

## Minutes

9:00am–1:00pm 18 February 2010

Boardroom, Level 6 / 201 Elizabeth Street, Sydney

| No. | Item   | Attachment | Action          |
|-----|--|------------|-----------------|
| 1.  | <p><b>Welcome and apologies</b></p> <p><b>Present:</b></p> <p><u>Members:</u> Norman Jennings (Chairman), Barbara McPhee (Independent), Ian Murray (CFMEU), Glenn Seton (AWU), Andrew McMahon (NSWMC; alternate for Tony McPaul), Susan Fields (CCAA), Wayne McAndrew (CFMEU), Graeme Peel (Independent), Ian Cribb (NSWMC), John Flint (I&amp;I NSW/DMSP; alternate for Alan Coutts), Rob Regan (I&amp;I NSW/DMSO, Technical Adviser to Chairman)</p> <p><u>Guest</u> Dr Richard Sheldrake (Director-General I&amp;I NSW)</p> <p><u>Secretariat:</u> Tim Crakanthorp, Bruce Jones</p> <p><b>Apologies:</b> Tony McPaul (NSWMC), Alan Coutts (I&amp;I NSW)</p> <p>The Chairman welcomed MSAC members and acknowledged Andrew McMahon as the alternate for Tony McPaul and John Flint as the alternate for Allan Coutts. He also introduced Bruce Jones as the acting Senior Policy Officer for the MSAC Secretariat.</p> |            |                 |
| 2.  | <p><b>Business arising from the minutes</b></p> <p><i>2.1 Adoption of Minutes from last meeting</i></p> <p>The Chairman invited members to adopt the Minutes of the previous meeting. Members agreed to adopt the minutes.</p> <p>The Chairman commented that action items following from the previous meeting all appeared to be completed. He also expressed the Council's gratitude to Wayne McAndrew for organising the Lithgow venue for the Council's December meeting. The Chairman advised that, to date, he had not received a response from the Minister to his letter reporting on the previous meeting and seeking approval in regard to a mine safety website and a community safety grants scheme.</p>   | 1          | Minutes adopted |
| 3.  | <p><b>Mine Safety Levy</b></p> <p>The Chairman brought members' attention to Attachment 2 of the papers, the Mine Safety Levy Schedule for 2010/11. He also tabled a letter from the CEO of the NSW Minerals Council, Dr Nicole Williams, regarding the Levy Schedule (attached).</p> <p>The Chairman introduced Dr Richard Sheldrake (I&amp;I NSW) and invited him to consult with the Council on the proposed levy for</p>   | 2          | Noted           |

| No. | Item  | Attachment | Action                           |
|-----|---|------------|----------------------------------|
|     | <p>2010/2011.</p> <p>Dr Sheldrake summarised the key points on 2010/2011 Mine Safety Levy –</p> <ul style="list-style-type: none"> <li>• While the 2010/11 Mine Safety Budget has a projected increase of almost \$2 million, the Mine Safety Levy estimate and percentage of industry wages has decreased;</li> <li>• The Levy percentage of the industry payroll is the lowest since the inception of the Levy;</li> <li>• The increased Budget is due to increases in salary and in corporate and legal expenses;</li> <li>• By applying \$3 million of the estimated residual of the Mine Safety Fund of \$5.6 million, I&amp;I NSW are managing the levy in a sound and balanced way while keeping some reserve for contingencies, which is recognised as proper business practice. The remainder is a buffer and provides for possible increases in Inspectors' award.</li> </ul> <p>The Chairman invited comments and questions and reiterated that while the Mine Safety Budget has increased slightly, the Levy on industry has decreased in both dollar terms and as a percentage of industry wages.</p> <p>NSWMC commented that it appears that while the proposed increases is about \$2 million, when the underspending in 2009/10 is taken into account, the real increase is 19%. The NSWMC seeks more clarity in regard to expenditure and the Minerals Council wishes the full Mine Safety Fund unspent funds to be applied to reducing the 2010/11 levy.</p> <p>I&amp;I NSW commented that:</p> <ul style="list-style-type: none"> <li>• If the whole Mine Safety Fund reserve were to be rolled over, that would expose the Budget to potential deficit due to likely salary increases;</li> <li>• If current industry performance and expansion continues. the Mine Safety Levy percentage will continue to fall;</li> <li>• A major reason for the shortfall of the 2009/10 Budget is the inability to fill Mine Safety inspector positions due to a combination of below industry-level remuneration and the Public Service staff freeze;</li> <li>• While the staff freeze had caused a direct underspend in salaries, it also meant that MSAC did not have the capacity to do all the items in its work plan;</li> <li>• The impact of National Mine Safety Framework is still not clear, but it is likely that more staff will be needed to deliver on current projects and to ensure that legislation is complied with. Two temporary positions are proposed;</li> </ul> <p>The CFMEU asked about current position concerning vacancies, as the union had argued before that these positions need to be made attractive in relation to industry salary levels. The CFMEU and AWU indicated the Levy must be sufficient to enable a fully staffed and trained Inspectorate.</p> <p>I&amp;I NSW commented that:</p> <ul style="list-style-type: none"> <li>• Three coal inspector positions are still vacant and there is an acting area manager position they are finding difficult to fill;</li> <li>• Need to test market again before putting a case to Treasury. If some positions are filled soon that would be good, but also</li> </ul> |            | <p>Director-General consults</p> |

| No. | Item  | Attachment | Action   |
|-----|---|------------|--|
|     | <p>likely to have from that process a case for above award wages that would make it more attractive for industry professionals to be inspectors. Unless something is done to fix this matter there will be OHS implications;</p> <ul style="list-style-type: none"> <li>In NSW there are 35 mine inspectors who could retire tomorrow and a further 25 in the next few years.</li> </ul> <p>CFMEU commented that:</p> <ul style="list-style-type: none"> <li>This is evidence of a looming crisis and there is a need to have funds in reserve for salary increases to be able to attract suitably qualified people.</li> <li>They and other industry members may make independent representations on this matter.</li> </ul> <p>NSWMC requested information on inspector resourcing and age profiles on the agenda of future meetings.</p> <p>The Chairman agreed that while the freeze had delayed things and the inspector award has proved to be too low, the Department now has to put more recent evidence to justify salary increases. To be in a position to pay that money means it is appropriate that some of the Mine Safety Fund reserve be carried over.</p> <p>The Chairman requested that the issue of inspector remuneration and vacancies be an agenda item and reported on a quarterly basis in the same manner as the Mine Safety Budget is now reported on a quarterly basis.</p> <p>The Director-General noted the NSW Minerals Council's concerns and objections and indicated these matters have been considered. He also noted the view of the CFMEU and AWU that the proposed levy is appropriate.</p> <p>The Director-General requested the Council to note the proposed Mine Safety Levy estimate of \$23.609 million which is 0.847% of the total mining industry salaries and wages.</p> <p>The Council noted the proposed Levy and the Chairman will write to the I&amp;I Director-General noting his consultation with the Council regarding the 2010-2011 Mine Safety Budget and proposed industry Levy.</p> |            | <p>That the issue of inspector remuneration and vacancy issues be an agenda item and reported on a quarterly basis in the same manner as the Mine Safety Budget is now reported</p> <p>Levy noted.<br/>Chairman to advise I&amp;I DG</p> |
| 4.  | <p><b>Outcomes from the MSAC Meeting at Lithgow</b></p> <p>The Chairman brought members' attention to Attachment 3 of the papers regarding outcomes of the December MSAC planning day -</p> <p><b>4.1. Letter from Chairman to the Minister</b></p> <p>The Chairman advised that, to date, no response has been received from the Minister to his letter 23 December 2009 but expects that planning for the Summit Review Event can begin shortly. The Chairman noted that the Culture Change projects are moving forward.</p>  | 3          | Noted  |

| No. | Item  | Attachment | Action |
|-----|---|------------|--------|
|     | <p><b>4.2. Good Practice Program</b></p> <p>I&amp;I NSW outlined the various options the Industry Assistance Unit (IAU) had identified for a Good Practice Program as requested at the December briefing from the IAU:</p> <ul style="list-style-type: none"> <li>• Suggestions had been workshopped looking at the advantages and disadvantages;</li> <li>• That the first opportunity would be at the NSW Minerals Council OHS conference in May, which would be a good opportunity if the preferred option was agreed.</li> </ul> <p>Recommended options:</p> <p><b>Option 1</b> – that a facilitated open workshop/forum be conducted at the NSW Minerals Council OHS conference held in the Hunter Valley in early May, and/or;</p> <p><b>Option 2</b> – that good practice information can be published and distributed.</p> <p>The Chairman requested members to consider these options and agree on a way forward. Discussion:</p> <ul style="list-style-type: none"> <li>• NSWMC advised there appeared some confusion about Option 1 – their offer was to allow a workshop specifically on health issues (such as the MSD one trialled at Dubbo) and that on the back of that could be some Good Practice sharing on MSD;</li> <li>• The Independent member (B McPhee) commented that even people in the health area may not be sure what good practice is as it is a hard thing to define; she wouldn't want to see something set up for possible failure and asking people to come in cold is not good practice.</li> <li>• NSWMC agreed that good practice is hard to define as there can be different examples for the same area and some may not appear to be good practice.</li> <li>• I&amp;I NSW said this would be an opportunity to get the ball rolling and a way to introduce the concept to a good representation of industry people; a starting point here or a way forward could be identified as people like sharing experiences.</li> <li>• Union members considered the NSWMC Conference a good opportunity to make a start, especially if there were significant numbers likely to attend.</li> <li>• The Chairman said that while this is a good opportunity, representation of the industry at the conference may not be as broad as it could be. Also, if MSAC were to take advantage of this offer, the topic needs to be something that catches attention; he noted that the various working parties had found good practice hard to define.</li> <li>• CCAA said that while there is no simple formula we should have a try – and that people should just be expected to bring what they are able to bring.</li> </ul> |            |        |

| No. | Item  | Attachment        | Action  |
|-----|---|-------------------|---|
|     | <p>The Chairman wanted members' opinions on the amount of financial support needed to make the event free in order to encourage union members and employees to participate in the workshop. Further discussion took place –</p> <ul style="list-style-type: none"> <li>• With the expectation that 50-60 people may be attracted \$4,000 in sponsorship may appropriate;</li> <li>• Members would prefer that workshop had a practical outcome such as “How to help build best practice”;</li> <li>• I&amp;I NSW indicated it would provide financial support;</li> <li>• CCAA would encourage members to attend as part of their incentive scheme;</li> <li>• CFMEU said need to move quickly on this with the CEO Summit looming and there is a need to have more than just one item delivered: I&amp;I NSW pointed out that the MSD, Fatigue and ANTS projects all have workshops but Good Practice at this conference is an opportunity. They agreed that it should be free and open to all.</li> </ul> <p>Members agreed that, given MSAC is sponsoring the conference proper as a stream sponsor, I&amp;I's offer to provide funding of up to \$4,000 to sponsor a Best Practice workshop at the NSWMC OHS conference in May was welcome.</p> <p>Members agreed that Option 1 is the preferred option to start with and that Option 2 will be considered at a later date.</p>   |                   | <p>Members agreed to Option 1 and I&amp;I NSW will provide funding of up to \$4,000 to support a Best Practice workshop in MSD at the NSWMC OHS conference in May being free and open to all. Option 2 will be considered at a later date</p> |
| 5.  | <p><b>World-leading OHS Culture Working Party</b></p> <p>The Chairman brought members' attention to the next item of business and Attachments 4, 5, 6, 7 and 8 regarding the World Leading OHS Culture Management Working Party.</p> <p><b>OHS Culture Project update</b></p> <p>The Chairman advised a selection panel has met and discussed tender bids in a teleconference. While some work was still to be done, he is expected recommendations to be made shortly to allow contract details to be finalised by I&amp;I NSW. The Project is now moving steadily forward and, while there will be progress; it is unlikely to be completed by the time of the CEO Summit Review Event.</p> <p>5.2 <b>ANTS Project</b></p> <p><b>Discussion Paper:</b> The Chairman advised that this project was discussed at some length at the last OHS Culture Working Party meeting and members indicated it is a very useful document and approved its release. Each stakeholder had been asked to nominate up to 10 people for a telephone survey and there are also to be consultations through three workshops in March. The ANTS Project is on track to be reported on at the CEO Summit Review Event.</p> <p><b>ANTS Fact Sheets:</b> I&amp;I NSW advised that the fact sheets have been published and that copies will be available for insertion into conference papers for the NSWMC OHS conference. Stakeholders were urged to distribute them widely.</p> | <p>4</p> <p>5</p> | <p>Noted</p> <p>Noted</p> <p>Members encouraged to promote ANTS</p>   |

| No. | Item   | Attachment  | Action  |
|-----|--|-------------|---|
| 5.3 | <p><b>I&amp;I Mine Safety webpage:</b> Details on ANTS are now available via the I&amp;I website and copies of the ANTS Fact Sheets, ANTS Discussion Paper and ANTS workshop details are available via download. The Chairman urged members to encourage participation in both the ANTS tele-survey and workshop activities as this is important to the project.</p> <p>NSWMC commented that ANTS has impacts in other areas – or at least linked – and wants to make sure that ANTS problems in other areas (like MSD) are integrated with other issues.</p> <p><b>Marketing Project</b></p> <p>At the December MSAC meeting it was agreed that further refinement of World-leading OHS Marketing Strategy was required. MSAC A/Executive Officer reported on progress since December –</p> <p><b>Educating mining communities strategy</b></p> <p>While still waiting for approval from the Minister, this item has progressed with discussions with a consultant and discussions with the RTA and positive feedback about a Cobar pilot project.</p> <p><b>NSWminesafety Website</b></p> <p>While still waiting for approval from the Minister, development has progressed. Members were shown the four concept pages and agreed that the fourth concept was the most appealing, as supported by the OHS Culture Working Party.</p> <p>The Chairman thanked members for their comments and inputs into this project and particularly for Andrew McMahon’s expert input. He commented that there had been impressive progress in a short time but these items still require the Minister’s approval. The work of the Culture Management Working Party is gathering speed and its strategic direction should be supported.</p> <p>Members wished to see a less complex name for this Working Party and agreed on “OHS culture Working Party”.</p> | 6<br>7<br>8 | <p>Project activities</p> <p>Members value integration of ANTS with other issues</p> <p>Noted</p> <p>Noted</p> <p>Noted</p> <p>Agreed that Webpage Concept 4 most attractive</p> <p>Members support the Working Party strategic direction</p> |
| 6.  | <p><b>Industry Assistance Unit (IAU) Update</b></p> <p>The Chairman brought members’ attention to next item of the agenda papers, an update on the work of the IAU; he highlighted that the IAU is integral to many MSAC programs and that it is closely involved in designing products that are either in the development stage or already or about to be rolled out.</p> <p>I&amp;I NSW briefed members on the IAU’s development of Health Management Plan toolkits, Fatigue pocket books, inspector briefings (starting from today); industry workshops; and also developing small mines briefing schedule. The Chairman highlighted the planned dates for workshops with mines, scheduled to commence in April through to November, covering all major areas and large and small mine sectors. The Chairman is looking forward to increasingly useful outcomes through the IAU.</p>  | 9           | Noted and supported   |
| 7.  | <p><b>NSW Mining Industry Health Working Party</b></p> <p>The Chairman brought members’ attention to Attachments 10 and 11 of the papers, regarding the Health Working Party’s update on Health Indices and the MSD workshop outcomes.</p> <p><b>7.1 Update on health indices</b></p>  |             | Noted and strategic   |



| No. | Item  | Attachment | Action   |
|-----|---|------------|--|
|     | <p>identify areas where further work was required; the data gathered through these audits provides important baseline information. This information can be used now to assist in identifying practices and operations where enforcement actions or advice may be required to improve legislative compliance, and also for comparison with future audits.</p> <p>General discussion followed on audit methodology; implementation of management plans; contractor auditing; issuing of non-compliance and improvement notices and the introduction of new methods/practices at mine sites.</p> <p>The Director MSO advised that these results are good (and done despite staff shortages) and will provide the benchmark for future audits. He also advised that the audit of the metalliferous sector has just started.</p> <p>Acting Director Mine Safety Performance congratulated the DMSO and his team on the wealth of information gathered and the work done, and asked that the Council resolve that Wran Recommendations 4, 17, 18 and 25 are completed and proposed the Chairman write to the Minister advising him of this.</p> <p>Some discussion and agreement by members that Recommendations 4, 17 and 18 are completed in regard to coal, and that Recommendation 25 should be viewed as an ongoing matter.</p> <p>The DMSO also cautioned that while these results are now a benchmark, matters may change with the introduction of National mine legislation.</p> <p>The Chairman concluded that this audit was a significant achievement and went a long way to meeting Wran Review recommendations 4,17,18 and 25 and that he would bring this item to the Minister's attention and invite him to provide a foreword to the complete report.</p> |            | <p>that the Chairman should bring this item to the Minister's attention and to also invite him to provide a foreword to the complete report prior to publishing it on the web.</p> |
|     | <p><b>8.2 Wran Schedule</b></p> <p>The A/Executive Officer took members through the Wran schedule and updates on progress. Members were happy with the progress.</p>  | 13         | Noted  |
|     | <p><b>8.3 Summary Matrix of MSAC Programmed Work</b></p> <p>The A/Executive Officer also briefed members on the matrix of MSAC Programmed Work. He advised that all programmed work is progressing as planned, The two that are slightly behind are related to the Culture Management project and should get back on track once a contractor has been selected. The Chairman commented that programmed work is pretty much on track and that deadlines can/should be moved if shown to be unrealistic upon more information coming to light.</p>  | 14         | Noted  |
|     | <p><b>8.4 Programmed work schedule for 2010/11</b></p> <p>The A/Executive Officer then briefed members on the MSAC Programmed Work schedule for 2010/11 to provide members with a holistic view of the status of projects. Members were satisfied with program status. The Chairman summarised this session by saying that all programmed work is being undertaken but that the Council is mindful that some matters, being interrelated, can experience delays and that circumstances may demand a rethink on schedules.</p>   | 15         | Noted  |

| No. | Item  | Attachment | Action  |
|-----|---|------------|---|
| 9.  | <p><b>MSAC Business</b></p> <p><b>Mine Safety budget update</b> - quarterly report (Q2)</p> <p>The Acting Director Mine Safety Performance and DMSO took members through the Mine Safety Budget update. Some areas are underspent due to delays in National Mine Safety Framework introduction; revenue from seminars and workshops and publishing had increased, and that revenue from the Mine Safety Technology Centre is growing due to the sale of new products and the increased amount of testing of new products. The Chairman thanked the Directors for providing a good overview for industry members on how the money is being spent and where revenue is being generated.</p> <p><b>National Mine Safety Framework update</b></p> <p>The Acting Director Mine Safety Performance said that a report into centralised data reporting is being considered by the Steering Group on Friday; that legislation for all mining jurisdictions is still subject to a series of meetings over the next few months. The overall process is to obtain consistency across all states.</p> | 16         | Noted   |
| 10. | <p><b>Other Business</b></p> <ul style="list-style-type: none"> <li>• The Chairman recommended that MSAC sponsorship of the NSW Minerals Council OHS Conference and the CCAA OHS Awards function as well as CFMEU and AWU OHS publications continues. Members agreed.</li> <li>• The Acting Executive Officer foreshadowed the need to address any pecuniary interest of MSAC members in the context of any real or perceived conflict of interest.</li> </ul> <p>The Chairman thanked members for their attendance and advised that the next MSAC meeting will be held on Thursday 22 April, 2010 in Sydney. He asked members to consider having the June meeting in Wollongong.</p>   |            | <p>MSAC continues to sponsor: NSW Minerals Council OHS Conference; CCAA OHS Awards; CFMEU and AWU OHS Handbooks</p> <p>Members to consider June MSAC meeting in Wollongong.</p> |
| 10. | <p><b>Close</b> Meeting closed at 1pm</p> <p><b>Next Meeting</b> - 22 April 2010 in Sydney</p>  |            |   |

0716486

**NEW SOUTH WALES MINERALS COUNCIL LTD**  
MINING SUSTAINABILITY

LEVEL 3, 12 O'CONNELL STREET, SYDNEY NSW 2000  
PO BOX A244, SOUTH SYDNEY NSW 1225  
\* T: 61 2 9274 1400 \* F: 61 2 9274 1455

17 February 2010

Mr Norm Jennings  
Chairman  
NSW Mine Safety Advisory Council  
c/o MSAC Secretariat  
NSW Department of Primary Industries  
PO Box 344  
Hunter Regional Mail Centre NSW 2310

john.flint@dpi.nsw.gov.au

Dear Mr Jennings

**Proposed Mine Safety Levy 2010/11**

The NSW Minerals Council (NSWMC) is deeply concerned that Industry and Investment NSW (I&I NSW) continues to use the Mine Safety Levy contrary to its intended purpose.

NSWMC and its members reiterate, in the strongest possible terms, that safety is the industry's number one priority and that the mining industry is committed to achieving the goal of world class safety in the NSW mining industry. We have strongly supported and participated extensively in the work undertaken by the Mine Safety Advisory Council (MSAC) and will continue to support initiatives that promote safety outcomes.

While NSWMC recognises that the percentage of the levy has not increased this year, we remain extremely concerned with respect to the following two issues:

**Roll Over Fund**

Maintaining a rollover fund was never contemplated by the Mine Safety (Cost Recovery) Act 2005 (the Act). Indeed, the Minister stated on November 28, 2005 when introducing the legislation to the House that the "estimate will take into account any surplus or deficit from the previous year, and adjustment will be made according to the total to be levied". Further, Mr Buffier, former Director General of the Department of Primary Industries, in a letter to NSWMC in 2006, reassured the industry that "if the estimate proves to be more than is actually expended, then the surplus will be applied to the following year".

Despite these commitments, there is an estimated \$5.6 million in unspent rollover funds at the end of 2009/10. As noted in our letter to you on the issue last year, NSWMC is adamant that rolling over unspent monies is unacceptable. While we recognise that I&I NSW proposes to supplement the 2010/11 Mine Safety Budget with \$3 million of the unspent funds, NSWMC strongly believes that all of the unspent rollover funds must be deducted from the budgeted amount each year.

NSWMC continues to be concerned at the large and consistently overbudgeted and over levied amount each year. In 2008/09, the levy was \$2.6 million overbudgeted and in 2009/10 this has been repeated by \$2.47 million dollars. NSWMC also seeks confirmation that the unspent funds provided by the industry have been invested, and are thus earning interest, as provided for by section 8 of the Act.

**Transparency**

Despite NSWMC repeatedly highlighting the lack of transparency and accountability in the levy estimate process, a breakdown of the financials has yet to be provided. This is a breach of basic governance principles which also runs counter to the commitment given by the Government that there would be "transparency and accountability in how Government manages the fund" and that "industry would know how the levy amount is decided each year". In particular, if the mining industry is expected to pay nearly \$2.4 million for corporate services and accommodation, that have risen more



ABN 42 002 900 316

than 8% in the last year, there must be a detailed breakdown of what these costs relate to, and how they are calculated. As requested in our letter last year dated 5 March, I&I NSW must provide written commitment that the mining industry is not funding the general corporate costs of I&I NSW or those of the other industries within the I&I NSW portfolio. NSWMC requests that these written commitments be provided in a timely manner.

NSWMC seeks the full amount of the rollover of unspent funds of \$5.6 million to be incorporated into the proposed 2010/11 Mine Safety Levy and that our issues surrounding transparency and accuracy are immediately addressed.

Yours sincerely



**Dr Nicole B Williams**  
CHIEF EXECUTIVE OFFICER

