

## Work Health and Safety Act 2012 (SA)

### Part 11 Enforceable Undertaking

## REASON FOR DECISION

**Entity:** Acciona Infrastructure Projects Australia Pty Ltd

**ABN/ACN:** 40 000 201 516

**Entity Address:** Level 7, 80 King William Street, Adelaide 5000

**Location of incident:** Rumble Road, Dry Creek SA 5094

**Date of incident:** 6 July 2021

### 1. History of the application

- 1.1 The undertaking given by Acciona Infrastructure Projects Australia Pty Ltd (Acciona) relates to an alleged contravention (incident) that occurred at Rumble Road, Dry Creek SA 5094 ( the workplace) occurring during the implementation of the Gawler Rail Electrification Project.
- 1.2 The worker was employed by Patriot Tankers Pty Ltd (Patriot) who was subcontracted to Acciona to conduct non-destructive digging works at the Rumble Road site.
- 1.3 On 6 July 2021, a worker entered a trench to allow for easier access for material to be vacuumed out. It was at this stage that the trench wall collapsed pinning the worker up against an existing water pipe. The worker was freed by emergency services and taken to the Royal Adelaide Hospital where he remained for 10 days. The worker sustained multiple spinal fractures, multiple rib fractures, laceration to the liver and a fractured pelvis.
- 1.4 Following an investigation by SafeWork SA (SWSA) inspectors, prosecution action was commenced by the Crown Solicitors Office (by complaint and summons) against Acciona, who had a health and safety duty pursuant to section 19(1) (2), and (3) (a)(g) of the *Work Health and Safety Act 2012 (SA)* (the WHS Act) and Regulation 34, 297 and 300 of the *WHS Regulations SA 2012 (SA)* (the Regulations), for allegedly failing to comply, so far as reasonably practicable, with the duty contrary to Section 32 of WHS Act.
- 1.5 In October 2022, Acciona contacted SWSA ,Regulatory Assurance Unit notifying of their intention to submit an enforceable undertaking (EU) for this matter.
- 1.6 On 25 September 2023, after considerable negotiations with Acciona, a final submission was presented for assessment. The assessment panel completed an evaluation of the revised EU and based on the amendments made to the EU and supporting documents received.

- 1.7 The Regulator accepted the final EU application on 14 November 2023 and Acciona was notified of this acceptance on the same day.

## **2. Legislation and Policy**

- 2.1 Pursuant to section 216 (1) of the WHS Act the WHS regulator may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention.
- 2.2 Section 217(1) of the WHS Act provides that the WHS regulator must give the person seeking to give an undertaking written notice of the decision to accept or reject the undertaking and the reasons for the decision.
- 2.3 Pursuant to section 217 (2) of the WHS Act, the WHS regulator must publish on the WHS regulator's website, notice of a decision to accept a WHS undertaking and the reasons for that decision.

## **3. Material and evidence considered by WHS Regulator**

- 3.1 In deciding this matter, the WHS regulator has considered the following documents:
  1. Work Health and Safety Act 2012(SA) & Regulations 2012.
  2. National Compliance and Enforcement Policy (Part 7 criteria)
  3. SWSA Guidelines for the acceptance of an enforceable undertaking – dated 2023
  4. WHS EU submitted by PCBU dated 25 August 2023.
  5. Complaint and Summons prepared by Crown Solicitors Office
  6. Brief of Evidence prepared by SWSA Investigator

## **4. Findings on material questions of fact – Regulator**

- 4.1. The Guidelines for the acceptance of an enforceable undertaking dated July 2023, contains considerations which are relevant and appropriate to my decision.
- 4.2. I find the undertaking given by Acciona satisfies the formal requirements of the WHS Act and the policy requirements discussed above with respect to the operation of Part 11 of the WHS Act as they have been published.
- 4.3. I find the factual background to the alleged contravention is set out in section 1 of the Acciona undertaking.
- 4.4. I find that the procedural history relating to the undertaking is set out in paragraph 1 above.
- 4.5 The significance of the undertaking and the respective financial commitments of Acciona are proportionate to the objective gravity of the alleged contraventions by Acciona and account for the benefits that would accrue to them through avoiding prosecution.
- 4.6 I find that Acciona have acknowledged the alleged contravention and shown regret regarding the occurrence and the consequences of the alleged contravention.

- 4.8. I acknowledge the assurance given by Acciona that the behaviour that led to the alleged contravention has ceased and the commitment to ensuring the ongoing effective management of risks to health and safety in the future.
- 4.9 I find the undertaking commits Acciona to a standard that is higher than the recognised compliance for the activity and/or to activities over and beyond recognised compliance levels.
- 4.10. I find the undertaking would constitute tangible benefits for workers, industry, and the community.
- 4.11 I find that the Enforceable Undertaking submitted by Acciona is an effective regulatory outcome.

### **Decision**

- 5.1 In making my decision, I have considered and had regard to the evidence and other material referred to in paragraph 3 above, and to the facts I have found referred to in paragraph 4 above.
- 5.2 Because the proposed undertaking given by Acciona and the formal requirements of the WHS Act and policy requirements, my discretion whether to accept the undertaking under section 216(1) of the WHS Act is enlivened.
- 5.3 Based on the evidence, findings and having regard to the objects of the WHS Act, I have carefully considered this matter and I am of the opinion that the undertaking given by Acciona is an appropriate enforcement option in regard to this case.
- 5.4 I have concluded that an EU is the preferred enforcement option, rather than continuing with the prosecutions, due to the opportunity to provide lasting organisational change within Acciona, and the implementation of monitored and targeted health and safety improvements that will deliver benefits to workers, industry, and the community, which may not be achieved by prosecution.
- 5.5 Under section 216(1) of the WHS Act, it is my decision to accept this undertaking.



**Glenn Farrell**

Executive Director,

SafeWork SA

3/12/2023