

## Commission for Occupational Safety and Health MINUTES – 1 April 2020

<b>Meeting No:</b>	<b>394</b>	<b>Time:</b>	<b>8.30am</b>
<b>Venue</b>	<b>Teleconference</b>	<b>Secretariat:</b>	<b>Department of Mines, Industry Regulation and Safety (DMIRS)</b>

### Attendees

Ms Stephanie Mayman	Chair
Mr Darren Kavanagh	WorkSafe Western Australian Commissioner (Commissioner)
Ms Erin Gisborne	UnionsWA (Proxy for Ms Joy Barrett)
Dr Alison Reid	Expert member
Dr Matthew Davies	Expert member
Ms Adrienne LaBombard	Chamber of Minerals and Energy WA (CMEWA)
Ms Andrea Roelofs	Chamber of Commerce and Industry WA (CCIWA)
Mr Owen Whittle	UnionsWA
Dr Julia Norris	Expert member
Ms Christina Folley	A/Director Mines Safety, DMIRS
Mr Glenn McLaren	UnionsWA (CCIWA)
Mr Paul Moss	Chamber of Commerce and Industry WA

### Invited Guests

Ms Liz MacLeod	Department of Health – Lead Coordinator of Operational Decisions
Mr Steve Gregory	Department of Health - Workforce Director
Mr Ian Munns	Deputy Director General, Safety Regulation, DMIRS
Mr Chris White	Chief Executive Officer, WorkCover

### Apologies

Ms Joy Barrett	UnionsWA
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### Executive Support

Dr Tony Stephens	Executive Officer, DMIRS
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### Administrative Support

Ms Sari Mattila	External Consultant
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## 1 ADMINISTRATION

### 1.1 Opening and welcome

The Chair opened the meeting at 8.35am and welcomed Ms Erin Gisborne as proxy for member Ms Joy Barrett.

### 1.2 Apologies

The Chair accepted an apology from Ms Joy Barrett.

### 1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

### 1.4 Declarations of Conflicts of Interest

Conflicts of interest for items involving training were declared by the CCIWA and UnionsWA representatives.

### 1.5 Other Business admitted by the Chair

The Chair advised that several applications from registered training organisations to deliver safety and health representative training online had been received. These would be admitted and addressed at the end of the meeting.

## 2 PREVIOUS MEETING/S

### 2.1 Confirmation of previous meeting minutes

The Unions WA representative requested that Item 3.6 *Amendments to OSH Regulations – Revised Workplace Exposure Standards* be amended to note Unions WA expressed support for the revised exposure standards.

A motion to accept the minutes of meeting 393 held on 4 March 2020 was **ENDORSED** subject to the changes to Item 3.6.

Moved: Unions WA; seconded: Mr Matthew Davies, expert member.

### 2.2 Review action list from previous meeting

The Chair asked if members had any questions regarding the general action list and the DMIRS action list.

The Commission **AGREED** the general action item 2.3 dated 4 March 2020 was complete. The UnionsWA representative reviewed the guidelines document and advised words relating to professional development and currency for trainers is adequately covered in Appendix 1 Section 1.1 (currency of trainers engaged by a registered training organisation (RTO) and Appendix 1 Section 8.1 (RTO maintaining professional development standards and association with industry bodies).

A progress report was requested by the CCIWA representative, on DMIRS action item 2.5 dated 16 October 2019 regarding a training provider which was trialling an online training format. Mr Ian Munns will investigate and report back to members.

The CCIWA representative requested a draft of the *Prevention of Falls at Workplaces* Code of Practice be included on the general action list. The Commissioner provided an update regarding the work by the Construction Industry Safety Advisory Committee (CISAC) to review the *Prevention of Falls at Workplaces* Code of Practice. He said that while the 25 March 2020 CISAC meeting had been cancelled, work on the Code was recognised as a high priority for

review and work will continue out-of-session. The final draft of the Code will now be presented to the Commission at its next meeting.

Mr Munns advised the following DMIRS action items are completed:

Action Item 2.5 dated 16 October 2019 – removal of “Introductory” from the title page of the *Guidelines and Criteria for accreditation of introductory training courses for safety and health representatives*.

Action Items 5.4 dated 16 October 2019 and 3.3 dated 5 February 2020 – both relating to the *Occupational Diving in Western Australia Code of Practice*.

Members advised that they had no other questions and the action list was **NOTED**.

#### **ACTION:**

**Mr Ian Munns will investigate and report back to members in relation to DMIRS action item 2.5 dated 16 October 2019 regarding a training provider which was trialling an online training format.**

### **3 AGENDA ITEMS**

#### **3.1 Update on COVID-19 by Ms Liz Macleod Lead Coordinator of Operational Decisions for the Department of Health**

Following a letter from the Chair to the Chief Medical Officer, Department of Health Coordinator Ms MacLeod was requested to join the meeting to present information about workplace information in relation to COVID-19.

Mr Steve Gregory, Department of Health Workforce Director was also online for the meeting.

Ms MacLeod and Mr Gregory provided advice in response to a variety of questions from members.

Expert member Dr Matthew Davies, asked a series of questions including:

What role the Department of Health has in advising the workplace if a patient from that workplace presented at a hospital with COVID-19 symptoms?; What is its role in tracing contacts?; Does the Department of Health communicate with WorkSafe about cases, hygiene and cleaning recommendations?; and, Does the Department of Health consider workers compensation claims in relation to COVID-19?

Ms MacLeod said the Department of Health has responsibility for management of all positive cases. The Public Health Unit conducts contact tracing and determines those that need to self-isolate. She suggested that currently there was not a process for communication of cases to WorkSafe. Ms MacLeod said people are open to testing if they have symptoms and have had close contact with someone who has contracted the virus.

Mr Gregory advised that general information is available about issues relating to age groups and those with health concerns, who should attend work, workplace distancing and hygiene and cleaning practices. He suggested that if an employee contracted COVID19 in the workplace, they would have the right to claim compensation.

The Chair asked about the widening of testing which was to begin on 2 April 2020 and if that would incorporate a widening of workplace contacts.

Ms MacLeod said there is no delineation between workplace contacts and other contacts, and they will be dealt with in the same way.

The CCIWA representative asked about specific advice available for managing safety for people in the health and aged care industries.

Ms MacLeod said there is information about personal protective equipment (PPE) and its appropriate use in the management of COVID-19 or suspected COVID-19 patients, as well as information about droplets and aerosol precautions. In the aged care sector they have information already available about when they need to exercise droplet precautions. Information is available from the Commonwealth information hub and Department of Health hub.

The Commissioner highlighted the information provided on the Work Safe site, guidance on the Safe Work Australia site where there is a range of information available via fact sheets, some of which were more detailed. He noted the information relies on trusted sources such as the Department of Health.

The UnionsWA representative noted the issues around access to PPE.

Ms MacLeod said it is important to understand the types of PPE required in particular circumstances, highlighting as an example, the use of a standard face mask rather than those used in hospitals and surgical areas.

The Commissioner highlighted innovative methods used in the transport and retail sector to assist with distancing requirements. However, more advice was still required in the aged care and disability sectors where maintaining distance was more difficult.

Expert member Dr Julia Norris, asked for advice on spirometry in relation to occupational medical assessments such as those required for pest management licences. She said the current advice has been to avoid spirometry, but continue with other elements of the assessment.

The Commissioner advised that spirometry tests had been temporarily suspended as per OSH requirements. WorkSafe wrote to all general practitioners to recommend temporary suspension of tests as required under the regulations. Other parts of the test can be performed that will not limit or inhibit a person to continue to work.

Ms MacLeod said she will provide information about the spirometry to the Commission.

The CMEWA representative noted that the Department had published information about remote industrial sites which could assist the Commission.

The Chair asked for advice on approaches by RTOs to deliver a five-day course online for health and safety officers.

Mr Gregory suggested considering modifications and options to defer and what impact there may be if the courses were to be deferred for a period of six months. He said the demand for training needed consideration, whether learning outcomes would be comparable or if an abridged version for existing representatives could be conducted. He said a five day face-to-face course was not sensible at this time.

The Chair thanked Ms MacLeod and Mr Gregory for their attendance during such a busy time.

**ACTION:**

**Ms MacLeod will provide information about spirometry in relation to occupational medical assessments to the Commission.**

### **3.2 COVID-19 impact on future meetings**

The Chair opened for discussion, a determination made about essential and non-essential committees, working groups and meetings.

The UnionsWA representative, expressed concerns about an inability to progress work on key Codes of Practice if the Legislative Advisory Committee (LAC) was determined non-essential. He suggested if it was determined non-essential, then a solution needed to be found to progress work out-of-session.

Members suggested that MIAC was **ESSENTIAL**, although the final decision in regard to MIAC meetings was deferred to its acting Chair Ms Christina Folley.

Members **AGREED** that the Commission was **ESSENTIAL** and meetings would be held online at the previously nominated times and dates.

Members **AGREED** LAC was **ESSENTIAL** and meetings would be held online at its previously nominated time of one week after Commission meetings.

Members **AGREED** CISAC was **ESSENTIAL** and meetings would be held online as required, depending on the Chair.

Members **AGREED** the Agricultural Working Group was non-essential, with all forthcoming meetings to be postponed.

The motion was put to the Commission to rewrite the letter *Determining Essential and Non-Essential Committees of DMIRS – COVID 19*, to take into account the decisions of the Commission.

Motion moved – UnionsWA, seconded - Dr Matthew Davies, Expert Member

**ACTION:**

**The letter *Determining Essential and Non-Essential Committees of DMIRS – COVID 19*, is to be rewritten to take into account the decisions of the Commission.**

### 3.3 Update on Construction Induction Training

The Chair provided an update on the construction induction training issues raised by the Commission in a letter to the Minister on 8 November 2019.

Expert member Dr Julia Norris, noted that the Minister had requested clarification on some issues. The Unions WA representative suggested the specific issues raised by the Minister would be best referred to CISAC. The Commissioner noted that CISAC had previously dealt with the issues raised.

The Minister's request, presented in an attachment to his letter of response, was as follows.

- 1) *When making amendments to regulations, the Government is obliged to conduct a Regulatory Impact Assessment (RIA) process.*
  - a) *The Preliminary Impact Assessment (PIA) for the RIA has a number of matters to be covered in support of a regulatory change. The first four questions are:*
    - i) *What is the problem you are trying to resolve?*
    - ii) *Why does this problem exist?*
    - iii) *What evidence is there to substantiate the problem?*
    - iv) *Why is there a role for government?*
  - b) *There are also questions requiring identification of the benefits and costs for proposals.*

- c) *A clear and detailed response to the PIA is requested for each of the In principle proposals by the Commission for Occupational Safety and Health (COSH). For your information, below is a link with information about RIS requirements, including a PIA template, published by the Department of Treasury:*

<https://www.treasurv.wa.gov.au/Economic-Policy/RIA-Program/RIA-support/>.

- d) *The Occupational Safety and Health Act 1984 (OSH Act) already places a duty on employers to provide initial and ongoing workplace safety training to employees. The role of government in these your proposals is an important issue and should be given careful consideration by the COSH.*
- e) *CIT is required to do construction work, which is a defined term in the Occupational Safety and Health Regulations 1996 (OSH regulations). Construction work is not limited to the construction industry. Please clarify the scope of your proposal.*

## 2) Refresher Training

- a) *My preference is that training of this type should be delivered by the Vocational Education and Training (VET) sector. This ensures that compliance with training and assessment is delivered within an existing formalised process.*
- b) *DMIRS does not have resources to take on this responsibility and I remain to be convinced about the need to duplicate the functions of a VET regulator for one unit of competency.*
- c) *The content of the proposed refresher training is not detailed in the COSH s proposal. It is important that stakeholders are provided with the content of the proposed refresher training course for comment during your consultation process.*

The Commission **AGREED** that CISAC would prepare responses to the information requested and provide these to the Commission at its next meeting.

The CMEWA representative noted that the Minister had also advised that proposed changes to course content, delivery and assessment be referred directly to the Australian Industry and Skills Committee (AISC).

The Commission **AGREED** it would prepare a letter highlighting the Commission's concerns about current course content and send it directly to AISC, with a copy to the Minister. The letter is to be prepared and circulated to Commission members for approval out-of-session.

### **ACTION:**

**Responses to Items 1 and 2 of the Minister's information request are to be provided by CISAC out of session and referred to the next meeting of the Commission.**

### **ACTION:**

**A letter highlighting the Commission's concerns about current course content is to be prepared and circulated to Commission members for approval out of session and sent directly to AISC with a copy to the Minister.**

### 3.4 Update on the Minister for Transport response to the issue of exposure to diesel particulate matter

The Chair presented an update to the Commission regarding her letter of 14 January 2020 to the Minister for Transport and subsequent response.

The UnionsWA representative proposed an alternate recommendation to that presented in the update.

The Commission **AGREED** that the recommendation be amended to read: *The Department prepare a discussion paper to the May Commission meeting with a recommendation reflecting the MIAC recommendation that went to the Minister, for the resources sector, for implementation across the general sector for diesel particulate matter.*

Expert member Dr Matthew Davies, suggested the Minister for Transport had not answered the question asked in the Chair's letter regarding the Vehicle Standard under Australian Design Rule 42/04 – General Safety Regulation 2005 which governs the location of exhaust systems on all types of vehicles made or imported into Australia.

Expert member Dr Alison Reid, the CCIWA representative and the UnionsWA representative agreed the Minister for Transport's response was not satisfactory.

The UnionsWA representative advised the relevant Australian Design Rule had not been reviewed in the past 15 years.

The Commission **AGREED** to prepare a letter to the Minister reframing the question relating to the Vehicle Standard under Australian Design Rule 42/04 – General Safety Regulation 2005. The UnionsWA representative and the Chair will draft a letter to circulate out-of-session to Commission members for approval.

#### **ACTION:**

**The Department bring a discussion paper to the May Commission meeting with a recommendation reflecting the MIAC recommendation that went to the Minister, for the resources sector, for implementation across the general sector for diesel particulate matter.**

#### **ACTION:**

**UnionsWA representative and the Chair will prepare a letter to the Minister relating to the Vehicle Standard under Australian Design Rule 42/04 – General Safety Regulation 2005, for circulation out-of-session to Commission members for approval.**

### 3.5 Update on the Family Support Group

The Commissioner provided an update on the establishment of a Family Support Group initiative. The update highlighted consultations which had taken place with a range of Western Australian Government and nongovernment organisations that provide support and assistance to people in dealing with traumatic death. The purpose of consulting with organisations such as Department of Justice, Compassionate Friends and Beyond Blue was to establish collaborative arrangements with the aim to avoid duplication of resources, where possible.

Options for establishing a family support group were also discussed at a meeting with families affected by Western Australian workplace fatalities. Meeting participants identified potential improvements in the way DMIRS assists and communicates with families, with

broad agreement for establishing a statutory committee rather than a group or committee without statutory powers i.e. Senior Officers Across Agency Asbestos Group (AAAG) or Agricultural Industry Safety Group (AISG). Relevant agencies in other jurisdictions including Victoria and Queensland have been consulted regarding their existing programs.

The Chair moved that the Commission note the update, if no comment was required.

The Commission **NOTED** the update.

### **3.6 Decision Regulation Impact Statement – Boland review of Model WHS Laws**

The Chair moved that the Commission **NOTE** the update if no comment was required.

It was noted that the final report of the *Review of the model Work Health and Safety (WHS) Laws* was published on the Safe Work Australia (SWA) website on 25 February 2019, with SWA initiating a Decision Regulation Impact Statement (DRIS) in late 2019. An embargoed report was subsequently distributed in early 2020.

The DRIS recommendations are in two parts:

Part 1 – recommendations of the 2018 Review that were assessed as having moderate or significant regulatory impact. It provides a regulatory impact analysis for the recommendations which potentially have a moderate or significant regulatory impact to meet the Council of Australian Governments (COAG) best practice regulation requirements. It also provides WHS ministers with recommended options based on an assessment of greatest net benefit.

Part 2 – recommendations of the 2018 Review that were assessed as having minor or nil regulatory impact. It provides WHS ministers with recommended options for progressing the recommendations of the 2018 Review that are assessed as having nil or minor impact.

The Commission **NOTED** the update.

### **3.7 WHS Bill and Regulations Consultation update**

Mr Ian Munns advised the Bill has passed the Assembly and is now with the Uniform Legislation Committee (ULC). DMIRS is responding to questions as they are raised.

The CCIWA representative asked about the potential impact of COVID-19 on the progression of the Bill.

Mr Munns advised the likely passage in Parliament of the Bill is that it will be moved to the next sitting in December, but that it was difficult to know if it would be dealt with. He said if it was not dealt with during December sitting, Parliament would rise, and with elections due the government may change. Consequently, the Bill may then have to seek passage back into Parliament.

The CCIWA representative spoke about the need to focus on supporting business to manage safety issues, and that with the current commercial environment slowing down it could be an ideal time to promote safe work practices. Dr Matthew Davies agreed that business down time provides a good opportunity to focus on training, but finding a way through the amount of current public health messaging could be difficult. The CCIWA representative suggested mid-year may be an appropriate time.

The Chair confirmed an update on the Bill would be provided at each Commission meeting and thanked the CCIWA representative for her comments.

The Commission **NOTED** the update.



### 3.8 Prevention of Falls Code of Practice Update

The Commissioner provided an update regarding the work by CISAC to review the *Prevention of Falls at Workplaces* Code of Practice. He advised that while the 25 March 2020 CISAC meeting had been cancelled, work on the Code has been recognised as a high priority for review and work will continue out-of-session. The final draft of the Code will now be presented to the Commission at its next meeting.

The Commission **NOTED** the update.

## 4 STANDING ITEMS

### 4.1 Commission newsletter – potential topics for next edition

The Chair advised that work is continuing on development of a communication strategy. At the previous meeting of the Commission it was **AGREED** the Executive Officer would liaise with DMIRS Safety Education team to develop a communication strategy or schedule and provide this to COSH members for consideration at a future meeting.

The Commission **NOTED** the update.

## 5 REPORTS

### 5.1 Legislative Advisory Committee (LAC)

The Chair provided an update regarding the LAC meeting held on 11 March 2020.

She advised that DMIRS Director of Service Industries and Specialists, Ms Sally North, had presented at the meeting regarding the latest findings and initiatives relating to violence, aggression, bullying and harassment in the workplace.

LAC members completed a review of the draft *Violence and Aggression at Work* Code of Practice. A list of changes and amendments were agreed to which will be incorporated into an updated draft by the DMIRS Safety Education team.

Manager of the DMIRS Safety Education Branch, Mr Andrew Ballam, provided information about the progress of the *Prevention of Falls at Workplaces* Code of Practice. The document is nearing finalisation. It had been returned to CISAC after members requested a final review before it was presented to the Commission. The Commissioner and Chair suggested the Code could be reviewed by CISAC and the Commission out-of-session if it would hasten the process.

Mr Andrew Ballam also advised LAC that a communication plan for revised silica exposure standards could be agreed to before final Ministerial agreement to the standard, but communication could only begin once the legal instrument was developed. The Chair advised that LAC members agreed that the Safety Education team disseminate information in as many quarters as possible on implementation of the standard. The Safety and Education team will advise the Executive Officer of the communication plan which he will then distribute to LAC members.

The Commission **NOTED** the LAC report and verbal update by the Commissioner.

### 5.2 WorkCover report

Mr Chris White provided a verbal WorkCover report focussing on silica-related claims. He advised that there had been a low amount of activity.

A silica case is still on the list but no new cases have been added.

Some COVID-19 claims have been made, but no actual numbers are available. A weekly check has been put in place. Some claims are speculative. A secondary issue has recently emerged regarding the psychological impact of COVID-19. These will be assessed on a case-by-case basis.

The Commission **NOTED** the verbal update.

### 5.3 Regulatory Activity Reports

The Commission **NOTED** the Regulatory Activity Report for February 2020.

### 5.4 Fatalities and significant incidents

The Commissioner advised there had been 10 confirmed work-related traumatic injury fatalities notified to DMIRS for the 2019–20 financial year (as at 26 March 2020), falling within the department's recording guidelines.

The Commissioner reported on two recent fatal workplace incidents, one involving a 64 year-old who fell from a pallet, and another involving a 27 year-old injured when moving steel.

The Commission **NOTED** the fatalities and significant incidents report

### 5.5 Exemption certificates

There were two exemption certificates granted since the previous meeting and these were considered to be standard.

The Commission **NOTED** the exemption certificates.

## 6 OTHER BUSINESS

### 6.1 Requests for delivery of online Safety and Health Representatives (SHREP) courses

The Chair advised that seven RTOs had made applications or requests to provide SHREP courses by remote means.

Members raised concerns about delivery of SHREP courses online rather than face-to-face, in particular those sections of the course which require group participation and attendance at a workplace. Other concerns were raised in relation to the ability of RTOs to develop a quality course which allows for effective learning outcomes and evaluation. Access to appropriate technology and ability of trainers to engage students over a five-day period online was also noted as a challenge.

Members agreed that the applications already received provided little detail of the proposed course structure or outline, and that the Commission would require more information before it could make a firm decision about the possibility of remote delivery of SHREP courses.

The Commission **AGREED** that in order to arrive at a flexible solution and ensure that some training was available during the COVID-19 pandemic, a proposal which sets out course detail requirements would be prepared and sent to the RTOs which had made requests to provide remote SHREP training.

RTOs will be required to provide a detailed application in line with course requirements as set out in the guidelines and this will then be assessed by the Commission.

**ACTION:**

The Chair and UnionsWA representative will develop criteria that applicants will have to address in order to be considered for the provision of online training during the COVID-19 period. This draft would then be circulated to Commission members for comment out-of-session.

**ACTION:**

Each applicant will be advised of the Commission's decision when it is known.

**7 CLOSE AND NEXT MEETING**

There being no further business, the Chair declared the meeting closed at 11.05am. The next meeting will be held by teleconference on 6 May 2020.

**MINUTES OF MEETING NO: 393  
OF THE  
COMMISSION FOR OCCUPATIONAL SAFETY AND HEALTH  
HELD ON 1 APRIL 2020**

**ENDORSED AS A TRUE AND ACCURATE RECORD OF THE MEETING**

Stephanie Mayman

**Chair**

Date