

## Commission for Occupational Safety and Health MINUTES – 7 April 2021

<b>Meeting No:</b>	<b>405</b>	<b>Time:</b>	<b>8.30am</b>
<b>Venue</b>	<b>Koorling Dandjoo Conference Room, 1 Adelaide Terrace, Perth</b>	<b>Secretariat:</b>	<b>Department of Mines, Industry Regulation and Safety (DMIRS)</b>

### Attendees

Dr Trish Todd	Chair
Mr Darren Kavanagh	WorkSafe Western Australian Commissioner (Commissioner)
Dr Matthew Davies	Expert member
Dr Julia Norris	Expert Member
Dr Lin Fritschi	Expert member
Mr Paul Moss	Chamber of Commerce and Industry WA (CCIWA)
Ms Elysha Millard	Chamber of Minerals and Energy (CMEWA)
Ms Jennifer Low	Chamber of Commerce and Industry WA
Ms Erin Gisborne	UnionsWA
Mr Glenn McLaren	UnionsWA
Mr Owen Whittle	UnionsWA
Mr Andrew Chaplyn	Director Mines Safety, DMIRS

### Guests

Mr Chris White	Chief Executive Officer, WorkCover
Ms Lorraine Field	Proxy for Mr Ian Munns, Deputy Director General Safety Regulation, DMIRS
Ms Cristina Simeons	Department of Health (for item 3.1)
Ms Bhaval Chandaria	Department of Health (for item 3.1)
Mr Baldave Singh	Department of Health (for item 3.1)
Ms Sally North	Director WorkSafe Service Industries and Specialists, DMIRS (for item 3.2)
Dr Evelyn Lee	Occupational Physician, DMIRS (for item 3.2)
Dr June Sim	Occupational Physician, DMIRS (for item 3.2)
Dr Yijun Yap	Registrar, Occupational Health, Hygiene and Noise, DMIRS (for item 3.2)

### Apologies

Mr Ian Munns	Deputy Director General Safety Regulation, DMIRS
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### Executive Support

Ms Anika Moore	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 405th meeting of the Commission at 8.30am, noting the large agenda. The Chair welcomed new Commission member Ms Jennifer Low from the Australian Chamber of Commerce and Industry, as a representative of the CCIWA, and Ms Lorraine Field (proxy for Mr Ian Munns).

### 1.2 Apologies

Apologies were accepted from Mr Ian Munns, with Ms Lorraine Field attending as his proxy.

### 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 were declared by a UnionsWA representative and a CCIWA representative, in relation to safety and health representative training.

### 1.5 Other Business admitted by the Chair

No additional agenda items were admitted by the Chair. It was agreed that an update in relation to the Safe Work Australia (SWA) *Statement of Regulatory Intent – COVID-19* would be included as part of Agenda Item 3.3.

## 2 PREVIOUS MEETING/S

### 2.1 Confirmation of previous meeting minutes

The Commission agreed that the following amendments should be made to the minutes of the 3 March 2021 meeting:

- The final sentence in the third paragraph of Agenda Item 3.6 be amended to read:  
*A CCIWA representative highlighted the importance of requesting the views of industry bodies in relation to the key questions that are technical in nature.*
- The fourth paragraph of Agenda Item 3.7 be amended to read:  
*A CCIWA representative suggested making a request to RTOs to seek feedback from SHREP trainees about their motivations for becoming a representative.*
- Dr Lin Fritschi noted 'vanadium' is the correct spelling in Agenda Item 3.8.

Subject to the agreed amendments, the Commission **ENDORSED** the minutes of meeting 404, held on 3 March 2021.

### 2.2 Review action list from previous meeting

The Commissioner drew members' attention to general action list item **3.6 of 3 March 2021 – Action 9** - *The Commissioner to seek and collate advice from experts in relation to technical feedback relating to the draft Occupational Diving Code of Practice.* The Commissioner thanked Dr Matthew Davies for his work in reviewing the draft Diving Code, noting the comments from industry had been critical of the detail in the Diving Code with a common theme suggesting it requires substantial review. The Commissioner advised that a paper will be presented at the 5 May 2021 Commission meeting.

Commission members had no further comments in relation to the general action list or the LAC action list.

### 3 AGENDA ITEMS

#### 3.1 Department of Health - Data Linkage Project

Representatives from the Department of Health, Ms Cristina Simeons, Ms Bhaval Chandaria and Mr Baldave Singh gave a presentation to the Commission regarding the Data Linkage Project (project).

The presentation provided an overview of the project, its intention for research and policy work, types of information stored in the data library, methods used to collect and link data and the benefits and limitations of the data.

Ms Simeons explained that all data is subject to legislative considerations and strong governance principles and that a memorandum of understanding or service level agreement is signed with organisations that contribute to the data linkage project. She highlighted the opportunities available through data linkage for research.

Commission members sought further information about the occupational and emergency department data available, the time taken to provide data once requested and whether the data provided was easy to understand. Ms Chandaria advised that the time taken to provide data has reduced. Ms Simeons informed attendees that a data warehouse is currently being developed along with an e-research tool, to assist in the interrogation of data provided, but acknowledged that there was very limited occupational data in the system.

Dr Davies commented that the source of the information is crucial and asked what occupational data is being collected and from where. The Commissioner expressed interest in determining the feasibility of extracting data for both regulatory and Commission purposes.

The Executive Officer **AGREED** to liaise with Ms Simeons regarding the Data Linkage Project team member responsible for working with organisations at the data source level.

The Chair thanked the guests from the Department of Health for the presentation, noting that the Commission will consider and explore opportunities going forward.

#### **ACTION 1**

***Executive Officer liaise with Ms Simeons regarding the Data Linkage Project team member responsible for working with organisations at the data source level.***

#### 3.2 WorkSafe silica compliance campaign update

Ms Sally North, Director WorkSafe Service Industries and Specialists, Dr Evelyn Lee, Occupational Physician, Dr June Sim, Occupational Physician and Dr Yijun Yap, Registrar from DMIRS provided a verbal update regarding the WorkSafe silica compliance campaign.

Ms North provided a brief summary of the WorkSafe air monitoring compliance campaign, advising that since July 2018, 145 inspections have been conducted with preliminary results indicating that workplace exposure to respirable crystalline silica (RCS) varies from less than half of the exposure standard to ten times the exposure standard. It is intended that the compliance campaign will be concluded and a report made available by the end of the 2020/2021 financial year.

Dr Sim provided a background of the WorkSafe CT Recall Project, informing attendees that its key aim was early intervention of silicosis. The project trialled low dose computed tomography (CT) scans, in place of chest x-rays read by International Labour Office (ILO) readers, to determine if x-rays have the sensitivity to detect silicosis symptoms.

Dr Yap detailed the methodology used for the project, which offered free low dose CT scans to 100 stone workers who previously had a chest X-ray and had worked 5 years or more in the engineered stone industry.

The project commenced in July 2020 and by October 2020 90 stoneworkers had completed CT scans. The findings from 90 scans identified eight new cases of silicosis, with other abnormalities found from 38 scans. No cases of silicosis had been detected using chest X-ray in the Western Australian engineered stone industry by early 2019.

Dr Lee acknowledged the work of WorkSafe and the Commissioner in facilitating the legislative change requiring low dose CT scans as part of health surveillance. She emphasised that the project provided evidence that low dose CT scans are more effective than X-rays at detecting early signs of silicosis. Dr Lee advised that WorkSafe is the first regulatory body in Australia, and likely worldwide, to legislate the use of a low dose chest CT as health surveillance for silica workers.

Dr Lee informed attendees that the multi-disciplinary team approach to reviewing cases had led to an increased appreciation for the risks involved in working with engineered stone versus natural stone. Dr Lee said it would reach a point where the knowledge and recommendations from the project would reach a broader audience and be acted upon.

In response to a question from Dr Matthew Davies about exposure time, Dr Lee advised that one case had been exposed over more than 30 years. She referred to a separate study that had shown a large difference between exposure of workers in natural and engineered stone industries.

In response to a question from a CCIWA representative about information flow, Dr Lee advised that when a silicosis case is identified appointed medical practitioners follow Western Australian guidelines and employers are notified.

A UnionsWA representative raised that only those still in the industry are being followed up with and asked if the Commission should also consider checks on those who had left the industry. He commented that the level of health surveillance occurring in the building and construction industry is also questionable.

In response to a comment from Dr Julia Norris regarding availability of CT scans, Dr Lee informed attendees that work is continuing with providers to improve access to low dose CT scans by reducing costs and increasing availability in regional areas. Dr Norris commended WorkSafe on the work being done to revise the silica health surveillance guidelines for medical practitioners.

The Commission discussed the ramifications of workers being forced to leave employment, who are not covered by the Western Australian workers' compensation scheme because they are asymptomatic. Members raised that some business owners do not encourage employees to be tested and that workers may avoid testing because of job insecurity fears. Dr Fritschi suggested that engineered stone should be banned from use.

The Commissioner acknowledged the exemplary work done during the project, noting the work had placed Western Australia in a leading position to understand and manage issues related to silicosis.

The Chair thanked the guests for sharing information about their extraordinarily interesting project, which has implications well beyond the immediate sphere.

The Commission **NOTED** the update.

### **3.3 COVID-19 pandemic and recovery – letter to Chair from Chief Health Officer**

The Chair opened the floor for discussion in relation to COVID-19, noting a letter had been received from Chief Health Officer in response to correspondence from the Commission about exposure of health care workers to SARS-CoV2.

Dr Lin Fritschi and Dr Julia Norris expressed their disappointment at the response from the Chief Health Officer, in particular the sidelining of occupational safety and health (OSH) protections for health care workers.

Dr Norris also raised concerns about the type of personal protective equipment (PPE) referred to in the letter, some of which does not adequately protect workers. The Commission also discussed issues related to hotel quarantine and heating, ventilating and air-conditioning (HVAC) systems. Dr Matthew Davies commented that the mindset of the OSH sector is one of prevention rather than a reactive culture.

A CCIWA representative asked the Commissioner to provide clarification in relation to the *SWA Statement of Regulatory Intent – COVID-19* (Statement), advising that there is some concern in industry that it refers to vaccinations as a high order control measure. The Commissioner explained that the intent was to make it clear that OSH regulators consider vaccinations to be controls. He advised that the main focus was that vaccines are voluntary and that there was a lot of discussion about what is reasonably practicable, based on availability and the national COVID-19 vaccine rollout plan. The Commissioner noted that the Statement will be revised once vaccines are readily available to the general public.

A UnionsWA representative commented on the confusion created by inconsistencies in different SWA COVID-19 guidance documents, which the Statement of Regulatory Intent will add to.

The Commissioner advised of an upcoming meeting of the Heads of Workplace Safety Authorities, of which he will report back to the Commission.

### 3.4 Commission Work Plan – proposed updates for consideration

The Chair presented the Commission *Work Plan* and sought approval of proposed changes.

The Commissioner noted that the *Work Plan* is an evolving document, which includes Commission activities and projects.

Commission members **ENDORSED** the changes.

### 3.5 Proposed WHS laws Code of Practice review process

The Commissioner presented a draft strategy to review codes of practice (codes) for the new work health and safety (WHS) laws. The draft strategy is based on the Minister's directions that DMIRS provide the Commission with updated codes for consideration and the Commission can provide advice on which codes can be revoked.

Commission members discussed the proposed review process, noting the need to:

- have guidance material ready for the 1 January 2022 election commitment date;
- ensure those codes that are critical be available on 1 January 2022;
- determine the codes and guidance materials for which the Commission is responsible;
- be mindful of the move to harmonisation;
- maintain the Western Australian aspects of Codes and guidance materials; and
- consider the impact of regulations on the Codes.

Mr Andrew Chaplyn **AGREED** that the mines safety codes would be considered at the next Mining Industry Advisory Committee (MIAC) meeting on 14 April 2021 and advice would be provided back to the Commission by 5 May 2021.

A CCIWA representative referred to a review conducted by the Legislative Advisory Committee (LAC) in 2019, which determined which Commission codes should be reviewed or revoked.

The Commission **AGREED** that the draft strategy to review codes of practice should be referred to LAC, with the 2019 review, for consideration.

It was **AGREED** that an extraordinary LAC meeting would be held on 21 April 2021, where the proposed code of practice review strategy would be reviewed and advice provided back to the Commission before the 5 May 2021 meeting.

### **ACTION 2**

***LAC to consider the proposed code of practice review strategy and 2019 review at an extraordinary meeting on 21 April 2021 and provide advice to the Commission for consideration at the 5 May 2021 meeting.***

## **3.6 Updated Draft Violence and Aggression at Work Code of Practice**

The Chair presented the draft *Violence and Aggression at Work Code of Practice* (Violence Code) and feedback from CMEWA regarding Appendix 3. The Violence Code was reviewed by LAC and was released for public consultation in 2020.

A CMEWA representative explained that the feedback provided suggests the removal of Appendix 3 and provision of other supporting guidance materials, due to the amount of detail included and use of non-contemporary language. A CCIWA representative supported the suggestion, arguing that use of guidance materials in place of Appendix 3 would not decrease the effectiveness of the Violence Code.

The Commissioner highlighted the work undertaken by DMIRS and LAC in reviewing the Violence Code, noting the expertise involved in its development. He highlighted the Commission's role in completing a final review and the need to publish the Violence Code as soon as possible. In response to a query from a CCIWA representative regarding the Violence Code's interaction with other codes, the Commissioner emphasised the importance of related codes having consistent language and terminology. He suggested that it was not reasonable to hold the Violence Code back from release until the Workplace Behaviour Code of Practice (Behaviour Code), which is yet to go out for public comment, is finalised.

Members noted that the Violence Code and Behaviour Code were each replacing half of the *Code of practice - Violence, aggression and bullying at work*. The Commission requested advice from DMIRS, as to whether it is possible to release the Violence Code before the Behaviour Code.

A CCIWA representative raised the recent trend of Western Australian codes including research references and statistics, which date the document as time passes. The Commissioner argued that including statistics demonstrates the reasons for publishing codes and guidance materials.

Dr Matthew Davies suggested including Local Government as a high-risk industry or occupation in the Violence Code and asked if practical advice to assist people in managing aggressive situations could be included.

The Commission discussed the need to tailor codes to the requirements of the new WHS legislation. A CCIWA representative suggested that LAC discuss the progression of codes in relation to the adoption of the new WHS Act.

Commission members **AGREED** that LAC should consider the progression and prioritisation of codes currently listed in the Commission *Work Plan*, in the context of the impending introduction of the new WHS laws.

The Chair highlighted the need to work to the 1 January 2022 date in the knowledge that Codes will need continual review. Commission members **AGREED** the need for industry to be provided with advice in relation to the *Violence and Aggression at Work Code of Practice* was a priority and it should not be delayed further.

Commission members **AGREED** to bring the draft Violence and Aggression at Work Code of Practice for discussion and decision to its meeting in May 2021.

### **ACTION 3**

***DMIRS to provide advice as to whether it is possible to release the Violence and Aggression Code of Practice before the Workplace Behaviour Code of Practice, given that they are each replacing half of the 'Code of practice - Violence, aggression and bullying at work'.***

### **ACTION 4**

***LAC to consider the progression and prioritisation of codes of practice currently listed in the Commission Work Plan, in the context of the impending introduction of the new WHS laws.***

### **ACTION 5**

***Commission members to review the updated Violence and Aggression at Work Code of Practice and discuss at the 5 May 2021 Commission meeting.***

### **ACTION 6**

***Executive Officer to circulate the tracked changes version of the draft Violence and Aggression at Work Code of Practice to Commission members.***

## **3.7 McGowan Government Industrial Relations Policy Commitment**

Ms Lorraine Field emphasised that DMIRS is working to meet the 1 January 2022 McGowan Government Industrial Relations Policy commitment to enact “three sets of Regulations related to the new [WHS] Act”.

A UnionsWA representative acknowledged the longstanding resourcing issues faced by the Safety Regulation Group of DMIRS, including the WorkSafe directorates (WorkSafe). He advised that UnionsWA would be happy to support a recommendation to the Minister that additional resources be allocated to DMIRS to enable the transition to the WHS Act and increased workload resulting from the legislative changes.

A CCIWA representative raised that resourcing will be required for policy development and educational activities, to support the implementation of the new WHS laws. He noted that industry appreciated the additional WorkSafe inspectors, but that there was also a need for broader support in the education and policy roles undertaken by DMIRS. A CCIWA representative suggested that funding was required for targeted education over a number of years, prior to and after the legislative changes are introduced.

The Commissioner highlighted issues faced in sectors such as agriculture, which could be targeted as part of an education campaign, if additional funding is allocated.

The Commission **AGREED** that a letter should be sent to the Minister, requesting that additional resourcing be allocated to DMIRS to enable the implementation of the WHS laws.

### **ACTION 7**

***The Chair to provide a letter to the Minister from the Commission, requesting that additional resourcing be allocated to DMIRS for the implementation of the WHS laws.***

## 4 STANDING ITEMS

### 4.1 Application for re-accreditation of Training Course for Safety and Health Representatives - Training Services Australia:

The Chair presented an application for re-accreditation of safety and health representative (SHRep) training from Training Services Australia.

No objections were raised and the Commission **ENDORSED** the application by Training Services Australia for re-accreditation of SHRep training.

### 4.2 Legislative Advisory Committee meetings – 10 March 2021

The Commissioner provided a report of the 10 March 2021 LAC meeting, highlighting that representatives from the Mental Health Commission would attend the next LAC meeting, to contribute to discussions related to the draft Mentally Healthy Workplaces Code of Practice.

The Commission **NOTED** the report.

### 4.3 Mines Safety Directorate verbal update

Mr Andrew Chaplyn provided an update of activities in the Mines Safety Directorate, advising that he had met with representatives from the Training Accreditation Council (TAC) and the Australian Skills Quality Authority (ASQA) to arrange a presentation to MIAC. He informed attendees that he could also organise a presentation to the Commission, which would be considered after the MIAC presentation.

Mr Chaplyn advised that the Mines Safety Directorate had been undertaking work to follow up on alleged sexual assaults at mining sites and highlighted the need for increasing industry understanding through guidance materials.

He noted the impact on Australian mine sites of the adoption of the Minamata Convention banning the mining and use of mercury.

The Commission **NOTED** the update.

### 4.4 Construction Industry Safety Advisory Committee Report – 16 March 2021

The Commissioner provided a report of the 16 March 2021 CISAC meeting, highlighting work done by CISAC to identify codes and guidance relevant to CISAC to provide feedback to LAC and assist in Commission *Work Plan* deliberations.

In considering the CISAC work agenda, the Commissioner advised of an intention to raise with CISAC members the option of meeting every two months.

The Commission **NOTED** the report.

### 4.5 Agricultural Working Group meeting – 5 March 2021

The Commissioner provided a report of the Agricultural Working Group (AWG) meeting held on 5 March 2021, advising that the campaign report was sent to the Minister. At the completion of the campaign the AWG had funds remaining with a decision about use of the funds yet to be made. The Commissioner highlighted the importance of the AWG and the influence it could have in making a positive cultural change in the agricultural industry.

Dr Lin Fritschi noted the need for the AWG Terms of Reference to include consultation with the Commission.

The Commission **NOTED** the report.



#### **4.6 WorkCover WA verbal update**

Mr Chris White provided a verbal report, advising premium rates would be released on 8 April 2021, with the expectation that the agricultural sector would see an increase in its rates due to incidents and accidents in the sector. Work on the draft workers compensation legislation is continuing and is likely to be completed in the coming months.

In response to a question from Dr Matthew Davies, Mr White advised that some additional diseases may be added to the SWA Deemed Diseases list, after a review is completed.

The Commission **NOTED** the update.

#### **4.7 Regulatory Activity Report – February 2021**

A UnionsWA representative raised the outstanding request for a Commission paper regarding auditing of assessors and interrogation of data relating to high-risk work licences, in particular the disproportionate number of assessors to license renewals.

The Commissioner advised that it has been difficult to access the requested data, a paper related to this issue is being prepared by DMIRS with the intention of tabling it at the 2 June 2021 Commission meeting.

The Commission **NOTED** the Regulatory Activity Report of 28 February 2021.

#### **4.8 Fatalities and significant incidents**

The Commissioner advised that there were three confirmed work-related traumatic injury fatalities notified to DMIRS.

A 67-year-old worker was found beneath a tractor that they were operating. A 77-year-old was working alone cutting branches from a tree when it appears they fell. A 48-year-old worker was escorting assessors at a race club, fell on wet paving and received a laceration to her knee, her condition deteriorated while in hospital where she passed away.

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

#### **4.9 Exemption Certificates**

There were two exemption certificates granted since the March 2021 meeting.

The Commissioner advised of the increasing number of exemption requests being made relating to superseded Australian Standards.

The Commission **NOTED** the exemption certificates.

#### **4.10 Commission Correspondence**

A CCIWA member noted with thanks the letter provided by the Commission to outgoing member Ms Andrea Roelofs.

The Commission **NOTED** the correspondence included in the agenda papers.

### **5 OTHER BUSINESS**

Nil.

### **6 CLOSE AND NEXT MEETING**

There being no further business, the Chair declared the meeting closed at 12.20pm. The next meeting is scheduled for 5 May 2021.

**MINUTES OF MEETING NO: 405  
OF THE  
COMMISSION FOR OCCUPATIONAL SAFETY AND HEALTH  
HELD ON 7 APRIL 2021**

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

Dr Trish Todd

**Chair**

Date