

Enforceable undertaking proposal

Date: **September 2018**

Enforceable undertaking

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

Section 216.

by **Construction Control**

ACN **150 745 207**

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 Access Canberra 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

Residential address:	Unit 124, 24 Lonsdale St, Braddon 2612
Postal address (if different from residential address):	PO Box 5120 Braddon 2612
Telephone contact number:	02 6257 4775
Mobile contact number:	0404085145
Email address:	info@ccontrol.com.au
Legal structure:	Company
Type of business:	Construction Management
Commencement date of the entity:	1988
Number of workers: (Full Time / Part Time)	105
Products and Services:	Construction Management
Comments:	N/A

b. Details of the alleged contravention

WorkSafe ACT issued a prohibition notice for scaffold at the Kingsborough Project on 17 January 2018 at 2150hrs. It is alleged by WorkSafe ACT that on the 18 January 2018, Construction Control did not comply with the prohibition notice by failing to comply with section 197 of the Work Health & Safety Act 2011.

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

The notice issued by WorkSafe ACT on 17 January 2018 prohibited use of all scaffold on the site.

It is alleged by WorkSafe ACT that on 18 January 2018, Construction Control failed to comply with the notice in that pre-cast panel installation works to a lift core occurred, with a worker accessing the lift core scaffold to undertake grouting works associated with the pre cast install.

d. An acknowledgement that Access Canberra alleged a contravention has occurred

It is acknowledged that WorkSafe ACT has alleged that Construction Control has contravened the WHS Act. A prohibition notice (IN-P01873-TSDDBJ-1) was received 9:50pm on 17 January 2018. The site team diligently responded by issuing a copy of the notice to all parties on site prior to work commencing on 18 January 2018. A copy of the notice was displayed on site and a number of notices were issued to subcontractors. Despite this one contractor did not adhere to the notice. Whilst we take the word of our staff members that the offending contractor was formally advised, rather than going down a protracted and costly defence of our position we propose to enter into this enforceable undertaking.

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

No injury was sustained.

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

Notices received:

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Yes (provide details) Prohibition Notice IN-P01873-TSDDBJ-1

No

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

Construction Control is committed to complying with its obligations under the WHS Act and ensuring, so far as reasonably practicable, the health and safety of all workers and those who may be affected by its business or undertaking. Construction Control will, so far as reasonably practicable, provide and maintain a safe and healthy workplace for its workers and other stakeholders.

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)

There was no injury related to the alleged contravention

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

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

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

Construction Control has a Business Management System for managing health and safety across the organisation.

The BMS has been externally audited and is AS/NZS 4801: 2001 and Office of the Federal Safety Commissioner (OFSC) compliant.

The BMS are subject to a continuous audit programme including both internal and external auditors.

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

Construction Control has consulted with the Project Team, the BMS Control Group, and Senior Management regarding the preparation of the enforceable undertaking.

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

Construction Control, its officers and employees deeply care about the safety of all workers. Construction Control sincerely regrets the alleged contravention. Construction Control is committed to ensuring, so far as reasonably practicable, the ongoing health and safety of its workers and other stakeholders.

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.

m. Any rectifications made as a result of the contravention

Scaffold Re-certification

All scaffold on the project site was inspected, rectified where required, and recertified by the scaffolding subcontractor.

Internal notification procedures

Correspondence was sent company wide to remind all projects on the importance of notifying Construction Control senior management in the event of receipt of any regulator issued notice.
This was issued to ensure any future notice receives the appropriate level of focus and control by Construction Control

Senior Management Inspections

The Managing Director and Group Safety Manager commenced weekly site inspections at the project site in response to the alleged contravention. These inspections are conducted with the Project Manager, Site Manager, Safety Advisor and relevant subcontractors as required. Outcomes are documented for close out and progress reviewed at each subsequent inspection.

Total amount spent on rectifications

TBC

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

Construction Control acknowledges that the undertaking may be published on WorkSafe ACT's website and may be referenced in WorkSafe ACT's publications.

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

Construction Control has the ability to comply with the terms of this enforceable undertaking.

p. Statement regarding relationships with beneficiaries

Construction Control has no relationship with the parties who will receive benefits under this undertaking, other than as an employer and member of the industry.

q. Intellectual property licence

Construction Control grants WorkSafe ACT a permanent, irrevocable, royalty free, worldwide, non-exclusive licence 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

Construction Control has read and understood the Enforceable Undertakings Overview as accessed on the Access Canberra website.

SECTION 2 – ENFORCEABLE TERMS

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

Construction Control commits that the conduct that led to the contravention has ceased.

In implementing the rectifications listed above, Construction Control has taken and will continue to take reasonably practicable steps to prevent recurrence of this type of incident.

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

Construction Control commits that it will take all reasonably practicable steps in respect of 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)

Construction Control commits to disseminating information about this undertaking within the workplace. This information will be delivered through monthly meetings and toolbox talks. This commitment will be completed within three months of the commencement of the undertaking.

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

Construction Control commits to participating constructively in all compliance monitoring activities regarding this undertaking.

Construction Control will provide necessary evidence to demonstrate compliance with the undertaking. The evidence provided to demonstrate compliance with the undertaking will be retained by Construction Control until advised by WorkSafe ACT, that the undertaking has been completely discharged.

It is acknowledged that WorkSafe ACT may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe ACT. It is acknowledged that WorkSafe ACT may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe ACT's expense.

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

e. STRATEGIES THAT WILL DELIVER WORKER BENEFITS

Strategy 1 – Employ additional safety resource

Estimated Cost \$180,000

Scope

This strategy will enhance Construction Control's capability to deliver coordinated, efficient and effective WHS programmes by engaging an additional qualified and experienced safety advisor.

Tangible Outcome

Additional resource with ability to provide technical and accurate WHS advice and guidance to projects, including Construction Control staff and subcontractors. This appointment will also strengthen the technical compliance skillsets of CC project teams.

Beneficiaries / audience

Construction Control staff and subcontractors.

Delivery method

Engage suitable safety advisor in a permanent role. Train them in the existing Construction control BMS and allocate them to required project(s) to provide technical WHS oversight.

Timeframe

Engage safety advisor within 8 weeks of commencement of this undertaking.

Safety Outcome

Trained and qualified safety advisor with ability to positively influence WHS outcomes on projects. Increased ability to educate and engage staff and subcontractors.

Strategy 2 – WHS Leadership Training Package

Estimated cost \$60,000

Scope

Development and roll out of WHS Leadership training package targeted at Project Managers, Site Managers, Foremen and Site Engineers. Designed to further enhance understanding of WHS roles and responsibilities and compliance requirements, and the ability to influence ongoing development of safer sites. The training package will be tailored to Construction Control BMS requirements.

Tangible Outcome

1. Development of training package specific to Construction Control BMS requirements in consultation with appropriate RTO
2. Delivery of training package to identified employees (Project Managers, Site Managers, Foremen and Site Engineers)
3. Evaluation of content and improvement as required

Beneficiaries / audience

All Construction Control project teams

Delivery method

Face to face learning over two days with course notes provided for each trainee.

Timeframe

Completion within 12 months of commencement of this undertaking

Safety Outcome

Enhanced understanding of WHS roles and responsibilities, and the ability to influence ongoing development of safer sites.

Total amount to be spent on benefits to workers

\$ 240,000

F. STRATEGIES THAT WILL DELIVER INDUSTRY BENEFITS

Strategy 3 – Online training capability

Estimated Cost \$ 50,000

Scope

Engage with an online training content developer and provider and roll out construction specific training to all Construction control staff. The minimum requirement for all project-based staff will include Manual Handling, Height Safety & Electrical Awareness. Develop the capability of the platform to make training available to key subcontractors on CC major projects.

Tangible Outcome

Tailored short courses delivered to construction personnel as part of a wider commitment to education and engagement.

Beneficiaries / audience

Workers being able to access construction specific training via multiple devices (computer, phone, tablet etc) at a time of their choosing.

Delivery method

Identify and engage suitable online training provider. Tailor Manual Handling, Height Safety and Electrical Awareness short courses specific to construction industry. Training courses will be assigned to required employees, courses will then be available for completion at a time convenient to the worker via the cloud.

Timeframe

All workers to have completed training course content within 12 months of commencement of this undertaking.

Safety Outcome

Enhanced knowledge of construction workers across key safety topics.

Total amount to be spent on benefits to industry

\$ 50,000

f. STRATEGIES THAT WILL DELIVER COMMUNITY BENEFITS

Strategy 4 – Stella Bella Little Stars Foundation

Estimated Cost \$ 10,000

Scope

Cash donation to Stella Bella Little Stars Foundation to assist them in their ongoing work in improving the lives of children in the ACT region who are living with serious and long term illnesses.

Tangible Outcome

A one-time \$10,000 donation to Stella Bella

Beneficiaries / audience

Families who may require the services and support of the Stella Bella Little Stars Foundation. The foundation provides petrol, food vouchers and small grants for equipment to parents who are caring for their seriously ill children, in hospital and at home, and are struggling financially.

Delivery method

A one-time cash donation to Stella Bella.

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Timeframe

Within 12 weeks of the commencement of this undertaking

Safety Outcome

Support the foundation in providing assistance to children, and their families, regardless of their diagnosis.

Total amount to be spent on benefits to the community **\$10,000**

Total cost of the strategies proposed (e-g)

Total amount to be spent on strategies **\$ 300,000**

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

Construction Control is committed to linking any promotion of the benefits arising from this undertaking to this undertaking and acknowledges that this undertaking was entered into as a result of an alleged contravention of the WHS Act.

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

Construction Control is committed to ensuring its existing business management system will continue to comply with the principles of AS/NZS 4801: 2001 Occupational Health and Safety Management Systems.

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

Construction Control is committed to ensuring its existing Business management system continues to be audited by third party auditors through:

- Office of the Federal Safety Commissioner; and
- Third party AS/NZS 4801:2001 accreditation

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

Construction Control acknowledges that audit reports received from the auditor will be made available to WorkSafe ACT within 30 days of being completed along with a letter certifying that the report has not been altered from the copy provided to it by the auditor.

Construction Control acknowledges that it will provide a written report to WorkSafe ACT within 30 days of providing the audit report to WorkSafe ACT advising the intended action in addressing each of the report's recommendations.

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

Construction Control commits to ensuring that the recommendations resulting from the audit will be fully implemented within six months of receiving the audit report, unless otherwise agreed with WorkSafe ACT.

SECTION 3 – OFFER OF UNDERTAKING

I offer this undertaking and commit to the terms herein.

Signed

[Signature]

Name

Peter Payten

Position

Managing Director

Dated at Braddon this 13th (suburb)

day of September 20 18.

OR

As a duly authorised person of

[Blank box]

I offer this undertaking and commit to the terms herein.

Signed (duly authorised person)

[Blank box]

Name

[Blank box]

Position

[Blank box]

Dated at [Blank] this [Blank] (suburb)

day of [Blank] 20 [Blank]

[Blank box]

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]

Name

GREG JONES

Position

Director, Workplace Protection Delegate of the Regulator

Dated at Dickson this 14th (suburb)

Access Canberra

day of September 20 18

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