



NSW Mine Safety Advisory Council

Meeting 2 – 3 June 2021

Meeting details

Meeting	NSW Mine Safety Advisory Council	Date	3 June 2021
Location	NSW Minerals Council 12 O'Connell Street, Sydney	Time	9am to 12pm
Chair	Hon. George Souris AM (Independent)		
Secretary	Mr Tony Linnane (Resources Regulator, Department of Regional NSW)		
Attendees	Mr Anthony Keon (Resources Regulator, Department of Regional NSW) Mr Graeme Osborne (Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)) Mr Ian Cribb (NSW Minerals Council (coal)) Mr Peter Jordan (Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)) Mr Rob Cunningham (NSW Minerals Council (metalliferous))		
Observers	Mr Garvin Burns (Resources Regulator, Department of Regional NSW) Mr James Barben (NSW Minerals Council) Mr Jason Kuchel (Cement Concrete & Aggregates Australia) - Telecon Ms Julie Armour (Independent) Ms Lucy Flemming (Coal Services)		
Apologies	Mr Matthew Freeman (Cement Concrete & Aggregates Australia)		
Not present	Mr Brock Skelton (Australian Workers' Union, New South Wales Branch)		
Prepared by	Ms Anna Ormerod (Resources Regulator, Department of Regional NSW)	Reference	DOC21/497658

Minutes

AGENDA ITEM	DISCUSSED/ACTION
1	Welcome and Chair's report <ul style="list-style-type: none">■ The meeting commenced at 9am.■ The Chair welcomed members and observers to the meeting.■ The Chair thanked Mr Barben, NSW Minerals Council, for hosting the meeting.

AGENDA DISCUSSED/ACTION ITEM

- The Chair advised that the Deputy Premier is no longer able to attend the meeting due to other commitments.
- The Chair advised that his position was soon expiring and that it had been advertised in accordance with government guidelines.
- Mr Jordan stated that it was critical that this process be completed before the expiry of the current term and expressed concerns over the length of time it takes to make appointments to MSAC, citing a historical example where a Chair was not appointed for a period of over 12 months. Appointments should be done prior to the next MSAC meeting to not have vacant positions.
- Mr Keon agreed and responded that the Department tries to factor in sufficient time into the process to avoid any vacancies, however there were factors outside of its control. As an example, the most recent process of appointing the independent members has been delayed due to issues with third party probity checks. Further, appointing members needs to go to the Minister for appointment and referral to Cabinet and then back to the Minister. The expression of interest process for the independent Chair has now commenced, well in advance of the expiry of the current term. It is not envisaged the Chair will not have been appointed by the December meeting.
- The Chair advised Mr Freeman is an apology.

Outcomes

- Members noted the observers for the meeting.
- Members noted that Mr Tony Cartwright's appointment has expired, and he elected not to reapply for an independent position through the public expression of interest process.
- Members noted the appointments expiring in 2021.
- Members noted the events attended by the Chair since the last meeting.
- Members noted the key stakeholder events planned for 2021.

- | | |
|---|--|
| 2 | Declaration of interests <ul style="list-style-type: none">■ The Chair asked members to declare any conflicts of interest arising from agenda items or advise if any changes need to be made to the pecuniary interests register. |
|---|--|

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none">■ The Chair advised that he has been appointed to the Sydney Cricket Ground Heritage Trust as at 30 April 2021 and requested the secretariat update the pecuniary interests register.■ No other conflicts were declared. <p>Actions</p> <ul style="list-style-type: none">■ Action A: Secretariat to update the pecuniary interests register to include changes by the Chair, George Souris.
3	<p>Acceptance of previous minutes and actions</p> <ul style="list-style-type: none">■ No changes were requested to the minutes. <p>Outcomes</p> <ul style="list-style-type: none">■ Members endorsed the minutes of the last meeting.■ Members noted the status of action items arising from the last meeting.
4	<p>Correspondence</p> <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted the correspondence and attachments.
5	<p>Carbon dioxide workplace exposure standard</p> <ul style="list-style-type: none">■ Mr Linnane noted that members discussed Safe Work Australia’s proposal to amend the workplace exposure standard for carbon dioxide at the last meeting. Members agreed the Chair write to the Deputy Premier expressing MSAC’s concerns. The Deputy Premier has considered advice from MSAC and the Resources Regulator and accepted that the position that the standard in NSW should not change. The Deputy Premier has asked the Resources Regulator to make the necessary legislative amendments to ensure the standard is retained (a copy of the correspondence is attached to the papers), which the Resources Regulator has commenced progressing.■ Mr Keon noted that the Resources Regulator’s submission has not been provided to MSAC members and indicated it would be circulated out of session.■ Mr Barben thanked MSAC for their consideration of the issue that it was a good outcome. Mr Barben also asked that it be specifically recorded that industry was very appreciative of the Resources Regulator’s and Deputy Premier’s response and action on the issue.

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none">■ Mr Jordan agreed that it was a great outcome for our industry and acknowledged the role the Resources Regulator and Chair played in achieving the positive outcome in such a quick timeframe.■ Mr Keon commented the reason we could get it through so quickly is MSAC's credibility with Government arising from its effective tripartite approach. <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted that the Deputy Premier has confirmed the NSW Government's intention to maintain the current carbon dioxide workplace exposure standard for underground coal mines.■ Members noted that the Resources Regulator will progress amendments to prescribe the current carbon dioxide workplace exposure standard in WESFAC in the NSW mine safety legislation. <p>Actions</p> <ul style="list-style-type: none">■ Action B: Resources Regulator to circulate its submission on the carbon dioxide workplace exposure standard out of session.
6	<p>Recommendations for MSAC from report on the statutory review of the WHS (MPS) laws</p> <ul style="list-style-type: none">■ Mr Linnane advised that comments on the discussion paper recently closed, with 15 submissions received. The Resources Regulator is currently analysing the submissions. Of the seven recommendations for consideration by MSAC, Mr Linnane commented:<ul style="list-style-type: none">□ Recommendation 1 is tabled for discussion by members today.□ Western Australia is in the process of reforming its legislation. Recommendation 2 will be considered once the changes are implemented.□ Recommendations 6, 8 and 29 were included in the discussion paper. The Resources Regulator will present a paper at the next meeting detailing feedback received in the submissions.□ Recommendation 12 is complete.□ The Resources Regulator is currently considering recommendation 35. A paper will be presented at the next meeting.■ Mr Linnane referred members to attachment B and C of the papers, which was an analysis of recent Queensland legislative amendments and the Resources

AGENDA DISCUSSED/ACTION ITEM

Regulator's position on their suitability for adoption in NSW. Members were advised that the fundamental difference between Queensland and NSW arrangements is the legislative framework in which they operate.

Attachment B

1. Ventilation officer

- Mr Cribb commented that when it was discussed in Queensland it was about adopting NSW's position.
- Members agreed there was no action for MSAC.

2. Continuing professional development

- Mr Linnane commented that NSW has had a maintenance of competence scheme in place for nearly 4 years.
- Members agreed there was no action for MSAC.

3. Site Senior Executive and suspension/cancellation of certificates

- Mr Linnane commented that the site senior executive position issue is not relevant in NSW as role does not exist in the NSW scheme.
- Mr Linnane said there is action required in relation to cancelling a certificate of competence. The decision to cancel or suspend is subject to internal and external review. There are concerns that there may be circumstances where a person may not yet have been convicted of a WHS offence, but it might be appropriate to suspend or cancel their certificate.
- Mr Cunningham asked in the event of something happening, can an individual be stood down until the outcome of the investigation. Mr Burns replied yes, but not just for a contravention. The other issue identified recently is that there is nothing in legislation that allows the Regulator to not issue a certificate based on the applicant already having a WHS conviction.
- Mr Keon commented that under the *Mining Act 1992*, the Regulator can cancel a title if satisfied that there has been a significant contravention. For an individual under WHS legislation there needs to be an actual conviction to cancel. A conviction can be a long process so there is a gap. We can only suspend for 28 days to undertake an investigation.
- Mr Cunningham asked if a background check can be done. Mr Keon advised the Resources Regulator is currently looking at the disclosures required as part of an application.

AGENDA DISCUSSED/ACTION ITEM

- Mr Linnane commented that the Regulator may not be aware if an individual has a conviction in another state. The only way is to ask the applicant to make a declaration.
- Mr Jordan commented that the action being proposed by the Resources Regulator is appropriate and supports closing those gaps.
- Mr Cribb commented that the Queensland discussion was around different levers in enforcement. The Resources Regulator picked up a different position on it. There was a gap between prosecution and what powers are available. The financial impact on losing a certificate was a big penalty as well. Mr Keon said this would be a factor. The cost of proceedings is quite significant. The more tools we have available, the better.
- Mr Linnane commented that the protections provided by the review process ensure that an individual won't be unfairly treated.
- Mr Cunningham asked how transparent the convictions from other states are. Mr Linnane replied that under mutual recognition, the Regulator seeks confirmation from the other jurisdiction if they are subject to any actions. However, South Australia has abolished their registration scheme, so we no longer grant mutual recognition to South Australia certificates of competence.

4. Statutory function holders being employees of mine operator

- Mr Linnane advised that the review recommended not supporting requiring statutory function holders to be employees of the mine operator as this matter was considered in the tripartite process in drafting the current regulation and the decision was made then not to adopt that approach.

5. Additional requirement to inform Chief Inspector (plant)

- Mr Linnane said the WHS Act has clear and specific duties about plant. It is inconsistent with the WHS model and would place an unnecessary burden on industry and the regulator. The model WHS laws don't apply to Queensland mining.
- Mr Burns commented that the Resources Regulator's incident notification protocols mean the Regulator will be notified of most hazards or incidents. Ms Flemming commented that a recent example is the self-contained self rescuers that kept igniting.

AGENDA DISCUSSED/ACTION ITEM

6. Officer due diligence obligations

- Mr Linnane advised that there is no action required as Queensland is aligning with the model WHS Act which has been adopted in NSW.

7. SHMS requirements for opal and gemstone mines

- Mr Linnane said the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 provides for exemptions for opal mines and gemstone mines, so no action is required.

8. Contractor and service provider management obligations

Mr Linnane said the NSW regulation already has provisions in place, so no action is required.

9. Advisory committees

- Mr Linnane commented that the membership of MSAC and the Mining and Petroleum Competence Board was specifically flagged for consideration in the review. The review found no need to change the membership. Industry agreed it was not necessary. The only thing to note is that the chair of the MPCB should be independent like in MSAC.

10. Managing risk

- Mr Linnane said that there needs to be a distinction between health monitoring and health surveillance. The WHS Regulation requires mine operators to provide health monitoring when there are valid ways of determining the impact. In addition, the Resources Regulator can direct a mine operator to undertake health monitoring not already specified. Health surveillance is a separate issue. NSW has a scheme in place for coal pre, during and post employment. The scheme does not exist for non-coal workers on the basis that the employer needs to manage the impacts of work. Notwithstanding what the coal industry has in place, it is the Regulator's position that it is not the role of government to provide ongoing health surveillance after a mine worker's retirement as this does not occur with other industries.

11. Notification of diseases

- Mr Linnane said the WHS laws and recent additions to the public health act in NSW already cover this. Mr Keon said that there is a requirement for Coal Services to notify the regulator of certain diseases.

AGENDA DISCUSSED/ACTION ITEM

12. Release of information

- Mr Linnane said that this is already covered in NSW legislation, so no action is required.

13. Civil penalties

- Mr Linnane said that NSW legislation provides for penalties including notices and prosecution, so no action is required.

Attachment C

1. Resources Safety and Health Queensland (RSQR)

- Mr Linnane commented the Resources Regulator is established as a stand-alone entity.

2. Independent Commissioner

- Mr Linnane commented that MSAC is established under an Act which is comparable.

3. Role of the WHS Prosecutor

- Mr Linnane said the Resources Regulator is established as the prosecutor under the WHS laws.

4. Orders for costs

- Mr Linnane commented in NSW orders for cost are administered under the *Criminal Procedure Act*.

5. Protections for reprisals

- Mr Linnane said the WHS Act already contains similar provisions.

6. Industrial Manslaughter

- Mr Linnane commented that national WHS ministers recently determined not to include industrial manslaughter in the model WHS laws. Category 1 offences were updated in NSW last year.

Outcomes

- Members noted the update on the recommendations for MSAC from the report of the statutory review of the WHS (MPC) laws.
- Members agreed to the Resources Regulator's positions per attachment B and C.

AGENDA ITEM	DISCUSSED/ACTION
	<p>Actions</p> <ul style="list-style-type: none">■ Action C: Resources Regulator to present a paper at the next meeting detailing feedback received in the submissions for recommendations 6, 8 and 29.■ Action D: Resources Regulator to present a paper at the next meeting on recommendation 35.
7	<p>MSAC Strategic Plan to 2023</p> <ul style="list-style-type: none">■ The Chair commented that the strategic plan looks brief. He questioned if an external person would understand the plan if they were to read it.■ Mr Cribb commented that it is a high-level document that requires a supporting document. It is difficult to measure performance against the presented document.■ Mr Osborne asked why it is called a strategic plan. It is an overarching of responsibility not a strategic business plan. Mr Jordan asked if it should be called an action plan then.■ Mr Cunningham commented that a management plan is overarching. MSAC should consider using a document tree; management plan and then specific documents under it detailing priority function areas.■ Mr Keon advised that MSAC's Constitution states it will have a strategic plan. However, the Constitution can be amended as it is not a legislated document.■ Mr Cribb commented MSAC needs a document with substance which details what is going to be done in relation to each of the seven priority focus areas.■ The Chair suggested the plan be expanded to include actions. Mr Keon suggested positioning it as a charter and have an action plan supporting it. Ms Armour commented that the previous plan to 2020 provided more detail.■ Mr Keon said the Resources Regulator will do more work around explaining each of the priority focus areas and circulate the updated document out of session.■ All members agreed. <p>Actions</p> <ul style="list-style-type: none">■ Action E: Resources Regulator to update the strategic plan with members comments and circulate to members out of session.

AGENDA ITEM	DISCUSSED/ACTION
8	<p>National Dust Disease Task Force consultation</p> <ul style="list-style-type: none">■ SafeWork NSW is representing NSW on the taskforce. The Resources Regulator was not directly consulted in this process. The Resources Regulator will continue to monitor and provide an update to MSAC as required. <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted the Australian Government’s National Dust Disease Taskforce consultation document.■ Members agreed to continue to monitor the work of the Taskforce.
9	<p>Members updates</p> <ul style="list-style-type: none">■ Ms Flemming advised that Coal Services has presented three papers today.■ Ms Flemming commented that attachment A examines the Resources Regulator’s report and matches it back to Coal Services data. Coal Services data largely matches trends the regulator reported.■ Ms Flemming commented that attachment B details what Coal Services has seen so far in terms of injury trends and the increasing complexity and severity of injuries reported. Notifications have increased from the previous period. Workers are putting in more claims (maybe heightened anxiety in the workforce). There has previously been an issue in reporting timeframes but there has been a marked improvement more recently however reporting timeframes are still below the legislated requirement.■ Timely reporting results in better outcomes for workers. Industrial deafness is increasing. There has been double the number of claims coming through in the last 2 years for psychological injury. The types vary and include allegations of bullying and harassment, witness to an event or involvement in assault, serious injuries, workplace pressures and stresses:<ul style="list-style-type: none">□ Mr Cribb asked what the workplace stresses were. Ms Flemming advised of the 58 claims; 38% harassment or bullying, 9% traumatic event, 28% work pressure. Last year 74% of the workers were employed at time of making the claim. This year 96% are employed at the time.□ Mr Cunningham commented the increase is due to awareness and individuals being encouraged to speak up.

AGENDA DISCUSSED/ACTION ITEM

- Ms Flemming commented that there are many mechanisms to help to speak up and the stigma around not talking about mental health is declining. It is more acceptable now to talk about.
- Mr Keon commented it is a more global issue. Ms Flemming commented that it is also a secondary issue e.g. workers sustain an injury and then psychological injuries occur as a result.
- Ms Flemming commented that the dust report for the last two months is attached at C. There have been no coal dust exposures under the new RCD standard and 17 in for RCS. In all exceedances, workers were wearing some sort of respiratory protection.

Outcomes

- Members noted the report on increasing severity of injuries being seen in the NSW coal mining industry workers compensation scheme tabled by Coal Services.
- Members noted the report on Coal Mines Insurance Claims and Injury Trends (Quarter 3 FY21) tabled by Coal Services.
- Members noted the Order 42 Airborne Dust YTD summary report tabled by Coal Services.

10

Review of coal industry health surveillance scheme steering committee

- Mr Keon advised that there were delays in finalising the tender to address any perceived conflicts. The Resources Regulator also sought further information from all tenderers about how the conflicts would be managed. The committee has identified one strong submission, but further information on face-to-face contact is being sought. MSAC will be notified out of session once a contract has been awarded. The timeframe will be revised if required.
- Mr Barben asked if the review will be open to public submissions. Mr Keon commented there is no reason a public call for submissions couldn't be accommodated.

Outcomes

- Members noted the update on the review of coal industry health surveillance scheme steering committee.

AGENDA ITEM	DISCUSSED/ACTION
	<p>Actions</p> <ul style="list-style-type: none">■ Action F: Secretariat to notify MSAC members once a contract for the review of coal industry health surveillance scheme project has been awarded.
11	<p>Legislative framework update</p> <ul style="list-style-type: none">■ Mr Linnane advised that 15 submissions were received on the Work Health and Safety (Mines and Petroleum Sites) law discussion paper. The Resources Regulator is currently analysing those submissions.■ Mr Barben asked if the code of practice on psychological health SafeWork NSW is developing is close to being finalised. Mr Burns advised that it has just been published.■ Mr Linnane advised that a communique on the meeting of Work Health and Safety Ministers is attached.■ Mr Jordan commented on the regulatory change for mental health. It will be interesting to see how industry deals with it. They are dealing with the unknown. The key issues are workloads, violence, excessive hours in the workplace. It will change a lot of workplaces significantly.■ Mr Burns advised that mines notify the Resources Regulator of absences from work greater than seven days. Mines have reacted once something has happened but have not necessarily been proactive. Fatigue has been flagged.■ Mr Cribb commented that the identification of hazard with psychological impact for one individual may not be the same for all. There will be conflict and competing issues. It will be difficult to pre-empt and prevent.■ Mr Barben commented that industry will be required to identify high risk individuals.■ Mr Burns advised that one of the mines have done a lot of work in that space to try to proactively identify mental health issues. It is happening within industry, but it will be a challenge.■ Mr Cribb commented that it is about identifying signs e.g. mates in mining rather than removing hazard. <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted the update on legislative developments and reform.

AGENDA ITEM	DISCUSSED/ACTION
	<p>Actions</p> <ul style="list-style-type: none">■ Action G: Resources Regulator to send the published guideline to MSAC members out of session.
12	<p>Resources Regulator report</p> <ul style="list-style-type: none">■ Mr Burns delivered a presentation about incidents over the past 3 months.<ul style="list-style-type: none">□ There was a jump in incidents in March 2021. This was a similar trend to last year and previous years. All incidents have arisen out of people doing their job. Incidents reported in May 2021 was the lowest it has been in years.□ There was a proportional increase of incidents across industry.□ There has been a targeted awareness campaign on vehicle incidents at open cut mines. The Resources Regulator attended 37 mines. Overwhelmingly positive feedback was received. All mine operators were approached beforehand and were 100% cooperative. As a result, the Regulator may see an increase in number of reported incidents.□ There has also been a targeted intervention on electrical safety at large quarries. There is an ongoing inspection program and the Resources Regulator will continue to work with that sector.□ Significant inroads are being made with the Lightning Ridge priority project.□ There was an immediate jump in silica notifications due to the new exposure standard introduced in July 2020.□ There was a large increase in planned site inspections from July to September 2020 as all sites were also given a dust standard assessment.■ Mr Keon advised that an investigation report on a recent fatality (Snapper Sands) will be released over the coming weeks. <p>Outcome</p> <ul style="list-style-type: none">■ Members noted the Quarterly safety report – January to March 2021.■ Members noted the serious injury incident notifications by time-related factors.

AGENDA ITEM	DISCUSSED/ACTION
13	<p>Mine safety levy report</p> <ul style="list-style-type: none">■ Mr Keon advised that the levy is 2.45% percent lower than last year and 13% lower than the year before due to a reduction in operating costs – particularly around corporate services costs and external contractors.■ Even though operating costs have gone down (and therefore the levy) the amount collected is likely to go up because there will be a significantly less draw down on the reserve.■ The Resources Regulator has provided an update on the independent review at each MSAC meeting. All matters have now been completed. Mr Keon proposed that the report no longer be provided.■ All members agreed. <p>Outcome</p> <ul style="list-style-type: none">■ Members noted the correspondence from the Resources Regulator to MSAC regarding the 2021/22 levy determination.■ Members noted the Mine Safety Levy Fund report - Actuals and Forecast April 2021.■ Members noted the update on the implementation of the recommendations from the Independent Review of the Mine and Petroleum Site Safety Levy.■ Members agreed that all actions from the are now complete or adopted as business as usual and as such an update is not required at each MSAC meeting.
14	<p>Additional business</p> <ul style="list-style-type: none">■ There was no additional business.
15	<p>Next meeting and meeting close</p> <ul style="list-style-type: none">■ The Chair advised that the next meeting is scheduled for 2 September 2021. Ms Flemming has offered to host the meeting at Hunter Valley Mines Rescue.■ Members agreed to hold the September meeting in Sydney and the December meeting at Hunter Valley Mines Rescue.■ Mr Jordan and Mr Cribb offered to host the next meeting.■ The Chair thanked Mr Barben for hosting the meeting. The meeting closed at 11:41am.

Summary of actions

NO.	RESPONSIBILITY	ACTION	AGENDA ITEM	DUE DATE
A	Secretariat	Update the pecuniary interests register to include changes by the Chair, George Souris.	2	Next meeting
B	Secretariat	Send submission on the carbon dioxide workplace exposure standard to members	5	Complete
C	Resources Regulator	Present paper detailing feedback received in the submissions for recommendations 6, 8 and 29 of statutory review of WHS (Mines and Petroleum Sites) law	6	Next meeting
D	Resources Regulator	Present paper on recommendation 35 of statutory review of WHS (Mines and Petroleum Sites) law	6	Next meeting
E	Secretariat	Update the strategic plan with members comments and circulate to members out of session.	7	Next meeting
F	Secretariat	Notify MSAC members once contract issued for review of coal industry health surveillance scheme	10	Next meeting
G	Secretariat	Send published psychological health code of practice to members out of session.	11	Next meeting