

Work Health and Safety Act 2011 (Cth)

Part 11 – Enforceable Undertakings

REASONS FOR DECISION

Comcare Reference: MC00022295

Applicant: Cleanaway Operations Pty Ltd (**Cleanaway**)

ACN: 010 745 383

Incident Location: 88 Sawmill Circuit, Hume, Australian Capital Territory,
2620

Decision Maker: [REDACTED] acting General Manager, Regulatory
Operations Group, Comcare

Date of Decision: 23 January 2025

DECISION

Pursuant to section 216 of the *Work Health and Safety Act 2011 (Cth)* (**the Act**) Comcare accepts a written WHS undertaking dated 19 December 2024 given by Cleanaway in connection with a matter relating to an alleged contravention by Cleanaway of the Act.

The matter involved a work health and safety incident where a Cleanaway worker was injured whilst inserting wire (**the task**) into an unguarded section of a baler machine at Cleanaway's solid waste and recycling services site located at 88 Sawmill Circuit, Hume, ACT.

BACKGROUND

1. On 4 June 2021 cardboard and plastic waste delivered to the incident location were being compressed into bales by a Cleanaway worker, using a Godswill Automatic Baling Press 4 Way Free Floating Type GB-1108F (**baler**). The baler was the only baler in operation at the incident location. There was no guarding between the inserter and the main body of the baler to prevent workers from accessing internal moving parts of the baler.



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2. Cleanaway had not provided or trained the worker in a procedure for carrying out the task or provided information on a lock-out tag-out procedure for operating the baler.
3. As the worker was undertaking the task, their hand came into contact with moving parts of the baler, causing them to sustain injuries to the middle finger and ring finger of one hand, including a broken middle finger which required surgery to insert a pin.
4. Following an investigation conducted by Comcare inspectors, a prosecution was commenced against Cleanaway on 2 June 2023 at the ACT Magistrates' Court on the basis that Cleanaway had a health and safety duty under section 19(1) of the Act, and it failed to comply with that duty which exposed a worker to a risk of death or serious injury or illness in contravention of section 32 of the Act.
5. An offence against section 32 is a Category 2 offence under the Act and, at the time proceedings were commenced against Cleanaway, carried a maximum penalty of \$1,500,000.

PROPOSED WHS UNDERTAKING

6. On 7 February 2024 Cleanaway submitted a proposed WHS undertaking to Comcare in connection with the allegation that Cleanaway contravened sections 19(1) and 32 of the Act.
7. Following discussions with Comcare, Cleanaway submitted revised proposed WHS undertakings to Comcare on 21 May 2024 and 14 August 2024 in connection with the same allegation that Cleanaway contravened sections 19(1) and 32 of the Act.
8. Following further discussions with Comcare, Cleanaway submitted a further revised proposed WHS undertaking to Comcare on 16 October 2024 in connection with the same allegation that Cleanaway contravened sections 19(1) and 32 of the Act.
9. On 9 January 2025 Comcare decided to accept the further revised WHS undertaking given by Cleanaway. Cleanaway signed the undertaking on 20 January 2025 and Comcare signed the undertaking on 21 January 2025 (**the WHS undertaking**). This document records the reasons why Comcare accepted the WHS undertaking.



10. The initiatives of the WHS undertaking can be summarised as:

Initiative 1 – Cleanaway will develop a virtual reality (VR) application in driver safety training in heavy vehicles and mobile plant for drivers to gain competency in waste collection and landfill operations and focusing on specific high-risk scenarios. The VR training will provide drivers with an opportunity to identify and assess hazards and risks that resemble real-life scenarios, which is intended to bridge the gap between classroom conducted safety training and on the job training; estimated cost \$265,000;

Initiative 2 – Cleanaway will trial and install new technology involving side loader pedestrian detection to reduce risks to pedestrians and cyclists around heavy vehicles, particularly side loading waste vehicles. Cleanaway will identify the areas where the risk of uncontrolled interactions between side loader vehicle and members of the public is highest. Cleanaway will engage a specialist provider to install an engineering control that will detect, alarm and prevent movement of the vehicle or side-loader arm, in the event of potential interaction with a person; estimated cost \$255,000;

Initiative 3 – Cleanaway will conduct a targeted public education campaign in partnership with local councils aiming to reduce incorrect battery disposal in residential waste bins. The campaign will identify the most effective and efficient means of communication to influence a behaviour change in the public who may not be aware of the potential for fires to be initiated by batteries in the waste management stream; estimated cost \$225,000;

Initiative 4 – Cleanaway will support programs undertaken in partnership with BackpackBeds for Homeless and Orange Sky to reduce the risks to rough sleepers who make seek shelter or forage for food or other items of value in waste skip bins. Cleanaway will provide funding for 500 backpack beds and laundry and shower services for rough sleepers; estimated cost \$180,000.

Total estimated cost \$925,000.

11. Cleanaway commits to a minimum spend of \$925,000 for carrying out initiatives 1 to 4 above within an overall time frame of 27 months from the date of acceptance of the WHS undertaking by Comcare.



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JURISDICTION

12. Comcare is defined as the regulator under section 4 of the Act. Comcare was established under section 68 of the *Safety Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) and is constituted by the Chief Executive Officer (**CEO**) under section 74(1A) of the SRC Act.
13. Pursuant to section 216 of the Act, Comcare may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the Act.
14. Under section 19(1) of the Act, persons conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of workers while the workers are at work in the business or undertaking.
15. Failure to comply with section 19(1) in circumstances where the failure exposes an individual to a risk of death or serious injury or illness is an offence pursuant to section 32 of the Act.
16. Greg Vines was appointed CEO of Comcare with effect on 17 April 2023 and as CEO of Comcare can exercise any authority vested in the regulator under the Act, including the authority to accept a written undertaking under section 216 of the Act.
17. By Instrument of Delegation dated 13 August 2024 at Schedule 1 and item 34, the CEO of Comcare delegated the exercise of powers and functions under section 216 of the Act to include the General Manager, Regulatory Operations Group, Comcare.
18. On 1 June 2015 [REDACTED] was appointed General Manager, Regulatory Operations Group, Comcare.
19. From 20 January 2025 to 27 January 2025, I, [REDACTED] was appointed as acting General Manager, Regulatory Operations Group.

EVIDENCE AND MATERIALS CONSIDERED BY COMCARE

20. In reaching the decision to accept the WHS undertaking, Comcare has considered the following:
 - *Work Health and Safety Act 2011* (Cth);
 - Comcare Regulatory Guide to WHS Undertakings;



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- Revised proposed WHS undertakings and supporting materials and correspondence submitted by Cleanaway;
- Information and Summons for proceeding CC40989 of 2023 filed at the ACT Magistrates Court on 2 June 2023 against Cleanaway;
- Prosecution Statement of Facts served on Cleanaway;
- Medical reports outlining the injuries suffered by the injured worker;
- Commonwealth Director or Public Prosecution's Prosecution Policy of the Commonwealth.

CRITERIA FOR ACCEPTING ENFORCEABLE UNDERTAKING UNDER THE WHS ACT

21. Comcare may accept enforceable undertakings under Part 11 of the Act. Section 216 provides that Comcare may accept a written undertaking given by a person *in connection with a matter relating to a contravention or alleged contravention by the person* of the Act. A WHS undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.
22. The exercise of Comcare's powers is guided by the main object of the WHS Act, to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. This object is achieved by a number of means, including securing compliance with the Act through effective and appropriate compliance and enforcement measures.
23. Comcare has published a Regulatory Guide to WHS undertakings which provides general guidelines in relation to the acceptance of WHS undertakings under the Act as required by section 230(2) of the Act (**Regulatory Guide**).
24. The Regulatory Guide describes the preconditions for accepting a WHS undertaking; which can be summarised as:
 - Comcare needs to be satisfied at least that the circumstances warrant that an allegation be made of a contravention of the Act;
 - Comcare cannot accept an undertaking where the relevant contravention or alleged contravention is a Category 1 offence;
 - Comcare may accept a WHS undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised;
 - A WHS undertaking should be 'in connection with a matter relating to' a contravention or alleged contravention. A WHS undertaking need not be restricted to the direct circumstances of a contravention or alleged



contravention. As long as there is a sufficient link to the contravention or alleged contravention, the WHS undertaking can deal with other matters.

25. The Regulatory Guide also provides guidance on how Comcare will make a decision whether to accept a WHS Undertaking as follows:

- Comcare will consider each WHS undertaking on its merits, taking into account all the relevant circumstances of the particular case. The starting point will be the nature and extent of the contravention or alleged contravention.
- Comcare may be more likely to accept a WHS undertaking if it takes advantage of the flexibility inherent in the WHS undertaking mechanism.

26. The Regulatory Guide also provides that Comcare may decide that it is more appropriate in the particular circumstances to take other measures under the Act, such as issuing notices or undertaking a prosecution, rather than accepting a WHS undertaking.

REASONS

27. I am satisfied that the WHS undertaking given by Cleanaway is capable of acceptance by Comcare under section 216 of the Act because:

- a. The WHS undertaking is in connection with a matter relating to an alleged contravention by Cleanaway under the Act; and
- b. The alleged contravention by Cleanaway as set out in the Information and Summons is not a Category 1 offence under the Act.

28. The criminal proceedings against Cleanaway in the ACT Magistrates Court have not been finalised.

29. I have considered the WHS undertaking and I am satisfied it addresses the requirements of the Regulatory Guide.

30. I have considered the nature and extent of the alleged contravention by Cleanaway, and the remedial steps taken by Cleanaway since the incident.

31. Cleanaway confirmed that the worker injured in the incident is very supportive of the initiatives contained in the WHS undertaking and the WHS undertaking approach more generally. The injured worker has not communicated their views on acceptance of the WHS undertaking with Comcare.



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32. I have considered Cleanaway's past performance and history of compliance with the Act. Cleanaway has a previous conviction under the Act. On 3 May 2017 the District Court of South Australia imposed a fine on Cleanaway of \$650,000 with conviction for one count of contravening sections 19 and 32 of the Act, a Category 2 offence. Cleanaway pleaded guilty to the offence. The conviction arose from a chemical fire that occurred on 25 July 2013 at Cleanaway's Wingfield site. A worker suffered a sprained wrist as a result of the incident involving the solvent distilling process.
33. I note the incident giving rise to the conviction occurred about eight years before the incident giving rise to the present alleged contravention and more than ten years before the submission of the first proposed WHS undertaking by Cleanaway. The conviction was not imposed in relation to the death of a person. The conviction is not seen as a bar to accepting the WHS undertaking.
34. I consider that the WHS undertaking would deliver benefits for:
- a. workers at the Cleanaway incident location and other Cleanaway workplaces (initiative 1);
 - b. waste management practices at Cleanaway and the waste management industry (initiatives 2 and 3); and
 - c. the community (initiative 4).
35. I am satisfied that the WHS undertaking contains:
- a commitment to outcomes that are tangible, measurable and achievable, with specified timeframes for each initiative; and
 - improvements that are not limited to the specific alleged contravention, covering a range of different hazards and risks associated with Cleanaway's operations and more broadly in the waste management industry and the community.

DECISION

Having regard to the information before me and for the reasons set out above, I consider that a WHS undertaking is an appropriate enforcement outcome because it will deliver superior work health and safety outcomes than a court imposed fine. The initiatives are able to be monitored and offer a broad range of benefits that could not be achieved by continuing the criminal proceedings against Cleanaway.

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Under section 216 of the Act, Comcare accepts the WHS undertaking given by Cleanaway which will take effect on the date signed by Comcare. Comcare will take all reasonable steps to discontinue the prosecution proceedings against Cleanaway.



**A/g General Manager
Regulatory Operations Group
Comcare**