

WHS undertaking

Reasons for decision

Entity	Evolution Mining (Northparkes) Pty Limited (ACN 164 997 317)
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 Evolution Mining (Northparkes) 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 Evolution Mining (Northparkes) 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 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 \$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 (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. Prior to 4 April 2023 (then) CMOC Mining Pty Limited (now Evolution Mining (Northparkes) Pty Limited), the mine operator of Northparkes Mine, contracted Total Relines Australia Pty Ltd to perform maintenance work.
9. On 4 April 2023 a subcontracted worker engaged by Total Relines Australia Pty Ltd was performing maintenance work at the Northparkes Mine processing plant (**the Mine**) during a planned shutdown. The work involved use of an angle grinder to cut and remove the top of a used, and believed to be empty, 1,000 litre plastic intermediate bulk container (**IBC**), so that it could be used as a waste bin during the maintenance works. During the process of cutting the IBC the worker heard a loud whoosh, moved back from the IBC and felt immense heat to the front of his body. Two other subcontracted workers immediately assisted the first worker by removing his shirt. The first worker sustained serious burns to his arm and minor burns to his face and chest and a second worker sustained a minor burn to his hand.
10. An Investigation information release regarding the incident was published by the regulator in April 2023.

WHS undertaking given by Evolution Mining (Northparkes) Pty Ltd

11. On 17 July 2024, Evolution Mining (Northparkes) Pty Limited (**Northparkes**) 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 an obligation on Northparkes to:

- a. Within 30 days of receiving notification from the regulator of the acceptance:
 - Publish a public notice in the Parkes Champion Post and Forbes Advocate
 - Disseminate information about the undertaking to all workers
 - Reimburse the regulators' costs incurred during the investigation including investigative, legal, animation development and monitoring costs of the undertaking – a total cost of **\$19,328**
- b. Engage an external specialist consultant to:
 - Facilitate a risk assessment in relation to the lifecycle of chemical IBCs
 - Assist in the development of a best practice procedure for the safe management, use, storage, transport, disposal and re-use of chemical IBCs (the 'Best Practice Procedure Initiative')
 - Assist in the development and roll out to workers at the Mine an education package including details of the incident, key learnings from the Incident and the best practice procedure for the safe management, use, storage, transport, disposal and re-use of chemical IBCs (the 'Education Initiative') – a total cost of both initiatives is **\$125,000**
- c. Northparkes will present the training package to a minimum of three New South Wales based industry forums, seminars or similar events to be agreed in consultation with the Resources Regulator – a minimum spend of **\$25,000**
- d. Donate **\$50,000** to Careflight, the local Emergency Response helicopter service which air lifted the injured worker to hospital
- e. Complete the WHS undertaking on or before **24 months** from acceptance of the WHS undertaking by the regulator, with a total minimum spend of **\$219,328**.

Considerations and findings

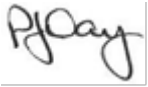
13. I am satisfied that the proposed undertaking meets the requirements of the WHS Act and the guidelines. I have also had regard to the objects set out in section 3 of the WHS Act in considering this matter.
14. While under the WHS Act the giving of an undertaking does not constitute an admission of guilt, Northparkes has acknowledged that the regulator alleges a contravention of its health and safety duty and regrets the incident occurred and that workers suffered injury as a result of the incident.
15. The objective seriousness of the offence committed by Northparkes to which the WHS undertaking proposal relates is at the low end of the range because of the low degree of foreseeability of risk to health and safety brought about by several factors including:
 - a. Northparkes acted upon misinformation contained in both the safety data sheet and the IBC label that the chemical was not flammable
 - b. Empty IBC's that previously contained the chemical had been cut for approximately 8-months preceding the incident (albeit with a reciprocating saw not an angle grinder) without incident.

16. However, Northparkes contributed to the risk to health and safety by not doing any of the following:
 - a. Providing Total Relines Australia with the safety data sheet for the chemical which included a prohibition upon reusing IBC's, other than filling with the same chemical, thereby obviating the need to cut IBC's (albeit premised on the chemical being corrosive not flammable)
 - b. Making inquiries of the supplier of the chemical about reusing IBC's which would have likely resulted in the supplier reinforcing the prohibition upon reusing IBC's other than filling with the same chemical (albeit, again, premised on the chemical being corrosive not flammable)
 - c. Undertaking, or causing Total Relines Australia to undertake, a risk assessment in accordance with its safety management system that would have directed attention to the safety data sheet or the making of inquiries of the supplier resulting in the prohibition upon reusing IBC's, other than filling with the same chemical, being given effect
 - d. Issuing a Hot Work Permit in accordance with its safety management system that would have also directed attention to the safety data sheet or the making of inquiries of the supplier resulting in the prohibition upon reusing IBC's, other than filling with the same chemical, being given effect
 - e. Developing, or cause Total Relines Australia to develop, a Safe Work Procedure that would give effect to the prohibition upon reusing IBC's, other than filling with the same chemical, in circumstances where the task was repeated over many years
 - f. Adhering to the instruction contained in the safety data sheet that the chemical be stored in a cool, dry and well-ventilated area instead of storing the IBC in direct sunlight which may have led to higher temperatures resulting in the flashpoint of flammable constituents being exceeded.
17. I am satisfied that, having particular regard to misinformation that the chemical was not flammable upon which reliance was placed, the undertaking proffered by Northparkes adequately reflects the seriousness of the incident and the alleged offending.
18. The strategies of the undertaking need to go beyond mere compliance and provide clear and tangible benefits to workers, the broader industry, and the community - beyond what the regulator would ordinarily expect of an operator.
19. Northparkes has provided an undertaking which contains projects which I am satisfied meet those objectives.
20. 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.
21. 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. I note that Northparkes took the incident seriously and responded immediately by implementing post incident remedial measures to prevent a recurrence in the total sum of approximately \$132,243.
22. 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.

23. Accordingly, I have determined to accept the WHS undertaking given by Northparkes.

Date of decision: 26 August 2024



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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