



Work Health and Safety Act 2012 (SA)

Part 11 - Enforceable Undertakings

Notice of a decision to accept a WHS enforceable undertaking and reasons for acceptance

Entity: Department of Human Services

ABN: 11 525 031 744

Entity Address: Level 8, Riverside Centre North Terrace Adelaide SA 5000 Kaurana Country

Location of incident: Felixstow SA 5070

Date of incident: 28 April 2022

1. History of the application

- 1.1 The undertaking given by the Department of Human Services (DHS) relates to a workplace fatality involving a National Disability Insurance Scheme participant (the client). The incident occurred at a private residence located in Felixstow SA 5070, where disability care services were provided by DHS - Disability Services.
- 1.2 The client was diagnosed with Dementia, followed by advanced Huntington's disease in August 2020, a progressive and ultimately fatal neurological condition causing severe cognitive and movement impairments. The client required 1:1 line-of-sight supervision, 24 hours a day.
- 1.3 Approximately 2.20pm on Thursday 28 April 2022, the client was found unresponsive in their residential unit. The client was sitting in an upright position on the floor between their bed and wheelchair, with the wheelchair seatbelt across their neck, resulting asphyxiation.
- 1.4 Following an investigation by SafeWork SA (SWSA), prosecution action was commenced by the Crown Solicitors Office (by complaint and summons) against DHS, who had a health and safety duty pursuant to section 19(2) of the *Work Health and Safety Act 2012 (SA)* (the WHS Act), for failing to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking and section 32 for failing to comply with health and safety duty.

In addition, SWSA alleged DHS failed to:

- ensure, so far as was reasonably practicable, the provision and maintenance of a work environment without risks to health and safety;
- provide the level of care to the client, required in the clients Care Plans;



- ensure, so far as was reasonably practicable, the safe use of plant; and
- ensure, so far as was reasonably practicable, the provision of information, training, instruction, and supervision that was necessary to protect a client from risks to safety arising from work carried out as part of the conduct of the business.

The Department's failure to comply with the section 19(2) duty exposed the client to a risk of death or serious injury, which materialised on 28 April 2022 when the client suffered fatal injuries.

- 1.5 On 18 November 2024, DHS submitted an initial proposal for an EU concerning the alleged contraventions.
- 1.6 Following negotiations with DHS, on 21 February 2025 a final EU application was submitted to the Regulator for consideration. After assessing the application, the Regulator accepted the EU on 25 February 2025.

2. Legislation and Policy

- 2.1 Pursuant to section 216 (1) of the WHS Act the WHS regulator may accept a written undertaking given by a person in connection with a matter relating to a contravention.
- 2.2 Section 217(1) of the WHS Act provides that the WHS regulator must give the person seeking to give an undertaking written notice of the decision to accept or reject the undertaking and the reasons for the decision.
- 2.3 Pursuant to section 217(2) of the WHS Act, the WHS regulator must issue, and publish on the WHS regulator's website, notice of a decision to accept a WHS undertaking and the reasons for that decision.

3. Material and evidence considered by the WHS Regulator

- 3.1 In deciding this matter, the WHS regulator has considered the following documents:
1. *Work Health and Safety Act 2012 (SA) & Work Health and Safety Regulations (SA) 2012*
 2. National Compliance and Enforcement Policy (Part 7 criteria)
 3. SWSA Enforceable Undertaking Application Guidelines (September 2024 Version: 3)
 4. WHS EU application submitted by the applicant dated 21 February 2025 (date signed by the applicant).
 5. Complaint and Summons prepared by Crown Solicitors Office
 6. Brief of Evidence prepared by SWSA Investigator



4. Regulator Findings

- 4.1 The SWSA Enforceable Undertaking Application Guidelines contains considerations which are relevant and appropriate to my decision.
- 4.2 I find the undertaking given by DHS satisfies the formal requirements of the WHS Act and the policy requirements discussed above with respect to the operation of Part 11 of the WHS Act, as they have been published.
- 4.3 I find the factual background to the characterisation of, or the alleged contravention is set out in section 1 of the undertaking submitted by DHS.
- 4.4 The significance of the undertaking and the respective financial commitments of DHS are proportionate to the gravity of the alleged contraventions by DHS and account for the benefits to them avoiding prosecution.
- 4.5 I find that DHS have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.6 I find the undertaking commits DHS to a standard that is higher than the recognised compliance for the activity and/or to activities over and beyond recognised compliance levels.
- 4.7 I find the undertaking would constitute tangible benefits for workers, industry, and the community.

5. Decision

- 5.1 In making my decision, I have considered and had regard to the evidence and other material referred to in paragraph 3 above, and to my findings referred to in paragraph 4 above.
- 5.2 Because DHS have submitted an EU application to me in accordance with the requirements of the WHS Act, my power to accept the undertaking under section 216(1) of the WHS Act is enabled.
- 5.3 Based on the evidence, findings and having regard to the objectives of the WHS Act, I have carefully considered this matter, and I believe the undertaking given by DHS is an appropriate enforcement option.
- 5.4 I have concluded that an EU is the preferred enforcement option, rather than continuing with prosecution, regarding the opportunity to provide lasting organisational change within DHS, and the implementation of monitored and targeted health and safety improvements that will deliver benefits to workers, industry, and the community.
- 5.5 Under section 216(1) of the WHS Act, it is my decision to accept the DHS EU dated 21 February 2025, which I signed on 25 February 2025.

A handwritten signature in blue ink, appearing to read 'Glenn Farrell'.

Glenn Farrell
Executive Director,
SafeWork SA
6 March 2025