

Minutes

MEETING	Mine Safety Advisory Council		
MEETING NO.	3 of 4 for 2014	DATE	4 September 2014
LOCATION	Jumbunna Room - MLC Centre	TIME	10:30am – 1:00pm
ATTENDEES	<p>John Hannaford (MSAC Chairman), Barbara McPhee (Independent), Dr Graeme Peel (Independent), Peter Jordan (CFMEU), Andy Honeysett (CFMEU), Tony McPaul (NSWMC), Ian Cribb (NSWMC), Scott Tipping (CCAA).</p> <p>Observers and Secretariat: Andrew McMahon (NSW MC), and Jenny Nash, John Flint, Bruce Jones and Rob Regan from T&I.</p> <p>Guests: Robert Vellar and Lee Shearer (T&I), Peter Wilkinson (Noetic Group)</p>		
APOLOGIES	Glenn Seton (AWU), Andrew Lewis (T&I)		
PREPARED BY	Bruce Jones		

Welcome and preliminary business

Action	Status
<p>The Chairman opened the meeting and welcomed members and observers, and introduced Mr Robert Vellar, Executive Director / Governance and Ms Lee Shearer Executive Director / Compliance and Enforcement within NSW Trade and Investment's Resources and Energy (R&E) Department. The Chairman invited both Mr Vellar and Ms Shearer to brief members on how their new positions under the new departmental structure relate to MSAC business.</p> <p>Ms Shearer spoke of her professional background in the Police and the positions she had held (LAC Newcastle; Director Legal Services) and the independent roles she has had since leaving the Police. She advised her role as Executive Director of the newly established Compliance and Enforcement Branch in R&E:</p> <ul style="list-style-type: none"> • Background in emergency response has enabled her to review emergency response procedures and is in final discussions with Police about a sub-Plan for mine emergencies under the SERM Act. • Wants Resources and Energy to be a modern regulator with a risk based approach, striking a balance on the road to a stronger enforcement regime and working to empower industry. <p>Ms Shearer thinks Mine Safety is ahead of the rest of the Department and her focus in next six months will be –</p> <ul style="list-style-type: none"> ○ Crystalize reporting and resource deployment 	

Action	Status
<ul style="list-style-type: none"> ○ This includes the titles and environment sections of the Department, and ○ Looking to the future. <p>Mr Vellar, the Executive Director of the new Governance section in R&E spoke to members:</p> <ul style="list-style-type: none"> • About his background (also largely) in Police and more recently as an Assistant Commissioner for Fair Trading; that his Police background has given him a passion for emergency management. • His aim is to help establish a proper governance structure to reduce or eliminate any corruption in NSW especially in the Titles/Planning areas. • Initial observations are that there is not enough oversight on expenditure of Fund Levies and he will work to improve this through better performance reporting. • He wants R&E to achieve best practice in performing its roles and delivering services. <p>The Chairman requested information regarding the Department's representative on MSAC and was advised it hasn't been finalised and matter presently with Deputy Secretary, but is likely to be Mr Vellar.</p> <p>Member NSWMC asked if there was any chart or explanation of the new departmental structure. Ms Shearer advised the restructure was to provide seamless functions and management across the department so that it provided better services and better delivery of those services. She was happy to provide information if requested. Members asked if there was a non-redacted version of the restructure report (it had been agreed at the last MSAC meeting to send copies of the redacted version to members) and were advised it was still to be released.</p> <p>The Chairman requested a briefing on the restructure be provided for the next MSAC meeting for the information of members.</p> <p>The Chairman thanked both directors for attending and for the information they had provided and wished them well in their respective positions.</p> <p>The Chairman then asked if there were any declarations of conflict of interest. There were none.</p>	<p>Determination of Department's MSAC representative to be finalised; presently matter with Deputy Secretary.</p> <p>A briefing for members on the department restructure is to be provided at the November MSAC meeting.</p> <p>No conflicts of interest.</p>

This meeting

Item	Issue	Action
1.	<p>Minutes from the previous meeting Members resolved that in regard to "resources required" the last dot-point and last paragraph of Item 4 be deleted. Minutes accepted. No business arising.</p>	<p>Reference to "Resources required" in Item 4 to be deleted. Minutes accepted.</p>
2.	<p>MSAC fatalities review The Chairman then brought members' attention to business on hand, referring members to Attachment 2, and asked Mr Peter Wilkinson to report on his initial review of the recent fatalities at NSW mine sites.</p> <ul style="list-style-type: none"> • From the information on the incidents provided to him by the Department Mr Wilkinson reported that on 	<p>Discussed.</p>

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	<p>consideration of the facts associated with the 5 fatalities, they all were (in his opinion) depressingly “normal” industrial accidents except for Austar.</p> <ul style="list-style-type: none"> • Fatigue did not seem to be an issue, and • There were known controls but these did not stop the incidents. <p>He explained he used the word “normal” because although they were preventable in hindsight the same circumstances that caused these fatalities may have been such for some time with no incident occurring, and it was just in the case of these fatalities, circumstances were not favourable. Chance does play a role regarding whether the outcome is an injury or a fatality.</p> <ul style="list-style-type: none"> • He explained that when looking at the circumstances and factors in play in an incident, he considers all factors – the activity at the time, employment circumstances, location, age and experience of workers, time of day/night, what risk controls were intended to be in place (and were they in place) and the extent to which these types of incidents are known (or occur) in the industry. • He said accidents can always be prevented with hindsight – and that data is a key to foresight. All individuals have a propensity to error or have an inherent vulnerability to make an error – in mining this can come down to an incident happening as a result of a wrong move on a joystick. This may be chance but really it is because the longer something stays where it is (or the same), humans get used to that. • If the barrier is human action then human error needs to be taken into account. • Informal procedures should be looked at as well as formal procedures and supervisors may be aware of gaps, and it is a problem if incidents are only reported when there is an injury (and COMET only for reportable incidents). <p>Mr Wilkinson advised that he had not been provided with information to aid him in looking at risk controls so he doesn't know how they are controlled, he doesn't know how well managers know what the controls are and how well they are implemented and therefore how well the risks are controlled at a mine site. Mr Wilkinson thought the Regulator should collect information on controls.</p> <p>The Chairman asked Mr Wilkinson whether it was worthwhile looking at company data if it were available. It would he advised.</p> <p>Rob Regan advised that since 1991 there have been 61 MDGs produced in NSW and there are legislative requirements for the industry to deal with MDG issues. He agreed that inspector audit reports are not utilising feedback on non-compliance. Data shows that recent incidents are in the low frequency range and the risks were known in three cases.</p> <p>NSWMC member asked why, if the hazard is known and steps/checks put in place and yet incidents still happen, there is no data. This was confusing – if the department has all this information, why is information still not provided to industry? What is not known is how well are those controls implemented.</p> <p>CFMEU member asked what the department can do about non-reporting / compliance about data not captured by inspectors.</p> <p>Mr Regan offered to supply Mr Wilkinson a summary of the five most recent Audit Reports (on controls) which was</p>	<p>Despite controls human actions need to be taken into account.</p> <p>It was noted it would assist inquiry if companies provide data.</p> <p>Mr Wilkinson thought the Department should collect information on major hazard controls.</p> <p>Five most recent audit reports to be supplied to Mr Wilkinson by MSO.</p> <p>Members requested Mr Wilkinson's</p>

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	<p>accepted.</p> <p>Members requested that the final report from Mr Wilkinson is to be circulated out-of-session and Mr Wilkinson is to be invited to the next MSAC meeting to present his findings.</p>	<p>report be circulated out-of-session and that a presentation be made to members at next MSAC meeting.</p>
<p>3.</p>	<p>Coordination of Emergency Management</p> <p>The Chairman asked for agreement from members to bring item 3.2 forward to allow Lee Shearer to speak on the topic of emergency management, before she has had to leave to attend another meeting. Members agreed.</p> <ul style="list-style-type: none"> • Ms Shearer advised that she feels this has been a very good project and the process is nearly complete with a sub-Plan agreed on to go to SEMC mid-September. • She doesn't expect any more surprises or hold-ups as the Deputy Police Commissioner involved is keen to have this wrapped up. All is agreed at departmental officer level, including Ministry • She expects inspectors, because of the technicalities involved in mining, will definitely be able to assist Police make decisions at an incident site as part of the Incident Management Team. • She advised that when the sub-Plan is signed-off (due to be by end of November) then it will be distributed immediately. • Once the sub-Plan and new arrangements are bedded down (which will likely take some time), all will fall into place with the various parties knowing each other's expectations through better communication and rehearsal of potential incidents. • MS Shearer is confident that once in place, if there is a Pike River or a Morwell fire incident here there will now be a co-ordinated approach from State agencies. <p>NSWMC member asked if the 2 years' worth of data from simulated emergency exercises his company has may be useful. He also reported they could comment on the sub-Plan.</p> <p>The Chairman asked what will be the likely impact of the sub-Plan? Ms Shearer indicated it would have faster responses and substantial assistance at emergency sites, and possibly in emergency management exercises (although this has not yet been considered). The key lesson from this project is the need for a co-ordinated approach by government agencies.</p> <p>Mr Regan also advised he is in the process of recruiting three more emergency management inspectors.</p> <p>Members requested that when the sub-Plan is approved then a briefing is to be made to MSAC.</p>	<p>Noted</p> <p>Sub-Plan agreed at officer level; set to receive State Emergency Management Committee approval soon.</p> <p>MSAC to be briefed when sub-Plan approved.</p>
<p>4.</p>	<p>Medlock Review Working Group</p> <p>The Chairman introduced the next meeting item, referring them to Attachment 3, concerning the Medlock Review into the communication of learnings from mining incidents to industry in a timely manner, advising members that a meeting had been held on 29 August 2014 of the Working Group (WG).</p> <p>The Chairman reported that there was a lack of clarity for WG participants – while there was a comprehensive presentation about the Investigation Unit (IU) by the IU Manager, Steve Orr, WG members felt that this is not a review</p>	<p>Discussed.</p>

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	<p>of the IU or its enforcement role – but purely about the communication of lessons learned from incidents.</p> <p>After discussion members agreed the process for the WG should also be about understanding why delays hinder information release. While the presentation on the IU has led to a better understanding of what it takes to get a report out, members hope to hear from a representative from Sparke Helmore for a company’s perspective at the next WG meeting. The Chairman summarised the meeting and then invited comment from members –</p> <ul style="list-style-type: none"> • The Investigation Unit Manager had raised issues not previously dealt with or considered. • Legal personal privilege (LPP) is a major inhibitor to the release of all information relating to an incident and safety may be secondary outcome of the IOU conducts criminal style investigations. • Level 2 investigations are not being considered in relation to lessons that can be communicated to industry due to resourcing issues; the whole of our processes for Level 2 and 3 incidents need to be looked at. <p><u>Comment:</u></p> <p>Independent member Graeme Peel re-stated his position –</p> <ul style="list-style-type: none"> • That both the industry and regulator should investigate Level 3 incidents (as they do largely for Level 2s) and that no action to prosecute should be taken until an investigation is complete. • This may help mend an apparent dis-connect between the IU and companies; best practice is for companies to fully collaborate and provide information independent to any legal impost. • Without those conditions there will never be a quick dissemination of lessons learned. <p>NSWMC members stated that –</p> <ul style="list-style-type: none"> • Once the Investigation Unit are involved (Level 3, and sometimes reviewed Level 2 incident) the shutters come down in the industry – through fear of prosecution – and personal legal privilege is claimed. • Have no preference on structure – just want improvements so information gets out to industry. • Would like MSAC to determine a decent time-frame to set for Level 3 investigations release of findings/report. <p>CFMEU members stated –</p> <ul style="list-style-type: none"> • The pressure is on the WG as no agreement again in the meeting; wonders if there ever will be agreement and this surprises him as half the WG comprise MSAC members, so there should be clarity at WG meetings; • The CFMEU has concerns if lawyers for parties are at the next WG meeting and they receive the criticism the IU Manager got at this meeting of the WG; • Very concerned there is still nothing from the WG and likely still nothing by the time of the next MSAC meeting; • Questions whether the process is right. <p>T&I –</p> <ul style="list-style-type: none"> • Clarification from MSAC is about getting safety outcomes. • Not only looking at Level 3 as level 2’s should also be considered • The focus of the WG is not on the enforcement Policy and not about prosecution. The most important focus is about getting information out. <p>The Chairman concluded that although some WG discussions were fraught there were positives and he is still</p>	<p>MSAC request the WG to hold further discussions but that resourcing of investigation is not an issue to be discussed at this stage.</p>

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	<p>expecting clear resolutions resulting from the next WG meeting as there is now a clear focus on safety and why, if collaboration works at Level 2 investigation level, what is blocking the same collaboration at Level 3 – there must be a solution found.</p> <p>Rob Regan commented that the creation of the IU has kept investigation costs down but not sure how they could have a different system and still keep the protections that currently exist in place.</p> <p>The Chairman feels this matter is moving forward and he will make clear to the WG that MSAC would like –</p> <ul style="list-style-type: none"> • More discussion to take place about current process delivering and include Level 2 learning/process. • That this is not about resources but about incidents and getting learning outcomes out to industry as soon as possible. <p>There was some discussion on setting a timeframe goal for the dissemination of learnings but no agreement was reached.</p>	<p>Level 2 learnings should be considered by the WG.</p> <p>The WG should consider how learnings can be disseminated to the public as soon as possible following an investigation.</p>
5.	<p>Older Workers</p> <p>The Chairman then took members to the item on Older Workers on the Agenda (Attachment 4). It reported on work to date and the Executive Officer then updated members on an out-of-session on Older Workers held on Monday 25 August 2014:</p> <ul style="list-style-type: none"> • The aim of the meeting was to establish clear objectives and a clear way forward the older workers project. There was not a formal quorum as union representatives were unable to attend due to unforeseen circumstances. • Those present discussed a number of key themes and ideas. • Steps were also identified which could occur over a time period of 1 to 3 years – <ul style="list-style-type: none"> ○ Examine workers compensation data, to determine if workers over the age of 45 are leaving the industry with workplace injuries. ○ Develop the safe design program over the next 2 to 5 years. ○ Older workers WHS needs to be considered when developing and revising MSAC material (e.g. fatigue, health management plan). This to be achieved by developing a tool with set criteria to ensure the WHS needs of older workers are considered in all publications. ○ Department and stakeholders consider older workers work health and safety needs in WHS material. ○ Post material on MSAC website including the HMAc discussion paper December 2012. ○ Influence health control plan under the new legislative framework ○ Include older workers questions in health lead indicator survey; and ○ Explore opportunities to influence International and Australian standards when appropriate. • A more detailed project plan will be developed for consideration if MSAC endorses the progression of the proposed steps. <p>MSAC members agreed key objectives should be –</p> <ol style="list-style-type: none"> 1. Mining work places and practices are suitable and sustainable for all workers throughout their working lives; 	<p>Members updated on discussions and suggested steps to understand and meet the WHS needs of Older Workers.</p>

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	<p>and, 2. Workers can retire and be functional in retirement.</p> <p>MSAC members discussed the outcomes of the Older Worker workshop and support HMAC in developing a project plan based on the steps as outlined and agreed objectives to meet the WHS needs of Older Workers.</p>	<p>MSAC support HMAC to develop a project plan based on outlined steps and objectives to meet the WHS needs of Older Workers.</p>
6.	<p>Safe Design The Chairman then referred members to Attachment 5 on a work done and a proposal concerning Safe Design which is connected with the Older Worker issue but has actually grown out of the Participatory Ergonomics program. Members discussed aspects of this matter and the project proposal –</p> <ul style="list-style-type: none"> • The Director of Mine Safety Operations considers this is all about cost benefits that will entice industry to get on board this project. • At the workshops with workers held in the Central West on this subject the big winner was productivity. • The CCAA are very supportive of this program and see as benefitting smaller operators and how they can influence OEMs. • The project plan would – <ul style="list-style-type: none"> 1. Encourage participatory approaches with safe design issues; 2. Establishing list of hazardous tasks where a safe design is a barrier; 3. Coordinate workshops with industry on specific tasks where safe design is a concern; 4. Promotion of safe design and consider establishment of formula to provide a cost benefit analysis for safe design; 5. Establish partnerships with experts on safe design focusing on new technologies which promote automation and decrease risks; and, 6. Develop a guide for the end user to influence safe design. <p>Members agreed to endorse the Safe Design program and funding proposal and would like to see it have real results for people.</p>	<p>Members agreed to endorse Safe Design program and funding proposal.</p>
7.	<p>Business for Noting</p> <ul style="list-style-type: none"> • Correspondence from Minister and CCAA concerning MSAC appointments. • Update from Health Management Advisory Committee. • Update from WHS Culture Working Party. • MSAC work matrix. 	<p>All Noted</p>

Next meeting

26 November 2014
Level 47, MLC Centre, Martin Place Sydney