



PUB18/157

- Entity:** Ulan Coal Mines Limited, ACN 000 189 248, and
Ulan West Operations Pty Limited, ACN 143 383 377
- Issue:** Whether to accept an enforceable (WHS) undertaking in relation
to an alleged contravention of the WHS Act.
- Legislation:** *Work Health and Safety Act 2011* Part 11
- Decision maker:** Lee Shearer
Deputy Secretary, Resources Regulator
Coordinator General for the Central Coast

Section 216 decision

As authorised by section 216 of the *Work Health and Safety Act 2011* (WHS Act), I, Lee Shearer, having delegated authority from the Secretary of the Department of Planning and Environment (the **regulator**), have decided to **accept** the enforceable WHS undertaking given jointly and severally by Ulan Coal Mines Limited and Ulan West Operations Pty Limited, as attached to this decision.

The undertaking takes effect and is in force immediately upon Ulan Coal Mines Limited and Ulan West Operations Pty Limited being notified of this decision.

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) 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.
 - c) The regulator must issue, and make public, general guidelines for or in relation to the acceptance of enforceable undertakings under the WHS Act.
2. Section 217 of the WHS Act provides that:

The regulator is required 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 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 has delegated the function to accept a WHS undertaking under section 216 of the WHS Act to the Coordinator General.

Background

7. Ulan Coal Mines Limited is the mine holder of Ulan West Operations.
8. Ulan West Operations Pty Limited is the mine operator of the Ulan West Mine, a part of Ulan West Operations. The Ulan West Mine is a large underground longwall coal operation about 45 kilometers north-north-east of Mudgee, in the western coalfields of NSW.
9. On 26 November 2015, a worker was performing a pressure test on the surface of the mine on a length of plastic pipe that had been reclaimed from the underground longwall panel. The pipes were to be reinstalled and used in longwall development as part of the inert gas reticulation system. During the testing a pipe blanking cap was ejected under pressure and struck the worker. The injured worker suffered leg, hand and facial injuries.
10. The investigation by the regulator found sufficient evidence to support a prima facie case and the elements of an offence under section 32 for failure of the section 19 duty of a person conducting a business or undertaking of the WHS Act for each corporation.
11. On 24 November 2017, the regulator commenced prosecution action against Ulan Coal Mines Limited and Ulan West Operations Pty Limited alleging that the mine holder and mine operator each contravened section 32 of the WHS Act. At the time of the alleged contravention the maximum penalty for this offence committed by a body corporate was \$1,500,000.

Proposed undertaking

12. On 4 April 2018, Ulan Coal Mines Limited and Ulan West Operations Pty Limited jointly submitted a signed WHS undertaking to the regulator. Consistent with the Enforceable Undertaking Guidelines the proposal was developed using the pre-proposal advisory services offered by the regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
13. In summary, the WHS undertaking:
 - a) Provides a commitment that the behaviour that lead to the alleged contravention has ceased and provides an assurance that steps have been taken to prevent a recurrence of the incident.
 - b) Provides a commitment to disseminate information about the undertaking to workers, safety and health representatives, and other relevant stakeholders.
 - c) Provides a commitment to pay the regulator's investigation, legal and administration costs of \$244,244 incurred during the investigation and litigation process.
 - d) Provides a commitment to pay the regulator the sum of \$8,500 to cover the costs associated with monitoring the undertaking.
 - e) Provides \$250,000 to develop and deliver:
 - i. A mental health training seminar for workers at the six coal mining operations in the western coalfields
 - ii. A skills workshop about the incident learnings to participants from the six coal mining operations and contractors in the western coalfields
 - iii. A communication training package for industry that will be presented to at least one external industry event and two Glencore contractor forums. It will also be published on the Ulan Coal Mines Limited website and supplied to the Regulator for industry wide use
 - iv. Funding for essential rehabilitation equipment at the Mudgee Hospital and health facilities in Gulgong and Rylstone
 - v. A final report on the undertaking and outcomes to the Regulator.

Considerations and findings

14. While under the WHS Act the giving of an enforceable undertaking does not constitute an admission of guilt, I note both Ulan Coal Mines Limited and Ulan West Operations Pty Limited acknowledge the allegations put forward by the regulator that each failed to comply with a health and safety duty under sections 32 and 19 of the WHS Act and that the failure exposed a worker to a risk of death or serious injury.

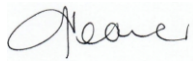
15. There is a strong community expectation that companies such Ulan Coal Mines Limited and Ulan West Operations Pty Limited are aware of their obligations under the WHS Act and have systems in place to ensure compliance.
16. Ulan Coal Mines Limited and Ulan West Operations Pty Limited have implemented measures to minimise the recurrence of the circumstances and behaviour that gave rise to the alleged offending conduct.
17. The agreed terms proposed by Ulan Coal Mines Limited and Ulan West Operations Pty Limited, are estimated to cost \$502,744, including the funding and delivery of safety and community projects with a minimum spend of \$250,000.
18. Included in the enforceable terms, Ulan Coal Mines Limited and Ulan West Operations Pty Limited have agreed to pay the regulator's costs of \$252,744 to cover the investigation, legal expenses and compliance monitoring. This is an appropriate undertaking that will ensure that the regulator, and ultimately the taxpayer, does not bear undue financial costs as a result of its actions in investigating and pursuing the alleged contravention.
19. The acceptance of an undertaking will ensure that the regulator 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.
20. The commitment by Ulan Coal Mines Limited and Ulan West Operations Pty Limited to fund and undertake the specified projects is considered significant, and is likely to achieve a better compliance outcome than pursuing prosecution action alone.
21. Ulan Coal Mines Limited and Ulan West Operations Pty Limited have no prior convictions for offences under the WHS Act.

Conclusion

22. I am satisfied that the proposed undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
23. I am of the view that the proposed undertaking will deliver future and long-term benefits to workers, the industry and community through increasing awareness of safety issues, mental health and wellbeing and providing vital rehabilitation equipment to regional health services.
24. I am satisfied that the requirement under the WHS 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.
25. I am satisfied that the initiatives proposed by Ulan Coal Mines Limited and Ulan West Operations Pty Limited resolve both the behaviour of concern that led to the alleged contravention and also rectify the consequences of the conduct.

26. Accordingly, I have determined to accept the WHS undertaking given by Ulan Coal Mines Limited and Ulan West Operations Pty Limited.
27. In accordance with the WHS Act the regulator will discontinue the current proceedings against Ulan Coal Mines Limited and Ulan West Operations Pty Limited as soon as practicable.

Date of decision: 6 April 2018



Lee Shearer

Deputy Secretary, Resources Regulator
Coordinator General for the Central Coast
Department of Planning and Environment

NOTE

In accordance with section 217 of the *Work Health and Safety Act 2011* this decision will be published on the regulator's website.