



ACT
Government

**Access
Canberra.**

*Work Health and Safety Act 2011 (WHS Act) –
Work Health and Safety Regulation 2011 (WHS Regulation)*

Enforceable undertaking proposal

Date:

24 October 2018

Enforceable undertaking

Undertaking to the Regulator given for the purposes of part 11 of the *Work Health and Safety Act 2011 (WHS Act)*.

Section 216.

by **FEEL STYLE PTY LTD**

ACN 146 136 843

Privacy statement

Access Canberra respects your privacy and is committed to protecting personal information. The information provided on this document is for the purpose of making an undertaking to the Regulator given for the purposes of part 11 of the WHS Act. This information will be managed within the requirements of the current ACT government privacy policy.

The department may publish the undertaking and the information contained in it for purposes identified in the undertaking or for other appropriate legal purposes in various publications such as newspapers and on its website. The department may be required to disclose personal information to other regulatory agencies in accordance with other law enforcement activities which may be conducted as part of an investigation. Further information on our privacy policy can be found at <http://www.cmd.act.gov.au/legal/privacy>.

SECTION 1 - GENERAL INFORMATION**a. Details of the person proposing the undertaking**

<i>Residential address:</i>	150 Jabanugga Avenue, Ngunnawal ACT 2913
<i>Postal address (if different from residential address):</i>	
<i>Telephone contact number:</i>	
<i>Mobile contact number:</i>	0402 454 452
<i>Email address:</i>	damien.berry@bigpond.com
<i>Legal structure:</i>	Company
<i>Type of business:</i>	Residential builder
<i>Commencement date of the entity:</i>	2 September 2010
<i>Number of workers: (Full Time / Part Time)</i>	3 (including Director)
<i>Products and Services:</i>	Residential building services
<i>Comments:</i>	

b. Details of the alleged contravention

It is alleged by WorkSafe ACT that on 27 October 2016, Feel Style Pty Ltd failed to discharge its obligations as person conducting a business or undertaking under Section 32 of the *Work Health and Safety Act 2011* (the Act), failure to comply with health and safety duty – category 2. Feel Style Pty Ltd, being a person conducting a business or undertaking, had a safety duty under section 19 of the Act, to ensure the health and safety of workers including but not Ltd to providing any information, training, instruction or supervision necessary to protect workers from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking. It is alleged that Feel Style Pty Ltd did not, so far as reasonably practicable, ensure the health and safety of its workers.

c. Details of the events surrounding the alleged contravention, e.g. incident details

It is alleged that on 27 October 2016, a young worker was working on a site in Amaroo, ACT. The principal contractor of the site was Nikias Diamond Property Developments Pty Ltd. The young worker fell from a height of approximately six (6) metres on to a concrete floor below. Prior to the fall, the young worker was standing on a ladder that was placed next to a void in the construction site (a penetration), and the young worker fell when he stepped off the ladder.

It is alleged that Feel Style Pty Ltd failed to comply with their safety duty under the Act by failing to ensure that worksite voids were adequately covered, to the necessary extent, to prevent workers from falling. It is also alleged that appropriate site supervision was not in place at the time of the incident, noting that the young worker was enrolled in the 'Kids Assist' Australian School Based Apprentice ("ASBA") program.

Enforceable undertaking proposal

Date:

d. An acknowledgement that WorkSafe ACT alleged a contravention has occurred

It is acknowledged that WorkSafe ACT has alleged that Feel Style Pty Ltd has contravened section 32 of the *Work Health and Safety Act 2011*.

e. The details of any injury that arose from the alleged contravention

The injured young worker sustained the following injuries as a result of the incident:

- Broken ribs
- Broken collarbone
- Bruised lung
- Vertebral fractures

f. The details of any enforcement notices issued that relate to the alleged contravention:

Notices received:

Yes (provide details) No

g. A statement of assurance about future work health and safety behaviour

Feel Style Pty Ltd is committed to complying with its obligations under the *Work Health and Safety Act 2011* and ensuring, so far as reasonably practicable, the health and safety of all workers and those who may be affected by its business or these undertakings.

When an alleged contravention is associated with an injury/illness

h. The details of the type of workers compensation provided (if the injured person(s) is a worker of the person)

Not applicable.

The details of the support provided, and proposed to be provided, to the injured person(s) to overcome the injury/illness

Does the contravention involve injury to person?

Yes No

The injured young worker was working with Feel Style Pty Ltd, whilst enrolled in a an ASBA program. The young worker did not have any permanent employment arrangement with Feel Style Pty Ltd.

The following support has been provided to the injured person(s) or injured person(s) family:

November 2016	Met personally with young worker and the young worker's family at their home, in order to follow up on progress made since the injury. Offered support and assistance to the young worker.	Damien Berry Director of Feel Style Pty Ltd
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Enforceable undertaking proposal

Date:

i. If the matter involves a fatality or very serious injury¹, a claim to demonstrate that exceptional circumstances exist that the enforceable undertaking is a more appropriate response than pursuing prosecution

Does the contravention involve a fatality or very serious injury¹?

Yes

No

Feel Style Pty Ltd is a small proprietary company, operating in the Canberra and Queanbeyan regions. Feel Style Pty Ltd currently employs four workers, including two apprentices. Feel Style Pty Ltd operates in the residential sector and primarily works as a sub-contractor for principal residential contractors. The scale of work that Feel Style Pty Ltd was engaged in at the Nikias site where the incident occurred is much larger than the usual work carried out by the company.

Feel Style Pty Ltd acknowledges that a very serious injury has occurred and is deeply regretful. Feel Style Pty Ltd considers there are exceptional circumstances in this matter to warrant WorkSafe ACT accepting the proposed enforceable undertaking rather than pursuing prosecution. These exceptional circumstances include that Feel Style Pty Ltd has no prior safety breaches or convictions and has been in operation since 2010. At all times, Feel Style Pty Ltd and its Director has been frank and open with WorkSafe ACT and the investigation team, and immediately acknowledged their culpability in the incident and injury to the young worker. Feel Style Pty Ltd displays a willingness to take part in training sessions and strives to become a leader and change the safety culture in the entire construction industry, as well as the company itself. Feel Style Pty Ltd is highly unlikely to reoffend in the future.

¹ 1. An injury that has caused nervous system damage liable to lead to mental incapacity or permanent restriction of mobility or involves a major amputation of a limb or parts of the body, for example, amputation above the knee or elbow. This term is not defined in the WHS Act; it is used within this document to identify certain circumstances which will trigger additional steps in the enforceable undertaking process.

Enforceable undertaking proposal

Date:

j. The details of any existing occupational health and safety management system at the workplace including the level of auditing currently undertaken

Feel Style Pty Ltd has an occupational health and safety management system in place that is suitable for a company of its size. This includes site specific Safe Work Method Statements, policies and procedures in place in compliance with the Act, as well as compliance with ISO-31000 – Risk management.

This system is reviewed by principal contractors when Feel Style Pty Ltd is engaged as a subcontractor, which is the primary way that the company performs work.

k. The details of any consultation undertaken within the workplace regarding the proposal of an enforceable undertaking

Feel Style Pty Ltd has discussed the proposed enforceable undertaking with its workers. This includes the reason for proposing the enforceable undertaking and the incident on 27 October 2016, the content of the undertaking and what is required to ensure that the requirements of the undertaking are met. Feel Style Pty Ltd has also discussed the enforceable undertaking and the events of 27 October 2016 with other stakeholders including various subcontractors, industry associations and suppliers.

l. A statement of regret that the incident occurred (i.e. not an admission of guilt)

Feel Style Pty Ltd regrets the incident that occurred on 27 October 2016, in which a young worker, Tarek Hijazi, was involved. Feel Style Pty Ltd acknowledges the seriousness of the incident and injuries sustained by Mr Hijazi, and the ongoing and long-term consequences of the injury for Mr Hijazi.

m. Any rectifications made as a result of the contravention

Reviewed and implemented changes to the delivery of Safe Work Method Statements, ensuring that not only are they completed but also understood by all workers. In particular, Feel Style Pty Ltd ensures that all voids and penetrations are covered to prevent future falls.
Feel Style Pty Ltd is ensuring all foreman and managers undergo additional Work Health and Safety training
Review of the induction process on sites for new workers, ensuring that the principal contractor and Feel Style Pty Ltd are aware of their obligations and that an appropriate induction is carried out

Total amount spent on rectifications

\$5,000 per annum in wages on weekly safety talks, site inspections, site walk throughs and additional reporting

n. An acknowledgement that the enforceable undertaking may be published and publicised

Feel Style Pty Ltd acknowledges that the undertaking may be published on WorkSafe ACT internet sites and may be referenced in WorkSafe ACT publications.

o. A statement of ability to comply with the terms of the enforceable undertaking

Feel Style Pty Ltd acknowledges that it has the resources available to comply with the requirements of this enforceable undertaking.

Date:

p. Statement regarding relationships with beneficiaries

Feel Style Pty Ltd acknowledges there are no known current relationships with any of the beneficiaries outlined in the proposed enforceable undertaking, other than the current employees of Feel Style Pty Ltd and the injured worker.

q. Intellectual property licence

Feel Style Pty Ltd grants WorkSafe ACT a permanent, irrevocable, royalty free, worldwide, non-exclusive license to use, reproduce, distribute, electronically transmit, electronically distribute, adapt, and modify any materials developed as a result of this enforceable undertaking.

r. The person may be required to provide a statutory declaration

Not applicable.

s. Acknowledgement of enforceable undertakings overview and guidelines

Feel Style Pty Ltd has read and understood *Enforceable Undertakings – An Overview – Guidelines for proposing an Enforceable Undertaking* as listed on WorkSafe ACT website.

SECTION 2 – ENFORCEABLE TERMS

a. A commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

Feel Style Pty Ltd commits that the behaviour that led to the contravention has ceased and that it will take all reasonably practicable steps to prevent a reoccurrence of this type of incident.

b. A commitment to the ongoing effective management of work health and safety risks

Feel Style Pty Ltd commits that it will exercise its best endeavours to the ongoing effective management of work health and safety risks.

c. A commitment to disseminate information about the undertaking to workers, and other relevant parties (which may include work health and safety representatives), and in the annual report (if applicable)

Feel Style Pty Ltd will ensure information in relation to the undertaking will be communicated to workers, and other relevant parties which may include work health and safety representatives.

d. A commitment to participate constructively in all compliance monitoring activities of the undertaking

Feel Style Pty Ltd commits to ensuring all compliance monitoring activities are undertaken in a cooperative and constructive manner.

STRATEGIES THAT WILL DELIVER BENEFIT TO WORKERS, INDUSTRY AND THE COMMUNITY.

e. STRATEGIES THAT WILL DELIVER WORKER BENEFITS

Strategy 1 – Training of Safety Officer

Estimated cost including Wages \$20,000 plus \$2,000 for Cert IV

Enforceable undertaking proposal

Date:

Scope

The additional training to an existing employee of Feel Style Pty Ltd will ensure there is a focus on Feel Style Pty Ltd exceeding the requirements under the *Work Health and Safety Act 2011* and associated legislation. The existing employee would dedicate 25% of their time to attending to continually monitoring and improving safety outcomes in the workplace.

To ensure that this employee has adequate knowledge and training to complete the required tasks, they will be enrolled in a Certificate IV in Workplace Health and Safety, which will be delivered by a nationally registered training organisation. The nominal hours for the course is 400, involving practical, theory and workplace based assessments which must be completed to attain the qualification.

Tangible Outcome

Certificate IV in Workplace Health and Safety
Employee with dedicated and additional health and safety training

Beneficiaries / audience

Feel Style Pty Ltd workers, as well as others exposed to or involved in works undertaken by Feel Style Pty Ltd.

Delivery method

Provided by a national recognised training provider.

Internal human resources to be reallocated to allow for the worker to attend training and perform this role on an ongoing basis, at approximately 25% of their full-time role. Feel Style Pty Ltd will measure this by recording the time the employee dedicated to health and safety spends solely on health and safety.

Timeframe

Certificate IV Workplace Health and Safety – to be completed by the end of 2019.

Existing employee will commence dedicating 25% of their time to workplace health and safety duties by 31 October 2018 and will continue to do so for the duration of the enforceable undertaking and beyond.

Safety Outcome

Improved safety in the workplace for Feel Style Pty Ltd employees, through the enhanced identification and elimination of hazards and associated risks. There will also be improved communication between workers, principal contractors and even industry stakeholders. Feel Style Pty Ltd does not have the resources or capacity to create this role as a stand

Enforceable undertaking proposal

Date:

alone position, but by ensuring that an employee of Feel Style Pty Ltd allocates 25% of their time to safety will ultimately distinguish the company from others in the industry.

Total amount to be spent on benefits to workers

F. STRATEGIES THAT WILL DELIVER INDUSTRY BENEFITS

Strategy 2 – Lessons Learned Workshop Estimated Cost - \$15,000 including preparation, time and travel costs (where necessary)

Scope

Feel Style Pty Ltd will prepare, collate and facilitate the authoring of an industry safety training workshop or “lessons learned” program, relevant to this incident involving a young worker and a fall from heights. Feel Style Pty Ltd, in conjunction with BCC Building Pty Limited and WorkSafe ACT, will deliver these workshops to member associations or as reasonably directed by WorkSafe ACT, describing the incident, why it occurred and what steps should have been implemented to prevent similar incidents occurring in the future. Feel Style Pty Ltd will conduct a maximum of ten (10) sessions over a period of 24 months. Feel Style Pty Ltd acknowledges that WorkSafe ACT must approve the material to be communicated under this strategy.

Tangible Outcome

Attendance by members of the building and construction industry.

Beneficiaries / audience

People working in the building and construction industry, specifically targeted at young workers and those workers who work from heights.

Delivery method

The sessions will be delivered jointly between Feel Style Pty Ltd and BCC Building Pty Limited, in conjunction with WorkSafe ACT and where appropriate, the injured worker.

Timeframe

Delivered a maximum of ten (10) times over a period of 24 months.
Feel Style Pty Ltd to provide a draft presentation to WorkSafe ACT within six (6) months.

Safety Outcome

An increase knowledge and awareness about general safety with a focus on safety when working from heights.

Enforceable undertaking proposal

Date:

Strategy 3 – Lessons Learned Material

– Estimated cost \$5,000

Scope

In conjunction with the Lessons Learned Workshops, Feel Style Pty Ltd (which may be in collaboration with BCC Building Pty Limited) will prepare an editorial piece of 1,000 words touching on the lessons learned as a result of this incident, to be published in various media outlets in the ACT region.

Tangible Outcome

Members of the building and construction industry will become aware of what occurred and the lessons learned.

Beneficiaries / audience

People working in the building and construction industry.

Delivery method

In print.

Timeframe

An article will be provided to WorkSafe ACT within 12 months.

Safety Outcome

An increased knowledge and awareness about safety in the building and construction industry, with a focus on safety when working from heights.

Total amount to be spent on benefits to industry

Date:

f. STRATEGIES THAT WILL DELIVER COMMUNITY BENEFITS

Strategy 4 – Cash Donation: Spinal Injury Unit – Estimated Cost \$30,000

Scope

Feel Style Pty Ltd will make a cash donation to the Spinal Injury Unit at Canberra Hospital.

Tangible Outcome

Donation of \$30,000.

Beneficiaries / audience

Canberra community, in particular, people with spinal injuries.

Deliver method

Cash donation.

Timeframe

Over three years, to be paid in full by 31 October 2021.

Safety Outcome

Safety will be increased.

Strategy 5 – Ongoing commitment to Hands Across Canberra – Estimated Cost \$60,000

Scope

Feel Style Pty Ltd will provide building and construction (including maintenance) services to Hands Across Canberra up to the value of \$20,000 per annum for a period of three years. Hands Across Canberra was founded in 2010 by a group of Canberrans with the idea of creating a foundation to help Canberrans give back to the community.

Tangible Outcome

Donation of services to the value of \$60,000 to Hands Across Canberra.

Beneficiaries / audience

Canberra community.

Delivery method

Enforceable undertaking proposal

Date:

Building and construction services to be provided to Hands Across Canberra.

Timeframe

Three years.

Safety Outcome

Safety will be increased.

Total amount to be spent on benefits to the community

Total cost of the strategies proposed (e-g)

Total amount to be spent on strategies

g. A commitment regarding linking the promotion of benefits to the enforceable undertaking

Feel Style Pty Ltd is committed to ensuring that any promotion of a benefit arising from this undertaking will clearly link the benefit to the undertaking, and that the undertaking was entered into as a result of the alleged contravention.

h. A commitment to establish and maintain (or maintain if a system already exists) an occupational health and safety management system (OHSMS)

Feel Style Pty Ltd is committed to improving its safety management system on an ongoing basis.

i. A commitment to ensure the OHSMS is audited by third party auditors

Feel Style Pty Ltd will arrange for an accredited third party auditor to undertake an audit of its OHSMS within 12 months of the commencement of this undertaking.

j. A commitment to provide a copy of each finalised OHSMS audit report to Access Canberra

Feel Style Pty Ltd will provide a copy of each finalised OHSMS audit report to WorkSafe ACT in a timely manner.

k. A commitment to implement the recommendations from these audits (unless otherwise negotiated with Access Canberra)

Feel Style Pty Ltd commits to implementing any reasonable recommendation from any audit undertaken in connection with this undertaking, unless otherwise negotiated with WorkSafe ACT.

l. Timeframe

Feel Style Pty Ltd commits to enter the enforceable undertaking and to have completed all undertakings by 31 October 2021.

Date:

SECTION 3 – OFFER OF UNDERTAKING

I offer this undertaking and commit to the terms herein.

Signed

[Signature box]

Name

[Name box]

Position

[Position box]

Dated at

[Suburb box]

this

[Day box]

(suburb)

day of

[Month box]

20

[Year box]

OR

As a duly authorised person of

FEEL STYLE PTY LTD

I offer this undertaking and commit to the terms herein.

Signed (duly authorised person)

[Signature]

Name

DAMIEN BERRY

Position

DIRECTOR of FEEL STYLE PTY LTD

Dated at

FYSHWICK

this

22ND

(suburb)

day of

OCTOBER

20

18

The duration of an enforceable undertaking is determined by the content of the agreed terms. An enforceable undertaking commences and is enforceable once accepted by Access Canberra. The enforceable undertaking will be concluded on written advice from Access Canberra when all requirements of the undertaking have been satisfactorily executed.

I accept this undertaking as an enforceable undertaking under section 216 of the WHS Act.

Signed

[Signature: Greg Jones]

Name

GREG JONES

Position

Delegate of the Regulator

ACT Work Safety Commissioner

Dated at

Dickson

this

24th

(suburb)

Access Canberra

day of

October

20

18

Enforceable undertaking proposal

Date:

ANNEXURE 1 – PUBLIC NOTICE OF ACCESS CANBERRA ACCEPTANCE OF UNDERTAKING

Notice of Acceptance of an enforceable undertaking under Part 11 of the *Work Health and Safety Act 2011*.

The full undertaking and general information about enforceable undertakings will be available at www.accesscanberra.act.gov.au