

**Commission for Occupational Safety and Health
MINUTES – 3 June 2020**

Meeting No:	396	Time:	8.30am
Venue	Kaartdijin Room and Wandju Rooms, 1 Adelaide Terrace, Perth	Secretariat:	Department of Mines, Industry Regulation and Safety (DMIRS)

Attendees

Ms Stephanie Mayman	Chair
Mr Darren Kavanagh	WorkSafe Western Australian Commissioner (Commissioner)
Ms Joy Barrett	UnionsWA
Dr Alison Reid	Expert member
Dr Matthew Davies	Expert member
Ms Adrienne LaBombard	Chamber of Minerals and Energy WA (CMEWA)
Mr Owen Whittle	UnionsWA
Dr Julia Norris	Expert member
Mr Andrew Chaplyn	Director Mines Safety, DMIRS
Mr Glenn McLaren	Chamber of Commerce and Industry WA
Mr Paul Moss	UnionsWA

Invited Guests

Mr Ian Munns	Deputy Director General Safety Regulation, DMIRS
Mr Chris White	Chief Executive Officer, WorkCover

Apologies

Ms Andrea Roelofs	Chamber of Commerce and Industry WA
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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 meeting at 8.32am and welcomed members, noting the return of Ms Anika Moore as Executive Officer.

1.2 Apologies

An apology was received from Ms Andrea Roelofs, Chamber of Commerce and Industry WA (CCIWA).

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

1.4 Declarations of Conflicts of Interest

CCIWA and UnionsWA representatives declared conflicts of interest in relation to items involving health and safety representative training.

1.5 Other Business admitted by the Chair

The Chair advised that the status of the Agricultural Working Group would be discussed under other business.

2 PREVIOUS MEETING/S

2.1 Confirmation of previous meeting minutes

A motion to accept the minutes of meeting 395, held on 6 May 2020 was **ENDORSED**.

Moved: CCIWA; seconded: Dr Matthew Davies, Expert Member.

2.2 Review action list from previous meeting

Members had no comments regarding the general action list or the DMIRS action list.

3 AGENDA ITEMS

3.1 Consultation regarding COVID-19 guidance material for the SWA website

The Commissioner thanked Commission members for providing prompt responses regarding COVID-19 documents for the Safe Work Australia (SWA) website. The Chair and a UnionsWA representative thanked the Commissioner for the opportunity to provide comments.

The Commissioner advised that SWA is considering regulations and a Code of Practice as a result of the COVID-19 pandemic. The WorkSafe website which has Western Australian specific information relating to the transport, aged care, construction and education sectors.

The Commissioner confirmed that industry and regulators should distribute the SWA COVID-19 information. Commission members noted that SWA has received funding to develop and promote COVID-19 information.

The Commissioner advised that discussions are occurring nationally in relation to respiratory protection, with most consideration focussed on supply and compliance of masks. In the health sector, there have been discussions on the correct or appropriate use of personal protective equipment (PPE), particularly appropriate use in Aerosol Generating Procedures. Dr Davies indicated that recent research has highlighted the spread of COVID-19 aerosols through expiration; including speech, shouting and singing, in addition to the more widespread understanding of coughing and sneezing.

In response to a question from the CMEWA representative about aviation, the Commissioner noted that some epidemiological reports indicated differences in transmission periods for aerosols, but he was not aware of much discussion about this issue at a national level.

The Commission **NOTED** the advice.

3.2 Feedback from Training Services Australia – trial of online SHREP training

The Chair presented an evaluation report from Training Services Australia (TSA) relating to two online training trials that were completed in 2017 and 2020. Attendees noted that the registered training organisation (RTO) had previously received permission from the Commission to conduct the online training trial. The provision of the evaluation report was a condition of that approval.

Commission members noted that the report indicated the online training trials were a reasonable success, but offered less effective learning than face-to-face training. A UnionsWA representative noted issues including the inability for online trainees to practice consultative elements and requirements for up to date hardware and software.

A CCIWA representative noted that observations about the difficulties faced were useful starting points to identify solutions. Dr Alison Reid, Expert Member, noted the difference in perception between the trainer and participants, with participants generally positive about the training received. Dr Matthew Davies, Expert Member noted that TSA is a professional organisation and had provided well-informed opinions about the difficulties of building confidence in trainees in an online setting. He also noted that SHREP trainees are grateful for any training provided and suggested reaching out to safety representatives to highlight the options available.

A UnionsWA representative suggested barriers to training often involve the ability to attend training and proposed that a letter be sent to TSA, expressing the Commission's appreciation for the candour and thought that had gone into the report.

The CMEWA representative suggested companies will still take a risk-based approach to training. A CCIWA representative reported that businesses and individuals are being more cautious. In response to a UnionsWA suggestion to produce a SHREP video, Mr Andrew Chaplyn advised that a generic video was already available, providing information about the requirements of safety and health representatives.

Dr Davies suggested writing to training providers, to indicate that discussions were ongoing and convey the current thinking of the Commission.

The Commission **AGREED** that the Chair would write a letter to Training Services Australia, expressing the Commission's appreciation for the candour and thought that had gone into providing the report.

ACTION 1

The Chair to write a letter to Training Services Australia, expressing the Commission's appreciation for the candour and thought that had gone into providing the report.

3.3 Application from ATI-Mirage for online training

The Chair presented an application for online SHREP training, recommending the Commission discuss the new application and/or refer it to LAC.

A CCIWA representative suggested referring the extensive application to LAC.

Dr Julia Norris, Expert Member, noted the need to decide and inform providers if the Commission was going to accept online SHREP training as a valid format in the long term and the need to provide guidance if it was accepted.

A CCIWA representative advised that LAC had agreed to send a letter asking providers if they still anticipated a need for online training. UnionsWA representative said the initial Commission decision was to be for a two month period, that LAC had discussed the format of online training if restrictions returned, and suggested providers needed to know if the Commission was going to accredit online training.

A UnionsWA representative submitted that discussion during the meeting demonstrated that Commission members were in agreement that online training was the least preferred option. He suggested that the Commission take more time to consider what training could be provided, if no alternative was available in the future. The Unions WA member commented that LAC should consider what elements could be provided online, with the proviso that the circumstances are exceptional.

The Chair explained the history surrounding the issue, regarding the provisions in the accreditation criteria that allow for variation and different models of training.

Dr Norris questioned whether the Commission would be accepting applications for online training in the next few months. A UnionsWA representative suggested contacting providers about reconsideration of online training. The Chair noted the previous Commission decision, to discuss issues at the next LAC meeting, which may resolve the differing opinions of Commission members.

The Chair proposed the existing accreditation criteria, and the additional criteria drawn up in relation to COVID-19 provisions, be considered by LAC in conjunction with applications.

ACTION 2

LAC to consider the existing accreditation criteria and the additional criteria drawn up in relation to COVID-19 provisions, in conjunction with applications.

ACTION 3

LAC to discuss online SHREP training and provide a report back to the Commission.

3.4 Prevention of Falls at Workplaces Code of Practice – final endorsement

The Commissioner presented the final draft of the *Prevention of Falls at Workplaces* Code of Practice (Falls Code) to the Commission, seeking endorsement to publish. The Commissioner advised that CISAC had reviewed the Falls Code and the Excavation Code as per category B - Minimal Subject Matter Change, from the five categories previously determined by LAC.

This approach enabled an expedient timeframe for important improvements. The Commissioner informed attendees that the prompt release of the updated Falls Code would assist industry, until the harmonised WHS legislation is adopted in Western Australia.

Dr Matthew Davies, Expert Member, asked whether slips, trips and falls at the same level should be included in the Code, in addition to falls from height. The Commissioner advised that this was considered, but such significant changes would have been contrary to the approach taken by CISAC and required further consultation.

The Commissioner suggested the Commission consider a paper at the August 2020 meeting, to provide advice to industry about slips, trips and falls at the same level. The Commissioner noted that the paper could be aligned with the *National Injury Prevention Strategy 2020–2030*, to reduce the injury rate by 20 per cent, as per the Commission's strategic intent. He also suggested that the Commission thank CISAC for their work in updating the Falls Code.

The Commission **ENDORSED** the reviewed *Prevention of Falls at Workplaces* Code of Practice, for referral to the Minister with a recommendation to approve publication.

ACTION 4

The Commissioner to table a paper in relation to slips, trips and falls on the same level at the August 2020 Commission meeting.

ACTION 5

The Commission to thank CISAC for their work in reviewing and updating the Prevention of Falls at Workplaces Code of Practice.

3.5 Abridged version of comparison between the WHS Bill and model legislation

As per the request from CCIWA at the March 2020 Commission meeting, Mr Ian Munns provided a track changed document, indicating the changes made to the National Model WHS Act, to create the WHS Bill for Western Australia.

Commission members agreed that while the document showed the changes made, it was not an actual comparative document. Mr Ian Munn advised that the tracked document was intended to show the changes in context. He informed attendees that a comparison table or summary would be of significant length and, due to other priorities, DMIRS cannot devote the resources required to create this kind of comparison document.

The CCIWA member thanked Mr Munns for providing the document and advised that it had been very useful.

The Commission **NOTED** the briefing.

3.6 Office of the Auditor General report on Regulation of Asbestos Removal

The Commissioner advised that the Office of the Auditor General (OAG) *Performance Audit Report on Regulation of Asbestos Removal* was tabled in the Parliament of Western Australia on 21 May 2020.

The objective of the OAG audit was to assess whether DMIRS effectively regulates asbestos removal, by issuing and renewing licences appropriately and performing risk-based monitoring to reduce the risk of asbestos exposure.

The Commissioner informed attendees that he has scheduled meetings with key DMIRS Safety Regulation and Service Delivery officers to discuss the OAG audit report findings. A briefing paper will be prepared for the 1 July 2020 Commission meeting, summarising the outcomes of these discussions.

The Commissioner noted that some information in the report is not accurate and highlighted the robust licensing system in place. He noted that the report identifies some useful opportunities for improvement which would be considered and the briefing paper will detail actions to be taken.

Dr Alison Reid, Expert Member, highlighted some concerns about training for restricted licensing. The Commissioner agreed that there is room for improvement in training and emphasised the importance of ensuring asbestos removal is carried out correctly. The Commissioner noted that auditing is a vital component to provide assurance to the Commission and community about the regulation of asbestos removal.

A UnionsWA representative asked about the Across Agency Asbestos Group (AAAG). The Commissioner advised that the AAAG would meet in June 2020, with the audit report as one of the main discussion items. The Commissioner suggested inviting an AAAG member to the next Commission meeting, to provide an overview of AAAG work.

A UnionsWA representative suggested the briefing paper would be of interest to the Commission, highlighting concerns from stakeholders, particularly how the regulator responds to asbestos complaints.

The UnionsWA representative informed attendees that the audit report showed only a quarter of complaints are investigated, and there is no triaging of complaints. He explained that UnionsWA would like to see more about this issue in the briefing paper to the Commission.

The Commissioner advised that the Government has provided some additional resources, allowing for the appointment of two specific asbestos officers and another with hygiene expertise at DMIRS. The Commissioner urged members to inform stakeholders that work is underway to address issues raised in the OAG audit report.

UnionsWA asked about the *National strategic plan for asbestos awareness and management 2019-2023*. Attendees requested that the plan be recirculated to Commission members.

The Commission **NOTED** the paper.

ACTION 6

The Commissioner to invite an AAAG member to attend the 1 July 2020 Commission meeting, to provide an overview of work being undertaken by the AAAG.

ACTION 7

The Commissioner to provide an agenda paper for the 1 July 2020 Commission meeting, summarising the outcomes of discussions in relation to the OAG Audit Report.

ACTION 8

The Executive Officer to recirculate the ‘National strategic plan for asbestos awareness and management 2019-2023’ to Commission members, as an attachment to the Commissioner’s paper for the 1 July 2020 meeting.

3.7 Violence and Aggression at Work Code of Practice

The Chair presented the revised draft *Violence and Aggression at Work* Code of Practice (Violence Code), for endorsement by the Commission.

The Violence Code was amended, after a decision was made to separate the *Violence, Aggression and Bullying at Work* Code of Practice into two codes. The DMIRS Safety Education Branch completed a full edit of the draft Violence Code, incorporating recommendations from LAC members, experts and WorkSafe Inspectors.

A UnionsWA representative advised that LAC had recommended the draft Violence Code be sent out for consultation, for a three-month period and moved that this occur. A CCIWA and the CMEWA representatives seconded the proposal.

The Chair noted the need to remove “Bullying” from the recommendation and on the first page of the document the words “Violence and aggression at work” were required – that is “at work” be added.

The Chair thanked the Safety Education Team for their work on the draft Violence Code, and a UnionsWA representative moved that WorkSafe Officers also be thanked for their input.

UnionsWA representative suggested that the public be informed that the *Bullying and Harassment at Work* Code of Practice was being reviewed and would be sent out for public consultation at the appropriate time.

The Commissioner advised that the Australian Human Rights Commission had released the *National Inquiry into Sexual Harassment report* in March 2020, which identified significant scope for improvement. The Commissioner asked the Commission to note the report and refer to it when releasing the *Bullying and Harassment at Work* Code for publication.

The Chair suggested that the Commission thank DMIRS for work on the Code, specifically the Safety Education Branch, WorkSafe Inspectors and experts who contributed. Members noted that the quality of the Code was greatly improved by DMIRS.

The Commission **ENDORSED** the draft *Violence and Aggression at Work Code of Practice*.

The Commission **AGREED** to:

- release the draft *Violence and Aggression at Work Code of Practice* for a three-month consultation period;
- thank the DMIRS officers who contributed to the development of the Code;
- include a sentence in the consultation information, advising that the Australian Human Rights Commission had released the *National Inquiry into Sexual Harassment* report and that comments relating to the report are welcomed as part of the consultation process; and
- include advice in the consultation information that a separate Bullying and Harassment Code is being developed and will be released for consultation in the future.

ACTION 9

DMIRS to arrange for the draft Violence and Aggression at Work Code of Practice to be released for a three-month consultation period. When this occurs, agreed information about the National Inquiry into Sexual Harassment and the separate Bullying and Harassment and Work Code of Practice is to be included in the consultation information.

ACTION 10

DMIRS officers to be thanked for their contribution to the development of the Violence Code.

3.8 Commission Strategic Plan 2019-2022 – final edits

The Chair advised that the Commission Strategic Plan had been finalised with the assistance of a UnionsWA member and the DMIRS Safety Education Branch.

The Chair advised she had approved printing of the Commission Strategic Plan 2019-2022 and that DMIRS had released funds for printing. Commission members will receive a copy of the printed Commission Strategic Plan 2019-2022.

The Commission **NOTED** the advice.

ACTION 11

DMIRS to arrange for the Commission Strategic Plan 2019-2022 to be published on the Commission page of the DMIRS website.

3.9 WHS Bill and Regulations update (verbal)

Mr Ian Munns provided a verbal update on the WHS Bill progress, informing attendees that the Minister was positive that the WHS Bill will pass through Parliament this year. He advised that some minor technical amendments are being made to the WHS Bill, which will be progressed through the Parliamentary process.

Mr Munns informed attendees that Part 2 of the Bill is now with the Legislation Committee which is to report back by August. In terms of the regulations, DMIRS aims to provide an extensive feedback report to the Minister soon, who will decide how to proceed.

The Commission **NOTED** the update.

4 STANDING ITEMS

4.1 Commission newsletter – potential topics for next edition

At the request of the Chair, Commission members suggested:

- Drawing attention to the Commission Strategic Plan.
- Highlighting that the *Violence and Aggression at Work* Code of Practice is to be put out for public consultation, once approved by the Minister.
- Notice of the publication of the revised *Prevention of Falls at Workplaces* Code of Practice.
- Reminding readers that the *Occupational Diving in Western Australia* Code of Practice is out for consultation.

The Commission **AGREED** to the suggestions for topics in the next Commission newsletter.

5 REPORTS

5.1 Legislative Advisory Committee (LAC) – 13 May 2020 meeting

The Chair provided an update regarding the LAC meeting held on 13 May 2020.

Her report noted the key issues discussed which included:

- Nano-diesel particulate matter exposure standards for mining and general workplaces;
- Applications for online SHREP training;
- Continuation of the review process of the *Violence and Aggression at Work* Code of Practice; and
- Commencement of the review process for the *Bullying and Harassment at Work* Code of Practice.

The Commission **NOTED** the LAC report.

5.2 Construction Industry Safety Advisory Committee (CISAC) – Out-of-session review of Prevention of Falls at Workplaces Code

The Commissioner provided an update on the work of CISAC. The meeting focussed on three key issues - COVID-19, the review of the Code of Practice: Excavation and discussion about Concrete Placing Units.

The Commissioner advised that work on the excavation code had slowed, due to the online meeting format but is progressing. He forecast that the issues raised in discussions about concrete placing units would require consideration by the Commission in the future.

CISAC members agreed to seek input from their respective stakeholders regarding the need for further industry guidance and advice concerning the safe use of concrete placing units.

The Commission **NOTED** the update.

5.3 WorkCover WA report (verbal)

Mr Chris White reported that:

- no new silicosis claims related to stone bench top work had been received by WorkCover WA in the past month;
- there are five current workers' compensation insurance claims relating to stone bench tops and two claims relating to non-stone benchtop work ongoing;

- one COVID-19 claim has been accepted – the claim is complex, with the claimant exposed at work overseas;
- no claims of a psychological nature, or relating to working from home during COVID-19 have been received;
- the recommended premium rates have been held constant and the insurance industry has made pragmatic decisions in relation to injured workers during the COVID-19 pandemic; and
- drafting of the new workers' compensation legislation is progressing slowly, with the completed draft expected by July 2020.

There was discussion regarding the number of COVID-19 related claims in other states and territories.

The Commission **NOTED** the update.

5.4 Mines Safety Directorate and MIAC (verbal)

Mr Andrew Chaplyn presented a summary of issues and projects relevant to MIAC. He thanked Christina Folley for taking on his role while he was away.

Mr Chaplyn advised that:

- MIAC would continue online for the next meeting, scheduled for 10 June 2020;
- inspectors are slowly moving back to office-based work, with about 60 per cent currently working from the office, with field work also increasing;
- serious incidents are being inspected on site, while less serious issues are being reviewed online and by phone call;
- work on key projects is continuing, including nano diesel particulates and mental health and wellbeing; and
- the ThinkSafe magazine and 2018-2019 statistics had been published, with the statistics showing an unfortunate increase in injury numbers.

In response to Dr Matthew Davies, Expert Member noting the number of hand injuries in the statistics, Mr Chaplyn agreed to follow up on the categories of injury.

The Commission **NOTED** the update.

5.5 Regulatory Activity Reports – April 2020

Mr Ian Munns presented the Regulatory activity statistics report.

The CCIWA representative asked about the progress of recruiting new inspectors. Mr Munns advised that DMIRS is progressively recruiting inspectors with some currently undergoing a 6-week training course. Recruitment is looking to specifically employ inspectors with investigations skills.

In response to a question from UnionsWA, Mr Munns informed attendees that DMIRS is currently advertising for seven investigators, with some required in regional areas. He indicated that there has been a high level of interest shown but it was necessary to readvertise in Albany. The Commissioner advised that five inspectors had been appointed since additional funding was announced and there had been a lot of interest in the investigator positions.

The Commission **NOTED** the report.

5.6 Fatalities and significant incidents

The Commissioner advised there had been 12 confirmed work-related traumatic injury fatalities notified to DMIRS for the 2019–20 financial year (as at 31 May 2020), falling within the Department's recording guidelines.

The Commissioner advised that since the last report to the Commission there have been no confirmed work-related traumatic injury fatalities notified to DMIRS, falling within the recording guidelines.

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

5.7 Exemption Certificates

There were no exemption certificates granted since the previous meeting.

The Commission **NOTED** the advice.

6 OTHER BUSINESS

6.1 Resumption of AWG as an essential sub-committee

The Chair proposed to the Commission that the status of non-essential be lifted in relation to the Agriculture Working Group (AWG). The AWG was deemed non-essential at the outset of the COVID-19 pandemic, but with the easing of restrictions the Chair proposed the AWG should now meet. The Chair advised that CBH Group had donated \$10,000 to the campaign being managed by the AWG.

Commission members **AGREED** with the proposal for the AWG to resume as an essential sub-committee.

The next meeting of the AWG will be held on Friday 5 June 2020.

7 CLOSE AND NEXT MEETING

In closing the meeting, the Chair informed attendees that it was her last as Chair of the Commission. She urged members to maintain the momentum of work. Ms Mayman expressed her enjoyment during her time as Chair of the Commission, thanked all members for their cooperation and wished them good luck in their future work with legislation and other responsibilities.

A UnionsWA representative passed on the Commission members' appreciation of the time Ms Mayman had spent as Chair, noting the increase in work and projects after she had taken on the role. The Commissioner also thanked Ms Mayman, noting the overall good working relationship he had enjoyed with her.

There being no further business, the Chair declared the meeting closed at 10.55am. The next meeting is scheduled for 1 July 2020.

**MINUTES OF MEETING NO: 396
OF THE
COMMISSION FOR OCCUPATIONAL SAFETY AND HEALTH
HELD ON 3 JUNE 2020**

ENDORSED AS A TRUE AND ACCURATE RECORD OF THE MEETING

Stephanie Mayman

Chair

Date