

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	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 Clarence Coal Pty Limited (Clarence Coal) as follows:

In relation to Project 3 in Attachment A of the undertaking (pages 19 and 20);

Task	Due Date
Completion of the physical ergonomics assessment including engagement with the participatory ergonomics team through workplace interactions (stage 1)	Within 8 months Within 10 months of acceptance of WHS undertaking
Completion of the second ergonomics assessment for the purpose of identifying "next generation" bolting equipment (stage 2)	Within 9 months Within 11 months of acceptance of WHS undertaking
Completion of ergonomic assessment reports including task analysis, risk assessment, participatory ergonomics process outcomes and provide ongoing assistance with any redesign activities	Within 10 months Within 12 months of acceptance of WHS undertaking
The stage 1 and stage 2 reports available to share with OEMs and NSW coal mining industry seminars	Within 12 months Within 14 months of acceptance of WHS undertaking

In relation to project 6 in Attachment A of the undertaking (page 23);

Task	Due Date
Delivery of animated video to Clarence Coal workforce and the mining industry through the Resources Regulator website.	Within 9 months Within 11 months of acceptance of 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.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.*
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, two workers were working underground at the Clarence Colliery when a large amount of material, comprising coal and mudstone, collapsed from the rib and cornice. The material struck the two workers 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. On 1 February 2021, Kyle Egan, Mine Manager at Clarence Colliery, sent correspondence to the Resources Regulator seeking to vary the WHS undertaking made by Clarence Coal for the following reasons:

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).

- a. Project 3 - Strata Support Ergonomics Assessment undertaken by the University of Queensland (UOQ).

The university has been engaged and an initial report has been provided which details the difficulties the UOQ has faced in attending the mine due to Covid-19 restrictions imposed by the Queensland government. The report from UOQ was provided as supporting evidence.

- b. Project 6 – Development of animation video

Clarence Coal had engaged Coal Services to develop a short, animated video presentation of the incident and safety lessons learnt. Coal Services had recently advised that due to Covid-19 restrictions and a re-structure within Coal Services they would be unable to meet the original timeframes. A letter from Coal Services was provided as supporting evidence.

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. Covid-19 has caused significant disruption to business operations throughout 2020 and early 2021, and several other WHS undertakings have had to be varied as a result.
9. In relation to Project 3, I particularly note that the Queensland Government restricted movement across its border with NSW in the latter part of 2020, with a mandatory quarantine period of 14 days for travelers returning from NSW. This directly impacted on the ability of UOQ personnel to travel to the mine to conduct the assessments planned under the project.
10. I also note that, under Project 6, Coal Services have submitted that they have been impacted by Covid-19 restrictions as well as an internal re-structure.
11. For these reasons, I am satisfied that the delays to the project timelines have been out of the control of Clarence Coal. I am also satisfied that the proposed 2-month extension to those timelines is reasonable and appropriate in the circumstances.
12. Finally, I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
13. Accordingly, I have determined to agree to vary the WHS undertaking made by Clarence Coal as proposed.

Date of decision: **8th March 2021**



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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