

New Zealand's first judgment ordering a court-ordered enforceable undertaking

On 18 June 2020 Judge Kevin Phillips delivered a judgment sentencing Otago Polytechnic for an offence under the Health and Safety at Work Act 2015. Instead of ordering a significant fine, the judgment ordered New Zealand's first ever court-ordered enforceable undertaking.

Otago Polytechnic, represented by James Cowan and John Farrow from our Employment Team, pleaded guilty to a charge under the Health and Safety at Work Act 2015 (Act) after a carpentry student suffered a partial amputation to a finger on his left hand following an incident involving a draw saw. The draw saw was inadequately guarded and earlier risk assessments had failed to identify the guarding as a health and safety risk.

A court-ordered enforceable undertaking (court-ordered EU) is a sentencing option available under the Act. An order for a court-ordered EU involves the court requiring an offender to give an undertaking that the offender will complete specified conditions within a timeframe of up to two years.

A court-ordered EU means money that would otherwise be used to pay a fine (in this case from one Crown entity to another) is instead spent on activities such as health and safety training.

WorkSafe New Zealand (as prosecutor) opposed the court-ordered EU.

Otago Polytechnic sought and was successfully ordered to give a court-ordered EU on terms that it would:

- Complete an awareness raising campaign promoting safety;

- Deliver safety training courses including to construction industry workers; and
- Provide scholarships for construction courses.

Court-ordered EUs are unlikely to be common, but are at the court's discretion and will sometimes be an appropriate and proportionate outcome in sentencing under the Act.

Otago Polytechnic is uniquely placed to be in a position to deliver the undertaking activities. The court-ordered EU activities will be beneficial in promoting construction industry safety as Dunedin readies itself for the upcoming construction boom.

See more:

- *WorkSafe New Zealand v Otago Polytechnic* [2020] NZDC 11114
- ODT article | [Otago Polytechnic landmark ruling after student injured](#)
- RNZ article | [Otago Polytechnic convicted after student's finger partially amputated](#)

Want to know more?

If you have any questions about health and safety please contact our specialist [Employment](#) Team.