

WHS undertaking varied by Clarence Coal Pty Limited

Entity	Clarence Coal Pty Limited (ACN 083 465 212)
Issue	Application to vary a WHS undertaking made by Clarence Coal Pty Limited
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Garvin Burns 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, Garvin Burns, having a delegated authority from the Secretary of Regional NSW (**the regulator**), **give written agreement** to the varying of the WHS undertaking made by Clarence Coal Pty Limited (**Clarence Coal**) as follows:

- The compliance timeframe of enforceable term B-10 is extended by six months which extends the completion date for the WHS undertaking to 7 May 2022.
- The compliance timeframe for the final deliverable of Project 4 of the WHS undertaking is extended by six months.

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 the Department 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. On 4 July 2018, Messrs Phillip and Nethen McFadden, were working underground in the 806A panel of the Clarence Colliery when a large amount of material, comprising coal and mudstone, collapsed from the rib and cornice. The material struck the two mineworkers with one pinned by a large piece of coal weighing about 750 kg. Both workers received serious injuries.
5. On 7 May 2020, the Secretary's delegate accepted a WHS undertaking from Clarence Coal.

Reasons for variation

6. The final deliverable of Project 4 cannot be delivered due to there being no suitable industry seminars prior to the 7 November 2021 compliance timeframe.

Conclusion

7. I am satisfied that Clarence Coal has made reasonable efforts to comply with the WHS undertaking and the compliance timeframes set out in the WHS undertaking accepted on 7 May 2020.
8. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
9. Accordingly, I have determined to agree to vary the WHS undertaking made by Clarence Coal as proposed.

Date of decision: **09 November 2021**



Garvin Burns
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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