

February 2023

# WHS undertaking

## Notice of variation

### WHS undertaking varied by Winder Controls Australia Pty Limited

Entity	Winder Controls Australia Pty Limited
Issue	Application to vary a WHS undertaking made by Winder Controls Australia Pty Limited
Legislation	Part 11 of the Work Health and Safety Act 2011
Decision maker	Peter Day 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, Peter Day, having a delegated authority from the Secretary of Regional NSW (the regulator), give written agreement to varying the WHS undertaking made by Winder Controls Australia Pty Limited (WCA) as follows:

- The timeframe for Term B-4 Project 1 is extended to within 13 months from acceptance of the WHS undertaking
- The timeframe for Term B-4 Project 4 is extended to within 14 months from acceptance of the WHS undertaking

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<sup>1</sup>.
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

<sup>1</sup> 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).

(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.
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

1. On 6 October 2020 at the Appin East Mine, during the removal of a winder rope from the drift winder as part of an equipment upgrade project, the head sheave pulley wheel (weighing several tonnes) dislodged from its support frame and fell approximately 13 metres to the ground below.
2. At the time a contract worker was positioned on ground level, within a taped off restricted access area, directly below the pulley wheel. The worker had to move to avoid being struck by the falling object. No injuries resulted from the incident.
3. On 7 February 2022 the Secretary’s delegate accepted a WHS undertaking from WCA.

## Reasons for variation

1. The current timeframes for completion of enforceable term B-4 (Projects 1 and 4 of Attachment A to the WHS undertaking) are not achievable due to circumstances outside the control of WCA.
2. Project 1 requires the development of a PowerPoint presentation which is contingent on the incident animation which has not yet been finalised. The PowerPoint presentation is due to be submitted to the regulator on or before 7 February 2023. An extension of one month has been requested to finalise the PowerPoint presentation following the finalisation of the incident animation. In my view, this is a reasonable request.
4. On 8 April 2022 the deliverables for Project 4 were varied by agreement between the regulator and WCA. The variation required the development of an animation on shaft safety by Coal Services in consultation with the regulator and WCA. On 31 October 2022 the timeframe for delivery of Project 4 was extended to “within 12 months of acceptance of the WHS undertaking”.
5. Coal Services was engaged to produce an animation on shaft safety to support an online training module for opal miners. The script for the animation took much longer to develop than anticipated due to the number of inspectors involved in the input phase and the approval phase.
6. WCA was consulted on the script for the animation and Coal Services is in the process of developing the animation, however, the due date for Project 4 will not be met. An extension of two months has been requested to allow for the completion of the animation. In my view, this is a reasonable request.
5. The variation to the timeframes of the WHS undertaking is agreed between WCA and the Regulator.

## Conclusion

1. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
2. Accordingly, I have determined to agree to vary the WHS undertaking made by WCA as proposed.

Date of decision: 2 February 2023



**Peter Day**

**Executive Director**

**Resources Regulator**

**Regional NSW**

Note: In accordance with Section 221 of the Work Health and Safety Act 2011 this will be published on the Regulator's website

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