

## Work Health and Safety Act 2012 (SA)

### Part 11 Enforceable Undertaking

## REASON FOR DECISION

**Entity:** G L Hausler Pty Ltd

**ABN:** 96 153 946 804

**Entity Address:** 347 Lovers Lane, Morgan SA 5320  
PO Box 19, Morgan SA 5320

**Location of incident:** 347 Lovers Lane, Morgan SA 5320

**Date of incident:** 8 August 2022

### 1. History of the application

- 1.1 The undertaking given by G L Hausler Pty Ltd (Hausler) relates to an alleged contravention (incident) that occurred at 347 Lovers Lane, Morgan SA 5320 (the workplace).
- 1.2 The worker (Injured Person – IP) was a contractor engaged by Hausler to undertake repairs to an excavator bucket (2400 mm x 800 mm in dimension and with a mass of approximately 650kg).
- 1.3 To perform the repair, the excavator bucket needed to be raised from the ground, and for this reason the excavator bucket was lifted from the ground with forklift tynes and suspended at a convenient height. The bucket was not attached or secured to the forklift tynes. A pneumatic chisel was used by the IP on the excavator bucket whilst it was suspended by forklift tynes. The use of the pneumatic chisel likely resulted in a rotating force causing the excavator bucket to move and fall from the forklift tynes. The excavator bucket struck the IP's back and legs as it fell resulting in serious and significant back and leg injuries.
- 1.4 Following an investigation by SafeWork SA (SWSA) inspectors, prosecution action was commenced by the Crown Solicitors Office (by complaint and summons) on 23 August 2023 against Hausler who had a health and safety duty pursuant to section 19 of the *Work Health and Safety Act 2012 (SA)* (the WHS Act). It was alleged that Hausler failed to comply, so far as reasonably practicable, with the duty contrary to section 19(3)(c) and 19(3)(f) of the WHS Act.

- 1.5 On 31 August 2023, Hausler contacted SWSA, Regulatory Assurance Unit notifying of their intention to submit an enforceable undertaking (EU) for this matter.
- 1.6 On 13 May 2024, after negotiations with Hausler a final submission was made to the Regulator. Hausler provided an amended EU agreement on 2 July 2024. The EU with the amendments was agreed to and signed by the Regulator on the 23 July 2024.

## **2. Legislation and Policy**

- 2.1 It is alleged that Hausler, who had a health and safety duty pursuant to section 19 of the WHS Act failed to comply, so far as reasonably practicable, with that duty contrary to section 19(3)(c) and 19(3)(f) 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:

1. Work Health and Safety Act, 2012(SA) & Regulations (SA) 2012.
2. National Compliance and Enforcement Policy (Part 7 criteria).
3. SWSA Guidelines for the Acceptance of Enforceable Undertakings – dated July 2023.
4. WHS EU submitted by PCBU dated 2 July 2024.
5. Complaint and Summons prepared by Crown Solicitors Office.
6. Brief of Evidence prepared by SWSA Investigator.
7. Injured Person Impact submission.

## **4. Findings on material questions of fact – Regulator**

- 4.1. I regard the Guidelines for the acceptance of an enforceable undertaking dated July 2023, contains considerations which are relevant and appropriate to my decision.
- 4.2. I find the undertaking given by Hausler 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 the undertaking submitted by Hausler.

- 4.4. The significance of the undertaking and the respective financial commitments of Hausler are proportionate to the gravity of the alleged contraventions by Hausler and account for the benefits to them avoiding prosecution.
- 4.5. I find that Hausler, 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 of the WHS Act. I find that Hausler 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 Hausler 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 Hausler 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 Hausler 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 enlivened.
- 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 Hausler 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 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 Hausler's Enforceable Undertaking dated 2 July 2024 and agreed to by me on 24 July 2024.



**Glenn Farrell**  
Executive Director,  
SafeWork SA  
31 July 2024