incident.	Existing temporary construction fencing around the site to be secured. No work to be undertaken at the site with the exception of staff assisting the WorkSafe ACT Inspectors.
11.10.17	Prohibition Notice	PN05771 SA5 MWH	Breach of s19 WHS Act	Safe system of work established and implemented.

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

Hindmarsh 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 other persons 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)**

The injured workers were not employed by Hindmarsh.

Separately EAP counselling has been made available to all Hindmarsh employees and all contractors

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

Does the contravention involve injury to person?

Yes       No

Hindmarsh has enquired after the welfare of the workers on a number of occasions over the past 20 months.

**i. If the matter involves a fatality or very serious injury<sup>1</sup>, a claim to demonstrate that exceptional circumstances exist that the enforceable undertaking is a more appropriate response than pursuing prosecution**

Does the contravention involve a fatality or very serious injury?

Yes       No

## Enforceable Undertaking

**j. The details of any existing occupational health and safety management system at the workplace including the level of auditing currently undertaken**

Hindmarsh has a WHS Management System (WHSMS) which has been developed in accordance with the WHS legislative framework and is tailored to the operating characteristics of the business.

Hindmarsh's WHSMS is certified to ISO 45001:2018, and accredited by the Office of the Federal Safety Commissioner (OFSC) Accreditation Scheme.

The current audit program includes:

- Annual third party ISO45001 certification audits
- Annual OFSC accreditation
- Monthly system audits conducted by external client appointed auditors (client dependent)
- Quarterly site audits conducted by SQE Managers including Cross Border Audits conducted by SQE Managers from other jurisdictions.
- Senior Management Reviews conducted as per the Senior Management Inspection and Audit Schedule

Hindmarsh's audit programs are supported by:

- Weekly site inspections conducted by Site Managers
- Monthly site documentation reviews conducted by Project Managers
- Monthly SWMS Field Inspections conducted by site team members
- Proactive Hazard Reporting and rectification conducted by site teams and logged via online hazard reporting module
- Safety Committee meetings conducted by elected safety committee members and HSR's

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

Hindmarsh has consulted with Senior Management, its national Safety, Quality and Environment Committee, and key ACT Site Team members on development of this EU proposal.

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

Hindmarsh, its officers and employees are committed to the safety of all workers and other persons who may be affected by its business or undertaking. Hindmarsh sincerely regrets that the incident on 11 October 2017 occurred, and is committed to ensuring, so far as reasonably practicable, the ongoing health and safety of its workers and other persons. This undertaking provides with it the ability to make further improvements in relation to health and safety.

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

Item	Details
1	Development and introduction of a formalized pre-start board for every active Hindmarsh site nationally, prompting a description of the daily high-risk work activities, vehicle and pedestrian movement plan, and site worker interface. Photographs of the pre-start board must now be uploaded to the online site diary on a daily basis to verify implementation.

**Total amount spent on rectifications**                      **\$10,650**

**n. An acknowledgement that the enforceable undertaking may be published and publicised**

Hindmarsh acknowledges that this EU proposal may be published on the Access Canberra website and may be referenced in WorkSafe ACT's publications.

## Enforceable Undertaking

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

Hindmarsh has the resources and financial ability to comply with the terms of this EU proposal. The EU has the support of the Hindmarsh Management Team.

**p. Statement regarding relationships with beneficiaries**

Hindmarsh has no relationships with the parties who will receive benefits under this undertaking, other than as an employer and industry member, or member of the community.

**q. Intellectual property licence**

Hindmarsh grants WorkSafe ACT a permanent, irrevocable, worldwide, royalty free, non-exclusive licence to use, reproduce, electronically transmit, electronically distribute, distribute, adapt and modify any materials developed as a result of this EU.

**r. The person may be required to provide a statutory declaration**

N/A.

**s. Acknowledgement of enforceable undertakings overview and guidelines**

Hindmarsh has read and understood the *Enforceable Undertakings Overview and Guidelines* provided by WorkSafe ACT and accessible on the Access Canberra website.

## SECTION 2 – ENFORCEABLE TERMS

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

Hindmarsh commits that the conduct that led to the alleged contravention has ceased.

In implementing the rectifications listed above, Hindmarsh has taken and will continue to take reasonably practicable steps to prevent a recurrence of this type of incident.

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

Hindmarsh commits that it will take all reasonably practicable steps in respect of the ongoing effective management of work health and safety risks.

**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)**

Hindmarsh commits to disseminating information about this EU to workers, and WHS representatives associated with its business.

The information will be delivered through:

- National construction leadership team meetings
- Project managers meetings
- Site team meetings
- Safety committee meetings and safety work groups

## **Enforceable Undertaking**

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

Hindmarsh commits to participating constructively in all compliance monitoring activities regarding this undertaking. Evidence demonstrating compliance with the terms of this undertaking will be provided to WorkSafe ACT.

The evidence provided to demonstrate compliance with the undertaking will be retained by Hindmarsh until advised by WorkSafe ACT, that the undertaking has been completely discharged.

It is acknowledged that WorkSafe ACT may undertake other compliance activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe ACT. It is acknowledged that WorkSafe ACT may initiate additional compliance monitoring activities, such as inspection, as considered necessary at WorkSafe ACT's expense.

## **STRATEGIES THAT WILL DELIVER BENEFIT TO WORKERS, INDUSTRY AND THE COMMUNITY.**

### **e. STRATEGIES THAT WILL DELIVER WORKER BENEFITS**

#### **Strategy 1 – National safety leadership training package – Estimated cost \$400,000**

##### **Scope**

This strategy involves the delivery of a bespoke national safety leadership training package to all Hindmarsh site staff.

The training package will be provided to Hindmarsh site staff nationally– comprising the following roles:

- Cadets
- Contractor administrators
- Contract managers
- Project coordinators
- Project engineers
- Project managers
- Service managers
- Site coordinator
- Site engineer
- Site managers
- Site safety quality and environment coordinators
- Site supervisors
- Subcontractor supervisors

Hindmarsh will pay its employed site staff nationally (approximately 140 individuals) to undergo the safety leadership training package.

There will be approximately 50 spaces made available to Hindmarsh's subcontractor supervisors over the course of the training package – with opportunities allocated to Hindmarsh preferred subcontractors.

The safety leadership training package incorporates nationally recognized training modules on:

- WHS legislation – SLCSRL402 – Implement construction industry work health and safety legislation
- WHS culture on sites – SLCSRL401 – Establish effective positive safety culture programs

##### **Tangible Outcome**

- Delivery of the VET recognised safety leadership program 'Safety Leadership Foundations' to employed Hindmarsh site staff.
- Accreditation and standardised competencies for all Hindmarsh site staff. Site staff will receive accreditation towards the full 1060NAT Certificate IV in Safety Leadership (WHS) – Construction.
- Improved WHS knowledge and more confident leadership and decision making capability for site staff nationally

## Enforceable Undertaking

### Beneficiaries / audience

- Hindmarsh site staff
- Hindmarsh sites
- Broader construction industry

### Delivery method

Training will be delivered by RTO, Safety Dimensions.

The training will be delivered over approximately 19 courses, in order to ensure all Hindmarsh and subcontractor site staff (estimated at approximately 190 individuals) are accommodated.

### Timeframe

Delivery of the Safety Leadership Foundations training modules will commence within one month of acceptance of this EU proposal.

Completion of modules by September 2021.

### Safety Outcome

- Increase in WHS knowledge across Hindmarsh's site staff nationally
- Increased awareness of the full range of hazards and risks on site and how to control and monitor these - leading to better informed decisions
- Improved knowledge and ownership of roles and responsibilities on site
- Reinforced accountability for supervisors and managers
- Enhanced confidence and decision making capability for Hindmarsh's young workers
- Enhanced organisational safety leadership - across all levels at Hindmarsh
- Enhanced long term safety culture at Hindmarsh
- Safer sites

Total amount to be spent on benefits to workers

\$400,000

## f. STRATEGIES THAT WILL DELIVER INDUSTRY BENEFITS

### Strategy 2 – Purchase of a Fork Lift for ACT Training Facility (CIT) – Estimated Cost \$40,000

#### Scope

This strategy involves Hindmarsh partnering with an ACT Registered Training Organisation to provide a piece of mobile plant for use in high risk work license/LF courses.

Hindmarsh will purchase a Toyota 32-8FG20 forklift for the Canberra Institute of Technology (CIT) High-Risk Training facility.

The forklift will be a dedicated training resource for CIT, and will facilitate the completion of practical operational components of the high risk work courses by trainees in controlled conditions.

The strategy aims to develop greater knowledge, awareness and capability of young workers and trainees in relation to hazards and risks involved with mobile plant operations.

## **Enforceable Undertaking**

### **Tangible Outcome**

- Purchase and delivery of a forklift to CIT
- Provision of two after sales services for the forklift
- Dedicated training resource for CIT
- Enhanced training opportunity for trainee forklift operators and other high-risk work trainees
- Enhanced reputational benefit for CIT

### **Beneficiaries / audience**

- Trainee forklift operators and other high-risk work trainees undertaking qualifications at CIT
- CIT
- Workplaces where forklifts operate in the ACT and surrounding region

### **Delivery method**

Purchase and delivery of a suitable forklift.

### **Timeframe**

Purchase will be completed within 2 months of the EU proposal being accepted.

### **Safety Outcome**

- Enhanced practical hands-on training opportunities for trainee forklift operators in the ACT and surrounding region
- Training of more skilled and confident workers - working in and around mobile plant in the ACT and surrounding region
- Safer workplaces where forklifts operate

### **Strategy 3 – Certificate IV WHS Scholarship and Tool Voucher in 2020 and 2021 – Estimated Cost \$6,500**

#### **Scope**

This strategy involves Hindmarsh partnering with the ACT Construction Industry Training Council (CITC) to reward an apprentice in 2020 and 2021 for their contribution towards construction industry safety culture.

Hindmarsh will develop an award category with CITC to recognise and reward a construction apprentice in the ACT who has shown a proclivity towards safety, or who has demonstrated exemplary behavior in relation to safety. Apprentices from all RTOs in the ACT, at any stage of their apprenticeship, will be eligible to compete for the award.

Hindmarsh will present the award recipient with:

- A scholarship to study a Certificate IV – WHS and
- A \$500 voucher for use at Sydney Tools.



## Enforceable Undertaking

The scholarship and voucher will be awarded by CITC to one award recipient in 2020 and one award recipient in 2021.

The strategy aims to encourage and promote WHS awareness and capability for young and inexperienced apprentices who are training for a trade qualification.

### Tangible Outcome

- Development of an award / recognition for a young and / or inexperienced apprentice in the ACT
- Scholarship to study a Certificate IV in WHS in 2020 and 2021
- Provision of a \$500 voucher for the purchase of tools and equipment at Sydney Tools in 2020 and 2021
- Enhanced profile and reputation for CITC
- Profile raising for a young ACT construction industry apprentice award recipient

### Beneficiaries / audience

- ACT construction industry apprentices
- CITC
- Construction sites in ACT and surrounding region

### Delivery method

Hindmarsh will fund the cost of a Certificate IV in WHS course and provide a \$500 voucher at Sydney Tools to an award recipient in 2020 and 2021.

### Timeframe

Hindmarsh will develop a strategy in consultation with CITC for the scope, development and implementation of the award category within 3 months of the EU proposal being accepted.

### Safety Outcome

- Improved opportunity for young apprentices in the ACT construction industry to develop WHS competencies, awareness and confidence
- Training of more skilled and confident workers
- Safer workplaces

Total amount to be spent on benefits to industry

## g. STRATEGIES THAT WILL DELIVER COMMUNITY BENEFITS

**Strategy 4 – Donation of a mobile support vehicle to OzHelp – Estimated Cost \$60,000**

### Scope

The aim of this strategy is to provide resources to a not-for-profit organization to improve mental and physical wellbeing of workers in the ACT region, particularly in the construction industry.

Ozhelph is a nationally recognised leading provider of well-being services and offers counselling, mental health services and and suicide prevention support to workers onsite.

## Enforceable Undertaking

Hindmarsh will purchase a dedicated vehicle for OzHelp - from which OzHelp can provide its mobile physical and mental health screening, training and counselling services.

Hindmarsh will liaise with OzHelp on selection of an appropriate vehicle. It is envisaged that the vehicle will require some modification, to be determined in consultation with OzHelp, to ensure it is fit for purpose.

### Tangible Outcome

- Selection and purchase of a bespoke vehicle for OzHelp
- Two year support / servicing package for the vehicle
- Increased accessibility to physical and mental well-being resources for Hindmarsh employees and contractors
- Increased access to supports, and improved mental health and wellbeing in the broader community

### Beneficiaries / audience

- Workers on Hindmarsh construction sites
- Families and friends of Hindmarsh employees
- Individuals suffering mental and / or physical ill health in construction
- Broader ACT and regional community

### Delivery method

Purchase and delivery of a dedicated vehicle to OzHelp.

### Timeframe

Purchase of the vehicle will be completed within 5 months of acceptance of this EU.

Total amount to be spent on benefits to the

\$60,000

Total cost of the strategies proposed (e-g)

Total amount to be spent on strategies

\$506,500

#### h. A commitment regarding linking the promotion of benefits to the enforceable undertaking

Hindmarsh is committed to linking the promotion of the benefits arising from this undertaking and acknowledges that this undertaking was entered into as a result of an alleged contravention of the WHS Act.

#### i. A commitment to establish and maintain (or maintain if a system already exists) an occupational health and safety management system (OHSMS)

Hindmarsh is committed to ensuring its existing WHSMS complies with ISO 45001.

## **Enforceable Undertaking**

### **j. A commitment to ensure the OHSMS is audited by third party auditors**

Hindmarsh is committed to having its WHSMS audited by an external accredited third-party auditor (DNV) that meets ISO45001 in accordance with established timeframes. It acknowledges that the auditor selected to perform the audit will meet the qualification requirements as set by WorkSafe ACT and that details of the auditor's qualifications against the stated requirements will be provided with the audit reports to WorkSafe ACT.

### **k. A commitment to provide a copy of each finalised OHSMS audit report to WorkSafe ACT**

Hindmarsh acknowledges that audit reports received from the auditor will be made available to WorkSafe ACT within one month of being received together with a letter certifying that the report has not been altered from the copy provided to Hindmarsh by the auditor.

Hindmarsh acknowledges that it will provide a written report to WorkSafe ACT within one month of providing the audit to WorkSafe ACT advising the intended action in addressing each of the report's recommendations.

### **l. A commitment to implement the recommendations from these audits (unless otherwise negotiated with WorkSafe ACT)**

Hindmarsh commits to ensuring that the recommendations resulting from the OHSMS audit will be fully implemented within six months of receiving the audit report, unless otherwise agreed by WorkSafe ACT.

### **m. Timeframe**

Hindmarsh commits to implementing the aforementioned strategies within 24 months of acceptance of the undertaking or as agreed in consultation with WorkSafe ACT.

# Enforceable Undertaking

## SECTION 3 – OFFER OF UNDERTAKING

As a duly authorised person of

**Hindmarsh Construction Australia Pty Ltd**

I offer this undertaking and commit to the terms here in.

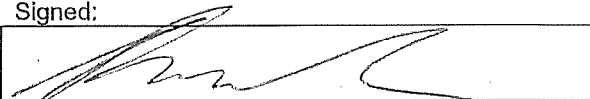
Name:

ROWAN HINDMARSH

Position:

CHIEF EXECUTIVE OFFICER

Signed:



Dated at

CAMPBELL      this 16<sup>TH</sup>  
(Suburb)

Day of

SEPTEMBER      2019  
(Month)      (Year)

*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 WorkSafe ACT. The enforceable undertaking will be concluded on written advice from WorkSafe ACT 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*.

Name:

Bradley Cummins

Position:

Assistant Director - P 05771

Signed:



WorkSafe ACT

Dated at

Dickson      this 18th  
(Suburb)

Day of

September      2019  
(Month)      (Year)