

## WHS undertaking given by Maules Creek Coal Pty Limited accepted

Entity	Maules Creek Coal Pty Limited (ACN 140 533 875)
Issue	Whether to accept or reject a WHS undertaking
Legislation	Part 11 of the Work Health and Safety Act 2011
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Regional NSW

### Section 216 and 218 decisions

Pursuant to section 216 of the *Work Health and Safety Act 2011* (**WHS Act**), I, Anthony Keon, having a delegated authority from the Secretary of Regional NSW, have determined to **accept** the WHS undertaking given by Maules Creek Coal Pty Limited (**MCCPL**) 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 MCCPL is first notified of my decision to accept that WHS undertaking.

### Reasons for decision

#### Legislation

- Section 216 of the WHS Act provides that:
  - 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.
  - A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
  - 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.
- 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 \$250,000 in the case of a corporation, and \$50,000 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 Regional NSW (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 Resources Regulator's website, [guidelines](#) relevant to the acceptance of WHS undertakings as required by section 230 of the WHS Act.

## Background

8. Maules Creek Coal Mine is operated by Maules Creek Coal Pty Ltd (**MCCPL**) and is located near Boggabri, NSW. The mine is a workplace within the meaning of section 8 of the WHS Act.
9. Just before 8am on 21 April 2018, a Caterpillar 773 service truck and a fully loaded Hitachi EH5000 haul truck collided at a major four-way intersection on the mine haul road. At the time of the incident, the service truck was travelling east. The haul truck was travelling north.
10. The intersection road signs were changed during the day shift on the day prior to the incident. The change was to allow haul trucks to drive straight through the intersection from the mine's production area. To give effect to this change, the intersection's stop signs were relocated to the eastern haul road, requiring traffic travelling east and west to stop and give way to other traffic.
11. The change to the intersection road signs was not communicated to all workers.
12. The haul truck driver was aware of the change to the intersection signs as he had driven through the intersection earlier in the morning on the day of the incident. He understood that he had right of way.
13. The 100 tonne service truck collided with the side of the 500 tonne haul truck, resulting in catastrophic damage to the service truck and injuries to the service truck driver.

14. An [investigation information release](#) was released in May 2018, and a [final investigation report](#) and [video animation](#) into the incident in August 2019.
15. On 18 December 2019, the regulator commenced prosecution proceedings in the District Court of NSW in relation to the above event, alleging that MCCPL had contravened section 32 of the WHS Act, by failing to comply with a health and safety duty under section 19 of the Act (Category 2).

## Rejection of previous undertaking given by MCCPL

16. On 17 January 2020, MCCPL submitted a signed WHS undertaking to the regulator. The Regulator rejected the undertaking and published its reasons for the [decision](#) on its website.

## WHS undertaking given by MCCPL

17. On 6 July 2020, MCCPL submitted a further signed WHS undertaking to the regulator. Consistent with the Guidelines the undertaking was developed using the pre-proposal advisory services offered by the regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
18. In summary, the WHS undertaking will impose an obligation on MCCPL 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 Northern Daily Leader and the Sydney Morning Herald
  - c. disseminate information about the undertaking to MCCPL workers
  - d. reimburse the regulator's costs associated with the investigation, legal advice and administration of \$193,113 and with monitoring of the undertaking, a total cost of \$203,113
  - e. implement a mine and Narrabri community-wide mental fitness initiative, partnering with Gotch4Life, at a minimum cost of \$150,000
  - f. develop a mentoring program to support the progression of its indigenous employees to management roles within Maules Creek Coal, at a minimum cost \$100,000
  - g. partner with the University of Queensland to support a project in assessing human-system interaction risks in autonomous mining operations, at a minimum cost of \$225,500
  - h. share its experiences and learnings associated with the implementation of an autonomous haulage system at the mine at one of the regulator's safety seminars

- i. provide \$25,000 to the Narrabri Shire Interagency Group for the running of a mental health “Community Connect Day” for the Narrabri community
- j. provide \$20,000 to the local SES to purchase life-saving equipment
- k. provide \$80,000 to Boggabri Hospital to purchase or upgrade emergency equipment
- l. commit to a total minimum spend of \$803,613
- m. complete the undertaking on or before 26 months from acceptance by the regulator.

## Considerations and findings

19. 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.
20. While under the WHS Act the giving of an undertaking does not constitute an admission of guilt, MCCPL 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.
21. I also note that MCCPL has implemented measures to minimise the recurrence of the circumstances and behaviour that gave rise to the alleged offences
22. However, there is a strong community expectation that companies such as MCCPL are aware of its obligations under the WHS Act and have systems in place to ensure compliance. MCCPL is what I would consider to be a sophisticated and well-resourced operator, and forms part of a broader group which states to be ‘the leading Australian producer of premium quality coal.’
23. The subject WHS undertaking, if accepted, will require MCCPL to incur costs of at least \$803,613, including the funding and delivery of safety and community projects at a minimum cost of \$600,500.
24. In this regard, I note that the cost of the undertaking is significantly more than the three most recent penalties imposed in the District Court as a result of prosecution action by the regulator for similar offences:
  - a) LakeCoal Pty Ltd which was fined \$180,000, and LDO Operations which was fined \$136,000 in relation to an incident resulting in a serious injury to a worker who was stuck in the face and head by a damaged W-strap while travelling underground.
  - b) Richard Wayne Simmons who was fined \$90,000 in relation to a worker who was fatally injured when he was struck in the head by the tailgate of a coal haulage trailer.

25. In each of the above matters the defendants were charged with the same offences with which the regulator has commenced proceedings for against MCCPL, and in each matter the court found that the defendant had failed in its duties, and those failures exposed a worker to serious injury or death,
26. In this respect, I am satisfied that the undertaking proffered by MCCPL adequately reflects the seriousness of the incident and the alleged offending, and is significant, particularly in terms of monetary value.
27. However, the monetary value alone is not a determinative factor, and in rejecting MCCPL's previous proposal for an undertaking I noted the strategies of the 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 the size of MCCPL.
28. MCCPL have now provided a revised undertaking which contains projects which I am now satisfied meet those objectives.
29. The Mental Health Fitness Program will provide direct and tangible benefits for the workforce and broader community by implementing a community-wide mental health initiative with the aim of breaking down the stigma surrounding mental ill-health and seeking out support, to facilitate a mentally well community and reduce suicide rates. In this respect I accept that there are significant mental health challenges faced by regional areas, which have been exacerbated by recent and ongoing issues such as drought, bushfires and COVID-19, and I am of the view that this program has significant merit.
30. Similarly, the mentoring program has community and workforce benefits by providing a program to specifically support the development and retention of indigenous employees to management roles at the mine.
31. The initiative to assess human-system interaction risks in autonomous mining operations has clear benefits to the broader industry by seeking to determine the best approaches for identifying, analyzing and evaluating risk associated with the introduction of autonomous or semi-autonomous technologies. I note that the use of these type of technologies is increasing across industry and these shared learning will help all operators better identify and manage the risks associated with introducing this emerging technology.
32. Finally the collective donations of \$125,000 to Narrabri Shire Interagency Group, the SES, and Boggabri Hospital will provide tangible benefits to the broader community by funding a mental health 'Community Connect Day' and providing funds to purchase much needed emergency and lifesaving equipment.

33. 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 the continuation of the current prosecution proceedings.
34. MCCPL has no prior convictions under the WHS Act and I am of the view that the total value of the undertaking exceeds the likely penalty that would be imposed by a court following successful prosecution action.
35. 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.
36. 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.
37. The initiatives given by MCCPL in the undertaking resolve the behaviour of concern that led to the alleged contravention, and rectifies the consequences of the conduct and provides clear and tangible benefits to the MCCPL workforce, across the mining industry and the broader community.
38. Accordingly, I have determined to accept the WHS undertaking given by Maules Creek Coal Pty Limited.
39. In accordance with section 222 of the WHS Act the regulator will discontinue the current proceedings against MCCPL as soon as practicable.

Date of decision: **31 July 2020**



Anthony Keon

**Executive Director, Resources Regulator  
Regional NSW**

**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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