

Commission for Occupational Safety and Health MINUTES – 4 September 2019

Meeting No:	389	Time:	8.30am
Venue	Koorling Dandjoo Room, Level 2, 1 Adelaide Terrace, East Perth	Secretariat:	Department of Mines, Industry Regulation and Safety (DMIRS)

Attendees

Ms Stephanie Mayman	Chair
Mr Darren Kavanagh	WorkSafe Western Australia Commissioner (Commissioner)
Ms Joy Barrett	UnionsWA
Mr Andrew Chaplyn	Director Mines Safety, DMIRS
Dr Barry Chesson	Expert member
Dr Matthew Davies	Expert member
Dr Lin Fritschi	Expert member
Ms Adrienne LaBombard	Chamber of Minerals and Energy WA (CMEWA)
Ms Pearl Lim	UnionsWA (proxy for Glenn McLaren)
Mr Paul Moss	Chamber of Commerce and Industry WA (CCIWA)
Mr Owen Whittle	UnionsWA

By Invitation

The Hon Bill Johnston MLA	Minister for Mines and Petroleum; Industrial Relations (until 9.30am)
Mr John Welch	Senior Policy Advisor to the Minister (until 9.30am)
Mr Chris White	WorkCover WA (WorkCover)
Mr Ian Munns (as Observer)	Deputy Director General Safety Regulation, DMIRS

Apologies

Mr Glenn McLaren	UnionsWA
Ms Andrea Roelofs	CCIWA

Executive Support

Ms Anika Moore	Executive Officer, DMIRS
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1 ADMINISTRATION

1.1 Opening and welcome

The Chair opened the meeting at 8.30am and welcomed the Hon Bill Johnston MLA (Minister) and Mr John Welch. It was noted that Ms Pearl Lim was in attendance, as proxy for Mr Glenn McLaren from UnionsWA.

1.2 Apologies

Apologies were accepted from Ms Andrea Roelofs and Mr Glenn McLaren.

1.3 Update from the Minister

The Chair asked the Minister to speak about the development of Western Australia's work health and safety (WHS) laws.

The Minister provided Commission members with an update regarding the WHS Bill. He provided information in relation to:

- industrial manslaughter offences;
- the exclusion of union right of entry provisions;
- prohibition of insurance for penalties;
- psychosocial hazards;
- the Government's intention to introduce to the WHS Bill to Parliament in 2019; and
- the consultation process for three sets of WHS Regulations.

The Minister answered Commission members' questions and there was discussion in relation to several matters relating to the WHS laws.

In response to a question from the Chair, the Minister advised that a dedicated officer will not be allocated to the Commission. He informed members that laws restrict who can give directions to a public sector officer. The Minister committed to speak to the Director General of DMIRS, regarding the provision of additional resourcing to the Commission.

The Chair thanked the Minister and Mr Welch for attending the meeting and providing an update to attendees.

Following morning tea, the Minister and Mr Welch departed at 9.30am.

1.4 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

1.5 Declarations of Conflicts of Interest

Two conflicts of interest were declared. A CCIWA representative declared that CCIWA is a registered training provider and a UnionsWA representative advised that UnionsWA is a training provider.

1.6 Other Business admitted by the Chair

The Chair advised that the Commissioner would formally farewell Expert Member Dr Barry Chesson at item 6.1.

2 PREVIOUS MEETING/S

2.1 Confirmation of previous meeting minutes

A motion to accept the minutes of meeting 388 held on 7 August 2019 was **ENDORSED**, subject to the following amendment:

Item 5.1 Legislative Advisory Committee (LAC), in the first sentence of the second paragraph "Code of Practice" was replaced with "*Policy and Procedures*".

Moved: Dr Barry Chesson; seconded: CMEWA.

2.2 Review action list from previous meeting

The Chair referred to Action 3.2 of 3/10/18 and asked if the Commission still would like the Across Agency Asbestos Group (AAAG) to make a presentation at a meeting.

The Commissioner advised that he is the Chair of the AAAG and that the next meeting is scheduled for 17 September 2019. He informed members that a representative from the national Asbestos Safety and Eradication Agency (ASEA) is attending the AAAG meeting.

The Commissioner offered to provide an update, regarding the AAAG, at the next Commission meeting.

There was discussion regarding ASEA and the 2019 Asbestos Safety Conference.

Members reviewed Action 2.3 of 3/7/19 and it was noted that the Commission would like to see the final versions of the DMIRS Safety Regulation and Prosecution Policies.

A UnionsWA representative asked what had happened in relation to a previous action regarding methamphetamine guidance.

The Chair advised that the matter had been referred to LAC and had been considered. She informed members that the Commission Guidance note - *Alcohol and other drugs at the workplace* was not high on LAC's priority list for updating at this time. The Chair noted that the Guide was very outdated.

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

ACTION

DMIRS to provide final versions of the DMIRS Safety Regulation and Prosecution Policies to the Commission for noting.

ACTION

Commissioner to provide a report regarding the Across Agency Asbestos Group at a future Commission meeting.

ACTION

Executive Officer to circulate the 2019 Asbestos Safety Conference Program to Commission members.

2.3 Updated Commission Strategic Plan 2019-2022

The Chair advised that the Strategic Plan Working Group had met and made progress on the *Commission Strategic Plan 2019-2022* (Strategic Plan).

The Chair informed members that she had since met with the Executive Officer, to undertake additional work on the deliverables for the Strategic Plan. This work is reflected in the version of the plan included in the Commission agenda papers.

Members **AGREED** that the working group should meet again to finalise the Strategic Plan.

ACTION

Executive Officer to arrange a meeting of the Strategic Plan Working Group, at 9am on Wednesday 18 September 2019 in the Wandju Room at 1 Adelaide Terrace.

ACTION

The Strategic Plan Working Group to finalise the Commission Strategic Plan. An updated draft to be circulated prior to the 16 October 2019 meeting, for consideration by the Commission at that meeting.

2.4 Breathe Freely Australia Partnership

The Chair invited Dr Barry Chesson to speak about Breathe Freely Australia.

Dr Chesson answered the questions raised by Commission members at the previous meeting. He spoke about the presentations that would be given at the workshops and explained that the hierarchy of controls will be followed by Breathe Freely Australia.

Dr Lin Fritschi emphasised that her main concern was that elimination and substitution do not seem to have been considered in the Breathe Freely Australia material.

There was discussion amongst Commission members about Breathe Freely Australia and the controls required to manage the risk of silica exposure to workers.

It was noted that WorkSafe Inspectors from DMIRS will be involved in the workshops.

Several members asked for clarification, in relation to exactly what would be involved if the Commission partnered with Breathe Freely Australia.

There was general agreement that the Commission should support education, but acknowledge that there is a conversation to be had around elimination. It was noted that the target audience of the workshops would likely be different to those who are in a position to enable elimination and substitution.

The Commission **ENDORSED** a motion to partner with Breathe Freely Australia.

Moved: Dr Lin Fritschi; seconded: Dr Barry Chesson.

ACTION

DMIRS to report back to the Commission following the roll out of the Breathe Freely Australia workshops in Western Australia.

ACTION

The Chair to draft a message regarding Breathe Freely Australia for endorsement by the Commission.

2.5 Pesticides Regulation Review

The Commission considered the comments provided by members, regarding the *Pesticides Regulation Review Discussion Paper*. As there was no clear preference for one option it was decided that the Commission would not advocate for a specific option.

There was discussion regarding the interaction between occupational safety and health (OSH) and public health in Western Australia.

The Commission **ENDORSED** a motion for the Chair to write to the Department of Health, advising that:

- the Commission opposes option A and notes that some of the examples in the discussion paper involve workers, which fall under occupational safety and health (OSH) laws, rather than public health laws;
- Western Australia is currently in the process of developing work health and safety (WHS) laws that are intended to replace the existing OSH laws. Both the existing OSH and proposed WHS laws cover exposure to hazardous substances at workplaces; and
- to ensure that there are no inconsistencies between the WHS laws and public health laws, the Commission suggests that the Department of Health liaises directly with the Department of Mines, Industry Regulation and Safety (DMIRS). The Commission understands that an Inspector from the DMIRS - Occupational Health, Hygiene and Noise Branch is a member of the Pesticides Advisory Committee.

2.6 Coroner's Reports

The Chair explained that the Commission used to receive Coroner's reports relating to OSH, but since 2009 have only received Coroner's reports that were directly referred to the Commission.

The Commission **NOTED** that, as per the decision at the previous meeting, new Coroner's reports relevant to OSH will be included in future Commission agenda papers.

2.7 Current DMIRS Investigations – old and new penalty frameworks

Mr Ian Munns noted that this item was in response to an action from the previous Commission meeting. He referred to the advice provided by DMIRS, regarding the number of ongoing investigations that fall within the old and new penalty frameworks.

Mr Munns noted that each investigations can result in multiple cases in court. He informed members that, as some investigations take longer than others, there will be a period of overlap when cases from both regimes come through, until all of the old penalty framework cases are complete.

The Commission **NOTED** the information provided by DMIRS.

3 AGENGA ITEMS

3.1 Media Statement regarding the Western Australian Work Health and Safety Regulations

The Chair introduced the Minister's media statement published on 27 August 2019, announcing the commencement of the public consultation process for Western Australia's WHS Regulations.

The Chair advised members that the public comment period will go for three months, closing on 26 November 2019.

There was discussion regarding the information sessions. Mr Ian Munns advised that there was a video version of the presentation and that webinars are scheduled, for anyone who cannot not attend a session in person.

The Commission **NOTED** the information in the media release and that provided by Mr Munns.

3.2 Training Accreditation Council (TAC) - Focus on quality: TAC Regulatory Strategy 2019-2021

Due to an Executive Officer error this item was deferred until the 16 October 2019 Commission meeting.

ACTION

Executive Officer to circulate the TAC Regulatory Strategy 2019-2021 to members, prior to the next meeting.

4 STANDING ITEMS

4.1 Accreditation of introductory training courses for Safety and Health Representatives

The Commission **APPROVED** the accreditation of the:

- Murray House Resource Centre introductory training course for a period of three years, expiring on 10 September 2022; and
- Master Builders Association of Western Australia introductory training course for a period of three years, expiring on 27 September 2022.

4.2 Reaccreditation of ATI Mirage SHReps introductory training course

The Commission **APPROVED** the re-accreditation of the ATI-Mirage Training & Business Solutions introductory training course for a period of three years, expiring on 16 July 2022.

5 REPORTS

5.1 Legislative Advisory Committee (LAC)

The Chair advised that there were no LAC meetings since the previous Commission meeting and that the next LAC meeting is scheduled for 11 September 2019. She noted that future LAC meetings will be held a week after each Commission meeting.

5.2 Construction Industry Safety Advisory Committee (CISAC)

The Commissioner summarised the 27 August 2019 CISAC meeting, advising that the following matters were discussed:

- the WHS Regulations public consultation process; and
- the Code of Practice: *Prevention of Falls at Workplaces*.

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

5.3 Mines Safety Directorate and the Mining Industry Advisory Committee (MIAC)

Mr Andrew Chaplyn provided a verbal report of the 14 August 2019 MIAC meeting, referring to the MIAC Communique. Mr Chaplyn ran through key issues, including:

- the *Ground control for Western Australian mining operations*: Code of Practice and guideline;
- the investigation into the fatality at Red Hill;
- the presentation of nano diesel particulate matter (nDPM) research findings and future actions;
- an update on the development of the *Commission Strategic Plan 2019-2022*;
- discussion regarding the reviewing of mining-related codes of practice and guidance material;
- the Mental Health Strategies Working Group; and
- the Registered Managers Forum.

A UnionsWA representative asked when the nDPM research could be presented to the Commission. Mr Chaplyn agreed to organise a presentation for the Commission, once MIAC has considered the nDPM research findings.

Mr Chaplyn advised that the next MIAC meeting is on 9 October 2019.

The Commission **NOTED** the verbal report given by Mr Chaplyn and the MIAC Communique.

ACTION

DMIRS to arrange a Commission presentation of the nano diesel particulate matter research findings.

5.4 Diving Working Group (DWG)

The Commissioner informed members that there have been no DWG meetings since the previous Commission meeting.

The Commissioner advised that work was continuing on the Occupational Diving Code of Practice out of session. He anticipates that a draft will be ready for consideration at the 16 October 2019 Commission meeting.

The Commission **NOTED** the DWG update provided by the Commissioner.

5.5 Agricultural Working Group (AWG)

The Chair provided a summary of the 16 August 2019 AWG meeting.

The Chair advised that the SafeAgWA Campaign was launched by the Commissioner at the Dowerin Field Day, on Wednesday 28 August 2019.

The Chair thanked the AWG Executive Officer for the amount of work she has done to support the campaign and acknowledged the prompt and high quality work of the DMIRS officers who developed the SafeAgWA website.

The Commission **NOTED** the AWG report and update provided by the Chair.

5.6 WorkCover WA Report

Mr Chris White reported that:

- there have been no more silicosis claims made in Western Australia, with the total standing at three; and
- drafting of the new workers' compensation legislation is progressing slowly.

The Commission **NOTED** the verbal report given by Mr White.

5.7 Regulatory Activity Report

Mr Ian Munns noted that, as the Regulatory Activity Report is only for the first month of 2019-2020, there is not a lot of information in it.

The Commission **NOTED** the Regulatory Activity Report to 31 July 2019.

5.8 Fatalities and significant incidents

The Chair asked Mr Ian Munns to speak about the report.

Mr Munns provided an update regarding work that DMIRS is undertaking with the Coroner's Office. He advised that there may be a new process introduced, whereby in some instances the Coroner's Registrar could conclude that a death was due to natural causes. This may speed up the process of determining whether some fatalities are work-related or not.

Mr Munns confirmed that this would only be possible for cases where there is no uncertainty about the cause of death.

The Commission **NOTED** the fatalities and significant incidents report and the information provided by Mr Munns.

5.9 Coroner's Reports

The Commission **NOTED** the Coroner's reports included in the agenda papers.

There was discussion about the three reports, particularly in relation to the Serjeant Findings.

The Chair suggested that the Borradaile Coroner's Report Findings and Recommendations be referred to LAC for consideration. She said it was unlikely any action would be required.

The Commission **ENDORSED** a motion, confirming that in future only new Coroner's reports will be provided in the agenda papers.

ACTION

LAC to consider the Borradaile Coroner's Report Findings and Recommendations.

5.10 Exemption certificates

The Commission **NOTED** the exemption certificate granted since the previous meeting.

6 OTHER BUSINESS

6.1 Farewell to Dr Barry Chesson

The Chair advised members that it was the final Commission meeting for Expert Member Dr Barry Chesson.

The Commissioner presented Dr Chesson with a certificate, acknowledging that:

- Dr Chesson has served on the Commission as an expert member from 1985 to 1997 and from 2009 to the present;
- in 2016 he received a Companion (AC) of the Order of Australia, for significant service to the community in the field of occupational health science, to professional associations, and to tertiary education;
- during his time on the Commission he chaired tripartite working groups that have developed legislative instruments for hazardous chemicals, hearing conservation and manual handling; and
- Dr Chesson has chaired various tripartite working groups appointed by the Commission to develop codes of practice and guidance material relating to Legionella, heat, entertainment and asbestos.

Dr Chesson thanked the Commissioner and remarked upon the big difference he saw between his first 12 year period as a Commission member and the second 10 year period.

Dr Chesson spoke about his experience as an Expert Member and expressed his appreciation at getting to know the Chair and enjoyment of his time on the Commission.

7 CLOSE AND NEXT MEETING

There being no further business, the Chair declared the meeting closed at 11.25am. The next meeting will be held at 1 Adelaide Terrace, East Perth on 16 October 2019.

It was noted that the 2019 Work Health and Safety Excellence Awards will be held on 2 October 2019.

**MINUTES OF MEETING NO: 389
OF THE
COMMISSION FOR OCCUPATIONAL SAFETY AND HEALTH
HELD ON 4 SEPTEMBER 2019**

ENDORSED AS A TRUE AND ACCURATE RECORD OF THE MEETING

Stephanie Mayman

Chair

Date