

# Application for an enforceable undertaking

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June 2019

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

Name of entity or, partnership or individual applying for this undertaking

MARLBOROUGH LINES LIMITED

# Application for an enforceable undertaking

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

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

Timothy Cosgrove as the CEO of Marlborough Lines Limited

On behalf of:

Marlborough Lines Limited

Name of the entity giving this undertaking (if an individual or sole trader, leave blank - complete in all other cases)

Marlborough Lines Limited

This enforceable undertaking is given on the day and date that it is accepted and signed by WorkSafe. 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.

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

WorkSafe 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 WorkSafe 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 WorkSafe will generally publish the undertaking in full on its website.

TERM	DEFINITION
Contravention	An action which offends against the <i>Health and Safety at Work Act 2015</i> and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention.
HSMS	A Health and Safety Management System.
Person	An individual who or a legal entity which has a duty under the <i>Health and Safety at Work Act 2015</i> and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, trustees of trusts, and crown organisations.
Health and Safety legislation	<i>Health and Safety at Work Act 2015</i> and associated regulations.
Enforceable undertaking	An enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with WorkSafe. 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).

# 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)

Timothy Cosgrove as the CEO of Marlborough Lines Limited

Name of entity: (if applicable, leave blank if an individual)

Marlborough Lines Limited

Type of legal entity: (complete in all cases, for example individual, sole trader, partnership, trust, company, etc)

Electricity Distribution Company

Nominated contact person: (the same person listed above/one of those listed above)

Timothy Cosgrove

Physical address:

1 Alfred Street, Blenheim, 7201

Postal address: (if different from physical address)

PO Box 144, Blenheim, 7201

Work phone: 03 577 7007

Mobile phone: 021 505 407

Email: tim.cosgrove@mll.co.nz

Industry: Electricity

Workers (enter numbers):

Full-time: 122      Part time: 6      Casual: 128

Description of the products and services provided by the business or undertaking:

Electricity distribution and network management

Comments:

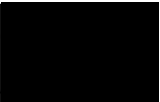


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## 1.2 Detail of the contravention

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Refer to ANNEXURE 1.



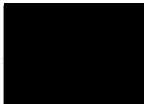


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### 1.3 Detail the events surrounding the contravention

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Refer to ANNEXURE 1.



**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	NIL			
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)**

Refer to ANNEXURE 2.

**1.6 Total amount of money spent on rectifications**

Refer to ANNEXURE 3.

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**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**

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There was no illness or injury sustained or harm suffered by any person or persons.

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**1.8 Detail any offer of amends or payments 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)**

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Describe the victim(s) relationship to you/the entity in question: (eg 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 and/or shareholder of the business, or an employee who is a shareholder (etc) - then please describe this)

N/A

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Detail offer of amends or payments:

N/A

**1.9 Detail any consultation with the victim(s) as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution**

- (a) No person suffered any injury as a result of this incident and accordingly there is not considered to be a victim in the usual sense.
- (b) There is a complainant, the contractor [REDACTED]

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

Refer to ANNEXURE 4.

**1.11 Detail the support provided or proposed by the person to the victim(s), other(s)**

DATE	DESCRIPTION OF SUPPORT	COMMENTS
DD / MM / YEAR	N/A	
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
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DD / MM / YEAR		
DD / MM / YEAR		



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## 1.12 Detail any current HSMS implemented and maintained by the person

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Describe how health and safety risks are managed, including types of procedures or policies or standards:

Marlborough Lines has an excellent safety record and has adopted the highest levels of responsibility towards safety. This includes becoming the first power company in New Zealand to achieve certification to ISO45001 which is the internationally recognised Occupational Health and Safety Management System (OHSMS). Certification to OHSAS18001 was held at the time of the incident, which was prior to the availability of ISO45001.

Marlborough Lines' OHSMS includes the following policies and procedures relevant to health and safety risk management:

- Risk Management Policy PO23
- Risk Management (General) Procedure PR79
- Occupational Health and Safety Risk Management Procedure PR67

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### 1.13 Detail the level of auditing undertaken on the HSMS, including compliance audits and audit frequency

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The OHSMS part of a Integrated Management System (IMS) which comprises certification to the following standards:

- ISO 45001:2018 Occupational Health and Safety Management Systems
- ISO 9001:2015 Quality Management Systems
- ISO 14001:2015 Environmental Management Systems
- NZS 7901:2008 and 2014 Public Safety Management System

The IMS is independently audited by Telarc on an annual basis and is also subject to an internal audit programme.

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

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There has been consultation with EEA, ENA and E tu in relation to the proposed educative programme.

A component of the educative programme is resilience evaluation. Because this is a specialist area, Marlborough Lines intends that the programme which it intends to outline in its seminars to industry be independently scrutinised. The programme will be prepared by Teamworks Pacific Limited who are longstanding providers to Marlborough Lines. It will be independently assessed by another practising psychologist, [REDACTED] whose CV is attached. [REDACTED] as confirmed that he is available to evaluate the programme and give it an independent assessment.

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## 2. General terms

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

### 2.1 Acknowledgement that WorkSafe alleges a contravention occurred as detailed in term 1.2

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Marlborough Lines acknowledges that WorkSafe has alleged contraventions in terms of the prosecutions issued against Marlborough Lines. Marlborough Lines acknowledges that WorkSafe alleges deficiencies in the respects outlined in the Summary of Facts issued in respect of those prosecutions.

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### 2.2 Statement of regret that the contravention occurred

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Marlborough Lines regrets that this incident occurred. It is pleased that there were no injury consequences. It notes that the happening of this incident has identified areas where systems can and have been improved.



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

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Refer to ANNEXURE 5.



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

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The steps which Marlborough Lines has taken will ensure that contraventions of the kind that led to this incident will not occur in the future.

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## 2.5 Acknowledgment of the policy published by WorkSafe for the acceptance of an undertaking

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

Marlborough Lines Limited (Timothy Cosgrove)

has read and understood the Enforcement Undertaking Operational Policy.

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## 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)

Marlborough Lines Limited (Timothy Cosgrove)

acknowledges that the undertaking will, if accepted, be published on WorkSafe's website in full and referenced in WorkSafe material.

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## 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)

Marlborough Lines Limited (Timothy Cosgrove)

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

(type of evidence provided)

Publicly available information on Marlborough Lines website [www.marlboroughlines.co.nz](http://www.marlboroughlines.co.nz)

with this undertaking to support this declaration.

In the event of impending receivership, liquidation or sale of the entity, (write the name of the person(s) or entity giving the undertaking)

Marlborough Lines Limited (Timothy Cosgrove)

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

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## 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

There are no such relationships.

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## 2.9 Statement regarding Intellectual Property

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

Marlborough Lines Limited (Timothy Cosgrove)

grants WorkSafe 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.

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## 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)

Marlborough Lines Limited (Timothy Cosgrove)

acknowledges that it may be necessary for WorkSafe 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 WorkSafe

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## 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 WorkSafe 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 WorkSafe, 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 WorkSafe may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe.
6. It is acknowledged that WorkSafe may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe's expense.
7. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to WorkSafe, 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)

Timothy Cosgrove



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### 3. Enforceable terms

The person acknowledges all activities set forth in the enforceable terms below must be auditable 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 ongoing 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:

Refer to ANNEXURE 6.



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

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(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:

- (a) Information about this Enforceable Undertaking will be disseminated to the EEA and ENA (this is already underway as these organisations are part of the educative process which forms part of this undertaking).
- (b) There will be workplace meetings with Marlborough Lines workers to review the incident, explain the subsequent processes involving WorkSafe and the arrangements provided for in the Enforceable Undertaking. The benefits which will accrue to Marlborough Lines workers will be explained to them.
- (c) St John will be notified that this donation has been made as a community benefit recognition contained in this Enforceable Undertaking.

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Dissemination will occur by: DD / MM / YEAR

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**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	COST	TIMEFRAME
Outline the activity and the expected outcomes	(\$)	
What Marlborough Lines has already done and undertakes to do falls into two categories:		
- Within its own organisation.		
- In the wider electricity industry.		
(a) Within its own organisation Marlborough Lines has a comprehensive programme of worker		
training and care and this is being augmented in some discrete areas as a consequence of this incident.		
It is difficult to quantify the specific cost of all of the augmentations.		
(b) The wider electricity industry is covered in section 3.4.		
Total estimated cost of benefits for workers/others		
		\$





### 3.6 Where WorkSafe considers appropriate in the circumstances, undertaking a SafePlus Onsite Assessment

Further information about SafePlus can be found here: [worksafe.govt.nz/about-us/who-we-are/our-priorities/safeplus/about-safeplus](https://worksafe.govt.nz/about-us/who-we-are/our-priorities/safeplus/about-safeplus)

- 3.6.1 The suitability of a SafePlus assessment will be determined by the Enforceable Undertakings Panel when your application is considered.
- 3.6.2 In addition to the total cost below (3.7) all costs of a SafePlus Onsite Assessment will be met by the person making this undertaking. The fee charged for an Onsite Assessment is a commercial matter between your business and the SafePlus Accredited Assessors that you commission.

### 3.7 Minimum spend

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

- 3.7.1 Marlborough Lines Limited (Timothy Cosgrove)  
commits to a minimum spend of \$ 160,000 for this undertaking.

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

- 3.7.2 Marlborough Lines Limited (Timothy Cosgrove)  
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 WorkSafe

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

- 3.7.3 Marlborough Lines Limited (Timothy Cosgrove)  
Acknowledges the minimum spend comprises of the:

TOTAL COST	MINIMUM SPEND
Financial amends paid to victims (if applicable)	N/A
Benefits to workers/others	
Benefits to industry	\$150,000
Benefits to community	\$10,000
<b>Estimated cost of the undertaking</b> Plus GST (if any)	<b>\$ \$160,000</b>

#### 4. Execution

##### Authorised representative of an organisation

Undertaking given by (name of authorised representative)

Timothy Cosgrove

In my ~~own right and in my~~ capacity as (eg President, Chairperson, etc)

CEO

of (eg organisation)

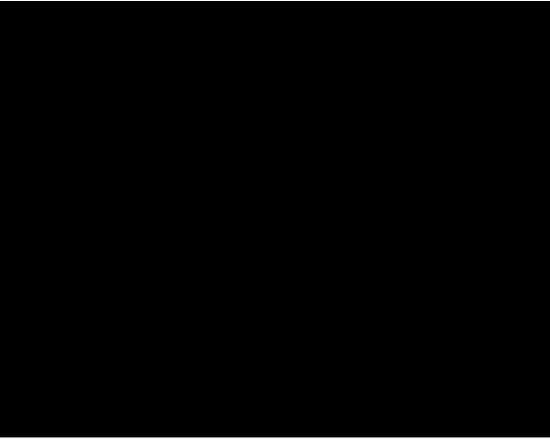
*Northborough Lines*

On the (day) *11* day of (month) *June*, 20*20* (year).

Signature of the person giving the undertaking:



Undertaking given before me:



#### 5. Acceptance

This undertaking is accepted by WorkSafe.

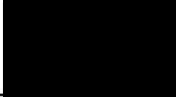
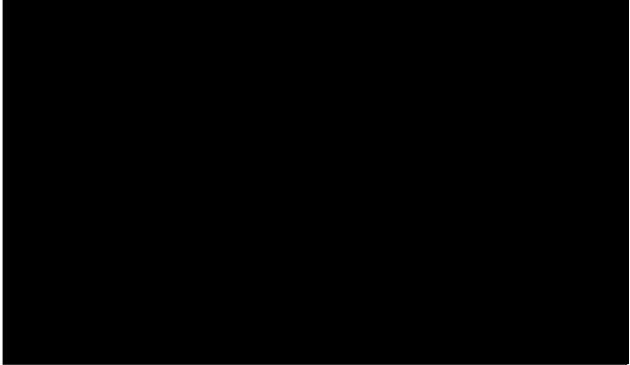
On the (day) *15<sup>th</sup>* day of (month) *June*, 20*20* (year).

Signature of person accepting the undertaking:



Name of WorkSafe representative (General Manager, WorkSafe (or delegate))

Undertaking given before me:



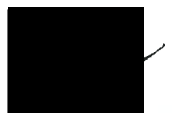
## ANNEXURE 1

### **1.2 Detail of the Contravention**

### **1.3 Detail the events surrounding the Contravention**

1. On 14 November 2016 severe earthquakes in the sequence known as the *Kaikoura Earthquakes* struck Marlborough. There was widespread damage including damage to electricity distribution systems. On 16 November 2016 in the aftermath of the earthquake an incident occurred when electricity supply was reconnected. It is this incident which is the subject of this Enforceable Undertaking.
2. Marlborough Lines is the owner and operator of the Marlborough electricity reticulation network. The network comprises some 3,000 kilometres of 11kV electricity distribution lines. Some 26,000 installations are supplied over an area of some 10,000 square kilometres. The terrain over which supply is distributed is diverse and challenging. It runs from alpine areas through to the complex coastal systems of the Marlborough Sounds. It includes the principal townships of Blenheim and Picton and secondary centres including Havelock, Renwick, Rai Valley and Seddon and Ward.
3. Within the geographical area of Marlborough there are also some private networks. Examples are the RNZAF Base at Woodbourne and a large sawmill at Kaituna. Another example and the one relevant to this incident is the Salt Works at Lake Grassmere owned by Dominion Salt.
4. The Salt Works is a total area of some 1,416 hectares. Within this area there are extensive ponds where seawater is taken in and evaporated to leave salt. There are areas where salt accumulations are worked within buildings and structures and outside. There is a collection of buildings, offices and installations. It is within this area that Dominion Salt owns and operates its private electricity network. This network is connected to the Marlborough Lines network and is reticulated at 11kV.
5. The first of the earthquake shocks occurred at 00.02 hours on Monday 14 November 2016. The widespread damage included serious damage to the Marlborough Lines network and to the network of Dominion Salt. Initially the Salt Works was left without electricity on account of failures within the Marlborough Lines network. There were also extensive failures within the Dominion Salt network which Dominion Salt addressed directly.
6. Dominion Salt managed its own network. At this relevant time it engaged a local contractor (*WPS*) who is independent of Marlborough Lines to undertake some limited work. This contractor was a former employee of Marlborough Lines but had no continuing status with Marlborough Lines in any employment or contractor sense. As a contractor to others he was authorised to work on the Marlborough Lines network to the extent of energising or de-energising the supplies of customers under the direction of Energy Traders. He was not an accredited contractor for lines work on the Marlborough Lines network. This contractor was engaged by Dominion Salt following the earthquakes to inspect the private Dominion Salt network and isolate the damaged areas. The purpose was to leave the damaged parts isolated for future repair but nevertheless allow the undamaged parts to receive a power supply to facilities requiring electricity such as pumps and other machinery.

7. On the afternoon of the earthquakes (a Monday) a senior manager at Dominion Salt contacted Marlborough Lines. He advised that the Salt Works was without power, that there was damage to its network that specific isolations had been put in place and that Dominion Salt had a contractor addressing these issues. Marlborough Lines was advised that Dominion Salt did not want power restored at that stage. Marlborough Lines ensured that the Salt Works was isolated from the Marlborough Lines network. This was achieved by opening a switch supplying the network of the Salt Works. This switch and the associated circuit breaker (ABS360 and CB5092-R) were at Grassmere.
8. Part of the advice given to Marlborough Lines by the Dominion Salt senior manager was that a specific switch within the private network (ABS344) had been opened by the Dominion Salt contractor to prevent supply going beyond that switch.
9. Subsequently on the evening of Monday 14 November and throughout Tuesday 15 November and on the morning of Wednesday 16 November Dominion Salt through its manager inquired with the Marlborough Lines Control Room when power would be restored to the Salt Works. Owing to faults on the Marlborough Lines network, power could not be restored to the Marlborough Lines main line at Grassmere so as to reach the boundary switch (ABS360 and CB5092-R) until around midday on Wednesday 16 November 2016.
10. Shortly after midday Wednesday 16 November 2016 the Marlborough Lines Control Room contacted the Dominion Salt senior manager to advise that power had been restored to the Marlborough Lines main line at Grassmere and that Marlborough Lines was ready to close the switch to allow electricity to flow into the Dominion Salt network. The Dominion Salt senior manager advised the Marlborough Lines Control Room that the Salt Works was ready to receive power. The Control Room operator asked for confirmation of this saying that they did not want *any surprises* and confirmation was given.
11. The Marlborough Lines Control Room operator then instructed a Marlborough Lines lineman to restore power to Dominion Salt. He was instructed to go first to Marlborough Lines switches ABS360 and CB5092-R and close those switches. He was instructed to then proceed into the Dominion Salt network and close ABS344 and CB127-R. This second step was given as an instruction because the Control Room operator understood the instruction from Dominion Salt to be to restore supply to Dominion Salt. Knowing from the Marlborough Lines record given on the Monday that a switch had been opened inside the Dominion Salt network, the Control Room operator knew this switch would have to be closed to restore supply to the remainder of the Dominion Salt network. So, confident that the instruction from Dominion Salt was to restore supply to its entire network the instruction was given to the lineman to close the switches inside the private network to allow this to happen.
12. All airbreak switches on the Marlborough Lines network and on most other networks are operated by a lever which is locked open or closed with a padlock. On the Marlborough Lines network there are hundreds of these switches and many more locks. The locks are put in place and owned by the network operator.
13. Soon after midday on Wednesday 16 November 2016 when the lineman received his instruction he went first to the pole near State Highway 1 at Grassmere. This pole is prior to the commencement of the Salt Works network. As expected, he found the switch locked in an open position. Using his key he removed the padlock, closed the switch and locked it closed. That padlock had a Marlborough Lines *Do not operate* tag on the line but he knew that the instruction on the tag had been overridden by the Control Room instruction so he removed the tag. There





was a Marlborough Lines circuit breaker on this pole. Power was restored upstream of CB5092-R. After the lineman advised the Control Room that ABS360 had been closed, CB5092-R was closed by Scada from the Control Room.

14. The lineman was then instructed to proceed further, almost a kilometre, to the second place where supply had been isolated. This was at the pole which carried ABS344 and CB127-R. As expected, the lineman found that this switch was padlocked in an open position. He pushed the Marlborough Lines master key into the padlock and it slid in. It turned out that the Blenheim locksmith who gave services to Marlborough Lines and Dominion Salt allocated the same key slots to the padlocks of each organisation. However the key would not turn. The lineman asked himself why the key would not turn the lock. He concluded that the lock must have had internal corrosion which stopped it turning. Padlocks in salty conditions such as the extreme salty conditions of Grassmere often become seized and are often required to be cut. The lineman, thinking this had happened, cut the padlock on ABS344. There was a tag on ABS344. The tag was an aluminium plate with the words "*Do not close man on line*". It was an aluminium tag of a kind that Marlborough Lines used in the past. It also had attached to it a cattle ear tag with the initials *WPS* written on this cattle ear tag. These were the initials of the contractor. The lineman did not see the ear tag attached to the plate. How visible it was is not now known.
15. The lineman having cut the padlock closed the switch and put a new Marlborough Lines padlock in place. At that point power was restored from the airbreak switch as far as the circuit breaker on the same pole that is about 1.5 metres. The lineman endeavoured to close the circuit breaker by activating the closing handle two times. When the circuit breaker would not hold closed the lineman then sought further instructions from the Control Room. At this point the contractor who coincidentally was in the vicinity but was not working on the lines approached the lineman to question why the restoration of electricity was being attempted in the circumstances.

## ANNEXURE 2

### **1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention, events and the enforcement notices issued.**

1. Marlborough Lines has taken steps in a number of discrete areas which it considers to be individually and collectively beneficial to those persons in its own workplace and also beneficial to workers in the wider electricity distribution industry.

#### **2. Arrangements with Private Network Operators:**

- (a) In New Zealand there are some 26 Electricity Distribution Businesses (EDBs) covering the whole of New Zealand. These EDBs take their electricity from the generating and supply companies and distribute this to ultimate consumers. Most consumers take their supply from one of these EDBs and utilise the electricity in their homes, businesses and farms. However, throughout New Zealand there are larger businesses which take electricity from an EDB and then privately distribute that electricity within their own networks. These are the *Private Network Operators*. In the case of Private Network Operators, once the electricity crosses the border from the EDB and into the private network the ongoing responsibilities within the private network lie with the Private Network Operator and not the EDB.
- (b) In Marlborough there are several Private Network Operators including the RNZAF base, a large sawmill complex and the salt works complex of Dominion Salt.
- (c) Dominion Salt is a long-established company with a highly specialised business in Marlborough where it takes sea water into evaporation ponds, facilitates the evaporation of the sea water and collects and processes the residual sea salt. The extensive area of the Dominion Salt operations involves building and processing plants, administrative facilities and an extensive pumping network, all powered by electricity. Dominion Salt reticulates and distributes electricity within its private network.
- (d) There has been a long and mutually respectful relationship between Dominion Salt and Marlborough Lines. Within the Dominion Salt private network Marlborough Lines has in the past done some work for Dominion Salt and Dominion Salt has also employed independent contractors. At the time this incident occurred in 2016 there was no formal written agreement between Marlborough Lines as an EDB and Dominion Salt as a Private Network Operator. While there were working relationships which were thought to be effective, there was no written agreement and no written protocols. As a result of this informality the roles and responsibilities of people within Marlborough Lines and Dominion Salt were insufficiently defined.
- (e) This incident has caused Marlborough Lines and Dominion Salt to recognise the need for formality and written protocols. There is now a formal written agreement in place and protocols for working interactions have been established. Accordingly, what was an unrecognised gap in the health and safety systems of both companies has been corrected.
- (f) Moreover, Marlborough Lines has reviewed its relationship with other private network operators and appropriate written agreements and protocols are either in place or are being actively developed.

- (g) As part of its relationship with Private Network Operators in its region, Marlborough Lines has taken upon itself the function of engaging with such Private Network Operators to ensure not just that the relationship between Marlborough Lines and its Private Network Operators is properly established and documented, but also to ensure, very importantly, that any arrangements which Private Network Operators have with independent contractors are properly documented and are subject to proper protocols particularly in relation to safety. Private Network Operators are encouraged by Marlborough Lines to ensure that within their own networks there are all appropriate systems, procedures and allocation of authority levels in place, not just for the Private Network Operator's own staff but also for those external contractors which it engages.

### **3. Control Room Procedures**

- (a) The Control Room within a regional EDB is the heart of its operations. Its importance in the business can be likened to the importance of Air Traffic Control in relation to airports and aviation.
- (b) This incident has shown that some looseness in language has caused a misunderstanding in the critical area of restoration of supply. Marlborough Lines has tightened its Control Room procedures in relation to the interface between itself as an EDB and Private Network Operators. It is recognised as being of critical importance that when supply to a Private Network Operator is being reconnected or also disconnected, there need to be clear standard procedures to be followed. These will involve specific answers to specific questions and there will not be reliance on general assurances.

### **4. Resilience Assessment**

- (a) The incident occurred at a time of high stress. Not only was electricity supply severely interrupted, but there was widespread damage to property including the properties of Marlborough Lines personnel.
- (b) When Marlborough Lines reviewed its overall performance following the earthquake it addressed the question of the resilience and capacity of crisis responders to manage while under the stress of an unusual event. Marlborough Lines was at the time already considering its obligations under Regulation 21 of the Health and Safety at Work (General Risk and Workplace Management) Regulations, to manage risks associated with remote or isolated work. It seemed logical that people working remotely and in isolation could have their performance affected by their mental state. Electricity crisis responders often work in isolation and sometimes alone.
- (c) Marlborough Lines decided that it needed to extend its competency programmes for the evaluation of technical skills to the evaluation of mental resilience. It was thought that personnel would benefit from understanding their own psychological health and what influenced their decisions.
- (d) Marlborough Lines looked for providers of the programme that was being envisaged but there was no provider giving services in this area. There were programmes for psychometric testing and mental health assessment, but nothing specific around crisis responders being mentally fit for the challenges they would encounter.
- (e) Marlborough Lines had used a company, Teamworks Pacific, for over 25 years for the provision of staff support services such as grief counselling and pre-employment

psychometric testing. They were asked to develop a programme and did so. The programme has now been introduced and the outcomes have given Marlborough Lines an additional level of confidence that all of its emergency response personnel, particularly those working remotely or on their own, will make good operational and health and safety decisions. There is a particular need for this in times of pressure brought about by a crisis. It is thought by Marlborough Lines that the experience it has had in this area will be useful to pass on to other EDBs.

**5. Emergency After-Care Programme**

- (a) Marlborough Lines recognises that those of its staff who are required to deal with emergency situations need after-emergency care. While this incident arose out of a severe earthquake, Marlborough Lines also frequently has emergency situations arising from road accidents and other accidents and, less frequently, arising from fires. In these situations staff can be exposed to distressing situations which can be expected to have emotional impacts. In recognition of this Marlborough Lines has introduced an Emergency After-Care Programme where staff who have been exposed to unusually stressful situations are properly debriefed and cared for.

**6. Safety, Health, Wellbeing and General Training Programme**

- (a) Marlborough Lines has a comprehensive programme directed at safety, health, wellbeing and general training, which is estimated to cost some \$1m per annum.

### ANNEXURE 3

#### 1.6 Total amount of money spent on rectifications

1. After the incident of 2016 there were certain initiatives related to rectification that were taken within Marlborough Lines. Additionally, there were ongoing checks and programmes which were already in place but which were augmented as a consequence of the incident.
2. The money spent in this context is set out as follows. Some of the cost is internal and some is external.

<b>Purpose</b>	<b>ML Cost</b>	<b>External Costs</b>	<b>Total Costs</b>
Contract with Dominion Salt	\$21,120	\$5,778	\$26,898
Contracts with others	\$10,000		\$10,000
Cost to update switching protocols	\$10,000		\$10,000
Cost to update communication protocols	\$5,000		\$5,000
Assessment of lone and remote workers*	\$15,840	\$31,029	\$46,869
Staff presentations focussed on health, mental health & wellbeing*		\$38,000	\$38,000
Health and Safety Leadership Training*		\$101,000	\$101,000
Mental Health First Aid*		\$2,200	\$2,200
Personal Resiliency Training*		\$13,000	\$13,000
<b>TOTAL COSTS</b>	<b>\$61,960</b>	<b>\$191,007</b>	<b>\$252,967</b>

\*NB: These were existing programmes which were augmented following the incident.

#### ANNEXURE 4

**1.10 Detail of consultation with unions/sector/industry as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution.**

- (a) Marlborough Lines has consulted with and received support from the following in the development of this Enforceable Undertaking:
  - (i) Electricity Engineers' Association (EEA)
  - (ii) Electricity Networks Association (ENA)
  - (iii) E tū
- (b) The consultation with the EEA and the ENA has begun and has been positive, particularly in relation to the industry education programme which Marlborough Lines proposes to undertake.
- (c) The consultation with E tū has begun and is positive in relation to benefits which will accrue to industry personnel.

## ANNEXURE 5

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

1. Marlborough Lines has already taken extensive corrective steps following this incident and it proposes to do more. What it has done and what it proposes to do is set out in Annexure 5.
2. Marlborough Lines considers that this Enforceable Undertaking proposal is the most appropriate response to the contravention for the following reasons:
  - (a) It best meets the purpose of the Act as set out in Section 3.
  - (b) The alternative of a Court prosecution will not achieve the same level of desirable outcomes (there will be no educative process of the kind contemplated).
  - (c) Marlborough Lines has an excellent safety record and has adopted the highest levels of responsibility towards safety. This includes becoming the first power company in New Zealand to achieve certification to ISO45001 which is the internationally recognised occupational health and safety management system. Certification to OHSAS18001 was held prior to the availability of ISO45001.
  - (d) Marlborough Lines has also taken a very positive attitude to the training and care of its personnel. It was the first (and it thinks the only one) business with an involvement in emergency situations to undertake a professional programme for the evaluation of the resilience of personnel involved in first responses. This programme has shown that it is possible to go some way towards identifying those personnel who can cope with stress more readily than others.
  - (e) Marlborough Lines has an extensive programme which addresses the health and wellbeing of its personnel. Annexure 8 is an extract from the latest Annual Report of Marlborough Lines, which gives an outline of its programme.
  - (f) Marlborough Lines, through its memberships of the Electricity Engineers Association and the Electricity Networks Association, has always been a contributor to improvements in industry safety and training. Marlborough Lines has taken a positive approach to following best industry practices at all times.
  - (g) This incident arose out of an unusual set of circumstances.

## **ANNEXURE 6**

### **What the incident has shown**

1. The incident has shown that the procedures which Marlborough Lines had at the interface with a Private Network Operator were not as good and as robust as they need to be. The incident has highlighted a potential problem area and to this extent, there has been a beneficial outcome.
2. From its understanding of the situation in the wider industry, Marlborough Lines considers that the area of weakness which the incident has shown will likely be found in other electricity distribution businesses. Accordingly, it is anticipated that the bringing to the attention of other companies of this situation will result in corrective actions being taken elsewhere.

### **3.1 What Marlborough Lines has done and commits to doing**

1. It has reviewed its relationship with other private network operators and appropriate written agreements and protocols are either in place or are being actively developed.
2. It has established a process for the evaluation of the resilience of staff likely to be placed in emergency situations.
3. It has introduced a system for post-emergency after-care for the benefit of staff exposed to emergency situations.
4. It has introduced more definitive Control Room protocols.
5. It has engaged with Private Network Operators in its region for educative and relationship purposes directed at safety.
6. It is developing an industry education programme in conjunction with the Electricity Engineers' Association and the Electricity Networks Association and details of this are set out in Annexure 6.
7. It has made a donation of \$10,000 to St John Marlborough. This is in addition to its continued support of that organisation (which has included the gift of a fully equipped ambulance).



## ANNEXURE 7

1. The programme which Marlborough Lines intends to implement as part of this Enforceable Undertaking Agreement is going to take some time (estimated 2-3 months) to develop.
2. The programme will be developed in consultation with the Electricity Engineers' Association and the Electricity Networks Association and will be subject to the approval of each of those bodies. Each body has indicated a willingness to support the programme.
3. The thrust of the programme will be to make available to other electricity distributors in New Zealand the learnings which Marlborough Lines has taken from this incident.
4. There will be some discrete components of the programme including:
  - (a) The need for careful arrangements and protocols with private network operators to be established and documented.
  - (b) The fundamental importance of establishing tight Control Room procedures and standard language when supply to a Private Network Operator is being reconnected or disconnected.
  - (c) The desirability of EDBs engaging with Private Network Operators to ensure that there is proper safety at the interface and also within the private network.
  - (d) The desirability of EDBs putting in place professionally run programmes;
    - (i) To evaluate the resilience of potential emergency responders.
    - (ii) To ensure that emergency responders receive proper care after any emergency response.
  - (e) The desirability of a general wellness programme for staff.
5. It is envisaged that this education programme will take the form of seminars in convenient locations throughout New Zealand enabling electricity distributors to have representatives in attendance. Provisionally these locations are Whangarei, Auckland, Hamilton, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill.
6. It is envisaged that each seminar will take approximately half a day and will comprise presentations from engineers and other professionals.
7. It is proposed that a nominee or nominees of either the Electricity Engineers' Association or the Electricity Networks Association will lead and introduce each seminar.
8. The presenters at each seminar will likely include:
  - (a) Representatives of EEA or ENA as above.
  - (b) A Marlborough Lines engineer with detailed knowledge of the incident and associated matters.
  - (c) The Marlborough Lines Health & Safety Officer in relation to general approaches to health and safety and some specific matters.

- (d) A professional psychologist or other appropriate presenter in relation to the resilience testing and after-care programme.
9. The cost of this programme is expected to be no less than \$150,000 made up of the following inclusions:
- (a) The costs of EEA and ENA involved in the assessment of matters arising out of this Enforceable Undertaking.
  - (b) The professional costs of independent seminar leaders (nominees of EEA or ENA).
  - (c) Travel, venues and accommodation.
  - (d) The fees of professionals likely to be engaged (e.g. in relation to the psychological evaluation and after-care programmes).
  - (e) External professional fees from legal advisors and others in the setting up of a programme.
  - (f) Staff and organisation time.

## ANNEXURE 8

Extract from the Marlborough Lines 2019 Annual Report, which gives an outline of its employee health and wellbeing programme.

# MULTIPLE FACTORS TO GOOD HEALTH AND WELLBEING

## 01 HEALTH AND WELLBEING POLICIES AND GUIDELINES

Policies and guidelines available in Mango:

- » Domestic Violence Policy
- » Harassment, Bullying and Discrimination Policy
- » Employee instructions for making a complaint of Harassment, Bullying or Discrimination
- » Employee Mental Health and Wellbeing Policy

## 02 EAP SERVICES

(Employee Assistance Programme)

Professional & confidential service for all MLL employees, paid for by MLL.

## 03 ANNUAL HEALTH CHECKS

Available FREE to all staff (voluntary).

Compulsory health checks and health monitoring for some roles (e.g. Arborists).

Pre-employment medicals for all new field staff employees.

## 04 SUN / HEAT PROTECTION

Sunscreen, lip balm, insect repellent, sunglasses, caps, brimmed hats provided to field staff.

## 05 SKIN CHECKS

Free annual skin checks available on-site for all staff.

## 06 FIVE WAYS TO WELLBEING

Aligning our wellbeing initiatives with the Mental Health Foundation's "5 Ways to Wellbeing":

1. Give
2. Take Notice
3. Be Active
4. Keep Learning
5. Connect

Creating awareness of the 5 Ways and how to apply them in everyday life.

## 07 TRAINING TARGETED AT MENTAL HEALTH & WELLBEING

Resiliency, mental health and first aid.

## 08 WORK STATION ASSESSMENTS

When new employee starts, and as needed or requested.

## 09 SIT / STAND DESKS

Available for office based employees when requested.

**10 SOUTHERN CROSS HEALTH INSURANCE**

For all staff.

**11 DEATH & DISABILITY INSURANCE**

For all staff.

**12 JOB FLEXIBILITY**

Where appropriate and possible flexible working hours and arrangements can be made, depending on role.

**13 HYDRATION**

Filtered water dispensers at Taylor Pass and Alfred Street.

Electrolyte supplement for field workers during hotter months available through Stores.

**14 SUPPORTIVE CULTURE**

Trust, honesty, respect, value.

Open door policy with Managing Director and Senior Management.

**15 POSITIVE HEALTH & SAFETY INITIATIVES PROGRAMME**

Programme for recognising positive health and safety initiatives with quarterly and annual awards.

**16 SUPPORT OF NATIONAL WELLNESS INITIATIVES**

Employee participation in national wellness initiatives e.g. Relay for Life and Step-Tember with MLL support including payment of registration fees.

**17 FLU JABS**

Free annual flu jabs available on-site for all staff.

**18 RANDOM DRUG & ALCOHOL TESTING FOR ALL STAFF**

Maintaining a drug and alcohol free workplace.

**19 SUBSIDISED GYM MEMBERSHIP**

Only \$5 per week for MLL employees for Stadium 2000 membership.

**20 EARLY RETURN TO WORK**

Supporting alternative/reduced duties following injury or illness.

**21 H&S PRESENTATIONS WITH GUEST SPEAKERS**

Since 2014 we have had 26 guest speakers talk about a range of H&S topics.

The programme will continue with at least four speakers each year.

- » Raising awareness
- » Thought provoking
- » Generating conversations

**22 MOVING FOR CANCER INITIATIVE**

MLL donates \$2 to the Marlborough Cancer Society for every 1km moved by employees when they enter as part of a MLL team into agreed sporting events and contributes to registration costs.

**23 FATIGUE MANAGEMENT**

Training and procedures for preventing and managing fatigue.