

WHS undertaking

Reasons for decision

Entity	Cobar Management Pty Limited (ACN 083 171 546)
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 Cobar Management 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 Cobar Management Pty Limited is first notified of my decision to accept that WHS undertaking.

Reasons for decision

Legislation

- Section 216 of the WHS Act provides that:
 - 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.
 - A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
 - 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.
- 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 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. The CSA Mine is operated by Cobar Management Pty Limited and is located near Cobar, NSW. The mine is a workplace within the meaning of section 8 of the WHS Act.
9. The regulator alleges that Cobar Management Pty Ltd failed to take reasonably practicable steps to eliminate or minimise the risk of workers being exposed to psychosocial hazards at the mine, and in failing to do so, exposed 2 workers to a risk of serious injury or death.
10. On 4 October 2024, the regulator commenced prosecution proceedings in the Industrial Court in relation to the above alleging that Cobar Management Pty Limited had contravened section 32 of the WHS Act by failing to comply with a health and safety duty under section 19 of the Act (a Category 2 offence).

WHS undertaking given by Cobar Management Pty Limited

11. On 18 December 2024, Cobar Management Pty Limited (**CMPL**) 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.
12. In summary, the WHS undertaking will impose obligations on CMPL to:
 - a) commit that the behaviour that led to the alleged contravention has ceased and provide an assurance that steps have been taken to prevent a recurrence of the psychosocial hazards.
 - b) publish a public notice in the Daily Telegraph and the Sydney Morning Herald.
 - c) disseminate information about the undertaking to all workers.

- d) reimburse the regulator's costs incurred including investigative, legal and monitoring costs of the undertaking, a total cost of \$176,060.
- e) engage an external consultant to design and conduct a comprehensive survey targeting all workers, focusing on their safety perceptions, mental health concerns, and team interactions. The estimated total cost of this project is \$50,000.
- f) implement psychometric testing during the recruitment process for roles requiring high mental acuity. This will involve hiring a third-party testing company to assess candidates' cognitive capabilities, ensuring the right fit for critical roles. The estimated total cost of this initiative is \$75,000.
- g) develop (by engaging a 3rd party expert) and deliver a training program to equip leaders with mental health awareness skills, including how to identify, manage, and support workers experiencing mental health challenges. This initiative will include workshops, online modules, and ongoing mental health first aid training. The estimated total cost of this initiative is **\$150,000**.
- h) implement a training program that focuses on hazard identification through visual literacy, teaching workers to recognize potential safety risks through visual clues. This is especially critical in high-risk areas and will be a case study in Australia, shared with industry peers. The estimated total cost of this initiative is **\$280,000**.
- i) organise and fund an interactive Full-Day Workshop, to be held in Dubbo, NSW in or around November 2025. The Workshop will be presented by a professional external facilitator and will be dedicated to equipping participants with tools and strategies related to psychosocial risk management in mining in order to create safer, healthier workplaces. CMPL will expand the hazard identification program developed at CSA Mine to industry peers, creating training modules and workshops to share the approach to recognising visual cues for hazards at the regulator's Mechanical, Electrical and Mining Engineering Managers forums in 2025 or 2026. The total cost of this initiative is **\$150,000**
- j) partner with local schools to deliver the Resilience Project, a program focusing on mental health education through gratitude, empathy, and mindfulness. The total cost of this project is **\$50,000**.
- k) donate **\$100,000** to the Royal Flying Doctor Service.
- l) commit to a total minimum spend of **\$1,031,060**
- m) complete the undertaking on or before **24 months** from acceptance by the regulator.

Considerations and findings

13. 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.
14. While under the WHS Act the giving of an undertaking does not constitute an admission of guilt, CMPL has acknowledged that the regulator alleges a contravention of its health and safety duty and regrets the psychosocial hazards occurred.

15. There is a strong community expectation that companies such as CMPL are aware of its obligations under the WHS Act and have systems in place to ensure compliance.
16. The subject WHS undertaking, if accepted, will require CMPL to incur costs of at least \$1,031,060 including the funding and delivery of safety and community projects at a minimum cost of \$855,000.
17. In this regard, I note that the cost of the undertaking is significantly more than the expected penalty that would be imposed in a court as a result of prosecution action.
18. In this respect, I am satisfied that the undertaking proposed by CMPL adequately reflects the seriousness of the psychosocial hazards and the alleged offending, and is significant, particularly in terms of monetary value.
19. However, the monetary value alone is not a determinative factor. The strategies of the undertaking need to go beyond mere compliance and provide clear and tangible benefits to workers, the broader industry or the community - beyond what the regulator would ordinarily expect of an operator.
20. CMPL has provided an undertaking which contains projects which I am satisfied meet those objectives. The projects are of an innovative and progressive nature that represent significant value, both monetary and meaningful non-monetary benefits provided to workers, industry and community, and address gaps or current deficiencies in industry WHS risk control measures.
21. 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.
22. I am of the view that the total value of the undertaking exceeds the likely penalty that would be imposed by a court following successful prosecution action.
23. 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.
24. 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.
25. Accordingly, I have determined to accept the WHS undertaking given by CMPL.

Date of decision: 22 January 2025



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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