

EU 1 of 2023

NOTICE OF WORKSAFE COMMISSIONER'S DECISION
TO ACCEPT A WORK HEALTH AND SAFETY UNDERTAKING
AND REASONS FOR DECISION

Part 11

Work Health and Safety Act 2020

Fortescue Ltd (ACN: 002 594 872)

CHARGES

Mine site:	Christmas Creek Operations
Court number:	PE 6694 - 6712/2023 (19 charges)
Alleged contravention:	section 171(7) <i>Work Health and Safety Act 2020</i> Refused or failed to comply with a requirement to provide documents in relation to Christmas Creek Operations, to an inspector within a specified period, without a reasonable excuse.
Date of alleged contravention:	29 July 2022
Mine site:	Cloudbreak Operations
Court number:	PE 6690/2023 (1 charge)
Alleged contravention:	section 171(7) <i>Work Health and Safety Act 2020</i> Refused or failed to comply with a requirement made by an inspector, to answer questions in relation to CloudBreak Operations, within a specified period, without a reasonable excuse.
Date of alleged contravention:	4 August 2022
Mine site:	Solomon Operations
Court number:	PE 6671 - 6684/2023 (14 charges)
Alleged contravention:	section 171(7) <i>Work Health and Safety Act 2020</i> Refused or failed to comply with a requirement to provide documents in relation to Solomon Operations, to an inspector within a specified period, without a reasonable excuse.
Date of alleged contravention:	29 July 2022

DECISION

1. Pursuant to section 216(1) of the *Work Health and Safety Act 2020*, (**WHS Act**) it is my decision to accept the WHS Undertaking (**Undertaking**) proposed by Fortescue Ltd in relation to the above thirty-four charges.

REASONS

Background

2. Fortescue Ltd, formerly Fortescue Metals Group Ltd (**Fortescue**), is a publicly traded company registered and based in Australia, deriving revenue from the sale of iron ore. The company engages in all aspects of mining activities in the Pilbara region of Western Australia and has a green energy division headquartered in Australia that operates throughout the world.
3. Fortescue employs over five thousand workers and operates at mine sites including Christmas Creek Operations, Cloudbreak Operations and Solomon Operations in the Pilbara region of Western Australia.
4. On 11 July 2022, a WorkSafe Inspector issued notices pursuant to section 171 of the WHS Act. The notices required Fortescue to provide information in relation to alleged incidents of exposure to psychosocial harm including sexual assault and sexual harassment, physical assault and bullying at its Christmas Creek Operations between 1 January 2019 and 20 March 2022. Charges PE 6694 - 6712/2023 alleged Fortescue did not comply with nineteen of these notices and contravened section 171(7) of the WHS Act. Each of the nineteen alleged offences attracts a maximum fine of \$55 000.
5. On 21 July 2022, a WorkSafe Inspector issued a notice pursuant to section 171 of the WHS Act requiring Fortescue to answer questions in relation to alleged incidents or events involving psychosocial harm including sexual assault and sexual harassment, physical assault and bullying at its Cloudbreak Operations between 1 January 2019 and 31 March 2022. Charge PE 6690/2023 alleged Fortescue did not comply with this notice and contravened section 171(7) of the WHS Act. The alleged offence attracts a maximum fine of \$55 000.
6. On 11 July 2022, a WorkSafe Inspector issued notices pursuant to section 171 of the WHS Act requiring Fortescue provide information relating to alleged incidents of psychosocial harm including sexual assault and sexual harassment, physical assault and bullying at its Solomon Operations between 1 January 2019 and 20 March 2022. Charges PE 6671 - 6684/2023 alleged Fortescue did not comply with fourteen of these notices and contravened section 171(7) of the WHS Act. Each of the alleged offences attracts a maximum fine of \$55 000.

Relevant statutory provisions

7. Section 171(1) of the WHS Act provides:

- (1) An inspector may, for the purpose of this Act, do the following (after entering a place under Division 3 or at any other time) –
 - (a) require a person to tell an inspector who has custody of, or access to, a document;
 - (b) require a person who has custody of, or access to, a document to provide that document, or a copy or reproduction of that document, to an inspector –
 - (i) while the inspector is at a place entered under Division 3; or
 - (ii) with a specified period;
 - (c) require a person –
 - (i) to submit to an interview with an inspector at a reasonable time and place, and in the way, determined by that inspector; and
 - (ii) to answer any questions put by that inspector during the interview; and
 - (iii) if and as directed by that inspector, to verify any answers given by statutory declaration;
 - (d) require a person –
 - (i) to answer, within a specified period and in a specified way, any questions put by an inspector otherwise than by way of an interview; and
 - (ii) if and as directed by that inspector, verify and answers given by statutory declaration

8. Section 171(7) of the WHS Act provides:

- (7) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

9. Section 216 of the WHS Act provides:

216. Regulatory may accept WHS undertakings

- (1) 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 this Act.
- (2) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is industrial manslaughter or a Category 1 offence.
- (3) 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.

Applicable principles

10. In deciding whether to accept the Undertaking I have had regard to the *WorkSafe Western Australia Policy: WHS Undertakings 2022* (released March 2022) (the **Policy**). I have had regard to the considerations set out in section 8 of the Policy.

Consideration

11. I consider that the actions Fortescue has agreed to undertake will significantly strengthen compliance with the WHS Act and build sustainable performance beyond the obligations to comply with the WHS Act. I also consider the Undertaking will offer long term, sustainable, measurable, and tangible work health and safety benefits to Fortescue's workplace, the mining industry, and the community. The strategies provided by the Undertaking are directly linked to the growing community concern with psychosocial harm at work.

12. I have considered Fortescue's considerable operations and means to comply with the Undertaking.

13. Finally, I have considered Fortescue's lack of any convictions under the WHS Act, or its predecessor the *Mines Safety and Inspection Act 1994*.



Sally North
Acting WorkSafe Commissioner

18 December 2023