

Meeting	Mine Safety Advisory Council				
Meeting No.	4 of 2016	Date	Thursday 15 December 2016	Time	10:00 – 15:00
Location	NSW Mines Rescue Service, Newcastle Station 533 Lake Road Argenton NSW 2284				
Members	Mr Carl Scully (Chair), Mr Andy Honeysett (CFMEU), Ms Barbara McPhee (Independent), Mr Brock Skelton (AWU), Mr Chris Dolden (CCAA), Mr Douglas Revette (Department), Mr Peter Jordan (CFMEU), Mr Rob Cunningham (NSWMC), Mr John Flint (Department, MSAC Executive Officer), Mr Greg Sullivan (NSWMC representing Mr Ian Cribb)				
Observers	Mr Bruce Grimshaw (Coal Services), Mr Dave McLean (Resources Regulator), Ms Jenny Nash (Resources Regulator), Ms Lee Shearer (Resources Regulator), Ms Lucy Flemming (Coal Services), Ms Monique Andrew (CCAA), Mr Todd Hacking (CCAA), Mr Tony Linnane (Resources Regulator), Ms Anna Kneath (Department, MSAC Secretariat), Mr Marty Jones (Department)				
Presenters	Mr Garvin Burns (Resources Regulator), Mr Stewart Armstrong (Resources Regulator), Mr Steve Millington (Resources Regulator)				
Apologies	Dr Graeme Peel (Independent), Mr Ian Cribb (NSWMC)				

MINUTES

Item	Issue	Outcomes/Actions
1	INTRODUCTION	
1.1	<p>Welcome and Apologies</p> <ul style="list-style-type: none"> A safety briefing was provided by Mr Darren Parker from Mines Rescue Newcastle Station. The Chair opened the meeting at 10:15am and thanked everyone for their attendance. Coal Services was thanked for hosting the meeting. Apologies were noted from Dr Graeme Peel and Mr Ian Cribb. 	
1.2	<p>Declaration of Conflict of Interest</p> <ul style="list-style-type: none"> The Chair requested members declare any conflicts of interest. No conflicts of interest were declared. 	

Item	Issue	Outcomes/Actions
1.3	<p>Acceptance of Previous Minutes</p> <ul style="list-style-type: none"> The Chair noted a requested change from Mr Sullivan at agenda item 2.1 page 4: <i>“Mr Sullivan noted that the legal advice does not say that establishing a causal investigation is <u>impossible</u> but [delete but] <u>only that</u> you cannot do it and fully meet the 3 principles.”</i> The minutes of the last meeting on 22 September 2016 were endorsed subject to the above modification. 	<p>a. The Secretariat to update the minutes of the 22 September 2016 meeting with the change requested by Mr Sullivan.</p>
1.4	<p>Correspondence</p> <ul style="list-style-type: none"> Members noted the outgoing correspondence. 	
2	<p>FOR DISCUSSION AND/OR DECISION</p>	
2.1	<p>Dual investigation through the Incident Prevention Strategy</p> <ul style="list-style-type: none"> Additional copies of the updated draft Causal Investigation Policy document circulated prior to the meeting were tabled. Ms Shearer advised that draft document is what the Department is proposing as the dual investigation model. Ms Shearer advised the process for triaging incidents as: <ul style="list-style-type: none"> all incidents notified to the department are triaged and assessed by Causal Assessment Unit (CAU) incidents considered appropriate for a causal investigation will then be referred to the Safety Incident Review Panel (SIRP) and Compliance Assessment Review Panel (CARP) for consideration and subsequent recommendation to the regulator. Mr Sullivan commented that he has held discussions with the two industry members, Mr Cribb and Mr Cunningham, briefed the NSWMC OHS committee, and obtained independent legal advice. In relation to the department’s first legal advice it is accepted that the original model is not workable. In relation to the second legal advice, the industry view is that the ‘election’ model is workable and delivers on the first two principles and to an extent the third principle. Overall, the industry endorses the proposal in principle subject to working through with Ms Shearer some wording of the document. Mr Sullivan indicated industry is pleased with the outcome and believes it is a workable solution. The Chair thanked Ms Shearer and Mr Sullivan for their work in getting to this point. The Chair raised a question in relation to resourcing and costs. Ms Shearer indicated it is believed that it can be done within existing resources. Mr Jordan raised a concern in the second legal advice (page 6). Half way down the page in the second dot point reading <i>“However, if the Director advised in favour of a prosecution....An agreement to this effect would be very useful, but might be considered unlikely.”</i> Mr Jordan raised the question that if MSAC endorses this as a policy position is it assumed that the CFMEU gives agreement as a stakeholder. Is that saying that the CFMEU will never undertake its own enforcement? 	<p>b. The Regulator to:</p> <ul style="list-style-type: none"> update the draft causal investigation policy document to state that it is not intended to fetter anyone’s statutory right to undertake proceedings and take into consideration Minerals Council comments recirculate the document to MSAC members out of session send the document to Peter Singleton for review present the final document to MSAC at its next meeting in March 2017.

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	<ul style="list-style-type: none"> • Ms Shearer advised that this is certainly not the intention of the policy. Should a causal investigation be conducted the evidence would not be made available to the CFMEU if they wished to exercise their rights under the statute to take prosecutions proceedings. Any attempt to access the information gathered in a causal investigation will be resisted by the Regulator and the concepts of public interest immunity would be used to defend that position. • It was agreed that the policy needs to be updated to state that it is not intended to fetter anyone's statutory right to undertake proceedings. • Ms Shearer agreed to then recirculate the policy to MSAC members. • Mr Hacking also indicated CCAA's support and in principle agreement. He expressed concerns over the regulators statements and encouraged the department to ensure they are correct. • MSAC agreed to review the policy in 12 months and then again in three years. • Ms Shearer advised that the department will send the policy to Peter Singleton once finalised. The policy will then be presented to MSAC at the next meeting. Ms Shearer also raised that the department has received feedback from the NSW Minerals Council. • MSAC agreed: <ul style="list-style-type: none"> – to the departments proposal to deliver the dual investigation process through the Incident Prevention Strategy – that the Department would update the document to state that it is not intended to fetter anyone's statutory right to undertake proceedings – to update the document taking into consideration Minerals Council comments if agreed however it is expected the issues will be able to be resolved – once updated, the department to then recirculate the document to MSAC members out of session – once feedback has been received from MSAC, the department to send the document to Peter Singleton for review – once reviewed by Peter Singleton, the department to present the final document to MSAC at its next meeting in March 2017. <p><u>Steve Millington – Presentation on the Central Assessment Unit</u></p> <ul style="list-style-type: none"> • Mr Millington delivered a presentation to MSAC on the Central Assessment Unit (CAU). It was advised that the previous system: <ul style="list-style-type: none"> – has been in place for many years – was primarily reactive once an incident had been notified – each mine had a specific inspector appointed to it who received notifications for their assigned mine 24/7 and would be responsible for deciding the appropriate response to incidents – responses could subsequently be inconsistent. 	

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	<ul style="list-style-type: none"> • On 24 July 2016, the model underwent a change into the current central notification system. Currently: <ul style="list-style-type: none"> - all notifications for the state go through the CAU - the CAU assigns a response classification to each incident (one of the 5 levels) - the department is notified in writing for about 2/3 of the notifications - the remaining third of notifications are received by phone - less than 10 notifications per 10 week come in outside business hours; those notifications are received by a rostered inspector - there are five classification levels: monitoring, standard, elevated, severe and critical. • The triage classification is the initial response undertaken by an inspector. • The decision to triage an incident between enforcement and causal depends on a number of factors including injuries, number of significant incidents. • Members requested examples of severe and critical incidents. It was advised: <ul style="list-style-type: none"> - severe – severe hospitalised injury results in an immediate response by an inspector - critical – fatality, multiple injuries results in an emergency services response. • Mr Millington was thanked for his presentation and good work. <p><u>Jenny Nash – Presentation on Activity Compliance Enforcement System (ACES)</u></p> <ul style="list-style-type: none"> • Ms Nash provided a demonstration to MSAC on the Activity Compliance Enforcement System (ACES). <p><i>Mr Cunningham arrived at 11:38am.</i></p> <ul style="list-style-type: none"> • Ms Shearer advised that the department is developing an online reporting tool. It is moving to an online form where sites enter their own data. Information will automatically be imported into ACES. When submitted, the person who submits form and the operator of the mine will receive an email. • Operator can then confirm or deny and then will be able to fill in additional details. • If operator denies, it gets flagged in the system and the regulator can follow up. • Either the mine operator or PCBU completes the form. • The person who completes the form has the ability to update the information as required. • Currently there are three mines testing the online reporting. • The online reporting tool is currently in testing phase and is due to go live on 16 January 2017. • It was requested that Ms Nash advise Mr Sullivan which mines are testing the online reporting tool. <p><i>Mr Armstrong left the meeting at 11:50pm.</i></p>	<p>c. Ms Nash to advise Mr Sullivan which mines are testing the online reporting.</p>

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	<p><u>Garvin Burns – Presentation on assessment and inspection strategy</u></p> <ul style="list-style-type: none"> • Mr Burns delivered a presentation to MSAC on the regulator’s assessment and inspection strategy. • The strategy emanated from recommendation 3 of the fatality review. • There are three types of inspections – targeted assessments process (TAP), targeted intervention process (TIP), planned inspections • Ms Shearer advised that the department is having issues around the publication of reports in clear and concise language that are written in plain English. Additional resources being brought in with specialist writing skill sets. <p><u>Regulation Reform Review</u></p> <ul style="list-style-type: none"> • Ms Shearer tabled a document at the meeting Noetic Report – Regulation Reform Review. • It was advised that the reform review is a mid way review. The Regulator’s reform has been so significant that Ms Shearer wanted to ensure that it was what Peter Wilkinson envisaged and ensure that the Department’s overall strategy is correct and the actual internal operation deployment strategy was as anticipated. • The final conclusion is that substantial changes have been made and Noetic was very impressed with the changes so far. • This mid way review was intended to be internally focussed. In 2017, a full review will be completed which will involve discussion with industry members to obtain their views of the reform. • The Chair thanked Ms Shearer and her team for all their work to date. <p><i>Mr Millington left the meeting.</i></p>	
2.2	<p>Airborne Contaminants</p> <ul style="list-style-type: none"> • The Chair advised that there was a lot of information coming out of the round table event. He raised concerns about how we bring together the work being undertaken on airborne contaminants by a number of bodies including the Coal Services Board and HMAC Dust Sub-Group. • Mr Flint raised that we need to coordinate without duplicating efforts. • The Chair suggested that we need a steering group and questioned whether or not the HMAC Dust Sub-Group is the appropriate group. • Ms Flemming raised concerns that the right people are not on HMAC. • Ms McPhee raised that we need to consider what we are going to do for quarries and metex and how we are going to go about it. • Mr Hacking raised that the reality is that QLD had some failures in its regulatory approach. NSW needs to 	<p>d. The Department to present a draft interim report on the airborne contaminants TAPs at the next HMAC meeting.</p> <p>e. The outcomes of the airborne contaminants round table to be referred to the HMAC Dust Sub-Group for analysis at the next</p>

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	<p>learn from that and look at its framework. He questioned whether or not we need to react when there is not a problem. We can look at emerging issues through the TAP process. Any reviews need to be done in a coordinated fashion.</p> <ul style="list-style-type: none"> • Mr Skelton stated that the purpose is to establish a committee and identify if there is a problem. It is believed that there is an issue already particularly among workers lack of education. It is worthwhile having a committee to consider the topic. • The Chair raised his concerns about having a lag approach. That is, waiting until we have a problem before we do anything about it. In response to QLD we want to make sure that we have done everything we can in NSW. What emerged out of the round table is that we need to do more in broader industries other than just coal. The Chair agreed that we need a measured and rational approach to the issues. It is unknown whether or not the actions that came out of the round table are sound but someone needs to go through the process of identifying what is being actioned, what is not etc. • Mr Jordan indicated his support that HMAc Dust Sub-Group is the appropriate forum to drive it. It has appropriate membership from all representatives. He proposed that MSAC refer the outcomes to HMAc to analyse at the next meeting in February 2017. • The Chair stated that the HMAc Dust Sub-Group should engage technical expertise as required. • Mr Jordan added that at the next HMAc meeting the Dust Sub-Group should determine what assistance may be required. • The Chair stated that MSAC should request that the HMAc Dust Sub-Group consider the outcomes from the round table and advise MSAC what issues MSAC should take forward and who should do it and which items are already dealt with. • Mr Flint noted that we need a holistic view. We may need different specialist skills depending on the issues. • Mr Burns raised a concern about the focus and outcomes of the round table. He raised that there was no discussion about controlling dust at the source. The department is in the middle of two TAPs on airborne contaminants. Issues may be identified through the TAP process. A draft interim report will be available for the next HMAc meeting. • Mr Flint added that there was also silence on regulatory oversight. • Ms McPhee stated that we need good representation from SafeWork NSW on any reported dust diseases. • Ms Flemming noted there has been an increase in lung disease within the construction industry. Diesel and silica is not as strong as it should be. There are a lot of unknowns at this stage. • Mr Sullivan stated that Mr Cribb expressed concerns about extending the role of the coal dust committee into metex and extractives as the coal industry funds Coal Services. The industry doesn't want to see a dilution of Coal Services focus by expanding the remit of coal services into other areas. It is funded to focus on coal and that is where the focus should remain. • It was stated that the HMAc Dust Sub-Group will need to have a few extra meetings next year. 	<p>meeting in February 2017. HMAc to advise MSAC what issues it should take forward, who should do it and which items are already dealt with.</p> <ul style="list-style-type: none"> f. The HMAc Dust Sub-Group to consider at their next meeting in February 2017 what additional technical expertise may be required. g. The HMAc Dust Sub-Group to hold additional meetings as required to consider the outcomes. h. The Secretariat to circulate the current membership list of HMAc to MSAC out of session.

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	<ul style="list-style-type: none"> • Mr Hacking stated that the HMAC Dust Sub-Group should consider all of the issues raised at the round table and not be restricted to just where the red dots were. • Mr Flint agreed adding that the outcomes from the day are just the perspectives of the people that were present. • Ms Shearer requested that Ms Nash, Mr Linnane and Mr McLean (or representative) be added as members of the HMAC Dust Sub-Group. • Mr Jordan stated that organisations are nominated and they can send whomever they deem as appropriate as their representative. • It was requested that the Secretariat circulate the current membership list of HMAC to MSAC out of session. 	
2.3	<p>HMAC and Dust Sub-Group Terms of Reference</p> <ul style="list-style-type: none"> • The Terms of Reference for the HMAC and Dust Sub-Group were endorsed. 	
2.4	<p>Bonuses and Safety Incentive Schemes</p> <ul style="list-style-type: none"> • Mr Honeysett advised that his concerns are over the re-emergence of super bonuses in the industry that are related to production and safety. There are concerns that it changes the mindset of the operator, procedures are not adhered to, corners are cut by restricting or delaying tasks, supervisors become part of the operation and do work to get tasks done faster and there is less reporting of incidents. • Mr Skelton stated that all of his mines have bonus systems relating to; 1. safety, 2. production, 3. overall profitability. The most alarming one is the safety bonus. Its easy money by not reporting. • Mr Sullivan stated that Mr Cribb asked him to convey that he is taking this issue very seriously. He has undertaken his own review but could not find any correlation between safety outcomes and the payment of bonuses. • The Chair questioned whether or not the problem is that they are not reporting incidents. • It was raised that the CWP considered the notion of super bonuses and recommended that the 'Reviewing safety incentive schemes' document be reviewed. • Mr Jordan stated that this matter was brought to MSACs attention by Mr Honeysett at the last MSAC meeting. He questioned why it went to the CWP meeting without agreement by MSAC. He noted that the action from the last meeting was that the department prepare a paper on the issue. Mr Jordan did not support the need to review the document. That document was written as a result of the Digging Deeper Report and supported all the recommendations emanating from that report. He indicated support for the CWPs recommendation that a new communication strategy be developed to promote the 'Reviewing safety incentive schemes' document without the need to review the document. • Mr Jordan added that if there are specific instances from industry of under reporting to obtain a bonus, then the department should intervene and carry out an investigation. 	<ul style="list-style-type: none"> i. The Department to re-promote the 'Reviewing safety incentive schemes' document out to industry without modifications. j. The Secretariat to send a list of CWP working group members to MSAC members out of session. k. MSAC or the MSAC Chair only should decide if an issue is to be referred to one of the MSAC working groups.

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	<ul style="list-style-type: none"> • Mr Sullivan stated that Mr Jordan's comments are in line with what Mr Cribb expressed to him yesterday regarding why this matter was sent to the CWP when it was a report back to MSAC. It is unclear how this issue was sent to CWP in the first place. Individual complaints should be referred to the regulator. He agreed that the document is sound and remains relevant. There is no evidence that the document needs to be reviewed. MSAC should be focused on matters of a systemic nature, not complaints in relation to individual operations. • Ms Shearer stated that the regulator would need to demonstrate that whatever is happening is undermining the safety of the workers. The issue is not the payment of a bonus but if it is connected to non-reporting of safety incidents. The regulator would not generally explore the payment of bonuses. • Ms McPhee commented that the 'Reviewing safety incentive schemes' document did not get the promotion it should have done at the time. It took a back step to other issues. • Mr Honeysett stated that he didn't flag a safety bonus but a super bonus where people take short cuts. He indicated support for the document to be re-circulated back to the industry. • Ms Shearer also indicated support for that action. • MSAC agreed that the Department send out the 'Reviewing safety incentive schemes' document again without modification. • Lee requested a list of the membership for the CWP. It was requested that the Secretariat send out a list of working group members to MSAC members out of session. • Mr Sullivan questioned why the issue went to the CWP. This needs to be addressed. • Members agreed that all work to working groups need to be referred by MSAC not just added to the agenda. • Ms Shearer agreed that if the Department identified that a broader and a systemic problem is occurring with under reporting as a result of a super bonus then it would notify MSAC. 	
2.5	<p>Musculoskeletal Disorders (MSD) Guide</p> <ul style="list-style-type: none"> • Mr Flint advised that a revised version of the MSD Guide is attached for MSAC endorsement. The guide has been reviewed by HMAC. It is designed for operators, in particular small operators. If endorsed by MSAC it will replace the 2009 version. • Ms McPhee raised that there are a few grammatical errors that need to be fixed. It was agreed that the Department would liaise with Ms McPhee directly about these changes. • Members endorsed the MSD guide subject to Ms McPhee's modifications. • Mr Hacking raised that very few of his members would read the guide because of its size. He proposed that the guide be supplemented by a four page summary document. • MSAC agreed that a four page fact sheet should accompany the guide. 	<p>I. The Department to:</p> <ul style="list-style-type: none"> - liaise with Ms McPhee directly about grammatical changes to the MSD Guide - develop a four page summary support document to the MSD Guide - replace the photo on the front page of the

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	<ul style="list-style-type: none"> MSAC also agreed to request that the photo on the front page be replaced with one displaying appropriate PPE. 	MSD Guide.
2.6	<p>Mine Safety Annual Performance Measures Report 2015-16</p> <ul style="list-style-type: none"> Ms Flemming advised she has a fair bit of feedback on the report and has been holding discussions directly with Ms Shearer and Mr Linnane. Ms Shearer advised the Regulator is taking on board Lucy's comments. MSAC noted the report and agreed that Ms Flemming should continue to engage directly with Ms Shearer out of session. 	m. Ms Flemming and Ms Shearer to liaise directly out of session in relation to comments on the report.
3	BUSINESS FOR NOTING	
3.1	<p>Human and Organisational Factors</p> <ul style="list-style-type: none"> Ms McPhee raised that there is a lack of detail and references in the paper and attachments. For example, attachment B states 'we decided' but there is no reference as to who 'we' is. It was agreed that for future papers clearer detail is provided in relation to the source of information, authors, intended target audience and explanation of the attachments. Members noted the paper. 	n. Future papers and attachments should provide clear detail in relation to the source of information, authors, intended target audience and explanation of the attachments.
3.2	<p>Culture Benchmarking</p> <ul style="list-style-type: none"> MSAC questioned what the paper means, why we are undertaking the project and what does the data tell us. Mr Hacking raised that MSAC needs to ask some critical questions in relation to the project; why is it there, why is it being done, what is the relevance, what is the purpose and what does the data mean? MSAC agreed that the document needs to have greater context in terms of background and explanation of the current content. It was requested that for the next MSAC meeting more background and narrative is provided in relation to the project. 	o. The Department to provide an updated paper at the next meeting with greater explanation on the background of the project and context of the data.
3.3	<p>Associated Non-Technical Skills (ANTS) Next Generation</p> <ul style="list-style-type: none"> Mr Hacking raised concerns that no feedback has been received from Cadia. Members noted the paper and requested that feedback is sought from Cadia for the next MSAC meeting. 	p. The Department to provide feedback on the video trial at Cadia for the next MSAC meeting.

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3.4	<p>2017 Meetings Calendar</p> <ul style="list-style-type: none"> • Members agreed to the following dates and locations for the 2017 MSAC meetings: <ul style="list-style-type: none"> - Thursday 16 March at CFMEU, Cessnock - to change the proposed meeting on 8 June to 15 June and to hold it in Parkes - Thursday 7 September in Sydney - Thursday 7 December in Sydney • Meetings will be held from 10am to 2pm. 	q. The Secretariat to send calendar invitations for the 2017 MSAC meetings.
4	OTHER BUSINESS	
	<p><u>Pike River, NZ</u></p> <ul style="list-style-type: none"> • Ms Shearer provided a verbal report on her trip to Pike River mine, New Zealand in September 2016. • It was advised that: <ul style="list-style-type: none"> - a lot of work is going on sealing the mine - for about a month families have been picketing against sealing the mine as they are still looking for answers - it is a much smaller industry in NZ - all of the key stakeholders have been very supportive of the reforms and rebuilding of the regulator. <p><u>New member</u></p> <ul style="list-style-type: none"> • It was advised that Mr Glenn Seton has retired from the AWU and that Mr Brock Skelton will be the new representative. 	
5	CLOSE	
	<ul style="list-style-type: none"> • The Chair thanked members and observers for their attendance. • The Chair closed the meeting at 14:05 hours. 	