

## WHS undertaking varied by Otraco International Pty Ltd

<b>Entity</b>	<b>Otraco International Pty Ltd</b> (ACN 008 809 265)
Issue	Application to vary a WHS undertaking made by Otraco International Pty Ltd
Legislation	Part 11 of the <i>Work Health and Safety Act 2011</i>
Decision maker	Tony Linnane Acting 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, Tony Linnane, 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 Otraco International Pty Ltd (**Otraco**) in relation to the following:

- Variation to the compliance date for the recruitment of the interns, and all subsequent dependant actions as contained in the table in section 2.4 on page 12 of the WHS undertaking.

Key Milestones	Date
Recruitment of interns to undertake Video Training Package Project	<del>Within 2 months</del> Within 6 months of acceptance of WHS undertaking
Engagement of consultant to develop Video Training Package	Within 2 months of acceptance of WHS undertaking
Engagement of marketing consultant	Within 2 months of acceptance of WHS undertaking
Development of Video Training Package concepts for the Supporting Guide and video story boards in consultation with the regulator at regular intervals	<del>Within 5 months</del> Within 8 months of acceptance of WHS undertaking
Feedback from regulator on Video Training Package for Supporting Guide concepts and video story boards	<del>Within 6 months</del> Within 9 months of acceptance of WHS undertaking
Compliance Assurance activities completed	Within 8 months of acceptance of WHS undertaking

Completed Video Training Package and supporting guide	<del>Within 9 months</del> Within 13 months of acceptance of WHS undertaking
Delivery of Video Training Package to Otraco workers in NSW	<del>Within 10 months</del> Within 14 months of acceptance of WHS undertaking
Release Video Training Package and Supporting Guide to industry by making the Video Training Package publicly available on Otraco's website and by providing the regulator access	<del>Within 11 months</del> Within 15 months of acceptance of WHS undertaking

- Variation to the compliance date for the commencement of the internships, and all subsequent dependant actions as contained in the table in section 3.5 on page 14 of the WHS undertaking

Key Milestones	Date
Engage with NSW universities to confirm internships	Within 1 month of acceptance of WHS undertaking
Recruitment of interns to undertake Video Training Package Project	<del>Within 2 months</del> Within 6 months of acceptance of WHS undertaking
Commencement of internships	<del>Within 2 months</del> Within 6 months of acceptance of WHS undertaking
Final reflection report by interns following completion of internships	<del>Within 14 months</del> Within 18 months of acceptance of WHS undertaking

- Variation to section 3.3(a) on page 14 of the WHS undertaking to dispense with the requirement that the interns be graduates of a NSW university, but instead any university.
- Variation to section 10 on page 8 of the WHS undertaking to extend the timeframe for delivery of the strategies set out in the WHS undertaking to 18 months.

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 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.<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

4. Mt Arthur Coal Pty Limited (**MACPL**) is the mine operator of the Mt Arthur Mine (**the mine**) located about five kilometres southwest of Muswellbrook NSW.
5. Otraco is contracted to MACPL to provide onsite tyre management services for the mine's fleet of light and heavy vehicles.
6. 

### WHS undertaking

7. On 31 July 2019, Otraco submitted a signed WHS undertaking to the regulator.
8. The undertaking given by Otraco was accepted by the regulator on 16 September 2019.
9. Enforceable term No.3 required Otraco to develop a best practice video training package to enhance the current unit of competency for the use of earthmoving and off-the-road tyre handlers and to provide internships for two recent university graduates from a NSW university to oversee the development of the video training package.
10. Attachment 1 of the undertaking, which forms part of the 'Part B' enforceable terms required recruitment of the interns within two months of the acceptance of the WHS undertaking, being 16 November 2019.

<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).

## Reasons for variation

11. Otraco has not met the timeframe for its commitment under the enforceable undertaking to recruit two graduates from a NSW university, an enforceable term of the undertaking due by 16 November 2019.
12. Otraco provided a reasonable explanation for not meeting the timeframe for recruitment of two graduates from a NSW university.
13. On 19 December 2019, Otraco applied to vary the undertaking.

## Conclusion

14. I am satisfied that Otraco made reasonable efforts to recruit two graduates from a NSW university within the committed timeframe.
15. In this respect I am satisfied that Otraco could not meet the compliance date in relation to the recruitment of two graduates from a NSW university, for reasons beyond Otraco's control.
16. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
17. Accordingly, I have determined to agree to vary the WHS undertaking made by Otraco as proposed.

Date of decision: **22 January 2020**



**Tony Linnane**

Acting Executive Director

Resources Regulator

Department of Planning, Industry and Environment

<p><b>NOTE</b> In accordance with section 221 of the Work Health and Safety Act 2011 this notice will be published on the regulator's website.</p>
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