

Meeting	Mine Safety Advisory Council		
Meeting No.	3 of 2016	Date	Thursday 22 September 2016
Location	67A Aberdare Road Cessnock NSW 2325 Boardroom	Time	10:00 – 15:00
Members	Mr Carl Scully (Chair), Mr Ian Cribb (NSWMC), Mr Rob Cunningham (NSWMC), Mr Andy Honeysett (CFMEU), Mr Peter Jordan (CFMEU), Mr Douglas Revette (Department), Ms Barbara McPhee (Independent), Dr Graeme Peel (Independent), Mr Chris Dolden (CCAA), Mr John Flint (Secretariat)		
Observers	Ms Lee Shearer (NSW Resources Regulator), Mr Greg Sullivan (NSWMC), Ms Lucy Flemming (Coal Services), Mr Bruce Grimshaw (Coal Services), Ms Monique Andrew (CCAA), Mr Dave McLean (Department), Ms Jenny Nash (Department), Mr Tony Linnane (Department), Mr Tony Forster (Department), Mr Marty Jones (Department), Ms Anna Kneath (Secretariat)		
Apologies	Mr Glenn Seton (AWU), Mr Todd Hacking (CCAA), Mr Brock Skelton (AWU)		

MINUTES

Item	Issue	Outcomes/Actions
1	INTRODUCTION	
1.1	Welcome and Apologies <ul style="list-style-type: none"> The Chair opened the meeting at 10:00am and thanked everyone for their attendance. Mr Jordan was thanked for hosting the meeting. Apologies were noted from Mr Seton, Mr Hacking and Mr Skelton. 	
1.2	Declaration of Conflict of Interest <ul style="list-style-type: none"> The Chair requested members declare any conflicts of interest. No conflicts of interest were declared. 	
1.3	Acceptance of Previous Minutes <ul style="list-style-type: none"> No changes requested. The minutes of the last meeting on 14 July 2016 were endorsed without change. 	

Item	Issue	Outcomes/Actions
1.4	Correspondence <ul style="list-style-type: none"> Members noted the incoming correspondence. 	
2	FOR DISCUSSION AND/OR DECISION	
2.1	Dual Investigation Model <ul style="list-style-type: none"> The Chair noted the Department has now received legal advice and that the legal advice was circulated to members prior to the meeting. Ms Shearer advised that: <ul style="list-style-type: none"> we need to go back to the original three principles for the dual investigation model (1. no impact on enforcement capacity; 2. clear separation and 3. protections) legal advice was provided by Peter Singleton who has considerable experience in this area the legal advice highlights irreconcilable tension between the proposed model and principle one the bottom line is that the two functions cannot sit within one agency the Secretary has indicated it is not possible for him to fulfil both functions legal advice also raises concerns over waiving the privilege around documents the ATSB and CASA are separate statutory authority's which is why that model works the legal advice highlights potential resolutions however some only partially address the principles other resolutions will fully meet the principles but require significant changes to legislation which are outside the authority of our Minister other resolutions would also require changes to the harmonisation scheme we are dealing with complex areas of law and any changes would be breaking new ground we would need to involve other Minister's as we do not own the relevant pieces of legislation requiring amendment; this would add a new level and degree of complexity. The Chair noted that once the Secretary has the knowledge, or assumed to have the knowledge, there is a requirement that something is done with the information. Ms Shearer stated that there are strong prosecutorial principles in NSW per the DPP guidelines. The DPP Act goes a step further than common law principles and requires disclosure of all information that may impact on prosecution. If we accept the legal advice the dual investigation model will impinge on prosecutions. All members agreed that there should be no impact on the Regulator's ability to prosecute. Mr Cribb raised that the aviation industry has a dual investigation model. Ms Shearer noted that the key difference is that the ATSB and CASA are two separate bodies who do not sit under the one person. In mining, they would both sit under the Secretary. The Secretary is the Regulator in NSW and the two functions of causal investigations and prosecutor cannot be separated out. The Chair noted that it is not viable to set up a completely separate body in the mining industry due to cost and concerns over the amount of work. The reasons to keep it within the Department were shared knowledge, 	a. Ms Shearer to prepare a possible model that meets the legal constraints, following the subsequent legal advice being received and the development of the draft enforcement policy, for the December meeting.

Item	Issue	Outcomes/Actions
	<p>skills and resources. There was MSAC consensus to utilise the existing skills and knowledge rather than establish another body without expertise in the industry.</p> <ul style="list-style-type: none"> • Ms Shearer discussed her declaration regarding the Austar investigation which was investigated as an early learnings case to allow information to be disseminated to industry very quickly. • Ms Shearer advised that the Department is in the process of drafting a prosecutions policy which is expected to be sent out for consultation in a few weeks. • Mr Cribb expressed his concerns that the Department is not getting early learning information out to industry and that the information being sent out is different to the findings made at the conclusion of prosecution findings. • Ms Shearer advised that the Department is distributing initial reports within 14 days. There is a program of works being implemented to improve transparency and information. The Department has done an analysis but was unable to find a case where the Department was aware of information but did not release it as part of the early information. The Department requested MSAC members to advise of any specific examples of this happening so it could be looked into. <p><i>Mr Cunningham arrived at 10:55am.</i></p> <ul style="list-style-type: none"> • The Chair sought views from members. <ul style="list-style-type: none"> - Mr Grimshaw advised that based on the legal advice he supports Ms Shearers comments that the dual investigation model cannot operate as proposed. - Mr Revette stated the idea of a dual investigation model is based on the perception there is going to be an improvement in getting extra information earlier. He noted that this has not been quantified in terms of how much quicker the information would go out. We cannot see where the improvements will come quantitatively. - Mr Flint noted that before the Medlock report, the Department was slow at releasing information however since then the Department has put in place many initiatives to improve the timely release of information. - Dr Peel stated that there are three examples of how dual investigations can work. 1. ATSB/CASA; 2. QANTAS; and 3. RAAF (dual investigation model within the same organisation). It was raised that this is a Federal government model where the legal framework was provided through a terms of reference. It was questioned why this cannot be done in NSW. - Ms Shearer commented that it works as it is a military model because they are actually investigating their own, it works in Qantas because they are a private company with no regulatory obligations under Statute and it works in the ATSB/CASA because they are separate statutory organisations. This does not occur in the mining industry in NSW and the current legislative arrangements cannot facilitate it. The legal advice is clear in this regard. 	

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	<ul style="list-style-type: none"> - Mr Honeysett agreed with Mr Revette's comments. - Mr Cribb expressed concerns that the information being released by the Department is limited and does not meet industry needs. - Mr Dolden also expressed his concerns that the information in the alerts is limited. - Mr Forster advised that the Department's alerts are picked up internationally and trigger a response for sharing information. - The Chair stated that MSAC needs a resolution on the matter and proposed that if a resolution cannot be made today MSAC agreed not to pursue with a dual investigation model. - Mr Jordan indicated his support of finalising the matter today. He referred to MSACs previous agreement on the proposed model and that the next step was to seek legal advice to determine if it is viable. It was agreed that if it was not a legally viable model that we would not proceed. The legal advice has now been received and it is indicating that it is not legally possible, that MSAC's agreed model cannot proceed. Mr Jordan agreed to abandon the proposal. - Ms Andrew stated that if MSAC agrees to abandon the proposed model it needs to be clear on how the objectives will be met instead. MSAC should then report back to the Minister so the Minister is comfortable that the matter and issues are addressed. - Mr Cribb did not support Mr Jordan's comments on making a decision today as he wanted to seek feedback on the legal advice. - Mr Sullivan noted that the legal advice does not say that establishing a causal investigation is impossible only that you cannot do it and fully meet the 3 principles. - The Chair proposed that the Department provide advice to MSAC at its next meeting on a model that could be established, in line with both the legal advice and the principles - Ms Shearer indicated that the Department is expecting to receive supplementary legal advice soon. Ms Shearer agreed to put together a proposal and disseminate before the next meeting in December 2016. - Ms Andrew noted that members also need time to disseminate the information within their organisation and seek further advice. - Mr Jordan noted that MSAC is still a long way off from implementing a model. Even if a decision is made on an alternative model at the December 2016 meeting, it will still need to be analysed by stakeholders and address other key considerations such as funding before a trial basis commences. - Mr Peel reiterated the need to come to a resolution on the matter. - The Chair stated that if no resolution can be reached at the December meeting it would need to be abandoned. <ul style="list-style-type: none"> • The Chair noted the legal advice and that members need time to consider the advice in further detail. • MSAC agreed that Ms Shearer would prepare a possible model that meets the legal constraints, following the subsequent legal advice being received and the development of the draft compliance and enforcement policy enforcement policy, for the December meeting. 	

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2.2	<p>Airborne Contaminants</p> <ul style="list-style-type: none"> • Ms Flemming provided a verbal update and advised the attachments as requested at the last meeting are attached for noting. • Members discussed the attachments and noted: <ul style="list-style-type: none"> – the QLD and NSW legislative frameworks are different – QLD medical tests can be done in house and the doctors are working directly for the coal company – in NSW, Coal Services is independent and tests are done on behalf of the industry – Coal Services has a small pool of expert doctors who conduct the tests and examine the x-rays; in QLD tests are done by independent general doctors not dedicated to the mining industry; this was identified as a deficiency by Professor Sim – Mr Forster raised that one of the lessons learnt from the UK is that tests need to be done by expert practitioners with specialised skills and expertise in the area • Members noted the Coal Services briefings. • The Chair raised the issue of retired workers, how we are able to keep track of them and what responsibilities exist once a worker exits the industry. Members commented: <ul style="list-style-type: none"> – Ms Flemming advised that Coal Services has increased its communication and education to retired workers and they have noticed an increase of retired workers coming in for tests – compulsory pre-medical screening has only been in place since 2011 – it is difficult to identify retired miners as there is no compulsion to conduct tests on exit – it is an incurable disease, if it has reached the progressive stage the only actions are to increase education and provide advice for lifestyle management – the key is early detection of people currently working in the mining industry – retired workers are no longer exposed to dust. The next action is to consider miners who are currently exposed and making changes to mitigate their exposure levels – it is important to note that QLD was identified as being deficient in their screening. This is not the case in NSW – Coal Services can only offer exit medicals but they cannot be enforced. <p><u>Issues for consideration (attachment D)</u></p> <ul style="list-style-type: none"> • Mr Flint advised that the Secretariat has prepared a list of issues for consideration as requested by MSAC at the last meeting. • Members agreed the issues for consideration tabled at the meeting should be considered by HMAC and the round table. 	<ul style="list-style-type: none"> b. HMAC to consider the dust issues for consideration tabled at the meeting. c. The issues for consideration tabled at the meeting should be considered at the round table. d. HMAC to develop a new terms of reference integrating airborne contaminants and present it to MSAC at the December 2016 meeting for endorsement. e. Secretariat to organise an airborne contaminants round table and dinner before Christmas 2016. Queensland stakeholders and regulator should be invited.

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	<p><u>Dust Committee</u></p> <ul style="list-style-type: none"> • MSAC resolved to establish a subcommittee to consider dust in light of the re-emergence of pneumoconiosis in QLD. • Members agreed that the dust committee should be incorporated with its own terms of reference into the Health Management Advisory Committee and that the agenda be expanded. • It was requested that HMAAC develop a new terms of reference and present it to MSAC at the December 2016 meeting for endorsement. <p><u>Round table</u></p> <ul style="list-style-type: none"> • MSAC agreed: <ul style="list-style-type: none"> – to hold a round table as per the agenda paper under the MSAC banner – that the round table be held in mid to later November 2016 – a dinner be held the night before – the round table be held in Sydney – representatives from Queensland and Tasmania be invited to attend – that the agenda needs further work and should include plenary sessions – clear outcomes needs to be defined – CCAA to nominate two quarry workers to attend – Minerals Council to nominate two workers from the metal industry to attend – CFMEU to nominate two underground coal workers, one open cut coal worker and one washery coal worker to attend – two industry check inspectors be invited (Mr David Simm and Mr Peter Tatton) • It was further agreed that an independent facilitator may not be necessary and will be dependent on the final agenda. 	
2.3	<p>Department’s Mine Safety Regulatory Reform Incident Prevention Strategy</p> <ul style="list-style-type: none"> • Ms Shearer advised that the centralised assessment unit (CAI) has been very successful. The Department is able to know about incidents in real time. Previously some incidents were only known about when the written report was received. There are currently two Inspectors working in the unit now. The unit is driving improved business practices. • The Chair sought feedback on the centralised assessment unit. Members commented: <ul style="list-style-type: none"> – Mr Cribb questioned whether reports are available on the day once a Targeted Assessment Program (TAP) has been completed. – Mr Forster advised that it takes a couple of days to implement and reconcile the information. Each site is given an individual report. The Department is in the process of improving individual reports. 	f. Members to provide comment on the NSW Resources Regulator Monthly Business Activity Reporting) to Ms Shearer by Friday 30 September 2016.

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	<ul style="list-style-type: none"> - Mr McLean advised that reports do take time to reconcile however, if anything critical is identified sites are advised and the issue dealt with immediately. - Ms Shearer advised that is not the intention of the document to be a 'name and shame' exercise but to share information. - Ms McPhee commented that she visited an underground metals mine last week and received feedback that the TAP was very helpful. • Mr Shearer advised that: <ul style="list-style-type: none"> - the external reporting document (NSW Resources Regulator Monthly Business Activity Reporting) is due to be published from next month. Members were requested to provide feedback to Ms Shearer on the document by Friday 30 September 2016 - ground control, diesel emissions, respirable dust TAPs have commenced and are due to be completed by March 2017 - fatigue management, emergency management, health and consultation TAPs are due to commence before June 2017. <p><u>Risk Management Technical Working Group</u></p> <ul style="list-style-type: none"> • The Chair raised whether or not there was a need for the Risk Management Technical Working Group to continue. • Mr McLean advised that the group has met once and it was a valuable exercise. • Mr Cribb advised that it was agreed at the meeting to hold one more meeting towards then end of the year and decide whether or not it was worthwhile continuing. • Members noted the advice. 	<p>g. Risk Management Technical Working Group to meet in November/December 2016 and provide advice back to MSAC on the need to continue the group.</p>
2.4	<p>MSAC Strategic Plan 2020</p> <ul style="list-style-type: none"> • Mr Sullivan advised that he has received feedback on the fourth strategic action area 'observe and mitigate risks'. It was requested that it be changed to identify rather than observe. • Members agreed to change the strategic action area to 'identify risks of fatal incidents and disease'. • Members agreed that the 10 point vision is a background driver but should remain out of the Plan. • It was also requested that the Secretariat: <ul style="list-style-type: none"> - delete the reference to the tele-survey of mines and quarries under 'Focus on health and wellbeing' (p4) - update the 'Foreword' to remove the reference to the 10 point vision • MSAC endorsed the MSAC Strategic Plan to 2020 subject to the above modifications and agreed to send the Plan to the Minister for endorsement. 	<p>h. Secretariat to update the MSAC Strategic Plan to 2020 per changes requested at the meeting.</p> <p>i. Secretariat to send the endorsed Plan to the Minister for endorsement.</p>

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2.5	<p>Review of the Fatigue Management Plan</p> <ul style="list-style-type: none"> • The Chair raised that the key concept of Dr Mabbott’s work is that sleep is the number one priority for managing fatigue. The Chair questioned how that links in with the review of the plan. • It was agreed that the project team would consider above when re-drafting the plan. • MSAC requested that the project team seek feedback from Dr Mabbott once the plan is re-drafted. • Mr Jordan also raised that recovery sleep is an important factor in managing fatigue i.e. workers having enough time to sleep and prepare for their next round of shifts. A shorter duration between blocks of shifts jeopardises the ability for recovery sleep. The current fatigue plan does not recognise or put enough emphasis on this. It was requested that the project team considers this factor as part of the review. 	<p>j. The project team to consider the following points as part of the review of the Fatigue Management Plan: sleep is the number one priority for managing fatigue; how a shorter duration between blocks of shifts jeopardises the ability for recovery sleep and seek feedback from Dr Mabbott.</p>
2.6	<p>Commuting and Contractor Fatigue Management Recommendations</p> <ul style="list-style-type: none"> • Members endorsed HMAC’s recommendations in relation to the commuter and contractor fatigue management project that MSAC: <ul style="list-style-type: none"> – consider strategies to build the capacity of sites to have the expertise in fatigue risk management – recommend to the Department it has sufficient skills in fatigue risk management to support and provide assistance to industry – recommend the Department develop a standardised line of inquiry to be used during investigations where fatigue may be a causal or contributing factor that can be used by all stakeholders and the Department – consider revitalising the education and assistance program already developed by the Department’s Industry Assistance Unit (IAU) – consider whether some sort of peer review of operations fatigue risk management plans would add value to a continuous improvement program. A formal accreditation program is not recommended – consider using the National Offshore Petroleum Safety and Environmental Management Authority NOPSEMA N-09000-GN1397 Guidance Note, as a starting point, to allow mines and extractive industries to better investigate accidents and dangerous occurrences where fatigue may be a causal or contributing factor as part of developing standard lines of inquiry • MSAC agreed that the remaining recommendations be considered by the project team conducting the review of the Fatigue Management Plan (sub-project 3) and that the project team provide advice back to HMAC as to whether or not the recommendation was adopted. 	<p>k. Members agreed the project team conducting the review of the Fatigue Management Plan (sub-project 3) review the remaining recommendations and provide advice back to HMAC as to whether or not the recommendation was adopted.</p>

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2.7	Associated Non-Technical Skills Next Generation Implementation Strategy <ul style="list-style-type: none"> • Mr Flint advised that the ANTS video is currently being trialled at Cadia through Nedra Burns • Members viewed the video and requested feedback from the Department on the trial for the next MSAC meeting. • Members supported the strategic direction of the project 	l. Department to prepare a paper on the ANTS video trial for the next MSAC meeting.
3	BUSINESS FOR NOTING	
3.1	Fatigue Management Practices Evaluation Project <ul style="list-style-type: none"> • Members noted the paper. 	
3.2	Culture Benchmarking <ul style="list-style-type: none"> • Members noted the paper. 	
3.3	International Electrotechnical Commission Meeting Report <ul style="list-style-type: none"> • Members noted the paper. 	
3.4	Mining and Petroleum Competence Board – ANTS Competencies <ul style="list-style-type: none"> • Members noted the paper. 	
4	OTHER BUSINESS	
	<ul style="list-style-type: none"> • The Chair noted that despite the differences in status of those attending MSAC meetings, his view was that anyone attending would be given an opportunity to contribute. • The next meeting will be hosted by Coal Services on Thursday 15 December 2016 from 10am to 2pm at the Mines Rescue Station, Argenton. • The Chair congratulated Mr Sullivan on the well run Minerals Council Conference and the exposure to industry that MSAC received there. <p><u>Bonuses</u></p> <ul style="list-style-type: none"> • Mr Honeysett raised a concern over a re-emerging trend in the industry of production bonuses and a super bonus. Comments were made that bonuses change workers mine set (they chase the reward for the risk). • Ms McPhee noted that MSAC has produced a document on the management of bonuses. • Mr Flint stated that this was one of the concerns in the Digging Deeper project. • Mr Forster stated that this was also a driver in the Pike River mine disaster. • It was requested that the Department prepare a paper for the next MSAC meeting on the status of this topic. 	m. Department to prepare a paper for the next MSAC meeting on the impact of bonuses and safety incentive schemes.

Item	Issue	Outcomes/Actions
5	CLOSE	
	<ul style="list-style-type: none"> • The Chair thanked members and observers for their attendance. • The Chair closed the meeting at 14:25 hours. 	

Minutes endorsed by MSAC on 15 December 2016