



NSW Mine Safety Advisory Council

Meeting 3 – 2 September 2021

Meeting details

Meeting	NSW Mine Safety Advisory Council (MSAC)	Date	2 September 2021
Location	Online (via Microsoft Teams)	Time	9am to 12pm
Chair	Hon. George Souris AM (Independent)		
Secretary	Mr Tony Linnane (Mining, Exploration and Geoscience, Department of Regional NSW)		
Attendees	Mr Brock Skelton (Australian Workers' Union, New South Wales Branch) Assoc. Prof. Deborah Yates (Independent) Mr Garvin Burns (delegate for Anthony Keon, Resources Regulator, Department of Regional NSW) Mr Graeme Osborne (Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)) Mr Ian Cribb (NSW Minerals Council (coal)) Ms Julie Armour (Independent) Mr Matthew Freeman (Cement Concrete & Aggregates Australia) Mr Peter Jordan (Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)) Mr Rob Cunningham (NSW Minerals Council (metalliferous))		
Observers	Mr James Barben (NSW Minerals Council) Mr Jason Kuchel (Cement Concrete & Aggregates Australia) Mr Leigh Nicholls (Chief Inspector, Resources Regulator, Department of Regional NSW) Ms Lucy Flemming (Coal Services)		
Apologies	Nil		
Prepared by	Ms Anna Ormerod (Resources Regulator, Department of Regional NSW)	Reference	DOC21/813417

Minutes

AGENDA ITEM	DISCUSSED/ACTION
1	<p>Welcome and Chair's report</p> <ul style="list-style-type: none">■ The meeting commenced at 9am.■ The Chair welcomed members and observers to the meeting.■ The Chair congratulated Ms Armour on her reappointment for a further three years.■ The Chair welcomed and congratulated Ms Yates on her appointment as an independent member for three years.■ The Chair advised that Mr Burns is attending as Mr Keon's delegate on a permanent basis due to a restructure within the Department. Mr Burns is now acting Executive Director of the Resources Regulator.■ The Chair advised that Mr Nicholls is now acting Chief Inspector so is attending as an observer.■ The Chair advised that Mr Linnane will continue as secretary of MSAC. <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted that Julie Armour has been re-appointed as an independent member of MSAC for three years.■ Members noted that Deborah Yates has been appointed as an independent member of MSAC for three years.■ Members noted the representatives and observers for the meeting.■ Members noted the appointments expiring in 2021.■ Members noted the events attended by the Chair since the last meeting.■ Members noted the key stakeholder events planned for 2021.
2	<p>Declaration of interests</p> <ul style="list-style-type: none">■ The Chair asked members to declare any conflicts of interest arising from agenda items or advise if any changes need to be made to the pecuniary interests register.■ Ms Yates declared that she is closely involved with one of the tenderers per agenda item 10 (Review of coal industry health surveillance scheme steering committee) so would leave the meeting while that agenda item was discussed. <p>Outcomes</p> <ul style="list-style-type: none">■ Ms Yates declared a conflict with agenda item 10.

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none">■ No changes or additional interests were requested to the pecuniary interest register.
3	<p>Acceptance of previous minutes and actions</p> <ul style="list-style-type: none">■ No changes were requested to the minutes. <p>Outcomes</p> <ul style="list-style-type: none">■ Members endorsed the minutes of the last meeting held on 3 June 2021.■ Members noted the status of actions arising from the last meeting.
4	<p>Correspondence</p> <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted the incoming and outgoing correspondence since the last meeting.
5	<p>Recommendations for MSAC from report on the statutory review of the WHS (MPS) laws</p> <ul style="list-style-type: none">■ Mr Linnane advised members of the following changes because of the Mining, Exploration and Geoscience (MEG) and Resources Regulator merger:<ul style="list-style-type: none">□ Anthony Keon and Mr Linnane are now part of the Strategy Performance and Industry Development branch of MEG□ Mr Linnane has retained the secretariat function for MSAC and the Mining and Petroleum Competence Board□ the Department is in the process of reorganising the policy team to enable a more centralised approach.■ Mr Linnane said there are four recommendations for discussion by members today. <p>Recommendation 6</p> <ul style="list-style-type: none">■ Mr Linnane said that stakeholder views are included as Attachment A. The causal investigation policy has been in place for four years and is working effectively. The Resources Regulator believes that there is no evidence to warrant making a change to legislation.■ Mr Cunningham joined the meeting at 9:15am.■ Mr Skelton asked if a position had been put to minister yet. Mr Linnane replied that a position hasn't been put to the Minister yet as it needs to be discussed with MSAC first.

AGENDA DISCUSSED/ACTION ITEM

- Mr Burns said the use of word 'formalise' overlooks the way the policy was developed. The policy was developed using a tripartite forum including members of MSAC. The Resources Regulator will consult before making any changes. Where there is a need for change, any member of the council could come forward and ask if it needs to be reviewed.
- Mr Linnane said on the basis of no further comments or concerns from members, the Resources Regulator will advise the Deputy Premier that there is no need for causal investigation to be included in legislation at this stage.
- All members agreed.

Recommendation 8

- Mr Linnane advised that there are two parts to recommendation 8.
- Mr Linnane said that the Resources Regulator agrees with the recommendation that probity checks for the appointment of industry safety and health representatives for coal mines be legislated. It is current practice as part of appointment standards and is included in the practice note published on the Resources Regulator's website.
- The current legislation allows the Minister to appoint four or more industry safety and health representatives, so no legislative amendment is required.
- Members agreed to the Resources Regulator's position.
- Members noted that a paper on recommendation 8 regarding industry safety and health representative roles will be presented at the December meeting.

Recommendation 29

- Mr Linnane said that the Resources Regulator has developed a code of practice for emergency management in mines. The Resources Regulator's position is that:
 - a tripartite review of the code of practice be undertaken to ensure any recommendations in the Statutory review are included in the code
 - additional prescription of emergency planning in the legislation is not required.
- Members agreed with the Resources Regulator's position.

Outcomes

- Members agreed that the Resources Regulator advise the Deputy Premier not to include provisions in relation to causal investigations in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (recommendation 6).

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none">■ Members agreed the requirement of probity checks for the appointment of industry safety and health representatives for coal mines should be included in legislation (recommendation 8).■ Members agreed that no legislative amendment is required in relation to the appointment of four or more industry health and safety representatives (recommendation 8).■ Members noted that the Resources Regulator will prepare a paper for the December MSAC meeting in relation to industry safety and health representative roles being extended beyond the coal sector (recommendation 8).■ Members agreed there is no need to further prescribe emergency planning the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (recommendation 29).■ Members agreed that a tripartite review of the code of practice be undertaken to include recommendations from the Statutory Review. <p>Actions</p> <ul style="list-style-type: none">A. Resources Regulator to advise the Deputy Premier that there is no need for causal investigation to be included in legislation at this stage.B. Resources Regulator to prepare a paper for the December MSAC meeting in relation to industry safety and health representative roles being extended beyond the coal sector (recommendation 8).
6	<p>Simplifying plant registration requirements</p> <ul style="list-style-type: none">■ Mr Linnane advised that during the past four years the Resources Regulator has worked to improve its approach to plant registration. It has identified five recommendations on how to simplify plant registration requirements which are presented to MSAC today for discussion.■ Mr Burns said:<ul style="list-style-type: none">□ An issue with the registration of winders is the potential delays of six weeks or longer due to missing detail in the application. The proposed changes in recommendation 1 will make the process simpler.□ Some mine operators do not proceed with modifications on basis that a simple upgrade would turn into major exercise of having to reregister the equipment. The proposed amendment would simply this process.■ Ms Armour asked what implications will be on compliance if a guidance system is adopted. Mr Burns replied that there are not many hoists in service. The

AGENDA ITEM	DISCUSSED/ACTION
	<p>Resources Regulator has identified chronic non-compliance. The guidance will make it less onerous and a more risk-based approach to achieve an improvement in safety.</p> <ul style="list-style-type: none">■ Mr Linnane said the Regulator is seeking to remove the process for opal mines and specify safety requirement in the regulation. This will take away the administrative process which is difficult for opal miners and the Regulator. They will still need to meet safety requirements.■ Mr Burns added that there is a challenge with the qualifications of verifiers.■ Mr Cunningham said that conversations about this new process would be welcomed now so that operators have an understanding about the process.■ Members agreed with the Resources Regulator’s five recommendations on how to simplify plant registration requirements as set out in the position paper.■ Mr Linnane advised that any consultation with industry would occur if any legislative amendment was required. The Resources Regulator believes that the proposed changes will be welcomed by industry. It will remove the burden on industry and return better safety outcomes.■ Mr Cribb asked if there is no registration process in place, how will structural integrity be dealt with? Mr Burns replied that the current compliance action process will continue with prohibition notice and improvement notices issued. <p>Outcomes</p> <ul style="list-style-type: none">■ Members agreed with the Resources Regulator’s five recommendations on how to simplify plant registration requirements.
7	<p>Queensland Coal Mining Board of Inquiry – Grosvenor review</p> <ul style="list-style-type: none">■ Mr Linnane advised that the Resources Regulator has reviewed and analysed the Grosvenor review to identify any recommendations that are relevant to NSW. Fourteen recommendations should be considered by MSAC to determine if advice should be given to the Minister or the Resources Regulator. The recommendations have been broken down into six issues. The Resources Regulator’s recommendation is included in the attachment to the papers.■ Mr Jordan asked if the use of the word ‘perception’ in point 4 was the view of the Resources Regulator. Mr Burns replied that the word ‘perception’ was used in the Grosvenor Review report. The Regulator has received reports of issues. Targeted assessments have been undertaken but the Regulator has not been able to establish the breadth of the issue.

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- Mr Cribb said that as they operate in Queensland, they have provided a formal response to all recommendations and would be happy to circulate his response to all members. Mr Cribb expressed concerns with the first recommendation and did not support elevating the category of a gas exceedance. Any exceedance requires investigation into the circumstance and cause. If repeated exceedances occur, it should be elevated within the company.
- Mr Burns said that this isn't about a change in reporting requirements to the Resources Regulator but an escalation within the mine site itself. The inquiry identified issues with internal reporting processes.
- Mr Jordan asked if the Resources Regulator has a plan on how it will progress the recommendations, if adopted by MSAC. Mr Burns replied that the Resources Regulator can develop a plan if requested by MSAC taking into consideration recommendations from MSAC on how it should be done. The Regulator has been addressing critical control management (point 2) through assessment and education for the last four years. Location tracking (point 6) is also addressed on an ongoing basis. Mr Linnane said that the Regulator has made recommendations in the attachment.
- Mr Burns said that lead indicators are a focal point as the Regulator has not been able to address it successfully. There is a reliance on lag indicators. Lead indicators are currently based on assessment results, but the Regulator is looking at the other lead indicators such as frequency of notices. The industry is weak on what an effective lead indicator is. This is one area that MSAC could consider.
- Mr Linnane said that one issue is perception. MSAC could consider how it can be addressed on an industry wide basis. There are no specific actions but MSAC needs to consider labour hire (point 5) in all its deliberations.
- Ms Armour said that perception is coming across in a range of areas.
- Mr Linnane asked what MSAC wants to do about the lead and lag and perception issues. They were raised in Queensland. Should they be explored further in NSW?
- Ms Yates said that the issue of perception is real. One of the ways to address it is to do a survey to see what the workers themselves felt. They do survey monkeys in the medicine field. Lead indicators are very important. Ms Yates said that she supports further work being undertaken on lead indicators.
- Mr Cribb agreed that MSAC needs to establish if perceptions are factual or opinions. Work needs to be done in that area. In relation to lead and lag

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indicators, not one model fits all circumstances or situations. Lag indicators are important to know and understand as an injury or incident has occurred.

- Mr Jordan agreed with Ms Yates and Mr Cribb's comments. There is a concern about the level of casual labour particularly in the open cut sector. On average it is about 50% of the workforce. There are very few mines that don't operate with casual labour. Workers are concerned that if they raise issues, they won't be required the day after, or their job will come to an end. It is a real concern and not a perception. The open cut sector is entirely different. MSAC should be concerned and consider the issue. Mr Jordan supported the use of a survey.
- Mr Skelton advised he supported Mr Jordan's comments. Many sites are now referring to casual employees as contractors. There is an awareness of the issues.
- Mr Osborne said the issues go further with new starters having a fear of retribution within their probation period. They do report issues via phone but don't want their name mentioned and don't want to take up with their supervisor.
- Mr Burns replied there is broad support for a survey to target mine workers. The Resources Regulator can circulate the questions prior to next meeting. The mechanism to reach the mine workers will be a challenge. A number of methods including online (survey monkey) and paper based need to be used. It needs to be distributed by mine operators or unions rather than the Resources Regulator. The Resources Regulator will draft options for distribution and circulate out of session with the questions. A separate survey should also be developed for mine operators to get their views.
- Mr Cribb said that there are professional groups who could be engaged to undertake the survey. Mr Jordan said the union could provide a survey to all its members.
- Ms Armour said that it is important to survey mine operators as well to get identify some of the barriers of their perceptions.

Outcomes

- Members agreed to undertake two surveys (one for mine workers and one for mine operators) to determine if there is a perception that labour hire workers and other non-permanent workers under-report safety concerns due to fear of losing employment. Members agreed that the survey also needs to address the reasons behind the perception.

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Actions

- C. Resources Regulator to draft questions for the survey, identify survey methods and options for dissemination and circulate to members out of session for comment.

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National Dust Disease Task Force

- Mr Linnane advised that the NSW Government will contribute a response to the report. The Resources Regulator will provide comment which will form part of the overall response from NSW. Several recommendations are relevant to the NSW mining industry.
- Mr Flemming advised that Coal Services has reviewed the report to identify items that could better support workers in NSW with dust disease. There is ongoing support of research and methods to detect diseases at early stages. There has been a lost focus on prevention.
- Ms Yates said that she has been on most of the committees for the taskforce. The Thoracic Society has considered the issue carefully. One problem is the poor provision of access to medical services generally. Workers have difficulty accessing expertise. A position paper on detecting diseases has been published which can be circulated to members.
- Ms Yates said the National Dust Disease Task Force focuses on artificial stone silicosis. There is less focus on coal lung diseases. In NSW, we are uniquely qualified to focus on coal lung disease. Coal Services provides an excellent service. This needs to continue and be strengthened. There needs to be a greater focus on preventative methods and education for workers, local medical practitioners and respiratory physicians. MSAC should monitor this space to ensure the recommendations of task force get implemented. It has implications for coal and other mining sectors.
- Ms Yates suggested this topic becomes a regular agenda item. The Chair agreed to keep it on the agenda as a standing item.

Outcomes

- Members noted the Australian Government's National Dust Disease Taskforce final report.
- Members noted the Resources Regulator will contribute to the NSW position on implementation of the Taskforce's recommendations.

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none"> ■ Members agreed to continue to monitor the implementation of the National Dust Disease Taskforce’s recommendations and add it as a standing item on the agenda. <p>Actions</p> <ul style="list-style-type: none"> D. Secretariat to add National Dust Disease Task Force as a standing agenda item.
9	<p>Members updates</p> <ul style="list-style-type: none"> ■ Ms Flemming advised that Coal Services position on the National Dust Disease Task Force is attached for information of members. ■ Ms Flemming summarised the airborne dust summary report. There has been an increase in exceedances. The use of respiratory equipment has decreased – and 12.7% of individuals were not wearing an RPE at time of exceedance. There has been a reduction in incident reports through to CMI. The main mechanism of injury is body stressing. There are many psychological injuries. ■ Ms Armour asked if there was any change to the source of the body stressing injuries. Ms Flemming replied no. It has been stable for a long time. It is mainly underground workers. <p>Outcomes</p> <ul style="list-style-type: none"> ■ Members noted the report tabled by Coal Services.
10	<p>Review of coal industry health surveillance scheme steering committee</p> <ul style="list-style-type: none"> ■ Agenda item 10 was deferred until the completion of the agenda. ■ Discussions have been excluded from the minutes due to a conflict of interest.
11	<p>Legislative framework update</p> <ul style="list-style-type: none"> ■ Mr Linnane advised that: <ul style="list-style-type: none"> □ the Deputy Premier has taken on board the Resources Regulator and MSAC’s advice about carbon dioxide. Work is currently progressing on the amendments to the regulation □ SafeWork NSW has proposed a remake of the Explosives Regulation. □ The Environment Protection Authority has commenced a statutory review of the <i>Radiation Control Act 1990</i> has commenced. <p>Outcomes</p> <ul style="list-style-type: none"> ■ Members noted the update on legislative developments and reform.

AGENDA ITEM	DISCUSSED/ACTION
12	<p>NSW Resources Regulator report</p> <ul style="list-style-type: none">■ Mr Nicholls advised that in the quarter:<ul style="list-style-type: none">□ there was one fatality and three significant serious injuries. The fatality is currently under investigation.□ the Resources Regulator completed a targeted awareness campaign on vehicle interactions with 13,500 mine workers after seeing an increase in trends and near misses. Feedback was positive.□ there is confusion around what legislation applied for ammonium nitrate inspections were undertaken last year.■ The Chair raised concerns about the storage of ammonium nitrate offsite as it is the responsibility of another Department. Mr Burns replied that the Resources Regulator liaises with SafeWork NSW on a regular basis. They are aware of those sites and have taken compliance activity at some of the sites.■ Mr Nicholls advised that the Resources Regulator is currently undertaking recruitment for six inspector positions. <p>Outcomes</p> <ul style="list-style-type: none">■ Members noted the Quarterly safety report – January to March 2021.■ Members noted the serious injury incident notifications by time-related factors.
13	<p>Mine safety levy report</p> <ul style="list-style-type: none">■ Mr Burns advised that a preliminary report was attached for information of members. There was a draw down on the reserve fund based on the results of a legal case. COVID has had an impact on the costs of all legal proceedings.■ Mr Cribb asked if members can be sent a copy of the mine safety levy report in comparison to the budget. <p>Outcome</p> <ul style="list-style-type: none">■ Members noted the Mine Safety Levy Fund report - Actuals and Forecast April 2021. <p>Actions</p> <ul style="list-style-type: none">E. Resources Regulator to send members a copy of the Mine Safety Levy Report with the budget out of session.

AGENDA ITEM	DISCUSSED/ACTION
14	<p>Additional business</p> <ul style="list-style-type: none">■ The Chair invited members to raise any additional items of business.■ Mr Cribb asked a question in relation to the legal status of mandatory COVID-19 vaccines at mine sites. Mr Cribb noted that MSAC took a position at a previous meeting based on advice from the Resources Regulator and requested updated advice.■ The Chair agreed and requested that the Resources Regulator prepare a paper for the next meeting.■ Mr Burns advised that he is a part of the working group developing a road map. Mr Burns invited members to send him an email if they have any issues that merit consideration.■ The Chair asked if mine sites are using rapid testing for COVID.■ Mr Burns replied there are some sites but it is not widespread. The rapid testing is used as an indicator to drive a further testing.■ Ms Flemming said that the Government's advice is changing daily.■ Mr Jordan said that he raised the issue at the March meeting. MSAC adopted a position in March. The CFMEU is strongly opposed to mandatory vaccinations for coal miners. There is no evidence that position needs to be reconsidered or changed. The union is encouraging members to get vaccinated and is supportive of initiatives such as rapid testing.■ Mr Kuchel said his industry's position is to encourage vaccinations.■ Ms Yates advised that she is involved with taking care of COVID positive patients. There are good methods being developed for testing. Ms Yates echoed Ms Flemming's comments that the main problem with vaccinations is that there are not enough. <p>Actions</p> <ul style="list-style-type: none">F. Resources Regulator to prepare a paper on COVID and mandatory testing for the next meeting.
15	<p>Next meeting and meeting close</p> <ul style="list-style-type: none">■ The Chair advised that the next meeting is scheduled for 2 December 2021 at Hunter Valley Mines Rescue, Singleton. Coal Services has extended an invitation to members to undertake a tour of the facilities prior to the meeting at 8am. The tour will last approximately 40 minutes, followed by coffee prior to the commencement of the meeting at 9am.

NSW MINE SAFETY ADVISORY COUNCIL

Meeting 3 – 2 September 2021

AGENDA ITEM	DISCUSSED/ACTION
	<ul style="list-style-type: none">■ The Chair advised that he invited Ms Georgina Beattie, Deputy Secretary, Mining, Exploration and Geoscience to the December meeting.■ Discussions moved to item 10. <p>Actions</p> <ul style="list-style-type: none">G. Secretariat to update the appointment details for the next meeting.H. Chair to re-issue the invitation to Ms Georgina Beattie to attend the next MSAC meeting.
The meeting closed at 11:30am.	

Approval

Name/Position	Signature/approval	Date
George Souris, Chair	Approved	2 December 2021

Comment:

Summary of actions

NO.	RESPONSIBILITY	ACTION	AGENDA ITEM
A	Secretariat	Advise Deputy Premier that there is no need for causal investigation to be included in legislation at this stage.	5
B	Tony Linnane	Prepare paper for the December MSAC meeting in relation to industry safety and health representative roles being extended beyond the coal sector.	5
C	Garvin Burns	Draft survey questions, identify survey methods and options for dissemination and circulate to members out of session for comment.	7
D	Secretariat	Add National Dust Disease Task Force as a standing agenda item.	8
E	Garvin Burns	Send copy of Mine Safety Levy Report with the budget to members out of session.	13
F	Leigh Nicholls	Prepare paper on COVID and mandatory testing for the next meeting.	14
G	Secretariat	Update appointment details for December meeting.	15
H	Chair	Re-issue the invitation to Ms Georgina Beattie to attend the next MSAC meeting.	15