



# Environmental Defenders Office

Our Ref: KR:SE:10223

19 September 2025

Mel Smith  
Senior Specialist, Enforcement & Compliance Portfolio Coordination  
Enforcement & Compliance  
Australian Securities and Investments Commission

Australian Securities Exchange  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

**By email only;** [Mel.Smith@asic.gov.au](mailto:Mel.Smith@asic.gov.au), [info@asx.com.au](mailto:info@asx.com.au)

Dear Ms Smith

## **Complaint regarding Whitehaven Coal Limited: potential misleading or deceptive conduct**

1. We act for Lock the Gate Alliance Ltd.
2. Our client is concerned about certain statements made by Whitehaven Coal Ltd (ASX: WHC) (**Whitehaven**) regarding the number of penalties and enforcement actions it has received for environmental infringements in the past financial year. In the statements of concern, Whitehaven represented that it has experienced “zero environmental enforcement action events” in the Financial Year ending 30 June 2025 (FY25) in various places in its recent investor material including its annual report, sustainability report, ASX announcement and website. These statements are collated at **Annexure A** and set out below.
3. For the reasons that follow, our client considers that Whitehaven’s statements may constitute misleading or deceptive conduct in contravention of section 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**) and/or section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
4. As such, our client requests that:
  - (1) Australian Securities and Investments Commission (**ASIC**) investigate whether Whitehaven has engaged in misleading or deceptive conduct in contravention of the Corporations Act and/or the ASIC Act; and
  - (2) ASX require Whitehaven to issue a corrective announcement in relation to the relevant statements.

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## Whitehaven's relevant statements

5. In a webpage dated 21 August 2025 titled 'Full Year Results', available on the 'News' section of Whitehaven's website and attached at **Annexure A**, Whitehaven made the following statements:<sup>1</sup>
  - (1) "Whitehaven's FY25 results include... zero environmental enforcement actions"
  - (2) "[environmental enforcement actions] include penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions".
6. In its ASX announcement dated 21 August 2025 and summarised at **Annexure A**, Whitehaven made the following statements under the heading 'Strong operational performance together with diversification and scale benefits delivered in FY25':
  - (1) "Whitehaven's FY25 results include...zero environmental enforcement actions".<sup>2</sup>
  - (2) "[environmental enforcement actions] include penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions."<sup>3</sup>
7. In its pdf presentation titled 'Full Year Results FY25', dated 21 August 2025, available on the 'News' section of Whitehaven's website and summarised at **Annexure A**, Whitehaven made the following statements under the heading 'Good safety and environmental performance':<sup>4</sup>
  - (1) "Zero environmental enforceable action events reported in FY25 consolidating FY23 and FY24 excellent performance"
  - (2) "Events resulting in environmental enforceable actions include penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions."
8. In its Financial Report for the year ended 30 June 2025, Whitehaven made the following statements:
  - (1) "Our commitment to safe and responsible operations also delivered excellent results. We are proud to report another year of zero environmental enforcement actions."<sup>5</sup>
  - (2) "In parallel, environmental performance was strong in FY25, with no incidents triggering or likely to trigger enforcement actions, leading to a Stretch outcome."<sup>6</sup>
  - (3) "Enforcement actions are defined to include a range of possible infringements including penalty notices, enforceable undertakings, suspensions, prevention notices and prosecutions, and are penalised in the year of potential infraction. There is no future reversal if they are subsequently cleared, which encourages employees to work constructively with regulators on continual improvement."<sup>7</sup>
9. In a presentation title 'Sustainability Report 2024', available under the 'Sustainability' section of Whitehaven's website, Whitehaven made the following statements:

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<sup>1</sup> Whitehaven Coal, 'News', accessed at: <[Full Year Results FY25 - Whitehaven Coal](#)>

<sup>2</sup> Whitehaven, 'ASX Announcement', 21 August 2025, p. 1

<sup>3</sup> Whitehaven, 'ASX Announcement', 21 August 2025, p. 4

<sup>4</sup> Whitehaven, 'Full Year Results FY25' (presentation, 21 August 2025), p. 4

<sup>5</sup> Whitehaven, Financial Report: Appendix 4E and Annual Financial Report for the year ended 30 June 2025, p. 27

<sup>6</sup> Whitehaven, Financial Report: Appendix 4E and Annual Financial Report for the year ended 30 June 2025, p. 41

<sup>7</sup> Whitehaven, Financial Report: Appendix 4E and Annual Financial Report for the year ended 30 June 2025, p. 41

- (1) “In FY24, we received zero environmental enforcement actions across all our operations.”<sup>8</sup>
- (2) “Includes Queensland mines. Environmental enforcement actions include penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions.”<sup>9</sup>

(together, the **Statements**).

10. Our client considers that by making the Statements, alone or in combination, Whitehaven represented that it has received no penalties, convictions, charges or fines in relation to its mining operations in the financial year of 2023/2024 and 2024/2025.

## Background

11. Whitehaven Coal is a listed entity that owns several coal mines in NSW and Queensland. This includes four thermal coal mines in the Gunnedah Basin. One of those is the Maules Creek Mine, which is a large open-cut thermal coal mine, located in the Leard State Forest and the Narrabri Shire municipality, in the North-west Slopes region of New South Wales. Whitehaven holds a 75% interest in and is the operator of the mine through its wholly owned subsidiary, Maules Creek Coal Pty Ltd (**MCCPL**).<sup>10</sup>
12. The Maules Creek Coal mine conducted a blast operation on 20 August 2020 that caused the nearby Boggabri Coal mine to evacuate their workers due to the strong shockwaves and high quantity of dust and fumes resulting from the blast. Following the incident, the EPA undertook an investigation, and as a result issued 4 criminal charges on 16 August and 13 December 2021. MCCPL contested the charges and as a result, the case was set down for hearing and heard in 2023-2024.
13. On 4 October 2024, the Land and Environment Court found MCCPL guilty on all 4 charges as follows:<sup>11</sup>
  - (1) An offence against s 64(1) of the *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**) of contravening condition O1.1 of the environmental protection licence (**EPL**) in not carrying out licensed activities in a competent manner for not programming the blast with an appropriate burden release time;
  - (2) An offence against s 64(1) of the POEO Act of contravening condition O1.1 of the EPL in not carrying out licensed activities in a competent manner by stemming length of the blast holes sufficiently;
  - (3) An offence against s 64(1) of the POEO Act of contravening condition O1.1 of the EPL in not carrying out licensed activities in a competent manner by overloading the blast holes; and
  - (4) An offence against s 140(1) of the POEO Act of causing the emission of noise and the noise was caused by its failure to deal with materials in a proper and efficient manner.

<sup>8</sup> Whitehaven, Sustainability Report 2024, p. 37.

<sup>9</sup> Whitehaven, Sustainability Report 2024, p. 37.

<sup>10</sup> ASIC, ‘Current Company Extract for Maules Creek Coal Pty Ltd’, as at 18 August 2023.

<sup>11</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd \(No 3\)](#) [2024] NSWLEC 97, [17]

14. On 27 August 2025, the Court finalised penalties and orders as follows:<sup>12</sup>

- (1) Monetary penalties in the sum of \$50,000 for each offence, a total of \$200,000<sup>13</sup>
- (2) Pursuant to s 122(2) of the *Fines Act 1996* (NSW), 50% of the fines imposed on the defendant to be paid as a moiety.
- (3) Pursuant to s 250(1)(c) of the POEO Act, the defendant must make a contribution of \$100,000 to the NSW National Park and Wildlife Service, within 28 days of the order, to contribute to the Brush-tailed Rock-wallaby Mount Kaputar National Park Translocation Project.
- (4) Pursuant to s 257B of the *Criminal Procedure Act 1986* (NSW), the defendant is to pay the prosecutor's legal costs as agreed or as may be determined under s 257G of that Act.
- (5) Pursuant to s 250(1)(a) of the POEO Act, the defendant, at its own expense, must within 28 days of the date of the order, cause a notice of a minimum size of a quarter page to be published within the first 12 pages of the Sydney Morning Herald, Mining Magazine Australia, The Australian Financial Review and the Northern Daily Leader with a notification of the legal conviction.
- (6) Pursuant to s 250(1)(b) of the POEO Act, the defendant, at its own expense, within 28 days of the date of the order is to cause a notice to be placed on the Whitehaven Coal Limited company website under the 'News' section about this conviction.
- (7) The defendant is to cause a notice to be placed in the next annual Sustainability Report published by Whitehaven Coal Limited after the date of this order.<sup>14</sup>
- (8) Within 14 days of the order, the defendant must publicise the offences and the orders made against it by posting a notification of the conviction to Whitehaven Coal's LinkedIn page, together with a hyperlink directly to the Court's judgement as published on the New South Wales Caselaw website and tagging the Environment Protection Authority in the post. The post is to be made between the times of 8am and 10am or between 4:30pm and 6:30pm on a weekday. The post must remain a pinned post on the LinkedIn page for a minimum of 7 days.<sup>15</sup>

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<sup>12</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd \(No 4\)](#) [2025] NSWLEC 92, [216]; [230].

<sup>13</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd \(No 4\)](#) [2025] NSWLEC 92, [216]

<sup>14</sup> Note that Whitehaven successfully sought a temporary stay of this order until 30 September 2025 for the purpose of lodging an appeal.

<sup>15</sup> Note that Whitehaven successfully sought a temporary stay of this order until 30 September 2025 for the purpose of lodging an appeal.

15. In her judgment, Her Honour Justice Pritchard found that the blast was carried out in a way that had potentiality caused risk of harm to vegetation in the biodiversity corridor, which was some 30-40 metres from the blast zone.<sup>16</sup> She also found that the blast had “considerable impact on lay witnesses, in particular Mr Byrnes and Ms Severin who presented to Boggabri Hospital after the blast” and “potentiality of risk of harm to workers at the Boggabri coal mine”.<sup>17</sup>

### **Why the Statements are potentially misleading or deceptive**

#### *Relevant provisions of the Corporations Act and ASIC Act*

16. Section 1041H of the Corporations Act provides:

*(1) A person must not, in this jurisdiction, engage in conduct in relation to a financial product or financial service that is misleading or deceptive or is likely to mislead or deceive.*

17. Section 12DA of the ASIC Act provides:

*(1) A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.*

18. The Statements were aimed at members of the public including investors or potential investors in Whitehaven, having been made publicly to the ASX and/or made available in the ‘News’ section of its website. As such, the Representation was made in relation to a financial product (being Whitehaven’s shares) for the purposes of section 1041H of the Corporations Act, or in relation to financial services, as they relate to dealing in or issuing of a financial product (being Whitehaven’s shares), for the purposes of section 12DA of the ASIC Act.
19. The Statements were also made in trade or commerce for the purposes of section 12DA of the ASIC Act, being external communications made in furtherance of Whitehaven’s commercial interests.

#### *Alleged misleading or deceptive nature of the Statements*

20. Our client's view is that the Statements are potentially misleading and deceptive because Whitehaven’s wholly owned subsidiary was convicted, as outlined above, in October 2024 of environmental charges for failing to carry out their licensed activities in a competent manner. This conviction occurred within the financial year of 2024/2025, so Whitehaven’s representation that they received “zero environmental enforcement actions” in that year is not accurate.
21. It is our client’s belief that a reasonable consumer viewing the Statements would understand “enforcement action” to include any convictions or sentences that have been handed down to Whitehaven in the past financial year. However, Whitehaven has failed to disclose the existence of a recent environmental conviction. The conviction is significant: the Court found that MCCPL gave “no consideration of the safety of persons at the Boggabri coal mine where personnel were

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<sup>16</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd](#) (No 4) [2025] NSWLEC 92 [116]

<sup>17</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd](#) (No 4) [2025] NSWLEC 92 [117], [121]

less than 3000m from the blast”<sup>18</sup> and created “safety issue in terms of flyrock and “air blasting”...a potential danger to the environment”.<sup>19</sup>

22. The Statements include a variety of qualifications that define “enforcement action” to include any “penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions”. Our client is of the view that it is important to consider the entirety of the criminal process in considering this term and not merely the date the offence occurred. In the case of MCCPL, the conviction occurred last year during the 2024/2025 financial year and judgment outlining the fine and other remedies was only recently handed down. By their very nature, prosecutions take time to finalise as they involve the need to investigate, then have a matter determined if contested through a lengthy court process. As MCCPL contested this charge, the matter has taken even longer to progress through the Land and Environment Court (including an appeal against bias of the Judge) and required the consideration of significant evidence both on liability and harm at two separate hearings.
23. The Annual Financial report, outlined at [13], defines “enforcement actions” in a more restricted manner, stating that Whitehaven records any incidents “in the year of potential infractions”.<sup>20</sup> However, in the initial representation on page 27 that Whitehaven has received “another year of zero environmental enforcement actions”, there is no reference directing readers to this more significantly limited definition of “enforcement actions”. It is included, some 14 pages later.<sup>21</sup> It therefore is reasonable to expect that readers would interpret the statement to mean that there have been zero enforcement actions against Whitehaven, including convictions or determinations of liability, in the recent financial year. Nor do the other statements include any similar limitation.
24. In addition, the Statements represent that the “zero environmental enforcement proceedings” are “consolidating FY23 and FY24 excellent performance”,<sup>22</sup> and that this is “another year of zero environmental enforcement actions”.<sup>23</sup> These representations imply that Whitehaven also received zero environmental enforcement actions in the financial years prior to 2025. Given that the prosecution proceedings for the most recent case were heard between 30 January and 3 February 2023, 6 and 10 February 2023, 18 and 21 September 2023, and 13 and 16 November 2023,<sup>24</sup> this ignores the existence of the prosecution which commenced in the financial year of 2022-2023 and continued throughout the financial year of 2023-2024. Furthermore, using a broad term such as “there have been zero enforcement actions against Whitehaven” implies there have been no actions throughout this period.

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<sup>18</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd \(No 3\)](#) [2024] NSWLEC 97 [484].

<sup>19</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd \(No 3\)](#) [2024] NSWLEC 97 [446].

<sup>20</sup> Whitehaven, Financial Report: Appendix 4E and Annual Financial Report for the year ended 30 June 2025, p. 41

<sup>21</sup> Whitehaven, Financial Report: Appendix 4E and Annual Financial Report for the year ended 30 June 2025, p. 27

<sup>22</sup> Whitehaven, ‘Full Year Results FY25’ (presentation, 21 August 2025), p. 4

<sup>23</sup> Whitehaven, Financial Report: Appendix 4E and Annual Financial Report for the year ended 30 June 2025, p. 41

<sup>24</sup> [Environment Protection Authority v Maules Creek Coal Pty Ltd \(No 3\)](#) [2024] NSWLEC 97, [5].

## Harm associated with the conduct

25. These misrepresentations may cause harm to the broader public, including investors or potential investors in Whitehaven, who might rely on them to understand the environmental impacts of Whitehaven's operations. As highlighted in our previous complaint to ASIC dated 26 June 2023, Whitehaven has a particularly poor history of environmental compliance, having regularly been the subject of enforcement action across their sites.<sup>25</sup> In NSW, the Land and Environment Court has heard five criminal cases involving their companies, including:

- (1) **2019**: Convicted and fined \$38,500 for a 2016 blast fume incident at Rocglen Mine in contravention of s 64 of the POEO Act: *Environment Protection Authority v Whitehaven Coal Mining Limited* [2019] NSWLEC 27.
- (2) **2021**: Convicted of taking water from a water source without an access licence, contrary to s 60A(2) of the *Water Management Act 2000* (NSW) and fined a total of \$187,500: *Natural Resources Access Regulator v Maules Creek Coal Pty Ltd* [2021] NSWLEC 135
- (3) **2021**: Convicted of nine offences under the *Mining Act 1992* (NSW) and fined a total of \$372,500, including for failing to prepare a site rehabilitation plan for Whitehaven's Narrabri mine: *Stephen James Orr v Narrabri Coal Operations Pty Ltd; Stephen James Orr v Narrabri Coal Pty Ltd* [2021] NSWLEC 85.
- (4) **2022**: Convicted of three offences of polluting waters with sediment and expanded polystyrene beads, incurring a penalty of \$158,750: *Environment Protection Authority v Maules Creek Coal Pty Ltd* [2022] NSWLEC 33.
- (5) **2024** (most recent conviction): Convicted of 4 charges in relation to a blast conducted in contravention of s 64 of the POEO Act: *Environment Protection Authority v Maules Creek Coal Pty Ltd (No 3)* [2024] NSWLEC 97

## Request to investigate


26. For the above reasons, our client requests that:

- (1) ASIC investigate whether Whitehaven has engaged in misleading or deceptive conduct in contravention of the Corporations Act and/or ASIC Act; and
- (2) ASX require Whitehaven to issue a corrective announcement in relation to the Statements

If you would like to discuss any matters raised in this complaint, please do not hesitate to contact us at [kirsty.ruddock@edo.org.au](mailto:kirsty.ruddock@edo.org.au).

Yours faithfully

**Environmental Defenders Office**



**Kirsty Ruddock**

Managing Lawyer

Corporate and Commercial

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<sup>25</sup> Environmental Defender's Office, *Letter to Australian Securities and Investments Commission Re: Complaint regarding potential breaches of s 180(1) of the Corporations Act 2001 (Cth) by directors of Whitehaven Coal Limited* (26 June 2023), see [Complaint Whitehaven Coal.pdf](#)





## Annexure A

**Whitehaven Coal Annual Financial Report 2025: accessible at**  
[<WHC FY25 Appendix 4E and Annual Financial Report.pdf>](#)

### Page 27

Our commitment to safe and responsible operations also delivered excellent results. We are proud to report another year of zero environmental enforcement actions. Furthermore, our Group TRIFR improved to 4.6, a 10% improvement on the 5-year average of 5.1 for our consolidated NSW and new QLD operations.

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FY25 Targets and Results						
KPI Unit	Weighting	FY25 Result	Threshold (50%)	Target (100%)	Stretch (150%)	FY25 SIP Outcome (% of stretch)
HEALTH, SAFETY AND ENVIRONMENT						
TRIFR	15%	4.63	5.6	5.1	4.6	98%
						
Environmental Compliance (Enforceable Actions)	15%	0	5	3	0	100%
						
<p>Safety remains our first and foremost priority. Following ongoing investment and focus, the Company's TRIFR continued to improve, decreasing to 4.63 in FY25 relative to a 5-year average of 5.1 for the combined NSW and QLD operations. This outcome continues to track favourably to comparable industry performance. In parallel, environmental performance was strong in FY25, with no incidents triggering or likely to trigger enforcement actions, leading to a Stretch outcome.</p> <p>The performance hurdles for both metrics were deliberately set to be challenging. For safety, the target ranges were raised to reflect the inclusion of the QLD assets and their higher historical TRIFR; these targets were designed to incentivise improvement on the combined 5-year average. To account for the Company's increased scale, the Threshold and Target objectives for Environmental Compliance were also increased from the prior year. The Stretch objective was set at zero incidents however, consistent with the prior year's stretch outcome, a rigorous standard given the Company's larger operations.</p> <p>Enforcement actions are defined to include a range of possible infringements including penalty notices, enforceable undertakings, suspensions, prevention notices and prosecutions, and are penalised in the year of potential infraction. There is no future reversal if they are subsequently cleared, which encourages employees to work constructively with regulators on continual improvement.</p>						

**Presentation of Full Year Results FY25: accessible at** [<Whitehaven Results>](#)

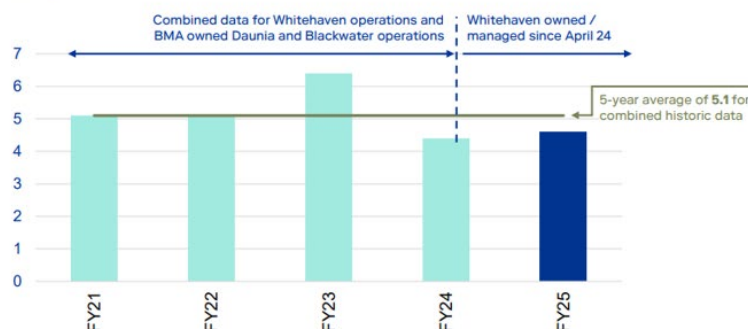


## Good safety and environmental performance

QLD and NSW operations consolidated including 5-year historic data



Total Recordable Injury Frequency Rate (TRIFR)  
- employees and contractors



**Whitehaven ASX Announcement- 21 August 2025: accessible at**  
[<WHC FY25 Results Announcement.pdf>](#)

Whitehaven's FY25 results include:

- A total recordable injury frequency rate (TRIFR) of 4.6 for the expanded business and zero environmental enforcement actions<sup>1</sup>

Footnote refers to EEA as including penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions.

**Whitehaven Sustainability Report 2024: accessible at** [<WHC 2024 Sustainability Report.pdf>](#)

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## Environmental management

We are committed to protecting the environment and minimising adverse impacts from our operations.



### Compliance

We aim to deliver strong performance in complying with environmental legislation and regulations and have strategic targets in relation to environmental enforcement actions linked to executives' remuneration incentive opportunity.

In FY24, we received zero environmental enforcement actions across all our operations.<sup>1</sup>

Footnote 1- notes Environmental enforcement actions include penalty infringement notices, enforceable undertakings, suspensions, prevention notices and prosecutions.

**Whitehaven webpage at** [<Full Year Results FY25 - Whitehaven Coal>](#)

**Includes link to: Full Year Results FY25**