

# Enforceable undertakings

An enforceable undertaking provides an alternative to paying a fine for breaching the *Occupational Safety and Health Act 1984*. An enforceable undertaking aims to create improvements to occupational safety and health resulting in significant and tangible benefits to workers, industry and the community.

**Reforms to the Occupational Safety and Health Act 1984 allow an undertaking by an offender in lieu of payment of a fine. The new laws took effect from 1 January 2005.**

## What are enforceable undertakings?

Enforceable undertakings (undertakings) legally binds an offender who has been found guilty of an offence under the *Occupational Safety and Health Act 1984* and a penalty is imposed by the court. The undertaking is entered into with the WorkSafe WA Commissioner (the Commissioner) and is an alternative to the payment of fine/s. The cost to the offender of complying with the undertaking must be substantially equivalent to or greater than the amount of the fine/s imposed.

## Are they applicable to all offences?

Undertakings can only be entered into for minor offences and where there has been no physical harm to any person. Both the offender and the complainant (WorkSafe) must agree that it is appropriate to enter into an undertaking.

The option of an enforceable undertaking is available only if ordered by the court. It is open for either the prosecutor or the defendant to ask the court to adjourn proceedings to allow each to consider if an enforceable undertaking is appropriate.

## What is involved?

Once the offender has chosen an undertaking an election must be lodged no later than 28 days from when the order was made. The court specifies the date by which the undertaking must be entered into.

The nature and terms of the undertaking are agreed by the offender and

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the Commissioner. This includes the offender agreeing to take the action specified, taking responsibility for all associated costs and completing the required action by a specified date. The undertaking may be varied by agreement between the offender and the Commissioner.

The type of actions that may be included in an undertaking include:

- taking steps to improve occupational safety and health;
- publicising details of the offence;
- taking steps to remedy any consequence; and/or
- carrying out a project or activity for the improvement of occupational safety and health in the community.

An undertaking cannot include actions that the offender would have had a duty to comply with under the Act in any event.

### What happens if a person doesn't comply with an undertaking?

An offender who fails to meet the requirements of the undertaking and is found guilty of such an offence will be required to pay the fine associated with the undertaking and any additional penalty imposed by the court.

#### Need more information?

Contact **WorkSafe** on **1300 307 877** and ask for **Legal Services**

or check out the website at [www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au)

This bulletin is available on request in other formats to assist people with special needs.

#### Regional offices:

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