

Commission for Occupational Safety and Health MINUTES – 5 May 2021

Meeting No:	406	Time:	8.30am
Venue	MS Teams	Secretariat:	Department of Mines, Industry Regulation and Safety (DMIRS)

Attendees

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

Guests

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

Apologies

Dr Lin Fritschi	Expert Member
Ms Erin Gisborne	UnionsWA
Mr Paul Moss	Chamber of Commerce and Industry WA

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 of the Commission at 8.40am, noting the need to meet virtually in-light of the current COVID-19 restrictions, to progress important items on the agenda.

The Chair welcomed Ms Debbie Larson (UnionsWA) as a proxy for Ms Erin Gisborne and welcomed Mr Ian Munns following his return from leave.

1.2 Apologies

Apologies were accepted from Dr Lin Fritschi, Ms Erin Gisborne and Mr Paul Moss.

Confirmation of agenda

The agenda was confirmed as the business of the meeting.

1.3 Declarations of Conflicts of Interest

There were no declarations of conflicts of interest.

1.4 Other Business admitted by the Chair

At the request of the Commissioner, the Chair admitted an item under other business, for the Commission to receive an update on Safe Work Australia activities.

2 PREVIOUS MEETING/S

2.1 Confirmation of previous meeting minutes

The Commission **ENDORSED** the minutes of meeting 405, held on 7 April 2021.

2.2 Review action list from previous meeting

The Commissioner drew members' attention to general action list items:

Action 8 of 5 August 2020 – *The Commissioner to provide the Safe Work Australia report of support arrangements in place for people affected by workplace fatalities and serious injuries to members.* The Commissioner advised of a Workplace Relations Ministerial meeting to be held on 20 May 2021, during which material relating to this action is expected to be endorsed, which will allow for the information to be shared with the Commission.

Action 13 of 7 October 2020 – *DMIRS to provide a paper to assist the Commission to consider options to address issues relating to assessor proportions.* The Commissioner provided an interim document listing assessors and number of assessments made. A final paper in relation to the issue will be presented at the June Commission meeting.

The Chair noted that general action list items **Action 4** and **Action 12 of 3 March 2021** were included in the meeting Agenda Items.

The Executive Officer presented a response received from the Director Dangerous Goods and Petroleum Safety from DMIRS in relation to general action list item **3.1 of 1 May 2019** - *DMIRS to provide a report to the Commission, with a focus on any systemic issues that may require a policy or educational response, upon completion of the investigation into the incident at Chevron's Gorgon LNG facility.* The response advised that investigation into the event was complete and DMIRS had determined that no further action was required under the *Dangerous Goods Safety Act 2004*.

Mr Ian Munns offered to obtain additional information to determine if any systemic issues had been identified during the investigation and report back to the Commission.

After meeting: On 6 May 2021, Mr Munns provided advice to the Commission that there:

- have been no systemic issues identified during the investigation of the incident involving release of mercury into the environment in 2019; and
- is no evidence to show that there is any relationship or connection between 2019 event and the most recent issues involving mercury at the Gorgon Facility.

Commission members had no further comments in relation to the general action list or the Legislative Advisory Committee (LAC), LAC action list.

2.3 Advice from LAC regarding WHS laws code of practice review process

The Chair sought Commission comments regarding the work health and safety (WHS) code of practice review process suggested by LAC. She also highlighted the principles suggested by LAC in relation to the review process.

There was consensus that duplication of codes must be avoided. Members expressed the view that important elements from some Western Australian occupational safety and health (OSH) codes should be retained and incorporated into some model WHS codes.

The Commission **AGREED** to the following principles in relation to codes of practice under the WHS laws:

1. avoid duplication of codes;
2. adopt WHS codes as a preference – revoke OSH codes with a WHS equivalent;
3. if principle 2 would lead to significant loss of high quality content from a OSH code, that is superior to content in the equivalent WHS code, then the Commission may consider adding elements from the OSH code to the duplicate WHS code, or potentially replace the WHS code with the OSH code entirely; and
4. OSH codes that do not have a WHS equivalent may be transitioned over to the WHS framework, with consideration of whether the content of the code would duplicate the WHS Regulations and noting that OSH codes will refer to repealed legislation.

Commission members sought clarification of the codes requiring review, removal or updating and requested that the table from LAC be updated, to clearly indicate decisions that have been made. Mr Ian Munns suggested that the updated document should clearly distinguish between review principles and process. The Commission **AGREED** that the table of codes should be updated.

The Chair drew attendees' attention to comments provided by LAC members, representing UnionsWA, CCIWA and CMEWA, in relation to the three codes prioritised for discussion by the Commission.

Following discussion, the Commission made the decisions below regarding the three codes:

- **Abrasive blasting** – the Commission **AGREED** to revoke the OSH code and adopt the model WHS Code of Practice: *Abrasive blasting*;
- **Control of noise in the music entertainment industry** – the Commission **AGREED** that information contained in the OSH code should be incorporated into an information sheet or other guidance material, to support the WHS Code of Practice: *Managing noise and preventing hearing loss at work*;
- **Safeguarding of machinery and plant** – the Commission **AGREED** to adopt the model WHS Code of Practice: *Managing risks of plant in the workplace* and incorporate some elements from the Western Australian OSH code.

Dr Matthew Davies suggested that the Western Australian OSH *Safeguarding of machinery and plant* Code of Practice (OSH Plant Code) provided superior guidance to the WHS code.

A UnionsWA representative supported this view, noting superior elements such as better images, examples and practical guidance, which were particularly important in light of the high number of plant related fatalities in the Western Australian agricultural sector. He also noted that the OSH Plant Code has not been updated since 2009 and that subject matter experts should be consulted, to ensure that contemporary language is used.

A CCIWA member suggested that, if the Commission considers that OSH codes contain practical examples that would improve the equivalent model WHS code, then advice should be provided to Safe Work Australia (SWA) with a request to update the model WHS code.

Members saw benefit in a request being made to SWA, for the model WHS Code of Practice: *Managing risks of plant in the workplace* to include more practical examples.

LAC members will continue review work on the codes highlighted in the *Priority ranking for reviewing codes of practice* and provide comments to the Executive Officer by 28 May 2021.

The Chair thanked LAC representatives for their work in providing a proposed process and in reviewing code requirements.

Mr Andrew Chaplyn advised that a special Mining Industry Advisory Committee (MIAC) meeting will be held on 12 May 2021, to consider the review process for mining codes of practice.

The Commission **ENDORSED** the approach determined by LAC, including that all National Occupational Health and Safety Commission codes and the 'Health and safety in welding' code should be revoked.

ACTION 1

DMIRS to update the table of OSH and WHS codes based on Commission decisions and clearly distinguish between review principles and process.

ACTION 2

LAC members to review the seven codes highlighted in the priority ranking for reviewing codes of practice and provide comments to the Executive Officer by 28 May 2021.

2.4 Updated Draft Violence and Aggression at Work Code of Practice

The Chair and Commissioner provided the draft Code of Practice Violence and Aggression at Work (Violence Code) for Commission consideration of amendments, advising the draft would be made available for reference during the consultation period for the Workplace Behaviour Code of Practice (Behaviour Code).

The Chair highlighted the advice provided by DMIRS, in relation to releasing the Violence Code before the Behaviour Code.

A CMEWA representative sought clarification of the intention and timing to make changes to the family and domestic violence information contained in Appendix 3 of the Violence Code. The Commissioner advised that commentary, explaining that Appendix 3 is still being worked on and will be changed substantially, could be provided with the Violence Code when it goes out with the Behaviour Code for the consultation period.

In response to Dr Matthew Davies commenting that a checklist had been removed, the Commissioner advised that LAC had agreed that an information sheet would provide more suitable practical support.

A UnionsWA representative was supportive of providing the draft Violence Code with the Behaviour Code, when it is released for public consultation, noting the length of the process to review the code date.

The CMEWA representative agreed with the proposal, on the proviso that the suggested commentary related to Appendix 3 accompany the Violence Code.

A CCIWA representative suggested that the Violence Code be referred back to LAC for consideration, in light of the number of amendments made since the public consultation period. The Commissioner commented that it would not be efficient to re-open up discussion of the entire Violence Code at LAC and delay consultation for the Behaviour Code.

The Commission **AGREED** that the Violence Code should be made available for reference during the consultation period for the Behaviour Code.

The Commission **AGREED** that commentary, explaining that Appendix 3 is still being worked on and will be changed substantially, should be provided with the Violence Code when it goes out with the Behaviour Code for the consultation period.

Commission members **AGREED** that, while the consultation process for the Behaviour Code was ongoing, the Violence Code would be referred back to LAC and specific issues would be dealt with by exception only, noting that the entire Violence Code is not up for consideration.

ACTION 3

DMIRS to add commentary, explaining that Appendix 3 is still being worked on and will be changed substantially, to the Violence Code when it goes out with the Behaviour Code for the consultation period.

ACTION 4

LAC to discuss specific issues by exception in relation to the Violence Code (while the consultation process for the Behaviour Code was ongoing), noting that the entire Violence Code is not up for consideration.

2.5 Workplace Behaviour Code of Practice – questions for consultation

The Chair and Commissioner sought endorsement of consultation questions agreed by LAC, to accompany the draft Workplace Behaviour Code of Practice (Behaviour Code) when it is released for public consultation.

The Chair noted that on 3 March 2021, the Commission agreed that questions relating to definitions, leadership styles and the audit tool, should accompany the draft Behaviour Code when it is released for public consultation.

Commission members **ENDORSED** the six questions agreed by LAC, noting that DMIRS would arrange for release of the Behaviour Code as per Action 4 of 3 March 2021.

2.6 Data Linkage Project - potential occupational data sources

The Chair highlighted email correspondence from Dr Lin Fritschi, Expert Member, in which she noted previous experience of the difficulties involved in analysing WorkCover WA data and the option of ongoing or one-off data linkage.

Dr Matthew Davies was of the view that WorkCover WA data could be useful and suggested seeking more information about what could be offered, and if information about occupation could be captured. Dr Julia Norris advised that most medical forms include an occupation field, but it is regularly left blank or marked as “retired” which does not result in useful data.

The Executive Officer advised that correspondence had been sent to the Department of Health requesting the contact details of the Data Linkage Project team member responsible for working with organisations at the data source. She agreed to follow up with them again.

2.7 DMIRS advice regarding approval of Violence and Aggression at Work Code of Practice

Commission members considered the advice provided by DMIRS, as to whether it is possible to release the Violence and Aggression at Work Code of Practice before the Workplace Behaviour Code of Practice during discussion of agenda items 2.4 and 2.5.

The Commission **NOTED** the advice.

3 AGENDA ITEMS

3.1 COVID-19 pandemic and recovery

The Chair opened the floor for discussion in relation to COVID-19.

The Commissioner advised that Safe Work Australia had published workers' compensation claims data relating to COVID-19 and noted the current situation occurring in Western Australia.

The Commission **NOTED** the information.

3.2 Commission Work Plan – to inform discussion

The Chair provided the endorsed Commission *Work Plan* for members' reference, to inform discussion and consideration of priorities.

The Commission **NOTED** the *Work Plan*.

3.3 Amendments to Guidance note: Safe stone production, fabrication and installation

The Chair sought endorsement to publish the updated Guidance note: *Safe stone production, fabrication and installation*, advising of correspondence from Dr Lin Fritschi, Expert Member, which requested that the Commission consider deleting the word "Safe" from the title of the guidance note.

Dr Fritschi's comments argued that artificial stone is not a safe product and there is evidence that levels cannot be reduced below the occupational exposure limit in many common situations. She also noted that very few guidance notes promise to deliver safe work.

Commission members supported the removal of the term "Safe" from the title of the guidance note and **AGREED** the title should be changed to "*Working with stone: production, fabrication and installation*".

A CCIWA representative advised of changes by industry, to make manufactured stone with a lower silica content. Commission members welcomed the information, but noted that silica is not the only dangerous inhalable substance. Members emphasised the importance of ensuring that procedures are in place to protect workers from inhaling all types of dust.

The Commissioner informed attendees that SWA is undertaking work on a code of practice relating to silica and having discussions about further regulations and changes regarding dry cutting processes. The outcomes of the work will be brought to the Commission.

In response to a question from Dr Matthew Davies, the Commissioner advised that a nationally consistent approach to health surveillance, in particular low dose of high-resolution computed tomography (HRCT) scans, had been raised with SWA in relation to its inclusion in the SWA Silica Code, but a decision had not yet been made.

The Commission **ENDORSED** the proposed amendments to the Guidance note: *Safe stone production, fabrication and installation* to reflect the amendment to the Occupational Safety and Health Regulations 1996, to require a low dose HRTC scan instead of an X-ray for health surveillance.

ACTION 5

DMIRS to make the proposed changes to the Guidance note: 'Safe stone production, fabrication and installation' and amend the title to 'Working with stone: production, fabrication and installation' then arrange for publication and Chinese translation.

3.4 Update on WorkSafe prosecution - Auscon Metals Pty Ltd

The Commissioner provided an update in relation to a successful WorkSafe prosecution of Auscon Metals Pty Ltd (Auscon Metals), which followed an incident where a machine operator suffered injuries when his right arm was pulled into a conveyor belt while he was attempting to clear a jam in the roller. The Commissioner drew attention to the prosecution of Auscon Metals for its failure to notify WorkSafe.

The Commission **NOTED** the report.

3.5 Update on WorkSafe prosecution - Leyburn Nominees Pty Ltd

The Commissioner provided an update in relation to a successful WorkSafe prosecution of Leyburn Nominees Pty Ltd (Leyburn) which followed an incident in which a rigger suffered a serious injury to his lower right leg due to it being trapped between a rack and bundle of bucked drill casings weighing several tonnes. Leyburn was fined and charged for breaching provisions of the *Occupational Safety and Health Act 1984*, specifically section 19(1), and section 19A(2).

After this incident, Leyburn created and implemented a new operating procedure for the handling of steel casings.

The Commissioner advised that media releases prepared in relation to both the Auscon Metals and Leyburn prosecutions were not released due to the State Government Election caretaker period.

A UnionsWA representative commented that the report provided to the Commission was more informative than media releases usually released in relation to prosecutions and requested that similar reports be provide to the Commission in the future.

The Commission **NOTED** the report.

3.6 Update on 2021 events coordinated by the WorkSafe Directorate of DMIRS

The Chair provided a report of WorkSafe events coordinated by DMIRS that are planned for 2021 and sought nominations for two judges for the Work Health and Safety Excellence Awards.

Commission members **AGREED** to nominate Mr Owen Whittle and Dr Matthew Davies.

3.7 Update on presentation to MIAC by Training Accreditation Council and Australian Skills Quality Authority

Mr Andrew Chaplyn provided an update regarding the presentation to MIAC by the Training Accreditation Council (TAC) and Australian Skills Quality Authority (ASQA). Mr Chaplyn noted the presenters advised that TAC and ASQA welcome information from the Commission and regulators regarding issues of concern.

A UnionsWA representative advised that he intends to meet with TAC and ASQA representatives to discuss issues of concern. The Chair noted the presentation provided general information and that more detail in relation to the auditing process would be beneficial.

The Chair asked the Commission to note the presentation and suggested that there is need to continue to seek further information on issues relating to quality of training.

The Commission **NOTED** the presentation slides and information provided.

The Commission **AGREED** to continue to raise issues relating to quality of training as required, rather than request another presentation from TAC and ASQA, as per Commission **Action 12 of 3 March 2021**.

4 STANDING ITEMS

4.1 Legislative Advisory Committee meetings – 14 and 21 April 2021

The Commissioner provided reports of the 14 April 2021 and 21 April 2021 LAC meetings, thanking LAC members for their work and attendance at an extraordinary meeting held to discuss the prioritisation of the codes of practice.

The Commission **NOTED** the report.

4.2 MIAC meeting – 14 April 2021 and Mines Safety Directorate update

Mr Andrew Chaplyn provided a summary of the MIAC meeting of 14 April 2021, highlighting:

- the Workplace Exposure Standard review and concerns raised by MIAC members regarding the time frame for the review;
- a presentation on Mentally Healthy Workplace Audits which was well received by MIAC members; and
- a document being prepared to outline the information requirements of industry and employer groups in relation to the recording and reporting of fly-in fly-out and drive-in drive-out roster statistics.

The Chair noted that the Mentally Healthy Workplace Audits presentation highlighted improvements made by industry in reacting to and managing mental health issues, but also highlighted areas where there was opportunity for improvement.

The Commission **NOTED** the report.

4.3 WorkCover WA verbal update

Mr Chris White provided a verbal report, advising that the recommended workers' compensation premium rate for 2021-2022 had been released and come into effect in June 2021. He advised that there had been no new silicosis claims and that work on the draft workers compensation legislation is continuing.

The Commission **NOTED** the update.

4.4 Regulatory Activity Report – March 2021

Mr Ian Munns highlighted a typographical error in the Regulatory Activity Report, noting the year-to-date number of exemptions is 51, not 61.

The Commission **NOTED** the Regulatory Activity Report to 31 March 2021.

4.5 Fatalities and significant incidents

The Commissioner advised that there were two confirmed work-related traumatic injury fatalities notified to DMIRS, falling within the department's recording guidelines.

A 38-year-old maintenance worker and manager attended a fallen sign post with attached conduit. The manager left to get equipment and on his return found the worker deceased. A 21-year-old apprentice entered a roof space to check access for installation of new wiring and came in contact with an energised source and suffered a fatal electric shock.

A UnionsWA representative noted concerns about lack of industry knowledge of the requirements for buildings to be de-energised when working in roof spaces and the need to highlight this requirement. The Commissioner advised that DMIRS Building and Energy Division and WorkSafe are working closely to determine issues involved in relation to the death in a roof space and agreed with the need to alert industry to the safety requirements in that environment.

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

4.6 Exemption Certificates

There were 10 exemption certificates granted since the April 2021 meeting.

The Chair highlighted that the majority of the exemption certificates related to the bushfire recovery process.

The Commission **NOTED** the exemption certificates.

4.7 Commission Correspondence

The Chair noted a formal response to a letter to the Minister regarding resourcing of DMIRS to implement WHS legislation had not yet been received, although an initial verbal response indicated that resources may not be made available.

The Chair has requested a meeting with the Western Australian Fishing Industry Council Inc. in relation to the draft Occupational Diving Code of Practice, which is yet to be held.

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

5 OTHER BUSINESS

5.1 Safe Work Australia – report of activities

The Commissioner advised that the next batch of workplace exposure standards were to be reviewed and sought Commission and sub-committee member's comments on the standards.

National Assessment Instruments are being reviewed by the Construction Industry Safety Advisory Committee, with input to be provided to Safe Work Australia.

In relation to diesel particulate matter, the Commissioner noted diesel emissions were the subject of discussions at the national level and he has advocated for a diesel particulate exposure standard and for the standards adopted in Western Australia and New South Wales to be considered nationally.

The Commission **NOTED** the update.

6 CLOSE AND NEXT MEETING

There being no further business, the Chair declared the meeting closed at 10.55am. The next meeting is scheduled for 2 June 2021.

**MINUTES OF MEETING NO: 406
OF THE
COMMISSION FOR OCCUPATIONAL SAFETY AND HEALTH**

HELD ON 5 MAY 2021

ENDORSED AS A TRUE AND ACCURATE RECORD OF THE MEETING

Dr Trish Todd

Chair

Date