



ACT
Government

Justice and Community Safety

*Work Safety Act 2008 (WS Act) –
Work Health and Safety Regulations 2009 (WS Regulation)*

Enforceable undertaking proposal

Date: 10/12/2015

Enforceable undertaking – proposal template

Undertaking to the WorkSafe ACT given for the purposes of part 6, Division 6.6 of the Work Safety Act 2008 (WS Act).

by D Group Pty Ltd ABN 40 086 626 600

Privacy statement

WorkSafe ACT 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 WorkSafe ACT given for the purposes of part 6 of the WS 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 is available at www.justice.act.gov.au/news/view/1602/title/jacs-privacy-policy

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

<i>Residential address:</i>	5 Whyalla at Fyshwick
<i>Postal address (if different from residential address):</i>	As above
<i>Telephone contact number:</i>	
<i>Mobile contact number:</i>	
<i>Email address:</i>	@dgroup.com.au
<i>Legal structure:</i>	Company
<i>Type of business:</i>	Plumbing
<i>Commencement date of the entity:</i>	1 April 2000
<i>Number of workers: (Full Time / Part Time)</i>	55
<i>Products and Services:</i>	Hydraulics / plumbing
<i>Comments:</i>	

b. Details of the alleged contravention

It is alleged by WorkSafe ACT on 10 September 2011, D Group Pty Ltd failed to discharge its obligations as a person conducting a business or undertaking under section 33 of the Work Safety Act 2008 (the Act), failure to comply with safety duty – negligently cause serious harm, D Group Pty Ltd, being a person conducting a business or undertaking, had a safety duty under section 21 of the Act; to ensure work safety by managing risk and providing and maintaining a safe workplace and safe systems of work. D Group Pty Ltd did not ensure so far as reasonably practicable the health and safety of workers.

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

It is alleged that on 10 September 2011, D Group Pty Ltd, being a person conducting a business or undertaking failed to comply with their safety duty, by not ensuring the necessary controls were in place for excavation and trenching deeper than 1.5 metres at Block 1 Section 99 Harrison Act – The Fusion Apartments site. Appropriate site supervision was not in place at the time of the incident. By failing to comply with this Safety Duty, D Group Pty Ltd negligently caused serious harm to a D Group employee.

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

It is acknowledged that WorkSafe ACT has alleged that D Group Pty Ltd has contravened section 33 of the Work Safety Act 2008.

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

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

- Multiple fractured ribs
- broken leg
- hyper extension of the left wrist
- injured right shoulder.

As a result of these injuries the injured worker is no longer able to work in his profession as a plumber.

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

Notices received:

Yes (provide details) No

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

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

D Group Pty Ltd is committed to complying with its obligations under the Work Health & 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 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)

The injured worker received a number of workers compensation payments which included wages, hospital and other medical costs. The injured worker also undertook a return to work program organised by D Group Pty Ltd and its insurer.

i. 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 person is an employee

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

Date issued	Description of support	Comment
September 2011	Ongoing communication to provide assistance and support as well as providing reassurance that D Group Pty Ltd will do everything possible to help him through his injury & rehabilitation process	Managing Director, Operations Manager and HSE Manager visited Liam in hospital to provide assistance and support
Throughout 2013	D Group Pty Ltd created an alternative light duties role for the injured worker in consultation Workers Compensation Insurer.	This was a flexible role that allowed the injured worker to meet all rehabilitation appointments and attend training courses for future employment opportunities.
Throughout 2013	D Group Pty Ltd assisted the employee in his quest to find more suitable employment	D Group provided training courses to expand injured workers skill base for future employment opportunities.
2011 through 2013	All wages and medical expenses were paid to the injured worker	Payments made in accordance with all relevant legislation.

j. 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

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

D Group has an existing occupational health and safety management system compliant with AS/NZS 4801:2001. Third party auditing of the workplace against AS/NZS 4801:2001 is conducted on an annual basis.

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

D Group Pty Ltd has consulted with management and field staff regarding the proposal of an enforceable undertaking. And what it means to make the enforceable undertaking to work (regarding our obligation towards safety and the work health and safety act 2011)

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

D Group Pty Ltd regrets that the incident on 10 September 2011 occurred and that the worker sustained injuries as a result of the incident. With polices and process now in place D Group Pty Ltd endeavours to ensure that this type of incident will not occur in the future

n. Any rectifications made as a result of the contravention

Details
Preparation of site audit review and checklist. Includes Safety Inspection checklist, Environmental checklist, quality checklist, IRE checklist. This checklist is completed on a monthly basis for every site and spot weekly checks occur.
Inclusion of safety update discussion in fortnightly foreman's/managers meeting
D Group Pty Ltd has improved its induction process for new employees as well as site inductions which includes a full review and sign off of SWMS
D Group Pty Ltd has provided internal training for site managers to educate them on their roles and responsibilities for site safety.

Total amount spent on rectifications \$ 2,500 on checklist creation.
\$40,000 per annum on weekly audits
and resources salaries

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

D Group Pty Ltd acknowledges that the undertaking may be published on WorkSafe ACT internet site and may be referenced in WorkSafe ACT publications.

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

D Group Pty Ltd acknowledges that it has the financial ability to comply with the terms of this enforceable undertaking and can provide evidence to support this declaration.

q. Statement regarding relationships with beneficiaries

D Group Pty Ltd acknowledges there are no known current relationships with any of the beneficiaries outlined in the Undertaking, other than the current employees of D Group Pty Ltd and the injured worker.

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 WS Act; it is used within this document to identify certain circumstances which will trigger additional steps in the enforceable undertaking process.

r. Intellectual property licence

D Group Pty Ltd 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.

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

N/A

t. Acknowledgement of enforceable undertakings overview and guidelines

D Group 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

D Group Pty Ltd commits that the behaviour that lead to the contravention has ceased and that it will take all 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

D Group 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)

D Group Pty Ltd agrees to disseminate information about the undertaking within the workplace, including to the members of any health and safety committee, health and safety representatives, workers and other relevant parties. This information will be dissemination through management and staff meetings, toolbox talks and general publication and will be completed within 1 month (30 days) of enforceable undertaking taking effect

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

D Group Pty Ltd acknowledges that the responsibility for demonstrating compliance with this undertaking rests with the person who has given this undertaking. Evidence to demonstrate compliance with the terms will be provided to WorkSafe ACT by the due date for the term.

D Group Pty Ltd acknowledges that WorkSafe ACT may undertake other compliance monitoring activities to verify the evidence that is provided and compliance with the relevant term. The evidence provided to demonstrate compliance with the undertaking will be retained by the person who has given this undertaking until advised by WorkSafe ACT that the undertaking has been completely discharged.

D Group Pty Ltd acknowledges that WorkSafe ACT may initiate additional compliance monitoring activities, such as inspectors, as considered necessary at WorkSafe ACT expense.

Strategies that will deliver benefit to workers, industry and the community.

e. Strategies that will deliver worker benefits

Strategy One – Employment of Fulltime WHS Manager

The employment of a Full-time WHS manager is aimed at increasing the resources available to managers, supervisors and employees at all levels to manage and improve the safe work practices at every site. D Group currently has a Part-time WHS manager which meets our current needs, however, we have identified that there could be more proactive engagement with site teams in this area.

Tangible outputs:

- Greater number of available hours for site monitoring, employee training and induction of employees.

- More effective management and implementation of site safety manuals and employee awareness of all safety procedures

Beneficiaries/audience – All employees and subcontractors of D Group Pty Ltd

Delivery Method – Internal appointment of full-time WHS manager.

Timeframe – Mid 2016

Cost Breakdown – \$35,000 Increase from part-time wages to full time wages

Safety Outcome:

The employment of a fulltime WHS manager will have multiple impacts on the overall safety at D Group. The first intention is to show the emphasis being placed on safe work practices by top level management through the investment in the position.

Importantly, through increasing the number of hours employed it will allow the position to be much more proactive in the identification and prevention of potential safety issues on all sites. The current workload means that a significant portion of time is spent in office, the extra hours will allow for greater site time where potential issues can be dealt with prior to them becoming a safety concern. Ultimately this will lead to fewer workplace injuries.

Through greater site team and engagement with employees it is envisaged that the specialist knowledge of the WHS manager can be better passed on to employees so that they can be better equipped at identifying potential issues and effectively resulting in having more eyes on the ground.

Strategy Two – Implementation of a WHS Training Program with emphasis on Health and Safety Duties and personal skill improvement

The implementation of a highly skilled training program over and above the general training program and legal requirements of the industry will equip the employees with skills and qualifications in work safety. This will enable employees to understand their obligations in regards to site safety, in addition to this the additional training programs will equip employees with further skills and qualifications enabling them to identify and conduct high risk activities in a safe manner.

D Group currently maintains a base training program which ensures that all legal requirements are met. This basic training program includes refresher training for the first aid certificate holder for each site. The program also includes white card re-induction for employees who have multiple safety breaches of minor obligations, or who show disregard for standard safety requirements. D Group will also include asbestos awareness training where new employees do not have this qualification, this is mainly targeted at new apprentices who have not had any experience in the construction industry. This base training program aims to ensure that all legal requirements are fully complied with and also the company's focus on safety is reinforced to employees.

The high skilled training program aims to provide employees with skills in the area of the alleged contravention. The courses selected of Health and Safety Representative (HSR) Training, Enter and Work in Confined Space Training and additional First Aid Training.

HSR training with the MBA (a course approved by the ACT Work Health and Safety Commissioner) aimed at project foreman is designed to give those employees the skills and knowledge of exactly what their obligations and duties are. It will also allow these employees to properly identify a potential work safety concern and provide them with the tools to correct the situation without having to rely solely on the WHS manager.

Whilst the D Group supervisors are attending this week long course it is recognised that there needs to be appropriate supervision provided on work sites and this cost will be absorbed by D Group as part of its long term commitment to providing a work place that is the benchmark for safety in the local area.

Confined space training will be provided to a number of employees. The objectives behind this training is two-fold. Firstly it will give employees the adequate skills to perform work in a confined space in a safe manner. More importantly it will provide employees with the skills to identify a confined space and potential confined spaces and ensure that other employees do not enter this potentially dangerous area. Employees will then have the knowledge on what steps are to be taken to ensure that any work carried out in the confined space is conducted in accordance with the legislative requirements.

First Aid Training for employees will be conducted so that a number of employees on site at any point in time will be equipped with the skills to deliver first aid to other employees in the event of an injury. This is a skill that the employee will also be able to transfer to their personal lives.

Through the provision of these skills it is envisaged that all employees will have the confidence to deal with any injury that occurs on site. D Group also identified that in the event of an injury of any magnitude, by having more than one first aid officer on site the confidence of those administering first aid will be increased as they have the support of another trained employee to assist them.

This measure will result in better treatment of employees in the event of an injury.

Tangible outputs:

- Certificate of attendance for Health and Safety Representative (HRS) Course – an industry based course conducted by MBA
- Statement of attainment (RIIWHS202D) Enter and Work in Confined Spaces
- First Aid certificates

Beneficiaries/audience – All D Group Workers

Delivery Method – Approved training course undertaken through a variety of recognised industry training providers including Master Builders Association, Southern Training Organisation and CSI

Timeframe – 24 month program from the commencement of the undertaking

Cost Estimate: \$41,000

Safety Outcome:

- Greater awareness of WHS procedures and responsibilities placed on employees.
- The programs will also ensure that all employees are more able to identify threats to safe work practices and provide them with the skills to rectify the situation
- Through equipping employees with qualifications they can transfer these skills to other workplaces.

Total amount to be spent on benefits to workers **\$76,000**

f. Strategies that will deliver industry benefits

Strategy One – Purchase of Defibrillators for major constructions sites where D Group are not the head contractor.

This strategy will result in emergency medical equipment being more readily available for all industry workers on site. Currently only large sites will have Defibrillator facilities available on site, and it is generally limited to one machine. Many of our employees have expressed concern that if the machine was required in an emergency that it may be difficult and/or time consuming to get access to. Having another facility on site located close to workers and in a location familiar with workers it will allow for urgent medical attention to be delivered in a more timely manner.

In instances where two employees have been injured in the one incident the ability to have two defibrillators available for medical will also undoubtedly provide better care and potentially be life saving if this situation was to arise.

D Group has experienced an incident in the past where an employee suffered a minor heart attack whilst at work. Fortunately the employee survived this incident, however it did provide the company with some insight into how beneficial this equipment could be, not just for a workplace accident but for general health emergencies also.

Tangible output – The provision of extra defibrillators for construction sites.

Beneficiaries / audience - construction industry

Delivery method – Purchase by D Group of approved devices

Timeframes for development/delivery – Beginning Sept 2015 with further purchases every 3 months. 4 purchases in total

Cost Estimate – \$10,000

Strategy Two – Contribution of services to the construction of Ricky Stuart House.

This activity will benefit our employees through providing them with employment for a period of up to 10 weeks. By donating our services it will provide further room in the organisations budget to engage other contractors onto the project and will create further work for the industry.

This project has been selected primarily for its local focus and also from expressions of interests from employees who have indicated their enthusiasm for the project to assist people in the industry who have family members that suffer from autism who have found it difficult to hold employment due to not being able to access respite services and the nature of the industry requiring the employee to be present at the worksite during set hours to fulfil their employment. This centre will assist those people to achieve the difficult balance of providing care for their family and holding down employment.

Tangible output – Construction of Ricky Stuart House

Beneficiaries / audience - construction industry

Delivery method – D Group employees and machinery to be engaged on site

Timeframes for development/delivery – Beginning August 2015 and completed by late 2015

Cost Estimate – \$49,000

Total amount to be spent on benefits to industry

\$59,000

g. Strategies that will deliver community benefits

Strategy – An in-kind donation through the provision of labour and equipment rental to the ACTMCC (ACT Motorcycle Club). This club is a not for profit organisation and we are in a position to assist with the construction of new track facilities and upkeep of existing facilities. A number of employees and other participants in the industry are members of the club and have highlighted the impact that could be made to the facilities of the club through the input of D Group.

D Group currently contributes in excess of \$20,000 per annum to a combination of organisations including regular contributions to the Cancer Support Group, Lifeline and other organisations. This support is by way of cash donations to the organisations directly.

D Group has identified the opportunity to have an even greater contribution to an organisation through the in kind donation of our services and expertise to a community organisation that is not necessarily in a position to receive cash donations, and whose membership revenue does not allow for top class facilities. By increasing the quality and number of facilities the club has it will not only benefit the current members but will also allow for national competitions to be held at the track which will bring in additional revenue for the club as well as tourism revenue for the surrounding community.

Tangible outcome – a \$25,000 in kind donation of services and equipment rental.

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Date: 10/12/2015

Beneficiaries – Member of the ACT public and surrounding areas

Delivery Method – Provision of labour and equipment at no charge to the organisation

Timeframe – Late 2015 through mid 2016

Total amount to be spent on benefits to the community \$25,000

Total cost of the strategies proposed (e-g)

Total amount to be spent on strategies \$160,000

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

D Group 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.

Where appropriate (i-l)

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

D Group Pty Ltd is committed to establishing an OHSMS system acceptable to WorkSafe ACT that satisfies the principles of AS/NZS 4804: 2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques.

D Group Pty Ltd acknowledges that the OHSMS will be maintained in accordance with the standard.

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

D Group Pty Ltd commits to ensuring the OHSMS will be audited by accredited third party auditors that meet the principles of AS/NZS 4801: 2001 Occupational Health and Safety Management Systems – Specification with guidance for use, as set by WorkSafe ACT in accordance with established timeframes.

D Group Pty Ltd acknowledges that the auditors selected to perform OHSMS audits will meet the qualification requirements as set by WorkSafe ACT.

D Group Pty Ltd acknowledges that details of the auditors' qualifications against the stated requirements will be provided with audit reports submitted to WorkSafe ACT.

D Group Pty Ltd acknowledges that an initial third party audit will be undertaken within 12 months and two further third party audits will be undertaken during the course of the undertaking following signing of the enforceable undertaking.

k. A commitment to provide a copy of each finalised OHSMS audit report to WorkSafe ACT

D Group Pty Ltd acknowledges that audit reports received from the auditor will be sent to WorkSafe ACT, within 1 month of the audit along with a letter certifying that the report has not been altered from the copy provided to the person by the auditor.

D Group Pty Ltd acknowledges that within 1 month of receipt of the auditor's written report, WorkSafe ACT will be advised of the intended action in addressing each of the report's recommendations.

l. A commitment to implement the recommendations from these audits (unless otherwise negotiated with WorkSafe ACT)

D Group Pty Ltd commits to fully implementing the intended actions arising from the audit within 12 months from receiving the audit report from the OHSMS auditor unless otherwise agreed by WorkSafe ACT.

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 [] this []
(suburb)

day of [] 20 []

OR

As a duly authorised person of

D GROUP

I offer this undertaking and commit to the terms herein.

Signed (duly authorised person)

[Signature]

Name

[Name box]

Position

Operations Manager

Dated at Fyshwick this 10th
(suburb)

day of December 20 15

SECTION 4 – WORKSAFE ACT'S ACCEPTANCE OF UNDERTAKING

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 WorkSafe ACT. The enforceable undertaking will be concluded on written advice from WorkSafe ACT when all requirements of the undertaking have been satisfactorily executed.

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

Signed

[Signature]

Name

TRACEY LIANOS

Position

DEPUTY DIRECTOR

WorkSafe ACT

Dated at DICKSON, ACT this 22ND
(suburb)

day of MARCH 20 16

ANNEXURE 1 – PUBLIC NOTICE OF WORKSAFE ACT ACCEPTANCE OF UNDERTAKING

Notice of Acceptance of an Enforceable Undertaking under Part 6, Division 6.6 of the Work Safety Act 2008.

On *[Insert Event Date]*, *[Insert Event Details eg; an employee of XYZ Building Products Pty Ltd suffered grievous bodily harm while operating the radial arm saw at the company's Long Street premises, Suburb]*.

The Office of Regulatory Services of *WorkSafe ACT* investigated the incident and subsequently alleged that *[Company name]* contravened section *[insert sections of the Act]* of the Work Safety Act 2008.

This notice has been placed under the terms of an enforceable undertaking and acknowledges acceptance of an undertaking, that is enforceable under the Act, from *[insert company name]*, ABN *[insert ABN]* as settlement of the abovementioned alleged contravention.

The undertaking requires the following actions:

- *[list key strategies in dot point format]*

The full undertaking and general information about enforceable undertakings is available at www.worksafe.act.gov.au