

Enforceable Undertakings

Under the
Workplace Health and Safety Act 1995
and the
Electrical Safety Act 2002

Information for Applicants

May 2008

Introduction

One of the objectives of the Department of Employment and Industrial Relations (the Department), through Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO) is to deliver effective and credible compliance and enforcement strategies within the context of their Enforcement Frameworks.

As outlined in these frameworks, key principles underpinning Queensland's workplace health and safety and electrical safety enforcement efforts are targeting, consistency, transparency, and proportionality. When people fail to meet their legislative obligations, the Department and its inspectors may use a range of compliance and enforcement options including:

- verbal directions
- improvement notices
- prohibition notices
- court orders to secure compliance with notices
- seizure
- infringement notices
- Enforceable Undertakings
- prosecutions.

This document provides information on Enforceable Undertakings under the *Workplace Health and Safety Act 1995*¹ and the *Electrical Safety Act 2002*² (the Acts) for persons (obligation holders) who are alleged to have breached their obligations under the Acts. Essentially, an Enforceable Undertaking is a contract involving a commitment by a person (obligation holder) who is alleged to have breached their obligations under the Acts to do something, which if not done, is enforceable in court. The Department may choose to accept an Enforceable Undertaking instead of pursuing prosecution action through the courts. Each case will be considered on merit. Typically, the activities associated with an Enforceable Undertaking are substantial and must contain specific health and safety initiatives that will bring benefits to the workplace, industry, and the broader community.

WHSQ and the ESO will use Enforceable Undertakings as a medium level sanction within the range of enforcement options available to the Department. These undertakings will be used to promote occupational health and safety and electrical safety and as an opportunity for obligation holders to undertake serious organisational reform to implement effective management systems and to deliver tangible benefits to workers, industry, and the community

The Acts grant the Chief Executive (Director-General) of the Department of Employment and Industrial Relations the discretion to accept or reject written undertakings in the exercise of powers under the Acts. Provision is also made for the enforcement of undertakings in the Industrial Court. The Department does not have the power to demand or require an Enforceable Undertaking to be offered. Similarly, a person cannot compel the Department to accept an Enforceable Undertaking. The Chief Executive is not obliged to

¹ *Workplace Health and Safety Act 1995* - Part 5

² *Electrical Safety Act 2002* - Part 3

accept an undertaking. It is up to the obligation holder or their authorised representatives to put an offer of an undertaking for the consideration of the Chief Executive in relation to an allegation of a contravention of the Acts.

The Enforceable Undertaking process does not consider matters relating to worker's compensation issues or any civil action that may have been taken or is being contemplated in relation to the incident that is the subject of any proposed undertaking.

An Enforceable Undertaking must be entered into on a voluntary basis. Obligation holders who give such undertakings may only withdraw or vary the undertaking with the prior agreement of the Chief Executive.

The Department regards Enforceable Undertakings as an important enforcement option for use in situations where there is evidence of an alleged contravention of an obligation provision.

Time available for submitting an Enforceable Undertaking application

The *Workplace Health and Safety Regulation 1997* s229A requires that undertakings must be received by the Chief Executive within 90 days after the obligation holder has been served with a summons in relation to the alleged contravention.

The processes in place for the settling of enforceable undertaking applications include the provision of feedback on the initial application by officers of the Department's Enforceable Undertakings Unit. Their feedback is offered to assist the applicant to prepare their final proposal having regard to the legislative requirements and additional administrative requirements contained within these Guidelines. However, responsibility for the content of the proposal rests solely with the applicant. Once a final application is received, the department aims to make a decision on the application within 4 weeks.

What is the process the Department follows when an obligation holder submits an application for an Enforceable Undertaking?

All enforceable undertaking applications will be subjected to an assessment of the objective gravity of the alleged offence which will be categorised as low, medium, or high. Where the objective gravity is deemed to be 'high', applicants will need to include as part of their submission, detailed reasons why the Director-General should consider an enforceable undertaking as a suitable enforcement option in the circumstances relevant in the particular case.

Objective gravity is a term which must be understood in conjunction with the facts and seriousness of any particular workplace incident or event. The objective gravity of the alleged offence that is the subject of the Enforceable Undertaking application will be assessed by looking at:

- compliance by the obligation holder to the principles of risk management embodied in the relevant Act
- the actual and potential risks
- culpability
- aggravating or mitigating factors
- cooperation with the Department throughout the investigation
- previous sanctions and prior prosecutions
- remorse
- previous compliance history.

All applications will be considered having regard to the objective gravity of the matter and the principles and other considerations described in this guide.

Potential applicants will be advised during their initial ‘face to face’ meeting with an Enforceable Undertakings Coordinator of the outcome of the assessment of the objective gravity relevant to their particular case. Refer to page 12 for further information on these initial ‘face to face’ meetings.

The following six principles apply to the application of Enforceable Undertakings:

1. Undertakings will deliver tangible benefits to workers, industry and or the community

Any undertaking must deliver a tangible benefit to the health and safety of employees, the community generally, and within the relevant industry. An Enforceable Undertaking will only be accepted when it offers the most appropriate sanction in the circumstances of the case, having regard to the significance of the issues concerning industry, government, and the community.

2. Undertakings will deliver benefits beyond compliance

All obligation holders are required to comply with their obligations set out in the Acts. Therefore, the elements (activities) of an undertaking must commit the obligation holder (applicant) to activities that go beyond mere compliance with the Acts and therefore achieve a standard higher than legislative compliance.

For example, if an obligation holder undertakes to introduce a Workplace Health and Safety Officer and fund the relevant training, even though the company does not employ over 30 workers, this is a ‘benefit beyond compliance’. An obligation holder who undertakes to guard an unguarded piece of plant or to provide induction training to staff is not an undertaking providing a benefit beyond compliance.

3. Undertakings will not normally be accepted in cases involving workplace or electrical fatalities

Enforcement responses taken by the Department will be proportionate to the level of risk and seriousness of an injury/illness when it occurs.

Enforceable undertakings are not considered an appropriate enforcement option in cases relating to incidents where there has been an allegation of “aggravation causing death” unless the claim of exceptional circumstances, submitted as part of the application, is accepted by the Director-General.

4. Enforceable Undertakings may be publicised

Enforceable Undertakings, including any withdrawals or variations, may be made public by the Department.

Publicising enforcement outcomes assists in fostering a culture of compliance. The outcomes of Enforceable Undertakings will be treated similarly to public court findings.

Undertakings may be publicised in media statements, publications and any other method considered appropriate. As a minimum, the Department will normally publish a ‘Notice of Acceptance’ in an appropriate newspaper.

If an undertaking is accepted, it is an expectation that the applicant will disseminate the terms and deliverable benefits to relevant Workplace Health and Safety Officers, Workplace Health and Safety Committees, and where applicable, published in a company’s annual reports.

5. Monitoring Enforceable Undertakings

Consistent with its regulatory responsibilities the Department will rigorously oversee the obligation holder’s compliance with the terms of the undertaking and will conduct regular audits to assess compliance. These audits will be conducted by Departmental Officers at specified times detailed in the undertaking. Obligation Holders will be provided a copy of the Auditor’s Compliance Report with 14 days of the audit site visit.

6. Costs

As part of any prosecution, the Department is entitled to recover “reasonable costs” associated with the investigation. As part of any application for an Enforceable Undertaking an applicant must give an undertaking to pay these costs, as well as costs of considering the undertaking (for example, cost associated with any technical/legal consultancy/advice to the evaluation team); publishing the undertaking, and any identified costs to the Department associated with monitoring compliance to an accepted undertaking. Such agreed costs will be included in the undertaking. (Refer Appendix 1).

Other considerations

Enforceable Undertakings will be considered by the Chief Executive on a case by case basis and acceptance will be determined by whether it offers the most appropriate enforcement action in the circumstances of the case. In addition to the general principles outlined above, the following factors may also be considered:

- the impact of the enforcement action, especially its impact on encouragement and deterrence
- the compliance history of the obligation holder
- relevant aspects of any previous enforceable undertakings
- the extent of the risk
- the seriousness of the perceived contravention and the actual or potential consequences;
- whether a target issue, a target hazard or specific strategic priority is involved;
- whether the incident or nature of the non-compliance is of considerable public concern;
- the need to highlight a common hazard or risk in order to deter other workplaces from continuing particular practices;
- the views or opinions, expressed in writing, of any person injured as a result of the incident; and
- information relating to any rehabilitation activity or program or other support or assistance that was provided to injured persons.

The Chief Executive takes into account various factors before making a decision to accept or reject the application for an enforceable undertaking. One of these factors is any comment that an injured worker might wish to make about the enforceable undertaking being proposed. Before considering whether it is appropriate to accept an undertaking, the Chief Executive seeks to discover the impact that the incident has had on the injured worker; whether the worker has been rehabilitated and returned to work, or whether there are other safety issues that remain of concern to the injured worker. All of these factors are taken into account by the Chief Executive in determining whether an enforceable undertaking is the appropriate enforcement option, or whether the obligation holder should be prosecuted through the court system.

There is no specific limit on the number of enforceable undertaking applications that can be submitted by an obligation holder. However, only one application will be considered in relation to a specific incident to which an alleged breach has been made and a summons issued.

Who decides if an application will be accepted?

The Department has established a group of experts as an advisory panel. Each application for an undertaking is reviewed by a three-member panel.

For electrical safety applications, the panel is made up of two industry representatives and the Executive Director of the Electrical Safety Office.

For workplace health and safety applications the panel is made up of two industry representatives and the Executive Director of Workplace Health and Safety Queensland.

These groups consider all facts before making a recommendation to the Chief Executive, who can accept or reject the application.

Note: The decision whether to accept an undertaking is at the sole discretion of the Chief Executive. As the decision maker, the Chief Executive considers all available and applicable material relating to the matter before a decision is made. Where an Enforceable Undertaking application is rejected, prosecution of the matter will proceed through the Industrial Magistrates Court. An obligation holder aggrieved by the Chief Executive's decision to reject an application may seek to have the decision reviewed by the Supreme Court through processes under the *Judicial Review Act 1991*.

Terms of an Enforceable Undertaking

Enforceable Undertakings must also incorporate a number of other terms. The manner in which the obligation holder proposes to implement these terms must form part of the Enforceable Undertaking. What is being proposed should take into consideration the Department's requirement that the proposed Enforceable Undertaking will deliver tangible benefits to workers, industry and the community.

The Enforceable Undertaking must:

- acknowledge that the Department alleges a contravention has occurred
- identify the facts and circumstances of the alleged contravention
- include an assurance from the applicant (obligation holder) about their future behaviour, including a commitment to cease any alleged contravention and not to recommence it
- establish and or maintain an occupational health and safety management system at the workplace which is subject to third party audit at regular intervals (as detailed in the sections below).

An Enforceable Undertaking must also set out how the applicant will:

- (a) address the alleged contravention
- (b) rectify the consequences of the conduct
- (c) prevent any future behaviour that could result in a contravention of a workplace health and safety or electrical safety legislative obligation.

The applicant will be responsible for:

- (a) compliance with the terms of the Enforceable Undertaking
- (b) reimbursing agreed departmental costs associated with the Enforceable Undertaking.

A statement of regret, where appropriate, will also be expected in any undertaking.

If the applicant is a company, the company will be expected to deliver information (through open access to the full Enforceable Undertaking document, newsletters or notices) to its Workplace Health and Safety Committee and/or Workplace Health and Safety Representatives and/or staff setting out the details of the terms of the Enforceable Undertaking.

If the applicant is a publicly listed company, the company will be expected to publish details of the Enforceable Undertaking in the first Annual Report due for publication after the date the Enforceable Undertaking is accepted.

OHS management system requirements

All Enforceable Undertakings must promote the implementation, maintenance and verification of a systematic approach to occupational health and safety management through the establishment or adherence to an OHS management system consistent with AS/NZ 4801:2001 *Occupational Health and Safety Management Systems – Specification with guidance for use*, throughout their company.

Obligation holders are required to declare in the application whether they are required by their industry to maintain an OHS management system that is regularly subject to third party auditing against, AS/NZ 4801:2001 *Occupational Health and Safety Management Systems – Specification with guidance for use*. In such circumstances, maintaining the system would not be considered “beyond compliance” and therefore any associated costs will not be considered when determining the overall value of the EU proposal.

If the applicant already has a formal OHS management system in place it is expected that the undertaking shall commit the applicant to third party auditing of the workplace against, AS/NZ 4801:2001 *Occupational Health and Safety Management Systems – Specification with guidance for use*. The initial audit should be undertaken within three months of signing of the undertaking, with provision for two further audits at 12 month intervals during the period of the undertaking commencing 12 months after the initial audit report has been provided.

Applicants that do not currently have a formal documented OHS management system will be expected to have a system consistent with the requirements of AS/NZ 4804:2001, *Occupational Health and Safety Management Systems General guidelines on the principles, systems and supporting techniques* developed and implemented within 12 months of signing the undertaking. Following this, third party audits would need to be undertaken against the requirement defined in AS/NZ 4801:2001 *Occupational Health and Safety Management Systems – Specification with guidance for use*. The initial audit should be undertaken within six months of implementation of the system with provision made for a further two audits at 12 month intervals commencing 12 months after the initial audit report has been provided.

Third Party Auditors selected to perform OHS Management System Audits must be either:

- certified by a certification body accredited by JAS-ANZ to ISO/IEC 17024:2003 *General Requirements for bodies operating the certification of persons*. (Auditors listed on the RABQSA OH&S Auditor Register³ would meet this standard); or
- An OHS auditor appointed as an accredited provider under section 177 of the *Workplace Health and Safety Act (1995)*.

³ The RABQSA Auditor Register can be accessed at: <http://www.rabqsa.com/>

Auditors should be requested to submit their reports to the applicant's Senior Manager within 30 days of completing the site visit. Audit reports shall be detailed and include:

- An assessment of compliance with each of the criteria contained in AS/NZ 4801:2001 *Occupational Health and Safety Management Systems – Specification with guidance for use*
- A list of ALL evidence sighted confirming compliance or otherwise;
- Each element of AS/NZ 4801:2001 will be assessed as either:
 - Fully compliant
 - Partial compliant (detailed explanation required)
 - Non-Compliant (detailed explanation required)
- Appropriate recommendations aimed at achieving compliance.

The OHS Audit reports outlined above must be forwarded by the company to the Executive Director, Workplace Health and Safety Queensland. Applicants will be required to advise the Executive Director, Workplace Health and Safety Queensland of their intended action/s in addressing each of the report's recommendations within 30 days of receipt of the auditor's written report.

There is an expectation that the company will, within six months, fully implement the recommendations resulting from the OHS management systems audits, unless exempted by the Chief Executive of the Department of Employment and Industrial Relations as being unreasonable.

Worker's Compensation

Self Insurers

Applicants who are Worker's Compensation Self Insurers must also include the following:

- detailed injury description
- rehabilitation – (describe the rehabilitation assistance that has been provided to the injured worker to date)
- status of worker's compensation claim - (including, if a lump sum payment has been offered and whether it was accepted)
- worker's current employment status – (if worker is on graduated return to work program, outline the program, including date commenced. If no longer employed with this employer, advise date and circumstances of employment cessation)
- Residual disability - (provide details of any residual or likely residual disability)
- common law claim status - (is there evidence that the worker has or intends pursuing civil action in this matter?)
- employer's workplace compensation history - (provide brief details of employer's claims history for the past three years).

For all other applicants covered by WorkCover, the Department will seek information from WorkCover regarding the same information sought from self-insurers.

Unacceptable terms:

An Enforceable Undertaking will not be regarded as acceptable if it includes:

- a denial of liability
- a statement that the Enforceable Undertaking is not an admission in relation to action by third parties such as employees (but the Enforceable Undertaking need not make such an admission)
- terms purported to set up defences for possible non-compliance
- obligations placed on the Department.

Enforceable Undertakings are not to be used as the mechanism for payment of compensation to injured workers or others.

Possible outcomes

It is intended that Enforceable Undertakings allow more flexible and broad outcomes than those available through prosecution. For example, the outcomes may include, but are not limited to, a combination of the following:

- conducting, facilitating or funding research into a safety issue relevant to the industry
- implementation of specified projects, such as special training programs to address specific needs for workers, supervisors and management
- promotion and education campaigns targeted to various sectors
- targeted publicity regarding the alleged breach
- employing and/or funding occupational health and safety expertise within the workplace or industry sector
- community service commitments, such as implementation of an industry-wide awareness program or publication of material dealing with the Enforceable Undertaking in relevant trade journals or newspapers
- donation of funds or equipment or service to relevant units within a local hospital e.g. a spinal unit, the local ambulance service or other relevant community organisation e.g. the local bush fire brigade or State Emergency Service
- assisting or funding in the development of industry standards relevant to the applicant's industry.

Failure to comply with an Enforceable Undertaking

It is an offence not to comply with an Enforceable Undertaking and orders may be sought from the court to secure compliance and apply financial penalties.

A magistrate may make orders directing an obligation holder subject to an Enforceable Undertaking to comply with the undertaking, pay monies to the State equal to a financial benefit obtained through not complying with the undertaking, direct the obligation holder

to give a security bond to the State for a stated period, and/or other orders the magistrate deems appropriate in the circumstances.

The maximum penalty for failure to comply with an Enforceable Undertaking is:

- 1,000 penalty units (\$75,000) for an individual
- 5,000 penalty units (\$375,000) for a corporation

Request to vary or withdraw an Enforceable Undertaking.

An Enforceable Undertaking may be withdrawn or varied by the obligation holder only with the prior agreement of the Chief Executive. The provisions of an Enforceable Undertaking cannot be varied to provide for a different alleged contravention for the Enforceable Undertaking.

The Chief Executive may only consider a request to vary an undertaking in the following circumstances:

- where compliance with the undertaking is subsequently found to be impractical
- where there has been a material change in the circumstances.

How is an offer of an undertaking made?

An organisation or individual wishing to enter into an Enforceable Undertaking should forward their offer in writing to the Director-General, Department of Employment and Industrial Relations. An officer from the Department will then contact the applicant to discuss the proposal and seek clarification as necessary. Once the offer is finalised, it will be considered by the Evaluation Team and a recommendation is made to the Chief Executive. The Chief Executive then considers all issues and makes a decision. Where an Enforceable Undertaking is not accepted, the obligation holder will be advised why the Enforceable Undertaking was not accepted. The acceptance of an undertaking will be acknowledged in writing.

To assist applicants, a template example of an Enforceable Undertaking is provided in Appendix 1. Previously accepted undertakings are published on the department's website and can also be a useful guide to format and layout. Applicants should note that submission of an Enforceable Undertaking based on the template format does not guarantee acceptance of the undertaking by the Director-General, as each application is considered on its merits and the circumstances of the precipitating incident.

Initial meeting to discuss enforceable undertaking option

Applicants are strongly encouraged to participate in face to face discussions with an officer from the department's Enforceable Undertakings Unit before completing a formal application. Experience has shown that applicants that participate in face to face discussions are in a better position to complete their applications having regard to the legislative and departmental requirements. It is highly desirable for the applicant to be represented at these discussions by the Chief Executive Officer or Managing Director and the person within the company functionally responsible for workplace health and safety matters. The applicant's legal representatives are also welcome to attend these discussions.

Who to Contact

For further information:

Enforceable Undertakings Program Coordinator, Regional Services Branch,
Workplace Health and Safety Queensland:

Email: undertakings@deir.qld.gov.au

- Ph 07 4938 4138
- Fax 07 4938 4155

The Department of Employment and Industrial Relations website <http://www.deir.qld.gov.au/> contains relevant Workplace Health and Safety information including links to legislation and Codes of Practice which may be of assistance to applicants.

To submit an application:

All applications must be in writing to:

The Director-General
Department of Employment and Industrial Relations
GPO Box 69
Brisbane Qld 4001

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Template for Enforceable Undertaking Applications

Workplace Health and Safety Enforceable Undertaking

Or

Electrical Safety Enforceable Undertaking

Note:

Applicants should note that submission of an Enforceable Undertaking based on the template format does not guarantee acceptance of the undertaking by the Chief Executive, as each application is considered on merit and the circumstances of the precipitating incident.

Applicants should consider all of the legislative requirements as well as the departmental requirements contained in the “Information for Applicants” guide when framing their Enforceable Undertaking proposals.

Workplace Health and Safety Undertaking

Workplace Health and Safety Act 1995

Undertaking to the Chief Executive, Department of Employment and Industrial Relations given for the purposes of Section 42 of the *Workplace Health and Safety Act 1995*

by

(INSERT NAME OF COMPANY)

ABN

(Please number each clause)

Background

1. Insert 1-2 paragraphs providing details of the company. Include details such as the type of business i.e. civil construction company, how long the company has been in business, number of full time and part time workers and the type of products and services the company provides.

Incident

2. Insert 1-2 paragraphs that describe the factual details of the incident. Do not include individual persons names, instead use suitable terms that best describe the persons relationship to the incident such as: the injured worker, a member of the public, or the site or workshop supervisor.

Acknowledgment

3. Insert the company's acknowledgement of the Department's allegation. A suitable acknowledgment might read something like this:

“It is acknowledged that Workplace Health and Safety Queensland has alleged the Company has contravened provisions of the *Workplace Health and Safety Act 1995*. These allegations are considered very serious and the Company has conducted its own investigations into both the incident itself and the necessary remedial measures required to ensure there is no repetition of the incident.”

Alleged contravention

4. Describe details of the allegation as detailed on the “complaint and summons”.

Statement of regret

5. Insert a statement of regret. The statement is not an admission of any liability, rather a statement indicating that the company (or individual) sincerely regrets that the incident occurred at the workplace.

Assurance about future behaviour

6. Include an assurance from the applicant (obligation holder) about their future behaviour, including a commitment to cease any alleged contravention and not to recommence it.

Terms of undertaking

There is an expectation that applicants will commit to implementing an OHS management system consistent with AS/NZ 4801:2001 Occupational Health and Safety Management System – Specification with guidance for use. Include one of the following two clauses in the EU dependant on whether the applicant already has a formal OHS management system in place (use Clause 7) or no formal system currently exists (use Clause 8). Delete whichever clause is not relevant.

OHS management system audits

7. [Insert Obligation Holder] will conduct third party auditing of the workplace against AS/NZ 4801:2001 *Occupational Health and Safety Management System – Specification with guidance for use*. The initial audit will be undertaken within three months of signing of the undertaking, with two further audits to be conducted at 12 month intervals during the period of the undertaking commencing 12 months after the initial audit report has been provided.
8. [Insert Obligation Holder] will have a formal documented OHS management system that is consistent with the requirements of AS/NZ 4804:2001, *Occupational Health and Safety Management Systems General guidelines on the principles, systems and supporting techniques*, developed and implemented within 12 months of signing the undertaking. Following this, third party audits will be undertaken against the requirement defined in AS/NZ 4801:2001 *Occupational Health and Safety Management Systems – Specification with guidance for use*. The initial audit will be undertaken within six months of implementation of the system with provision made for a further two audits at 12 month intervals commencing 12 months after the initial audit report has been provided.
9. Auditors selected to perform these OHS management system audits should be certified by a certification body accredited by JAS-ANZ to ISO/IEC 17024:2003 General Requirements for bodies operating the certification of persons. Auditors listed on the RABQSA OH&S Auditor Register would meet this standard.
10. Audit reports shall be forwarded by the auditor to the company, with a copy sent by the company direct to the Executive Director, Workplace Health and Safety Queensland.

11. Within 30 days of receipt of the auditor's written report applicants are to advise the Executive Director, Workplace Health and Safety Queensland of their intended action in addressing each of the report's recommendations.
12. There is an expectation that the company will, within six months, fully implement the recommendations resulting from the OHS management systems audits, unless exempted by the Chief Executive of the Department of Employment and Industrial Relations as being unreasonable.

What is being proposed under these terms should take into consideration the Department's requirement that the proposed Enforceable Undertaking will deliver tangible benefits to workers, the industry generally and the community. Insert clauses below that describe in detail what the applicant (obligation holder) is proposing to do. It is important to provide enough detail so that all key deliverables are clearly identified. This should include when the activity is intended to be undertaken and completed along with estimated costs associated with each proposed activity.

Benefits to Workers

13. Describe undertakings that are being proposed that will be of benefit to the company's workers. Provide detail and include estimated costs.

Benefits to relevant industry

14. Describe undertakings that are being proposed that will be of benefit to the relevant industry. Provide detail and include estimated costs.

Benefits to the general community

15. Describe undertakings that are being proposed that will be of benefit to the general community. Provide detail and include estimated costs.

Other terms

16. It is expected that if the applicant is a company, it will deliver information (through open access to the full Enforceable Undertaking document, newsletters or notices) to its Workplace Health and Safety Committee and/or Workplace Health and Safety Representatives and/or staff setting out the details of the terms of the Enforceable Undertaking.
17. If the applicant is a publicly listed company, it is expected that the company will publish details of the Enforceable Undertaking in the first Annual Report due for publication after the date the Enforceable Undertaking is accepted.

Compliance with Terms of the Undertaking

18. The [Insert Obligation Holder] acknowledges that the Department will conduct a series of audits to ensure [Insert Obligation Holder] compliance with the terms of this undertaking. The following compliance audit schedule is agreed:

First compliance audit is to be conducted during [Insert month/year];

Second compliance audit is to be conducted during [Insert month/year];

Third (final) compliance audit is to be conducted during [Insert month/year];

19. [Insert Obligation Holder] acknowledges its responsibility to cooperate with the Department's Compliance Auditor and will ensure relevant material (evidence of compliance) will be available. [Insert Obligation Holder] understands that the cost of these compliance audits will be met by [Insert Obligation Holder], and is detailed at Clause [Insert number].

20. [Insert Obligation Holder] acknowledges that the Department may initiate additional compliance audits as considered necessary, at the Department's expense.

Costs

21. The following standard clause should be used to describe the costs recoverable by the Department:

The following costs shall be payable to the Department:

- (i) Investigation costs in the amount of \$(these will be advised by the Department), representing the reasonable investigation costs arising out of the incident.
- (ii) Consideration costs of \$800.00 (EIGHT HUNDRED DOLLARS).
- (iii) Compliance Auditing and Regulatory Monitoring costs of \$(these will be advised by the Department) representing costs to the Department in monitoring and auditing of compliance with the terms of this undertaking.
- (iv) Costs of \$(these will vary for each applicant and will be advised by the Department) being the costs to the Department in publishing the Notice of Acceptance."

22. The total amount of \$(TBA) will be due for payment 30 days after receipt of the Department's invoice.

