

VIOLENCE IN SCHOOLS LEADS TO AUD10 MILLION WHS UNDERTAKING

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Australia Labour, Employment and Workplace Safety Alert

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LARGEST ENFORCEABLE UNDERTAKING BY MONETARY VALUE

The Australian Capital Territory Education Directorate (the Directorate) has signed on to the largest [enforceable undertaking](#), by monetary value, to date under harmonised work health and safety legislation.

The undertaking included an estimated total cost of AUD 10.045 million was signed by the Directorate on 28 September 2018, and included the following commitments:

- AUD7.67 million spent on rectifications relevant to occupational violence, a significant proportion of which relates to the development of sensory spaces in schools for staff to support students with complex needs, and professional learning to support schools in creating sensory spaces – these initiatives have been undertaken over the last two years as part of the Directorate Occupational Violence Safety Management System program and are continuing
- AUD2.225 million spent on strategies intended to deliver worker benefits, largely centred around training and communications initiatives
- AUD50,000 spent on strategies delivering industry benefits, focused on sharing and consultation initiatives carried out under the undertaking with the industry
- AUD100,000 spent on strategies to deliver community benefits, involving work with Parents and Citizens Associations to raise the risk profile of occupational violence in the education sector.

BACKGROUND

The undertaking arose out of WorkSafe ACT investigations into incidents at three ACT schools involving students causing injuries to teachers between 2016 and 2017. WorkSafe ACT alleged that the Directorate failed to comply with its obligations under the *Work Health and Safety Act 2011* (ACT) to ensure the health and safety of its workers, and caused exposure of its workers to risk of injury, and actual injuries.

In particular it was alleged that the Directorate:

- applied inconsistent or inadequate controls to workplace hazards associated with student behaviours
- failed to adequately adjust controls following incidents or changes in circumstances
- failed to provide adequate training to staff in the application of controls identified.

In each school involved in the investigations, workers suffered physical injuries from children with complex needs and behavioural challenges in circumstances ranging from kindergarten to high school students. The physical injuries also gave rise to psychological injury in some incidents. In spite of the injuries being reported, in each school there were found to be inadequacies with the communication or training related to proposed controls in response to the incidents, and the controls did not adequately mitigate the risk to the workers.

The [*Work Health and Safety \(WHS Undertakings\) Guidelines 2018 \(No 1\)*](#) (ACT) provide that the activities associated with enforceable undertakings "*may be substantially higher than the value of the fine a court may impose for the matter*", but the estimated costs of this undertaking are substantially higher than any undertaking previously recorded.

PRACTICAL IMPLICATIONS

The undertaking serves as a reminder to every industry that all risks to the health and safety of workers in the workplace need to be adequately identified, assessed and controlled in accordance with the legislated standard, and that there are significant consequences for failing to comply with this duty. It is particularly pertinent in industries where there is an elevated risk of occupational violence, such as the school education industry.

It is also a timely reminder that it is not sufficient simply to devise adequate controls to address risks; duty holders must also ensure that adequate communication, training and supervision is undertaken to implement those controls and that those controls are adjusted as required where there is any incident or change in circumstances.

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