

MINUTES			
Mining and Petroleum Competence Board (the Board)			
MEETING NO.	3 for 2016	DATE	25 August 2016
LOCATION	Hanson NSW Head Office, Level 18, Jessie Street Centre, 2-12 Macquarie St, Parramatta	TIME	10.15 am – 3.05pm
ATTENDEES	Mick Cairney (NSWMC), Nick Strong (NSWMC) by teleconference with online access to documents, Leanne Parker (CCAA), Andy Honeysett (CFMEU), Dave Simm (CFMEU), Brock Skelton (AWU), Tony Linnane (NSW Department of Industry), Tony Ingram (Independent), Bob Gibbons (Independent), <i>Secretariat:</i> John Flint, Andrew Palmer, <i>Observers from NSW Department of Industry:</i> Melinda Edwards (Co-ordinator Professional Standards, Governance) from 1pm.		
APOLOGIES	Doug Revette (NSW Department of Industry), Keith Shaw (CFMEU), Dave McLean and Gary Parker, Acting Chief inspectors (NSW Department of Industry), Glen Seton (AWU)		
PREPARED BY	Andrew Palmer		

Welcome and preliminary business

No.	Item	Status
1	Introduction	Noted apologies and alternate delegates for the AWU and CFMEU.
1.1	<p>John advised the term of appointment for the previous Chairperson (Bryan Davis) expired on 22 July 2016. Under the Board Charter, in the absence of a Chairperson, the Board can elect a member to chair the meeting. John nominated Tony Ingram as an independent and the members agreed to this sole nomination.</p> <p>The Chairman welcomed those in attendance and thanked Leanne for providing the venue and catering for the meeting. Leanne then explained WHS arrangements for the venue.</p> <p>Brock advised that Glen Seton has taken extended leave and at this stage he will represent the AWU. David advised that he was standing in for Keith Shaw for this meeting.</p>	
1.2	Declaration of conflict of interest	

No.	Item	Status
	The Chairman asked if there were conflicts of interest to declare. No declarations were made.	No conflicts of interest declared.
1.3	<p>Acceptance of previous minutes and actions arising (paper 1)</p> <p>Moved by Leanne, seconded by Andy that the minutes of the previous meeting 10 May 2016 in paper 1, as amended, were accepted. Andrew advised that the actions arising from previous meeting have been completed with papers for this meeting and the guidance for 2.6 Underground Mining Supervisor on the number to be nominated by a mine operator is still under development by the Department.</p>	Minutes accepted.
1.4	<p>Correspondence (paper 2)</p> <p>Correspondence received and sent was noted by the Board.</p>	Correspondence noted.

No.	Item	Status
2.1	<p>2. For update and discussion and/or decision</p> <p>Paper 3 – Progress report on statutory functions descriptions</p> <p>Andrew acknowledged the efforts of the Steering Group (Leanne, Gary and Keith) to progress this project in providing their time at short notice to review documents and meet.</p> <p>Andrew summarised the Background in the paper that the project had been recalibrated so the descriptions closely align with legislation. The descriptions outline:</p> <p>a) what is stated in the legislation for what the individual must do e.g. the duties of mining supervisor are specified for certain functions</p> <p>b) those requirements in legislation for other duty holders and statutory functions that is recommended that they should assist with as a minimum good practice e.g. the mine operator must establish and implement the mine's safety management system but an individual exercising a statutory function can assist them with the duty.</p> <p>Nick asked whether Descriptions could be used in prosecutions. Tony Linnane advised that the intent of the descriptions is to provide clarity for the mine operator on what individual is to do in</p>	

No.	Item	Status
	<p>order to exercise the function. Leanne agreed that the Description enables the mine operator and individuals to assess whether they have the motivation and capabilities to exercise the function.</p> <p>Andrew tabled an A3 sheet detailing the statutory functions from Schedule 10 of the Regulations for the 8 draft Descriptions in appendices A – E and the additional three emailed to the Board. On the rear of the sheet, an extract from the Descriptions for Deputy, Undermanager and Mining Engineering Manager was provided to demonstrate the differences between them and the consistency. Andrew pointed out the wording of the functions for Quarry Manager and Underground Supervisor are different to the other similar functions on their level. Leanne and Tony Ingram think the Quarry Manager function contains tasks that are carried out for the Mining Engineering Manager functions. Tony Linnane clarified that the wording between the functions is different and descriptions cannot be written to disregard this. He indicated that amendment to the Regulation can be possible if the Board recommends the statutory functions be changed.</p> <p>The Board agreed that only the engineering manager functions have the scope restricted to engineering standards and procedures. Other positions (e.g. Deputy) have the scope for exercising their function for the whole Safety Management System.</p> <p>The Board reviewed the proposed additional section for Work Practices in the Deputy description. The Board supported that a work practices section be added to all lower level functions up to Undermanager level, but that it is not appropriate for the Engineering Manager level. Andrew advised that development of this section is not provided for in the contract for Forsythes. The Secretariat will develop this material as they have time to do it.</p> <p>Mick spoke to a handout of the 'Ten Hurdles PDCA WHS Act 2012' that Andrew provided. The handout sets out the legislative requirements of the WHS Act and Regulations that essentially requires an individual to manage WHS i.e. PDCA – Plan, Do, Act, Check. Mick put forward that it would be beneficial for the descriptions to encourage individuals to think of exercising their functions as part of the management cycle. The meeting agreed in principle.</p> <p>Tony Ingram raised an issue with the Quarry Manager description in the Interpretation section. He referred to the Review phase for setting out what is to be exercised but then refers to how it should be carried out, with the list of items not being complete. This conflicts with the approach that the descriptions are to state what but not how to carry out the function.</p> <p>The Board supported the overall approach being taken with the development of the Descriptions</p>	<p>1) The Secretariat (Andrew) to consult with Leanne and Tony Ingram to possibly develop an alternative wording for the Quarry Manager statutory function to put to the Board.</p> <p>2) The Descriptions be amended so functions other than engineering managers have a scope to exercise for the safety management system, and not just engineering standards and procedures.</p> <p>3) Secretariat to develop Work Practices section for statutory functions below the Engineering Manager level as they are able to.</p> <p>4) Andrew to investigate amendments to the Descriptions that encourage a management approach to exercising the legislative requirements in the statutory functions by individuals.</p> <p>5) Tony Ingram and other members of the Board have 2 weeks until the 8 September 2016 to provide feedback on the draft descriptions tabled.</p> <p>Noted Board endorsement of the work completed to date for the drafts of descriptions and the approach being taken.</p>

No.	Item	Status
	and their content.	
2.2	<p>Paper 4 - Update on working group progress with maintenance of competence scheme</p> <p>Andrew acknowledged the efforts of the working group to progress the scheme, by meeting every month between Board meetings since February 2016.</p> <p>The Working Group has met twice since the last Board meeting to respond to action items from the last plan and to progress their action plan (attachment A). Papers 5 – 10 contain their recommendations to the Board to finalise the design of the scheme and to start consideration of the operation and implementation of the scheme.</p>	<p>The Board noted the progress of the working group in actioning their plan to respond to public comment on the scheme.</p>
2.3	<p>Paper 5 – Clarifying areas of competence topics</p> <p>The working group recommended in response to the last Board meeting action items:</p> <ol style="list-style-type: none"> 1) The meanings given for the main topic areas in the safety management system sub area of WHS-Mining Systems be accepted 2) adding and deleting topics from the WHS-Mining Systems area of competence including hoisting being removed. 3) revised rules and guidelines to apply to how learning is undertaken by individuals for areas of competence e.g. learning must be relevant to their statutory function <p>Moved by Leanne, seconded by Mick that the recommendations be accepted. The Board agreed.</p>	<p>The Board agreed to endorse to the Department the revisions to the areas of competence for the scheme recommended by the working group in paper 5</p>
2.4	<p>Paper 6 – Types of learning recognised</p> <p>The working group recommended in response to the last Board meeting action items:</p> <ol style="list-style-type: none"> 1) non-formal learning be added as an additional category, given meanings of formal and informal learning, according to the OECD provided in attachment C 2) adding Mines Rescue Brigades person training and exercises as Non-formal learning (except that which may claimed under formal training courses) 3) the percentage ratios be amended to formal learning against non-formal & informal 	<p>The Board agreed to endorse to the Department, the revised types of learning set out in attachment A of paper 6, with the amendments to the classification of Brigades training and exercises.</p>

No.	Item	Status
	<p>learning (combined).</p> <p>The Board requested that Mines Rescue Brigades person training and exercises be split into Formal for their training courses and Non-Formal for exercises.</p> <p>Moved by Leanne, seconded by Mick that the recommendations be accepted as set out in attachment A, with the amendment to the classification of Brigades training and exercises. The Board agreed.</p>	
2.5	<p>Paper 7 - Learning hours requirements</p> <p>The working group recommended in response to the last Board meeting action items:</p> <ol style="list-style-type: none"> 1. removing the rule of minimum of 8 hrs of learning be completed each year (to replace it) 2. the proposed rule of a maximum of 1/3 of total hours required for a certificate can be claimed in any one year of the five period prior to renewal 3. one third of the total learning hours required for each certificate be allocated to the areas of competence as follows: <ol style="list-style-type: none"> a) Mining and WHS systems (minimum 1/3) b) Legislation, Emergency Management and Leadership & Management (minimum 1/3) c) Other WHS topics (maximum 1/3) <p>Tony Ingram spoke in support of the maximum hours per year rule as it still allows individuals to do a lot of their hours in any one year, particularly those in remote areas who may attend a number of longer learning events e.g. conferences. John also pointed out that it allows a person to have 2 years out of the 5 in which they do not complete learning e.g. maternity or sick leave.</p> <p>Moved by Tony Ingram, seconded by Tony Linnane the Board accept the recommendations. Agreed.</p>	<p>Board endorsed the recommendations of the working group to the Department to make changes to the rules for learning hours, as set out in paper 7 and summarised below:</p> <ol style="list-style-type: none"> A. Number of hours to be completed in any one year to be amended from a minimum of 8 hours to a maximum of 1/3 of total hours B. Total hours of learning hours required be split by one thirds between: <ol style="list-style-type: none"> i. Mining and WHS systems (minimum 1/3) ii. Legislation, Emergency Management and Leadership & Management (minimum 1/3) iii. Other WHS topics (maximum 1/3)
2.6	<p>Paper 8 – Records and auditing</p> <p>The working group presented its recommendations to address record keeping and auditing of</p>	<p>The Board endorsed the recommendations of the working</p>

No.	Item	Status
	<p>individuals:</p> <ul style="list-style-type: none"> a) Department (not) providing an online system for individuals to renew their practising certificate (but will provide guidance with sample logbooks – electronic and paper versions) b) A Department email address to which individuals can ask for clarification and confirmation of compliance c) Accepting records from any substantiated source, including CPD providers (and mine operators) d) Department to develop auditing processes based on group outcomes, in consultation with the Board e) Department not to approve formal learning courses and providers <p>Working group reviewed the discussion paper for the scheme in these areas, and agreed with what was originally proposed. They have considered the public comment themes and made recommendations that do not add to the administrative burden for industry or the Department.</p> <p>Bob stated that it should be promoted for mine operators to keep records for their workers. John indicated that mine operators would be supported along with other stakeholders as part of implementation, including CPD providers who may be able to support their participants with records and evidence to satisfy the scheme.</p> <p>Moved by Andy, seconded by Brock that the recommendations be endorsed by the Board, which was agreed to.</p>	<p>group to the Department, as set out in paper 8 and summarised in these minutes, with additional notes.</p>
2.7	<p>Paper 9 – Managing non-compliance and reapplying after lapsing</p> <p>Recommendations from the working group for the proposed processes for managing non-compliance and lapsing of certificates were:</p> <ul style="list-style-type: none"> a) individuals to be required to make up any shortfalls detected as non-compliance within the 5 year renewal period to retain their practising certificate b) At renewal or thereafter, non-compliant individuals will be required to show cause why action should not be taken by the Department, with their response considered to 	<p>The Board endorsed the recommendations of the working group to the Department, as set out in paper 9 and amended in these minutes for managing non-compliance and reapplying after lapsing the practising certificate.</p>

No.	Item	Status
	<p>determine whether they will retain their practising certificate</p> <p>c) managing individuals applying for a practising certificate after:</p> <ul style="list-style-type: none"> i. a 3 year period from scheme introduction for the certificate, or ii. an existing practising certificate lapses for over 3 years before the person reapplies <p>with the option to impose an additional condition for the individual to complete extra learning hours during the first 12 months of 20% of their total learning hour's requirements, on top of their existing requirements.</p> <p>Andrew provided a flowchart of the proposed scheme to assist discussions.</p> <p>Tony Linnane proposed an amendment to recommendation c) that:</p> <ul style="list-style-type: none"> i. is a 2 (not 3) year period from scheme introduction for the certificate, before the additional loading applies ii. existing practising certificate lapses for over 1 year (not 3) then it is an extra 20% loading on top of required total hours <p>Moved by Nick Strong, seconded by Andy that the recommendations be accepted, as amended. Agreed by Board.</p>	
2.8	<p>Paper 10 – Implementation of the scheme</p> <p>Recommendations from the working group for the implementation of the scheme were:</p> <ol style="list-style-type: none"> 1) staggered introduction for requirements for the issuing (of practising certificates) and commencing of maintenance of competence condition(s) over a 12 month period 2) the Department reviews the scheme during implementation and makes reports to the MPCB on a regular basis for consideration. The Department will discuss and agree with the Board on any changes that need to be implemented and will communicate the changes to industry. <p>Moved by Andy Honeysett, seconded by David Simm that the recommendations be endorsed by the Board. Agreed.</p>	<p>The Board endorsed the recommendations of the working group to the Department, as set out in paper 10 for implementation of the scheme.</p>

No.	Item	Status
2.9	<p>Paper 11 – Risk profiling operations for mine specific Quarry Manager Practising Certificate and competence standards</p> <p>Tony Linnane introduced the paper indicating the Resources Regulator internal working group had further progressed the matter from the concepts outlined at the last Board meeting, as requested.</p> <p>Attachment A to the paper ‘Draft risk assessment tool for a mine for eligibility to nominate with a mine specific Quarry Manager Practising Certificate’ was endorsed by the Board, without amendment. Leanne and Tony Ingram are going to consult with stakeholders in the extractives industry on the application of the tool and provide feedback within 2 weeks.</p> <p>Attachment B ‘Extract from draft Guide: Practising Certificate for Quarry Manager of a specific mine’ set out the proposed process and competence pre-requisites for applicants to align with the existing certificates of competence system, with the following changes from the existing process for the Production Manager Permit system:</p> <ol style="list-style-type: none"> 1. attendance at a briefing session to be optional and replace the existing requirement to attend a half day information session 2. persons will be required to have a current first aid certificate and one year’s experience working in a quarry 3. undergo a written examination via online assessment and oral examination by interview at the mine <p>The Board endorsed the proposed process without amendment.</p> <p>The maintenance of competence working group have recommended a proposal from the Regulator internal working group for individuals to attend a half day seminar provided by the regulator to update/refresh individuals on WHS at quarries once during the five year period of the practising certificate, prior to renewal. The Board endorsed the proposal.</p>	<p>Leanne and Tony Ingram to distribute ‘Attachment A Draft risk assessment tool for a mine to determine eligibility for a Mine Specific Quarry Manager Practising Certificate’ to stakeholders in the extractives industry, including the CCAA, for feedback on its suitability within 2 weeks (9 September 2016) to Andrew.</p> <p>The Board endorsed the Department’s proposed:</p> <ol style="list-style-type: none"> a) process and competence standards for assessing individuals for the Mine Specific Quarry Manager Practising Certificate b) half day seminar conducted by the Department to refresh and update on WHS for quarries, which holders will attend once every 5 years prior to renewal of the practising certificate.
2.10	<p>Paper 12 – MPCB Annual Report for 2015/16</p> <p>Board endorsed report with the amendment that Bob Gibbons and Tony Ingram be added to the list of Board members serving during the year.</p>	<p>The Board endorsed the annual report for submission to the Minister, with amendments.</p>

No.	Item	Status
2.11	<p>Paper 13 – Nominations for examination panel members</p> <p>Nick raised the issue of an examination panel member being involved in a reportable incident under investigation and whether this should affect approval to appoint them to the examination panel. The justification is that it may be perceived that the examination panel member and the panel's capacity to examine individuals may be perceived as being less than expected. Members discussed that individuals could be working at mines where incidents are under investigation and they may not know they are involved. Andrew suggested they could choose to stand aside for a period if they did know. The Board did not form a view on how these situations could be managed but thought it could be addressed in the code of conduct for examiners.</p> <p>Moved by Leanne, seconded by Andy that the Board endorse:</p> <ul style="list-style-type: none"> a) appendix A – Brief for approval with its recommendations to appoint and pay examination panel members to assess candidates, and the Chief Inspector and Director of Mine Safety Performance to sign the letters of appointment b) the elected Chairperson at the meeting signs the original on behalf of the Board to indicate the endorsement. <p>The Board agreed.</p>	<p>The Board endorsed the brief to appoint and pay examination panel members listed in the attachments, as indicated by the elected Chairperson signing off on the brief.</p>
3	<p>Business for noting</p> <p>3.1 Paper 14 - Update on Australasian Mining Competency Advisory Council (AMCAC)</p> <p>The paper gave a summary of the AMCAC meeting on 24 May 2016 and its outcomes. The Board noted the update on the establishment of AMCAC and its activities. It was agreed for Nick and Keith to attend the next meeting tentatively proposed for Monday 7 November 2016 in the Hunter Valley.</p> <p>Paper 15 - Progress in implementing the Board strategic plan to 2020</p> <p>3.2 Leanne advised that Skills DMC has proposed to combine with the automotive industry skills council to be the Skills Service Organisation for their industries. They are awaiting a response from the Federal Government agency involved shortly.</p> <p>3.3 Progress with appointment of chairperson and members</p>	<p>Nick and Keith to attend the next meeting of AMCAC on 7 November 2016 in the Hunter Valley (tentative date).</p> <p>Progress in implementing the operation plan for the Board Strategic Plan was noted.</p>

No.	Item	Status
	<p>John advised that approval for the appointment of the Chairperson will go to Cabinet on 2 September 2016 or thereafter. He also advised that he has sent letters to the organisations represented on the Board asking for nomination for those members whose terms of appointment expire in December this year.</p>	
4.	<p>Other Business Conduct of 2016 Open Cut Examiner (OCE) Examinations Melinda tabled a Summary of Investigation into the 2016 OCE examinations undertaken by the Professional Standards Branch, Resources & Energy Branch of the Department in response to 2 allegations. Their findings were: Allegation 1: Some OCE candidates were provided with the OCE legislation exam questions the night before the exam – sustained. The investigation found an administrative error resulted in an Open Cut Manager exam candidate receiving the OCE paper. The candidate recounted the questions to an RTO trainer, who passed them on to their OCE candidates. Allegation 2: An exam panel member provided OCE candidates that worked at this mine site with exam questions/topics – not sustained. The exam panel member provided general, non-specific advice on how to answer questions and problem solving techniques to employees at their mine. However, mentoring and coaching of candidates by exam panel members is consistent with a perceived conflict as described in the conflict of interest policy. The recommendations from the investigation are: 1. Review administrative policy and procedures regarding the preparation and administration of examination processes 2. Review current conflict of interest management strategies for Convenors and Exam Panel Members as they relate to the competency framework. ... 3. Review the competency framework and measures of competency for the OCE and OCM. 4. Provide examination debrief material in a timely manner, including an answer guide for all OCE and OCM questions. John clarified, with Board member input, what could be considered in actioning the recommendations and prioritisation: 1. Immediate priority for: a) establishing a 2 step verification process for Department to ensure correct papers are sent</p>	

No.	Item	Status
	<p>b) exam questions set should have model answers and marking guides In the longer term: c) possibly establishing a bank of exam questions from which each year a number are selected. The questions could be reviewed every 4-5 years for currency.</p> <p>2. Urgent review of the framework for managing conflicts of interest for examiners. Melinda is to look into other models for managing conflict of interest that could be applied.</p> <p>3. The competency framework and measures for OCE and OCM are already under review as part of the Statutory Functions Descriptions Project.</p> <p>4. Posting written examination papers and guide to answers in a timely manner is already being addressed.</p> <p>The Board noted the recommendations and the good practices that have been undertaken by examination panels. While there was some discussion about sending a Briefing Note to the examination panels to reinforce the correct practices and behaviours, but John advised that the Board Strategic Plan included objectives to develop examination panel member competencies and processes further. They will be satisfied as the operational plan is progressed.</p>	<p>The Board agreed to receive an update on progress with the actions arising from the investigation into the OCE exams of 2016 at the next meeting.</p>
	<p>Next meeting is 24 November 2016 at the Department of Industry offices at Maitland</p>	<p>Agreed by the Board</p>
	<p>Closed meeting 3.05 pm</p>	

MCPB Actions Schedule from 25 August 2016 Meeting

Item	Action	Current Status
2.1	Paper 3 – Progress report on statutory function descriptions project	
	<p>1) The Secretariat (Andrew) to consult with Leanne and Tony Ingram to possibly develop an alternative wording for the Quarry Manager statutory function to put to the Board.</p> <p>2) The Descriptions be amended so functions other than engineering managers have a scope to exercise for the safety management system, and not just engineering standards and procedures.</p> <p>3) Secretariat to develop Work Practices section for statutory functions below the Engineering Manager level as they are able to.</p> <p>4) Andrew to investigate amendments to the Descriptions that encourage a management approach to exercising the legislative requirements in the statutory functions by individuals.</p> <p>5) Tony Ingram and other members of the Board have 2 weeks until the 8 September 2016 to provide feedback on the draft descriptions tabled.</p>	Completed for all – see meeting paper on this topic
2.9	Paper 11 – Risk profiling operations for mine specific Quarry Manager Practising Certificate and competence standards	
	Leanne and Tony Ingram to distribute Attachment A Draft risk assessment tool for a mine to determine eligibility for a Mine Specific Quarry Manager Practising Certificate to stakeholders in the extractives industry, including the CCAA, for feedback on its suitability within 2 weeks to Andrew.	Completed – see meeting paper on this topic
3.1	Paper 14 - Update on Australasian Mining Competency Advisory Council (AMCAC)	
	Nick and Keith to attend the next meeting of AMCAC on 7 November 2016 in the Hunter Valley (tentative date).	Completed
4	Conduct of 2016 Open Cut Examiner (OCE) Examinations	
	The Board agreed to receive an update from the Mining Competency Team on progress on actions with actions arising from the investigation into the OCE exams of 2016 at the next meeting.	Department undertaking a review of procedures with a tender. Conflict of interest procedure implemented.