

Workplace Health and Safety Undertaking

Workplace Health and Safety Act 1995

Undertaking to the Chief Executive, Department of Employment and Industrial Relations given for the purposes of Section 42 of the *Workplace Health and Safety Act 1995*

By

FK Gardner and Sons Pty Ltd ABN: 99 010 136 053 (FKGS) and FK Gardner Services Pty Ltd ABN: 36 080 364 450 (Services) - jointly and severally the Companies

Background

1. FKGS is a family owned commercial and civil construction company. It undertakes a diverse range of construction projects throughout Queensland. FKGS has approximately 350 persons working full time in its business. About ½ the workers are engaged directly in construction work. Since incorporation in 1977, FKGS has opened 2 administrative centres – one in Toowoomba and one in Brisbane. The head office is in Toowoomba Queensland.
2. Services was incorporated in 1988. Services employs the workers for FKGS. All of Services employees work for FKGS's business undertaking. Services does not carry on an employment or labour hire service generally. Services only role is to be the employer for FKGS. Services only business undertaking is FKGS's business undertaking. Services only purpose is to support FKGS's business interests.
3. Services' sole director is Gary Gardner. Gary Gardner is a director of FKGS, together with his son Nicholas Gardner.
4. Because:
 - (a) Services' control lies with 1 of the 2 directors of FKGS; and
 - (b) Services operates only to support FKGS' business undertaking; and
 - (c) Services has no business undertaking of its own – but is only an accounting entity for FKGS;

it is appropriate to accept the undertaking of FKGS as an undertaking on behalf of Services.

5. FKGS is the entity with funds and is the entity that makes the decisions in connection with the business that is the subject of this Enforceable Undertaking. Compliance with the undertaking and any expenditure made in compliance with the Enforceable Undertaking is only within FKGS' power and direction.

6. FKGS and Services submit the Complaint and Summons issued to each of FKGS and Services ought to be withdrawn in the event that this Enforceable Undertaking by FKGS is accepted.

The Incident

7. On 19 March 2007 a worker (the worker) was working at FKGS's premises at Alderley in Queensland. The premises has a mezzanine floor which is used for storage. The mezzanine floor was accessed by a ladder.
8. The worker climbed a steel ladder to access the mezzanine storage area. As the worker was about to step onto the mezzanine floor the ladder's feet slipped, causing the ladder to fall about 2.4 metres to the ground below. The worker also fell, first forward onto the mezzanine floor landing on his chest, then the 2.4 metres to the floor below.
9. The worker sustained a broken leg, 4 broken ribs, a broken shoulder blade and extensive bruising.
10. In February 2007, prior to the incident, the Companies' Workplace Health and Safety Manager issued a direction to the site manager to remove the steel ladder (the ladder that was the subject of the incident) from use and to ensure a fixed ladder was introduced.
11. In late February 2007, in a tool box meeting at the site (at which the worker was present) all the workers at the Alderley site were instructed to use the fixed ladder only to access the mezzanine floor.
12. Despite the instruction, FKGS did not ensure the workers' safety by ensuring that the instruction was complied with or that the steel ladder was removed from the premises, thus making it inaccessible for use.
13. FKGS recognises the objective seriousness of failing to ensure the control measure was complied with or that the control measure could not be ignored. Despite the seriousness of FKGS's omission, it submits that this Enforceable Undertaking will result in better safety outcomes for its workers and those affected by its undertaking. The terms of the Enforceable Undertaking will strengthen the implementation of the safety control measures in accordance with the hierarchy of controls set out section 27A of the Workplace Health and Safety Act 1995. The terms in this Enforceable Undertaking will result in a significant ongoing minimisation of risks in relation to FKGS's undertaking. Carrying out the terms of this Enforceable Undertaking will result in greater safety for those affected by FKGS's undertaking.

Steps to assist the injured worker

14. Since the incident FKGS have provided substantial support to the injured worker and his family in order to ease the impact of his injuries.

15. FKGS paid for the injured worker's transport to and from the hospital and paid the taxi expenses for his wife to travel between the hospital and their home.
16. FKGS paid for the injured worker's children to fly from Sydney to Brisbane immediately following the accident.
17. FKGS's Safety Manager and other Senior Managers have regularly visited the worker (both in hospital and during his convalescence at home) to assure him of his ongoing role with FKGS and to keep him linked with work
18. FKGS assisted the injured worker and his family with home maintenance, including lawn mowing, concrete slab preparation for the installation of a rainwater tank and with construction of ramps at his home for ease of access. On one occasion the company Safety Manager assisted by giving the injured workers sister help with a task at her home – a task that the injured worker normally would have done.
19. Workplace rehabilitation has commenced to help return the worker to full time work.

Acknowledgement

20. The Companies acknowledge the allegation by Workplace Health and Safety Queensland that:
 - (a) FKGS contravened section 28(1) of the *Workplace Health and Safety Act 1995* (Act); and
 - (b) Services contravened section 28(1) of the Act;

by failing to ensure that workers were not exposed to risks to their safety and health.

21. The allegations are serious. FKGS conducted an investigation into the incident and into the necessary remedial measures to ensure that there is no repetition of the incident.

Alleged contravention

22. The allegation against FKGS and Services is that they exposed FKGS workers to a risk to their health and safety arising out of the conduct of FKGS's business, being the risk of falling from a height. The risk arose from not taking sufficient steps to prevent workers using a risky means of accessing the mezzanine floor. The alleged breach resulted in a worker suffering grievous bodily harm.

Statement of regret

23. FKGS sincerely regrets the incident and acknowledge that the incident ought not to have occurred in the workplace.

Assurance about future behaviour

24. FKGS, together with its Directors and Executive Officers are committed to ensuring that the incident giving rise to the alleged contravention never recurs and to ensuring that the safety and health obligations imposed by the Act are met into the future. Further, FKGS proposes to implement risk control measures that go beyond mere compliance with the Act.

Terms of the undertaking

25. FKGS proposes to undertake a number of activities in order to ensure that a similar incident cannot recur.

OHS management system audits

26. FKGS will develop and implement a Workplace Health and Safety Management System compliant with AS/NZS 4801:2001 Occupational Health and Safety Management System – Specification with guidance for use (Safety Management System).

27. The Companies propose to have the Safety Management System in place within 12 months of this undertaking being accepted.

28. Further, FKGS undertake to implement 3rd party auditing of its Safety Management System against AS/NZS 4801:2001 Occupational Health and Safety Management System – Specification with guidance for use.

29. The initial audit will be undertaken 12 months after the signing of this undertaking. A further 2 audits of the Safety Management System and its implementation across FKGS workplaces shall be undertaken:

(a) within 24 months of signing the undertaking; and

(b) within 36 months of signing the undertaking.

30. The selected auditors will be certified by a certification body accredited by JAS-ANZ to ISO/IEC 17024:20003 general requirements for bodies operating the certification of persons.

31. The completed audit reports will be provided to the Executive Director, Workplace Health and Safety Queensland within 30 days of the reports being delivered to the Company's.

32. At the same time – if the audit reports identify any deficiencies in safety and health, FKGS will provide the Executive Director, Workplace Health and Safety Queensland with a list of its intended remedial actions to address any of the recommendations in the audit reports.

33. FKGS will implement the recommendations within 6 months of the auditor's report being made, unless exempt by the Director-General Department of Employment and Industrial Relations as being unreasonable.

34. The first follow up audit at clause 29(a) will include the implementation of the OHS management system and audit of 6 work sites (including the Brisbane and Toowoomba offices).

35. The subsequent audit at Clause 29(b) will also include site based audits over a representative number of sites (including the Brisbane and Toowoomba offices) to confirm compliance across all sites with the Safety Management System.

36. The total cost of the:

- (a) Implementation of the Safety Management System; and
- (b) independent audit process;

is about \$90,000 - over the 3 year period.

37. This includes additional expense in addressing any items requiring remediation before third party certification is achieved.

Benefits to workers – Workplace Health and Safety Officer training

38. FKGS will train key site personnel each year over 3 years as Workplace Health and Safety Officers – Construction (WHSO) or to at least the same standard of competency as that required by a WHSO. FKGS key personnel will include management staff, project managers as well as site managers. It will train at least 5 key staff members each year. The cost of the training is \$27,250 each year over the 3 years.

39. Each person trained to at least WHSO standard of competency will benefit from the attainment of an additional level of education and training. Site based workers will benefit by having access to a greater number WHSO's for guidance and support on safety related matters. Additionally, all site workers will benefit by working on sites that are subject to greater supervision from qualified safety personnel who can identify hazards and implement effective control measures associated with fall from heights activities and other construction type hazards within the workplace. The benefits from training management personnel is the leadership aspect that these persons will bring both to the implementation of practical and effective control measures and leadership in further developing an effective safety culture throughout the business.

40. The total cost over the 3 year period shall be no less than \$81,750.

Benefits to workers – Elevating Work Platform training

41. FKGS will train 5 site personnel each year in the prescribed licence areas to operate Elevating Work Platforms. This will provide the site based personnel with a greater ability to manage and control the risks of working at height. The added competency

will allow the use of engineering/equipment control measures rather than lower level administrative controls or less effective barriers.

42. The cost for this training will be \$5500 per year for the three years for a total of \$16500.

Benefits to workers – Workplace Trainers and Assessors

43. Two key personnel each year for three years will be sponsored to undertake training in Certificate IV - Workplace Training and Assessment. The personnel will be fulltime Workplace Health and Safety Officers employed by Services for FKGS. The workers undertaking FKGS construction work will benefit from improved quality safety and health training and assessment, delivery of toolbox meeting information and site activity skills training, including hazard identification and risk assessment.

44. The total cost over the 3 year period shall be no less than \$22500.

Benefits to industry – Falls from height training seminars

45. FKGS will deliver 2 formal safety and health training sessions each year to construction contractors who regularly undertake work for FKGS and whose activities involve workers being exposed to work at heights over 2 metres. FKGS expects about 15 of its subcontractors to attend each session. This means 30 contractors will receive training each year.

46. Training sessions will be hosted at the Brisbane and Toowoomba Offices on an invitational basis and conducted by the Workplace Training Officers mentioned previously. The training will be targeted to contractors who may not normally be in a position to access the resources offered by a larger organisation.

47. The training programs are expected to cost not less than \$5000 per year for each of the 3 years. The anticipated total cost over the 3 years will be \$15000.

Benefits to the general community

48. FKGS will donate financial assistance to the Princess Alexandria Hospital Spinal Unit (Unit). The most appropriate projects or uses to which the donation is to be applied will be for the Unit to determine.

49. FKGS's donation will be \$5000 each year for 3 years. This is a total cost of \$15000.

Monitoring of compliance with the terms of the undertaking

50. FKGS acknowledges that the Department will conduct a series of audits to ensure compliance with the terms of this undertaking. The following compliance audit schedule is agreed:

(i) First compliance audit is to be conducted during December 2008;

- (ii) Second compliance audit is to be conducted during November 2009;
- (iii) Third compliance audit is to be conducted during November 2010; and
- (iv) Fourth (FINAL) compliance audit is to be conducted during November 2011.

51. FKGS acknowledges its responsibility to cooperate with the Department's Compliance Auditor and will ensure relevant material (evidence of compliance) will be available. FKGS understands that the cost of these compliance audits will be met by FKGS and is detailed at Clause 53 (iii).

52. FKGS acknowledges that the Department may initiate additional compliance audits as considered necessary, at the Department's expense.

Costs.

53. The following costs shall be payable to the department:

- (i) Investigation Costs in the amount of \$3,372.00 (THREE THOUSAND THREE HUNDRED AND SEVENTY TWO DOLLARS), representing the reasonable investigation costs arising out of the incident.
- (ii) Consideration costs of \$800.00 (EIGHT HUNDRED DOLLARS).
- (iii) Compliance Auditing and Regulatory Monitoring costs of \$2,403.00 (TWO THOUSAND FOUR HUNDRED AND THREE DOLLARS) representing costs to the department in monitoring and auditing of compliance with the terms of this undertaking
- (iv) Costs of \$2,600.00 (TWO THOUSAND SIX HUNDRED DOLLARS) being the costs to the Department in publishing the Notice of Acceptance."

54. The total amount of \$9175.00 will be due for payment 30 days after receipt of the department's invoice.

The enforceable undertaking proposed will incur total costs as follows:

Year One	\$120,250
Year Two	\$60,250
Year Three	\$60,250
<u>Costs</u>	<u>\$9,175</u>
Total cost	\$249,925

55. The estimated value of this undertaking (including recoverable department costs). FKGS is committed to investing a minimum of \$249,000 on this undertaking which will significantly enhance the company's safety systems and provide benefits to industry and the community. Accordingly, if the 'actual' total expenditure associated with delivery of the undertaking is less than \$249,000, the cost difference will be spent on:

(a) additional safety equipment that provides for engineered elimination, substitution or isolation of hazards; and

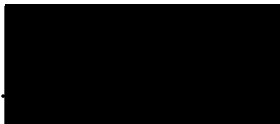
(b) additional training for safety personnel to monitor and supervise safe working practices;

in consultation with the department on the most effective safety outcomes for the business and for its workers and those affected by the business undertaking.

56. This undertaking will be deemed to be formally concluded when the Chief Executive confirms in writing that the undertaking has been satisfactorily executed.

Dated at Brisbane this 1st day of September 2008

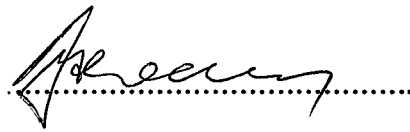
Signature...



Nicholas John Gardner

Director of FK Gardner & Sons Pty Ltd

**ACCEPTED BY THE CHIEF EXECUTIVE, DEPARTMENT OF
EMPLOYMENT AND INDUSTRIAL RELATIONS PURSUANT TO
SECTION 42E OF THE WORKPLACE HEALTH AND SAFETY ACT 1995**



~~Peter Hencken~~ Barry Leahy
A/ Director-General, Department of Employment and Industrial Relations

Dated at BRISBANE this 7th day of OCTOBER (year) 2008