



**NSW
Resources
Regulator**

MINE SAFETY ADVISORY COUNCIL

CONSTITUTION

7 March 2019



Document control

Published by NSW Resources Regulator

Title: Mine Safety Advisory Council Constitution

First published: January 2020

Authorised by: Director Regulatory Programs

CM9 reference: DOC19/276384

AMENDMENT SCHEDULE

Date	Version	Amendment
January 2020	1	First published

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (December 2019) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

1. Introduction	4
What is the NSW Mine Safety Advisory Council?	4
Functions	4
Vision	5
Terms of reference	5
2. Membership	5
Members	5
Chairperson	6
Secretary	6
Term of members	6
Process for appointing members	6
3. Roles and Responsibilities	7
Minister	7
Chairperson	7
Members	7
Secretary	8
4. Conduct of members	8
Ethical framework	8
Code of conduct	9
Conflicts of interest	9
Confidentiality	9
5. Conduct of meetings	10
Frequency	10
Quorum	10
Form of meeting	10
Working groups	10
Appointment of alternates	10

Alternate chair.....10

Members alternate10

Observers.....11

Strategic plan.....11

6. Review.....11

1. Introduction

The NSW Mine Safety Advisory Council Constitution is developed under clause 162 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.

What is the NSW Mine Safety Advisory Council?

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 for Resources, Energy and Utilities (the Minister) on strategic health and safety issues in the mining and extractives industry.

It is established under section 60 of the *Work, Health and Safety (Mines and Petroleum Sites) Act 2013*.

MSAC comprises people representing the interests of industry, unions, NSW Department of Planning and Environment, 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.

Functions

The functions of MSAC are detailed in the Act and the Regulation.

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

- a) to provide advice to the Minister on any policy matter relating to work health and safety in mines
- b) any other advisory function relating to work health and safety in mines that is prescribed by the Regulations.

The functions prescribed under section 161 of the Regulation are:

- a) 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

- b) 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.

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 and to provide information to stakeholders so that safety performance is improved
- 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
- interact with the safety advisory committees to enable them to lead their industry sectors, and to inform the work of MSAC.

2. Membership

Members

MSAC comprises one or more nominees of the following bodies (section 160(1):

- NSW Minerals Council (representing employers in the coal sector) ((a)(i))
- NSW Minerals Council (representing employers in the metalliferous sector) ((a)(ii))

- Cement Concrete and Aggregates Australia (representing employers in the extractives sector) ((a)(iii))
- Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division (representing employees) ((b)(i))
- Australian Workers Union, NSW Branch (representing employees) ((b)(ii))
- Secretary of the department ((c))
- Independent members who have expertise that is of assistance to the council ((d))

An equal number of persons are to be appointed under subclause (a) and (b).

Chairperson

One of the independent members is to be appointed by the Minister as the chairperson (160(2)).

Secretary

The secretary of MSAC is to be an officer of the department appointed by the Secretary (160(4)).

Term of members

Membership terms, as specified in the member's instrument of appointment, must not exceed three years. Members, however, are eligible for re-appointment.

Process for appointing members

Members and chair

Members and the chair are appointed by the Minister under section 160 of the Regulation.

Nominations for members will be provided by the appropriate body being represented per section 160 of the Regulation.

Appointments will be made according to the Public Service Commissioner's Appointment Standards and Department of Premier and Cabinet guidelines.

Secretary

MSAC's secretary is appointed by the Secretary under section 160(3) of the Regulation.

3. Roles and Responsibilities

Minister

MSAC is appointed and authorised by the Minister under the Act. It is subject to the direction and control of the Minister. The Minister may:

- make recommendations to Cabinet about member appointments and terminations
- direct MSAC to provide advice on a particular issue
- make decisions based on advice provided by a board or committee
- receive and review MSAC reports.

MSAC will provide advice to the Minister via a report after each meeting.

Chairperson

The chairperson shall preside at all meetings of MSAC. The chairperson has the same right to raise issues for discussion and contribute to meeting agendas as the other members. In the absence of the chairperson, the deputy chairperson shall preside.

The chairperson's general responsibilities include:

- ensuring that the MSAC performs its functions, acts within its statutory powers, and complies with legal obligations and policies
- facilitating the conduct of meetings, including the preparation of an agenda, to allow frank and open discussion
- facilitating the flow of information to members and stakeholders
- liaising with the relevant ministers and departmental representatives.

Members

The roles and responsibilities of members include:

- supporting the board or committee to perform its functions
- attending meetings and participating in decision making processes

- undertaking consultation or research to support and promote discussion of the agenda items.

Members must endeavour to reach consensus on all matters in providing their advice.

Members who are appointed to represent the views of an organisation may or may not agree with the decisions of MSAC and may have their views minuted.

Advice should be made in the light of applicable legislation, the code of conduct, Government policy and MSAC objectives. Decisions and outcomes must be in the public interest and be able to withstand public scrutiny. Conflicts of interest, including personal gain at public expense, must be avoided.

Secretary

The Secretary is to ensure the coordination of MSAC and the provision of the secretariat function. The secretariat undertakes a range of responsibilities to assist with the operations of MSAC including:

- working with the chairperson to develop agendas, manage meeting papers and prepare a range of documents
- circulating papers in advance of meetings
- taking minutes of the meeting including decisions, discussion and any dissenting views where appropriate
- organising meeting facilities and other meeting logistics
- liaising with members.

4. Conduct of members

Ethical framework

As public officials, MSAC members have an obligation to act in the public interest. All members must comply with the ethical framework for the public sector as per the Government Sector Employment Act 2013.

Code of conduct

Members of MSAC are committed to the standards and principles outlined in the NSW Department of Premier and Cabinet's 'Conduct Guidelines for Members of NSW Government Boards and Committees'. The code is designed to attract the highest level of confidence by providing guidelines on expected standards of behaviour.

Conflicts of interest

All MSAC members must disclose interests, which include positions and pecuniary interests in corporations, partnerships or other businesses that may be relevant to the activities of MSAC.

This does not apply to an interest of a member in a matter that arises merely because the member is associated with the organisation by which the member was nominated.

All members must complete a conflict of interest declaration form and identification of conflicts of interest must remain a standard agenda item for each meeting.

When an issue arises, which may be either a real or perceived conflict of interest, the member must disclose full and accurate details of the issue to the chair as soon as practicable.

All declarations are to be recorded within a register maintained by the secretariat and noted within the minutes of the meeting.

MSAC should make a decision as to how to manage the conflict of interest and record reasons for that decision. A decision may include:

- agreeing that the member will not participate in any discussion relating to the interest or issue, not receive any relevant Board papers, or be absent from the meeting room when any discussion or vote is taking place and not vote on the matter
- severing the connection, such as resigning from the position giving rise to the conflict
- resigning from MSAC.

Confidentiality

From time to time MSAC members may be given access to confidential material. These materials are shown in good faith and members must ensure that confidentiality is maintained. Documents that are confidential will be marked accordingly.

5. Conduct of meetings

Frequency

A minimum of two meetings must be held each year.

Quorum

The quorum for a meeting is a simple majority and must include at least one departmental, one employee and one employer representative. Decisions must not be made at a meeting without a quorum.

Form of meeting

A meeting may take the form of a face to face meeting, teleconference, video conference or consensus via electronic means (such as email).

Working groups

MSAC may establish special purpose working groups to workshop specific issues and develop papers to inform its formulation of advice. Such working groups may be comprised of sub-groups of MSAC, the regulator, parties outside MSAC with expertise relevant to the issue being considered, or a combination.

The procedures of the working groups should follow those of MSAC.

Appointment of alternates

Alternate chair

A deputy chairperson is not appointed. If the chairperson is to be absent from a meeting and a deputy chairperson is required, members will vote at that meeting to elect a chairperson from the NSW Department of Planning and Environment or the independent members present.

Members alternate

An alternate may be appointed by a member, in writing by that member, to the MSAC chairperson or secretariat, for a specified meeting, to ensure the stakeholder's organisation has a voice at that meeting.

Observers

Observers are not to attend MSAC meetings unless invited by the chairperson to do so. Members will be informed when observers will be attending. Observers have no role in discussions and may not speak unless invited to by the chairperson.

Strategic plan

MSAC will have a strategic plan to achieve its objectives that has been agreed to by members and endorsed by the Minister.

The strategic plan provides the basis for MSAC's accountability for its key outputs of advice and recommendations on work, health and safety issues.

6. Review

The operation of MSAC will be reviewed every three years to assess how it has achieved its objectives and evaluate how effectively it has met its terms of reference.