



Minutes
9:00am – 1:00pm – 17 February 2011
Boardroom, Industry & Investment NSW
Level 6 / 201 Elizabeth Street, Sydney

No.	Item	Attachment	Action
1.	<p>Welcome and apologies</p> <p>Present:</p> <p><u>Members:</u> Norman Jennings (Chairman), Barbara McPhee (Independent), Graeme Peel (Independent), Ian Cribb (NSWMC), Tony McPaul (NSWMC), Susan Fields (CCAA), Peter Jordan (CFMEU), Andy Honeysett (CFMEU), Rob Regan (I&I NSW), Jenny Nash (I&I NSW, alternate for Alan Coutts), Paul Noack (AWU, alternate for Glenn Seton).</p> <p><u>Observers:</u> Andrew McMahon (NSWMC).</p> <p><u>Guest:</u> Dr Richard Sheldrake (I&I NSW).</p> <p><u>Secretariat:</u> John Flint, Tim Crakanthorp.</p> <p>Apologies: Alan Coutts (I&I NSW), Glenn Seton (AWU)</p> <p>The Chairman welcomed the two new CFMEU members to their first meeting; the return of Dr Graeme Peel after a long tour of duty overseas; and the NSWMC observer to the meeting.</p>		
2.	<p>Declaration of conflict of interest</p> <p>The Chairman asked if any member had a declaration to make. There were no conflicts of interest to declare. The secretariat said that under the new mining regulation, there was a requirement that members write any conflict of interest in an official book (which the secretariat displayed for members' information).</p>		

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3.	<p>Business arising from the minutes</p> <p>The Chairman invited members to adopt the Minutes of the previous meeting. A NSWMC representative brought members' attention to the wording of sentence one, paragraph two, page 6, agenda item 8 of the minutes, specifically, "The NSW community has an expectation that workplaces are safe and free of risk of harm". He felt that this was an unrealistic expectation.</p> <p>I&I NSW pointed out that this statement is a reflection of the current Act which states that there is an obligation to make workplaces free of risk, and that this has been government policy since 1983. Following further general discussion on the sentence; it was agreed that the wording should stay as it is.</p> <p>Members agreed to adopt the minutes unamended.</p>	1	Minutes adopted.
4.	<p>Ministerial Correspondence</p> <p>There was none.</p>		
5.	<p>Mine Safety Levy</p> <p>The Chairman brought members' attention to Attachment 2 of the papers, the Mine Safety Levy estimate for 2010/11 and to several additional tables provided by I&I NSW. By way of introduction, the Chairman recalled that the Director-General of I&I NSW estimates the proposed levy and makes a recommendation to the Minister to approve it. He reminded the Council that while the Director-General was here today to consult with MSAC, MSAC has no specific decision making role on the levy. However, the Director-General considers MSAC's comments in recommending the estimate to the Minister.</p> <p>The Chairman then invited Dr Richard Sheldrake (Director General of I&I NSW) to consult with the Council on the proposed levy for 2011/12. Dr Sheldrake began by saying that the process of consultation with MSAC was an effective one, evidenced by the previous MSAC consultation when the proposed levy was altered in response to concerns raised. The contingency was reduced to the current level of \$2.4m. In addition, in the 2008/09 consultation the proposed levy was also adjusted down following discussions with MSAC.</p> <p>Dr Sheldrake then summarised the key points on 2011/12 Mine Safety Levy:</p> <ul style="list-style-type: none"> • The proposed mine safety 2011/12 budget is \$28.57m and the estimated levy is \$27.59m (0.899% of industry wages). • The carry forward for 2010/11 is expected to be \$0.98m, which is considerably less than the two previous years (\$2.3m in 2009/10 and \$1.8m in 2008/09). • The actual budget at \$28.57m is an increase over last year of \$1.965m. 	2	Noted.

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	<ul style="list-style-type: none"> • This increase is due to three primary items: an allowance for a 3% salary increase; provision for legal services on prosecutions previously funded by Attorney General's Core Legal Fund; and the implementation or roll-out of the new OHS and mine safety specific legislation. • The levy estimate of 0.899% of industry wages remains below 1% of industry wages. • Last year the NSWMC made a good case against the extra buffer of \$3m that was proposed. The buffer was subsequently cut and run down this year. • It is proposed to maintain the Mine Safety Fund at \$2.4m and only the carry forward of \$0.984m will be used to supplement the 2011/12 budget and levy. This is based around the need to recruit inspectors and increase their salaries. <p>General discussion then ensued on the issue of inspector recruitment, as follows:</p> <ul style="list-style-type: none"> • I&I NSW said that Premier and Cabinet have a proposal before them but have not made a decision on increasing inspectors salaries. If Premier and Cabinet agree, then an additional \$1m will be required to fund the increase. The current position of having the brief with Premier and Cabinet is as close as I&I NSW have ever been to getting some resolution of the issue. • I&I NSW said that 50% of inspectors are of retirement age either now or in the near future and that is on top of current recruitment difficulties. • The CCAA representative said that this has been the situation for the last three years and it needs urgent resolution. • The Director-General said that any action by member organisations to assist would be appreciated. If the industry, government and the unions are united on this issue then there is more likelihood of success. • The CFMEU said that they could write to the minister directly in addition to working through the MSAC. • Members agreed that the Chairman should to write to the Minister. <p>The amount of the levy was then discussed as follows:</p> <ul style="list-style-type: none"> • The NSWMC said that they had correspondence that would be received today by the Chairman outlining their concerns with the levy. They went on to articulate their three primary concerns: the fact that the mine safety budget (from the levy) is to now fund prosecutions against industry; the rollover or contingency fund (Mine Safety Fund); and transparency in calculating the levy. Dealing with investigations and prosecutions was already costly for the industry without it having to fund the Department's legal costs to the tune of over \$700,000, notwithstanding the fact that the goal of MSAC was to have an industry with no such incidents. 		<p>The Chairman will write to the Minister regarding the inspectors award.</p> <p>The issues raised by the NSWMC were noted.</p>

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	<ul style="list-style-type: none"> • I&I NSW said that the amount for prosecutions was a contingency based on previous years' experience. Having departments fund legal services, including prosecutions, was a policy decision already implemented by the Government, with WorkCover and more recently agriculture and fisheries. In addition, the Assessment Review Committee (ARC) that oversees the process of prosecutions is assiduous in scrutinising the results of investigations before recommending whether or not prosecutions should proceed. The ARC has an independent chairperson and WorkCover membership. • With regard to cost recovery in the case of prosecutions, if there is a successful case then the costs awarded should come back in due course to the Mine Safety Fund. NSWMC put the view that if a case was lost by the prosecutor and an award made in favour of the defendant, the industry, including the defendant, would have to fund this too. • In questioning the need for a contingency fund, NSWMC said that regular underspending of the levied amount led to a <i>de facto</i> contingency fund. I&I NSW stated that the Mine Safety Fund had not been allowed to grow and that having about 10% of the annual budget as a contingency for unforeseen expenses; including increased salaries if the Award for the mine safety inspectorate was changed during the year; would minimise fluctuations in the levy. Moreover, it was possible that the size of the buffer could be less next year. • Regarding transparency, I&I NSW drew attention to the tables that provided a detailed breakdown of figures used to calculate the levy. These had been emailed to members the previous day and were also tabled at today's meeting. Also I&I NSW reported regularly to MSAC on expenditure. • The CFMU and AWU supported the proposed levy and said it is appropriate to properly resource the regulator. <p>The Chairman thanked the Director-General for his attendance. He said that the NSWMC correspondence would be circulated to all members. The Chairman then drew members' attention to the recommendation at the end of the paper. Members noted that:</p> <ul style="list-style-type: none"> • The Mine Safety Levy estimate is \$27.590 million which is equivalent to 0.899% of total mining industry wages. • I&I NSW will continue during 2011/12 to provide MSAC with quarterly reports outlining performance and financial information on the operation of the Mine Safety Levy and Mine Safety Budget. • In response to member requests, I&I NSW will provide a greater level of detail in the reporting of financials, via greater specificity and cash flow analysis. 		<p>I&I NSW will continue during 2011/12 to provide MSAC with quarterly reports.</p> <p>In response to member requests, I&I NSW will provide a greater level of detail in the reporting of financials, via greater specificity and cash flow analysis.</p> <p>The issues raised by the NSWMC were noted and the correspondence to be received by the Chairman circulated out of session to members.</p>

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6.	<p>World-leading Mining OHS Regulator Update</p> <p>The Chairman brought members' attention to Attachment 3, the World-leading Mining OHS Regulator Update. Jenny Nash (I&I NSW) provided an update as follows:</p> <ul style="list-style-type: none"> • Stakeholders had raised concerns that the CEO summit vision points relevant to the interaction between the regulator and other stakeholders had not been sufficiently addressed by I&I NSW. • I&I NSW have undertaken a number of actions, in response to the recommendations of the Macken report, to address some of the issues raised by industry stakeholders. One of these actions is a project, currently being carried out by 'The Brief Group', to gauge views of industry around their interactions with investigators and inspectors since 2007. • 54 letters have been sent to stakeholders inviting them to participate in interviews with the Brief Group in April or May, to discuss such issues as what the regulator could do better, what works, and what their experience has been and is with the regulator. • Members felt that they would like to make sure the list of invitees is extensive and does not leave out any important possible contributors. It was agreed that members would make suggestions to the Secretariat if they have someone that they would like to be included on the list. Members noted the report. • In addition, I&I NSW has agreed to undertake a project to identify the characteristics and skills required across the organisation to lead and foster health and safety culture maturity of the other industry stakeholders. This project may include: <ul style="list-style-type: none"> ○ A literature review. ○ A 'Future Inquiry' with relevant participants to explore the characteristics of a world-leading OHS Regulator. ○ A gap analysis 	3	Members to make Suggestions to the secretariat if they have someone that they would like to be included on the list for the Brief Group.
7.	<p>Outcomes from the MSAC meeting at Mudgee</p> <p>The Chairman brought members' attention to Attachment 4, the Outcomes from the MSAC meeting at Mudgee. The Secretariat took members through the paper as follows:</p> <ul style="list-style-type: none"> • The major themes from the MSAC meeting day were: MSAC agreement to monitor the implementation of the recommendations from the Macken Board of Inquiry and provide regular advice to the Minister on progress; MSAC agreed to the revised CEO summit vision and accepted the feedback from the event; Fatigue and OHS Culture continue to be priority issues; MSAC messages need to reach operators and those who work in operational management. MSAC should learn from previous strategies and new strategies must be sustainable through the period of implementing the new legislation. 	4	

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	<ul style="list-style-type: none"> • The World-leading OHS Action Plan to 2014 was circulated out of session; a small number of changes were proposed and made. Further feedback was provided including: avoid duplication, use verbs, and make it more “punchy”. Members agreed to provide additional feedback to the secretariat by COB 3 March 2011. • Feedback from the CEO Review event was provided as a draft factsheet. The factsheet included the revised ten vision points and the extended perceived and potential impediments to achieving world-leading OHS culture. Members agreed to provide any specific feedback to the secretariat by 3 March 2011. <p>Members agreed:</p> <ul style="list-style-type: none"> • In principle to the MSAC World-leading OHS Action Plan to 2014, noting that only fine tuning was needed. Members agreed to provide any feedback by COB 3 March 2011 to the Secretariat. • To endorse the draft factsheet and communication mechanisms to promote the revised vision. • To Tuesday 11 September 2012 as the advertised date of the next review event. <p>That the Chairman writes to the Minister seeking his agreement to the final Action Plan and factsheet.</p>		<p>Members will provide additional feedback on the World-leading OHS Action Plan to 2014 and the World-leading OHS Vision document to the secretariat by COB 3 March 2011.</p> <p>That the Chairman writes to the Minister seeking endorsement for the Action Plan and Fact Sheet.</p>
8.	<p>World-leading OHS Culture Working Party (CWP)</p> <p>OHS Culture Project update</p> <p>The Chairman brought members’ attention to Attachment 5; the OHS Culture Project Update. The Secretariat took members through the paper pointing out that:</p> <ul style="list-style-type: none"> • The Secretariat has developed the one-page information sheet to act as a “hook” to attract industry to the future inquiry workshops. This sheet provides a contemporary context that is compatible with the concept of the “Positive duty of company officers” that is an object of the Work Health and Safety Bill. • The Culture Project is looking to run a smaller pilot of industry representatives from companies, unions, industry associations and the regulator to trial the first Future Facilitators workshop. • If this is done the Future Facilitator manual can be finalised and then promoted to industry with a view to achieving accreditation. • It is proposed that Andrea Shaw present a paper and run a workshop on health and safety culture at the NSW Minerals Council conference in July 2011 and that we would seek presentations from other large companies on their own culture improvement programs. 	5	<p>Members noted the brief and continue to support the OHS Culture Project.</p> <p>Members support continued sponsorship of NSWMC OHS Conference workshop and November forum.</p>

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	<ul style="list-style-type: none"> • This would enable learning from each others' experience and initiate discussion about how we can gather comparative data sets to develop a benchmarking capability and enable MSAC to monitor progress towards achievement of the CEO vision. • Finances are available to sponsor the workshop and a conference stream. <p>The NSWMC observer indicated that the culture project could also be a topic for presentation at the Regional NSWMC OHS Conference at Dubbo in November 2011. Members noted the brief and continue to support the strategic direction of the CWP.</p> <p>ANTS Project update</p> <p>The Chairman brought members' attention to Attachment 6, the ANTS Project update and went through the paper, highlighting the feedback from the Culture Working Party.</p> <p>While members noted the brief and continued to support the strategic direction of the Culture Working Party, they did suggest that perhaps all levels of an organisation would benefit from a plain English version of the fact sheets and that a technical version may be superfluous.</p> <p>Marketing Project – World-leading OHS marketing strategy</p> <p>The Chairman brought members' attention to Attachment 7, the Marketing Project – World-leading OHS marketing strategy. The Secretariat took members through the paper. Members agreed to the following recommendations:</p> <ul style="list-style-type: none"> • The Pilot Campaign to be implemented by I&I NSW with MSAC oversight by engaging Peach at a cost of \$40,825.48 (ex GST). • Avenues for the evaluation of the project to be investigated, both externally and internally, to a maximum cost of \$5,000. • The Pilot Campaign start date to be put back four weeks to the week commencing Monday 25 April 2011 for the commencement of public information. <p>The Chairman also asked if the new website could be updated to reflect the new MSAC members. In addition there are four members who do not have biographical information on the website. Members were invited to let the Secretariat if they wished to update their profile with their biography.</p> <p>The Chairman also told members that the Culture Working Party is undertaking a review of its own Terms of Reference, through a survey to ascertain whether it was still being effective and meeting the needs of MSAC. The survey results will be provided to MSAC. Members agreed the CWP should review its Terms of Reference and make recommendations to MSAC.</p>	<p>6</p> <p>7</p>	<p>Members noted the brief and support the strategic direction.</p> <p>Members agreed to the revised marketing strategy with the amended starting date.</p> <p>Members to provide photograph and biography for the website if still not on website.</p> <p>CWP to review its Terms of Reference and make recommendations to MSAC.</p>

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	<p>Programmed work schedule for 2010/11</p> <p>The Chairman brought members' attention to Attachment 12, the Programmed work schedule for 2010/11. The secretariat took members through the paper. Members noted the paper.</p>	12	Noted.
11.	<p>MSAC Business</p> <p>Mine Safety budget update – quarterly report (Q2)</p> <p>The Chairman brought members' attention to Attachment 13, the Mine Safety budget update – quarterly report (Q2). The Secretariat said that the legal expenses will not be totally spent this year due to recruitment problems. This will be reflected in the next two quarterly reports. Members noted the budget. The Chairman thanked I&I NSW for their work in compiling the budget.</p> <p>MSAC budget update</p> <p>The Chairman brought members' attention to Attachment 14, the MSAC budget update. Members noted the MSAC budget.</p> <p>Health Management Advisory Committee update</p> <p>The Secretariat updated members on this issue pointing out that there is only one nomination outstanding and that the working party will be meeting in the next month.</p>	13 14	Noted. Noted. Noted.
12	<p>Other Business</p> <p>National Mine Safety Framework</p> <p>A discussion on the National Mine Safety Framework ensued. Members discussed the progress and quality of current outcomes. The Chairman suggested that I&I NSW compile a one page update for future meetings on the status of the National Mine Safety Framework. This was agreed.</p>		I&I NSW to compile a one-page update for future meetings on the status of the National Mine Safety Framework.
13	<p>Close</p> <p>Meeting closed: 1.30pm. Next Meeting Thursday 19 May 2011, Mudgee</p>		