

WHS undertaking varied by Mt Arthur Coal Pty Ltd

Entity	Mt Arthur Coal Pty Ltd (ACN 000 181 902)
Issue	Application to vary a WHS undertaking made by Mt Arthur Coal Pty Ltd
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Regional NSW

Section 221 agreement

Pursuant to section 221 of the *Work Health and Safety Act 2011* (**WHS Act**), I, Anthony Keon, having a delegated authority from the Secretary of Regional NSW (**the regulator**), **give written agreement** to the varying of the WHS undertaking made by Mt Arthur Coal Pty Ltd (**Mt Arthur**) as follows:

- The compliance timeframe for initiative 2(b) as set out in section 1.2 on page 14 of the WHS undertaking is extended to 18 September 2020.

All other terms and commitments within the WHS undertaking remain in force.

In accordance with section 221(3) of the WHS Act, the notice of variation of the WHS undertaking will be published on the regulator's website.

Reasons for agreement

Legislation

1. The Secretary of Regional NSW (**Secretary**) is the regulator for the purposes of the WHS Act. The Secretary has delegated the function under section 221 of the WHS Act to the Executive Director, Resources Regulator.¹

2. Section 221 of the WHS Act relevantly states:

221 Withdrawal or variation of WHS undertaking

- (1) *A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:*
- (a) *withdraw the undertaking, or*
 - (b) *vary the undertaking.*
- (2) *However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.*
- (3) *The regulator must publish, on the regulator's website, notice of the withdrawal or variation of a WHS undertaking.*

¹ *Work Health and Safety Act 2011*, sch 2 cl 1(1)(b) and *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, s 5(1).

3. The Secretary has issued, and published on the Resources Regulator's website, guidelines relevant to the varying of WHS undertakings (**Guidelines**), as required by section 230(4) of the WHS Act.

Background

4. Mt Arthur Coal Pty Limited is the mine operator of the Mt Arthur Mine located about five kilometres southwest of Muswellbrook NSW.
5. On 10 August 2017, a worker received serious burn injuries after a fire started when refueling a diesel-powered tyre handler at the mines heavy vehicle refueling facility (fuel farm). The fuel ignition also set the tyre handler on fire.

WHS undertaking

6. On 25 July 2019, Mt Arthur submitted a signed WHS undertaking to the regulator.
7. The undertaking given by Mt Arthur was accepted by the delegate of the Secretary on 2 August 2019.
8. Initiative 2(b) as set out in section 1.2 on page 14 of the WHS undertaking requires completion by 20 June 2020.
9. The restrictions put in place by the Government in response to the Covid-19 pandemic, in conjunction with Mt Arthur's commitment to the health and safety of its workers and other persons, has made it not possible to complete the project work for initiative 2(b) within the timeframe set out in the WHS undertaking.

Reasons for variation

10. Relevant State Governments have closed their borders, with a requirement to isolate for 14 days if you choose to travel interstate.
11. These restrictions are affecting the progress of the works, in particular supply and transport delays of parts and materials and restriction on available labor required for fabrication, painting and installation.
12. Restrictions have been imposed on any workers/visitors travelling to site, unless defined as business critical due to social distancing requirements.

Conclusion

13. I am satisfied that Mt Arthur have made reasonable efforts to comply with the WHS undertaking and the compliance timeframes set out in the WHS undertaking dated 2 August 2019.
14. In view of the restrictions put in place by the Government in response to the Covid-19 pandemic and Mt Arthur's commitment to the health and safety of its workers and other persons, I am satisfied that Mt Arthur cannot meet the compliance dates in relation to initiative 2(b) of the WHS undertaking, for reasons beyond Mt Arthur's control.
15. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.

16. Accordingly, I have determined to agree to vary the WHS undertaking made by Mt Arthur as proposed.

Date of decision: **17 June 2020**



Anthony Keon
Executive Director
Resources Regulator
Regional NSW

NOTE In accordance with section 221 of the Work Health and Safety Act 2011 this notice will be published on the regulator's website.

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