

**GLENCORE**



**Mine Managers Association of  
Australia CPD Seminar  
June 2019**

**Ulan West Underground Mine  
An Enforceable Undertaking**

# Learning Outcomes from this Presentation

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- Describe an Enforceable Undertaking;
- Present a practical example of offering, acceptance and implementation of an enforceable undertaking at an operation;
- Provide an opportunity to disseminate information about the industry education sessions and publicly available communications training package that will be available in the second half of 2019; and
- Discuss key learnings regarding implementation of an enforceable undertaking for Mine Managers.



# What is an Enforceable Undertaking (EU)

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- An EU is a *legally binding agreement* entered into as an alternative to having the matter decided through legal proceedings for an *alleged contravention* of the Act. An EU provides an opportunity for *significant work health and safety reform* to be undertaken.
- An EU is a high level sanction used where the alleged contravention is of a serious nature. It is a *written promise* made by *the person* to undertake certain activities within a particular timeframe.
- Typically, the activities required under an EU are *substantial* and will include *specific initiatives* to be undertaken by the person that will deliver *positive safety benefits* to the workplace as well as benefits which extend to the industry and community. The effort and commitment required of a person in delivering the initiatives within an EU to completion are *significant in terms of cost and resources*.
- After considering the *merits* of an EU proposed by a person, the Regulator may accept the EU as an alternative to prosecuting the person for the alleged contravention.

## **Decision – as published on DP&E Resource Regulator Website**

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### **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.

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.



# The Mine

*Ulan West Mine* is a large underground Longwall coal operation about 45 kilometres north east of Mudgee in the western coalfields of NSW.



# Inertisation Pipe Range

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- The mine installs a dedicated *'inertisation' pipe range* with a nominal diameter of 160mm on the roof of the transport roadway in each gate road Panel to deliver inert gas to the active LW goaf in the event it is deemed necessary.
- At the time of the incident this pipe range consisted of 10m lengths of non-metallic pipe with steel swaged joiners which connected 5 lengths to form *50m usable lengths* which were *towed* underground and installed in a gate road.
- During LW retreat pipes would be *recovered in 50m lengths* and *towed* to the surface, stored on a lay down area adjacent to CV003 and subsequently *pressure tested for re-use* in the next Panel.



# The Incident

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- In November 2015, a worker was performing a *pressure test* on the surface of the mine on a 50m length of *non-metallic pipe* that had been reclaimed from the underground Longwall panel.
- During testing a pipe pressure manifold was *ejected under pressure* and struck the worker resulting in him sustaining *leg, hand and facial injuries and ultimately allegedly suffering mental health complications.*

# Incident Animation



# Investigation of Incident

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**5 x 10m pipes joined to form 50m length**



# Non-metallic Pipe

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Swaged fitting on pipe



Assembled pipe



Separated pipe and fittings



# Regulator's Investigation Findings

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- Dimensional incompatibility between pipe size and swaged end size.
- The recovery process from underground and the subsequent transportation to and from the surface did not consider potential damage to the swage fitting/pipe connections.
- There was relative movement between the pipe and swaged fitting. This was contended to be most likely from the installation, transportation, recovery process imposing tension and bending forces to the swage fitting/pipe connection.
- No consideration was given to the sudden failure of the swaged end during the process of pressurised leak testing.
- Workers involved in the pressurised leak testing considered the process safe because the pipes were being pressurised to a working pressure of 870 kPa and the non-metallic pipes showed a work pressure rating of 900 kPa
- LTA procedure
- LTA training of workers

*\*For the avoidance of doubt, the assertions indicated above amount to a summary of the findings from the Regulator, and the listing of those findings does not amount to an admission of guilt by Ulan Coal Mines or Ulan West Operations.*

## Outcome of the Regulator's Investigation

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In 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*.

# Regulator Commences Prosecution – What are your options?

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## 1. Defend the charge

- Consider impacts both *financial* and *reputational*?

## 2. Plead guilty (if you form the view that liability rests with you)

- *Who will this benefit?*

## 3. Offer to undertake a series of activities – an Enforceable Undertaking

- *Research* other Enforceable Undertakings
- *Consider* options that will deliver Worker, Industry and Community *benefits*
- Consider an appropriate amount to *invest* in this Process
- *Engage* with the Regulator and discuss proposed undertaking ‘activities’ and *timeframe* for their delivery in detail
- Develop the FINAL EU proposal in *consultation* with the Regulator so that it can be discussed by the appropriate Committee
- Gain approval for the Undertaking from the Regulator including acceptance by the Regulator of *the person* who will take *responsibility* for the delivery of the EU



# The Undertaking

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- a. Conduct mental health training *seminars* for workers at the six coal mining operations in the western coalfields.
- b. Hold a *skills workshop* about the incident learnings with participants from the six coal mining operations and contractors in the western coalfields.
- c. Develop a *communication training package* for industry and present 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.
- d. Provide funding to purchase essential *rehabilitation equipment* for the Mudgee Hospital and for health facilities in Gulgong and Rylstone.
- e. Deliver a final *report* on the undertaking and outcomes to the Regulator.
- f. Pay the Regulator's costs for investigation of the incident, litigation and for monitoring of the EU.

## Delivery of the Undertaking

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# Manage the Undertaking's activities as a Project

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## 1. Form a Project team

- Team must have high level of support to get tasks completed on time

## 2. Identify a suitably qualified Project Manager with relevant HST experience

- STAC Consulting – Kylie Hannigan

## 3. Gain approval from the Regulator to utilise Kylie as Project Manager

- Mark Freeman

## 4. Determine Project deliverables and document a schedule which meets the Compliance Monitoring Plan as supplied by the Regulator

- Meet with the team regularly
- Resolve impasses and impediments that can derail the Project

## 5. Provide the Regulator with regular updates on progress against the Monitoring Plan

## 6. Track Project progress against the Monitoring Plan and secure necessary resources so that deadlines are met

# Communications Training Package

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# Skills Workshop

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The target areas workshopped for development of the Industry Communication Package were:

1. Contractor Management:
2. Legal Obligations for Contractors:
3. Control of Energy:
4. Associated Non-Technical Skills (ANTS):

# Communications Training Package

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The Companies engaged a training provider to utilise the output derived from the skills workshop and feedback provided by the Skills Workshop's participants to develop a Communications Training Package.

The Training Package will be presented to a broader industry audience, comprise a slide pack and other associated (handout) materials of learnings from the Incident and will cover the following outputs:

**1. Contractor management:**

This will include descriptions and examples of good practices in contractor management, planning tasks, identification and assessment of risk and implementing risk controls including use of procedures.

**2. Legal obligations for contractors:**

Setting out legal obligations under applicable work health and safety legislation, including the interrelationship between the contractors' safety management plans and those that exist at the mine sites at which those contractors conduct work.

**3. Control of energy:**

This will include information about the identification of energy sources, good practice control of energy, general practices and procedures and the importance of testing for dead.

**4. ANTS:**

This will include information about factors for situation awareness, effective decision-making and effective communications and leadership.

# Where to find the Communications Training Package

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Once accepted in its FINAL form the Training Package will be made available to Industry as follows:

- Published on the Glencore Ulan Coal Mines Limited Website
- Provided in FINAL form to the Resource Regulator

## Key Learnings for Managers

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# Learnings from the experience

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- It will always be a better outcome for all involved parties to not have an incident **occur** in the first place
- However, if you are dealing with a Serious Incident that may result in a prosecution, consider both the impacts and benefits of:
  - Defence
  - A guilty plea
  - An Enforceable Undertaking

# Learnings from the experience

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- An EU is a legally binding agreement between a person and the Resource Regulator
  - It is not to be taken lightly
  - It is time consuming so consider who needs to be involved. For example a Project Manager may be better off stepping out of their current role and into this one until the EU is delivered completely
  - Consider engaging an independent professional for this role (in our case the EU was required to be delivered over 19 months)
- Enforceable Undertakings are not a cost saving initiative
- Getting involvement from members of a site Management team who still have an Operation to run will require some horsepower. Hence the need for Senior Management involvement.