

WHS undertaking varied by Winder Controls Australia Pty Limited

Entity	Winder Controls Australia Pty Limited (ACN 147 395 364)
Issue	Application to vary a WHS undertaking made by Winder Controls Australia Pty Limited
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
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 the varying of the WHS undertaking made by Winder Controls Australia Pty Limited (**WCA**) as follows:

- Term B-5 on page 7 to include a \$15,000 donation to Mates in Mining
- Term B-8 on page 8 to update the total to \$25,000 for the “benefits to community” and \$110,000 for the “benefits to industry”
- Attachment A (Project 3) to include the donation to Mates in Mining
- Attachment A (Project 4) to replace the seminars with the development of an animation on shaft safety by Coal Services in consultation with the regulator and WCA. Costing of \$20,000 including animation development cost (\$15,000) and WCA input on engineering concepts (\$5,000). The timeframe is amended to 4 months from acceptance of WHS undertaking.

The total value of the WHS undertaking remains at \$253,626.

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 *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).

Notice of variation

- (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 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.
5. 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.
6. On 7 February 2022 the Secretary's delegate accepted a WHS undertaking from WCA.

Reasons for variation

7. The current Project 4 deliverable is the preparation and presentation of two safety seminars concerning safe access to mine shafts to the opal mining community.
8. On 21 March 2022 the regulator sent an email to WCA advising that the seminars proposed would not be mandatory for opal miners and may not reach the audience required to educate the industry about shaft safety. A variation was proposed whereby the seminars would be replaced with an animation developed by the regulator and included in an online mandatory training module.
9. WCA replied by email on 21 March 2022 with a revised proposal for a variation. WCA agreed with replacing the seminars with an animation and proposed donating any excess balance of the allocated cost for Project 4 to the 'Mates in Mining' cause.
10. The variation to the WHS undertaking is agreed between WCA and the regulator.

Conclusion

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

Date of decision: **08 April 2022**

WHS undertaking

Notice of variation



Regional
NSW

A handwritten signature in black ink that reads 'Peter Day'.

Peter Day
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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