

# Application for an enforceable undertaking

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June 2019

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

Name of entity or, partnership or individual applying for this undertaking

# Application for an enforceable undertaking

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

Name of the person or persons who will be signing this undertaking in section 4:

On behalf of:

Name of the entity giving this undertaking (if an individual or sole trader, leave blank – complete in all other cases)

This enforceable undertaking is given on the day and date that it is accepted and signed by WorkSafe. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

Do not refer to the victim by name in this document. Please refer to the victim/worker/employee/volunteer/or other term as appropriate.

WorkSafe 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 WorkSafe under Part 4 of the *Health and Safety at Work Act 2015*. This information will be managed within the requirements of both the *Privacy Act 1993* and the *Official Information Act 1982*.

There is an expectation that WorkSafe will generally publish the undertaking in full on its website.

TERM	DEFINITION
Contravention	An action which offends against the <i>Health and Safety at Work Act 2015</i> and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention.
HSMS	A Health and Safety Management System.
Person	An individual who or a legal entity which has a duty under the <i>Health and Safety at Work Act 2015</i> and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, trustees of trusts, and crown organisations.
Health and Safety legislation	<i>Health and Safety at Work Act 2015</i> and associated regulations.
Enforceable undertaking	An enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with WorkSafe. The agreement outlines actions the duty holder will undertake to address the contravention. It is expected to deliver activities which benefit workers, the wider industry or sector and/or the community as well as acceptable amends to any victim(s).

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# 1. General information

## 1.1 Details of the person/persons/entity giving the undertaking

Name of person(s) making this undertaking: (in all cases complete with the name(s) of those who are signing this undertaking under Section 4)

Name of entity: (if applicable, leave blank if an individual)

Type of legal entity: (complete in all cases, for example individual, sole trader, partnership, trust, company, etc)

Nominated contact person: (the same person listed above/one of those listed above)

Physical address:

Postal address: (if different from physical address)

Work phone:

Mobile phone:

Email:

Industry:

Workers (enter numbers):

Full-time:                      Part time:                      Casual:

Description of the products and services provided by the business or undertaking:

Comments:

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## 1.2 Detail of the contravention

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### 1.3 Detail the events surrounding the contravention

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**1.4 Detail any enforcement notices issued that relate to the contravention as detailed in term 1.2**

DATE	NOTICE TYPE	NOTICE NUMBER	CONTRAVENTION OR PROHIBITED ACTIVITY	ACTION TAKEN IN RESPONSE TO NOTICE
DD / MM / YEAR				
DD / MM / YEAR				
DD / MM / YEAR				

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**1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention (1.2), events (1.3) and the enforcement notices issued (1.4)**

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**1.6 Total amount of money spent on rectifications**

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**1.7 Detail the injury sustained or illness suffered by victim(s) or other(s) as a consequence of the contravention or, (as applicable) the *potential* for fatal injury or future fatal illness**

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**1.8 Detail any offer of amends or payments made to the victim(s) who sustained injury or suffered illness (the total monetary amount here is also to be included in the table at 3.12.3)**

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Describe the victim(s) relationship to you/the entity in question: (eg employee(s)/shareholder/director/family member/contractor, etc. If the relationship has more than one dimension, for example a family member who is also an employee and a director and/or shareholder of the business, or an employee who is a shareholder (etc) – then please describe this)

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Detail offer of amends or payments:

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**1.9 Detail any consultation with the victim(s) as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution**

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**1.10 Detail any consultation with unions/sector/industry as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution**

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**1.11 Detail the support provided or proposed by the person to the victim(s), other(s)**

DATE	DESCRIPTION OF SUPPORT	COMMENTS
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		

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### **1.12 Detail any current HSMS implemented and maintained by the person**

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

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**1.13 Detail the level of auditing undertaken on the HSMS, including compliance audits and audit frequency**

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

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## **2. General terms**

The person acknowledges and commits to the general terms set forth in the sub-terms below.

### **2.1 Acknowledgement that WorkSafe alleges a contravention occurred as detailed in term 1.2**

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### **2.2 Statement of regret that the contravention occurred**

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**2.3 Statement of the reasons why, on balance, the person considers this undertaking is the most appropriate response to the contravention**

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

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**2.5 Acknowledgment of the policy published by WorkSafe for the acceptance of an undertaking**

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(write the name of the person(s) or entity giving the undertaking)

has read and understood the Enforcement Undertaking Operational Policy.

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**2.6 Acknowledgement that this undertaking will be published and publicised in full**

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(write the name of the person(s) or entity giving the undertaking)

acknowledges that the undertaking will, if accepted, be published on WorkSafe's website in full and referenced in WorkSafe material.

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**2.7 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities**

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(write the name of the person(s) or entity giving the undertaking)

has the financial ability to comply with the terms of this undertaking and have provided evidence by way of

(type of evidence provided)

with this undertaking to support this declaration.

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In the event of impending receivership, liquidation or sale of the entity, (write the name of the person(s) or entity giving the undertaking)

will advise WorkSafe of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

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**2.8 Statement outlining any relationship between the person and any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking**

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## 2.9 Statement regarding Intellectual Property

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(write the name of the person(s) or entity giving the undertaking)

grants WorkSafe a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in relation to any material developed as a result of this undertaking. This licence includes the right to use, copy, modify and distribute the materials.

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## 2.10 Acknowledgement that the person may be required to provide a statutory declaration

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(write the name of the person(s) or entity giving the undertaking)

acknowledges that it may be necessary for WorkSafe to obtain a statutory declaration outlining details of any prior convictions (safety related) outside of New Zealand and that it will provide such declaration if required by WorkSafe

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

1. It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
2. Evidence to demonstrate compliance with the terms will be provided to WorkSafe by the due date for each term.
3. The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by WorkSafe, that this undertaking has been completely discharged.
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.
5. It is acknowledged that WorkSafe may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe.
6. It is acknowledged that WorkSafe may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe's expense.
7. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to WorkSafe, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

(write the name of the person(s) or entity giving the undertaking)

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### 3. 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.

#### **3.1 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**

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Detail the management strategies to be employed that will satisfy and demonstrate to officer/s of the person that this commitment is being met:

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

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(this may include to work health and safety representatives and in the organisation's annual report, if applicable)

Dissemination will be achieved by doing the following:

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Dissemination will occur by: DD / MM / YEAR

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### 3.6 Where WorkSafe considers appropriate in the circumstances, undertaking a SafePlus Onsite Assessment

Further information about SafePlus can be found here: [worksafe.govt.nz/about-us/who-we-are/our-priorities/safeplus/about-safeplus](https://worksafe.govt.nz/about-us/who-we-are/our-priorities/safeplus/about-safeplus)

- 3.6.1 The suitability of a SafePlus assessment will be determined by the Enforceable Undertakings Panel when your application is considered.
- 3.6.2 In addition to the total cost below (3.7) all costs of a SafePlus Onsite Assessment will be met by the person making this undertaking. The fee charged for an Onsite Assessment is a commercial matter between your business and the SafePlus Accredited Assessors that you commission.
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### 3.7 Minimum spend

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(write the name of the person(s) or entity giving the undertaking)

3.7.1

commits to a minimum spend of \$ \_\_\_\_\_ for this undertaking.

(write the name of the person(s) or entity giving the undertaking)

3.7.2

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 amount will be sought from WorkSafe

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(write the name of the person(s) or entity giving the undertaking)

3.7.3

Acknowledges the minimum spend comprises of the:

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TOTAL COST	MINIMUM SPEND
Financial amends paid to victims (if applicable)	
Benefits to workers/others	
Benefits to industry	
Benefits to community	
<b>Estimated cost of the undertaking</b> Plus GST (if any)	\$ _____

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## 4. Execution

### Authorised representative of an organisation

Undertaking given by (name of authorised representative)

In my own right and in my capacity as (eg President, Chairperson, etc)

of (eg organisation name)

On the (day) day of (month), 20 (year).

Signature of the person giving the undertaking:

Undertaking given before me:

Witness name:

Witness address:

Witness signature:

## 5. Acceptance

This undertaking is accepted by WorkSafe.

On the (day) day of (month), 20 (year).

Signature of person accepting the undertaking:

Name of WorkSafe representative: (General Manager, WorkSafe (or delegate))

Undertaking given before me:

Witness name:

Witness address:

Witness signature: