

**Mine Subsidence Board plan of action
in response to recommendations made in
*Investigation into the conduct of a Mine
Subsidence Board district manager
(Operation Tunic)***

PART A: Mine Subsidence Board's response to corruption prevention recommendations

Firstly please indicate the response to be taken for each recommendation made.

Recommendation 1: That the MSB strengthens its organisational capability to fulfil its obligations, including:

- **securing the optimum staffing levels and staff with appropriate skills**
- **formalising service-level agreements**
- **generating meaningful data for the purposes of analysis and reporting to the MSB improving internal and external auditing arrangements**
- **tightening the accounts payable system.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Significant improvement has been made on this action, taking the percentage of permanent appointees from 51% to 86%, however five positions are still occupied by long term casual employees engaged through an employment agency. The future state services of the Mine Subsidence Board are being considered as part of the larger Review of the *Mine Subsidence Compensation Act 1961*. It is foreseen that a significant restructure of resources will be required, therefore further permanent appointments are not supported at this time. Alternative, interim appointments through fixed term contracts will be considered

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Recommendation 2: That the MSB builds controls into the claims and tendering processes to restrict a single user having end-to-end control and exceeding expenditure delegations.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action the Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Not applicable.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Not applicable.

Recommendation 3: That the MSB segregates the process and staff involved in estimating the costs of works, the allocation of contractors to undertake the works and the process of evaluating the delivery of works.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Not applicable.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Not applicable.

Recommendation 4: That the MSB agrees a threshold of delegated approvals and/or price for the whole-of-job remedial repairs, so that when the original scope and variations increase beyond a percentage of the agreed delegation or price, the matter is escalated for management review and approval.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Not applicable.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Not applicable.

Recommendation 5: That the MSB includes benchmarking as a method of better practice to verify the estimated costs of remedial work.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Not applicable.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Not applicable.

Recommendation 6: That the MSB routinely assesses the risk of contractor favouritism and takes steps to minimise those risks.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Not applicable.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Not applicable.

Recommendation 7: That the MSB takes steps to ensure increased transparency in undertaking remedial works, including the periodic assessment of the performance of contractors and value for money of work performed. Such matters are to be taken into account when determining the selection of future contractors.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Mine Subsidence Board intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Not applicable.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Not applicable.

ICAC's recommendation

Action taken to date

Further action intended

Estimated timeframe

- 1. That the MSB strengthens its organisational capability to fulfil its obligations, including:**
- securing the optimum staffing levels and staff with appropriate skills
 - formalising service level agreements
 - generating meaningful data for the purposes of analysis and reporting to the MSB
 - improving internal and external auditing arrangements
 - tightening the accounts payable system.

The complexity and volume of work, together with the MSB's systems and processes determine the MSB's labour requirements. These establishment numbers change over time, therefore set labour requirements are not fixed.

At the time of the ICAC inquiry the Mine Subsidence Board (MSB) had a total of 38 positions required. 18 of those roles were either vacant or were filled by casual labour (51% permanent appointees).

A restructure of the MSB's organisational structure has taken place. Management positions have been established to ensure appropriate oversight of procurement and district operations. Currently, the MSB requires 36 positions. Five of those roles (14%) are occupied by supplementary labour. The future state services of the MSB are being considered. A decision to close two offices has been approved by the Board as the workload does not justify a regional office. The required resources will be further reviewed over the next 12 months.

Due to natural attrition, a new Chief Executive Officer has been appointed from 16 May 2016 and a new Chairperson of the Board has been appointed from 1 June 2016. Ms Katherine McInnes has been appointed acting CEO. Ms Laura Christie, Executive Director of the Central Policy Office, DFSI, will commence in the role of Chairperson. Both Ms McInnes and Ms Christie have been overseeing the Review of the Mine Subsidence Compensation Act 1961 ('the Review') and therefore they are well placed to take on the required operational leadership functions.

Action to date has been based on the progressive transition of support services and systems from Department of Industry. Formal service level agreements with DFSI are given effect when the MSB support services come within the umbrella of the corporate operating model of the Department of Finance, Services and Innovation (DFSI). There has been substantial improvement integrating the MSB into DFSI and utilising DFSI's central service providers.

The MSB has previously operated autonomously under its standalone operating procedures and policies. A review of the MSB's 99 policies and procedures is underway to adopt and align with DFSI's policies where appropriate.

The MSB has reviewed and improved the information reported to the Board. Specifically, the Board now receive information, each month, on:

- The total value spent with vendors
- The number of vendor engagements
- Greater transparency on claims and the predicted cost associated for the scope of works required for claims
- General issues outstanding

The Review will consider whether the MSB is the most appropriate vehicle to administer the Act, and is sufficiently responsive and customer focused. Organisational capability and resources will be further considered following the outcome of the Review.

Significant improvement has been made on this action, taking the percentage of permanent appointees from 51% to 86%, however five positions are still occupied by long term casual employees engaged through an employment agency. The future state services of the Mine Subsidence Board are being considered as part of the broader Review of the *Mine Subsidence Compensation Act 1961*. It is foreseen that a significant restructure of resources will be required, therefore further permanent appointments are not supported at this time. Alternative, interim appointments through fixed term contracts will be considered

Completion of transition of support services and systems from Department of Industry into the corporate operating model of DFSI. 31 July 2016

Implementation of changes identified in the review of the MSB's policies and procedures. 30 September 2016

Change management training for staff on the changes to policies and procedures. 30 June 2016

The most appropriate governance structure of the MSB is being considered as part of the Review. 31 July 2016

The information being presented to the Board is a significant improvement on previous reporting. The MSB will continue to improve and refine reporting standards. 31 August 2016

Further improvements currently being developed include:

- Claim trends over time
- Development application trends over time
- Greater transparency on all claims outstanding
- Greater transparency on all development applications

ICAC's recommendation	Action taken to date	Further action intended	Estimated timeframe
<p>Significant improvement of internal and external auditing arrangements has taken place. The following audits have been commissioned since the announcement of the ICAC inquiry:</p> <ul style="list-style-type: none"> An audit of MSB's procurement policies and processes was undertaken by NSW Public Works (attachment A). An update on the NSW Public Works procurement Audit findings and required actions was presented to the Board in November 2015. Progressive updates have been provided to the Board. 	<ul style="list-style-type: none"> Greater transparency on the sustainability of the Fund and the backlog of claims <p>Clear action plan developed to address the outstanding procurement actions arising from the NSW Public Works Procurement Audit.</p>	31 May 2016	
<ul style="list-style-type: none"> An audit of MSB's procurement policies and processes was undertaken by NSW Public Works (attachment A). An update on the NSW Public Works procurement Audit findings and required actions was presented to the Board in November 2015. Progressive updates have been provided to the Board. 	<p>Full implementation of the procurement action plan.</p>	31 December 2016	
<ul style="list-style-type: none"> A procedure on construction tendering processes has been developed to address key issues addressed in the NSW Public Works Audit. 	<p>A number of gaps regarding the MSB's procurement processes have been identified. MSB will better align its procurement processes with those of DFSI.</p>	30 June 2016	
<ul style="list-style-type: none"> A dedicated position has been created to support procurement activities. This will ensure that procurement activities are oversighted and supported by officers with specific procurement accountability that is separate to claims management. 	<p>A Procurement Specialist within DFSI to be appointed as the procurement contact for the MSB.</p>	30 June 2016	
<ul style="list-style-type: none"> An audit of the MSB's 99 policies and procedures was undertaken to identify gaps, redundancies and opportunities to align. 	<p>Gap analysis of MSB expenditure against DFSI procurement standards to be completed, with an action plan to address standard procurement practices.</p>	31 July 2016	
<ul style="list-style-type: none"> A full Review of the Mine Subsidence Compensation Act 1961. One of the core objectives of this Review is to ensure that the Act is being efficiently administered. 	<p>Alignment and review of MSB's policies and procedures, including required change management training for staff.</p>	30 June 2016	
<ul style="list-style-type: none"> EV was commissioned to perform forensic data analysis of the accounts payable, claims and expenses databases in December 2015. Actions to address the findings of this audit have been identified. 	<p>Cabinet decision made on recommended MSB reforms identified by the Review.</p>	31 July 2016	
<ul style="list-style-type: none"> An independent Audit and Risk Committee has been established through DFSI. This Committee meets six times per year. 			
<p>The MSB historically managed all accounts payable processes in house. Accounts payable is now processed and managed by the central service providers within the Department of Investment. This change in process has created a more appropriate separation of duties and a more robust accounts payable process.</p>	<p>Full implementation of actions arising from the EV Forensic data analysis. These actions address all accounts payable issues identified in the Forensic audit.</p>	31 December 2016	
<p>That the MSB builds controls into the claims and tendering processes to restrict a single user having end-to-end control and exceeding expenditure delegations</p>	<p>Various improvements to procurement processes have been implemented to reduce corruption risks and meet best practice models for service delivery. Details of significant improvements include:</p>	31 August 2016	
	<p>A suitable process to manage claim variations is required.</p>	30 June 2016	
	<p>A Brief of Requirements outlining the progress against the required controls through review and redesign of procurement processes to be provided to the</p>		

IGAC's recommendation	Action taken to date	Further action intended	Estimated timeframe
<p>And</p> <p>That the MSB segregates the process and staff involved in estimating the costs of works, the allocation of contractors to undertake the works and the process of evaluating the delivery of works.</p>	<ul style="list-style-type: none"> Implementation of a clear separation of duties and independent review of key decisions to ensure no officer has 'end to end' control of any part of the procurement process. <p>One employee is assigned the role of assessing and managing the claim, this includes scoping and estimating the required works. This employee is considered the relationship manager for the claimant. For this reason, the same employee is typically involved at a later point for the construction management.</p> <p>The person evaluating the delivery of works is separate to the person who selects the contractor.</p> <p>A separate employee is required to manage the tendering process including the determination of successful vendors.</p> <p>Similarly, scopes of work and associated estimates now require a second review by an alternate employee before the work can proceed.</p> <ul style="list-style-type: none"> A Procurement Plan must now be approved for all procurements. The procedure for commissioning urgent work has been revised. The MSB are now using a request for tender form (RFT) from the Procurement System for Construction; The MSB now require a Tender Evaluation Plan for all competitive procurements and a negotiation protocol for single invited tenders, with independent approval. The MSB are now using the NSW Government "eQuote" system for lists of prequalified contractors for NSW Government construction work valued at up to \$1M. Governance arrangements, through a central MSB resource, have been established for using eQuote. The tenderer selection process has been centralised to identify trends and ensure consistency across regional offices. A strict rotation system for selecting tenderers has been established and through independent approval of panels of tenderers. The MSB now requires the Code of Conduct for a Tender Process to be signed before each evaluation commences, improving demonstrated probity of the tender evaluation process. A Procurement Officer has been appointed to manage the e-quotes and e-tendering processes for construction procurement. 	<p>Board.</p>	

This role also checks the establishment of tender evaluation plans, tender panels, calling of tenders, the distribution of tender outcomes and contract disclosure.

- The Operations Manager role has been created to oversee all District Managers and Supervisors to add another level of review to the claims and tendering process.
- The Manager Development and Procurement has responsibility for oversight of procurement and contracts.

Delegations for the MSB have been revised and clarified with all employees.

The MSB has reviewed and improved the information reported to the Board. Specifically, the Board now receive information, each month, on:

- The total value spent with vendors
- The number of vendor engagements
- Greater transparency on claims and the predicted cost associated for the scope of works required for claims
- General issues outstanding

A suitable process to manage claim variations is required.

Further improvements to the delegations and reporting requirements to be considered. This will include reporting to the Board on variations.

31 August 2016

31 August 2016

That the MSB agrees a threshold of delegated approvals and/or price for the whole-of-job remedial repairs, so that when the original scope and variations increase beyond a percentage of the agreed delegation or price, the matter is escalated for management review and approval.

That the MSB includes benchmarking as a method of better practice to verify the estimated costs of remedial work.

The MSB have implemented noteworthy benchmarking improvements to better verify the estimated costs of remedial work. These include

Further procedural improvements required to identify when benchmarking systems or expert should be adopted.

31 August 2016

- Detailed quotes, rather than set pricing for a job. The MSB now require detailed and itemised quotes allowing them to benchmark specific trade categories.
- The Tendering Procedure for Construction Contractors and Consultants has been updated to require a second internal review to verify the estimated costs.
- The pretender estimate and preferred tenderers price are now benchmarked. Where there is a variance of 10% greater or below the MSB's preferred tender and the estimate, a reconciliation process is required.
- When required, the MSB engage independent external experts such as a Quantity Surveys to prepare an estimate to verify the estimated costs.
- The use of Cordell's software. Cordell Information is the leading authority on project activity and building cost information in Australia. This information is used extensively in a wide range of industries including building, property and insurance by a variety of professionals. It includes industry data collected on performance and practices. The MSB utilise this software, as

ICAC's recommendation	Action taken to date	Further action intended	Estimated timeframe
<p>That the MSB routinely assesses the risk of contractor favouritism and takes steps to minimise those risks.</p>	<p>The Operations Manager role has been created to oversee all District Managers and Supervisors to add another level of review to the claims and tendering process.</p> <p>A monthly operational management meeting has been introduced. This meeting reviews contractor usage with all District Supervisor and District Managers.</p> <p>The Board revise contractor usage each month to identify any concerns relating to potential contractor favouritism.</p>	<p>No further action required - refer to actions in recommendation one.</p>	
<p>That the MSB takes steps to ensure increased transparency in undertaking remedial works, including the periodic assessment of the performance of contractors and value for money of work performed. Such matters are to be taken into account when determining the selection of future contractors.</p>	<p>The MSB has introduced deeds of agreement for major repairs or rebuilds. These agreements detail the scope to be agreed between the MSB and the Claimant. These deeds clearly articulate the agreed scope and costs enabling the MSB to better manage and control the scope of works. The deed also provides claimants with a clear understanding of the work to be delivered and gives them with an opportunity to provide input into the scope.</p> <p>The MSB has improved the contractor reporting process. A contractor performance report has been created where quality of work is formally reviewed after a job has been completed. This provides a clear feedback process which informs the selection of contractors for future work.</p> <p>Greater transparency has been established through the use of the extender system. This requires information on all contracts awarded over certain thresholds to be made public.</p>	<p>Establish a process where either the District Manager or Operations Manager undertakes a final inspection of completed works with the Contract Manager.</p> <p>Fully embed a client feedback process.</p>	<p>31 August 2016</p> <p>31 August 2016</p>

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