



**WHS undertakings:  
GUIDELINES FOR PROPOSING  
A WHS UNDERTAKING**

*Work Health and Safety Act 2012*

## 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](http://www.legislation.tas.gov.au).

### Preamble

Work health and safety (WHS) undertakings (also known as enforceable undertakings) are high-level sanctions for alleged contraventions of the *Work Health and Safety Act 2012*.

The regulator is the only person who can accept a WHS undertaking. Once accepted, the WHS undertaking becomes enforceable. An accepted undertaking can only be withdrawn or varied with written agreement of the regulator.

A WHS undertaking is a written, legally-binding commitment to implement effective work health and safety initiatives that are designed to deliver tangible benefits for workers, industry, and the community as a whole.

A WHS undertaking operates as an alternative to a court imposed sanction for an alleged contravention, without the recording of a conviction or a finding of guilt against the person. Details of a WHS undertaking may however form part of the work health and safety compliance record of a person.

A WHS undertaking does not constitute an admission of guilt by the person giving an undertaking in relation to the alleged contravention.

Court proceedings cannot be brought against a person for the alleged contravention to which a WHS undertaking relates if it is in effect and is being complied with or has been completely discharged. However, it is an offence for a person to contravene (not comply with) an undertaking.

A WHS undertaking cannot be accepted for an alleged contravention that is a Category 1 offence (as defined in the *Work Health and Safety Act 2012*).

Most WHS undertakings are given after a legal proceeding (also called a prosecution) in relation to the offence has been commenced. If an undertaking is accepted as an enforceable undertaking after a prosecution has been commenced, the proceedings will be discontinued. However, a person may give an undertaking in relation to the alleged contravention irrespective of whether a relevant legal proceeding has been commenced.

Once a decision has been made by the regulator as to whether the proposed WHS undertaking is accepted or not accepted, the relevant person will be given written notice and the reasons for the decision. If the WHS undertaking is not accepted by the regulator, legal proceedings for the alleged contravention may continue.

The regulator will publish the WHS undertaking and the reasons for the decision on [www.worksafe.tas.gov.au](http://www.worksafe.tas.gov.au).

This document sets out the regulator's general guidelines for the acceptance of a WHS undertaking.

## Guidelines for acceptance

To allow for the timely development and effective monitoring of a WHS undertaking, it needs to be in a written format that covers essential details of both a procedural and substantive nature. Details of the types of procedural matters the regulator requires are shown within the WHS undertaking template at Annexure A. In accordance with section 268 of the *Work Health and Safety Act 2012*, it is an offence to give false or misleading information.

Where a WHS undertaking is an alternative to prosecution, the quantum or effect of the undertaking must be commensurate with, and also account for, the benefits that accrue to the applicant due to the prosecution being discontinued. The benefits of avoiding court proceedings, including obviating a possible recorded conviction and other sentencing outcomes, must be reflected in the quantum or effect of the WHS undertaking, that is, those non-tangible benefits of avoiding prosecution must be reflected in the tangible outcomes required as part of the undertaking.

All persons are obliged to comply with their duties under the *Work Health and Safety Act 2012*. Therefore, any term of a WHS undertaking that merely represents ordinary expected compliance with the *Work Health and Safety Act 2012* cannot be considered for the purposes of an undertaking.

For a WHS undertaking to be accepted, the regulator requires terms that promote the objects or purpose of the *Work Health and Safety Act 2012* for the benefit of one or more of the following:

- the workers and/or workplace
- industry
- community.

The regulator also requires a person giving a WHS undertaking to have a Work Health and Safety Management System (WHSMS) acceptable to the regulator in place or alternatively commit to implementing one as part of the terms of an undertaking. This must include third party auditing of the WHSMS that is acceptable to the regulator.

When deciding whether to accept a WHS undertaking, the regulator will consider a number of factors, including:

- the objective gravity of the alleged contravention and the nature of the applicant's alleged misconduct
- the merits and benefits of the proposed undertaking
- the person's financial ability to meet the terms of the proposed undertaking
- the significance of the commitment compared to the capability of the person
- the person's past performance and history of compliance with the *Work Health and Safety Act 2012*
- the support the person has provided, and has committed to provide into the future to the injured persons or their dependants
- input from injured persons, next of kin or guardians (as relevant)
- the likely outcome should the matter be dealt with through legal proceedings
- any other matter which the regulator considers relevant.

Any decision made regarding the acceptance of a WHS undertaking rests solely with the regulator. To reach a decision, the regulator will independently exercise decision making powers under the *Work Health and Safety Act 2012*.

## More information

Find these guides on the WorkSafe Tasmania website under the Resources tab ([www.worksafe.tas.gov.au/resources](http://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: Information for auditors
- WHS undertakings: An overview

## Annexure A

*This annexure depicts a suggested format for a work health and safety undertaking*

# Work Health and Safety Undertaking

Part 11, *Work Health and Safety Act 2012*

The commitments in this undertaking are offered to the regulator by

..... (the person)  
[Insert person/entity name]

ABN/ACN .....  
[Insert person/entity ABN/ACN]

## Commencement of undertaking

This work health and safety undertaking is given on the day and date that it is accepted and signed by the regulator. The undertaking and its enforceable terms will commence to operate as a legally-binding commitment on the part of the person from the date it is given.

### Definitions

**Contravention** means an alleged contravention.

**Person** means an individual who or a legal entity which has a duty under the *Work Health and Safety Act 2012* and against whom the WHS undertaking becomes enforceable if it is accepted. It includes sole traders, each partner within a partnership, companies, unincorporated associations or government departments of public authority (including municipal councils).

**Term** of undertaking is something for which the person can be held accountable if the undertaking is accepted.

**The regulator** is the person appointed as the regulator in accordance with Schedule 2, Part 1 of the *Work Health and Safety Act 2012*.

**WHSMS** means a Work Health and Safety Management System.

**WHS undertaking** or **undertaking** or **enforceable undertaking** means a written undertaking given under Part 11 of the *Work Health and Safety Act 2012* by a person in connection with a matter relating to a contravention or alleged contravention by the person of the *Work Health and Safety Act 2012* and includes all of the contents of that document including the general information and general and enforceable terms. Once accepted by the regulator the undertaking becomes enforceable.

**WorkSafe Tasmania** is the agency responsible for administering the *Work Health and Safety Act 2012*.

### Privacy statement

The regulator 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 the regulator under Part 11 of the *Work Health and Safety Act 2012*. This information will be managed within the requirements of the current state government privacy regime.

The regulator may publish the undertaking and information contained in it for purposes identified in the undertaking or for other appropriate purposes in publications such as newspapers and on its website. The regulator may be required to disclose personal information to other agencies such as Tasmania Police or work health and safety regulators in other jurisdictions in accordance with enforcement activities that may be conducted as part of an investigation.

### Submitting the undertaking

Once the proposed undertaking has been executed, submit the undertaking for the regulator's consideration to:

The Regulator

WorkSafe Tasmania

PO Box 56

ROSNY PARK TAS 7018

By signing the undertaking, the person agrees to comply with the terms of the undertaking if the undertaking is accepted by the regulator. The proposed undertaking will not be evaluated or considered by the regulator unless it has been signed.

## Section I: General information

### I.1 Details of the person giving the undertaking

Nominated person  
(point of contact for communications): .....

[Enter details here]

Street address: .....

[Enter details here]

Mailing address: .....

[Enter details here]

Telephone: .....

[Enter details here]

Email address: .....

[Enter details here]

Legal structure: .....

[Enter details here]

Type of business: .....

[Enter details here]

Commencement date: .....

[Enter details here]

Workers: Full time: ..... Part time: .....

[Enter number]

[Enter number]

Casual: .....

[Enter number]

Products and services: .....

[Enter details here]

Comments: .....

[Enter comments here]

### I.2 Detail the contravention

(This should reflect the details of the Complaint and Summons, omitting personal details and reference to gender)

.....

[Enter details here]

### I.3 Detail the events surrounding the contravention

(Generally includes factual incident details and avoids blame or opinions)

.....

[Enter details here]

### I.4 Acknowledgement that the regulator alleges a contravention occurred as detailed in term I.2

.....

[Enter statement here]

**1.5 Detail the injury sustained or illness suffered by worker/s or other/s as a consequence of the contravention detailed in term 1.2**

.....  
 [Enter details here]

**1.6 Detail the enforcement notices issued that relate to the contravention detailed in term 1.2**

- Not Applicable
- Applicable (enter details below)

Date issued	Notice type	Notice number	Contravention or prohibited activity	Action taken in response to notice

**1.7 Detail the workers' compensation or other insurance benefits paid to the worker/s who sustained injury or suffered illness as detailed in term 1.5 or to the beneficiaries of deceased persons**

The person/s detailed is:

- an employee/s of the entity
- a self-employed person/s
- other .....  
 [Please specify]
- not applicable

.....  
 [Enter details here]

**1.8 Detail the support provided or proposed by the person to the injured worker/s, other/s or families**

Date	Description of support	Comments

**1.9 Detail any current Work Health and Safety Management System implemented and maintained by the person**

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

.....  
[Enter details here]

**1.10 Detail the level of auditing undertaken on the Work Health and Safety Management System referred to in term 1.9, including compliance audits and audit frequency**

.....  
[Enter details here]

**1.11 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking**

.....  
[Enter details here]

**1.12 Statement of regret that the contravention occurred and the reasons the person considers this undertaking is a more appropriate response to the contravention than a court imposed sanction**

(This should not include an admission of guilt)

.....  
[Enter statement here]

**1.13 Detail the rectifications to the workplace or work practices made as a result of the contravention and events detailed in terms 1.2 and 1.3 and the enforcement notices issued as detailed in term 1.6**

.....  
[Enter details here]

**Total amount spent on rectifications \$** .....

**1.14 Acknowledgement that this undertaking may be published and publicised**

**1.14.1** ..... [insert person] acknowledges that the undertaking may be published on WorkSafe Tasmania's website and referenced in WorkSafe Tasmania material.

**1.14.2** ..... [insert person] acknowledges that the undertaking may be publicised in newspapers.

.....  
[Insert case, if any, for why the regulator would not publish and/or publicise the undertaking]





## Section 2: 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.

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

.....  
[Enter statement here]

### 2.2 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)

.....  
[Enter details here]

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

(This may include to work health and safety representatives and in the annual report, if applicable)

Dissemination will be achieved by doing the following:

.....  
[Enter details here]

Dissemination will occur by:

.....  
[Enter timeframe here]

### 2.4 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

- 2.4.1 It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
- 2.4.2 Evidence to demonstrate compliance with the terms will be provided to the regulator by the due date for each term.
- 2.4.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the regulator that this undertaking has been completely discharged.
- 2.4.4 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.
- 2.4.5 It is acknowledged that the regulator may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to the regulator.
- 2.4.6 It is acknowledged that the regulator may initiate additional compliance monitoring activities, such as inspections, as considered necessary, at the regulator's expense.

**2.5 Activities to be undertaken to promote the objects of the Work Health and Safety Act 2012 that will deliver benefits for workers/others**

Activities		Cost	Timeframe
2.5.1		\$	
2.5.2		\$	
2.5.3		\$	
Total estimated cost of benefits for workers/others		\$	

**2.6 Activities to be undertaken to promote the objects of the Work Health and Safety Act 2012 that will deliver benefits for industry**

Activities		Cost	Timeframe
2.6.1		\$	
2.6.2		\$	
Total estimated cost of benefits for industry		\$	

**2.7 Activities to be undertaken to promote the objects of the Work Health and Safety Act 2012 that will deliver benefits for community**

Activities		Cost	Timeframe
2.7.1		\$	
2.7.2		\$	
Total estimated cost of benefits for the community		\$	

**2.8 Agreement to pay the regulator’s recoverable costs**

(These amounts will be provided by the regulator)

..... agrees to pay the regulator’s costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the regulator’s invoice:

[Insert person]

- administrative costs           \$ .....
- legal costs                       \$ .....
- compliance monitoring costs   \$ .....
- publication costs               \$ .....
- Total recoverable costs**       \$ .....

**2.9 A commitment regarding linking the promotion of benefits by the person to this undertaking**

(Activities that may promote or benefit the person need to specifically link the activity/benefit to this undertaking)

.....  
.....  
[Enter statement here]

**2.10 A commitment to [establish and maintain OR maintain] a Work Health and Safety Management System**

(Delete the irrelevant terms below. If required contact the regulator to determine which option is appropriate)

**2.10.1** ..... acknowledges there is no formal documented WHSMS in place.  
[Insert person]

**2.10.2** ..... commits to ensuring that a WHSMS acceptable to the regulator that  
[Insert person]  
satisfies the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques* will be implemented within 12 months of the acceptance of this undertaking.

or

**2.10.1** ..... acknowledges there is a formal documented WHSMS acceptable to the  
[Insert person]  
regulator that satisfies the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*, currently in place.

**2.10.2** ..... commits to ensuring that the WHSMS remains compliant with the  
[Insert person]  
principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

or

**2.10.1** ..... commits to ensuring that within 12 months of the acceptance of this  
[Insert person]  
undertaking the WHSMS shall be compliant with the principles of *AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

**2.10.2** ..... acknowledges that the WHSMS will be maintained in accordance with  
[Insert person]  
*AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques*.

**2.11 A commitment to ensure the Work Health and Safety Management System is audited by third party auditors**

(Delete the irrelevant terms below. If required contact the regulator to determine which option is appropriate)

**2.11.1** ..... acknowledges that the auditors selected to perform WHSMS audits must  
[Insert person]  
meet any qualification requirements as set by the regulator.

**2.11.2** ..... commits to ensuring the WHSMS will be audited by certified third party  
[Insert person]  
auditors.

**2.11.3** ..... acknowledges that details of the auditors' qualifications will be provided  
[Insert person]  
with audit reports submitted to the regulator.

**2.11.4** ..... acknowledges that costs associated with these audits will be met by  
[Insert person]  
..... as part of the undertaking.  
[Insert person]

**2.11.5** ..... [insert person] ..... commits to ensuring the WHSMS will be audited against criteria that meets the principles of AS/NZS 4801:2001 Occupational Health and Safety Management Systems — Specification with guidance for use, to verify the WHSMS meets the principles of AS/NZS 4804:2001 Occupational health and safety management systems—General guidelines on principles, systems and supporting techniques.

**2.11.6** ..... [insert person] ..... acknowledges that the current WHSMS in place, as detailed in term 2.10.1 is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within three months of this undertaking being accepted.

or

**2.11.6** ..... [insert person] ..... acknowledges that there is no WHSMS in place, as detailed in term 2.10.1 that is acceptable to the regulator and commits to ensuring that an initial third party audit will be undertaken within six months of this undertaking being accepted.

**2.11.7** ..... [insert person] ..... commits to ensuring at least two further third party audits will be undertaken at 12 month intervals, commencing 12 months after the initial audit.

## **2.12 A commitment to provide a copy of each finalised Work Health and Safety Management System audit report to the regulator**

**2.12.1** It is acknowledged that audit reports received from the auditor will be sent to the regulator within 30 days of the audit along with written confirmation that the report has not been altered from the copy provided to the person by the auditor.

**2.12.2** It is acknowledged that within 30 days of receipt of the auditor's written report, the regulator will be advised of the intended actions for addressing each of the report's recommendations.

## **2.13 A commitment to implement the recommendations from third party audits**

..... [insert person] ..... commits to ensuring the recommendations resulting from the WHSMS audits will be fully implemented within six months of receiving the audit report, unless otherwise agreed by the regulator.

## **2.14 Minimum spend**

**2.14.1** ..... [insert person] ..... commits to a minimum spend of ..... [insert minimum spend] ..... for this undertaking.

**2.14.2** ..... [insert person] ..... 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 will be sought from the regulator.

**2.14.3** ..... [insert person] ..... acknowledges the minimum spend comprises of the:

- Total value of benefits to workers/others ..... [insert \$ minimum spend]
- Total value of benefits to industry ..... [insert \$ minimum spend]
- Total value of benefits to community ..... [insert \$ minimum spend]
- The regulator's recoverable costs ..... [insert \$ minimum spend]

**Estimated total value of the undertaking** ..... [insert \$ value]

### Section 3: Execution

This undertaking is given by the person on the date it is accepted by the regulator as set forth in Section 4 (select from the following execution clauses and delete those that do not apply).

#### (INDIVIDUAL)

I offer this undertaking and commit to the terms herein.

**SIGNED** by the person

..... this ..... day of ....., 20 .....

[Insert person]

.....  
[Signature of person]

before me:

.....  
[Witness full name]

.....  
[Witness signature]

.....  
[Witness address]

**(PARTNERSHIP)**

We offer this undertaking and commit to the terms herein.

**SIGNED** by the persons

..... [Insert partner name] ..... [Signature of person] .....

and

..... [Insert partner name] ..... [Signature of person] .....

and

..... [Insert partner name] ..... [Signature of person] .....

On this ..... day of ..... , 20 .....

before me:

..... [Witness full name] .....

..... [Witness signature] .....

..... [Witness address] .....

**(INDIVIDUAL TRUSTEE OF A TRUST)**

I offer this undertaking and commit to the terms herein.

**SIGNED** by the person

..... in their own right and in their capacity as Trustee of the .....  
[Insert Trustee name] [Insert Trust name]

On this ..... day of ....., 20 .....

.....  
[Signature of person]

before me:

.....  
[Witness full name]

.....  
[Witness signature]

.....  
[Witness address]



**(COMPANY)**

..... offers this undertaking and commits to the terms herein.  
[Insert company name]

**THE COMMON SEAL** of

*Affix Common seal*

.....  
[Insert company name]

was affixed in accordance with the  
*Corporations Act 2001* in the presence of

.....  
[Insert Director name]

and

.....  
[Insert Director/Secretary name]

on the ..... day of ....., 20 .....

.....  
[Signature of Director]

.....  
[Signature of Director/Secretary]

.....  
[Director's full name]

.....  
[Director's/Secretary's full name]

before me:

.....  
[Witness full name]

.....  
[Witness signature]

.....  
[Witness address]

**(COMPANY AS TRUSTEE OF A TRUST)**

..... offers this undertaking and commits to the terms herein.  
[Company name]

**THE COMMON SEAL** of

*Affix Common seal*

.....  
[Insert Company name]  
was affixed in accordance with the  
*Corporations Act 2001* in the presence of

.....  
[Insert Director name]

and

.....  
[Insert Director/Secretary name]

in its own right and in its capacity as Trustee of .....  
[Insert trust name]

on the ..... day of ..... , 20 .....

.....  
[Signature of Director]

.....  
[Signature of Director/Secretary]

.....  
[Director's full name]

.....  
[Director's/Secretary's full name]

before me:

.....  
[Witness full name]

.....  
[Witness signature]

.....  
[Witness address]

## Section 4: Acceptance

This undertaking is accepted by the regulator on the

..... day of ....., 20 .....

.....  
[Signature]

.....  
[Name of regulator]

Appointed by the Secretary in accordance with Schedule 2, Part 1 of the *Work Health and Safety Act 2012*.

**1300 366 322**  
[www.worksafe.tas.gov.au](http://www.worksafe.tas.gov.au)

For more information contact

Phone: 1300 366 322 (within Tasmania)  
(03) 6166 4600 (outside Tasmania)

Fax: (03) 6173 0206

Email: [wstinfo@justice.tas.gov.au](mailto:wstinfo@justice.tas.gov.au)

