

Work Health and Safety Act 2012 (SA)

Part 11 Enforceable Undertaking

REASON FOR DECISION

Entity: Adelaide Brighton Cement Ltd

ABN: 96 007 870 199

Entity Address:

Location of incident: Klein Point Quarry ,299 Klein Point Road, Stansbury SA

Date of incident: 10 May 2021

1. History of the application

- 1.1 The undertaking given by Adelaide Brighton Cement Ltd relates to an alleged contravention (incident) that occurred at Klein Point Quarry, 299 Klein Point Road, Stansbury SA (the workplace) on 10 May 2021.
- 1.2 The injured party was employed by Adelaide Brighton Cement Ltd and they were replacing structural steel work around a crusher at the incident site, working at heights, approximately 3.76m from the ground. During the re-assembly phase of the maintenance project, a portion of the fixed walkway was removed resulting in a live edge without adequate railing. The injured party fell from the platform sustaining serious injuries.
- 1.3 Following an investigation by SafeWork SA (SWSA) inspectors, prosecution action was commenced by the Crown Solicitors Office (by complaint and summons) against Adelaide Brighton Cement Ltd, who had a health and safety duty pursuant to section 19(1) of the *Work Health and Safety Act 2012 (SA)* (the WHS Act), for failing to comply, so far as a reasonably practicable, with the duty contrary to section 32 of WHS Act.
- 1.4 On 9 May 2023, the CSO advised SWSA of Adelaide Brighton Cement Ltd.'s intention to submit an enforceable undertaking (EU) application for this matter.
- 1.5 On 6 September 2023, after negotiations with Adelaide Brighton Cement Ltd a final submission was presented for assessment. The assessment panel completed an evaluation of the revised EU and based on the amendments made the panel members recommended the EU be considered for acceptance by the Regulator.

2. Legislation and Policy

- 2.1 It is alleged that Adelaide Brighton Cement Ltd had a health and safety duty pursuant to section 19(1) of the WHS Act failed to comply, so far as reasonably practicable, with the duty contrary to section 32 of the WHS Act.

- 2.2. 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.
- 2.3. Pursuant to section 216(4) of the WHS Act, the WHS regulator must issue, and publish on the WHS regulator's website, general guidelines in relation to the acceptance of WHS undertakings under the WHS Act.
- 2.4. Section 217(1) of the WHS Act requires that the WHS regulator must give the person seeking to make a WHS undertaking written notice of the decision to accept or reject the undertaking and the reasons for that decision.

3. Material and evidence considered by WHS regulator

- 3.1 In deciding this matter, the assessment panel 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 July 2023
 4. WHS EU application submitted by PCBU dated 6 September 2023.
 5. Complaint and Summons prepared by the Crown Solicitors Office
 6. Brief of Evidence prepared by the Principal Investigator (SWSA)

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 Adelaide Brighton Cement Ltd 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 Adelaide Brighton Cement 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 Adelaide Brighton Cement Ltd are proportionate to the objective gravity of the alleged contraventions by Adelaide Brighton Cement Ltd and account for the benefits that would accrue to them through avoiding prosecution.
- 4.6I I find that Adelaide Brighton Cement Ltd have acknowledged the alleged contraventions and shown regret regarding the occurrence and the consequences of the alleged contravention.
- 4.7 I find that Adelaide Brighton Cement Ltd, who had a health and safety duty under the WHS Act, has failed to comply, so far as reasonably practicable, with that duty contrary to section 32 of the WHS Act.

- 4.8. I acknowledge the assurance given by Adelaide Brighton Cement Ltd 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 Adelaide Brighton Cement Ltd 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 acknowledge that all panel members have recommended acceptance of the undertaking as an appropriate enforcement outcome in the circumstances of this case.

5. 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 Adelaide Brighton Cement Ltd meets 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 Adelaide Brighton Cement Ltd 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 prosecution, due to the opportunity to provide lasting organisational change within Adelaide Brighton Cement Ltd 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 as an EU.



Glenn Farrell

Executive Director,

SafeWork SA

11 September 2023