

WHS undertaking varied by Bloomfield Collieries Pty Ltd

Entity	Bloomfield Collieries Pty Ltd (ACN 000 106 972)
Issue	Application to vary a WHS undertaking made by Bloomfield Collieries Pty Ltd
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Department of Planning, Industry and Environment

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 the Department of Planning, Industry and Environment (**the regulator**), **give written agreement** to the varying of the WHS undertaking made by Bloomfield Collieries Pty Ltd (**Bloomfield**) in relation to the following:

- Variation to the compliance date for the publication of the video animation on Bloomfield's website, as contained in the table on page 15 of the Enforceable Undertaking

Video animation published on Bloomfield's website	Within 10 months Within 30 days of being notified by the Chief Investigator, Resources Regulator
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All other terms and commitments within the Enforceable 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 Planning, Industry and Environment (**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.

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).

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- (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. Bloomfield is the mine operator of the Rix's Creek Mine (**the mine**), an open cut mining operation located about five kilometres northwest of Singleton NSW.
5. On 13 December 2016, a worker was fatally injured when he and two other workers attempted to manually clean coal residue out of a coal haulage trailer at the mine.

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6. On 23 November 2018 Bloomfield made application for the Regulator to consider a WHS undertaking.
7. The undertaking given by Bloomfield was accepted by the Regulator on 12 December 2018.
8. Enforceable term No.3 required Bloomfield to deliver an educational animation relating to truck safety, and to publish that video on the mine's website.
9. Attachment 1 of the undertaking, which forms part of the 'Part B' enforceable terms required the animation to be published on the mine's website within 10 months, being 12 October 2019.

Reasons for variation

10. Proceedings have been initiated for an alleged contravention of the WHS Act against an individual, Mr Wayne Simmons, arising from the same incident in the District Court of New South Wales. The matter is listed for sentence in the District Court of NSW on 9 December 2019.
11. To remove any potential for prejudice against the defendant in the above matter, the Regulator requested Bloomfield make application to vary the undertaking and delay the publication of the animation until those court proceedings had been finalised.
12. On 12 August 2019, Bloomfield applied to vary the undertaking as requested.

Conclusion

13. I am satisfied the publication of the animation on the Bloomfield website has the potential to be prejudicial to the proceedings currently before the District Court of New South Wales.
14. In this respect I am satisfied that it is necessary and appropriate that the animation related to the fatal incident not be published until after the proceedings in the District Court are completed.
15. The Chief Investigator, Major Safety Investigations will monitor the outcome of the proceedings and notify Bloomfield when the matter has been finalised.
16. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.

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17. Accordingly, I have determined to agree to vary the WHS undertaking made by Bloomfield Collieries Pty Ltd, so that within 30 days of being notified by the Chief Investigator of the proceedings being finalised, the animation will be published as required by the undertaking.

Date of decision: **25 September 2019**

A handwritten signature in blue ink, appearing to read 'Anthony Keon', written over a light blue circular stamp.

Anthony Keon
Executive Director
Resources Regulator
Department of Planning, Industry and Environment

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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