

## WHS undertaking

### Reasons for decision

Entity	Grahams Quarry Cedar Point (ACN 13 864 4121)
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 Grahams Quarry Cedar Point 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 Grahams Quarry Cedar Point 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 WHS undertaking relates.

2. Section 217 requires the regulator to give the person seeking to make a WHS undertaking written notice of the regulator's decision to accept or reject the WHS undertaking and the reasons for the decision. The regulator is also required to publish on its website any decision to accept a WHS 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 a WHS 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 Cedar Point Quarry is operated by Grahams Quarry Cedar Point Pty Limited and is located near Casino, NSW. The mine is a workplace within the meaning of section 8 of the WHS Act.
9. On 2 March 2024, at Cedar Point Quarry, a worker was injured when he was struck by a forklift’s jib attachment in the mechanical workshop of the Quarry. The jib, the forklift’s tynes and load guard detached from the forklift which was being used to lift a damaged truck cabin. The worker was standing in front of the forklift at the time of the incident.
10. The regulator alleges that Grahams Quarry Cedar Point Pty Ltd contravened the WHS Act in respect to this incident.

## WHS undertaking given by Grahams Cedar Point Pty Limited

11. On 14 May 2025, Grahams Quarry Cedar Point Pty Limited (**Grahams**) 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 WHS undertaking.
12. In summary, the WHS undertaking will impose obligations on Grahams to:
  - a) commit that the behaviour that led to the alleged contravention has ceased.
  - b) publish a public notice in the Daily Telegraph (a cost of \$1,707).
  - 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 \$35,988.
- e) develop a Mechanical Engineering Workshop and delivery of 11 face-to-face workshops in Mechanical Engineering and manufacturing of tools and attachments throughout regional NSW. The estimated total cost of this project is \$115,000.
- f) develop a Mechanical Engineering Online Course. The estimated total cost of this initiative is \$20,000.
- g) donate \$36,000 to the State Emergency Service at the following locations - Kyogle, Tabulam and Urbenville to purchase essential equipment.
- h) commit to a total minimum spend of \$208,695
- i) complete the undertaking on or before 24 months from acceptance by the regulator.

## Considerations and findings

- 13. I am satisfied that the proposed WHS 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 a WHS undertaking does not constitute an admission of guilt, Grahams 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 Grahams 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 Grahams to incur costs of at least \$208,695 including the funding and delivery of safety and community projects at a minimum cost of \$172,707.
- 17. In this regard, I note that the cost of the WHS undertaking is higher 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 WHS undertaking proposed by Grahams adequately reflects the seriousness of the incident and the alleged offending.
- 19. However, the monetary value alone is not a determinative factor. The strategies of the WHS 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. Grahams has provided a WHS undertaking which contains projects which I am satisfied meet those objectives. The development of the Mechanical Engineering Workshop is innovative and represents significant value to industry, with the online module having the potential to reach a wide audience. The course addresses gaps or current deficiencies in industry WHS risk control measures.

21. Accordingly, having considered the collective benefits of the WHS 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 WHS 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 a WHS 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 Grahams.

Date of decision: 16 May 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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