



MINING SKILLS ORGANISATION PILOT

INTERIM GOVERNANCE STRUCTURE

TERMS OF REFERENCE

25 MAY 2020

TABLE OF CONTENTS

INTERIM GOVERNANCE STRUCTURE – TERMS OF REFERENCE	1
Background.....	1
Mining Skills Organisation Pilot.....	1
Vision for the Mining SO Pilot	1
Objectives and expected outcomes for the Mining SO Pilot.....	1
Strategic communications and engagement	1
Roles and responsibilities for the Mining SO Pilot.....	2
Model	3
ATTACHMENT A: SKILLS ORGANISATION PILOTS BACKGROUND	4
ATTACHMENT B: DETAILED DESIGN FOR SO PILOT	5
ATTACHMENT C: STEERING GROUP – SPECIFIC TERMS OF REFERENCE.....	7
ATTACHMENT D: WORKING GROUP – SPECIFIC TERMS OF REFERENCE.....	11
ATTACHMENT E – MCA COMPETITION LAW COMPLIANCE PROTOCOL	15
ATTACHMENT F1 – CONFIDENTIALITY DEED POLL TEMPLATE.....	17
ATTACHMENT F2 – CONFLICT OF INTEREST TEMPLATE	20

Version Control

Version	Nature of update	Authority	Date
Version 1.0	First Terms of Reference for Steering Group endorsement	MCA – Mining SO Pilot	29 April 2020
Version 1.1	Updated Attachment C to capture Steering Group membership following endorsement of TOR by the Steering Group	MCA – Mining SO Pilot	8 May 2020
Version 1.2	Updated TOR to include a title page and table of contents and applied style guide corrections	MCA – Mining SO Pilot	25 May 2020

INTERIM GOVERNANCE STRUCTURE – TERMS OF REFERENCE

Background

The Australian Government is working with industry to establish three pilot Skills Organisations to trial innovative approaches to vocational education and training to ensure the national training system is responsive, respected and flexible to the needs for industry now and into the future.

Further background provided by the Department of Employment, Skills, Small and Family Business (the department) is at Attachment A.

Mining Skills Organisation Pilot

The Minerals Council of Australia (MCA) will lead the Mining Skills Organisation Pilot (Mining SO Pilot) work on behalf of employers and in conjunction with broader industry. In doing so, it will provide advice to the Minister for Employment, Skills, Small and Family Business as well as working with key players in the national VET governance structures to advise on and obtain agreement to changes that improve the quality and the extent of training for the sector.

Vision for the Mining SO Pilot

An industry-owned/ led approach to education and training for Australian mining, as specialist skills associated with innovation and technology adoption increase that:

- Ensures the skills needed of the sector and industries more broadly are met
- Equips learners in the current and future workforce for work in the modern mining sector.

Objectives and expected outcomes for the Mining SO Pilot

Responsible for leading the first stage of the Mining SO Pilot's evolution, the MCA will:

- Determine focus projects in the sector and a proposed forward work program
- Lead development of a model for how a mining SO will operate in the sector
- Inform the improvements to national arrangements for skilling the workforce as well as the longer term arrangements for a system of Skills Organisations based on the model proposed by the department is at Attachment B.

To assist in achieving these objectives, the MCA will establish an interim governance structure, including a Mining SO Pilot Steering Group and Mining SO Pilot Working Group. The steering group and working group will be covered by these Terms of Reference, with group-specific terms stipulated at Attachment C and D respectively.

In undertaking its work, the Mining SO Pilot will engage with and undertake work on behalf of the industry. In order to effect change within the national VET system, it will need to engage with and request changes through the appropriate mechanisms. These are usually at Ministerial or Departmental level or established under national governance and regulatory arrangements. The department will be able to assist with navigation of the system.

The work of the Mining SO Pilot will also inform deliberations by the Minister and the department in respect of funding and formal authority within the system.

Strategic communications and engagement

To ensure alignment of messaging across government, industry and stakeholder cohorts, the MCA will meet with the Minister and the department prior to public announcements.

To support this, the MCA will develop a strategic plan to guide and map communications and engagement for the Mining SO Pilot. The plan may include:

- Meetings and communications with the Minister and the department

- External communications and messaging
- Media, events and announcements.

Stakeholders

MCA has identified the following stakeholder cohorts in relation to the pilot:

- Industry: Member and non-member companies, state chambers/ divisions or specialist bodies, METS sector representatives, complementary industry representatives and learners
- Education and training sector: Group Training Organisations, Private and Enterprise Registered Training Providers, TAFEs and higher education (dual sector) providers
- Government: Federal and state departments including Education, Skills and Employment (the funding body) and Industry, Innovation and Science
- Current structure entities: Skills Service Organisations, Australian Industry Skills Committee or Industry Reference Committees (metalliferous mining, extractive drilling, coal mining) and unions
- Other bodies: industry, peak or professional bodies, specialist providers, agencies or networks, community representatives or specialists and any other stakeholders identified.

Roles and responsibilities for the Mining SO Pilot

Department of Education, Skills and Employment (formerly the Department of Employment, Skills, Small and Family Business)

The roles and responsibilities of the Department are to, amongst other things:

- Support the development and implementation of the Mining SO Pilot
- Facilitate final approval of the operational model and long-term governance arrangements of the Mining SO Pilot for the purposes of recognition and funding
- Facilitate final approval of the implementation plan and forward work program for the Mining SO Pilot for the purposes of funding
- Where appropriate and agreed, provide secretariat support to the working group, which may include meeting initial administrative costs such as for venues and teleconference facilities for the first stage of the Mining SO Pilot
- Provide appropriate funding and support for project and development work, including consideration of reasonable requests for research and consultancy work.

The Minerals Council of Australia

The roles and responsibilities of the MCA are to:

- Lead and facilitate the Mining SO Pilot
- Establish the interim governance structure to further develop the Mining SO Pilot, through nomination of appropriately skilled resources in the sector
- Develop some short term projects that could be undertaken to improve the quality and availability of training
- Develop a model for the longer term operation of the Skills Organisation in the sector and a proposed forward work program
- Provide advice, input and feedback to guide and inform the Government's consideration of national reforms and possible future arrangements for Skills Organisations in the longer term

- Develop consultation arrangements to ensure that the perspectives of other employers, broader industry and other keystakeholders in the sector are identified and considered.
- Develop and facilitate relationships with key VET stakeholders, including but not limited to, the Australian Industry and Skills Committee, the COAG Skills Council, industry reference committees etcetera
- Provide secretariat support to the steering group
- Provide appropriate funding and support for project and development work, including consideration of reasonable requests for research and consultancy work.

The Mining Skills Organisation Pilot Steering Group

The roles and responsibilities of the steering group are to provide strategic leadership, advice and direction of the pilot in accordance with these TOR and as stipulated at Attachment C.

The Mining Skills Organisation Pilot Working Group

The roles and responsibilities of the working group are to provide a stakeholder engagement mechanism through a 'hub and spoke' model and provide expert/ specialist input into the pilot in accordance with these TOR and as stipulated at Attachment D.

Model

The Mining SO Pilot will be delivered through a hub and spoke model, whereby the SO will act as the central hub to coordinate and facilitate pilot activity. The steering group will provide the strategic leadership, advice and direction analogous to a board and the working group will be the key voice of stakeholders and the main vehicle for pilot activity.

ATTACHMENT A: SKILLS ORGANISATION PILOTS BACKGROUND

The Australian Government announced the establishment of two pilot Skills Organisations as part of the \$585.3 million 2019-20 Federal Budget's [Skills Package](#) – Delivering Skills for Today and Tomorrow. The Skills Package lays the building blocks for reforms identified in the [Expert Review of Australia's Vocational Education and Training System](#) (the Joyce Review).

The Government's Skills Package will strengthen Australia's vocational education and training (VET) system to ensure that it remains responsive, respected and flexible, providing Australians with the skills they need to succeed in the modern workplace and providing business with the workers they need to grow a strong economy.

Against the backdrop of the Joyce Review, and a number of other reforms occurring in the VET sector, the Government committed \$41.7 million (as part of the Skills Package) to pilot two Skills Organisations. On 1 November 2019, the Government announced an additional investment to establish a third pilot Skills Organisation.

The Skills Organisation pilots, to be established by industry with the support of the Department of Education, Skills and Employment (formerly the Department of Employment, Skills, Small and Family Business), will target three key priority industries:

- Human services care (which may encompass one or more of aged care, early childhood education and care and disability services)
- Digital technologies (with a focus on cyber security)
- Mining.

The Joyce Review proposed Skills Organisations be owned by industry and take a leadership role to support the VET system so that it better meets the needs of employers, the economy and learners.

ATTACHMENT B: DETAILED DESIGN FOR SO PILOT

The detailed design must include:

- Governance arrangements
- A forward work program of the focus projects the SO Pilot will perform
- An implementation plan.

The focus projects in the forward work program may include activities such as:

- Assess skills needs in sector and provide information to the National Skills Commission and States and Territories
- Take responsibility for training package development
- Promote the use of skill sets within training packages
- Develop a set of core competencies that are stable and transferrable across the sector
- Record benchmark hours and any required work placement hours in qualifications to ensure all provision, including to secondary school students, clearly meets the needs of employers
- Develop stronger relationships with registered training organisations (RTOs) to improve delivery of VET qualifications and enhance outcomes, for example by:
 - Translating training materials into ‘industry language’
 - Better aligning training and assessment with the expectations of employers
 - Facilitating work placements for learners
- Increase confidence in the quality of VET graduates, such as through:
 - Independent assessment
 - Capstone testing
 - External validation of RTO assessment
- Develop a methodology to identify high performing/preferred registered training organisations (RTOs) that are delivering quality outcomes for learners
- Strengthen the links between schools and industry, for example by:
 - Advising of suitable VET qualifications; endorsing RTOs for use by schools
 - Brokering relationships with employers to secure work placements and Australian School-Based Apprenticeships opportunities
 - Engaging with schools to improve the quality of careers advice
- Manage apprenticeship and traineeship support
- Consider ways to address issues in recruitment and retention in the sector, for example by:
 - Establishing sector work trials for potential workers with basic induction and a buddy system
 - Marketing the industry and its qualification pathways to prospective apprentices and students in order to meet workforce needs
 - Developing clear pathways to support workers into a career in mining

- Improving post entry-level training to upskill the existing workforce to respond to the changing needs of the sector
- Better use of traineeships to provide learners with more practical experience in human-centred work
- Improving the public perception of the sector and promoting VET as a viable way to progress a meaningful career.
- Support development of micro-credentials and accredited courses in response to emerging skills needs.

ATTACHMENT C: STEERING GROUP – SPECIFIC TERMS OF REFERENCE

Purpose

The Mining SO Pilot Steering Group will provide strategic leadership, advice and direction for the Mining Skills Organisation Pilot and Mining Skills Organisation Pilot Working Group.

Functions

To provide strategic leadership, advice and direction on the:

- Establishment and implementation of the pilot, including the governance model, design and structure of the Mining Skills Organisation
- Operation of the Mining Skills Organisation for the duration of the pilot
- Identification and/or development, implementation and maintenance of projects and initiatives that test the governance model and structure of the pilot across the skills pipeline
- Evaluation of the pilot against its stated objectives and performance expectations.

Membership

Members are representative of industry and have been identified based on their capacity and capability to support the objectives and expected outcomes of the Pilot

Members of the steering group will undertake the functions as outlined above and will be comprised of six industry representatives as follows:

- Tania Constable (interim Chair) PSM – Chief Executive Officer, Minerals Council of Australia
- Chris Salisbury (interim vice-Chair) – CEO, Rio Tinto Iron Ore
- Christine Gibbs Stewart – CEO, Austmine Limited
- Warwick Jones – Head of HR, Anglo American
- Greg Graham – CEO WesTrac
- Andrea Maxey – Vice President Corporate Affairs

The Steering Group will also have advising observers as follows:

- Mary McDonald – First Assistant Secretary VET Quality and Policy Division, Department of Education, Skills and Employment
- The Hon Ian Macfarlane – Chief Executive, Queensland Resources Council
- Craig Robertson – CEO, TAFE Directors Australia
- Gavin Lind (Chair of the Mining Skills Organisation Pilot Working Group) – General Manager, Safety, Workforce and Innovation, MCA.

The MCA will provide secretariat support. Advising observers are invited to participate in discussions but do not have voting rights on decisions. Their advice and perspective can be leveraged by the Steering Group to inform their decisions on matters under consideration.

As required and with the Chair's approval, other experts may be invited to attend and speak to specific agenda items at steering group meetings – for example, presentation of outcomes on a specific program/ initiative or provision of information relevant to discussions. This may include specialists and representatives from across identified stakeholder cohorts and communities.

Roles and Responsibilities

The roles and responsibilities of the Chair are to:

- Chair meetings in accordance with meeting protocols
- Speak on behalf of the steering group
- Report to the Minister for Employment, Skills, Small and Family Business and the department

The roles responsibilities of the vice-Chair are to:

- Support the Chair
- Report to the MCA Board
- Chair meetings when Chair is absent in accordance with meeting protocols.

The roles and responsibilities of all members of the steering group are to:

- Provide strategic advice on matters related to the establishment, implementation operation and evaluation of the pilot
- Oversee pilot-related communications and leveraging relationships and reputation to maximise industry engagement in the pilot and confidence in vocational education and training
- Provide industry with guidance and authority to support the training products created or amended through the pilot
- Identify opportunities to draw on existing initiatives and programs across the training pipeline
- Confirm quality assurance and sign-off on training products created or amended through the pilot
- Contribute to/endorsing final report on the pilot, including learnings and recommendations for ongoing operation of a mining skills organisation.

Conduct, competition, confidentiality and conflict

The Chair and members of the steering group, in fulfilling their roles and responsibilities are expected to:

- Declare any real, potential or perceived conflicts of interest prior to appointment and during membership of the steering group, if and as conflicts arise¹
- Ensure the appropriate and proper use of information obtained through membership of the steering group, including confidential information
- Provide an inclusive environment by acting honestly, fairly and with respect and proper regard for the rights, obligations, diverse views and capacities of all members.
- Manage issues in a consistent and effective manner
- Contribute to quorum decision-making.

Competition policy

Members of the steering group are required to adhere to MCA Competition Law and Compliance Protocol as approved by the MCA Board and set out at Attachment E.

¹ An example of such an interest may be that the member or the organisation they work for has an interest in a registered training provider that delivers qualifications included in the relevant training package.

Confidentiality

All newly created information or materials generated by the steering group is for the purpose of progressing pilot objectives and should not be disclosed or provided to other parties outside the intended/ agreed parameters without the express permission of the Chair/ the MCA.

Members of the steering group (other than those members who are APS or MCA employees) are required to complete and provide to the MCA a confidentiality Deed Poll, in the form set out at Attachment E.

Conflict of interest

Members of the steering group (other than those members who are APS or MCA employees) are required to complete and provide to the MCA a conflict of interest declaration, in the form set out at Attachment E.

The steering group must establish (in consultation with the MCA) an ongoing process for the disclosure and management of Conflicts of Interest, with all interests that may lead to an actual or perceived conflict, to be declared and recorded in a Register of Interests.

A steering group member who has a direct or indirect conflict of interest in a matter being considered or about to be considered must disclose the conflict of interest immediately. Steering group members are expected to declare any new conflicts of interest that may have arisen at the beginning of each meeting.

A disclosure of a conflict of interest (pecuniary or otherwise) shall also be recorded in the minutes and the member shall not, unless otherwise determined by the Chair, be present during any discussion with respect to that matter or contribute to or influence any advice the working group may provide on that matter.

Authority and decision making

The steering group is authorised by the MCA and the department to deliver in line with these terms of reference and contribute to pilot objectives and outcomes.

The steering group does not have the delegated authority to make independent decisions on behalf of the Mining SO Pilot, the MCA or the department.

Wherever possible members of the steering group will seek to make decisions and recommendations based on consensus. Where this is not possible then the Chair of the meeting will ask for members to vote using a show of hands, provided that nothing in the way of business proposed is contrary to the objectives of the working group.

In the event of a formal vote the Chair will clarify what members are being asked to vote on – the ‘motion’. Subject to there being a quorum, a simple majority of members present will prevail. A quorum constitutes 50 per cent plus one steering group members. In the event of a tied vote, the Chair will have a second and-or deciding vote.

Meeting arrangements

The steering group will hold quarterly face to face meetings. Outcomes focused work and activity will be undertaken as required and achieved through steering group member action, delegations, ad hoc meetings, out of session activity and/or teleconferences as required.

If a steering group member fails to attend three consecutive meetings, without the approval of the Chair, the working group may apply to the steering group to terminate that individual’s membership and to have a new member appointed.

A member may resign their position on the steering group by advising the Chair in writing.

Agenda, minutes and reporting

For steering group meetings, the secretariat will:

- Aim to circulate an agenda and supporting papers at least three business days prior to each meeting
- Document all meeting outcomes
- Circulate the outcomes to relevant parties within two weeks of each meeting.

A written record of all discussion at meetings of the steering group, and of decisions made, will be prepared and maintained by the MCA as Secretariat for the steering group.

Operational arrangements

Participation on the steering group is voluntary and represents a part of industry's 'in-kind contribution' to the operation of a robust VET system that underpins skilled and productive workforces. This will be recorded as part of industry investment in the Mining SO Pilot.

Members of the steering group are to notify the chair and Secretariat in advance if they will be unable to attend a meeting.

Where members are unable to attend a meeting of the steering group, a suitable proxy appointed by the member may attend meetings on their behalf. Delegated authority for decision making would reside in the proxy member.

Costs associated with facilitating steering group meetings will be borne by the Mining Skills Organisation. This may include the provision of reasonable travel and accommodation costs to support attendance at the meetings.

Review

The role of the steering group and its ongoing functions will be subject to active consideration and review by steering group members, the MCA and the working group (if required) for the duration of the pilot.

Active consideration and review ensures identification of the ideal purpose, function and responsibility of the steering group for the longer-term, ongoing, sustainable operation of a mining skills organisation. Adjustments, agreed by the MCA, the department and the steering group will be reflected in updated terms of reference.

ATTACHMENT D: WORKING GROUP – SPECIFIC TERMS OF REFERENCE

Purpose

The Mining Skills Organisation Pilot Working Group will provide the stakeholder engagement mechanism and expert, specialist input for the ongoing operation of the pilot.

Functions

To provide the stakeholder engagement mechanism for the Mining SO Pilot and provide expert/specialist input through a 'hub and spoke' model on the:

- Establishment and implementation of the pilot, including the governance model, design and structure of the mining skills organisation
- Operation of the Mining Skills Organisation for the duration of the pilot
- Identification and/or development, implementation and maintenance of projects and initiatives that test the governance model and structure of the pilot across the skills pipeline
- Evaluation of the pilot against its stated objectives and performance expectations.

Membership

Members of the working group will undertake the functions as outlined above. The working group will be comprised of 12 representatives from the following identified stakeholder groups:

- Six industry: MCA member and non-member company representatives state chambers/divisions or specialist bodies, METS sector representatives, complementary industry representatives and learners
- Two Education and training providers: Group Training Organisations, Enterprise Registered Training Providers, TAFE and higher education providers (in particular dual sector)
- Two current structure entities: Skills Service Organisations, Australian Industry Skills Committee or Industry Reference Committees and unions
- Two other: industry, peak or professional bodies, other specialist providers, agencies or networks, including MCA associate members and non-MCA member.

The MCA will Chair the working group and where appropriate and agreed secretariat support will be provided by the Department of Employment, Skills, Small and Family Business.

As required and with the Chair's approval, other experts may be invited to attend and speak to specific agenda items at working group meetings – for example, presentation of outcomes on a specific program/ initiative or provision of information relevant to discussions. This may include specialists and representatives from across identified stakeholder cohorts and communities.

Responsibilities

The responsibilities of the Chair are to:

- Chair the meeting in accordance with meeting protocols
- Report to the steering group and the Mining Skills Organisation
- Code of conduct at the meetings.

The responsibilities of the Chair and the working group are to:

- Provide stakeholder voice and perspective on matters related to the establishment, implementation operation and evaluation of the pilot

- Share pilot-related communications within own company/organisation and networks, connecting interested and appropriate stakeholders and feeding back relevant intelligence to the working group, steering group and Mining Skills Organisation
- Identify opportunities to draw on existing initiatives and programs across the training pipeline
- Oversee the development, review and amendment of training packages/ products in accordance with the requirements of the Mining Skills Organisation and the existing training development system
- Promote the Mining SO Pilot and the use of vocational education and training in the stakeholder cohorts they represent
- Conduct research and other work required to achieve the objectives and expected outcomes of the Mining SO Pilot.
- Contribute to the final report on the pilot, including learnings and recommendations for ongoing operation of a mining skills organisation

Conduct, confidentiality, conflict and competition

The Chair and members of the working group, in fulfilling their roles are expected to:

- Declare any real, potential or perceived conflicts of interest prior to appointment and during membership of the working group, if and as conflicts arise²
- Ensure the appropriate and proper use of information obtained through membership of the working group, including confidential information
- Provide an inclusive environment by acting honestly, fairly and with respect and proper regard for the rights, obligations, diverse views and capacities of all members.
- Manage issues in a consistent and effective manner
- Contribute to quorum decision-making.

Competition policy

All working group members are required to adhere to MCA Competition Law and Compliance Protocol as approved by the MCA Board and set out at Attachment E.

Confidentiality

All newly created information or materials generated by the working group is for the purpose of progressing pilot objectives and should not be disclosed or provided to other parties outside the intended/ agreed parameters without the express permission of the Chair.

Members of the working group (other than those members who are APS employees) are required to complete and provide to the MCA a Confidentiality Deed Poll, in the form set out at Attachment F1.

Conflict of interest

Members of the working group (other than those members who are APS employees) are required to complete and provide to the MCA a conflict of interest declaration, in the form set out at Attachment F2.

The working group must establish (in consultation with the steering group an ongoing process for the disclosure and management of Conflicts of Interest, with all interests that may lead to an actual or perceived conflict, to be declared and recorded in a Register of Interests.

² An example of such an interest may be that the member or the organisation they work for has an interest in a registered training provider that delivers qualifications included in the relevant training package.

A working group member who has a direct or indirect conflict of interest in a matter being considered or about to be considered must disclose the conflict of interest immediately. Working group members are expected to declare any new conflicts of interest that may have arisen at the beginning of each meeting.

A disclosure of a conflict of interest (pecuniary or otherwise) shall also be recorded in the minutes and the member shall not, unless otherwise determined by the Chair, be present during any discussion with respect to that matter or contribute to or influence any advice the working group may provide on that matter.

Authority and decision making

The working group is authorised by the Mining SO Pilot and the steering group to deliver in line with these terms of reference and contribute to pilot objectives and outcomes.

The working group does not have the delegated authority to make independent decisions on behalf of the Mining SO Pilot, the steering group or the department.

Wherever possible members of the working group will seek to make decisions and recommendations based on consensus. Where this is not possible then the Chair of the meeting will ask for members to vote using a show of hands, provided that nothing in the way of business proposed is contrary to the objectives of the working group.

In the event of a formal vote the Chair will clarify what members are being asked to vote on – the ‘motion’. Subject to there being a quorum, a simple majority of members present will prevail. A quorum constitutes 50 per cent plus one working group members. In the event of a tied vote, the Chair may have a second and-or deciding vote.

Meeting arrangements

The working group will meet on a bi-monthly basis face to face either in-person or via videoconference. Outcomes focused work and activity will be undertaken as required and achieved through delegations, ad hoc meetings and out of session activity as required.

In setting bi-monthly and ad-hoc meetings, the Chair will take into consideration minimising operational costs, it is expected that the working group will utilise options including teleconference, videoconference or other electronic format where appropriate.

If a member fails to attend three consecutive meetings, without the approval of the Chair, the working group may apply to the steering group to terminate that individual’s membership and to have a new member appointed.

A member may resign their position on the working group by notifying the Chair in writing.

Agenda, minutes and reporting

Following the foundational working group meeting, a call for agenda items may be circulated prior to the meeting. The agenda, as agreed/approved by the Chair will be distributed at least three business days prior to the meeting and will include any papers and supporting documentation.

Meeting minutes will be prepared by the secretariat and approved by the Chair prior to distribution to members for feedback. All minutes shall be distributed to the Chair and members within two weeks of the meeting. At the following meeting, members may resolve to accept the minutes as a true and accurate record or accept with amendments.

Minutes will include clear, trackable actions with assigned timeframes and responsibility as agreed during meetings.

The working group will report to the steering group through the Chair. Reports will be prepared in the agreed format and include summary of activity, advice and recommendations. The secretariat will provide administrative support to the Chair as required.

Operational arrangements

Participation on the working group is voluntary and represents a part of industry's 'in-kind contribution' to the operation of a robust VET system that underpins skilled and productive workforces. This will be recorded as part of industry investment in the Mining SO Pilot.

Costs associated with facilitating working group meetings will be borne by the Mining SO Pilot. This may include the provision of reasonable travel and accommodation costs to support working group member attendance at the meetings.

Review

The role of the working group and its ongoing functions will be subject to active consideration and review by working group members, the MCA and the steering group for the duration of the pilot.

Active consideration and review ensures identification of the ideal purpose, function and responsibility of the working group for the longer-term, ongoing, sustainable operation of a mining skills organisation. Adjustments will be reflected in updated terms of reference.

ATTACHMENT E – MCA COMPETITION LAW COMPLIANCE PROTOCOL

The MCA is committed to compliance with competition laws, both in Australia and abroad. Australia's competition legislation (the *Competition and Consumer Act 2010* (CCA)) has significant civil and criminal penalties for anti-competitive conduct. Similar sanctions exist under competition laws in most of Australia's major trading partners.

This protocol is focused on ensuring there is no risk of collusion between MCA members through their involvement in the MCA's activities. It does not purport to address all forms of anti-competitive conduct, or address compliance with all aspects of Australian or foreign competition law.

Competition laws

The key risks for members under the CCA are the prohibitions on:

- Cartel conduct
- Agreements or concerted practices that have the purpose, or are likely to have the effect of substantially lessening competition.

It is illegal for competitors to make or give effect to any agreement to fix or control prices or limit the extent to which they will buy or sell goods or services in competition with each other.

A 'concerted practice' includes practices that substitute co-operation in the place of the uncertainty of competition (for example, exchanging or communicating commercially sensitive information, even if no agreement is reached).

Competitors can work together, through their membership of industry bodies, to discuss policy and regulatory issues, provided they recognise that these communications also provide opportunities to reach agreements that could affect competition. Members must take care to guard against this risk by following the protocols below.

Matters that cannot be discussed at MCA meetings or activities

Members must not discuss, or reach any form of agreement, relating to:

- Prices (including discounts, allowances, rebates, credits or terms of trade) or methods by which prices will be determined (e.g., by reference to historic or benchmark prices)
- Individual profit levels, inventory or capacity to supply
- Any limits on volumes to be sold, offered for sale or acquired
- Whether to bid for tenders or the terms of any bid
- Dealing (or not dealing) with specific customers or types of customer, or specific suppliers or types of suppliers
- Dividing or allocating markets (including types of customers or geographic areas).

Members must not exchange or disclose confidential or commercially sensitive information. This includes information regarding pricing, future plans or strategies, or any other competitively sensitive information that is not already publicly available.

Conduct of meetings

An agenda will be circulated prior to meetings to identify topics to be discussed.

Each meeting will commence with an acknowledgement that MCA members may be competitors and are committed to ensuring compliance with competition laws.

Any discussion of matters (including any matters not set out in the agenda) will comply with these guidelines.

If any member has concerns about a topic of discussion:

- The member should immediately raise the concern and discussion of the topic should cease
- The MCA should seek legal advice before discussion of the topic continues
- These matters should be recorded in the minutes.

After the meeting

Minutes will be kept to ensure there is a record of the topics discussed, whether attendees left the meeting, and any commitments given to obtain legal advice before continuing with particular discussions.

Discussions outside the agenda

Attendees must not engage in impromptu or 'side' discussions, whether they occur before, after or during meetings, involving topics which risk contravening competition laws.

ATTACHMENT F1 – CONFIDENTIALITY DEED POLL TEMPLATE

Confidentiality Deed Poll

This Deed Poll is made on **[Insert date]** by:

[Insert name of Confidant] of **[Insert address]** (**Confidant**) in favour of the Commonwealth of Australia as represented by the Department of Education, Skills and Employment ABN 54 201 218 474 of 10/14 Mort Street, Canberra ACT 2601 (**Department**).

RECITALS:

- (A) The Department has committed to undertaking the establishment of a Pilot Skills Organisation in respect of the mining sector.
- (B) In seeking further industry input and consultation on the development of the Skills Organisation Pilot, the Department has established a steering group comprising of different representatives across the mining sector (**Steering Group**). [The Steering Group has established a working group to assist in the conduct of research and other work required to achieve the expected outcomes of the Steering Group (**Working Group**)].
- (C) The Confidant is a member of the [**Steering Group / Working Group**]. In the course of performing their role as a member of the [**Steering Group / Working Group**], the Confidant may become aware of or have access to Confidential Information.
- (D) The Confidant agrees to take all necessary steps to ensure that the Confidential Information is kept confidential, and is used only for the Permitted Purposes.

AGREED TERMS

1. Definitions

1.1 In the interpretation of this Deed, unless the contrary intention appears:

Confidential Information means any information that is:

- (a) included in, or related to, the papers, discussions or decisions of the [**Steering Group / Working Group**];
- (b) by its nature confidential; or
- (c) the Confidant knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed;
- (e) is in the possession of the party without restriction in relation to disclosure before the date of receipt; or
- (f) has been independently developed or acquired by the Confidant.

Deed means this deed of confidentiality.

Permitted Purposes means:

- (a) use of the Confidential Information by the Confidant for the purpose of performing their duties in relation to the **[Steering Group / Working Group]**; and
- (b) any other purpose that may be approved in writing by the Department from time to time.

2. Confidentiality Undertakings

2.1 The Confidant:

- (a) acknowledges and agrees that this Deed is for the benefit of the Department and is directly enforceable by the Department even though it is not a party to this Deed;
- (b) must ensure that the Confidential Information is kept confidential and secure from disclosure;
- (c) must only use the Confidential Information for the Permitted Purposes;
- (d) must not without the prior written consent of the Department, disclose or permit any person to disclose any of the Confidential Information to any person, other than as permitted under clause 2.2; and
- (e) must promptly notify the Department of any unauthorised possession, disclosure or use of the Confidential Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use.

2.2 Clause 2.1 does not apply to a disclosure of any Confidential Information to the extent that the disclosure is for any of the following purposes:

- (a) the disclosure is in connection with performance of the Permitted Purposes;
- (b) as required or authorised by law; or
- (c) as necessary for the conduct of any legal proceedings.

3. Return of Confidential Information

3.1 Without limiting the Confidant's obligations at law, the Confidant must deliver to the Department, or destroy or erase, as required by the Department, all documents (including electronically stored or otherwise) in its possession or control which contain or relate to the Confidential Information on the earlier of:

- (a) the date specified in a notice given by the Department (acting reasonably); and
- (b) the time the documents and any other material are no longer required for the Permitted Purposes.

4. Variations

4.1 No term or provision of this Deed must be amended or varied unless such amendment or variation is agreed by the Department in writing.

5. Survival

5.1 The Confidant's obligations under this Deed survives the Confidant's resignation or removal from the [**Steering Group / Working Group**], or following the dissolution of the [**Steering Group / Working Group**].

6. Applicable Law

6.1 The laws of the Australian Capital Territory apply to this Deed.

6.2 The Confidant agrees to submit to the applicable jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising out of this Deed.

EXECUTED as a DEED POLL

SIGNED, SEALED and DELIVERED by
[**NAME OF CONFIDANT**] in the presence
of:

Signature of party

Signature of witness

Name

Address of witness

ATTACHMENT F2 – CONFLICT OF INTEREST TEMPLATE

Conflict of Interest Declaration

I have read and understood the probity obligations applicable to the Mining Skills Organisation Pilot Steering Group, as set out in the Terms of Reference.

I acknowledge that under the Terms of Reference for the Mining Skills Organisation Pilot Steering Group I am required to give notice of any interest, whether real, potential or perceived, that conflicts with the interests of the Department of Education, Skills and Employment in respect of the Mining Skills Organisation Pilot (**Conflict of Interest**).

Option 1: No Conflict of Interest

I declare that I have no Conflicts of Interest.

OR

Option 2: Declared Conflict of Interest

I declare that I have the following [actual/perceived/potential] Conflict of Interest.

[Insert details of the relevant Conflict of Interest].

I will retain a copy of this declaration and review it regularly to ensure that it is up to date at all times. I will notify you immediately of any material change in the facts set out above.

Item No.	Details	Signatory Information
(a)	(b)	(c)
1.	Signature	
2.	Printed Name	
3.	Level/Title	
4.	Appointment/Organisation	
5.	Phone/Email Contact	
6.	Date	
7.	Witness Signature	
8.	Name	