

January 2018

## Enforceable undertakings

An enforceable undertaking is an alternative to prosecution for a breach or alleged breach under the *Health and Safety at Work Act 2015* (the Act). It is an enforcement option that WorkSafe will accept in some circumstances.

### Key points on enforceable undertakings

- We may accept an enforceable undertaking for a breach (including an alleged breach) of the Act.
- We cannot accept an enforceable undertaking for a breach where there has been reckless conduct (section 47 of the Act) exposing any individual to a risk of:
  - death
  - serious injury, or
  - serious illness.
- Enforceable undertakings are not an admission of guilt.

### What is an enforceable undertaking?

Enforceable undertakings are a binding voluntary agreement that a person can make with us to remedy a breach of the Act. The person has the opportunity to voluntarily take positive action to make amends for the breach by:

- addressing the issues that led to the breach
- taking action to remedy any harm caused to the victim(s), and
- promoting the objectives and purposes of health and safety legislation.

An enforceable undertaking is not an admission of guilt. However, we expect that the person acknowledges the underlying issues that caused the breach to happen.

### How do I register interest in an enforceable undertaking?

You must first let us know if you are interested in an enforceable undertaking by registering your interest by emailing: [EnforceableUndertakings@worksafe.govt.nz](mailto:EnforceableUndertakings@worksafe.govt.nz) We will then consider the circumstances around the breach and determine whether you are eligible for an enforceable undertaking.

### The suitability assessment

To determine whether an enforceable undertaking is an appropriate option, we will complete a suitability assessment. This assessment considers whether, given your circumstances, it is likely WorkSafe will accept an enforceable undertaking. We will let you know the outcome of the assessment once it is completed.

### How do I submit an application?

We will let you know when we are ready to consider an application. Applications must be completed on the enforceable undertakings application form that can be downloaded from our website.

Applications must include details of the agreement you propose to make with us. This should include:

- acknowledgement of the issues that lead to the breach
- how you will address these issues
- the actions you will take to benefit workers, the workplace, industry or community, and
- how you will make amends to the victims(s).

Applications can be emailed to the Enforceable Undertakings Team.

## **The agreement you make with us**

As part of the agreement you make with us, you must commit to make up for the harm caused to the victim(s), and to promote health and safety legislation for the benefit of workers, the workplace, the industry or sector, and/or the community.

We will monitor the actions you have agreed to and help you decide a timeframe for when these should be completed by.

## **What happens when we consider an application?**

Applications will be considered on a case by case basis. We must consider whether the enforceable undertaking is a fair enforcement outcome for the harm that was caused. We will consider the views of the victim(s) during this process.

If the enforceable undertaking is accepted, we will stop the prosecution process for that person and withdraw the charges.

## **When is the enforceable undertaking complete?**

The Enforceable Undertakings Team at WorkSafe will decide when an enforceable undertaking is completed and this will be when they are satisfied that all of the agreed actions in the enforceable undertaking have been complied with.

The Team will confirm in writing via the enforceable undertakings email to the duty holder that the enforceable undertaking has been successfully completed.

## **Are there fees?**

We do not charge an application fee, however if your application is accepted we will generally seek to recover the following costs:

- administrative
- legal
- compliance, and
- publication costs.

These costs will be recovered by way of a fixed charge of \$10,300 (GST exclusive). This is only payable if your application is accepted.

## **Further information**

Further information on enforceable undertakings can be found on the enforceable undertakings page on the WorkSafe website: [www.worksafe.govt.nz](http://www.worksafe.govt.nz)

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