

WHS undertaking

Reasons for decision

Entity	Holmes's Pty. Ltd. (ACN 065 213 694)
Issue	Whether to accept or reject a WHS undertaking
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Jamie Tripodi A/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, Jamie Tripodi, 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 Holmes's Pty. Ltd. 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 Holmes's Pty. Ltd. 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 Regulator¹.
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. Clovass Quarry is operated by Holmes’s Pty. Ltd. It is located near Casino, NSW and is a workplace within the meaning of section 8 of the WHS Act.
9. On 8 February 2024, at Clovass Quarry, two workers were injured when inspecting a semi-trailer truck tyre for an air leak while it was being inflated. The tyre’s side wall ruptured, causing an explosive release of air pressure. The two workers were standing near the tyre and were struck by debris and air pressure resulting in injuries.
10. The regulator alleges that Holmes’s Pty. Ltd. contravened the WHS Act in respect to this incident.

WHS undertaking given by Holmes’s Pty. Ltd.

11. On 16 June 2025, Holmes’s Pty. Ltd. (HPL) 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 HPL to:
 - a. commit that the behaviour that led to the alleged contravention has ceased

¹ Work Health and Safety (Mines and Petroleum Sites) Laws Instrument of Delegation (Regulator) 2022

- b. publish a public notice in the Daily Telegraph and the Northern Star (digital edition)
- c. disseminate information about the undertaking to all workers
- d. reimburse the regulator's costs incurred including investigative and monitoring costs of the undertaking, a total cost of \$41,210.51
- e. put a minimum of six HPL mechanics through a Certificate II in Automotive Tyre Servicing Technology (Certificate). The estimated cost of each Certificate per employee is between \$2500 and \$5800 depending on course location
- f. build an entirely separate workshop and facility dedicated to tyres
- g. install tyre pressure and temperature monitoring systems on all HPL trucks over 15t GVM
- h. the estimate cost of the projects to benefit workers (e – g above) is \$165,000
- i. fund the development of an animation of the incident at an estimated cost of \$25,000
- j. present at three industry seminars, forums or events to be agreed with the regulator about the incident, post incident remedial measures taken by HPL and the effectiveness of the projects provided by the WHS undertaking using the animation to supplement the presentations
- k. develop a short video onsite at the Mine as an explainer for the animation, both of which will be presented by the regulator at its Small Mines Show
- l. donate \$10,000 to the Tomki Fire Brigade Station which is the local rural fire station.
- m. commit to a total minimum spend of \$243,010.51
- n. 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, HPL has acknowledged that the regulator alleges a contravention of its health and safety duty and regrets the incident occurred.
15. There is a strong community expectation that companies such as HPL 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 HPL to incur costs of at least \$243,010.51 including the funding and delivery of safety and community projects at a minimum cost of \$200,000.
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 HPL 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. HPL has provided a WHS undertaking which includes projects that I am satisfied meet those objectives. The development of the incident animation and presentations at three industry seminars, forums or events about the incident including post incident remedial measures taken, will benefit the wider quarry industry. Likewise, the development of the short video onsite as an explainer for the animation will benefit industry through the regulator's Small Mines Show.
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 HPL.

Date of decision: 18 June 2025



Jamie Tripodi

A/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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