

FILE NO:	0579-2015
ENTITY:	WorleyParsons Services Pty Limited ACN 001 279 812
AUTHORISATIONS:	Mining Act 1992 – 342 & 287
ISSUE:	Whether to accept an enforceable undertaking in in relation to an alleged contravention under the Act.
LEGISLATION:	<i>Mining Act 1992 - Part 17A, Division 4B</i>
DECISION MAKER:	Simon Y Smith Secretary of the Department of Industry

SECTION 378ZFB DECISION

As authorised by Section 378ZFB of the *Mining Act 1992*, I, Simon Smith, Secretary, Department of Industry, have decided to **accept** the enforceable undertaking given by WorleyParsons Services Pty Limited, as annexed to this decision.

The undertaking takes effect and is in force immediately upon WorleyParsons being notified of this decision.

REASONS FOR DECISION

Legislation

1. Section 378ZFB of the Act provides that:
 - a) The Secretary may accept a written undertaking (an **enforceable undertaking**) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
 - b) The giving of an enforceable 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.

- c) The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of enforceable undertakings under this Act.
2. Section 378ZFH provides that no proceedings for a contravention or alleged contravention of the Act may be brought against a person if an enforceable undertaking is in effect, or has been completely discharged, in relation to that contravention. If proceedings have already been commenced when the Secretary accepts an enforceable undertaking, then the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.
3. The Secretary is required to give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable undertaking and the reasons for the decision. The Secretary is also required to publish that decision and reasons.
4. In exercising functions under the Act, the Secretary must have regard to the objects set out in section 3A of the Act.
5. The maximum penalty for failing to comply with an enforceable undertaking is \$1.1 million in the case of a corporation, and \$220,000 in the case of a natural person.

Background

6. KEPCO Bylong Australia Pty Limited (KEPCO) (ACN 075 361 769) is the holder of Authorisation 342 and Authorisation 287 granted under the Mining Act.
7. KEPCO is the proponent of the Bylong Coal Project, which comprises of the proposed development of an open cut and underground coal mine, including associated infrastructure.
8. KEPCO engaged WorleyParsons Services Pty Limited (WorleyParsons) (ACN 001 279 812) to manage activities under the Project on its behalf.
9. On 7 and 8 May 2015, WorleyParsons submitted a Surface Disturbance Notice Application to the Department in relation to proposed exploration activities associated with A342.
10. The Application was accompanied by a number of attachments including a document titled "Proposed Drill Holes on the Property 'Oakdale'". This document comprised six photographs that were not photographs of the proposed locations of the six exploration boreholes on the Oakdale Property.
11. On 22 June 2015, the Department was advised that the Photographs provided in the Application were not taken on the Oakdale Property and did not show the proposed locations of the proposed boreholes on the Oakdale Property. The Department subsequently undertook an investigation into the matter.

12. On 11 March 2016 the Department commenced prosecution action against WorleyParsons alleging that the information provided in connection with the Application was false or misleading in a material particular in contravention of section 378C of the Act. At the time of alleged offence the maximum penalty under section 378C was \$55,000.

Proposed undertaking

13. On 5 August 2016 WorleyParsons submitted a signed enforceable undertaking proposal to the Department. Consistent with the *Enforceable Undertaking Guidelines* the proposal was developed using the pre-proposal advisory services offered by the Department which provided 'without prejudice' feedback on the proposed terms of the undertaking.

14. In summary, the WorleyParsons undertaking proposed to do the following:

- a) Implement compliance training for all WorleyParsons personnel involved in the preparation of documents and information relating to applications under the Mining Act together with mandatory training as part of induction on-boarding for all new project personnel.
- b) Ensure delegations of authority for the Bylong Project have been revised to ensure project tasks are appropriately assigned to staff with the relevant seniority for approval.
- c) Ensure the communications protocol for the Bylong Project have been revised to ensure peer review and verification by qualified senior staff.
- d) Implement prospective internal audits of all Bylong Project documents made under the Mining Act by WorleyParsons to DRE for a period of 3 years prior the acceptance of the undertaking.
- e) Implement retrospective audit by an external auditor of all documents and information prepared by WorleyParsons that has either been directly supplied (or through a client of WorleyParsons) to DRE.
- f) Engage an external auditor (agreed to by WorleyParsons and the Department) to independently review and confirm the results of the internal audits.
- g) Develop a best practice fact sheet for industry on preparing statutory applications under the Mining Act. The fact sheet will be developed in consultation with the Department and be published on the Department's web site.
- h) Present the best practice fact sheet to an industry forum.
- i) Pay the Department's investigation costs of \$24,799 and legal costs of \$36,833.54.
- j) Reimburse the Department's agreed costs of monitoring compliance with the undertaking up to \$3,000.
- k) Report to the Department about the status and completion of the above undertakings.

Considerations and findings

15. While under the Act the giving of an enforceable undertaking does not constitute an admission of guilt, I note that WorleyParsons acknowledges that the Application 'comprised six photographs that were not photographs of the proposed locations of the six exploration boreholes on the Oakdale property'.
16. WorleyParsons as an agent acting on behalf of KEPCO had a legal obligation to ensure the accuracy of information supplied to the Department and to ensure that such information was not false or misleading.
17. The alleged provision of information that is false or misleading information is a serious breach of the Mining Act and has the potential to significantly undermine community and industry confidence in the regulatory regime. In recognition of the seriousness of the this type of offence, I note that Government recently sought fit to double the maximum penalty available to \$110,000.00
18. As WorleyParsons prepared and submitted the Application that contained the alleged false material directly to the Department, I consider their culpability in the matter to be significant.
19. However, I note that WorleyParsons has no adverse compliance history under the Act and on the information before me, the conduct appears isolated to the Application in question.
20. WorleyParsons has proposed to implement a number of compliance strategies to ensure that there is no recurrence of the circumstances or behaviour that gave rise to alleged offending conduct.
21. In this regard, WorleyParsons' undertaking to; implement internal compliance training and induction programs for all project personnel; review delegation and communication protocols; and implement retrospective and prospective audits of its Mining Act applications directly addresses the behaviour subject of the allegations and provides appropriate controls to prevent future contraventions.
22. In particular I note that WorleyParsons undertakes to review all applications made under the Act for the previous 3 years, and to undertake an annual review of all future applications made for the project for the next 3 years. This undertaking will provide the community and the Department significant confidence in the accuracy and integrity of the information being supplied to the Department.

23. WorleyParsons has also undertaken to develop a best practice fact sheet on preparing statutory applications under the Mining Act in consultation with the Department. This resource will be used by the Department to assist the mining industry to prepare statutory applications under the Act.
24. WorleyParsons also undertakes to pay the Department's costs in the amount of \$62,632.54 to cover investigation, legal and monitoring costs. This is an appropriate undertaking that will ensure that the Department, and ultimately the taxpayer, does not bear undue financial costs as a result of its actions in investigating and pursuing the alleged contravention.
25. The acceptance of an undertaking will ensure that the Department does not incur further costs in relation to the matter, which particularly in relation to investigation and legal costs, can never fully be recouped through prosecution action.
26. Further, and noting that the quantum to be paid by WorleyParsons exceeds the maximum penalty available to be imposed by a court if successfully prosecuted (at the time of the offending), I am of the view that this will create a greater deterrent effect than prosecution action.

Conclusion

27. I am satisfied that the proposed undertaking meets the requirements of the Act and the Guidelines.
28. I am of the view that the proposed undertaking will deliver tangible benefits to industry and community by further strengthening the integrity and transparency of information submitted in connection with mining operations in NSW, and providing clear guidance to industry on the lawful preparation of applications.
29. I particularly note that, as WorleyParsons was acting as an agent in relation to the Application and does not hold any authorisations under the Act, prosecution action is the only enforcement tool available (outside of an undertaking) in responding to the alleged conduct.
30. In this respect, I am satisfied that the Department will achieve better compliance outcomes through the acceptance of the undertaking as:
 - a) WorleyParsons will pay an amount greater than the maximum penalty available to the Court
 - b) no other compliance tools are available to the Department to require WorleyParsons to implement the controls identified in the undertaking.
31. Further, the terms of the undertaking, and the requirement under the Act to publish the undertaking and this decision, is likely to achieve better compliance outcomes than prosecution action alone, and will provide similar specific and general deterrence to successful legal proceedings.

32. I am satisfied that the initiatives proposed by WorleyParsons resolve both the behaviour of concern that led to the alleged contravention and also rectify the consequences of the conduct.
33. Accordingly, I have determined to **accept** the enforceable undertaking proposed by WorleyParsons. In accordance with the Act, the Department will discontinue the current proceedings against WorleyParsons as soon as possible.

Date of decision:

5/8/16



Simon A Y Smith
Secretary
Department of Industry

NOTES

In accordance with section 378ZFC of the *Mining Act 1992* this decision will be published on the Department's website.