

WHS undertaking

Reasons for decision

Entity	Groundwork Plus Pty Ltd (ACN 609 422 791)
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 Groundwork Plus Pty Ltd (**GWP**) that is attached to this decision.

For the purposes of section 218 of the WHS Act, I determine that the WHS undertaking is enforceable from when GWP is first notified of my decision to accept it.

Reasons for decision

Legislation

1. Section 216 of the WHS Act provides that:
 - a. 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 \$374,369 in the case of a corporation. 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. The Mt Magometon Quarry is operated by Coonamble Shire Council. The mine is a workplace within the meaning of section 8 of the WHS Act.
9. On 28 August 2023, a contract worker employed by Lynch Contractors Pty Limited was injured while undertaking maintenance and cleaning tasks on a mobile screen. The worker's arm became entangled in a rotating idler drum, resulting in his arm being pulled into the conveyor up to his shoulder. The worker sustained serious injuries which resulted in amputation of his arm. At the time of the incident, the statutory Quarry Manager was an employee of GWP who was contracted (hired out) to the Quarry's operator.
10. The regulator alleges that GWP contravened the WHS Act in respect to this incident.

WHS undertaking given by Groundwork Plus Pty Ltd

11. On 3 August 2026, GWP 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 'without prejudice' feedback on the proposed terms of the undertaking.
12. In summary, the WHS undertaking will impose an obligation on GWP 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 incident

- b. Publish a public notice in the Sydney Morning Herald, The Daily Telegraph and the Institute of Quarrying Australia Magazine e- newsletter.
- c. Disseminate information about the WHS Undertaking to workers and provide regular updates on the progress of the WHS Undertaking.
- d. Reimburse the Regulator's costs incurred including investigative and monitoring of the undertaking, a total cost of \$ 113,900 (exc. GST)
- e. Develop training programs related to discharging obligations of supervisors and managers at mines and quarries to be delivered to quarry workers, managers and supervisors across six regional NSW locations at a cost of \$300,000 and on-line.
- f. Fund two annual awards through the IQA to the value of \$20,000 to persons engaged in the quarry or related industries.
- g. Commit to a total spend of \$463,900 and 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 Enforceable Undertakings 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, GWP 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 GWP are aware of its obligations under the WHS Act and have systems in place to ensure compliance.
- 16. I also note that GWP no longer provides Manager/Quarry Hire Services to its clients since the time of the incident.
- 17. The subject WHS undertaking, if accepted, will require GWP to incur costs of at least \$ 463,900 including the funding and delivery of safety and community projects at a minimum cost of \$ 350,000.
- 18. 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.
- 19. In this respect, I am satisfied that the WHS Undertaking proffered by GWP adequately reflects the seriousness of the incident and the alleged offending.
- 20. 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.
- 21. GWP has provided a WHS Undertaking which contains projects which I am satisfied meet those objectives (refer 12. a-g).

22. Finally, the donation of \$ 30,000 to CareFlight will provide tangible benefits to the broader community by funding rescue services in regional areas of NSW.
23. 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.
24. 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.
25. 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.
26. Accordingly, I have determined to accept the WHS undertaking given by GWP.

Date of decision: 07 August 2026



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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