

## WHS undertaking

### Reasons for decision

Entity	Total Relines Australia Pty Limited (ACN 663 614 971)
Issue	Whether to accept or reject a WHS undertaking
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Peter Day Executive Director, Resources Regulator Department of Primary Industries and Regional Development

### Section 216 and 218 decisions

Pursuant to section 216 of the *Work Health and Safety Act 2011*, I, Peter Day, having a delegated authority from the Secretary of the Department of Primary Industries and Regional Development, have determined to **accept** the WHS undertaking given by Total Relines Australia Pty Limited that is attached to this decision.

For the purposes of section 218 of the *Work Health and Safety Act 2011* (**WHS Act**), I determine that the WHS undertaking is enforceable from when Total Relines Australia Pty Limited is first notified of my decision to accept that WHS undertaking.

### Reasons for decision

#### Legislation

1. Section 216 of the WHS Act provides that:
  - a) The Resources Regulator (**the regulator**) may accept a written undertaking (a **WHS undertaking**) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the WHS Act.
  - b) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
  - c) The giving of a WHS undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

2. Section 217 requires the regulator to give the person seeking to make an enforceable undertaking written notice of the regulator's decision to accept or reject the enforceable undertaking and the reasons for the decision. The regulator is also required to publish on its website any decision to accept an enforceable undertaking.
3. Section 222 provides that no proceedings for a contravention or alleged contravention of the WHS Act may be brought against a person if a WHS undertaking is in effect, or has been completely discharged, in relation to that contravention. If proceedings have already been commenced when the regulator accepts a WHS undertaking, then the regulator must take all reasonable steps to have the proceedings discontinued as soon as possible.
4. In exercising functions under the WHS Act, the regulator must have regard to the objects set out in section 3 of the WHS Act.
5. The maximum penalty for failing to comply with a WHS undertaking is \$365,595 in the case of a corporation, and \$73,095 in the case of an individual. Failure to comply with an undertaking may also result in prosecution action being taken in relation to the original alleged offence.
6. The regulator may delegate any functions conferred under the WHS Act to another person. The Secretary of the Department of Primary Industries and Regional Development (**Secretary**) is “the regulator” for the purposes of the WHS Act and has delegated the function to accept a WHS undertaking under section 216 of the WHS Act to the Executive Director, Resources Regulator.
7. The regulator has issued, and published on the regulator’s website, [guidelines](#) relevant to the acceptance of WHS undertakings as required by section 230 of the WHS Act.

## Background

8. On 4 April 2023 a subcontracted worker engaged by Total Relines Australia Pty Ltd was performing maintenance work at the Northparkes Mine processing plant during a planned shutdown. The work involved use of an angle grinder to cut and remove the top of a used, and believed to be empty, 1,000 litre plastic intermediate bulk container (**IBC**), so that it could be used as a waste bin during the maintenance works. During the process of cutting the IBC the worker heard a loud whoosh, moved back from the IBC and felt immense heat to the front of his body. Two other subcontracted workers immediately assisted the first worker by removing his shirt. The first worker sustained serious burns to his arm and minor burns to his face and chest and a second worker sustained a minor burn to his hand.
9. An [Investigation information release](#) regarding the incident was published by the regulator in April 2023.

## WHS undertaking given by Total Relines Australia Pty Ltd

10. On 22 August 2024, Total Relines Australia Pty Limited (**TRA**) submitted a signed WHS undertaking to the regulator. Consistent with the guidelines the undertaking was developed using the pre-proposal advisory service offered by the regulator which provided feedback on the proposed terms of the undertaking.
11. In summary, the WHS undertaking will impose an obligation on TRA to:

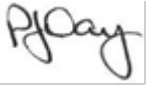
- a. Within 30 days of receiving notification from the regulator of the acceptance of the WHS undertaking:
  - o Publish a public notice in the Central Western Daily and the Parkes Champion Post
  - o Disseminate information about the undertaking to all workers
  - o Reimburse the regulators' costs incurred during the investigation including investigative, legal and monitoring costs of the undertaking. A total cost of **\$13,715**
- b. Fund a "Learning from investigation's" animation of the incident which will be published on the Resources Regulator's website and incorporated in TRA's training of subcontractors. A total cost of **\$20,000**
- c. Pay for TRA's subcontractors (approximately 30 workers) to attend nationally accredited training in hazard identification and job safety analysis (RIIRIS201E - Conduct local risk control (Release 1) with Ocurrio (RTO 45526). A total cost of **\$10,000**
- d. Donate **\$20,000** to the Burns Unit at Concord Hospital
- e. Complete the WHS undertaking on or before **12 months** from acceptance of the WHS undertaking by the regulator, with a total minimum spend of **\$63,715**.

## Considerations and findings

12. I am satisfied that the proposed undertaking meets the requirements of the WHS Act and the guidelines. I have also had regard to the objects set out in section 3 of the WHS Act in considering this matter.
13. While under the WHS Act the giving of an undertaking does not constitute an admission of guilt, TRA has acknowledged that the regulator alleges a contravention of its health and safety duty and regrets the incident occurred and that workers suffered injury as a result of the incident.
14. The objective seriousness of the offence committed by TRA to which the WHS undertaking relates is at the low end of the range because of the low degree of foreseeability of risk to health and safety brought about by several factors including:
  - a. TRA was not provided with the safety data sheet for the chemical or *Australian Standard AS3780:2008 The storage and handling of corrosive substances* which, although silent upon flammability, include a prohibition upon reusing IBC's other than filling them with the same chemical, which would have avoided the activity of cutting (albeit premised upon the chemical being corrosive not flammable)
  - b. The mine operator that contracted TRA, **Evolution Mining (Northparkes) Pty Limited** (formerly CMOC Mining Pty Limited), did not act in accordance with an instruction contained in the safety data sheet requiring the IBC be stored in a cool, dry and well-ventilated area but, instead, stored the IBC in direct sunlight which may have led to higher temperatures resulting in the flashpoint of flammable constituents being exceeded

- c. TRA acted upon misinformation contained in the IBC label that the chemical was not flammable
  - d. Empty IBCs that previously contained the chemical had been cut for approximately 8-months preceding the incident (albeit with a reciprocating saw not an angle grinder) without incident.
15. However, TRA contributed to the risk to health and safety by not doing any of the following which would have avoided the cutting of IBCs:
- a. Make inquiries of the supplier of the chemical about reusing IBCs which would have likely resulted in the supplier reinforcing the prohibition upon reusing IBC's other than filling with the same chemical (albeit premised on the chemical being corrosive not flammable)
  - b. Undertake a risk assessment that would have caused it to seek out the safety data sheet held by Evolution Mining Pty Limited (formerly CMOC Mining Pty Limited), refer to the *Australian Standard AS3780:2008 The storage and handling of corrosive substances* or make inquiries of the supplier resulting in the prohibition upon reusing IBC's, other than filling with the same chemical, being given effect
  - c. Develop a Safe Work Procedure that would give effect to the above in circumstances where the task was repeated over many years.
16. In this respect, I am satisfied that the undertaking proffered by TRA adequately reflects the seriousness of the incident and the alleged offending.
17. TRA has no prior convictions under the WHS legislation nor has it been subject of any other enforcement action administered by the Resources Regulator.
18. The strategies of a WHS undertaking need to go beyond mere compliance and provide clear and tangible benefits to workers, the broader industry, and the community - beyond what the regulator would ordinarily expect of an operator.
19. TRA has provided a WHS undertaking that includes projects which I am satisfied meet those objectives.
20. Accordingly, having considered the collective benefits of the undertaking in its entirety, I am satisfied that it will provide greater benefits to the workforce, industry and community than prosecution proceedings.
21. I am also satisfied that the requirement under the WHS Act to publish the undertaking and this decision, will provide similar specific and general deterrence to successful legal proceedings.
22. The acceptance of an undertaking will ensure that the regulator, and ultimately the taxpayer, does not incur further costs in relation to the matter, particularly in relation to investigation and legal costs, which may never fully be recouped through prosecution action.
23. Accordingly, I have determined to accept the WHS undertaking given by TRA.

Date of decision: 26 August 2024



Peter Day

Executive Director, Resources Regulator

Department of Primary Industries and Regional Development

**NOTE:** In accordance with section 217 of the *Work Health and Safety Act 2011* this decision will be published on the Regulator’s website.

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