

Work Health and Safety Act 2011 (Cth)

Part 11 – Enforceable Undertakings

REASONS FOR DECISION

Comcare Reference:	EVE00000526
Applicant:	Commonwealth Scientific and Industrial Research Organisation (CSIRO)
ABN:	41 687 119 230
Incident Location:	CSIRO Clayton premises, Research Way, Clayton, Victoria
Decision Maker:	Vanessa Graham, Chief Operating Officer, Corporate Group
Date of Decision:	2 March 2021

DECISION

Pursuant to section 216 of the *Work Health and Safety Act 2011 (Cth)* (**the WHS Act**), Comcare accepts a written Work Health and Safety undertaking dated 1 March 2021 (the WHS undertaking) given by CSIRO in connection with a matter relating to four alleged contraventions of the WHS Act.

- Incident involving the ignition of hydrogen gas at CSIRO premises in Clayton, Victoria causing injuries to a worker on 6 June 2017.

BACKGROUND

1. On 6 June 2017 at CSIRO's Clayton facility in Victoria, an incident occurred involving the ignition of hydrogen gas which had leaked from a 50-litre autoclave, resulting in injuries to a worker.
2. Following an investigation conducted by Comcare inspectors, a prosecution was commenced against CSIRO on 5 June 2019 in the Magistrates' Court of Victoria on the basis that CSIRO had a health and safety duty under section 19(1) of the Act and failed to comply with that duty in contravention of section 32 of the Act.

3. On 31 July 2020, CSIRO submitted a proposed WHS undertaking to Comcare in connection with the allegations that CSIRO contravened sections 19(1), 19(3)(a), 19(3)(c), 19(3)(d) of the Act.
4. CSIRO signed the WHS undertaking on 23 February 2021. Comcare accepted and signed the WHS undertaking given by CSIRO on 2 March 2021.

LEGISLATION/ JURISDICTION

5. 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.
6. 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.
7. 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.
8. 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.
9. The 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. By way of delegation dated 27 October 2020, this authority was delegated to the Chief Operating Officer, Corporate Group. I was appointed as the General Manager, Corporate Management on 5 August 2019, and my position title was changed to Chief Operating Officer, Corporate Group on 4 February 2020.
10. Comcare has published a 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 (**Comcare Guide to WHS Undertakings**).

EVIDENCE AND MATERIALS CONSIDERED BY COMCARE

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

- Proposed WHS undertaking and supporting materials submitted by CSIRO 31 July 2020 (and 27 February 2020 respectively);
- Charge and summons dated 5 June 2019;
- Letter from the injured worker to Comcare dated 7 September 2020;
- Comcare Risk and Analysis Intelligence Report: CSIRO Activity and Compliance Data, September 2020; and
- Prosecution Policy of the Commonwealth.

FINDINGS ON MATERIAL QUESTIONS OF FACT AND REASONS

12. I am satisfied that the WHS undertaking given by CSIRO is capable of acceptance by Comcare under section 216 of the Act because:
- a. the WHS undertaking is proposed in connection with a matter relating to a contravention or alleged contravention by CSIRO under the Act; and
 - b. the alleged contravention by CSIRO is not a category 1 offence under the Act.
13. I am satisfied that the WHS undertaking addresses the requirements of the Comcare *Guide to WHS Undertakings*.
14. I have considered the nature and extent of the (alleged) contraventions, and the remedial steps taken by CSIRO.
15. I have considered the views provided by the injured worker in relation to the incident and that they support the acceptance of the WHS undertaking.
16. I have considered CSIRO's criminal history. CSIRO has no previous convictions under the Act and has not previously been subject to prosecution under the Act.
17. I note CSIRO will issue a Notice of Acceptance of an Enforceable Undertaking in 'The Australian' newspaper.
18. I consider that the undertaking will deliver benefits for the workplace and the industry in relation to the project planning, risk assessment, infrastructure and technical guidance requirements associated with research projects in laboratories, including wet laboratories. In particular, CSIRO has committed to engaging with independent experts in developing the training and technical guidance material which will be disseminated within CSIRO and made publicly available.
19. I am satisfied that the undertaking contains a commitment to outcomes that are tangible, measurable and achievable, with specified timeframes. I note in particular:
- the identified timeframes for achieving various stages of each undertaking, and CSIRO's assurances that such milestones will be reported to the CSIRO Board and signed off by the Chief Executive;

- the commitment by CSIRO to provide three undertakings that will provide measurable improvements in work health and safety, both in the organisation and across the scientific research industry;
- a significant and achievable financial commitment by CSIRO to meet the terms of the three deliverables;
- an expression of remorse that the incident took place;
- measures were taken to address the impact of the incident on the person who was injured;
- improvements that are not limited to the specific contravention or alleged contravention, covering a range of risks or different subdivisions within the organisation;
- commitments which are in accordance with community expectations and the public interest;
- conducting research and preparing technical guidance in relation to infrastructure in high risk environments, the results of which will assist industry practice;
- an expression of willingness and a commitment to update Comcare on the progress of the deliverables and achieving key milestones;
- an expression of readiness to consider Comcare's feedback regarding the development of the three deliverables;
- CSIRO's assurances regarding the quality of the deliverables to be provided by the undertaking; and
- an assurance that CSIRO is working to ensure the alleged contraventions do not reoccur.

20. I appreciate the obvious work and effort in preparing the undertaking, and I acknowledge the safety focus represented by the proposed deliverables.

21. I have considered each of the commitments offered and note the tangible outcomes of deliverables 1, 2 and 3. In particular, I note the following:

- Deliverable 1 comprises a novel training system training which encompasses an augmented and virtual reality training package that will apply to a significant number of CSIRO workers as well as to wet laboratories more broadly. This training will assist in identifying and controlling risks in a wet lab environment with an aim to focus on real-life threats that simulate either a generic situation based on a CSIRO wet lab or a specific situation based on the participant's own laboratory structure. The training program also covers a theoretical component which will equip workers with risk management processes as outlined by the WHS Act. It will be made available to industry partners and the public for three years.
- Deliverable 2 includes an update to the pre-existing 'Opportunity to Delivery' (**O2D**) system within CSIRO to include a health, safety and environment risk

management module. This module will be incorporated into the O2D user guides as well as being made available internally to project leaders and externally within the research sector. The usage of this environmental risk management module will be monitored and compiled into reports for internal stakeholders. This module will provide a broad overview of the risk profile of the project and consider the processes required to manage the risks which in turn will assure managers who approve the projects that risks to health, safety or the environment can be appropriately managed. This deliverable will assist in ensuring the alleged contraventions do not reoccur.

- Deliverable 3 involves producing technical guidance material to assist with standardisation of laboratory designs throughout CSIRO and the industry. The detailed technical guidance material subject to deliverable 3 will be formulated with input from independent experts which will facilitate improvements to industry practice. The technical guidance material will be distributed within CSIRO as well as more broadly in the industry. It is noted this technical guidance material will provide significant benefits in the future, given CSIRO has extensive refurbishment and infrastructure commitments each year.

DECISION

22. 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. CSIRO has made a commitment to outcomes that are of a quality that will deliver significant benefits across the workplace and broader research community, in the areas of risk assessment training, project risk management and technical infrastructure guidance. The WHS undertaking offers benefits that would not otherwise be achieved by a prosecution. These include novel training procedures to be made publicly accessible, improvements to CSIRO's internal risk management procedures, and the provision of technical guidance on infrastructure-related requirements.

CSIRO has assured Comcare that it is committed to ensuring the alleged contraventions are avoided in the future.

23. Under section 216 of the Act, Comcare accepts the WHS undertaking given by CSIRO dated 1 March 2021. Comcare will take all reasonable steps to discontinue the prosecution proceedings.



Vanessa Graham
Chief Operating Officer, Corporate Group
Comcare
(Delegate under s 216 of the *Work Health and Safety Act 2011 (Cth)*).