

WHS undertaking

Reasons for decision

Entity	Hitachi Construction Machinery (Australia) Pty Ltd (ACN 000 080 179)
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 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 Hitachi Construction Machinery (Australia) 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 Hitachi Construction Machinery (Australia) 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 \$374,369 in the case of a corporation. 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. Hitachi Construction Machinery (Australia) Pty Ltd was a “person conducting a business or undertaking” as defined by Section 5 of the WHS Act and had a health and safety duty under section 19(1) of the WHS Act to ensure so far as reasonably practicable the health and safety of workers while the workers were at work in the business or undertaking.
9. On 13 November 2022 at the Tarrawonga Mine, an employee of Hitachi Construction Machinery (Australia) Pty Ltd was performing duties. He was engaged in maintenance work on a Hitachi EH4000 rigid dump truck in the mine’s mechanical workshop. During the lowering and lifting of the rear axle box assembly using a crane, the worker was struck on the lower left leg below the knee by a lifting plate causing a compound fracture.
10. The regulator alleges that Hitachi Construction Machinery (Australia) Pty Ltd contravened the WHS Act in respect to this incident.

WHS undertaking given by Hitachi Construction Machinery (Australia) Pty Ltd

11. On 3 October 2025, Hitachi Construction Machinery (Australia) Pty Ltd (**HCA**) 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.

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

12. In summary, the WHS undertaking will impose obligations on HCA to:

- a) commit that the behaviour that led to the alleged contravention has ceased
- b) publish a public notice in the Gunnedah Times, the Daily Telegraph and the Sydney Morning Herald
- c) disseminate information about the undertaking to all workers and provide a brief to all customers of EH4000 rigid dump trucks Australia-wide about it
- d) reimburse the regulator's costs incurred including investigative and monitoring costs of the undertaking, a total cost of \$131,480
- e) engage an accredited WHS HSR Training course provider (ACIM Solutions) to develop a 5-day HSR training course tailored to (respectively) the Coal and Metalliferous Mining Industry. The training package will be provided to the Resources Regulator which, in turn, will be made available to accredited trainers to deliver throughout the coal and metalliferous industry sectors. The estimated cost of this project is \$33,200.
- f) fund a 'Load Cell Project' in the sum of \$400,000 through the transfer of monies to the regulator who will administer and manage the project. The project will involve the regulator allocating a subsidy to eligible mine operators for the purchase of suitable lifting device weight scales (including electronic crane hook scales and digital load indicators) that will give a digital readout on the actual load being lifted.
- g) consult with Coal Services and Gunnedah Mines Rescue Brigade Captain to identify equipment which will be used to support emergency response capability of workers in the wider Gunnedah coal industry and fund the purchase of identified equipment to the value of **\$42, 120**.
- h) consult with TAFE NSW to identify equipment to be purchased by it to enhance or promote health and safety of courses offered by TAFE NSW in the Gunnedah catchment area. HCA will fund the purchase, or contribute up to the committed value, of identified equipment to the value of **\$42, 120**.
- i) partner with Gunnedah Community Health Service in support of its aim of delivering high-quality, patient-centred health care to the Gunnedah community by providing funding of \$42,120.
- j) provide funding of \$42,120 to the Gunnedah Family Support Services to deliver services that strengthen the wellbeing of individuals and families living in Gunnedah community.
- k) commit to a total minimum spend of \$733,160 and 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, HCA 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 HCA 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 HCA to incur costs of at least \$733,160 including the funding and delivery of safety and community projects at a minimum cost of \$601,680.
17. In this regard, I note that the cost of the WHS undertaking is higher than the likely 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 HCA 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. HCA has provided a WHS undertaking which includes projects that I am satisfied meet those objectives. The development of HSR training course tailored to (respectively) the Coal and Metalliferous Mining Industry will add value to industry. The funding of the "Load Cell Project" is innovative and adds value to industry, in particular smaller mine operators. The donations to the local community organisations, TAFE NSW and the purchase of equipment to support the emergency response capability of workers in the local coal industry will bring benefits to the Gunnedah area.
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 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.
23. 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.
24. Accordingly, I have determined to accept the WHS undertaking given by HCA.

Date of decision: 23 October 2025



Jamie Tripodi

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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