



WHS undertakings: INFORMATION FOR AUDITORS

WorkSafe Tasmania
Department of Justice



Information for Auditors

In the event of an alleged contravention of the *Work Health and Safety Act 2012*, the regulator may, as an alternative to prosecuting the contravention, accept a work health and safety (WHS) undertaking given by the person who is alleged to have committed the contravention.

A WHS undertaking (also known as an enforceable undertaking) is a high-level sanction which is legally binding and is used where the alleged contravention is of a serious nature. Accepted WHS undertakings will form part of the duty holder's compliance history. A WHS undertaking provides an opportunity for organisational reform to improve WHS practices.

What is a WHS undertaking?

A WHS undertaking is a legally-binding agreement between the regulator and the person who proposed the undertaking. Once accepted by the regulator, the WHS undertaking obliges the person to carry out the specific commitments outlined therein.

The commitments are intended to not only improve health and safety at the workplace, but also to deliver health and safety initiatives to the relevant industry and the broader community.

When a proposed undertaking is accepted, any legal proceedings connected to the alleged contravention are discontinued. Where legal proceedings have not been instituted, acceptance of the undertaking will mean that no proceedings will begin.

The terms of an undertaking will require a workplace to have a work health and safety management system (WHSMS) in place acceptable to the regulator and in accordance with the *Work Health and Safety Act 2012*, as well as a commitment to ensure the WHSMS is audited by third party auditors.

The terms of the undertaking will determine the timings of the WHSMS audits. Generally this will require the first audit to be undertaken within three months of the undertaking being accepted where a current WHSMS is in place, or otherwise within six months.

Auditor reports

An auditor must submit reports from the WHSMS audits to the person who proposed the undertaking within 30 days of completing the audit. Audit reports must be detailed and include:

- an assessment of compliance with each element of the National Self-Insurer OHS Management System Audit Tool, consistent with the principles contained in *AS/NZS 4801:2001 Occupational Health and Safety Management System—Specification with guidance for use*
- a list of all evidence sighted confirming compliance or otherwise
- an assessment of each clause as either:
 - fully compliant
 - partially compliant (detailed explanation required)
 - non-compliant (detailed explanation required)
- appropriate recommendations aimed at achieving compliance
- a statement of status on the implementation of recommendations and non-compliances identified in previous WHSMS audits.

Each finalised WHSMS audit report provided to the person by the WHSMS auditor must be forwarded by the person who proposed the undertaking to the regulator, along with a letter certifying that the report has not been altered from the copy provided by the auditor.

The person is required to advise the regulator of their intended action/s to address each of the report's recommendations.

More information

Find these guides on the WorkSafe Tasmania website under the Resources tab (www.worksafe.tas.gov.au/resources):

- WHS undertakings: Information at a glance
- WHS undertakings: Information for an injured person, next of kin or guardian
- WHS undertakings: An overview
- WHS undertakings: Guidelines for proposing a WHS undertaking.

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Work Health and Safety Act 2012*, the *Work Health and Safety Regulations 2012* and any other relevant legislation. To view, go to www.legislation.tas.gov.au.

For more information contact

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