

Work Health and Safety Act 2012 (SA)

Part 11 Enforceable Undertaking

REASON FOR DECISION

Entity: The Trustee for the Shanahan Family Trust t/a AMS Built Pty Ltd (AMS Built)
ABN: 46 368 569 812
Entity Address: Withheld
Location of incident: 65 Gould Road Stirling, SA 5152
Date of incident: 19 April 2023

1. History of the application

- 1.1 The undertaking given by AMS Built relates to an alleged contravention (incident) that occurred at 65 Gould Road Stirling, SA 5152 (the workplace).
- 1.2 The worker was employed by Ruediger Constructions Pty Ltd, whereby AMS Built was the principal contractor for the work site.
- 1.3 On 19 April 2023, construction works had commenced on the first floor of the workplace. During these works, a worker fell backwards through an unguarded open stairwell for a distance of about 3.5 metres. As a result of the fall, the worker sustained a traumatic brain injury, a cranial fracture and facial fractures.
- 1.4 Following an investigation by SafeWork SA (SWSA) inspectors, prosecution action was commenced by the Crown Solicitors Office (by complaint and summons) against AMS Built Pty Ltd, who had a health and safety duty pursuant to section 19(1) of the Work Health and Safety Act 2012 (SA) (the WHS Act), for failing to comply, so far as a reasonably practicable, with the duty contrary to section 19 (3) (a) failing to provide a work environment without risks to health and safety and 19 (3)(c) failing to provide a safe system of work and section 46, failing to consult with other duty holders, of the WHS Act 2012 (SA) (WHS Act) resulting in a category 2 (section 32) charge.
- 1.5 On 16 April 2025, AMS Built's legal representation contacted the SWSA Regulatory Assurance Unit notifying of AMS Built's intention to submit an enforceable undertaking (EU) application for this matter.
- 1.6 On 30 July 2025, after negotiations with AMS Built, a final EU application submission was presented for assessment. An evaluation of the revised EU and based on the amendments made to the EU and supporting documents received, the EU was

recommended to be considered for acceptance by the Regulator. The Regulator (A/Executive Director, SWSA) considered the EU application and agreed to and subsequently signed the EU agreement on 5 August 2025.

2. Legislation and Policy

- 2.1 It is alleged that AMS Built, who had a health and safety duty pursuant to section 19 (1) and 46 of the WHS Act failed to comply, so far as reasonably practicable, with the duty contrary to section 19(3)(a) and (c) and section 46 of the WHS Act.
- 2.2. Pursuant to section 216 (1) of the WHS Act the WHS regulator may accept a written undertaking given by a person in connection with a matter relating to a contravention.
- 2.3. Pursuant to section 217(2) of the WHS Act, the WHS regulator must issue, and publish on the WHS regulator's website, general guidelines in relation to the acceptance of WHS undertakings under the WHS Act.

3. Material and evidence considered by WHS regulator

3.1 In deciding this matter, the WHS regulator has considered the following documents:

1. Work Health and Safety Act 2012(SA) & Regulations 2012.
2. National Compliance and Enforcement Policy (Part 7 criteria)
3. SWSA Enforceable Undertaking Application Guidelines dated September 2024
4. WHS EU submitted by AMS Built dated 29 July 2025
5. Complaint and Summons prepared by Crown Solicitors Office
6. Brief of Evidence prepared by SWSA Investigator
7. Victim Impact submission (if presented)

4. Findings on material questions of fact – Regulator

- 4.1. I regard the Guidelines for the acceptance of an enforceable undertaking dated September 2024, contains considerations which are relevant and appropriate to my decision.
- 4.2. I find the undertaking given by AMS Built Pty Ltd satisfies the formal requirements of the WHS Act and the policy requirements discussed above with respect to the operation of Part 11 of the WHS Act, as they have been published.
- 4.3. I find the factual background to the alleged contravention is set out in section 1 of AMS Built Pty Ltd's undertaking.
- 4.4. The quantum of the undertaking and the respective financial commitments of AMS Built Pty Ltd are proportionate to the gravity of the alleged contraventions by AMS Built Pty Ltd and account for the benefits to them avoiding prosecution.
- 4.5. I find that AMS Built Pty Ltd, who had a health and safety duty under the WHS Act, has failed to comply, so far as reasonably practicable, with that duty contrary to section 19 and 46 of the WHS Act. I find that AMS Built Pty Ltd have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.

- 4.6. I acknowledge the assurance given by AMS Built Pty Ltd that the conduct that led to the alleged contravention has ceased and the commitment to ensuring the ongoing effective management of risks to health and safety in the future.
- 4.8 I find the undertaking commits AMS Built Pty Ltd to a standard that is higher than the recognised compliance for the activity and/or to activities over and beyond recognised compliance levels.
- 4.9. I find the undertaking would constitute tangible benefits for workers, industry, and the community.

5. Decision

- 5.1 In making my decision, I have considered and had regard to the evidence and other material referred to in paragraph 3 above, and to my findings referred to in paragraph 4 above.
- 5.2 Because AMS Built Pty Ltd have submitted an EU application, in accordance with the requirements of the WHS Act and policy, my power whether to accept the undertaking under section 216(1) of the WHS Act is enabled.
- 5.3 Based on the evidence, findings and having regard to the objects of the WHS Act, I have carefully considered this matter, and I believe the undertaking given by AMS Built Pty Ltd is an appropriate enforcement option.
- 5.4 I have concluded that an EU is the preferred enforcement option, rather than continuing with prosecution, regarding the opportunity to provide lasting organisational change within AMS Built Pty Ltd and the implementation of monitored and targeted health and safety improvements that will deliver benefits to workers, industry, and the community.
- 5.4 Under section 216(1) of the WHS Act, it is my decision to accept the Trustee for the Shanahan Family Trust t/a AMS Built Pty Ltd.'s Enforceable Undertaking dated 29 July 2025 and signed under my hand on 5 August 2025.



Robert Templeton
A/Executive Director,
SafeWork SA
11 August 2025