

## Commission for Occupational Safety and Health MINUTES – 4 March 2020

<b>Meeting No:</b>	<b>393</b>	<b>Time:</b>	<b>8.30am</b>
<b>Venue</b>	<b>Koorling Dandjoo Room, Level 2, 1 Adelaide Terrace, East Perth</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 Joy Barrett (from 9.00am)	UnionsWA
Dr Alison Reid	Expert member (proxy for Dr Lin Fritschi)
Dr Matthew Davies	Expert member
Ms Elysha Millard	Chamber of Minerals and Energy WA (CMEWA) (proxy for Ms Adrienne LaBombard)
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
Mr Paul Moss	CCIWA

### Observer

Mr Ian Munns	Deputy Director General Safety Regulation, DMIRS
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### Invited Guest

Mr Joe Lee	Director Investigations, DMIRS
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### Apologies

Ms Pearl Lim	UnionsWA
Mr Chris White	Chief Executive Officer, WorkCover
Ms Adrienne LaBombard	CMEWA

### 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 8.30am and welcomed Ms Elysha Millard (proxy for member Ms Adrienne LaBombard).

### **1.2 Apologies**

The Chair accepted an apology from Ms Adrienne LaBombard, Ms Pearl Lim and Mr Chris White.

The Chair noted that Ms Joy Barrett would be a late attendee due to other commitments.

### **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 there was no other business.

## **2 PREVIOUS MEETING/S**

### **2.1 Confirmation of previous meeting minutes**

The CCIWA representative requested the term used in Item 3.2 to describe the introductory section of the Commission newsletter be changed. The term to describe the paragraph outlining the role and scope of the Commission could be the "About Us" section.

The CCIWA representative requested an amendment to terms used in item 3.4, requesting refinement of terms used regarding the capacity of people to volunteer in firefighting situations. The wording should be amended to say "...some people may not be fit to function safely in a volunteer capacity and may be a risk to others...."

The Commissioner requested the deletion of Item 5.1 from the Commission minutes as this was mistakenly taken from a later held Legislative Advisory Committee meeting.

A motion to accept the minutes of meeting 392 held on 5 February 2020 was **ENDORSED** subject to the changes to Items 3.2 and 3.4.

Moved: Dr Matthew Davies; seconded: CCIWA.

### **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 Chair noted that Action Item 2.4 in the General Action List had been completed and could now be removed.

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

#### **ACTION:**

**Executive Officer to remove Action Item 2.4 from the General Action List.**

### 2.3 Revised guidelines and criteria for accreditation of training courses

The Chair presented the revised guidelines to the meeting for its consideration.

The overall formatting and spelling errors were noted.

The UnionsWA representative noted there was no mention of the requirement for professional development and currency of trainers. He offered to provide suitable words to highlight the requirement to be inserted in the document.

The meeting noted the need to hasten the progress of the revised guidelines and **AGREED** to progress the approval of the document out-of-session.

#### **ACTION:**

**UnionsWA to provide words relating to professional development and currency for trainers which are to be inserted into the guidelines and circulated to Commission members for approval between meetings.**

#### **ACTION:**

**The Executive Officer will circulate the amended guidelines (with amended formatting and inclusion of approved words) between meetings for approval out-of-session.**

## 3 AGENGA ITEMS

### 3.1 Presentation on improved WorkSafe investigatory processes – Mr Joe Lee DMIRS Director Investigations

Mr Lee made a presentation to the Commission members, highlighting recent process changes made to improve WorkSafe's investigatory processes.

Mr Lee spoke about the Directorate's future plans, transformation process and priority action areas which are currently being implemented. The plan focuses on investigative quality and expediency improvements with a 12 to 18-month implementation timeframe. These include:

- development and documentation of effective and contemporary investigative practices;
- assessing the manner of operation with other agencies, and managing the challenges involved in joint jurisdictional cases and coordinating services;
- analysing key areas of the investigative practices process - physical, oral, confessional evidence. In relation to physical evidence practices, the Directorate is increasing its capacity internally. In relation to the other practices, the Directorate has engaged an internationally renowned interviewing expert to develop guidelines and a training package. The final product is expected in June;
- improvement to workplace culture and investigative responsiveness;
- development of cooperative practices with key external agencies, including Western Australia Police (WAPOL) which has responsibility for reporting fatalities to the Coroner in WA. In particular the Directorate is developing protocols with WAPOL to utilise their forensic capacity and to ensure timely notification of fatalities related to workplace incidents, including road fatalities which may have occurred during a work activity;
- introduction of a team based investigative methodology which will ensure investigation of cases is conducted promptly; and
- changes to the staff recruitment focus to seeking people with investigative prowess which will allow for recruitment of specialist roles and improve investigative acumen.

Mr Lee indicated that he was very interested in engaging further with key employer groups and associations.

The Commissioner provided information about the work currently underway to establish a Family Support Group (FSG) in Western Australia. The process to establish a FSG was begun in 2019. Discussions have been held with affected families and with other State-based organisations to assist with a decision about the structure of the FSG.

The Commissioner clarified information about transport fatality figures mentioned by Mr Lee. He noted that the Commission is working with the Road Safety Commission to design a method to gather data required by the Commission and DMIRS in relation to fatigue or issues surrounding mechanical fitness of vehicles.

Questions raised by Commission members relating to Mr Lee's presentation focused on issues relating to the Directorate's confidence in its ability to resolve issues raised in the Morgan-Smith Coroner's report, the issues of primacy of jurisdictions in cases, time taken to determine primacy and begin investigations, and issues of jurisdiction and reporting of road fatalities.

Mr Lee noted the checks and balances which have been implemented in relation to the Morgan-Smith Coroner's report and he was confident the changes made, and processes which have been introduced, would ensure the same issues would not recur. He said work to develop and implement protocols to ensure jurisdictional responsibility is determined expediently is underway and that evidence in all cases will continue to be collected until the Directorate is told otherwise.

The Commissioner noted administrative arrangements which have been put in place with Comcare and AMSA. The Memorandum of Understanding will ensure a formal process will be followed in cases where there is overlapping jurisdiction.

Mr Lee said reporting of road fatalities were determined on a case-by-case basis as there are a number of factors involved. The Commissioner noted an outstanding action item (Item 3.1 from the April meeting) on reporting of road related fatalities and that it was appropriate for the Commission to discuss this once more information is received from the Road Safety Commissioner.

The UnionsWA representative asked if there was an opportunity to hasten the overall process.

The Chair noted the ongoing work and processes already implemented internally and the work on establishing a Family Support Group

The Commissioner AGREED to provide a status report on the progress of establishment of the FSG.

The Chair thanked Mr Lee for his time in making a presentation.

#### **ACTION:**

**The Commissioner to provide a progress report on the proposed establishment of the Family Support Group at the next meeting.**

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

Mr Ian Munns advised that the Bill had passed through the Legislative Assembly and is now with the Uniform Legislation Committee (ULC). Points raised during discussions in the Assembly included issues around industrial manslaughter and health and safety representative training.

The ULC has begun its preliminary considerations and DMIRS is responding to questions as they are raised. The ULC will provide a report to the Legislative Council.

The Chair explained the ULC considers legislation that is being made uniform around the country, with Western Australia being one of the last jurisdictions to pass the legislation.

Mr Munns suggested that historically, the ULC had raised concerns in cases where Bills are 'straight adoptions'. In this case, the model law process has been applied and should assist in the ULC consideration process.

The CCIWA representative asked if a comparative document highlighting the differences between the Bill and the model legislation was available. Mr Munn suggested there may be a possibility of providing an abridged version of the differences.

In relation to the WHS Regulations, Mr Munns advised that DMIRS is continuing to work through feedback from the consultation period and is developing a report to advise the Minister. The report should go to the Minister by the end of March.

The Commission **NOTED** the update.

**ACTION:**

**Mr Munns to provide an abridged version of comparative document highlighting differences between the Bill and model legislation.**

**3.3 National Assessment Instruments Update**

The Commissioner gave a brief update of the activities in relation to the review of the Transport and Logistics Industry (TLI) High Risk Work Licence National Assessment Instruments (NAI). He advised that a range of amendments had been made to the assessment. Safe Work Australia communicated the changes to assessors. Comments has been requested from assessors. The reviewed NAI is due for implementation in the coming weeks. Further assessments will be undertaken utilising the same consultative process.

The Commission **NOTED** the update.

**3.4 Falls Code of Practice Update**

The Chair provided a brief update regarding the work done by the Construction Industry Safety Advisory Committee (CISAC) to review the *Prevention of Falls at Workplaces* Code of Practice. She advised that the DMIRS Safety Education Team had now examined the Code in an editing capacity. In doing so, a number of issues has been raised regarding style and readability. Members of CISAC have indicated an interest in discussing improvements identified by the Safety Education Team at its 17 March 2020 meeting. Consequently, the final draft of the Code will now be presented to the Commission at its April 2020 meeting.

The Commission **NOTED** the update.

**3.5 SafeWork Australia Comparative Performance Monitoring and Comparison of Workers' Compensation Arrangements**

The Chair provided a brief outline of the two publications relating to performance monitoring and compensation arrangements which are of interest to Commission members. The Commissioner advised that WorkCover Chief Executive Officer, Mr Chris White, had reviewed the report and had suggested that Western Australia is performing well in relation to the performance indicators. The Commissioner said Mr White could elaborate more at the next meeting. The Chair also noted Mr White had advised there were no silica claims made in the month.

The Commission **NOTED** the update.

### 3.5 Amendments to OSH Regulations – Revised Workplace Exposure Standard for silica

The Chair opened discussion relating to the Commission's views on endorsement of the amendments to the Occupational Safety and Health Regulations 1996 (OSH Regulations).

The CCIWA representative asked about provision of transitional arrangements regarding the new silica standard.

The Commissioner advised that there would be no transitional arrangement for silica, because the majority of SafeWork Australia (SWA) members believed a transition would not be required. He said that at the previous Commission meeting, agreement was reached to insert the revised exposure standard into the OSH Regulations. The indicative date for implementation date was mid-year (June or July 2020).

Expert member Dr Julia Norris, asked about the timeframe to implement and whether it could happen by June. The Commissioner advised the implementation could occur in that timeframe

CMEWA representative asked about stakeholder consultation and communication of the change, suggesting there needed to be more clarification of the change to industry.

The Commissioner said there had been a consultation at the national level, and SWA has made the decision to implement the new standard.

A CCIWA representative noted previous conversations about communication strategies. She suggested a strategy needed to be available at a basic level to allow for uptake of communication, noting the needs for formal communication about the transition requirements.

A second CCIWA representative suggested employers need time to invest in new systems and controls to ensure they are not in breach of the new standards, noting the existing three-year transition for coal.

The Commissioner said if employers are striving to meet the current exposure standards for silica, then they should not need to put in a great deal of work into meeting the new standard in relation to processes, although the monitoring aspect will require more effort.

Expert member Dr Julia Norris, agreed with the Commissioner that the transition will not cause major issues for employers.

The Commissioner explained the change would replicate what is in the Mines Safety and Inspection Regulations.

The Chair put a recommendation to endorse the amendments to a formal vote.

The Commission **ENDORSED** amending the OSH Regulations to allow the revised workplace exposure standards for silica to be implemented, as a matter of urgency. UnionsWA were noted as supporting the revised exposure standards. Dissenting voices were noted.

#### **Dissenters**

The CMEWA representative dissented, suggesting CMEWA would only endorse the amendment if given time to consult with its members. At this stage, due to lack of time to consult with those stakeholders, the CMEWA could not endorse the amendment.

A CCIWA representative (Mr Paul Moss) dissented due to a lack of consideration of the assistance or support to employers for the implementation of the amendments.

A second CCIWA representative (Ms Andrea Roelofs) also dissented, supporting the CCIWA stance on lack of consideration of the assistance or support to employers for the implementation of the amendments, noting she is not opposed to the change but that there should be a strategy that stipulates how amendments are communicated to industry.

The Chair opened for discussion the construct of implementation of amendments.

Expert member Dr Julia Norris, recommended beginning communication to industry as the endorsement meant the amendments could now not be stopped.

The Commissioner suggested engaging the Safety Education Department of DMIRS, and that at the next Legislative Advisory Committee (LAC) meeting, discuss a new communications strategy. All material to be collated and considered in a future communications context.

**ACTION:**

**The Executive Officer will where possible, distribute Commission papers for future meetings a week before meetings.**

**ACTION:**

**The Executive Officer will distribute the LAC papers by Friday 5 March 2019.**

## **4 STANDING ITEMS**

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

The Chair suggested a potential topic for the Commission's newsletter - the amendments to OSH Regulations regarding the revised workplace exposure standards for silica. Expert member Dr Julia Norris, supported this idea but suggested the change required two separate items – highlighting the change to the regulations and also highlighting the change to the silica exposure standard. Other member suggestions included information about workplace specific coronavirus information, but it was agreed this was already available from the Department of Health.

The CCIWA representative, recommended that the Commission seek information about the strategy used by DMIRS in scheduling communications to allow for cross-referencing and utilisation of the newsletter in a more strategic manner.

It was **AGREED** to defer further discussion until a strategy or schedule of communications could be considered in tandem with potential newsletter topics.

**ACTION:**

**The Executive Officer to liaise with DMIRS Safety Education team to develop a communication strategy or schedule and provide this to Commission members for consideration at a future meeting.**

## **5 REPORTS**

### **5.1 Legislative Advisory Committee (LAC)**

The Commissioner provided an update regarding the LAC meeting held on 12 February 2020.

He advised there had been discussion of the *Prevention of Falls at Workplaces* Code of Practice which is now with DMIRS Safety Education Branch. He advised and that CISAC is currently reviewing the *Excavation* Code of Practice, opting for minimal changes, allowing for more expedient completion.

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

## 5.2 Construction Industry Safety Advisory Committee (CISAC)

The Commissioner advised that CISAC was continuing a review of the *Excavation* Code of Practice, predicting that the review should be completed during the upcoming meetings. He advised CISAC members had opted for a minimal subject matter change approach as it would be of more benefit to the industry to receive information sooner.

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

## 5.3 Mining Industry Advisory Committee (MIAC)

Ms Christina Folley A/Director Mines Safety, DMIRS provided an update on MIAC.

She said a similar conversation about silica exposure standards occurred at the meeting as had earlier in the Commission meeting. The nano-diesel particulate working group is going to draft a letter to the Minister. A significant discussion regarding radiation dose conversion factors and decreases in allowable levels was led by Mr Martin Ralph. Also interesting was how MIAC will communicate as a committee, with agreement to discuss optimisation options at its next meeting.

The UnionsWA representative asked about the status of a letter regarding the diesel particulate standard. Ms Folley advised that there had been a delay due to identification of an existing standard cited in part 9.2 which required a legal review of wording in the letter.

The Commission **AGREED** to a recommendation put by the Chair that the MIAC letter regarding diesel particulate be circulated to Commission members out-of-session for approval.

The UnionsWA representative sought information regarding the Mental Health Strategies Working Group report (based on recommendations of the Jacobs report). Ms Folley explained the group had delayed finalisation of the report due to recommendations made which were not the responsibility of DMIRS or the working group. There were some delays in finalisation of the report due to the need to obtain information from other agencies. The report has now been finalised and will be distributed in the coming week to the Mental Health Strategies Working Group.

The Commission **NOTED** the MIAC report and verbal update provided by Ms Folley.

### **ACTION:**

**The Executive Officer is to circulate MIAC letter regarding diesel particulate to Commission members out-of-session for approval.**

## 5.4 Agricultural Working Group (AWG)

The Commissioner gave a brief overview of the discussions at the meeting held on 21 February 2020 at which he was acting Chair.

Discussions included the dissemination of information about the SafeAgWA campaign to the Commission and the Minister, along with the need to evaluate the campaign effectiveness. The Commissioner said AWG members highlighted the need for other strategies to ensure the reason for establishing the working group i.e. promoting safe work practices on farms, was continued.

The Commissioner advised that there was currently \$7,500 remaining from the total of SafeAgWA sponsorship funds already received. However, a further \$10,000 had been promised by the CBH Group and was expected shortly.



The Commission **NOTED** the AWG report and update.

### 5.5 WorkCover WA Report

In Mr Chris White's absence, the Chair reported that Mr White had advised there had been no silicosis claims made in the past month.

The Commission **AGREED** to defer the full WorkCover WA report until Mr White's return.

### 5.6 Regulatory Activity Reports

The Regulatory Activity Report for January 2020 was not available at the meeting.

#### **ACTION:**

**The Executive Officer will provide the Regulatory Activity Report for January 2020 to Commission members out of session.**

### 5.7 Fatalities and significant incidents

The Commissioner reported on two recent fatal workplace incidents, one involving a 64 year-old truck operator, and another involving a 48 year-old air conditioning mechanic.

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

### 5.8 Exemption certificates

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

The Commission **NOTED** the exemption certificates.

## 6 OTHER BUSINESS

### 6.1 Foot and hand injuries in the Western Australian Workers' Compensation Scheme

Expert member Dr Matthew Davies, requested that relevant foot and hand injury statistics research be raised at the Commission meeting, suggesting a follow up on severity of injuries. Fellow expert member Dr Alison Reid, agreed the statistics were worth further investigation. The CCIWA representative suggested deferring further discussion until Mr Chris White could source more information about the nature of injuries and other insights.

It was **AGREED** to defer discussion.

### 6.2 Dreamworld catastrophe recommendations and Haywood Review Queensland

Expert member Dr Davies, raised the recent release of the recommendations of the two reviews which were worth noting in relation to fatality cycles and other issues. Dr Davies indicated he would send links for the reports to Commission members.

### 6.3 Amalgamation of Dangerous Goods regulations – update request

The CMEWA representative asked for an update regarding the amalgamation of dangerous goods regulations at the next meeting.

The Chair provided a brief background of the role of the Ministerial Advisory Panel in relation to the dangerous goods regulations amalgamation.

Mr Munns **AGREED** to arrange with DMIRS Manager Dangerous goods Mr Ian Dainty, to provide members with a detailed update

**ACTION:**

**Mr Munns to liaise with Mr Ian Dainty to provide a progress report on the amalgamation of dangerous goods regulations.**

**6.4 Clarification of commencement of the WHS Bill**

Clarification was requested by the UnionsWA representative about the process relating to enactment of the WHS legislation and availability of the relevant Codes of Practice.

Mr Munns advised that commencement of the Bill is aligned with promulgation of the Regulations. Work will continue in an effort to finalise as many Codes as possible before the Bill is promulgated. Discussions will be held with the Minister to allow him to decide how to manage the Codes that cannot be completed by that time.

**7 CLOSE AND NEXT MEETING**

There being no further business, the Chair declared the meeting closed at 11.15am. The next meeting will be held at 1 Adelaide Terrace, East Perth on 1 April 2020.

**MINUTES OF MEETING NO: 393  
OF THE  
COMMISSION FOR OCCUPATIONAL SAFETY AND HEALTH  
HELD ON 4 MARCH 2020**

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

Stephanie Mayman

**Chair**

Date