



MINING AND PETROLEUM COMPETENCE BOARD

Meeting 2 – 18 May 2021

Meeting details

Meeting	Mining and Petroleum Competence Board	Date	Tuesday 18 May 2021
Location	NSW Resources Regulator 516 High Street, Maitland	Time	9am – 12pm
Chair	<ul style="list-style-type: none"> ■ Ruth Mackay (Chair, Independent) 		
Attendees	<ul style="list-style-type: none"> ■ Garvin Burns (NSW Resources Regulator, Department of Regional NSW) ■ Peter Standish (Independent) ■ Stephen Tranter (Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)) ■ Tony Linnane (NSW Resources Regulator, Department of Regional NSW) <p><i>Via teleconference:</i></p> <ul style="list-style-type: none"> ■ Andrew Grivas (NSW Minerals Council - Metalliferous) ■ Ashley McLeod (NSW Minerals Council) ■ Chris Dolden (Cement Concrete & Aggregates Australia) ■ Justin Smith (Australian Workers' Union, New South Wales Branch) ■ Stephen Luck (Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)) 		
Not present	<ul style="list-style-type: none"> ■ Janine Lea-Barrett (Independent) 		
Presenter	<ul style="list-style-type: none"> ■ Andrew Palmer (Resources Regulator, Department of Regional NSW) – via teleconference 		
Observers	<ul style="list-style-type: none"> ■ Evelyn Subagio (NSW Minerals Council) – via teleconference 		
Prepared by	Anna Ormerod (NSW Resources Regulator, Department of Regional NSW)	CM9 ref	DOC21/477615

Minutes

PAPER	DISCUSSION
1	<p><u>Welcome and apologies</u></p> <ul style="list-style-type: none">■ The meeting commenced at 9:06am.■ Ms Mackay’s arrival was delayed. Members agreed that Mr Burns would act as interim chair until Ms Mackay arrived.■ The Chair acknowledged the traditional custodians of the land.
2	<p><u>Declaration of interests</u></p> <ul style="list-style-type: none">■ No conflicts of interest from agenda items were declared.■ No changes were requested to the pecuniary interests register.
3	<p><u>Acceptance of previous minutes and actions</u></p> <ul style="list-style-type: none">■ No changes were requested to the minutes. <p>Outcomes</p> <ul style="list-style-type: none">■ The Board accepted the minutes and actions from the previous meetings. Moved Mr Standish. Seconded Mr Linnane.
4	<p><u>Correspondence</u></p> <ul style="list-style-type: none">■ The Chair referred members to the correspondence detailed in the paper.■ Mr Linnane advised that Mr Tranter and Mr Standish have been reappointed by the Minister. <p>Outcomes</p> <ul style="list-style-type: none">■ The Board noted the correspondence.■ Members agreed to send a letter of appreciation to exam panel member, Mr Peter Nelson who has resigned. Moved Mr Burns. Seconded Mr Dolden. <p>Actions</p> <ul style="list-style-type: none">■ Action A: Secretariat to include appointment letters for Mr Tranter and Mr Standish in the papers for the next meeting.■ Action B: Secretariat to draft a letter to Mr Peter Nelson for Chair’s signature.
5	<p><u>Prerequisites for appointment of examiners</u></p> <ul style="list-style-type: none">■ Mr Burns referred members to the conditions detailed in the paper.■ Mr Standish asked if casual and temporary employees are included. Mr Burns replied that individuals must be employed on a permanent or part time basis.

PAPER DISCUSSION

- Ms Mackay arrived a 9:17am.

Outcomes

- The Board noted the explanation of how discretion for prerequisites for appointment of examiners will be applied.

6

Statutory review of the Work Health and Safety (Mines and Petroleum Sites) laws

- Mr Linnane advised that the consultation period closed May 17. The Resources Regulator will now undertake a review of the submissions.
- The Board discussed each of the recommendations.

Recommendation 16

- Mr Linnane commented that recommendation 16 does not require consideration by the Board as references to Australian standards are not related to competencies or qualifications.
- Mr Burns commented that standards are outside the scope of the Board.
- Mr Linnane commented that the other element is to consider a formal provision to enable a professional engineering demonstration as an alternate means of compliance.
- Mr Burns added that one shortcoming of standards, due to the length of time it takes to develop them, is that technology and equipment can be obsolete by the time the standards are published.

Recommendation 34

- Mr Linnane commented that feedback was sought from members last meeting on recommendation 34. Feedback was received out of session by Mr McLeod.
- Mr Linnane added:
 - The inclusion of a site senior executive (SSE) role is not considered necessary as it is not an engineering position. It doesn't fit within the WHS laws framework in NSW. NSW has statutory functions which allocate responsibility for critical safety functions.
 - The Board's decision of 18 February 2020 that a statutory function of a geotechnical Engineer is not warranted, should be maintained.
 - The need for a power system protection specialist is not supported as there is insufficient evidence to support the role. It is incumbent on the mine operator if it is required.

PAPER DISCUSSION

- There is no justification for expanding the engineering manager roles. The current framework requires a PCBU to be responsible for having structures in place to manage.
- The independent reviewer's decision that there is not enough evidence to make mine surveyors a key statutory function be supported. Key statutory roles a subset of a statutory function, they are only undertaken by one person at any time.
- The function of Electrical Engineer (coal mines other than underground coal mines) be updated to include supervise and monitor for consistency. There is a slight distinction between electrical engineer role and mining engineer role.
- Mr McLeod requested that the word 'supervise' be clarified. There shouldn't be an expectation that they are directly supervising all activities in those functions but supervising the implementation of the management plan. Mr Burns added there is a key distinction is direct supervision. There was concern over the interpretation of the word supervision and how that word is applied during the regulation amendments. If there is confusion, it can be teased out, but it has been addressed in the past.
- Mr Linnane asked if there was any comment on point 2 of the recommendation.
- The Chair commented that the Board has previously had a lengthy discussion about the need to regulate the position of geotechnical engineer. The Board only has control of positions where there is a safety outcome. The Board needs to have a good understanding of when we should or shouldn't make a change. This should be based on evidence and data.
- Mr Tranter commented that the Board needs to consider who is covering all of the responsibilities.
- The Chair commented that she would like to know what the safety issues are, what is the data, how do we know it is not a safety issue and why we are going against the recommendation. Mr Burns commented that in the case of the geotechnical engineer recommendation, it was a subjective submission put forward without any evidence or data to support it. There are concerns that certain experts are being used to make recommendations based on a desired outcome, not an evidence-based need.
- Mr Burns suggested that the starting point is to consider all the data including incident notifications, assessments and anecdotal data. In future, the Resources Regulator could produce a report for the Board that shows the supporting data and evidence for the decisions. The Resources Regulator does consider all the data when making recommendations and decisions.

PAPER DISCUSSION

- Mr Linnane advised that from the Resources Regulator’s perspective what is being asked is whether to make a regulatory amendment. It is the Resources Regulator’s view that the statutory function scheme in place in NSW is appropriate and gives effect to the harmonisation of mine safety laws. It is the Regulator’s view (apart from electrical engineering and mechanical tradesperson role last dot point) there is no justification for the change as the evidence hasn’t been provided.
- The Chair commented that it would be helpful to see the logic behind the decision to understand how the Regulator came to the decision it did.
- Mr Standish added that it would provide clarity.
- Mr Linnane commented that the full regulatory context in NSW needs to be taken into consideration. The regulator is happy to step through it at the next meeting.
- Mr Burns agreed to provide the Board with a copy of what the Regulator analysed, the historical record and context.
- The Chair replied it would be useful so the Board can also demonstrate how it came to its decision and why.
- The Board agreed that the Chair write to the Deputy Premier about the amendment to the statutory function of electrical engineer.
- Mr Linnane requested comments from members on making a gazette notice under Schedule 10 clauses 15 in relation to competencies for heavy vehicle workshops only.
- Mr McLeod commented that this is a hard space to get into. It is difficult to say that anyone working on a truck must have one of those qualifications when you could have a range of people working on the truck. All persons should be competent to undertake the work they are doing. It should be kept broad to allow a range of people with varying qualifications to undertake the tasks.
- Mr Burns commented this is what has happened as part of control plans. The wording in Mr McLeod’s submission on mechanical qualifications is clear. The Resources Regulator needs to consider risks and shortfalls.
- Mr Linnane added that the control plan can identify required competencies noting that because the types of plant used us wide it is difficult to identify the qualifications that will cover the field. The onus is on mine operators to ensure suitably qualified persons are utilised to undertake tasks.
- Mr McLeod commented that the words in his submission allows the Resources Regulator to do what they need to do.
- Mr Burns commented that the Regulator should look at what industry is doing, what is considered best practice and amend the code of practice accordingly.

PAPER DISCUSSION

- Mr Burns asked to clarify the outcomes that the Board does not endorse the recommendation and advise what members want the Resources Regulator to consider.
- Mr Linnane proposed the action that the Resources Regulator do more work on the approach Mr McLeod has articulated in terms of greater flexibility in the mechanical engineering control plan.
- Mr Tranter commented that the risk assessment underpins the control plan. Training and competency should be considered in the control plan. It will be hard to cover everything as it is a dynamic environment. A risk-based approach needs to be taken.

Outcomes

- The Board noted the Resources Regulator's opinion that recommendation 16 does not require the Board's consideration as it relates to engineering standards, not qualifications.
- The Board did not fully endorse the Resources Regulator's position in relation to recommendation 34.
- The Board agreed that the Chair of the Board write to the Deputy Premier recommending the amendment to the statutory function of electrical engineer (coal mines other than underground coal mines) as outlined in item 3.6 of the recommendation 34 analysis.
- The Board discussed the Resources Regulator's recommendations in relation to qualifications for heavy vehicle workshops only and requested that the Resources Regulator reconsider and present at the next meeting.

Actions

- Action C: Resources Regulator to provide data, evidence and justification for its decisions in relation to item 3 (3.1- 3.6) of the recommendation 34 analysis at the next meeting.
- Action D: The Resources Regulator revise its recommendation in relation to the gazette of qualifications for heavy vehicle workshops only and bring back to the next meeting.
- Action E: The Chair of the Board write to the Deputy Premier recommending the amendment to the statutory function of electrical engineer (coal mines other than underground coal mines) as outlined in item 3.6 of the recommendation 34 analysis.

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Implementation plan for blueprinting project

- Ms Lynne Shields and Ms Pamela Roxby from the Resources Regulator joined the meeting for agenda item 7.

PAPER DISCUSSION

- Mr Linnane advised the Resources Regulator met with examiners and briefed them on outcomes and implementation of the project. Most issues raised by examiners have been addressed.
- Mr Linnane commented that the blueprinting provides clarity around the assessment process, transparency and consistency across all statutory functions. The toolkits require additional work but are near finalisation.
- Ms Shields commented that a lot of content came out of the workshops.
- The Chair commented that the documents are comprehensive.

Outcomes

- The Board endorsed the project plan for the implementation of the blueprinting framework subject to comments in agenda item 8. Moved Mr Standish. Seconded Mr Dolden.

8

Proposed changes to the assessment process

- Mr Linnane commented that one of the key elements of the blueprinting project was to help ensure a transparent process which is valid and contemporary.
- Mr McLeod asked if a person is deemed not competent, are they able to be reassessed? Mr Linnane replied no. If they are assessed in a written exam and are not competent, they are not re assessed in an oral exam. The panel needs to identify competencies to be assessed and the appropriate means to assess the competency, but they don't double up.
- Mr McLeod commented that an individual can re-sit an oral exam three times. By the time the third oral is undertaken it might be hard for people to track what has been assessed.
- Mr Burns said that in his view if an individual is assessed as not competent, they should be required to do the full process again. Mr McLeod asked if all panel convenors are aware of that.
- Mr Burns commented that the idea of re sitting was outside the scope of the project but is something that needs to be addressed.
- Mr McLeod responded that it might have a perverse outcome. It is unusual to get more than half of individual undertaking oral examinations passing on their first attempt which means the process will take another year.
- Mr Grivas asked if will feedback be given to candidates if their portfolio is not up to scratch? Mr Burns replied that a portfolio achieves two things: 1. provide evidence of competence; and 2. is used for eligibility to sit exam. If the portfolio doesn't fulfill requirements, an individual will not be able to sit the exam.

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- Mr Palmer commented that the method used to assess a particular competency may change year to year.
- Mr Burns commented that the questions will change year to year but not necessarily what is assessed. It will be up to the individual panels to determine topical issues (e.g. critical events that have happened over the last 12 months) for examination.
- Mr Tranter suggested that a flowchart that steps the candidate through the process and has a scenario would be helpful. The process is a bit convoluted and needs to be simplified and clearer.
- Ms Shields advised that the Department is developing a candidates guide in which the process will be made clear.
- The Chair commented that any confusion can be addressed in the roll-out of the new process. The Chair asked what is the process moving forward?
- Mr Burns commented that we need to look at how we embed the current process in the new process and identify steps to address any issues.
- Mr Dolden commented that you either understand it or you don't. There are no fundamental problems with the process. Most topics are written or oral. It almost looks like two exams anyway. It seems there is a debate if it should be two exams or one exam in two parts.
- Mr Dolden agreed that what was done historically will be a challenge. The new matrix is clear about what is assessed orally and written.
- Mr Linnane commented that the competency framework will set out the competencies that will need to be assessed.
- Ms Shields commented that there are eight core competencies and benchmarks.
- Mr Linnane advised that the intent is that each of those competencies will be assessed but only once. Exam panel members will be clear on which competencies are essential and which are desirable. The formalised portfolio is part of the assessment process. With competencies determine to be desirable, there is flexibility and individuals do not need to get 100%. The result is either competent or not competent. A template and marking sheet will be provided.
- Mr McLeod asked if individuals need to receive a mark of 100% to be deemed competent. Mr Burns replied that if a competency is determined to be essential, they must get 100%. If desirable, it might be less than that. It comes down to how you write the questions. If you get different answers, there is a problem with the question.
- Mr Linnane sought decisions from the Board on each of the proposed changes per the paper:
 - Ranking competencies and benchmarks for each statutory function – all agreed.

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- ❑ Formalising portfolios as a pre-requisite method of evidence collection – all agreed.
- ❑ Implementing a competency-based model of assessment – all agreed.
- ❑ Implementing item templates and marking sheets across all statutory functions – all agreed.
- ❑ Formalising moderation procedures – all agreed.
- ❑ Competencies to be assessed once in either the written exam or oral exam. Mr Dolden commented that there is still a concern over this change. What if an individual can meet it in a written exam but can't demonstrate in an oral exam or vice-versa. Mr Dolden commented that individuals should have another opportunity to be assessed as some people will answer better in written versus oral exams and vice versa. Mr Burns acknowledged the point but commented that the bottom line is if a competency is assessed in a written exam it shouldn't be assessed in oral – not agreed, further work required for the Board's consideration.
- Mr Burns expressed appreciation to Ms Shields and Ms Roxby for their efforts on this project.

Outcomes

- The Board endorsed the proposed changes to certificates of competence assessment process except for competencies being assessed once in either the written exam or oral exam. Moved Mr Standish. Seconded Mr Dolden.

Actions

- Action F: Resources Regulator to undertake further work on competencies being assessed once in either the written exam or oral exam and report back at the next meeting.

9

MPCB communication plan

- Mr Linnane advised that the communication plan has been updated taking into consideration comments made at the last meeting. No additional comments were received out of session.
- The Chair commented that the plan is still passive and needs to be more proactive. The Board could:
 - ❑ be more proactive in writing to mine operators
 - ❑ present at the upcoming mining conference in August

PAPER DISCUSSION

- be a vessel to communicate messages out to industry.

- Mr Burns commented that the NSW Minerals Council conference program is already set but we might be able to get 10 to 15 minutes to present to attendees. The Board could also present at the Department's three safety seminars.
- Mr Linnane commented that presentation at seminars is the intent of last item in action plan. Mr Burns commented that members discussed at the last meeting that the plan is high level and can't always drill down into specifics.
- Members agreed to add activities per the communication plan.

Outcomes

- The Board endorsed the MPCB communication plan subject to modifications. Moved Mr Standish. Seconded Mr Linnane.

Actions

- Action G: Secretariat to contact the NSW Minerals Council to request time on the agenda for the Chair of the Board to present on Board's activities.
- Action H: Secretariat to request time on the agenda for the Department's three safety seminars for the Chair of the Board to present on Board's activities.

10

MPCB work plan

- Mr Linnane invited comments from members on the status of the projects.
- There were no comments from members.

Outcomes

- The Board noted the status of projects identified in the Board's work plan to support the Strategic Plan to 2023.

11

Appointment of examiners

- Mr Palmer advised that Mr Peter Every-Burns doesn't meet criteria for experience. He has 3 years, not 5 years' experience, but is being recommended for appointment.
- Mr Burns commented that he has known Mr Every-Burns in a work capacity since 2014. On that basis, he is satisfied that he is suitable despite not meeting the required years for experience.
- Ms Mackay asked if there were sufficient expressions of interest received for examiners. Mr Palmer replied yes but it also depends on how many people pass exams. The process is still open so individuals can apply at any time.

PAPER	DISCUSSION
	<p>Outcomes</p> <ul style="list-style-type: none">■ The Board approved the appointment of Peter Every-Burns as a member of the Electrical Engineering Manager for underground coal mines. Moved Mr Burns. Seconded Mr McLeod.■ The Board noted the outcomes of the expressions of interest process for examiners. <p>Actions</p> <ul style="list-style-type: none">■ Action I: Mr Palmer to send the appointment brief for reserve examiners out of session for member endorsement.
12	<p><u>Report on certification outcomes</u></p> <ul style="list-style-type: none">■ Mr Palmer advised the Board agreed at the last meeting to change the format of the report. <p>Outcomes</p> <ul style="list-style-type: none">■ The Board noted the change in reporting content from previous practising certificates and maintenance of competence outcomes.■ The Board noted the application and exam outcomes reported for certification from January to April 2021.
13	<p><u>Resources Regulator Quarterly Safety Report</u></p> <ul style="list-style-type: none">■ Mr Burns provided a summary of the report.<ul style="list-style-type: none">□ decrease in reported notifications over the period, this can be attributed to several large mining operations going into shutdown□ increase in dust and airborne exceedances attributed to change in reporting requirements□ assessments dropped considerably due to leave over the Christmas and new year period, work predominately focused on airborne dust□ targeted awareness campaign undertaken with Resources Regulator inspectors attending 27 mines directly addressing 10,500 workers to discuss ongoing concerns over vehicle incident heavy/light vehicles. The feedback from mine management, workers and inspectors was positive.□ increase in mental health assistance across the industry. <p>Outcomes</p> <ul style="list-style-type: none">■ The Board noted the Resources Regulator Quarterly Safety Report.

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PAPER	DISCUSSION
14	<p><u>Certificate of competence exam calendar and panels</u></p> <ul style="list-style-type: none">■ Mr Palmer advised that Mr Peter Every-Burns should be in the underground panel not surface per attachment b.■ Mr Burns and Mr Palmer left the meeting at 12:58pm. <p>Outcomes</p> <ul style="list-style-type: none">■ The Board noted the published certificate of competence exam calendar for the 2021/22 financial year.■ The Board approved the composition of examination panel members for the 2021/22 financial year. Moved Mr Linnane. Seconded Mr Dolden.■ The Board noted the list of appointed reserve examiners for each function.
15	<p><u>AMCAC</u></p> <ul style="list-style-type: none">■ Tony Linnane asked members if anyone would like to attend the AMCAC meeting.■ The Chair indicated she would like to attend. <p>Outcomes</p> <ul style="list-style-type: none">■ The Chair to attend the next AMCAC meeting as a representative of the Board. <p>Actions</p> <ul style="list-style-type: none">■ Action J: Secretariat to advise AMCAC secretariat Ms Mackay will attend the meeting.
16	<p><u>Additional business</u></p> <ul style="list-style-type: none">■ The Chair requested members raise any additional items of business.■ No additional business raised.
17	<p><u>Next meeting and meeting close</u></p> <ul style="list-style-type: none">■ The next meeting is scheduled for Tuesday 17 August 2021.■ Mr Tranter volunteered to host the meeting at the CFMEU office, Aberdare.■ The meeting closed at 1:00pm. <p>Outcomes</p> <ul style="list-style-type: none">■ The Board agreed to hold the next meeting at the CFMMEU office, Aberdare. <p>Actions</p> <ul style="list-style-type: none">■ Action K: Secretariat to update the appointment for the next MPCB meeting with the venue.

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Action items

NO.	ACTION	AGENDA ITEM
A	Secretariat to include appointment letters for Mr Tranter and Mr Standish in the papers for the next meeting.	4
B	Secretariat to draft a letter to Mr Peter Nelson for Chair's signature.	4
C	Resources Regulator to provide data, evidence and justification for its decisions in relation to item 3 (3.1- 3.6) of the recommendation 34 analysis at the next meeting.	6
D	Resources Regulator revise its recommendation in relation to the gazette of qualifications for heavy vehicle workshops only and bring back to the next meeting.	6
E	The Chair of the Board write to the Deputy Premier recommending the amendment to the statutory function of electrical engineer (coal mines other than underground coal mines) as outlined in item 3.6 of the recommendation 34 analysis	6
F	Resources Regulator to undertake further work on competencies being assessed once in either the written exam or oral exam and report back at the next meeting.	8
G	Secretariat to contact the NSW Minerals Council to request time on the agenda for the Chair of the Board to present on Board's activities.	9
H	Secretariat to request time on the agenda for the Department's three safety seminars for the Chair of the Board to present on Board's activities.	9
I	Mr Palmer to send the appointment brief for reserve examiners out of session for member endorsement.	11
J	Secretariat to advise AMCAC secretariat Ms Mackay will attend the meeting.	15
K	Secretariat to update the appointment for the next MPCB meeting with the venue.	17

Approval

NAME/POSITION	SIGNATURE/APPROVAL	DATE

Comment: