

June 2025

# WHS undertaking

## Notice of variation

### *WHS undertaking varied by Clarence Coal Pty Limited*

Entity	Clarence Coal Pty Limited
Issue	Application to vary a WHS undertaking made by Clarence Coal Pty Limited
Legislation	Part 11 of the Work Health and Safety Act 2011
Decision maker	Jamie Tripodi A/Executive Director, Resources Regulator Department of Primary Industries and Regional Development

### Section 221 agreement

Pursuant to section 221 of the Work Health and Safety Act 2011 (**WHS Act**), I, Jamie Tripodi, having delegated authority from the Secretary of the Department of Primary Industries and Regional Development (**the regulator**)<sup>1</sup>, give written agreement to the varying of the WHS undertaking made by Clarence Coal Pty Limited (**Clarence Coal**) as follows:

- The timeframe for Term B-4 - Project 2 - Stage 2 of Attachment A to the WHS undertaking is extended by 2 months from 'within 12 months' to 'within 14 months' from acceptance of the WHS undertaking

All other terms, commitments and timeframes 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

- The Secretary of the Department of Primary Industries and Regional Development

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<sup>1</sup> Work Health and Safety (Mines and Petroleum Sites) Laws Instrument of Delegation (Regulator) 2022

(**Secretary**) is the regulator for the purposes of the WHS Act<sup>2</sup>. The Secretary has delegated the function under section 221 of the WHS Act to the Executive Director, Resources Regulator<sup>3</sup>.

2. Section 221 'Withdrawal or variation of WHS undertaking' of the WHS Act relevantly provides that:
  - (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, general guidelines in relation to the acceptance of WHS undertakings (Guidelines), as required by section 230(4)(b) of the WHS Act.

## Background

1. On 2 November 2022 three workers were struck by falling material while operating, or supporting the operation of, a continuous miner that was cutting coal at Clarence Colliery near Lithgow, NSW.
2. On 7 August 2024 the Secretary's delegate accepted a WHS undertaking from Clarence Coal.

## Reasons for variation

1. Meeting the current timeframe for completion of Term B-4 - Project 2 - Stage 2 of Attachment A to the WHS undertaking (round table conferences) may negatively impact upon the quality of the Mining Industry Safe Supervision "Best Practice" Certification Package (**the package**) by virtue of reduced engagement of Mine Operator and Mineworker representatives due to circumstances outside the control of Clarence Coal.
2. Project 2 requires delivery of the package within 24 months of acceptance of the WHS undertaking. Stage 2 of the project requires Clarence Coal to arrange mining industry specific discussions to engage Mine Operator, the regulator and Mineworker representatives through participation in in-person round-table conferences, with the aim of building an informed best practice target outcome for the final training package. The delivery date for Stage 2 is 7 August 2025 but it has recently been recognised that meeting that date may negatively impact upon the quality of the training package due to the timing of competing industry

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<sup>2</sup> section 4 definition of 'regulator' and sch 2 cl 1(1)(b) of the WHS Act and section 5(1) definition of 'regulator' Work Health and Safety (Mines and Petroleum Sites) Act 2013

<sup>3</sup> WHS Laws (Mines and Petroleum Sites) Instrument of Delegation 2022

seminars in 2025 that will reduce the involvement of Mine Operator and Mineworker representatives in the round-table conferences for the package.

3. The Mine Managers Association of Australia Annual CPD Seminar is being held on 19 June 2025 and the NSW Minerals Council HSEC Conference is being held on 4-5 August 2025.
4. By email dated 29 May 2025 to the regulator, Clarence Coal advised that the value in the course development may be improved by the capacity of the attendees at each of the round tables. Clarence Coal proposes to have the round tables scheduled during the earlier part of September to engage the appropriate personnel from the selected Mine Operators, Resources Regulator and Industry Safety Health Representatives. Clarence Coal also proposes to complete these sessions before the Resources Regulator's Mining Safety Seminar in October.
5. Convening the roundtables 2 months later than previously agreed will not ultimately prevent the delivery of Project 2 (the package) within 24 months of acceptance of the WHS undertaking
6. The variation to the timeframes of the WHS undertaking is agreed between Clarence Coal 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 Clarence Coal as proposed.

Date of decision: **12 June 2025**



**Jamie Tripodi**

**A/Executive Director**

**Resources Regulator**

**Department of Primary Industries and Regional Development**

Note: In accordance with Section 221(3) of the Work Health and Safety Act 2011 this will be published on the Regulator's website

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## WHS Undertaking – Notice of variation

information with the appropriate officer of the Department of Primary Industries and Regional Development or the user's independent adviser.