

February 2024

## WHS undertaking

# Winder controls Australia - 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 <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:

- The timeframes for Term B-3 Project 2 and Term B-4 Project 3 in Attachment A are extended to 30 June 2024.
- The enforceable terms of Term B-4 Project 3 in Attachment A are varied to allow the Mental Health Awareness Module to be re-formatted into an online induction module to be made available through the NSW Resources Regulator’s website to be used/referenced by industry.

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*
    - (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 timeframe for completion of enforceable term B-3 and the enforceable terms and completion date for B-4 (Projects 2 & 3 respectively) will not be met by 7 February 2024.
2. The current timeframe for the remaining deliverables for Project 2 will not be met. By variation dated 31 October 2022 an extension of time was given to deliver the six presentations by 7 February 2024. Due to a change in WCA’s management mid-year in 2023, two of the

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<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).

presentations were not delivered in 2023. An extension has been requested by WCA to allow the delivery of the remaining presentations in 2024. The two remaining presentations will be completed by 30 June 2024. In my view, this is a reasonable request.

4. WCA has requested a variation to the enforceable terms of B-4 for the Mental Health Awareness Module (Project 3). The module was developed to run as a 12-week pilot program to be presented face-to-face at Coal Services inductions for mine workers. In October 2023, WCA approached Coal Services with the content of the module. Coal Services advised WCA that the module is not suitable for its inductions, as Coal Services do not manage or prepare the content that is delivered in the inductions. Coal Services advised WCA that it presents the information that each mine prepares for its relevant induction and that mental health is already incorporated into some of the mines' inductions. Coal Services indicated that the induction is already under time pressure to be completed in a half day. WCA has advised that the change in management (within WCA) appears to be responsible for this misunderstanding between WCA and Coal Services with WCA unsure of the initial arrangements negotiated with Coal Services for the 12-week pilot program. In my view, the re-formatting of the Mental Health Awareness Module to allow for online delivery via the regulator's website will add more value as it will be accessible to more workers in contrast to a face-to-face 12-week pilot program. This variation 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<sup>nd</sup> February 2024**



**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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