

Responsive sentencing: Non-monetary orders in work health and safety

Summary report

June 2020

Highlights

- Non-monetary orders enable sentencing to go beyond punishment and deterrence, to also increase awareness, build skills, and repair harm.
- Best-practice guidance to support an evidence-based and consistent approach to non-monetary orders is lacking, leading to infrequent and inconsistent use among jurisdictions.
- Regulators are encouraged to exercise their discretion and advocate for non-monetary orders in appropriate circumstances.
- Increased use of non-monetary orders will enhance the evidence base, enable empirical study, and further the debate on when and how to use the orders.

Table of contents

Highlights	1
Background	2
Adverse publicity orders	2
Restoration orders	3
Work health and safety project orders.....	4
Work health and safety undertakings	5
Training orders	6
Summary tables	7
Table 1: Summary of considerations before proposing an Adverse Publicity Order to the court, including legal citation and example case law.....	7
Table 2: Summary of considerations before proposing a Restoration Order to the court, including legal citation and example case law.....	8
Table 3: Summary of considerations before proposing a Project Order to the court, including legal citation and example case law.....	9
Table 4: Summary of considerations before proposing a WHS Undertaking to the court, including legal citation and example case law.....	10
Table 5: Summary of considerations before proposing a Training Order to the court, including legal citation and example case law.....	11
References	12

Background

The Australian Model Work Health and Safety (WHS) laws contain a range of orders for sentencing offenders. These include making offenders publicise their offence (Adverse Publicity Orders), restore harm caused by the offence (Restoration Order), carry out a WHS project (Project Order), and undertake training (Training Order). Courts can also adjourn prosecutions on the condition that the offender undertakes specific activities and remain on good behaviour for a period of time (WHS Undertaking). The specific activities can be whatever the court finds appropriate. Non-monetary orders can be given in addition to or instead of a fine, in isolation or combination, depending on the offender's needs and circumstances.

Although the orders enable Australian WHS sentencing to go beyond punishment and deterrence, the use of such orders to increase awareness, build skills, and repair harm have been infrequent and inconsistent. In early 2019, an Adverse Publicity Order was handed down for the first time in New South Wales under the harmonised *Work Health and Safety Act 2011*. This raised questions regarding the impact of non-monetary orders on offenders and the principles for when to raise the possibility of such orders to the court.

The Centre for WHS's review explored case law and literature across jurisdictions and areas of law, across Australia and internationally, to identify examples of how such orders have been used in the past along with the considerations made in those cases. Drawing upon these insights, the review discusses limitations and benefits, pitfalls and opportunities, and solutions to concerns regarding effectiveness and appropriateness. Most importantly, it highlights the lack of evidence and best-practice guidance to support an evidence-based and consistent approach.

To address this, the review recognises the unique position of regulators to exercise their discretion and advocate for non-monetary orders in appropriate circumstances. Regulators are encouraged to provide advice to the courts on sentencing options and the likely effects on WHS outcomes. This will enhance the evidence base, enable empirical study and further the debate to bring greater clarity to the purposes of the orders and the principles for their application.

The following sections summarise relevant considerations for regulators wanting to propose non-monetary orders to the court.

Adverse publicity orders

By broadcasting prosecution outcomes, publicity can raise awareness, reinforce disapproval, warn about risks, and educate about appropriate controls (Fooks, Bergman & Rigby, 2007). Delayed impacts of this disapproval contribute to specific deterrence in the offender, while an enhanced perceived risk of getting caught increases general deterrence.

Regulators should consider **(1)** the nature of the offence (i.e., seriousness of the offence, risk of reoffending and culpability of the offender), **(2)** how common the offence is and **(3)** the level of compliance the offender has reached since the offence was committed. These considerations will help determine the need to inform, warn, punish and/or deter.

Since the effectiveness of the order depends on the nature of the offender and the audience, it is important to consider **(4)** how the audience and the offender views publicity and its impacts. If the offender sees reputation as important and appreciates the likelihood of the publicity reaching important people (e.g., investors, customers), the likelihood that these groups will disapprove, and the extent of the impacts of this disapproval as high, then the order is likely to be effective in

deterring the offender (Gellhorn, 1973; Cortez, 2015).

While courts commonly restrict Adverse Publicity Orders to simple notices of factual information (i.e., details of the offence, appropriate management actions and the outcomes of the prosecution), the changing world of information-sharing makes it increasingly important to consider **(5)** the environment into which the publicity will be released. This also includes **(6)** the language and wording and how it may be interpreted by the intended audience and others. This is particularly important if delivery methods such as online news or social media will be used, many of which have restricted word limits or lend themselves to shorter and sharper messaging. Shortening information is known to put audiences at greater risk of misinterpreting information, while the effortless nature of forwarding and linking allows for mistakes to be easily multiplied (Cortez, 2015).

Anticipating the way information might get selected and framed in the media is, therefore, fundamentally important to managing reach, predicting interpretation and avoiding unintended consequences. However, it is also important to recognise that material that is noticeable, accessible, and seen as relevant and implementable is the most likely to generate the desired general deterrence and safety improvements (Thornton, Gunningham & Kagan, 2005). Further considerations include **(7)** the characteristics of the intended audience; Who needs to be informed, warned or deterred? Will they disapprove of the offending behaviour? Will they see the case as relevant to them and their workplace, and is it detailed enough so that they will learn from the case and make changes?

To increase the opportunity for general deterrence, regulators should also consider **(8)** how and when the target audience is best reached. This helps determine the delivery method, including duration and size of the notice. The level of attention and cost can then be estimated, and the order made proportional to the nature of the offence.

Proportionality is the main challenge of using the order. As it is impossible to withdraw the publicity and its impacts once it has been released (Cortez, 2015), it is important to consider aspects such as the political climate when determining wording and delivery. This includes whether the message has to compete with other, more newsworthy, stories and how effectively the media may dramatise the offence and the actions by the regulator and the court.

Considering the sheer quantity of information and demands of modern society on offenders, it is unclear how and to what extent they notice and learn from orders imposed on others and the level of deterrence prosecutions generate (Thornton, Gunningham & Kagan, 2005). The use of Adverse Publicity Orders allows courts to ensure the message is transmitted widely enough and is condemning enough to make the information about WHS offending more noticeable, accessible, applicable, and effective (Fooks, Bergman & Rigby, 2007; Jamieson et al., 2010; Thornton, Gunningham & Kagan, 2005).

Restoration orders

Restoration is a significant component of restoring harm to those affected by unlawful behaviour. This includes addressing both actual and potential harm through action, compensation and/or donation.

Regulators should consider **(1)** the nature of the offence and **(2)** the harm caused by the offence to determine the extent of harm or loss, and if it has been restored (having regard for workers compensation arrangements, public liability insurance and common law remedies). This can include the need to order action on unaddressed matters relating to the offence (e.g., to comply with a notice under section 155: Powers of the regulator to obtain information), to compensate

victims for financial or other material losses, or to make a donation to compensate harm to the community. An order may not be necessary if the offending behaviour has been addressed or compensation to victims has been provided.

The overlap between Restoration Orders and restorative activities included in Project Orders, WHS Undertaking conditions and public apologies in Adverse Publicity Orders, show that restoration can easily be **(3)** combined with other non-monetary orders. Factors that has sparked the consideration of a Restoration Order in NSW and South Australian WHS cases in the past have included **(4)** characteristics of the victims or affected parties that indicate higher likelihood of having losses or harm that has not been fully compensated (e.g., being young and working under weak employment conditions) and lower likelihood of seeking compensation through other means (e.g., young; poor financial capacity; not having sought compensation during the time taken from incident to prosecution). Similarly, consider **(5)** the characteristics of the offender and their ability to comply.

Embracing the nature of restorative justice, regulators can influence wider reaching benefits by **(6)** employing approaches such as conferencing to give voice to victims and others affected by the offence. This can identify opportunities to restore harm to communities through donation or other project-style activities through charities, public organisations or trusts. Restorative justice approaches can also be used to devise solutions to address commonly expressed concerns relating to the order. One such concern is the limited deterrence that a donation would add (Gruner, 1993). Other relate to how the arrangements assessed, such as who will be given donations or compensation and how much they will be given (Gruner, 1993).

In summary, Restoration Orders emphasise the seriousness of the offence and the offender's responsibility to restore harm. They provide opportunity to rebuild relationships and provide a safeguard to ensure harm is restored in cases where harm might not otherwise get addressed.

Work health and safety project orders

Project Orders allow courts to make offenders undertake activities to identify and address the failures that led to the offence. Giving offenders Project Orders and combining projects with other orders in ways that match the offender's needs is particularly useful where offenders have repeatedly failed to act or are likely to reoffend (Bonta & Andrews, 2016). Similarly, adding activities that restore harm, raises awareness and builds capability for the wider industry or community can contribute to wider-reaching safety improvements.

Regulators should consider **(1)** the nature of the offence and the offender's behaviour since the offence. If the offending was not deliberate, the offender takes responsibility for their actions and collaborates during the investigation, it may signal that the offender is willing and likely to complete a successful project (EPA, 2017).

When determining the content of the project, regulators could consider **(2)** the causes of the offence. If the failures are not known, an in-depth audit as part of the order can help inform future safety improvement activities. If the failures are known, the order can be **(3)** combined with other non-monetary orders to ensure that: failures in policy, procedures, and practices are addressed; learnings are applied (Training Order); risk or harm is addressed (Restoration Order), and outcomes are shared with the public (Adverse Publicity Order). If the offender lacks **(4)** the capacity and ability to comply with the order, the appointment of experts or consultants to support successful project outcomes can be part of the order.

The project activities can be **(5)** internal and/or community focussed. If there is opportunity to contribute to wider-ranging, community or research-based projects, the common approach is

that the activities are related to the offence in some way. For example, the activities could be addressing failures that led to the offence or mitigating harm caused by the offence. In Victoria, the *Occupational Health and Safety Act 2004* s 136(3) states that the cost of activities are limited to the maximum penalty the court could impose for the offence. This restriction has not been included in the Model Act. In jurisdictions such as England and Wales, the cost of project activities is not seen as part of the penalty as they generally relate to matters the offender should already have addressed by the time of the prosecution (UK Sentencing Council, 2015).

Similarities between Project Orders and other activity-based enforcement tools (e.g., Enforceable Undertakings [EUs] and Improvement Notices) also mean that the considerations made for these tools likely apply. For example, **(6)** the outcomes need to be concrete, tangible, and measurable in short and longer terms to enable monitoring and confirmation that the order has been complied with. Similarly, known issues may also apply. For example, if money is to be paid to third parties to be used in certain ways and those parties are not bound by the order (Johnstone and Parker, 2010). Research on EUs has also shown that project success in causing safety improvements and preventing reoffending is related to procedural and interactional fairness (Jess & Price, 2017). That is, putting in effort to ensure the offender understands and can influence the process being imposed on them, aiming for a respectful collaboration. Restorative justice approaches, such as **(7)** conferencing with offenders, victims and impacted parties, can thus increase the likelihood of improvements and lead to wider-ranging benefits.

The fact that Project Orders are rarely handed down on their own speaks to the potential to be reached when combining the order with fines or non-monetary orders. By tailoring projects to the specific needs and circumstances of the offender, the order can ensure the offender addresses its shortcomings, improves its performance, and shares its learnings more broadly.

Work health and safety undertakings

The WHS Undertaking gives courts the opportunity to emphasise the seriousness of an offence while allowing the offender to avoid further consequences by being on good behaviour. The order also makes the offender keep the court up-to-date on its compliance and allows courts to impose any conditions the court finds appropriate. This can be to either restrict the offender's capacity to carry out its business or to directly improve compliance and prevent reoffending (Fooks, Bergman & Rigby, 2007).

Regulators should consider **(1)** the nature of the offence and the offender's behaviour since the offence to determine whether an Undertaking should be recommended with or without conviction, fine, and/or special conditions. If the offending was not deliberate; the offender takes responsibility for its actions; and collaborates during the investigation, these behaviours may be signal that the offender is willing and likely to carry out the extra activities.

Since criminal courts tend to reserve good behaviour orders for less serious matters and low risk offenders who are unlikely to cause harm to the community, some concerns have been raised that the use of WHS Undertakings could trivialise WHS offences (Johnstone, 2003) and cause the public to see the offender as being "let off" (Bartels, 2010). However, the lack of cases where the order has been imposed on its own and without special conditions suggests that these concerns can easily be avoided. For example, by combining the order with other orders, by imposing special conditions, or by imposing the order in addition to, or partially in place of, a fine. The view that non-monetary orders should not be used for serious offences and offenders forgets the potential benefits that can be gained through rehabilitation and making offenders act on the failures they have repeatedly failed to address.

When identifying special conditions, regulators need to consider **(2)** the aim of the order and whether this is to add deterrence, punishment, incapacitation or rehabilitation. Depending on **(3)** the offender's needs and the causes of the offence, the special conditions can include training, restoration or project-style activities. The aim and special conditions will determine **(4)** the duration of the undertaking. Training may be completed within one to three months, while more laborious activities may take up to 12 months. In some cases, the full two years of good behaviour may be justified.

Training orders

Training Orders are used in most areas of corporate law, particularly where the offender's lack of knowledge and skills are seen as having contributed significantly to the offence. The order is therefore an important mechanism for rehabilitation and protects the community through the prevention of future risk and harm. This is particularly the case where offenders have little or no previous training on how to comply or have not provided adequate training to their workers.

Regulators should consider **(1)** the nature of the offence and whether **(2)** the lack of willingness, capability or competence significantly contributed to the offence. Since the needs of offenders differ, training can be tailored to cater for either **(3)** general and/or specific training needs. General training courses can improve general WHS management and due diligence skills, whereas more specific training can upskill staff in relevant areas of risk. Examples have included falls from heights and the safe operation of forklifts and other machinery. Training can also take the form of a **(4)** one-off training course/s or the establishment of an ongoing training program, depending on the needs of the offender.

The concept of training being able to increase willingness, capability and competence to comply is clear and well supported (Bonta & Andrews, 2016). However, the effectiveness of training can be limited by a number of factors: the context within which the training takes place, the motivation of the participants, the content of the training, the level of knowledge transfer and the extent to which knowledge can, given the pressures of work, be applied within the workplace (Tharenou, 2001; Davis, 2004; Fooks et al., 2007; Curado, Henriques & Ribeiro, 2015). While some argue that training must be learner-centred, participatory and hands-on to be effective at reducing incidents in the workplace (Burke et al. 2006), others argue that perhaps training can be regarded as a useful as long as participants get something out of the training — even only one thing — as that is an improvement on their initial position (Johnstone, unpubl.). It has also been argued that training can be made more effective if combined with other interventions than if applied on its own (Robson et al., 2012).

To maximise training effectiveness, regulators should consider **(5)** who would most benefit from adequate knowledge and skills to ensure future compliance. Regulators can also take a proactive approach to review training content to assist in **(6)** selecting a course that is appropriate to the characteristics of the learners. Effective training is (Bonta & Andrews, 2016):

- Tailored or adaptable to the learning style of the learners (e.g., visual, verbal, physical)
- Engaging and hands-on
- Relevant to the learners and their workplace
- Uses storytelling and problem solving
- Delivered at a time, location and pace that is suitable for the learners
- Have a clear call to action that is seen as implementable in their workplace

If a suitable training course does not exist, perhaps a Project Order or WHS Undertaking could be imposed to develop such a resource for the industry.

Summary tables

The following tables (Table 1 – 6) list the relevant considerations for each non-monetary order. The tables also include the legal text from the *Model Work Health and Safety Act 2010* and links to example cases where the order has been given in the past. This includes cases across all Australian work health and safety jurisdictions.

Table 1: Summary of considerations before proposing an Adverse Publicity Order to the court, including legal citation and example case law.

Adverse Publicity Order <i>Work Health and Safety Act 2010</i> s 236		
Citation	Considerations	Case law
<p>(1) The court may make an order (an <i>adverse publicity order</i>) in relation to the offender requiring the offender:</p> <p>(a) to take either or both of the following actions within the period specified in the order:</p> <p>(i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter,</p> <p>(ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter, and</p> <p>(b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.</p> <p>(2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.</p> <p>(3) If the offender fails to give evidence to the regulator in accordance with subsection (1) (b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.</p> <p>(4) However, if:</p> <p>(a) the offender gives evidence to the regulator in accordance with subsection (1)(b); and</p> <p>(b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order, the regulator may apply to the [designated court] for an order</p>	<p>(1) the nature of the offence</p> <p>(2) the prevalence of the offence in the industry</p> <p>(3) the level of compliance achieved since the offence was committed</p> <p>(4) how the offender views:</p> <ul style="list-style-type: none"> ▪ importance of reputation ▪ likelihood of publicity reaching important people ▪ likelihood these groups will disapprove ▪ extent of latent impacts of this disapproval <p>(5) the environment in which the notice will be released</p> <p>(6) the language and wording</p> <ul style="list-style-type: none"> ▪ Noticeable ▪ Accessible ▪ Relevant ▪ Implementable <p>(7) the characteristics of the intended audience;</p> <ul style="list-style-type: none"> ▪ Who needs to be informed, warned or deterred? (for example, public, industry, investors, shareholders, creditors, contractors, collaborators, distributors, providers, customers, employees) ▪ Will they disprove? ▪ Is it relevant? ▪ Will they learn? <p>(8) how and when they are best reached</p> <ul style="list-style-type: none"> ▪ Delivery method (for example, media releases, tv, radio, printed 	<p>SafeWork NSW v Investa Asset Management Pty Ltd [2019] NSWDC 472</p> <p>SafeWork NSW v KD & JT Westbrook Pty Ltd (No 2) [2019] NSWDC 15</p> <p>Perry v Bellard Pty Ltd [2014] SAIRC 23 (Order appealed)</p> <p>Badge Constructions (SA) Pty Ltd v Perry [2014] SAIRC 25 (Order appealed)</p> <p>Perry v Kahlon Estate's Wines Pty Ltd [2013] SAIRC 27</p> <p>Hillman v Ferro Con (SA) Pty Ltd (in liquidation) and Anor [2013] SAIRC 22</p> <p>Hillman v Prospect Building Services Pty Ltd & Anor [2013] SAIRC 21</p> <p>Perry v Conroy's Smallgoods Pty Ltd [2013] SAIRC 20</p> <p>Hillman v Amcor Packaging (Aust.) Pty Ltd [2012] SAIRC 59</p> <p>Neale v BJ Jarrad Pty Ltd [2012] SAIRC 57</p> <p>Russell v SA Dept of Further Education, Employment, Science and Technology [2012] SAIRC 39</p> <p>Farrell v B & A Fisheries Pty Ltd [2012] SAIRC 27</p> <p>Farrell v AlSCO Pty Ltd [2012] SAIRC 23</p> <p>Farrell v Goodchild Nominees Pty Ltd [2011]</p>

<p>authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.</p> <p>(5) If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in relation to the reasonable expenses of taking the action or actions as a debt due to the regulator.</p>	<p>and online newspapers, industry magazines, websites, social media, displaying physical notices, direct contact through email or post)</p> <ul style="list-style-type: none"> ▪ Duration ▪ Size ▪ Proportional cost and attention 	<p>SAIRC 69</p> <p>Hook v Weatherford Drilling International (Aust) Pty Ltd (2010) SAIRC 49</p> <p>Hillman v MSP Group Pty Ltd [2010] SAIRC 34</p> <p>Ireland v Lucas Earthmovers Pty Ltd [2010] SAIRC 16</p>
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Table 2: Summary of considerations before proposing a Restoration Order to the court, including legal citation and example case law.

Orders for Restoration <i>Work Health and Safety Act 2010 s 237</i>		
Citation	Considerations	Case law
<p>(1) The court may order the offender to take such steps as are specified in the order, within the period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender’s power to remedy.</p> <p>(2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if an application for the extension is made before the end of that period.</p>	<p>(1) the nature of the offence</p> <p>(2) the harm caused by the offence has not been addressed. For example,</p> <ul style="list-style-type: none"> ▪ unaddressed matters ▪ financial or other material losses ▪ harm to the community <p>Note: Consider workers compensation arrangements, public liability insurance and common law remedies</p> <p>(3) can it be included in other non-monetary orders? For example,</p> <ul style="list-style-type: none"> ▪ Injunctions ▪ Project Orders, ▪ WHS Undertakings <p>(4) the characteristics of victims and others indicating losses have not been fully compensated and low likelihood of seeking compensation through other means. For example,</p> <ul style="list-style-type: none"> ▪ young age ▪ low financial capacity ▪ weak employment conditions <p>(5) the characteristics of the offender indicating ability to comply. For example,</p> <ul style="list-style-type: none"> ▪ financial capacity <p>(6) conferencing or</p>	<p>SafeWork NSW v MGK Constructions Pty Ltd [2019] NSWDC 518 (Order rejected)</p> <p>Boland v Kentucky Fried Chicken Pty Ltd [2017] SAIRC 16 (Order rejected)</p> <p>R v Garth Paterson [2016] Local Courts of NSW (unpublished)</p>

	<p>engagement to incorporate the voice of those involved and identify opportunities for restoration activities incl. compensation, donation or project-style activities. For example,</p> <ul style="list-style-type: none"> ▪ victims ▪ industry associations ▪ community groups ▪ charities ▪ public organisations ▪ trusts 	
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Table 3: Summary of considerations before proposing a Project Order to the court, including legal citation and example case law.

WHS Project Orders <i>Work Health and Safety Act 2010 s 238</i>		
Citation	Considerations	Case law
<p>(1) The court may make an order requiring the offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order.</p> <p>(2) The order may specify conditions that must be complied with in undertaking the specified project.</p>	<p>(1) the nature of the offence and the offender's behaviour since the offence (For example, not deliberate, taking responsibility and collaborating during investigation suggests willingness and likelihood to complete a successful project)</p> <p>(2) the causes of the offence</p> <ul style="list-style-type: none"> ▪ policy, procedures, practices ▪ insufficient implementation of knowledge or capability ▪ remaining risk or potential for harm in the organisation or industry ▪ unknown <p>(3) combine with other non-monetary orders</p> <ul style="list-style-type: none"> ▪ Training Order ▪ Restoration Order ▪ Adverse Publicity Order <p>(4) the offender's capacity and ability to comply (For example, financial capacity, appointment of experts or consultants to support)</p> <p>(5) the scope of the project</p> <ul style="list-style-type: none"> ▪ internal or community focussed ▪ related to the offence <p>(6) outcomes</p> <ul style="list-style-type: none"> ▪ concrete, tangible, and measurable 	<p>SafeWork NSW v Samuels [2019] NSWDC 111</p> <p>Hillman v Barossa Enterprises Incorporated [2011] SAIRC 26</p> <p>WorkSafe Victoria v dairy farm in Milawa (28/09/2018, undertaking)</p> <p>WorkSafe Victoria v Mertikas Holdings Pty Ltd (20/04/2015, undertaking)</p> <p>Cases involved in Victoria's 2014-2015 Diversion Program (1/07/2015, 28/05/2015, 21/04/2015, 9/04/2015, 2/10/2014, 4/09/2014)</p>

	<ul style="list-style-type: none"> ▪ short term and longer term ▪ How will the offender demonstrate compliance to the Court? ▪ What role will the regulator play in verifying compliance? <p>(7) conferencing or engagement to incorporate the voice of those involved and identify opportunities for project activities</p>	
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Table 4: Summary of considerations before proposing a WHS Undertaking to the court, including legal citation and example case law.

Release on the giving of a court-ordered WHS Undertaking <i>Work Health and Safety Act 2010 s 239</i>		
Citation	Considerations	Case law
<p>(1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a <i>court-ordered WHS undertaking</i>).</p> <p>(2) A court-ordered WHS undertaking must specify the following conditions:</p> <p>(a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;</p> <p>(b) that the offender does not commit, during the period of the adjournment, any offence against this Act;</p> <p>(c) that the offender observes any special conditions imposed by the court.</p> <p>(3) An offender who has given a court-ordered WHS undertaking under this section may be called on to appear before the court by order of the court.</p> <p>(4) An order under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.</p> <p>(5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions</p>	<p>(1) the nature of the offence and the offender's behaviour since the offence (For example, not deliberate, taking responsibility and collaborating during investigation suggests willingness and likelihood to complete additional activities)</p> <p>(2) the aim of the order</p> <ul style="list-style-type: none"> ▪ supervision ▪ deterrence ▪ punishment ▪ incapacitation ▪ rehabilitation <p>(3) the offender's needs and the causes of the offence that require addressing</p> <ul style="list-style-type: none"> ▪ Training Order ▪ Restoration Order ▪ Project Order <p>(4) the duration (For example, 6 months for a training course, 12 months without special conditions, up to two years if required)</p>	<p>SafeWork NSW v Samuels [2019] NSWDC 111</p> <p>SafeWork NSW v E G Knight & Sons Pty Ltd [2019] NSWDC 336 (order rejected)</p> <p>SafeWork NSW v Yan Huai Wu and Zenger (Aust) Pty Ltd [2018] NSWDC 211</p> <p>R v Salvation Army NSW Property Trust [2015] NSWDC</p> <p>WHSQvE236520 (19/03/2019)</p> <p>WHSQvE246589 (13/12/2018)</p> <p>WHSQvE241701 (08/10/2018)</p> <p>WHSQvE238161 (6/07/2018)</p> <p>WorkSafe Victoria v Bellevue Orchard Pty Ltd (20/12/2018)</p> <p>WorkSafe Victoria v Mills Plumbing and Airconditioning Pty Ltd (15/08/2018)</p> <p>WorkSafe Victoria v Extension Builders Australia Pty Ltd</p>

of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.		(14/08/2018) WorkSafe Victoria v Dept of Health and Human Services (19/06/2018)
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Table 5: Summary of considerations before proposing a Training Order to the court, including legal citation and example case law.

Training Order <i>Work Health and Safety Act 2010 s 241</i>		
Citation	Considerations	Case law
The court may make an order requiring the person to undertake or arrange for 1 or more workers to undertake a specified course of training.	<p>(1) the nature of the offence</p> <p>(2) the lack of willingness, capability or competence was a significant contributor to the offence</p> <p>(3) address general or specific training needs, for example,</p> <ul style="list-style-type: none"> ▪ Due diligence training ▪ Risk management training ▪ Supervisor/management training ▪ General WHS training ▪ Specific areas related to the offence, (For example, falls from heights, forklift operation, machine operation) <p>(4) duration</p> <ul style="list-style-type: none"> ▪ one-off training course/s ▪ ongoing training program <p>(5) combine with other non-monetary orders</p> <ul style="list-style-type: none"> ▪ Project Order ▪ WHS Undertaking ▪ Restoration Order ▪ Adverse Publicity Order <p>(6) who would most benefit from adequate knowledge and skills to ensure future compliance</p> <p>(7) ensure the course selected is appropriate to the characteristics of the learners, that is,</p> <ul style="list-style-type: none"> ▪ Tailored ▪ Engaging ▪ Relevant ▪ Problem solving ▪ Timely ▪ Implementable 	<p>SafeWork NSW v Bilal Hamdan [2020] NSWDC 65</p> <p>SafeWork NSW v Samuels [2019] NSWDC 111</p> <p>SafeWork NSW v E G Knight & Sons Pty Ltd [2019] NSWDC 336 (order rejected)</p> <p>SafeWork NSW v Cleo Antoniou [2018] NSWDC 392 (order rejected)</p> <p>SafeWork NSW v Yan Huai Wu and Zenger (Aust) Pty Ltd [2018] NSWDC 211</p> <p>WorkCover NSW v Desmond Long (July 2014)</p> <p>Perry v Carter [2014] SAIRC 2</p> <p>Perry v Kahlon Estate Wines Pty Ltd [2013] SAIRC 27</p> <p>WHSQvE194862 (05/02/2016)</p> <p>WHSQvE190028 (22/06/2016)</p>

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