

DEMONSTRATING DUE DILIGENCE

Emma Bentton discusses how you can use enforceable undertakings to demonstrate due diligence and learn from them to avoid being prosecuted for an alleged contravention of a state's WHS Act.

One of the responsibilities for anyone with control in your business (referred to by WorkCover as officers) is to demonstrate due diligence. This means officers must demonstrate they have taken reasonable steps to avoid committing an offence in breach of work health and safety (WHS) acts.

One way to meet your responsibilities is by acquiring knowledge, keeping up to date with health and safety issues, and adjusting your work practices in response. A good place to start is by staying abreast of WHS or enforceable undertakings, and using them as a way to proactively manage your WHS and demonstrate due diligence.

WHAT IS AN ENFORCEABLE UNDERTAKING?

WorkCover may accept a work health and safety undertaking (also known as an enforceable undertaking) as an alternative to prosecuting a contravention or an alleged contravention of a state's work health and safety act, except for a category one offence.

Enforceable undertakings are considered on a case-by-case basis and are judged by whether the proposal offers the most appropriate enforcement response for the circumstances of the case. If accepted, the person is obliged to carry out the specific activities outlined in it. The activities are intended to improve not only health and safety at

the workplace, but also deliver health and safety initiatives to the relevant industry and the broader community. The activities may be substantial.

For example, last year, four workers at a construction site in Queensland were injured when the roof awning they were working on collapsed. The workers were employed by a roofing contractor and sub contracted to the principal contractor for the project, Evans Harch Pty Ltd. Three workers sustained minor injuries. The fourth worker sustained more serious injuries including a broken ankle. Evans Harch was found to be in breach of s.24 and s.28(1) of the *Queensland Workplace Health and Safety Act 1995*.

As an alternative to prosecution, Evans Harch Pty Ltd entered into an enforceable undertaking, requiring it to:

- Engage the training and system developments manager to conduct a review of the current quality, health, safety and environment (QHSE) management system and implement any recommendations as a result of the review.
- Implement an improved QHSE meeting format and implementation of improved signage and posters to raise safety awareness.
- Introduce a regular voluntary employee health check program.
- Buy three first aid defibrillators to be available at nominated worksites.
- Provide Certificate IV OHS training for 15 employees.
- Provide additional work health and safety (WHS) training for 40 employees and six senior managers with respect to recently changed WHS legislation.
- Provide specified professional development for QHSE managers.
- Purchase and implement a web based risk management software system.
- Establish an annual company safety reward for four employees and establish a company safety awareness reward for subcontractors nominated by project site safety committees.
- Develop and deliver presentations to

employees and sub-contractors in conjunction with the Spinal Injuries Association Queensland from construction workers affected by workplace accidents.

- Make a financial donation to 'Mates in Construction' for WHS purposes
This undertaking has a total minimum expenditure of \$121,000.

WHAT YOU LEARN FROM AN ENFORCEABLE UNDERTAKING

You don't need to wait for the horse to bolt before learning from an enforceable undertaking. They provide for significant and ongoing commitments to achieve improved WHS outcomes and compliance and they seek the person involved to communicate to industry peers and the community generally about the consequences of unsafe work practices. So why not stay ahead of the game and do this as part of your WHS commitments?

Be active among your industry associations and share your safety stories; implement company safety awareness awards; deliver education talks to your employees and sub-contractors in conjunction with key influencers such as spinal injury associations etc.

By doing so, alongside ongoing WHS planning, you demonstrate due diligence and commitment to achieving improved WHS outcomes and compliance. This will be incredibly useful to have should the worst-case scenario ever occur. ■

Emma Bentton is the founder of Systems on a Shoestring (SOAS), a set of easy-to-build safety systems for small business that you construct using mobile apps. Emma holds formal qualifications across health, safety and the environment, and has over 20 incident-free years working with small and large contractors in high-risk industries. www.soas.net.au.