

Application for an Enforceable Undertaking

Part 4 Health and Safety at Work Act 2015]



Application for an Enforceable Undertaking

Part 4, Health and Safety at Work Act 2015

The commitments in this undertaking are offered to Maritime New Zealand (Maritime NZ) by

[Name of the person or persons who will be signing this undertaking in section 4]

On behalf of -

[Name of the entity giving this undertaking. If an individual or sole trader, leave blank. Complete in all other cases]

This enforceable undertaking is given on the day and date that it is accepted and signed by Maritime NZ. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

Contravention means an action which offends against the Health and Safety at Work Act 2015 and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention.

Person means an individual who or a legal entity which has a duty under the Health and Safety at Work Act 2015 and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, trustees of trusts, and crown organisations.

Regulator means WorkSafe New Zealand, Maritime New Zealand or the Civil Aviation Authority.

Health and Safety legislation means Health and Safety at Work Act 2015 and associated regulations.

Enforceable undertaking means an enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with Maritime NZ. The agreement outlines actions the duty holder will undertake to address the contravention. It is expected to deliver activities which benefit workers, the wider industry or sector and/or the community as well as acceptable amends to any victim(s)

Do not refer to the victim by name in this document. Please refer to the victim / worker / employee / volunteer / or other term as appropriate.

Maritime NZ respects your privacy and is committed to protecting personal information. The information provided in this document is for the purpose of an undertaking given to Maritime NZ under Part 4 of the Health and Safety at Work Act 2015. This information will be managed within the requirements of both the Privacy Act 1993 and the Official Information Act 1982.

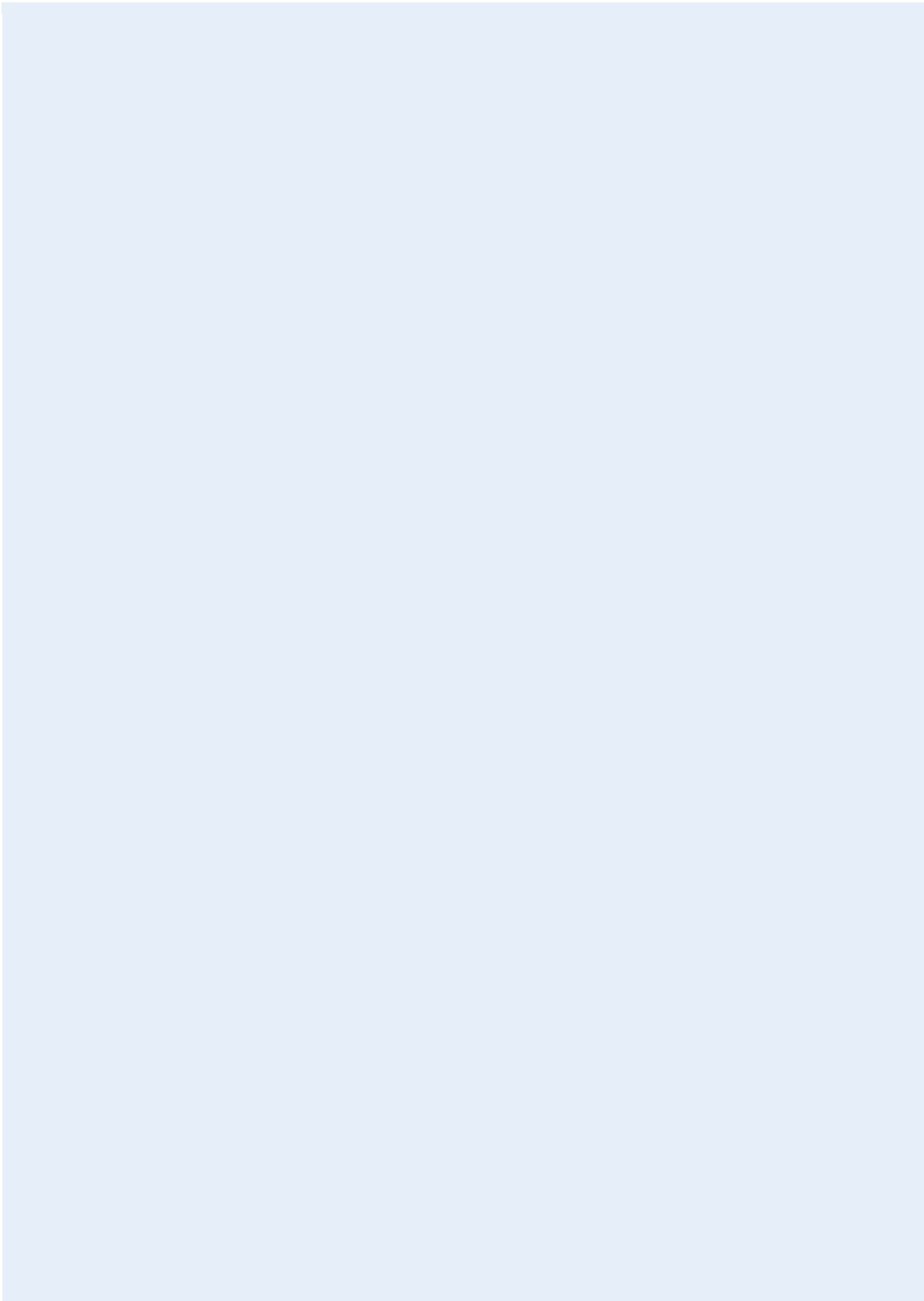
There is an expectation that Maritime NZ will generally publish the undertaking in full on its website.

Section 1: General Information

1.1 Details of the person / persons / entity giving the undertaking

Name of person(s) making this undertaking: [in all cases complete with the name(s) of those who are signing this undertaking under Section 4]		
Name of entity: [if applicable, leave blank if an individual]		
Type of legal entity: [complete in all cases, eg individual, sole trader, partnership, trust, company, etc]		
Nominated contact person: [the same person listed above / one of those listed above]		
Street address:		
Mailing address: [if different]		
Work phone:	Mobile phone:	
Email:		
Industry		
Workers [enter numbers]: Full time:	Part time:	Casual:
Description of the products and services provided by the business or undertaking:		
Comments:		

1.2 Details of the contravention



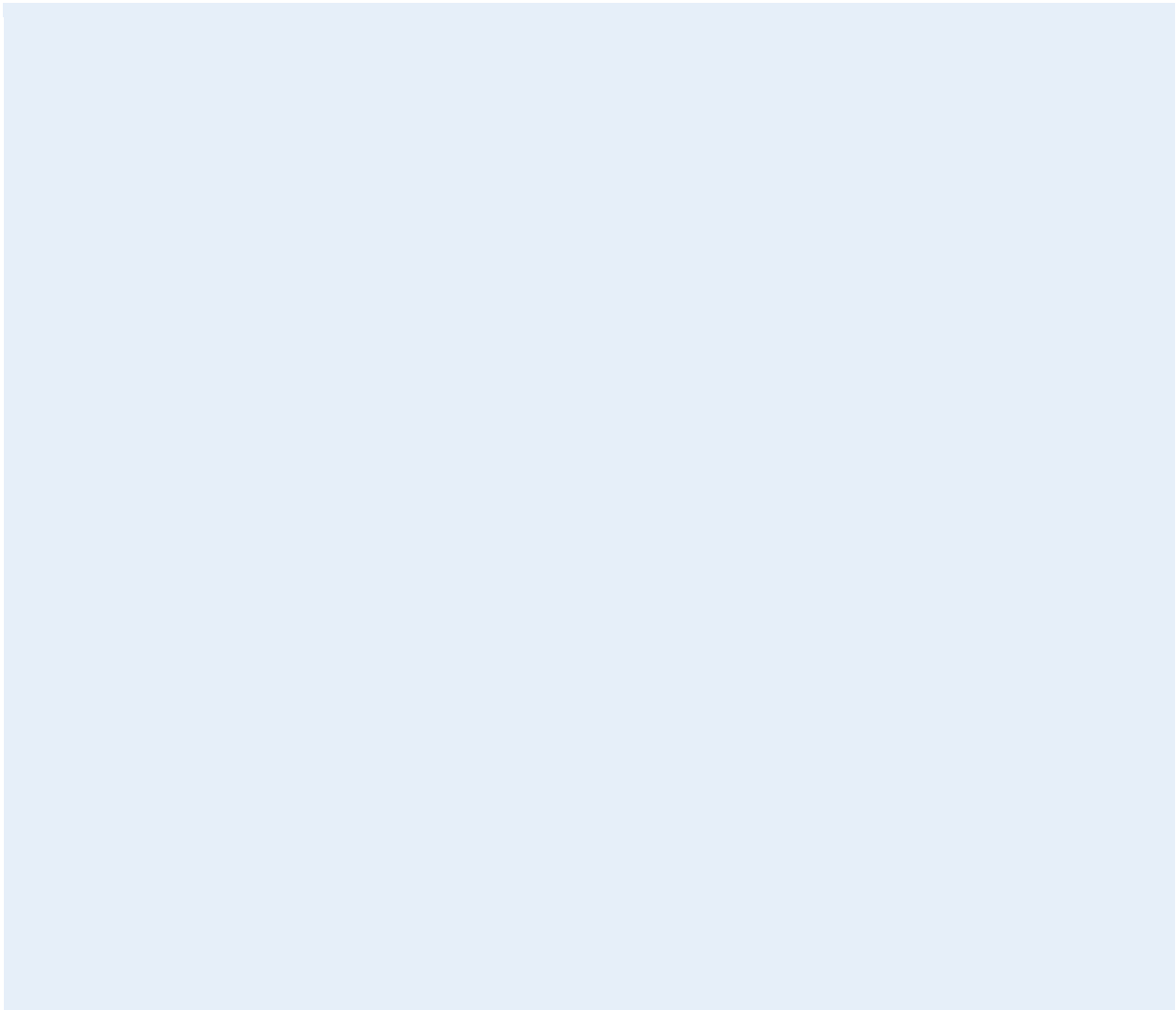
1.3 Detail the events surrounding the contravention

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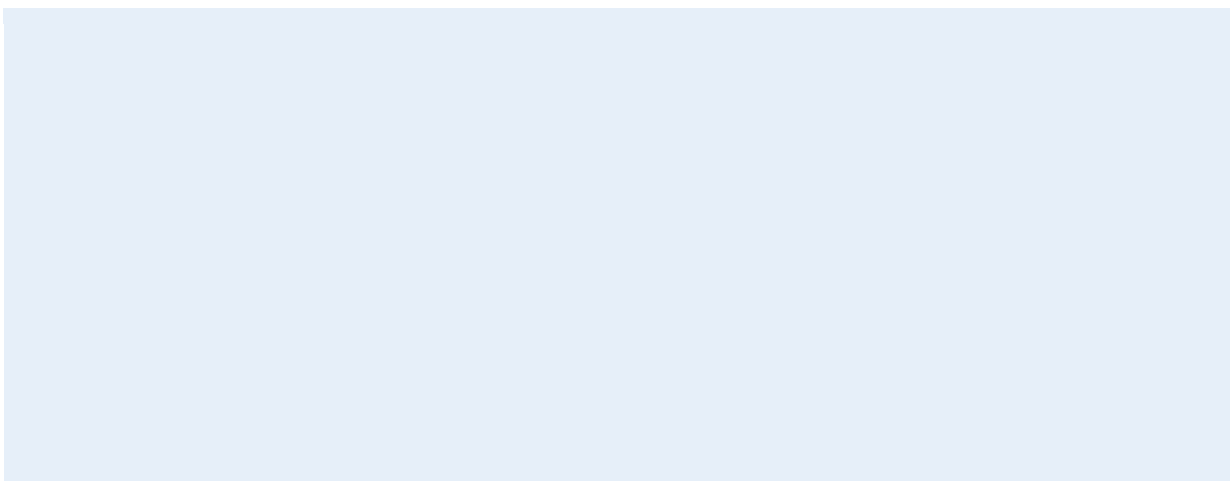
1.4 Detail any enforcement notices issued that relate to the contravention as detailed in term 1.2

Date	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice
DD / MM / Year				
DD / MM / Year				
DD / MM / Year				

1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention (1.2), events (1.3) and the enforcement notices issued (1.4)



1.6 Total amount of money spent on rectifications



1.7 Detail the injury sustained or illness suffered by victim(s) or other(s) as a consequence of the contravention or, (as applicable) the potential for fatal injury or future fatal illness

[Base this on your understanding of the consequences of the contravention. Do not contact the victim to discuss your response]

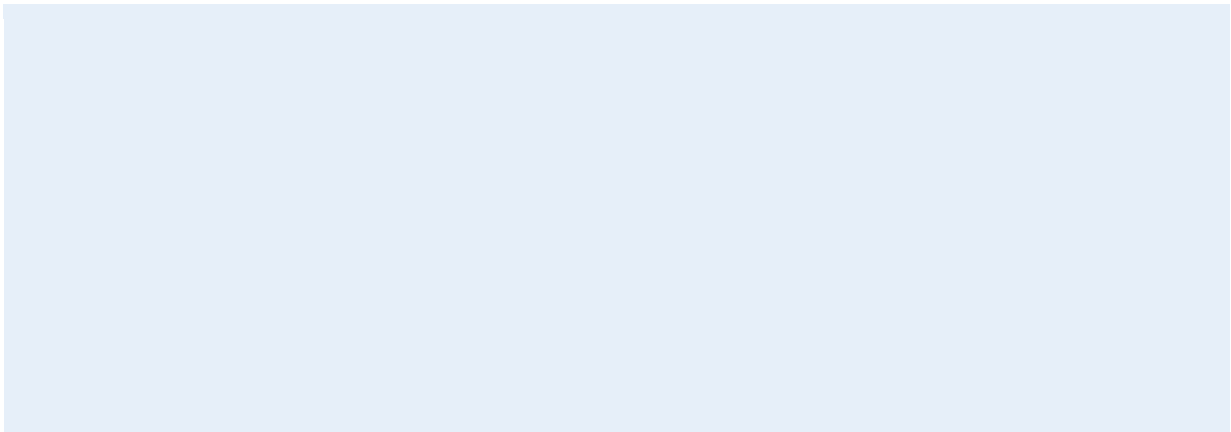
1.8 Describe the relationship between the victim(s) and you / the entity in question

[For example, passenger / employee(s) / shareholder / director / family member / contractor, etc. If the relationship has more than one dimension – for example a family member who is also an employee and a director of the business, or an employee who is a shareholder – then please describe this]

1.9 Detail the support already provided by the person to the victim(s), other(s)

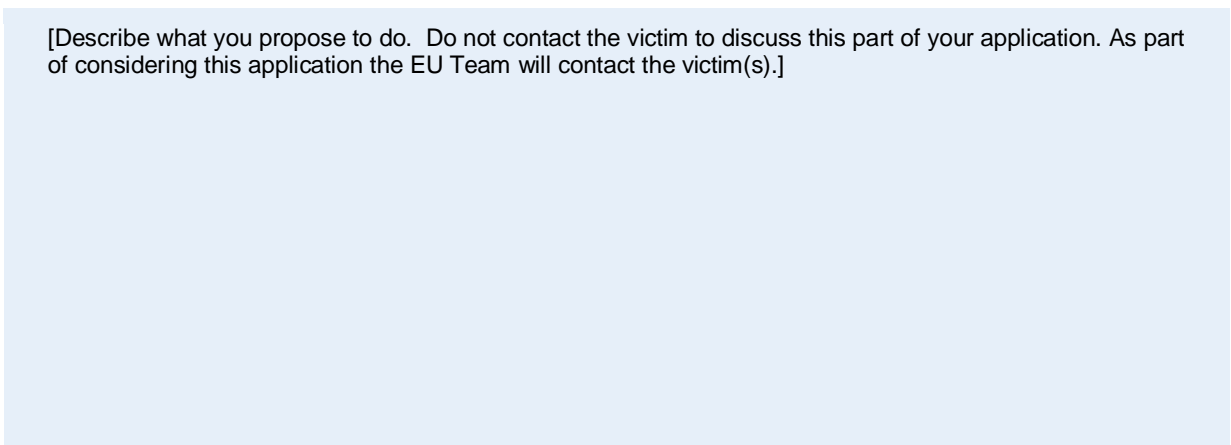
Date	Description of support	Comments
DD / MM / Year		
DD / MM / Year		
DD / MM / Year		
DD / MM / Year		
DD / MM / Year		

1.10 Detail any offer of amends or payments already made to the victim(s) who sustained injury or suffered illness (the total monetary amount here is also to be included in the table at 3.12.3)

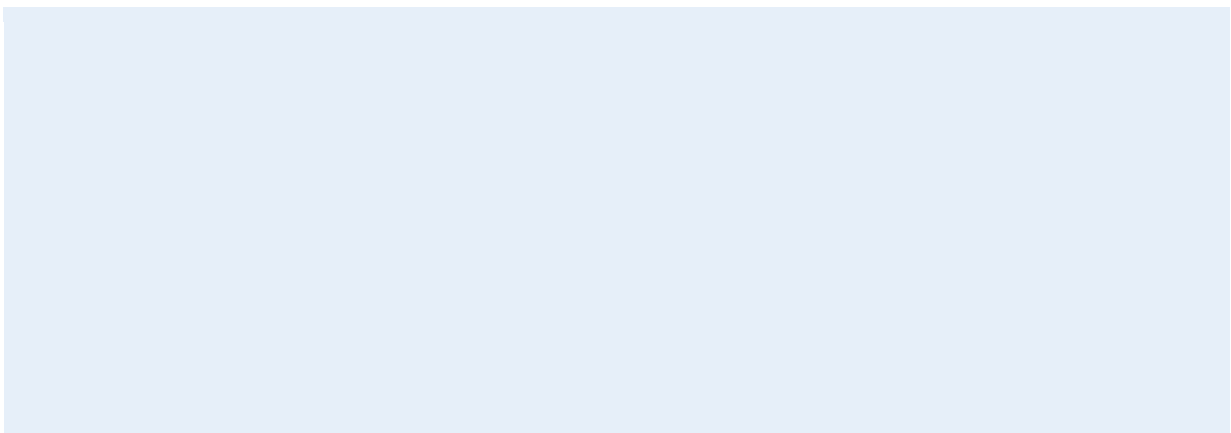


1.11 Detail any additional support, amends or payments proposed by the person to the victim(s), other(s)

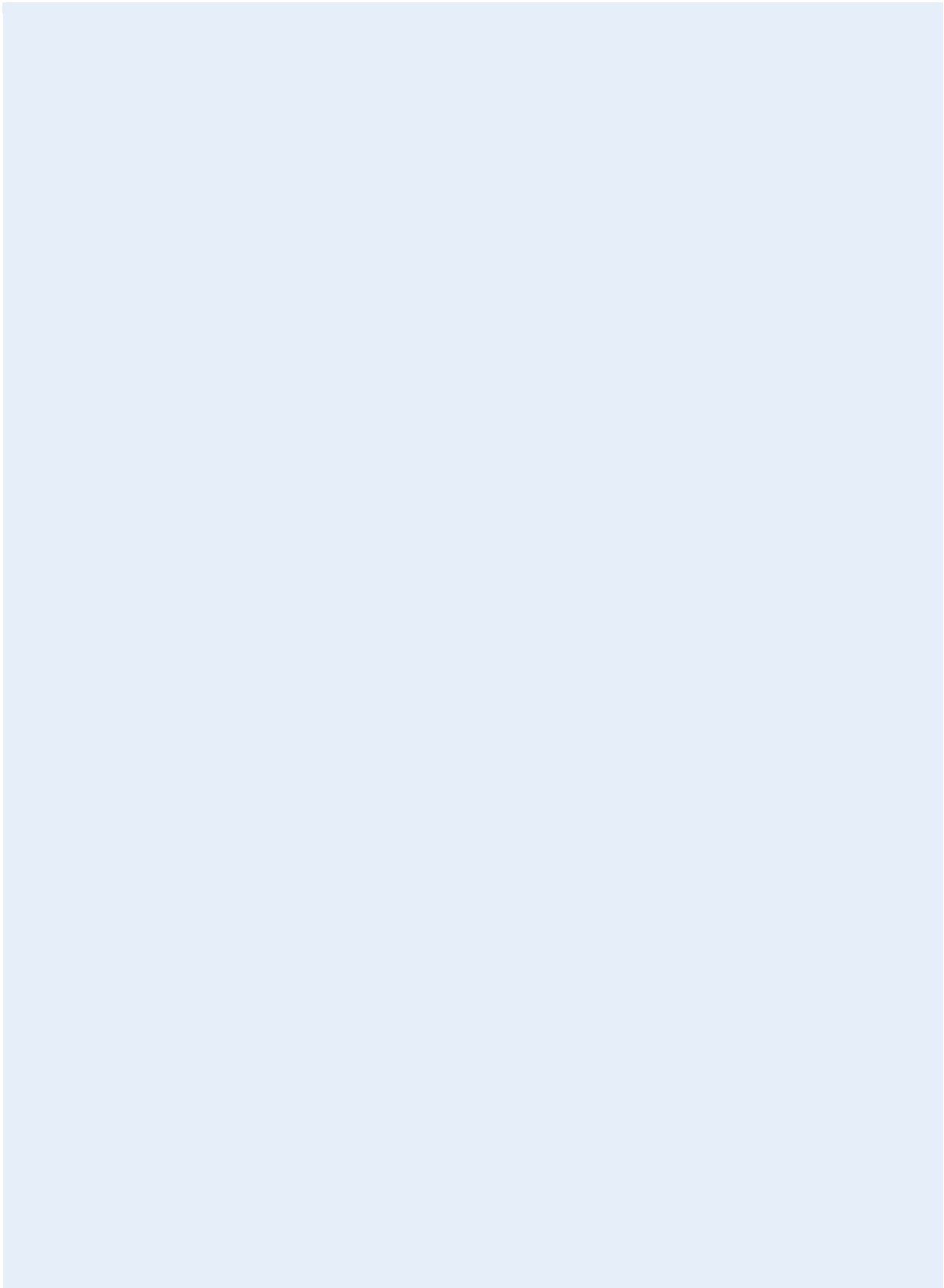
[Describe what you propose to do. Do not contact the victim to discuss this part of your application. As part of considering this application the EU Team will contact the victim(s).]



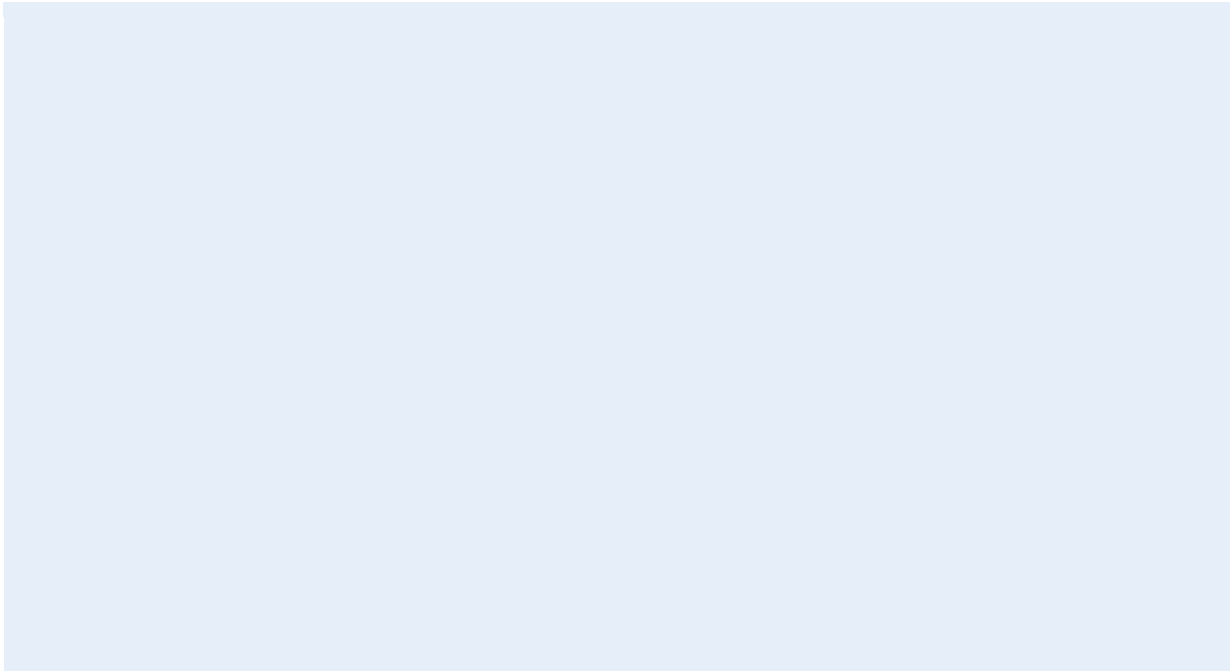
1.12 Detail any consultation with unions / sector / industry as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution



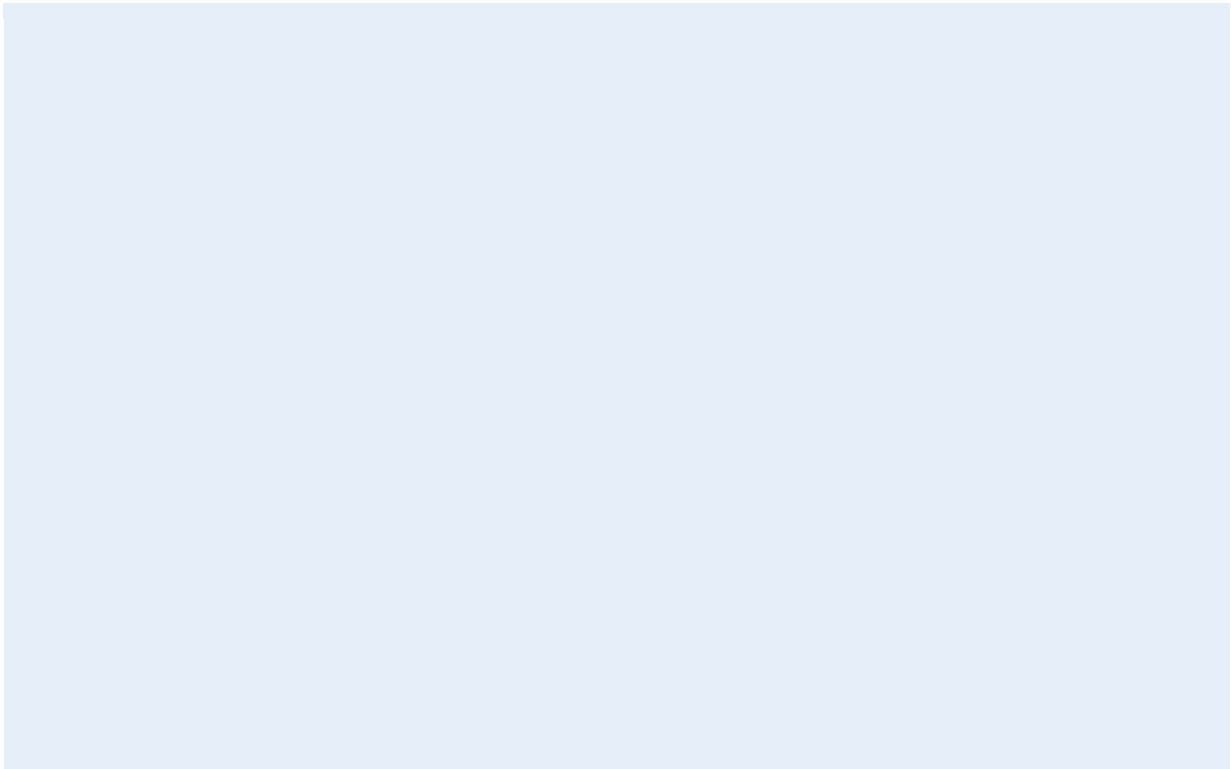
1.13 Detail how health and safety risks are managed by the person, including types of procedures or policies or standards



1.14 Detail the level of checks on the effectiveness of health and safety procedures or policies, including compliance assessments and assessment frequency



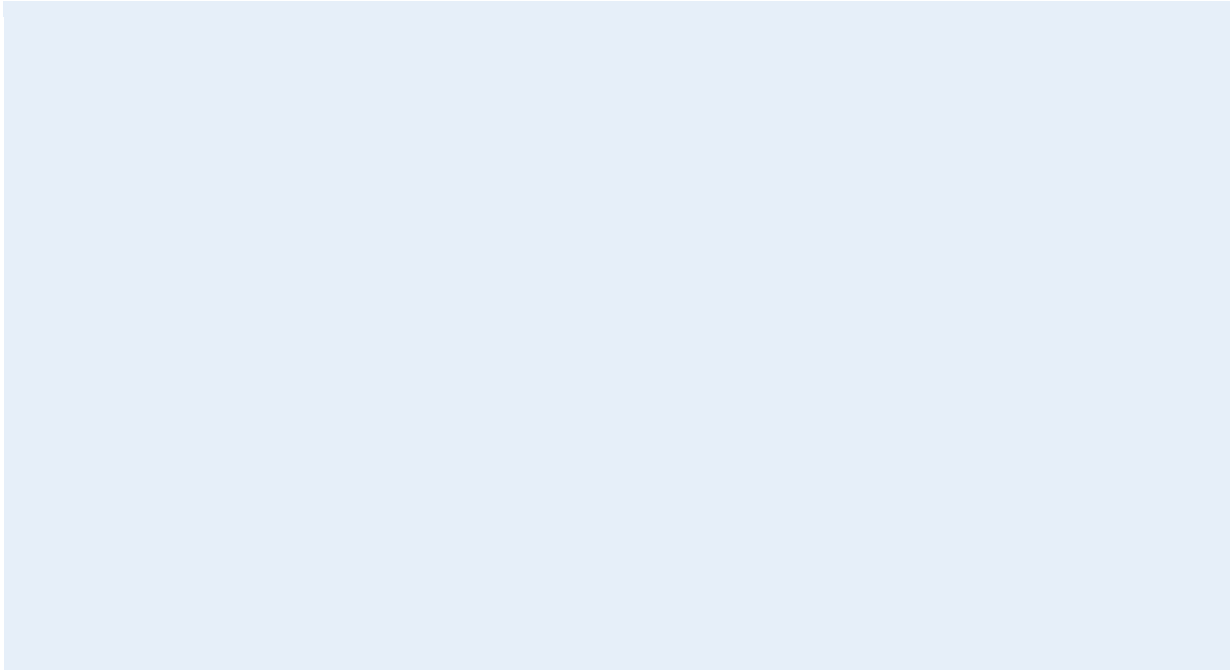
1.15 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking



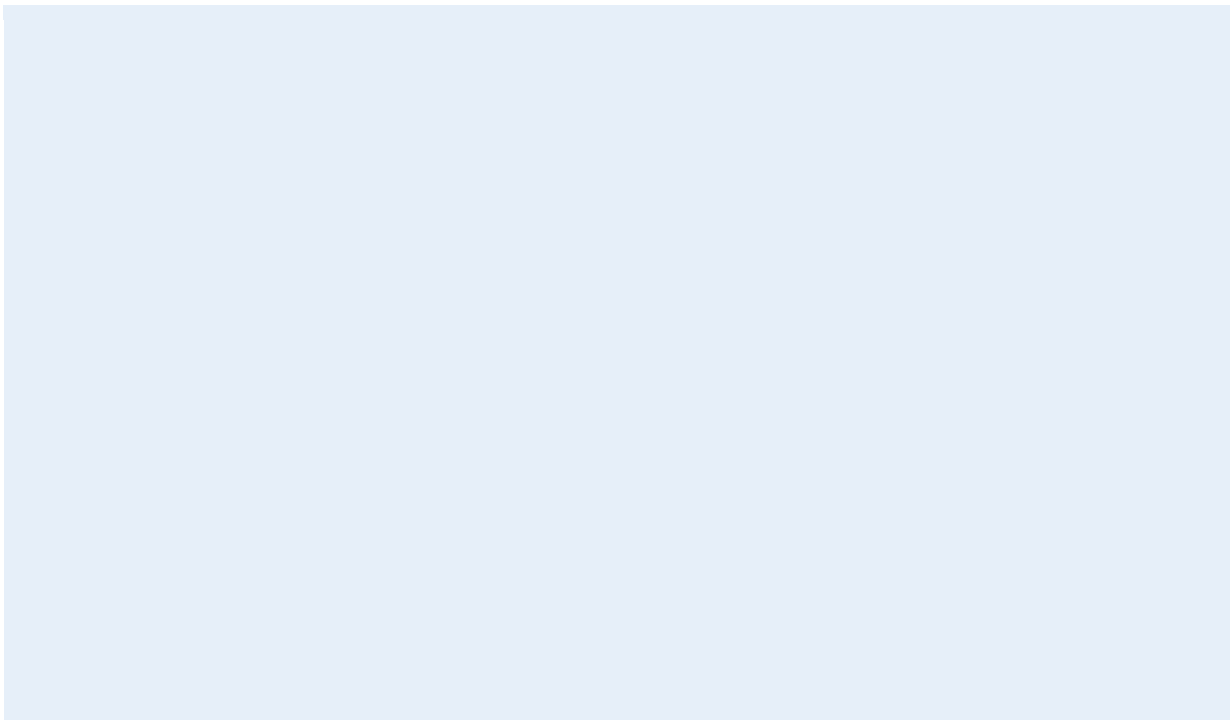
Section 2: General Terms

The person acknowledges and commits to the general terms set forth in the sub-terms below.

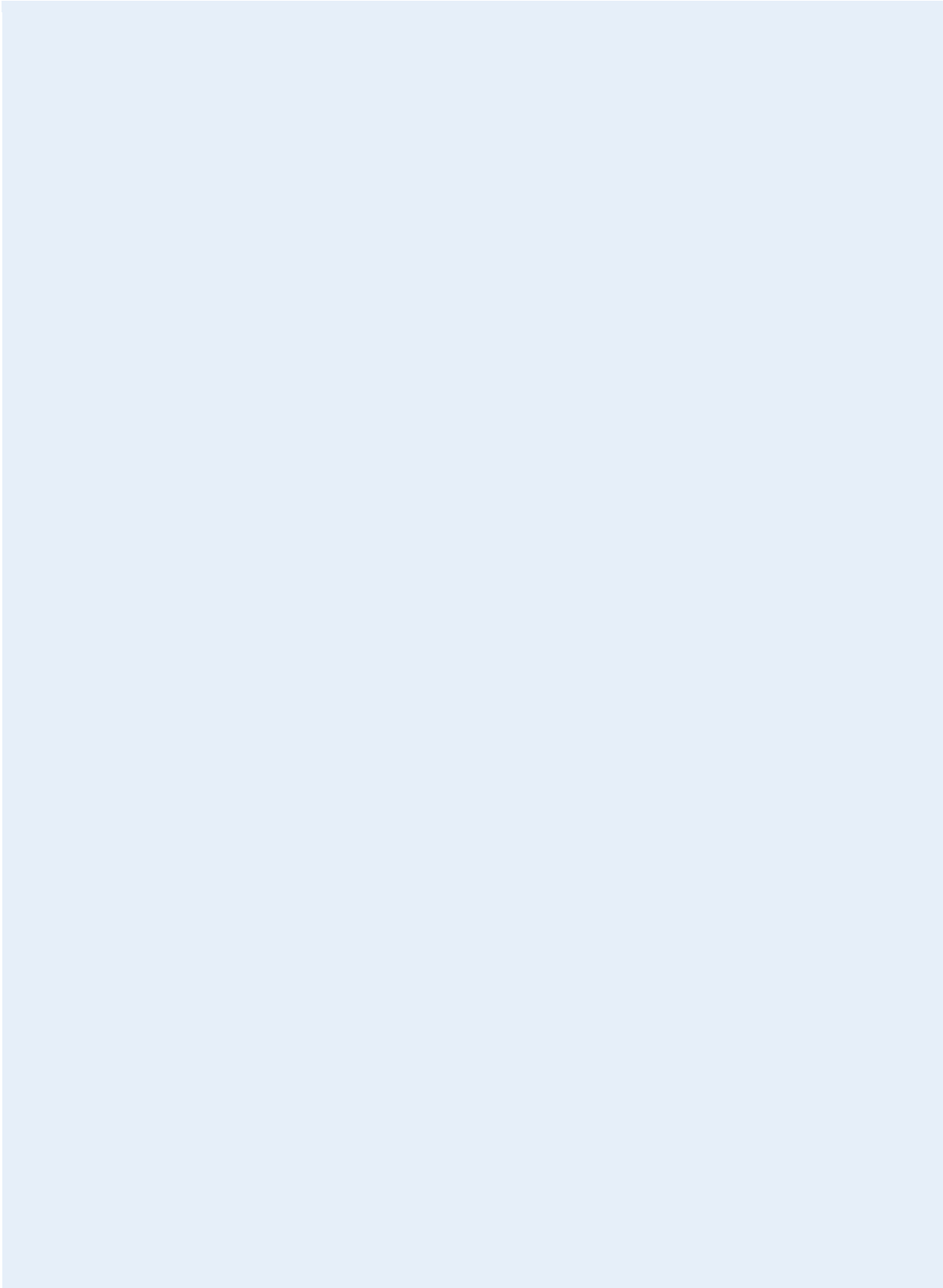
2.1 Acknowledgement that Maritime NZ alleges a contravention occurred as detailed in term 1.2

A large, empty light blue rectangular area intended for the user to provide an acknowledgment of the contravention.

2.2 Statement of regret that the alleged contravention occurred

A large, empty light blue rectangular area intended for the user to provide a statement of regret regarding the alleged contravention.

2.3 Statement of the reasons why, on balance, the person considers this undertaking is the most appropriate response to the alleged contravention



2.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur

A large, empty light blue rectangular area intended for a statement of commitment. It occupies the majority of the page below the section header.

2.5 Acknowledgment of the policy published by Maritime NZ for the acceptance of an undertaking

I have read and understood: Enforceable Undertakings Operational Policy

[write the name of the person(s) or entity giving the undertaking]

2.6 Acknowledgement that this undertaking will be published and publicised in full

[write the name of the person(s) or entity giving the undertaking]

acknowledges that the undertaking will, if accepted, be published on Maritime NZs website in full and referenced in Maritime NZs material.

2.7 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities

[write the name of the person(s) or entity giving the undertaking]

2.7.1 has the financial ability to comply with the terms of this undertaking and have provided evidence by way of

[type of evidence provided]

with this undertaking to support this declaration.

2.7.1 In the event of impending receivership, liquidation or sale of the entity,

[write the name of the person(s) or entity giving the undertaking]

will advise Maritime NZ of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

2.8 Statement outlining any relationship between the person and any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking

[Blank area for statement]

2.9 Statement regarding Intellectual Property

[write the name of the person(s) or entity giving the undertaking]

grants Maritime NZ a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in relation to any material developed as a result of this undertaking. This licence includes the right to use, copy, modify and distribute the materials.

2.10 Acknowledgement that the person may be required to provide a statutory declaration

[write the name of the person(s) or entity giving the undertaking]

acknowledges that it may be necessary for Maritime NZ to obtain a statutory declaration outlining details of any prior convictions (safety related) outside of New Zealand and that it will provide such declaration if required by Maritime NZ.

2.11 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

1. It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
2. Evidence to demonstrate compliance with the terms will be provided to Maritime NZ by the due date for each term.
3. The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by Maritime NZ, that this undertaking has been completely discharged.
4. It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.
5. It is acknowledged that Maritime NZ may undertake inspections or other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to Maritime NZ.
6. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to Maritime NZ, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

[write the name of the person(s) or entity giving the undertaking]

Section 3: Enforceable Terms

The person acknowledges all activities set forth in the enforceable terms below must be assessable and include a date for completion and an estimated cost for each activity.

The person commits to performing the activities below diligently, competently and by the respective completion date.

3.1 A commitment by the person to perform activities that will ensure the on-going effective management of risks to health and safety in the future conduct of its business or undertaking

[Detail the management strategies to be employed that will satisfy and demonstrate to officer/s of the person that this commitment is being met. This will include, for example:

- how health and safety risks will be managed, including any procedures, policies or standards that will be put in place
- how health and safety performance will be assessed, including reviews of procedures or policies, compliance assessments and third party assessment.

3.2 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties

[This may include to work health and safety representatives and in the organisation's annual report, if applicable]

Dissemination will be achieved by doing the following:

Dissemination will occur by: DD / MM / YEAR

3.3 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for workers and/or work and/or the workplace

Activities (outline the activity and the expected outcomes)	Cost (\$)	Timeframe
Total estimated cost of benefits for workers/others	\$	

3.4 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for the wider industry or sector

Activities (outline the activity and the expected outcomes)	Cost (\$)	Timeframe
Total estimated cost of benefits for industry	\$	

3.5 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for community

Activities	Cost (\$)	Timeframe
Total estimated cost of benefits for the community	\$	

3.7 Acknowledgement regarding any promotion of the person in relation to this undertaking

[write the name of the person(s) or entity giving the undertaking]

agrees that it will not undertake any activities that may promote or benefit the person without explicitly linking that activity / benefit to this undertaking

3.12 Minimum spend

3.12.1

[write the name of the person(s) or entity giving the undertaking]

commits to a minimum spend of \$_____ for this undertaking.

3.12.2

[write the name of the person(s) or entity giving the undertaking]

agrees to spend any residual amount arising from an original term not being completed or being less costly than estimated in this undertaking. Agreement on how to spend this residual amount will be sought from Maritime NZ

3.12.3

[write the name of the person(s) or entity giving the undertaking]

Acknowledges the minimum spend comprises of the:

Financial amends to victims (if applicable)	
Benefits to workers / others	
Benefits to industry	
Benefits to community	
Estimated cost of the undertaking	\$

Section 4: Execution

This undertaking is given by the person on the date it is accepted by Maritime NZ as set forth in section 5 below.

Individual / Sole Trader

Undertaking given by [name of the person]	
On the _____ day of _____, 20____.	
[day] [month] [year]	
Signature of person giving the undertaking:	
Undertaking given before me -	
Witness name:	
Witness signature:	
Witness address	

Director or Authorised Representative of a Company

Undertaking given by [name of director or authorised representative]	
In my own right and in my capacity as [eg Director, Managing Director, Chief Executive, etc]	
of [Write the Company name]	
On the _____ day of _____, 20____.	
[day] [month] [year]	
Signature of the person giving the undertaking:	
Undertaking given before me -	
Witness name:	
Witness signature:	
Witness address	

Partnership

Undertaking given by [Partner names]	
On the _____ day of _____, 20____.	
[day]	[month] [year]
Signature of Partners:	
Undertaking given before me -	
Witness name:	
Witness signature:	
Witness address	

Individual Trustee of a Trust

Undertaking given by [trustee name]	
In my own right and in my capacity as trustee of the [trust name]	
On the _____ day of _____, 20____.	
[day]	[month] [year]
Signature of the trustee:	
Undertaking given before me -	
Witness name:	
Witness signature:	
Witness address	

Authorised Representative of an Organisation

Undertaking given by [name of authorised representative]	
In my own right and in my capacity as [eg President, Chairperson]	
of [Write the Organisation's name]	
On the _____ day of _____, 20_____.	
[day]	[month] [year]
Signature of the person giving the undertaking:	
Undertaking given before me -	
Witness name:	
Witness signature:	
Witness address	

This template is to be used in circumstances where one of the other legal entity descriptors (individual, company, partnership, trust) does not apply.

Possible examples, and there may be others, of when this could be used are for –

- Unincorporated groups
- Incorporated societies
- Industrial and provident societies

If uncertain, please seek the advice of the WorkSafe Enforceable Undertakings Team.

Section 5: Acceptance

This undertaking is accepted by Maritime NZ	
On the _____ day of _____, 20____.	
[day]	[month] [year]
Signature of the person giving the undertaking:	
Name of Maritime NZ representative:	
Role	Deputy Director, Compliance Systems Delivery (or delegate)