

NSW Mine Safety Advisory Council Annual Report 2021 - 2022

December 2022



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Introduction

The NSW Mine Safety Advisory Council (MSAC) is a tripartite forum made up of employers, unions and government. It was established to foster an industry with safety as a core value and to provide advice to the Minister on strategic health and safety issues in the mining and extractives industry.

MSAC is established under section 60 of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*. Membership is stipulated in the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022*.

MSAC comprises of people representing the interests of industry, unions, NSW Department of Regional NSW and independent work health and safety experts. It is chaired by an independent chairperson.

MSAC is a collaborative partnership that integrates the views of all stakeholders while working towards common goals to:

- strengthen relationships and build trust
- agree on priority work health and safety issues and actions to address them
- gather, analyse, evaluate, and communicate information on work health and safety.

This MSAC annual report covers activities between 1 July 2021 and 30 June 2022.

Vision

The NSW Government's vision is for MSAC to operate in an environment of trust and co-operation to address health and safety issues and that all stakeholders demonstrate a willingness to support the work of MSAC and move forward on mutual matters of importance as one group.

Terms of reference

MSAC's terms of reference are to:

- establish strategic safety and health direction and goals
- analyse and review the safety performance of the industry
- provide leadership to the mining industry to develop safe and healthy workplaces within a framework which:
- encourages innovative and safe technology and processes
- sets the strategic direction for the industry in developing competent people
- advances a legislative framework which leads to safe mining practice
- encourage a move towards cross-industry and national standards.

Functions of MSAC

The functions of MSAC are detailed in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (the Act) and the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* (the Regulation).

MSAC's functions under section 61 of the Act are:

- to provide advice to the Minister (Deputy Premier) on any policy matter relating to work health and safety in mines
- any other advisory function relating to work health and safety in mines that is prescribed by the regulations.

The functions prescribed under section 164 of the Regulation are:

- to advise the Minister on any matter, other than a policy matter, relating to work health and safety in mines that is referred to it by the Minister, and
- to advise the Minister on any other matter, other than a policy matter, relating to work health and safety in mines that it considers relevant.

More information

For comprehensive information on MSAC and its activities visit the webpage:
www.resourcesregulator.nsw.gov.au/safety-and-health/about-us/advisory-council

Contact the MSAC

NSW Mine Safety Advisory Council

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Membership

The members of MSAC during the 2021-2022 financial year were:

Name	Nominee	Appointed under (Regulation section)
Mr Ian Cribb	NSW Minerals Council	164(1)(a)(i)
Mr Rob Cunningham ¹	NSW Minerals Council (metalliferous sector)	164(1)(a)(ii)
Mr Aaron Brannigan	NSW Minerals Council (metalliferous sector)	164(1)(a)(ii)
Mr Matthew Freeman ²	Cement Concrete & Aggregates Australia	164(1)(a)(iii)
Mr James Collings	Cement Concrete & Aggregates Australia	164(1)(a)(iii)
Mr Peter Jordan ³	Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)	164(1)(b)(i)
Mr Robin Williams	Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)	164(1)(b)(i)
Mr Graeme Osborne	Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)	164(1)(b)(i)
Mr Brock Skelton	Australian Workers Union, NSW Branch	164(1)(b)(ii)
Mr Anthony Keon ⁴	NSW Resources Regulator, Department of Regional NSW	164(1)(c)
Mr Peter Day	NSW Resources Regulator, Department of Regional NSW	164(1)(c)
Ms Julie Armour	Independent member	164(1)(d)
Assoc. Prof. Deborah Yates	Independent member	164(1)(d)
Hon. George Souris	Independent Chairperson	164(1)(d) and (2)

The Secretary of MSAC is appointed by the Secretary under section 164(3) of the Regulation. The Secretary for the reporting period was Mr Tony Linnane, Department of Regional NSW. Secretariat support is provided by the Department of Regional NSW.

¹ Mr Rob Cunningham's appointment expired on 27 June 2022. Mr Cunningham was replaced by Mr Aaron Brannigan.

² Mr Matthew Freeman resigned on 7 October 2021 prior to his term expiry. Mr Freeman was replaced by Mr James Collings.

³ Mr Peter Jordan resigned on 28 January 2022 prior to his term expiry. Mr Jordan was replaced by Mr Robin Williams.

⁴ Mr Anthony Keon resigned on 12 April 2022 prior to his term expiry. Mr Keon was replaced by Mr Peter Day.

Meetings

The council met on four occasions during the reporting period:

- 2 September 2021
- 2 December 2021
- 3 March 2022
- 2 June 2022.

Attendance at MSAC meetings during the reporting period is detailed below:

Member	Position	Present	Represented
Hon. George Souris	Chairperson	4/4	n/a
Mr Ian Cribb	Member	4/4	n/a
Mr Peter Jordan	Member	1/2	n/a
Mr Brock Skelton	Member	2/4	0/4
Ms Julie Armour	Member	4/4	n/a
Assoc. Prof. Deborah Yates	Member	3/4	n/a
Mr Rob Cunningham	Member	4/4	n/a
Mr Matthew Freeman	Member	1/1	n/a
Mr Graeme Osborne	Member	4/4	n/a
Mr Anthony Keon	Member	0/4	4/4
Mr James Collings ⁵	Member	0/0	0/0
Mr Peter Day ⁶	Member	0/0	0/0
Mr Robin Williams ⁷	Member	0/0	0/0
Mr Aaron Brannigan ⁸	Member	0/0	0/0

MSAC meetings are also attended by observers from Coal Services NSW, NSW Minerals Council, Cement, Concrete & Aggregates Australia and the Resources Regulator (Department of Regional NSW).

⁵ Mr James Collings was appointed on 6 June 2022. No meetings were held after his appointment during the reporting period.

⁶ Mr Peter Day was appointed on 6 June 2022. No meetings were held after his appointment during the reporting period.

⁷ Mr Robin Williams was appointed on 6 June 2022. No meetings were held after his appointment during the reporting period.

⁸ Mr Aaron Brannigan was appointed on 28 June 2022. No meetings were held after his appointment during the reporting period.

MSAC activities and focus during 2021-22

During the reporting period, MSAC developed and endorsed a new strategic plan to 2023. The NSW Mine Safety Advisory Council Strategic Plan to 2023 (MSAC Strategic Plan) lists three priority focus areas and 18 strategies for improving WHS for the NSW mining industry:

1. Focus on health
2. Focus on fatal incidents, serious injuries and illnesses
3. Focus on emerging trends

MSAC oversees the implementation of the actions and will provide the Minister, industry and the community with regular updates on its progress.

Activities of MSAC during the reporting period against the three priority focus areas and strategies is detailed below.

Focus on health

The health of workers in the NSW mining industry continues to be a major focus for MSAC.

In recent years there has been a re-emergence of coal worker pneumoconiosis and silicosis in the Queensland and NSW mining industries. NSW has had a robust and multi-faceted framework in place for managing the risks associated with occupational dust disease in the coal mining sector for many years. This includes a comprehensive regulatory scheme in place under the Resources Regulator and Coal Services, with specific mining health and safety legislation.

Coal industry health surveillance scheme

MSAC endorsed and has overseen an independent quality assurance review of the NSW health surveillance scheme for coal workers provided by Coal Services. The purpose of the review is to ensure that the system is providing robust and effective health surveillance for coal workers, and to provide assurance to industry that the health surveillance system in NSW is effective in the early identification of health conditions or potential health conditions that may affect workers.

MSAC established a steering committee comprising stakeholder representatives from MSAC with support from MSAC's secretariat to oversee the review. The University of Illinois (Chicago) was engaged to undertake the review.

MSAC received regular updates on the status of the project from both the steering committee and University of Illinois (Chicago) during the reporting period. It is anticipated that MSAC will receive a final report, consider the recommendations, and provide advice to the Minister during the 2022-2023 reporting period.

National Dust Disease Taskforce

MSAC was provided with an update by the Resources Regulator on the National Dust Disease Taskforce. The Taskforce was established in July 2019 to develop a nationally consistent approach to the prevention, early identification, control and management of occupational dust diseases in Australia. The Taskforce released a consultation document on the National Dust Disease Taskforce's Draft Vision, Strategies and Priority Areas for Action in April 2021.

MASC members continue to monitor the work of the Taskforce.

Monitoring reporting

MSAC receives quarterly updates from Coal Services on health surveillance in the coal sector including an ongoing update on airborne dust, periodic medical compliance and workers compensation claims and injury trends. It also receives quarterly updates from the Resources Regulator on health and safety performance report for mining operators in NSW, safety incident notifications, compliance activities and outcomes.

Psychosocial hazards (including bullying and harassment)

During the reporting period, members began to examine whether the understanding of the extent of exposure to psychosocial risks (to harmful behaviours and other organisational forms of psychosocial hazards) in the NSW mining and petroleum sectors is currently valid and reliable.

Members agreed that further work needs to be undertaken by MSAC to determine the extent and any further actions required.

Focus on fatal incidents, serious injuries and illness

Fatalities and serious injuries and illnesses are key measures which are the focus of health and safety performance in the NSW mining industry. While they are lag indicators, fatality and serious injury and illness data are indicative of the effectiveness of the implementation of critical risk controls.

MSAC considered advice by the Resources Regulator that there had been an increase in the number of serious injuries and illnesses notified to the regulator during the reporting period. MSAC considered an analysis provided by the regulator and agreed to monitor the numbers on a quarterly basis to identify any trends.

Focus on emerging trends

MSAC monitored and considered relevant information to anticipate emerging (or re-emerging) issues and provided the opportunity for key stakeholders to discuss solutions or research going forward.

The nature of employment and the impact this may have on safety reporting culture

As part of the response to the Queensland Coal Mining Board of Inquiry Grosvenor report, MSAC agreed to undertake a survey 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.

A survey was distributed to all coal sectors in quarter 1 of 2022. A draft report on the outcomes of the survey was provided to MSAC at the June 2022 meeting. An action plan will be developed during the 2022-2023 reporting period.

Impact of COVID-19 on mining industry

MSAC received updates from the Resources Regulator and members on the impact of COVID-19 on the mining industry and the Department's regulatory functions. The COVID-19 pandemic and associated restrictions enacted by governments had a significant impact on the NSW mining industry and the regulatory functions of the Resources Regulator.

MSAC considered the NSW resources industry's rights and obligations under the model work health and safety laws in relation to mandatory testing. MSAC agreed to monitor the situation and follow advice provided by Safe Work Australia in relation to COVID-19 safety measures and vaccinations.

Statutory review of WHS (Mines and Petroleum Sites) laws

MSAC participated in the NSW Government's review of the work health and safety laws applying to the mining and petroleum industries. The key aim of the review was to determine whether the laws were meeting their objectives to ensure safe mining and petroleum workplaces. Mr Kym Bills lead the review and was guided by a steering committee and assisted by the Resources Regulator. The report on the statutory review of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (WHS (MPS) laws) was tabled in Parliament by the Deputy Premier on 10 November 2020.

The review found the objectives of the Act remain valid and its terms generally appropriate for securing those objectives. It also made 40 recommendations for improvements to the operation of the laws. Of those 40 recommendations, seven required consideration by MSAC in consultation with the Resources Regulator (recommendations: 1, 2, 6, 8, 12, 29, 35).

During the 2020-21 financial year, MSAC considered recommendations 1 and 12. MSAC:

- agreed that further work needs to be undertaken on the suspension or cancellation of certificates of competency and site senior executive notices. MSAC agreed that no further action was required on the other Queensland amendments as they are currently covered by NSW arrangements (recommendation 1)
- agreed to publish meeting agendas ahead of their scheduled meetings with sufficient time to allow for industry stakeholders to provide input (recommendation 12).

The remaining recommendations for MSAC consideration were considered during the current reporting period. MSAC:

- noted that MSAC will be consulted when the Resources Regulator reviews the Western Australian Work Health and Safety Act and regulations to assess whether any provisions should be adopted to meet WHS (MPS) Act objectives and improve safety and health outcomes in NSW.
- 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)
- 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)
- agreed that no legislative amendment is required in relation to the appointment of four or more industry health and safety representatives (recommendation 8)
- agreed to write to the Minister advising MSAC does not agree to extending industry safety and health representative roles to non-coal mines, noting three members did not support this decision (recommendation 8)
- agreed there is no need to further prescribe emergency planning the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (recommendation 29)
- agreed that a tripartite review of the Code of practice on emergency planning for mines be undertaken to include recommendations from the Statutory Review (recommendation 29)
- agreed to five recommendations on how to simplify plant registration (recommendation 35):
 - a. introduce two separate processes for administering plant registration depending on whether the plant is mass produced (excludes winding systems and booster fans), or fixed plant requiring item registration (winding systems and booster fans only)
 - b. amend the WHS (MPS) Regulation to include a note to clarify the meaning of the terms 'commission' and 'commissioning' used in clause 177(9) and (10)
 - c. Amend the WHS (MPS) Regulation to remove design and item registration requirements for person-riding hoists and instead specify fundamental safety requirements for hoists (person-riding and material) in the WHS (MPS) Regulation, with supporting guidance published in a factsheet
 - d. Specify in the design orders issued by the Regulator under clause 177(5) of the WHS (MPS) that for an alteration to an existing registration:
 - i. the altered parts of the plant must be designed to comply with the current design order
 - ii. an assessment must be undertaken, and documented, by the designer to assess the impact that the design alteration has on unaltered parts of the plant. Where the assessment shows there has been a reduction in the effectiveness of existing control measures of any other parts of the plant, that is there has been a detrimental effect on health and safety caused by the alteration, these parts must also be designed to comply with the design requirements in the current design order
 - iii. any parts of the plant which are not affected by the alteration must continue to comply with the design requirements of the design order that was in effect on the date that the registration for the design of the plant was granted.

- e. Revise existing guidance to clarify what is an altered plant design (cl 244 of the WHS Regulation); what is an amendment of registration (cl 284, 285 of the WHS Regulation) and what are changes to information (cl 282, 283 of the WHS Regulation).

Develop a staff procedure (business practice) to clarify what can and cannot be accepted by the Resources Regulator as a registration amendment and what is, is not, a design alteration.

Implement an education program (e.g. forums) for designers, verifiers and registration holders to communicate the reforms to simplify plant registration.