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Department of Planning,
Industry and Environment
Mine Safety Levy Internal Audit

15 September 2020



**Building a better
working world**

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15 September 2020

Internal audit – Mine Safety Levy

Dear Anthony

We have completed the above-mentioned internal audit and are writing to report our findings and recommendations.

We acknowledge and appreciate the assistance provided by the management and staff from the Department of Planning, Industry and Environment in the performance of this internal audit. Fieldwork was performed throughout November 2019 for the audit period of 1 July 2018 to 30 June 2019.

Yours sincerely

Ernst & Young

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Distribution list:

- ▶ Secretary
- ▶ Chief Audit Executive
- ▶ Coordinator-General Environment, Energy and Science
- ▶ Executive Director Resources Regulator
- ▶ Deputy Secretary Corporate Services

Glossary

Term	Definition
Administrative Levy	Mine and Petroleum Administrative Levy. Payable by mining title holders and is used for administrative costs attributed to minerals and petroleum regulatory and compliance investigations and in the rehabilitation of mine sites through the Derelict Mines Program.
Carry Forward Balance	The closing amount of the Mine Safety Levy fund at the conclusion of a financial year that is brought forward as the starting balance in the forthcoming financial year.
Coal Industry Act	<i>Coal Industry Act 2001</i>
DOI	Department of Industry. Formed on 1 July 2015. DOI has been part of the Department of Planning, Industry & Environment since the Machinery of Government changes that took effect from 1 July 2019.
DPE	Department of Planning & Environment. Prior to the Machinery of Government changes that took effect from 1 July 2019, the Department was known as this.
DPIE	Department of Planning, Industry & Environment. The Machinery of Government changes that took effect from 1 July 2019 restructured the Department, including a merger with a number of functions including the Department of Industry.
Independent Review 2017	The independent review of the Mine and Petroleum Safety Levy was undertaken to investigate the determination and administration of the levy and make recommendations, as appropriate, on improvements to the administration and management of these funds.
Machinery of Government ¹	A Machinery of Government change occurs when the Government decides to change the way its responsibilities are managed. It can involve the movement of functions, resources and people from one agency to another.
MSAC	Mining Safety Advisory Council. MSAC is a tripartite committee made up of representatives from the resources industry, including employer and employee representatives, the NSW Department of Industry and independent experts. The MSAC has been established under the <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> to provide advice and guidance on matters relating to work health and safety in the NSW resources industry.
Mine and Petroleum Site Safety Act	<i>Mine and Petroleum Site Safety (Cost Recovery) Act 2005</i>
Mine Safety Levy	Mine and Petroleum Safety Fund. NSW Government levy collected to pay for health and safety regulation of the state's mining workplaces. Payable by nominated insurers.
Mine Safety Levy Determination	The amount approved by the Secretary and the Minister that is to be collected from the nominated insurers during the given financial year.
Mine Safety Levy Estimate	The amount budgeted by the Resources Regulator based on expenditure attributed to mine safety and regulatory activities that are to be undertaken during the financial year.
Reserve	The residual cash balance of the Mine Safety Levy Fund; determined as a percentage of the total funds collected through payments from the nominated insurers. Following on from the <i>2017 Independent Review of the Mine and Petroleum Site Safety Levy</i> , the Resources Regulator was recommended to maintain a reserve amount of 10% of the Mine Safety Levy.
Resources Regulator	The Resources Regulator is a division within the Department of Planning, Industry and Environment responsible for regulating safety and health performance at NSW mines and petroleum sites. Note: As of 2 April 2020, the Resources Regulator is a division within the Department of Regional NSW.
SIRA	State Insurance Regulatory Authority

¹ Australian Public Service Commission website. Available: <https://www.apsc.gov.au/machinery-government-mog-changes-what-mog-change>. Last accessed 18th October 2019.
Department of Planning, Industry and Environment
Mine Safety Levy Internal Audit



Executive summary

1. Executive summary

1.1 Background

The *Mine and Petroleum Safety (Cost Recovery) Act 2005* (the Act) establishes the Mine and Petroleum Site Safety Fund, commonly referred to as the Mine and Petroleum Site Safety Levy (the Mine Safety Levy; the Levy). It is a levy charged by the NSW Government to pay for the regulation of health and safety within the workplaces of mining and petroleum organisations in accordance with the mine safety legislation.

The levy estimate is budgeted based on expenditure attributed to mine safety and regulatory activities that are to be undertaken by the Resources Regulator during the financial year. This amount is to be collected from insurers within the mining and petroleum industry.

Levy funding is collected by the NSW Department of Planning, Industry & Environment (DPIE) from insurance premiums paid by workers compensation insurers; Coal Mines Insurance (coal sector), iCare (non-coal sector) and self-insurers of the mining and petroleum industries employers. Contributions are calculated as a percentage of employee wages from each respective insurer.

The table below represents the actuals summary of movements in the Mine and Petroleum Site Safety Fund in FY18-19.

Description	\$'000
Opening balance as at 1 July 2018	11,370
Plus: Mine Safety Levy for FY18-19	34,986
Plus: Miscellaneous other revenue for FY18-19	3,049
Less: Expenditure incurred for FY18-19	(40,986)
Closing balance as at 30 June 2019	8,419

Source: *Restricted Cash 2018-19* (prepared by the NSW Resources Regulator)

The Mine Safety Levy determination (i.e. budgeted levy amount) for FY19-20 is approximately \$38m. The determination amount of \$38m was approved by the Minister for Resources, Energy and Utilities, and the Arts

on the 28 February 2019 within the 2019 Mine Safety Levy Budget Briefing. This amount is to be collected during FY19-20.

The Secretary of the Department is responsible for administering the levy that is governed by the Act, allowing the levy to be used for:

- ▶ Regulatory activities connected with mine and petroleum safety legislation
- ▶ Administration or execution of mine and petroleum safety legislation
- ▶ Administration related to the levy

The Resources Regulator is fully funded collectively by the Mine Safety Levy and the Minerals and Petroleum Administrative Levy (the Administrative Levy). The Mine Safety Levy can only be used for the activities listed above in accordance to relevant legislation and as such is restricted to the Resources Regulator. The Administrative Levy is used for the administration of the Mining Act and Petroleum (Onshore) Act and is shared by the Resources Regulator and the Division of Mining Exploration and Geoscience (MEG) (formerly Division of Resources and Geoscience (DRG)).

In 2017, an Independent Review of the Mine Safety Levy ('Independent Review') was undertaken to investigate the determination and administration of the levy. The report, released in November 2017, outlined a number of recommendations to improve the management and expenditure of the fund. One recommendation was to develop a regular audit program for the Mine Safety Levy Fund of which this internal audit forms a part.

Other changes since the Independent Review include the following:

- ▶ A review of the internal cost centres and the allocation between the Mine Safety Levy and the Administrative Levy. Some cost centres within the Resources Regulator are allocated wholly to either of the levies, whilst some are split (generally on an 80/20 split) across both levies based on labour head count attributed to either mining safety and/or Administrative Levy activities relating to regulatory compliance and administration.

- ▶ Formalisation of the timeline and procedures for the Mine Safety Levy process, including requests for prior year wage data, completion of briefs, determinations, invoicing and reporting.
- ▶ Machinery of Government (MoG) changes in 2019, which led to budget constraints during a period of restructure, as well as a recruitment freeze. Currently there are 201 staff within the Resources Regulator.
- ▶ The Executive Director Resources Regulator also represents the Department on the Mine Safety Advisory Council (MSAC) on a quarterly basis. This forum is used to engage with industry stakeholders in providing updates on progress of the implementation of recommendations resulting from the Independent Review. The Council comprises of representatives from the NSW Minerals Council, the Australian Workers' Union, Cement Concrete & Aggregates Australia, Construction Forestry Maritime Mining and Energy Union as well as independent experts.

1.2 Objectives

The objectives of this internal audit were to examine the processes and controls in place to determine and collect the Mine Safety Levy, expend the use of funds collected appropriately, and reconcile the balance of the fund in accordance with the *Mine and Petroleum Safety (Cost Recovery) Act 2005*.

Where appropriate, this internal audit sought to identify opportunities to further enhance the efficiency of the Resources Regulator's internal processes and controls.

1.3 Scope

The scope of this internal audit focused on:

- ▶ The process for the determination/estimation of the contribution required for the levy to be in accordance with section 9 of the Act.
- ▶ The design and operating effectiveness of controls over collection of the levy, including whether insurers have paid the correct amount allocated to them (based on the determination), in accordance with section 10 of the Act.
- ▶ The design and operating effectiveness of controls to determine whether payments from the fund are in accordance with section 7 of the

Act, including whether the costs incurred for the administration of the fund, such as internal charges, are adequately substantiated.

- ▶ Assessment of the processes and design of controls to reconcile the closing balance of the fund.

1.4 Overall comment

Overall, we acknowledge the efforts by the Resources Regulator to improve the control environment and implement recommendations following the Independent Review conducted in 2017 while managing various challenges, including multiple MoG changes over recent years, recruitment freezes and budget constraints.

Whilst improvements have been made, we identified further opportunities to strengthen the control environment, notably through formalising control activities, responsibilities and the retention of supporting evidence. In particular, this includes:

- ▶ The need for greater transparency to substantiate corporate overhead costs incurred to ensure this is appropriate and in accordance with the Act.
- ▶ Cost centre splits between the Mine Safety Fund and Administrative Levy should be captured in a clear methodology with key assumptions identified to support consistency of approach for future periods.
- ▶ Strengthening of controls relating to the process to calculate the fund's carry forward balance.
- ▶ Greater clarity regarding the responsibilities of the Resources Regulator and the Department's Corporate Services Finance team in relation to late payments by insurers.
- ▶ The need to formalise the execution of key expenditure review controls.

1.5 Additional observations

Corporate and Mine Safety Levy Budgets

It was observed that there are two budgets i.e. (1) a Corporate Budget (internal Departmental budget) determined based on a median amount of those salaried; and (2) a budget that is used for the determination of the Mine Safety Levy. The levy is calculated based on an actual cost basis, where the cost is the actual position salary of DPIE staff attributed to either mine safety or compliance and administrative activities.

The FY19-20 levy budget was determined in February 2019; however, the Corporate Budget had not been finalised at the time of this internal audit.

The Resources Regulator is wholly funded by the Mine Safety Levy and the Administrative Levy, however, remains subject to Departmental budgeting processes. The Department Corporate Budget is the overarching budget applied on the Department, including the Resources Regulator and imposes budget restrictions on the Resources Regulator.

The Resources Regulator is required to operate in accordance to the Corporate Budget often resulting in budget allocations that do not align to their determined Levy budget.

This may restrict the Resources Regulator's ability to carry out all budgeted regulatory, compliance and remediation activities planned for the forthcoming year, as well as inhibit the Resources Regulator from maintaining a consistent levy reserve of no more than 10%, which was a recommendation from the 2017 Independent Review.

1.6 Positive observations

A detailed review of cost centre and internal order numbers was performed by the Director Regulatory Operations and the Levies & Finance Project Officer in March 2019 to reduce and clarify the apportionment and subsequently the costs attributed to the Mine Safety Levy and Administrative Levy. This review was commissioned by the Executive Director, Resources Regulator.

The Executive Director, Resources Regulator represents DPIE at the MSAC on a quarterly basis to engage with industry representatives. The MSAC obtain advanced notice of the Mine Safety Levy estimation and are provided insight into the composition of the Mine Safety Levy budget.

The Mine Safety levy budget is completed, and Secretary and Ministerial approval was obtained on a timely basis in February 2019.

1.7 Summary of findings

This review identified one High and five Medium rated findings, which are detailed with associated findings and recommendations in Section 2.

Very High	High	Medium	Low	Negligible
-	1	5	-	-

1.8 Overall findings and recommendations

Outlined below are the overall findings and summarised recommendations relating to the Mine Safety Levy Review.

Finding	Risk Rating	Recommendations
2.1 Lack of transparency and substantiation of corporate overheads allocated to the Resources Regulator	High Regulatory Compliance Consequence Level 4 Likelihood Possible	2.1.1 Clearly substantiate the costs incurred by Corporate Services that are attributed to the Mine Safety Levy to ensure transparency over administrative costs and ongoing compliance to the Act. This should be reviewed annually to account for possible changes in this cost base. 2.1.2 Review the processes and controls in place that are designed to identify the amount to be allocated to the Mine Safety Levy from Corporate Services. This should include detailed reviews and approvals from senior management prior to being agreed.
2.2 Lack of a documented methodology for determining and reviewing cost centre allocations relating to Mine Safety Levy	Medium Regulatory Compliance Consequences Level 3 Likelihood Possible	2.2.1 Document the methodology for the determination of the cost allocation split for those cost centres connected to functions required to be funded by a combination of levies. This methodology should capture key assumptions in determining the split so that a consistent approach can be applied for future determinations. This methodology should be reviewed on an ongoing basis for appropriateness.
2.3 Lack of policies, procedures, and guidance for calculating the fund's carry-forward balance	Medium Regulatory Compliance Consequences Level 3 Likelihood Possible	2.3.1 Formally document the key activities in the process to calculate the fund carry forward balance, including the following: <ul style="list-style-type: none"> ▶ Listing of all sources of revenue and expenditure; ▶ Persons responsible, accountable, consulted and informed; ▶ The actions required for key stakeholders in the review and approval of the fund balances on a monthly/quarterly basis; and ▶ Level of documentation/evidence required to be maintained to evidence the performance of the calculation of the carry forward balance and subsequent stakeholder reviews. 2.3.2 Formalise the reconciliation process between the carry-forward balance and the amount reported to the enterprise through MyOutcomes.
2.4 Unclear responsibilities relating to late payment follow up and enforcement of late payment fees	Medium Ongoing Financial Consequences Level 3 Likelihood Possible	2.4.1 Clarify and review the process for monitoring and follow up of late payments relating to the Mine Safety Levy, including identifying, deciding and enforcing late payment penalty fees. The documented process should include the following at a minimum: <ul style="list-style-type: none"> ▶ Accountabilities for monitoring, escalating and following up on all late payments on a timely basis ▶ Ensuring the Resources Regulator are informed of all late payments, including those between one and 60 days ▶ Factors to be considered when deciding whether to impose late payment fees ▶ Approvals required for the imposition of late payment fees

Finding	Risk Rating	Recommendations
2.5 Limited documentation to evidence that key controls surrounding cost allocation have been performed and to guide cost allocation reviews	Medium Regulatory Compliance Consequences Level 4 Likelihood Unlikely	2.5.1 Develop guidance/criteria that defines appropriate costs for each cost centre that can be used to support the monthly transaction review to ensure that costs are appropriately attributed to the cost centre(s). This should define the escalation protocols in the event of anomalies. 2.5.2 Reinforce the need to obtain evidence of key controls (e.g. review, sign off and date) in relation to the monthly transactional and costing allocation reviews as well as additional ongoing costing reviews to demonstrate that the key controls have been performed and the information contained is traceable.
2.6 Opportunity to strengthen the key procure to pay controls	Medium Regulatory Compliance Consequences Level 2 Likelihood Possible	2.6.1 Reinforce to relevant staff the following requirements in line with the procurement and purchasing card policies: <ul style="list-style-type: none"> ▶ Obtain PO approvals prior to purchasing of goods and services; ▶ Approve Pcard transactions in a timely manner (within 30 days of submission for approval); and ▶ Provide appropriate expenditure descriptions. 2.6.2 Enhance the existing PO and Pcard review process to identify any instances of POs raised after invoice received, approvals of Pcards conducted in an untimely manner and where Pcard transactions do not have appropriate descriptions. Investigate any exceptions identified and remediate in a timely manner.

1.9 Overall management comment

Executive Director Resources Regulator:

The Resources Regulator is committed to the appropriate allocation of the Mine and Petroleum Site Safety Fund (the levy) to ensure that it is utilised for the purposes for which it is intended and that it is expended effectively. The Regulator is also committed to continually exploring options to enhance delivery of services funded by the levy, whilst applying robust governance over expenditure in order to achieve savings and implement best-practice budget management.

In 2017, an Independent Review of the Mine and Petroleum Safety Levy was undertaken to investigate the determination and administration of the levy and make recommendations, as appropriate, on improvement to the management and expenditure of these funds. Following that review, the Regulator has been implementing the recommendations, including introducing a protocol for accessing the mine safety levy reserve, providing greater transparency of expenditure and commercial revenue and refined processes to ensure timely determinations. The Regulator has also been working with the department to gain greater clarity around internal costs, as identified in the review.

The Regulator also created the specific role of Levies and Finance Project Officer, who is primarily responsible for ensuring the cost-effective fund administration of the levy. Since the establishment of that role in August 2018, all policies and procedures associated with the collection and expenditure of the levy have been reviewed and updated as required.

The Regulator has also introduced a series of Business Practice documents relating to financial management which are designed to guide and direct staff in meeting expenditure obligations. In many instances, these Business Practices are more restrictive/limiting than related core Departmental policies and procedures, which are necessarily broad in scope due to the diverse nature of the Department's functions. All of the Regulator's established procedures and practices are subject to scheduled review and continuous improvement.

Following receipt of the audit findings, the Regulator has actioned all the agreed recommendations within our control:

2.2.1 Methodology for cost centre allocations has been documented, including the triggers for review

2.4.1 Process for consideration of imposition of late payment fees has been developed

2.5.1 Guidance for undertaking expenditure reviews has been developed

2.5.2 Procedure for documenting evidence of reviews has been developed

2.6.1 Reinforced requirements for PO approvals, timely acquittal of PCards and appropriate descriptions through additional communication to staff of the requirements of business practices

2.6.2 Continued to undertake a monthly review of all PCard transactions to ensure they are in accordance with the legislation, are appropriately allocated and are acquitted within the approved time. The Regulator has also articulated the process that is required to be followed if inappropriate expenditure were to be identified, regardless of the timeliness of acquittal and approval

Following transfer from the Department of Industry to the Department of Planning, the Resources Regulator identified that there was a reduced lack of centralised oversight on PCard acquittal and approval. As a result, the Regulator introduced a business practice outlining the fundamental obligations of card holders and approver.

As discussed and agreed with Business Advisory, the following agreed recommendations will be actioned by Business Advisory:

2.1.1 and 2.1.2 - The Corporate Services charge has been reviewed previously and will be reviewed again before the end of 2020

2.3.1 and 2.3.2 - Formal documentation of the funding model process will be made available so all parties are aware of their responsibilities

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Detailed findings and
recommendations

2. Detailed findings and recommendations

2.1 Lack of transparency and substantiation of corporate overheads allocated to the Resources Regulator		High Regulatory Compliance Consequence - Level 4 Likelihood - Possible
<p>Observation</p> <p>Corporate overheads, inclusive of accommodation and legal fees, represent the second highest expense of the fund (\$4.6m or 12% in FY18/19). The corporate overhead amounts lack substantiation and transparency and have not undergone a detailed review in recent years. As a result, the corporate overhead amount determined year on year and allocated to the Resources Regulator may be inaccurate and/or inappropriate due to inflation, significant structural changes within the Department and other efficiencies gained in relation to corporate services. This could lead to costs being incurred by the Mine Safety Levy that do not meet the criteria contained within the Act.</p> <p>This observation has been raised by the Resources Regulator to the Deputy Secretary Corporate Services in a detailed Memorandum in September 2019. At the time of this review, a response had not been received.</p>	<p>Potential impact</p> <ul style="list-style-type: none"> ▶ Corporate overhead expenses do not accurately reflect costs incurred, reducing funds available for other mine safety related activities and reputational risk for imprudent use of funds. ▶ Non-compliance to the Act due to significant unsubstantiated costs funded by the Mine Safety Levy. <p>Root cause</p> <p><i>Information - Expectations, Standards and Feedback</i></p> <ul style="list-style-type: none"> ▶ Corporate overhead amounts have been historically set and have remained static since 2017 despite staff changes attributed to the MoG transitions from DOI to DPE and from the recent transition from DPE to DPIE. ▶ Corporate Finance provided limited information to the Resources Regulator year on year to support the fundamental calculation and rationale of overhead amounts charged. 	
<p>Recommendation</p> <p>2.1.1 Clearly substantiate the costs incurred by Corporate Services that are attributed to the Mine Safety Levy to ensure transparency over administrative costs and ongoing compliance to the Act. This should be reviewed annually to account for possible changes in this cost base.</p> <p>2.1.2 Review the processes and controls in place that are designed to identify the amount to be allocated to the Mine Safety Levy from Corporate Services. This should include detailed reviews and approvals from senior management prior to being agreed.</p>	<p>Management comments</p> <p>Corporate Finance:</p> <p>The current Corporate Overhead amount includes the following costs: Rent, ICT, Payroll, Human Resources, Finance Services, Financial reporting. In March 2019, the creation of the Department of Planning, Industry and Environment (DPIE) was announced. This involved the amalgamation of the Department of Industry, the Department of Planning and Environment and other government departments. The Corporate Service cost recovery process varied in the different departments. The Corporate Services charge has been reviewed previously and will be reviewed again before the end of 2020.</p> <p>Responsible Officer: Executive Director, Business Advisory. Due Date: 31 December 2020</p> <p>Resources Regulator Note: A further machinery of government change on 2 April 2020 created the Department of Regional NSW, including the Resources Regulator. A consultant has been engaged to determine the appropriate split and model for corporate service costs for the new Department. Resolution of any allocation for corporate services from the Mine Safety Levy will be determined as part of this new model.</p>	

2.2 Lack of a documented methodology for determining and reviewing cost centre allocations relating to Mine Safety Levy

Medium
Regulatory Compliance
Consequence - Level 3
Likelihood - Possible

<p>Observation</p> <p>The Resources Regulator is fully funded by the Mine Safety Levy and the Administrative Fund. Consequently, it has established three categories of cost centres, as follows:</p> <ul style="list-style-type: none"> ▶ 100% attributable to the Mine Safety Levy, for those activities that are wholly connected with the exercise of functions under the Act ▶ 100% attributable by the Administrative Levy, for those activities that are wholly connected with exercise of functions under the <i>Mining Act 1992</i> ▶ A combination of both levies, which are generally split with 80% attributed to the Mine Safety Levy and 20% to the Administrative Levy (with certain unique projects requiring a different split) <p>However, there is limited documentation outlining the determination for cost centre allocations between the Mine Safety Fund and Administrative Fund for those functions that require to be funded by a combination of levies.</p> <p>In March and August 2019, the then Deputy Secretary and the Executive Director, Resources Regulator respectively approved the application of the '80-20 split' to these cost centres. However, there is limited documentation around how this split was determined to be appropriate, nor is there a defined frequency of review required to be adopted to ensure ongoing appropriateness. In the absence of a clear methodology to determine the split, costs may be incorrectly charged to the Mine Safety Levy, which could lead to non-compliance with the Act.</p>	<p>Potential Impact</p> <ul style="list-style-type: none"> ▶ Loss of corporate knowledge and expertise to perform this review in the event key personnel leave the Resources Regulator. ▶ Cost centres may have inappropriate splits between funds, leading to non-compliance with the Act. <p>Root Cause</p> <p><i>Information - Standards</i></p> <ul style="list-style-type: none"> ▶ The review of cost centres occurred recently, and management are still on a path to enhancing the overall control environment, including documentation of the methodology adopted for fund splits.
<p>Recommendation</p> <p>2.2.1 Document the methodology for the determination of the cost allocation split for those cost centres connected to functions required to be funded by a combination of levies. This methodology should capture key assumptions in determining the split so that a consistent approach can be applied for future determinations. This methodology should be reviewed on an ongoing basis for appropriateness.</p>	<p>Management comments</p> <p>Executive Director Resources Regulator:</p> <p>It has been a long-standing practice of the Resources Regulator to apportion each cost centre to either the mine safety or admin levy depending on the activities undertaken within that cost centre. Where the cost centre exists for a function that supports all staff within the Resources Regulator, the split is determined on the labour expenditure split of staff that are undertaking purely mine safety or admin levy functions. The current split of these staff is 80/20 mine safety to admin levy. These splits are reviewed annually or each time there is an organisational change (notably in 2019 two reviews were conducted and approved by the Executive Director/then Deputy Secretary).</p> <p>In addition to cost centres, the Resources Regulator has established internal orders within cost centres where it is necessary to attribute costs differently to the overarching cost centre. For example, where the cost centre may be based on the 80/20 split but there is a particular project or expenditure item within that cost centre that is 100% attributable to one levy.</p> <p>The use of cost centres and internal orders is documented in a Resources Regulator Business Practice that applies to all staff.</p> <p>However, it is acknowledged that the existing review processes could be further supported by documenting the above methodology in more detail. This has now been completed (DOC20/132011) and is subject to the standard review cycle documented in the Resources Regulator's Policy, Procedure and Associated Document Framework.</p> <p>Responsible Officer: Director, Regulatory Operations. Due Date: Completed</p>

2.3 Lack of policies, procedures, and guidance for calculating the fund's carry-forward balance

Medium
Regulatory Compliance
Consequence - Level 3
Likelihood - Possible

Observation

The calculation of the fund carry-forward amount does not have a clearly documented calculation methodology and procedural guidelines to support the amount determination. The carry forward amount is calculated by exporting individual labour and operating expenses and revenue line items into financial model (Excel) maintained by the Senior Finance Business Partner (Corporate Services). This model changed between FY18/19 and FY19/20 to account for the new cost centre and internal order allocation.

In the transition from the FY18/19 to the FY19/20 model and the associated change to the personnel responsible and accountable over the model's development and application, no independent review was performed to ensure that the underlying assumptions and calculations of the carry-forward balance are complete and accurate, thereby resulting in potential misappropriation of closing balances.

Corporate Services, Business Advisory are in the process of developing written direction to support the determination of the carry forward balance and are implementing controls that provide reasonable assurance that the ending carry-forward balance reconciles to sub-total account figures reported to the business through MyOutcomes.

However, it was noted that:

- ▶ At the time of fieldwork, the Senior Finance Business Partner distributed an email communication to the business outlining high level activities and responsibilities for the future process around the restricted funds bank account, which breaks down the cash movements in the Mine Safety Fund (among other restricted funds).
- ▶ Historically, there has been limited information provided to Director Regulatory Operations within the Resources Regulator to accurately confirm appropriate allocation of funding sources between the levies. However, Finance within Corporate Services intends to provide monthly/quarterly fund summaries to the Resources Regulator going forward for review and approval. This process has not yet been embedded at the time of fieldwork.

Potential Impact

- ▶ Inappropriate cost allocations are not identified, leading to incorrect reporting of the Mine Safety Fund balance.
- ▶ Reputational damage where incorrect fund balances are reported externally.

Root Cause

Information - Feedback

- ▶ Staff turnover and resource constraints have led to reduced capacity to document the procedure.

Information - Standards

- ▶ Corporate Services teams have applied consistent practices and methodology to the calculation of the carry-forward balance despite staff changes to business units and key personnel responsible for the determination of the balance.

Recommendation	Management comments
<p>2.3.1 Formally document the key activities in the process to calculate the fund carry forward balance, including the following:</p> <ul style="list-style-type: none"> ▶ Listing of all sources of revenue and expenditure; ▶ Persons responsible, accountable, consulted and informed; ▶ The actions required for key stakeholders in the review and approval of the fund balances on a monthly/quarterly basis; and ▶ Level of documentation/evidence required to be maintained to evidence the performance of the calculation of the carry forward balance and subsequent stakeholder reviews. <p>2.3.2 Formalise the reconciliation process between the carry-forward balance and the amount reported to the enterprise through MyOutcomes.</p>	<p>Corporate Finance</p> <p>The Funding model assigns a funding source to each revenue and expense and effectively details the year to date movement in the Mine safety Levy fund. Each quarter a reconciliation report is produced showing the opening balance of the Mine Safety Levy at the beginning of the period, the period movement in the Mine safety Levy (sourced from the Funding model) and the closing balance in the Mine safety Levy. Going forward, a quarterly bank transfer between the Operating account and the Restricted Funds account is to occur. This will require the Funds opening balance, movement and closing balance to be approved by the NSW Resources Regulator, and Corporate Finance will be responsible for the bank account transfer and journals to ensure the Cash asset in the balance sheet reconciliates to the bank account balance. This will reconcile to the closing balance on the quarterly reconciliation report and will represent the opening balance for the next period.</p> <p>Total expenses and revenue on the Funding model by cost category and division, are reconciled to MyOutcomes.</p> <p>It is acknowledged that formal documentation of the funding model process needs to be made available so all parties are aware of their responsibilities. This is committed to be completed by Corporate Services in the next 3 months.</p> <p>Responsible Officer: Executive Director, Business Advisory.</p> <p>Due Date: 30 November 2020</p>

2.4 Unclear responsibilities relating to late payment follow up and enforcement of late payment fees

Medium
Ongoing Financial
Consequence – Level 3
Likelihood – Possible

<p>Observation</p> <p>Responsibilities for monitoring and follow up of late payments from the insurers are unclear. We observed the following:</p> <ul style="list-style-type: none"> ▶ Payments between one and 60 days late are identified in an aged debt report but are not escalated from Corporate Services to the Resources Regulator to inform them of late payments by insurers. Furthermore, these aged debts are not actively followed up by the Corporate Finance Accounts Receivable team. ▶ Payments over 60 days are escalated to the Resources Regulator. However, it is currently unclear as to who is responsible for following up late payments. Whilst the Accounts Receivable and Debt Recovery Policy (October 2017) states that this is the responsibility of the Corporate Finance team, they advised that they do not perform this activity and that it is the responsibility of the respective business unit. ▶ One instance was identified whereby Holcim (Australia) Holdings Pty Ltd insurance contribution was paid 62 days after the due date following the terms of payment. The Resources Regulator were not informed of this late payment due to the timing of escalation from the Corporate Services Accounts Receivable team, and as a result, could not enforce a late payment fee. ▶ There is no formal process to monitor and enforce fees for late payments. The Act states that the Secretary may impose a late payment fee of 15% of the contribution amount per annum compounded quarterly as a debt due for payment into the fund. However, the process to operationalise this is not documented and accountabilities to issue/request late penalty fees are unclear. 	<p>Potential Impact</p> <ul style="list-style-type: none"> ▶ Loss of potential revenue and reputational risk from lack of formal process/criteria to be adopted in relation to late payments. <p>Root Cause</p> <p><i>Information - Standards and Expectations</i></p> <ul style="list-style-type: none"> ▶ Reduced management attention on this area due to a low perceived volume of late payments occurring.
<p>Recommendation</p> <p>2.4.1 Clarify and review the process for monitoring and follow up of late payments relating to the Mine Safety Levy, including identifying, deciding and enforcing late payment penalty fees. The documented process should include the following at a minimum:</p> <ul style="list-style-type: none"> ▶ Accountabilities for monitoring, escalating and following up on all late payments on a timely basis ▶ Ensuring the Resources Regulator are informed of all late payments, including those between one and 60 days ▶ Factors to consider when deciding whether to impose late payment fees ▶ Approvals required for the imposition of late payment fees 	<p>Management comments</p> <p>Corporate Finance</p> <p>Finance Shared Services are accountable for monitoring, escalating and following up on all late payments in a timely basis. The Accounts Receivable (AR) team, within Finance Shared Services, produces an aged debtor report monthly which categorises outstanding invoices as current (within 30 days), 1-30 days late, 31-60, 61-90, and 91+ days late. The NSW Resources Regulator has confirmed they are satisfied with the current process and do not need to be advised of all late payments between 1 and 60 days.</p> <p>Responsible Officer: Executive Director, Business Services</p> <p>Due Date: Completed</p> <p>Executive Director Resources Regulator:</p> <p>The Resources Regulator have not previously been notified of any late payments of the levy but Corporate Services have now put arrangements in place to advise of any late payments in excess of 60 days.</p> <p>A process for consideration and approval of the imposition of late payment fees has now been developed which will trigger upon notification from Corporate of any late or outstanding payments (DOC20/118243).</p> <p>Responsible Officer: Director, Regulatory Operations.</p> <p>Due Date: Completed</p>

Internal Auditors (IIA) International Standards for the Professional Practice of Internal Auditing in the NSW Public Sector. This internal audit will not be a reasonable assurance audit in accordance with *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

2. Approach

The approach taken for this internal audit was as follows:

- ▶ Held interviews with key personnel involved in the determination and administration of the Mine Safety Levy.
- ▶ Examined DPIE policies, procedures and other relevant documentation as prepared by DPIE pertaining to the determination and administration of the Mine Safety Levy.
- ▶ Prepared a Risk and Control Matrix (RACM) highlighting the link between key risks identified as well as the controls identified to mitigate the risks.
- ▶ Tested the design of key controls identified.
- ▶ Where appropriate, tested the operating effectiveness of key controls on a sample basis.
- ▶ Discussed with relevant staff and project sponsor to confirm results and identify potential root causes of any issues identified.
- ▶ Identify areas for improvement and prepare recommendations ('proposed actions') to improve procedures and controls.
- ▶ Agreed recommendations with project sponsors to be reported as 'agreed actions'.
- ▶ Drafted a report of findings and recommendations to improve the determination and administration of the Mine Safety Levy processes. The report will also include agreed actions by management.

Appendix B Stakeholders Interviewed

We wish to acknowledge the input and cooperation we received from the following personnel during this review.

#	Title / Position	Team
1	Executive Director	Resources Regulator
2	Director Regulatory Operations	Resources Regulator
3	Levies and Finance Project Officer	Resources Regulator
4	Executive Director	Business Advisory
5	Finance Manager	Corporate Services
6	Senior Finance Business Partner	Corporate Services
7	Senior Manager Financial Operations	Corporate Services
8	Financial Transactions Support Officer	Corporate Services
9	Financial Transactions Support Officer	Corporate Services

Appendix C Key documents reviewed

The table below sets out the key documents we inspected during the execution of this engagement.

#	Document Name
1	Mine and Petroleum Site Safety (Cost Recovery) Act 2005
2	Coal Industry Act 2001
3	Government Sector Finance Act 2018 - Instrument of delegation (July 2019)
4	DPE Purchasing Card Policy (November 2016)
5	DPE Procurement Policy (March 2016)
6	Team Brief - Purchase Approval Form
7	Mine Safety Levy Estimate and Determination Minister Briefings
8	Organisational overview (after re-alignment) February 2019
9	SIRA Concurrence Notice
10	MSAC - 5 September 2019 - Paper 10 - Mine Safety Levy Report
11	Independent Review of the Mine and Petroleum Site Safety Levy (November 2017)
12	Independent Review of the Mine and Petroleum Site Safety Levy - Response to Recommendations (not dated)
13	Mine Safety Levy Report 2017-18 (December 2018)
14	Draft Procedure - Management of the Mine Safety Levy (July 2019)
15	Protocol - Access to the Mine Safety Levy Reserve (June 2019)
16	Business Practice - Purchasing Cards (April 2019)

Appendix D Classification of risk rating

The Consequence table below is from the Department of Planning, Industry and Environment Risk Management Framework.

Consequence table

Consequence Type	Level 1	Level 2	Level 3	Level 4	Level 5
Reputation & Trust	Isolated short-term change in customer experience or inconvenience to the livelihood for a number of people; low level disruption to people's lives or local publicity with local community media coverage	Minor change in customer experience and/or customer advocacy for the Department for a number of people; minor disruption to people's lives or extended local community media coverage for less than a week	Moderate change in customer experience and/or advocacy for the Department for a number of people; moderate disruption to people's lives or state media coverage for a number of days	Major change to trust in the NSW Government for many people; major disruption to people's lives; extended disruption to part of an industry or single major operator; with a structured campaigning from NGOs, industry stakeholders or the community or sustained state media coverage for less than a week	Significant change to trust in the NSW Government for many people; major extended disruption to people's lives; extended disruption to industry or sector of the economy, state-wide structured campaigning from NGOs, industry stakeholder or the community or prolonged state media coverage for more than a week
Priority Outcomes (Project)	Moderate change# (5 - <10%) in the delivery schedule, cost or outcome of a Project	Major change# (10 - <15%) in the delivery schedule, cost or outcome of a Project	Significant change# (>15%) in the delivery schedule, cost or outcome of a Project	Abandonment or failure to deliver a Project	
Priority Outcomes (Program)	Minor change# (1 - <5%) in the delivery schedule, cost or outcome of a Program	Moderate change# (5 - <10%) in the delivery schedule, cost or outcome of a Program	Major change# (10 - <15%) in the delivery schedule, cost or outcome of a Program	Significant change# (>15%) in the delivery schedule, cost or outcome of a Program	Abandonment or failure to deliver a Program
Priority Outcomes (Program Group)		Negligible change# (<1%) in the timing, cost and outcomes of a Program Group	Minor change# (1 - <5%) in the timing, cost and outcomes of a Program Group	Moderate change# (5 - <10%) in the timing, cost and outcomes of a Program Group	Major change# (10 - <15%) in the timing, cost and outcomes of a Program Group
State Priorities			Negligible change# (<1%) in the timing, cost and outcomes of a State Priority	Minor change# (1 - <5%) in the timing, cost and outcomes of a State Priority	Moderate change# (>5%) in the timing, cost and outcomes of a State Priority
Regulatory Compliance	Isolated non-compliance with policy, procedure or guideline	Repeated non-compliance with policy, procedure or guideline	Isolated non-compliance with policy, procedure or guideline that is underpinned by legislation or regulation	Repeated non-compliance with policy, procedure or guideline that is underpinned by legislation or regulation	Material or systemic breaches with policy, procedure or guideline that is underpinned by legislation or regulation that may result in loss of trust with external stakeholder(s)
Environment, culture and heritage infrastructure	Minor, recoverable environmental impact to ecosystems requiring short term remediation or a minor impact to cultural asset and/or historic heritage infrastructure	Moderate, recoverable environmental impact to ecosystems requiring remediation or a moderate impact to cultural asset and/or historic heritage infrastructure	Major, recoverable environmental impact to ecosystems requiring long term remediation or a major impact to (non significant) cultural asset and/or historic heritage infrastructure	Irrecoverable, moderate environmental impact to endangered species, ecosystems or an impact to significant cultural asset and/or historic heritage infrastructure	Irrecoverable, major environmental impact to endangered species, ecosystems or a major impact to significant cultural asset and/or historic heritage infrastructure

Consequence Type	Level 1	Level 2	Level 3	Level 4	Level 5
One-off Financial (Agency)	One off benefit or loss of under \$500K	One off benefit or loss of \$500K - < \$1 million	One off benefit or loss of \$1 million -< \$5 million	One off benefit or loss of \$5 million -< \$10 million	One off benefit or loss of over \$10 million
Ongoing Financial (Agency)	Ongoing annual benefit or loss (year after year) of under \$250K	Ongoing annual benefit or loss of \$250K -< \$500K	Ongoing annual benefit or loss of \$500K -< \$2.5 million	Ongoing annual benefit or loss of \$2.5 million -< \$5 million	Ongoing annual benefit or loss of over \$5 million
Health, Safety and Well-being	Injury with no first aid or medical treatment required	Injury requiring first aid and medical assessment with no follow up treatment required	Injury requiring treatment by registered medical practitioner requiring repeated treatment with no permanent loss of capacity	Injury requiring immediate admission to hospital for treatment resulting in a permanent injury / partial loss of capacity up to ten people	One or more fatality and/or permanent and total disability/ loss of capacity to more than ten people

Appendix E Criteria for rating findings

The likelihood table below is from the Department of Planning, Industry and Environment Risk Management Framework.

Likelihood table

Likelihood	Descriptor
Almost Certain	Inevitable, expected to occur in most circumstances, could occur more than once a year
Likely	Not surprised if it happens, could occur in most circumstances, could occur within one to two years
Possible	Has occurred in the Department before, might occur in some circumstances, could occur within two to four years
Unlikely	Surprised if it happens, has occurred in a similar Department or organisation, could occur in some circumstances, could occur within four to eight years
Rare	Has not occurred in a similar Department or organisation before, may occur, but only in exceptional circumstances, could occur less than once every eight years

Risk matrix

Level of risk	Level 1	Level 2	Level 3	Level 4	Level 5
Almost Certain	Yellow	Orange	Yellow-Orange	Red	Dark Red
Likely	Green	Yellow	Yellow-Orange	Red	Dark Red
Possible	Green	Yellow	Yellow-Orange	Orange	Red
Unlikely	Blue	Green	Yellow	Yellow-Orange	Orange
Rare	Blue	Blue	Green	Yellow	Orange

Note: In the context of Projects or Programs, disregard the time periods (e.g. one to two years) in your selection of likelihood

The table below defines the individual ratings for findings.

Rating	Description	Indicative Resolution Timeframe
Very High	Immediate action required - for Secretary's attention	Immediate
High	Executive management attention needed	Generally within 3 months
Medium	Senior management attention needed	Generally within 6 months
Low	Manage by standard procedures	No indicative time
Negligible	Manage by standard procedures	No indicative time

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We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by management and personnel. We have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted with the report. We are under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form unless specifically agreed with DPIE. The review findings expressed in this report have been formed on the above basis.

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This report is solely for the purpose set out in Appendix A of this report and is for the DPIE's information. This report is not to be used for any other purpose or distributed to any other party without Ernst & Young's prior written consent.

This internal audit report has been prepared at the request of the DPIE and performed in accordance with our engagement letter dated 30 August 2018 and scope dated 15 October 2019. Other than our responsibility to the DPIE Audit and Risk Committee, neither Ernst & Young nor any member or employee of Ernst & Young undertakes responsibility arising in any way from reliance placed by a third-party, including but not limited to the DPIE's external auditor, on this report. Any reliance placed is that party's sole responsibility.

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