



\$1.5 million Enforceable Undertaking or Prosecution by SafeWork NSW?

In July 2017 a PCBU entered into a \$1.5 million enforceable undertaking with SafeWork NSW and thus avoided being prosecuted. An enforceable undertaking is a legally binding agreement between the PCBU who proposes the undertaking and SafeWork NSW. The PCBU is obliged to carry out the specific activities outlined in the undertaking.

This article explains what workplace incident occurred that led to this situation and the benefits of an enforceable undertaking. Would your PCBU make the same decision if it were in this situation? How could your PCBU avoid getting into this sort of this situation?

The Workplace Incident

The PCBU in this case is a manufacturing company and one of its workers sustained a severe injury while operating a guillotine that SafeWork NSW alleged was poorly guarded. SafeWork NSW concluded that the PCBU had “failed to discharge its obligations under section 19(1) in that it did not ensure so far as reasonably practicable the health and safety of workers”.

The injured worker was off work for 17 days and was then on suitable duties for about 3 months before returning to full hours of doing administrative work. During that time the worker had 2 surgical procedures and hand therapy. And it took another 10 months before the worker was given medical clearance to return to their pre-injury duties as an Apprentice Fitter Machinist. So this injury was clearly a significant injury.

SafeWork NSW Requirements for an Enforceable Undertaking

An enforceable undertaking that a PCBU proposes must satisfy three SafeWork NSW principles. It must provide:

- Benefits to the workplace
- Benefits to the PCBU's industry
- Benefits to the community

Further details about enforceable undertakings can be found at SafeWork NSW's website [here](#).

And you can see the summary and full details of the \$1.5 million enforceable undertaking at this link [here](#).

Benefits of Choosing an Enforceable Undertaking Instead of Prosecution

The possible benefits of choosing to go the enforceable undertaking route to avoid prosecution include:

- The PCBU does not have a 'prior conviction' on their record if a future workplace incident brings SafeWork NSW to investigate.
- The money the PCBU spends on the prosecution fine, legal costs, senior managers' time and other costs, is dead money. There is no benefit to the PCBU. Also there is a potential loss of business income because of the impact on the PCBU's reputation
- The money the PCBU spends on the "benefits to the workplace" requirement of the enforceable undertaking does provide a return by helping to prevent workplace incidents and improving safety culture.
- And the money the PCBU spends on the "benefits to the PCBU's industry and the community" requirements of the enforceable undertaking has a potential of providing a valuable boost to the PCBU's reputation and future business income.

The benefits of an enforceable undertaking route can be found even in lower level workplace incidents. One PCBU in 2016 successfully carried out an enforceable undertaking that cost only \$51,000 you can find those details [here](#).

How a PCBU can Avoid Prosecution and Avoid an Enforceable Undertaking

Page 5 of the \$1.5 million PCBU's enforceable undertaking shows the details of what it cost or is costing the PCBU to handle the situation where the injury occurred. The cost is \$53,000. It majorly covers training all workshop workers on regular inspections, hazard identification, risk assessment, and safe operating procedures. It includes all the PCBU's workshops not just the machine where the injury occurred

If those measures costing \$53,000 had been put in place before the worker was injured then it would have been very unlikely that the worker would have been injured and the need to spend \$1.5 million would not have arisen.

Courtenell developed a one day Risk Assessment Course just to help PCBU's avoid these situations. See the Course Outline by [clicking here](#). We also have consulting services to help PCBU's achieve WHS compliance.

COURTENELL Pty Ltd

as Trustee for the Vowles Family Trust
ABN 42164393628 ACN 050109281
PO Box 622, Broadway NSW 2037

147 St Johns Road, Glebe NSW 2050 train@courtenell.com.au
~ www.courtenell.com.au
Phone 02 9552 2066