



# NSW Mine Safety Advisory Council

Meeting 4 – 3 December 2020

## Meeting details

Meeting	<b>NSW Mine Safety Advisory Council</b>	Date	Thursday 3 December 2020
Location	Videoconference	Time	9am to 12pm
Chair	Hon George Souris AM		
Attendees	Mr Anthony Keon (Resources Regulator, Department of Regional NSW) Mr Brock Skelton (Australian Workers' Union, New South Wales Branch) Mr Graeme Osborne (Construction Forestry Maritime, Mining and Energy Union) Mr Ian Cribb (NSW Minerals Council (coal)) Ms Julie Armour (Independent) Mr Peter Jordan (Construction Forestry Maritime Mining and Energy Union) Mr Rob Cunningham (NSW Minerals Council (metalliferous)) Mr Tony Cartwright (Independent) Mr Tony Linnane (MSAC Secretary, Resources Regulator, Department of Regional NSW)		
Observers	Mr Garvin Burns (Chief Inspector, Resources Regulator, Department of Regional NSW) Mr James Barben (NSW Minerals Council) Mr Jason Kuchel (Cement Concrete & Aggregates Australia) Ms Lucy Flemming (Coal Services)		
Not present	Mr Matthew Freeman (Cement Concrete & Aggregates Australia)		
Prepared by	Ms Anna Ormerod (Resources Regulator, Department of Regional NSW)	Reference	DOC20/1011845

## Minutes

### AGENDA DISCUSSED/ACTION ITEM

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| 1 | <b>Welcome and apologies</b> <ul style="list-style-type: none"><li>■ The meeting commenced at 9:02am.</li><li>■ Mr Linnane advised that Mr Jordan's appointment was approved by Cabinet on 30 November 2020.</li></ul> |
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AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none"><li>■ The Chair requested the stakeholder events calendar be updated with the 2021 electrical and mechanical engineering seminar dates when known.</li><li>■ Members noted the:<ul style="list-style-type: none"><li>□ membership changes and appointments expiring in 2020</li><li>□ observers for the meeting</li><li>□ events attended by the chair since the last meeting</li><li>□ key stakeholder events planned for 2021.</li></ul></li></ul> <p><i>Action A: Secretariat to add dates for the Department’s electrical and mechanical conferences in 2021 to the stakeholder events calendar.</i></p>
2	<p><b>Declaration of interests</b></p> <ul style="list-style-type: none"><li>■ 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.</li><li>■ Mr Jordan declared a potential conflict of interest with paper 9, attachment A – Coal industry health surveillance scheme. Mr Jordan advised he is a Director of Coal Services Pty Limited and as such, believed there was a conflict.</li><li>■ The Chair noted Mr Jordan’s declaration. Members agreed the conflict did not preclude Mr Jordan from participating in discussions.</li><li>■ Mr Cribb also declared that he is a member of the NSW Minerals Council but did not believe that caused a conflict with what MSAC was being asked to do in the paper. Mr Osborne and Ms Flemming also advised they may have a potential conflict.</li><li>■ Members agreed to a blanket acknowledgement and declaration of conflict with paper 9, attachment A.</li><li>■ No other conflicts were declared. No changes were requested to the register.</li></ul>
3	<p><b>Acceptance of previous minutes and actions</b></p> <ul style="list-style-type: none"><li>■ Members endorsed the minutes of the last meeting without change.</li><li>■ Members noted the status of action items arising from the last meeting.</li></ul>

AGENDA ITEM	DISCUSSED/ACTION
4	<p><b>Correspondence</b></p> <ul style="list-style-type: none"><li>■ Members noted the correspondence and attachments.</li><li>■ The Chair noted that a copy of correspondence confirming Mr Jordan's reappointment to MSAC is expected to be presented at the next meeting.</li></ul>
5	<p><b>Kym Bills briefing on report on statutory review of WHS (MPS) laws</b></p> <ul style="list-style-type: none"><li>■ <i>Mr Kym Bills joined the meeting at 9:10am.</i></li><li>■ Mr Bills thanked:<ul style="list-style-type: none"><li>□ members who contributed to the review</li><li>□ the Hon Souris for his time and contributions</li><li>□ the Resources Regulator for supporting the process of drafting the report.</li></ul></li><li>■ Mr Bills advised members that any judgements in the report were his own and not those of the Resources Regulator.</li><li>■ Mr Bills provided further detail on the references and recommendations relating to MSAC as follows:<ul style="list-style-type: none"><li>□ Recommendation 1 (p38) – the AWU proposed that NSW consider implementing recent amendments made in QLD. He found that most were not relevant for NSW but those that were should be considered by MSAC.</li><li>□ Recommendation 2 (p39) – The new WA Act and Regs should be reviewed by the Resources Regulator and MSAC to see if any changes should be implemented in NSW. The review should occur after the details are finalised next year.</li><li>□ Recommendation 6 (p58) – NSW should consider broadening the provisions for causal investigations. MSAC should consider the protections relating to industry investigation reports.</li><li>□ Recommendation 8 (p65) – there could be merit in extending industry safety and health representative roles beyond coal but there is not sufficient evidence to make a recommendation. The Minister should seek additional evidence of costs and benefits and obtain MSAC advice.</li></ul></li><li>■ Mr Skelton commented that the recommendation request came from the AWU to expand the role beyond coal to cover metalliferous mining as well.</li></ul>

### AGENDA DISCUSSED/ACTION ITEM

- Mr Bills advised that recommendation 12 (p71) stemmed from industry stakeholder groups who felt that they were not represented on MSAC. There is merit in publishing agendas ahead of time for transparency and to allow groups not represented on MSAC to convey their views through the Minerals Council or secretariat ahead of the meeting.
- Mr Bills also commented on the following recommendations:
  - Recommendation 29 – this involves technical areas which should be reviewed by the Resources Regulator with input from MSAC.
  - Recommendation 35 was proposed by the Minerals Council and Glencore. The recommendation has merit and should be considered by the Resources Regulator and advice sought from MSAC.
  - The final recommendations which may be relevant to MSAC but are not specifically recommended to MSAC are 23, 25 and 26. MSAC should review as necessary.
- Chair thanked Mr Bills for the report and consultation with chair and others.
- *Mr Bills left the meeting at 9:35am.*
- Members endorsed recommendation 12 of the review report to publish MSAC meeting agendas in advance.
- Mr Linnane advised that the Resources Regulator would prepare papers on recommendations 1, 2 and 35 for the March MSAC meeting.
- Mr Linnane said a discussion paper on proposed legislative amendments will be prepared for public release and targeted consultation with key stakeholder groups will occur in early 2021.
- Members noted:
  - the proposed implementation plan for review report recommendations requiring consideration by MSAC (Attachment B)
  - that the Resources Regulator will prepare a discussion paper for industry consultation on the report's proposed legislative amendments
  - that the Resources Regulator will prepare papers for MSAC's consideration on recommendations 1, 2 and 35.

*Action B: Resources Regulator to prepare papers for the March 2021 MSAC meeting on recommendations 1, 2 and 35 of the report on the statutory review of the WHS (MPS) laws.*

AGENDA ITEM	DISCUSSED/ACTION
6	<p><b>Analysis of serious injuries notifications</b></p> <ul style="list-style-type: none"><li>■ Mr Keon advised:<ul style="list-style-type: none"><li>□ the purpose of the report was to bring members attention to an increase in serious injuries notifications</li><li>□ there has been increase since a sharp decline in incidents in 2018</li><li>□ Coal Services has given the Resources Regulator data to provide further information to identify trends across the industry</li><li>□ that a more detailed paper would be presented at the next meeting.</li></ul></li><li>■ Ms Fleming commented that Coal Services has seen an increase in the severity of incidents coming through workers compensation claims. However, she said there has been a decline in notifications and claims in the last two months.</li><li>■ Members noted that:<ul style="list-style-type: none"><li>□ there has been an increase in the number of serious injuries and illnesses notified to the Resources Regulator (attachment A)</li><li>□ the Resources Regulator is undertaking further detailed analysis of serious injuries and illnesses notifications and will report back to MSAC.</li></ul></li></ul> <p><i>Action C: Resources Regulator to present a paper at the March 2021 MSAC meeting on the analysis of serious injuries notifications.</i></p>
7	<p><b>Update on the security sensitive ammonium nitrate (SSAN) assessment program</b></p> <ul style="list-style-type: none"><li>■ Mr Burns briefed members on the paper. He advised that:<ul style="list-style-type: none"><li>□ the Resources Regulator will be preparing further guidance for industry</li><li>□ industry engagement has commenced with a presentation to Glencore and a presentation will be made at the mine safety forum on Tuesday</li><li>□ there is work to be done but no significant issues have been identified that require immediate rectification.</li></ul></li><li>■ The Chair expressed concerns about storage of SSAN in other locations other than mines; in particular, when in transit. If there is an incident enroute to a mine site, it may be viewed as a mining incident. The Chair asked if SafeWork NSW are the responsible agency at locations other than mine sites. And if so, are they adopting a similar approach to the Resources Regulator.</li></ul>

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none"><li>■ Mr Burns replied that SafeWork NSW are responsible and have adopted a similar approach. The regulators are taking a unified approach across the state to build assurance within the public and are working together on a weekly basis. SafeWork NSW is producing generalised guidance.</li><li>■ The Chair asked if consideration has been given to management when it is being transported and/or stored overnight on a truck for transport. Mr Burns replied that the Resources Regulator is taking that into consideration as part of its program.</li><li>■ Members noted the report.</li></ul>
8	<p><b>Legislative framework update</b></p> <ul style="list-style-type: none"><li>■ Mr Linnane brought members attention to two key changes:<ul style="list-style-type: none"><li>□ Changes to notifications of dust diseases. Applies across all industries, not just mining. Will cover silicosis, asbestosis and mesothelioma. Resources Regulator is working with SafeWork NSW.</li><li>□ Proposal to make changes to the Mutual Recognition Act to remove the notification requirement. This presents issues for NSW mining as a condition for maintenance of competence is applied to practising certificates which are issued under current mutual recognition notification.</li></ul></li><li>■ Ms Flemming commented that Coal Services is to notify the Resources Regulator of any pneumoconiosis and silicosis cases. This is expected to be expanded to include all mesothelioma and asbestosis. Mr Keon advised that a proposal to expand the notification is currently before the Deputy Premier.</li><li>■ Members noted the update.</li></ul>
9	<p><b>Member update</b></p> <p>A. <u>NSW Minerals Council</u></p> <ul style="list-style-type: none"><li>■ Mr Ian Cribb introduced the paper tabled for the meeting proposing an independent review of the NSW health surveillance scheme for coal workers provided by Coal Services be undertaken to ensure the scheme is performing to its best capacity. Mr Cribb said it was proposed that MSAC oversight the review and that funds in the Mine Safety Levy reserve be used to finance the review.</li></ul>

### AGENDA DISCUSSED/ACTION ITEM

- The Chair noted the previous conflict of interest declarations made in relation to this agenda item.
- Mr Keon proposed that, if endorsed, a steering committee be established comprising of each of the stakeholder representatives from MSAC with support from the Resources Regulator Secretariat. Any procurement activities would also have to be conducted by the Resources Regulator in accordance government requirements
- Mr Jordan noted that while the paper was written on behalf of the NSW Minerals Council, he said such concerns had not previously been tabled by the NSW Minerals Council appointed directors of Coal Services and he questioned whether the paper reflected the views of all coal industry members of the NSW Minerals Council, rather than one company. He also raised concerns over criticisms in the paper about Coal Services ceasing to carry out medicals during COVID without consultation. He said Coal Services has been open about its arrangements and the Resources Regulator has been kept informed of its activities.
- The Chair noted that if the recommendation is adopted, the content of paper and any criticisms within it, would not form part of the terms of reference. MSAC would develop the terms of reference.
- Ms Flemming provided a history of Coal Services and its responsibilities under the legislation and the further strengthening of health surveillance processes over the last 10 years. Ms Flemming advised she would support a review.
- Mr Cribb said the recommendations in the paper were not made by Glencore but instead the NSW Minerals Council WHS committee.
- Mr Keon advised that the Resources Regulator would support a review as a quality assurance mechanism to ensure NSW continues to have a strong regime in place. He commented that while there were enough funds in the mine safety levy reserve, RR was subject to strict expenditure limits, so additional approval from Treasury may be required if the Resources Regulator is unable to fund this project using its existing operational expenditure limits.
- Mr Keon suggested that the steering committee include one employer representative, one worker representative, one independent representative, and one Department representative. The Resources Regulator would draft a terms of reference for MSAC consideration and endorsement out of session.

### AGENDA DISCUSSED/ACTION ITEM

- Members supported the independent review of the coal industry health surveillance scheme being undertaken and to provide oversight of the review.

*Action D: Secretariat to write to members seeking nominations of one employer representative, one worker representative, one independent representative, and one Department representative for the steering committee.*

*Action E: Resources Regulator to draft a terms of reference for the steering committee and send to MSAC out of session for comment and endorsement.*

#### B. Coal Services

- Ms Flemming advised the report on the coal industry's performance in relation to dust will be provided as a standing agenda item to keep members informed. There have been some exceedances in silica. Data from Queensland has now been received and will be provided to secretariat to circulate with the minutes.
- Mr Keon raised that the report states that many workers are still not wearing appropriate respiratory protective equipment (RPE). Ms Flemming said that it was identified that when exceedances were occurring, workers were not wearing appropriate RPE at the time of recording the exceedance. Coal Services is finding that people don't think they need to wear RPE.
- Mr Burns said the Resources Regulator hadn't seen anything we didn't expect. Across all sectors there has been a decrease. There are some coal mines who have made improvements.
- Members noted the Order 42 Airborne Dust YTD summary report tabled by Coal Services.

*Action F: Coal Services to provide updated report with the figures from Queensland to the secretariat for distribution with meeting minutes.*

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#### **NSW Resources Regulator report**

- Mr Burns provided members with a verbal update as detailed in the attachment. He advised that:
  - there has been one fatality since the last meeting and the Resources Regulator is in its early stages with the investigation
  - there will be a focus on workplace exposure standards at quarries in the next 12 months



AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none"><li>□ all inspectors will be undertaking training in relation to hazardous chemicals</li><li>□ certificate of competence exams has resumed</li><li>□ the number of incidence notifications in last few months has increased; no analysis has been undertaken yet.</li><li>■ Mr Keon advised that a category 1 prosecution proceedings had commenced (second time in NSW) in relation to a shotfiring incident at Albury Quarry.</li><li>■ Members noted the:<ul style="list-style-type: none"><li>□ Regulator’s report for NSW Mine Safety Advisory Council</li><li>□ Quarterly safety report – July to September 2020</li><li>□ Resources Regulator Annual Report 2019-2020.</li></ul></li></ul>
11	<p><b>Mine safety levy report</b></p> <ul style="list-style-type: none"><li>■ Mr Keon provided a verbal report to members on the paper. He said there was one high risk finding relating to corporate overheads in the 2018/19 internal audit report on the Mine Safety Levy.</li><li>■ Mr Keon advised that while the papers forecast that the reserve will remain over 10% by end of financial year, there is a current prosecution matter that will likely cause the reserve to go below 10%. However, as the legal proceedings were ongoing and involved a potential conflict with one of the MSAC members he was unable to disclose further details at this time. He also indicated that the Regulator will further consider whether maintaining the levy reserve at 10% is appropriate, or whether this can be further reduced.</li><li>■ Members noted the:<ul style="list-style-type: none"><li>□ Mine Safety Levy Fund report</li><li>□ update on implementation of the recommendations from the Independent Review of the Mine and Petroleum Site Safety Levy</li><li>□ final report for the internal audit conducted by EY is now available</li><li>□ 2019/20 Mine Safety Levy report.</li></ul></li></ul>
12	<p><b>Multi-media campaign sub-committee</b></p> <ul style="list-style-type: none"><li>■ Mr Linnane referred members to the attachment. He advised that the campaign was undertaken during July but there was a change in the implementation due</li></ul>

### AGENDA DISCUSSED/ACTION ITEM

to COVID restrictions. The purpose of the attached report was to determine how effective the campaign was.

- Ms Armour asked if there is a need to have a targeted follow up to see if there has been a change in behaviour. A lot of people left those questions blank. The campaign is good for awareness, but it is critical that there is a change in behaviour. Mr Burns commented that airborne contaminants is number one in terms of risk profile in the industry. The Resources Regulator will be maintaining a focus on education. Every inspection going forward will include an assessment on dust control.
- Ms Flemming commented that there was an improvement in RPE where exceedances were recorded in September and October. When dust monitoring is being undertaken, Coal Services looks at management and RPE, etc. That data is mapped on a regular basis.
- Mr Kuchel raised that there seemed to be a higher response rate from the coal sector. He asked if those rates were disproportionate when considering the number of people in each sector. Mr Linnane advised that one quarter of all responses was from the quarry sector which is higher than the percentage of workers. Site visits proved to be a more effective way of getting responses.
- Mr Jordan commented that MSAC should be disappointed with the number of people who responded to the survey given the issue so prominent and the effort that was put in to raise awareness. The responses were predominately filled in by managers. For MSAC to be satisfied, we really need to get responses from workers at the coal face.
- The Chair commented that if we were to redo the survey there is concern about the amount of time that has elapsed since the campaign. To redo the survey, we would need to rerun the campaign, or a summary of it.
- Mr Burns commented that priority is how to ensure the information in the campaign is retained in six months by the workers. He said the Resources Regulator handed out more than 1000 dust booklets in non-coal sectors. The inspectorate will have a continuing focus on dust which will go some way to improving education. The toolkit will be distributed on an ongoing basis.
- Mr Keon commented that the challenge is to get through to workers. There are some opportunities next year with the introduction of diesel particulate

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AGENDA ITEM	DISCUSSED/ACTION
	<p>standard and reduction in coal dust coming into effect from 1 Feb. Any follow up survey could be done following that.</p> <ul style="list-style-type: none"><li>■ Mr Cartwright said that there has been an intense focus on the survey. If we want to get to the workers, we should be looking at other indicators within the workforce, such as statistics from Coal Services on low numbers of people wearing RPE, not just surveys. Mr Linnane said the survey was about understanding the effectiveness of campaign, not how well dust is being managed in the mines.</li><li>■ Members noted the Dust Awareness Campaign evaluation report.</li></ul>
	<p><b>Additional business</b></p> <ul style="list-style-type: none"><li>■ There was no additional business.</li></ul>
14	<p><b>Future MSAC meetings</b></p> <ul style="list-style-type: none"><li>■ Mr Linnane advised that the CFMMEU office at Aberdare has been confirmed for the 11 March 2021 meeting.</li><li>■ Members noted the details for the MSAC meetings for 2021.</li></ul>
	<p><b>Closing</b></p> <ul style="list-style-type: none"><li>■ The meeting concluded at 11:41am.</li></ul>

## Action items

NO.	RESPONSIBILITY	ACTION	AGENDA ITEM	DUE DATE
A	Secretariat	Include dates for the Department's 2021 electrical and mechanical engineering seminars in the stakeholder events calendar.	1	11/03/21
B	Tony Linnane	Resources Regulator to prepare a paper for the March 2021 MSAC meeting on recommendations 1, 2 and 35 of the report on the statutory review of the WHS (MPS) laws	5	11/03/21

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NO.	RESPONSIBILITY	ACTION	AGENDA ITEM	DUE DATE
C	Tony Linnane	Resources Regulator to present a paper at the next meeting on the analysis of serious injuries notifications.	6	11/03/21
D	Secretariat	Write to members seeking nominations of one employer representative, one worker representative, one independent representative, and one Department representative for the Coal industry health surveillance scheme steering committee.	9	10/12/20
E	Tony Linnane	Resources Regulator to draft a terms of reference for the coal industry health surveillance scheme steering committee and send to MSAC out of session for comment and endorsement.	9	18/12/20
F	Lucy Flemming	Coal Services to provide updated report with the figures from Queensland to secretariat for distribution with meeting minutes.	9	17/12/20