



Meeting No.	12	Time:	9.00am
Venue	Koorling Dandjoo Conference Room, 1 Adelaide Terrace	Secretariat:	Department of Mines, Industry Regulation and Safety (DMIRS)

Work Health and Safety Commission Minutes – 7 June 2023

Attendees

Dr Patricia Todd	Chairperson
Ms Sally North	A/WorkSafe Commissioner
Dr Matthew Davies	Expert member
Dr Lin Fritschi	Expert member
Ms Jennifer Low	Chamber of Commerce and Industry Western Australia (CCIWA) (via Microsoft TEAMS)
Mr Glenn McLaren	UnionsWA
Mr Owen Whittle	UnionsWA
Ms Naomi McCrae	UnionsWA
Ms Christina Folley	A/Director Mines Safety Directorate, DMIRS

Guests

Ms Laila Nowell	Chamber of Minerals and Energy (CME) (nominated member)
Mrs Agnes McKay	CCIWA (nominated member)
Mr Chris White	Chief Executive Officer, WorkCover WA

Executive Officer (EO)

Ms Helen Brown	DMIRS
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1 ADMINISTRATION

1.1 Opening and welcome

1.2 Apologies

Darren Kavanagh

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

1.4 Declarations of conflicts of interest

Nil

1.5 Other business admitted by the Chairperson

No additional business was raised.

2 PREVIOUS MEETINGS

2.1 Confirmation of previous meeting minutes

The Minutes were **ENDORSED** as a true and correct record subject to minor refinements to the wording as requested by two members.

2.2 Review action list from previous meeting

Action items on the Action List were discussed by default. The Chairperson requested that the following action item be followed up:

The training materials for HSRs will be reviewed with a view to including material relating to the new psychosocial regulations in the WHS Regulations.

The Work Health and Safety Commission (WHSC) **NOTED** the Action List.

ACTION 1 – EO will consult with DMIRS regarding the progress of the inclusion of information in the training materials for HSRs relating to the new psychosocial regulations in the WHS Regulations.

2.3 Codes of Practice and guidance

The WHSC was presented with an updated table tracking the development of codes of practice and guidance that have been the subject of a decision by the WHSC. Items were discussed by default.

The A/Director Mines Safety noted an error in relation to development of a code of practice for the design and management of mining and construction accommodation. This code is not as far advanced as indicated, with comprehensive consultation with stakeholders currently taking place.

The WHSC **NOTED** the updated table tracking the development of codes of practice and guidance.

3 ITEMS FOR NOTING

3.1 HSR Training – Approvals

The WHSC was presented with applications by providers of training for Health and Safety Representatives (HSRs) for endorsement, following approval out of session by the Chairperson.

The WHSC:

- **ENDORSED** the approvals for the following training providers to deliver the five-day course of training for HSRs :
 - North Metropolitan Health Service (nominated trainer Emma Shepherd)
 - Saferight Pty Ltd (nominated trainer Paul Francis)
- **ENDORSED** the approval for the following training providers to deliver the one day refresher training course:
 - Aurenda Training Services
 - Aveling
- **ENDORSED** the approvals for the following additional nominated trainers:
 - Training Services Australia – Cindy O’Dea
 - WALGA Training – Mick Holmes.

The fact that some large public sector organisations create a registered training organisation to conduct their own ‘in house’ training of HSRs was queried. This was in the context of whether HSRs are given the option of choosing the course they attend, in accordance with section 72(1)(c) of the *Work Health and Safety Act 2020*. Another concern expressed was that when HSRs in the health system are trained ‘in house’ it is inevitable that they will be pulled out of training for work reasons. Further, it is unlikely that HSRs are exposed to different perspectives through ‘in house’ training. The Chairperson commented that the WHSC unfortunately has no way of monitoring these types of issues. It was suggested that such organisations could be subject to an audit in future.

3.2 **Construction Industry Safety Advisory Committee** – Meeting report - 16 May 2023
See Item 4.10

3.3 **Mining and Petroleum Advisory Committee (MAPAC)** – Meeting report - 12 April 2023
The WHSC **NOTED** the MAPAC report (which is published on WorkSafe website)

3.4 **Agricultural Safety Advisory Committee (ASAC)** – Meeting report – Meeting 16 May 2023
The WHSC **NOTED** the ASAC report which focused on the *Inquiry into the agricultural industry in Western Australia* report.

3.5 **Legislative Advisory Committee (LAC)** – Meeting reports – 19 April and 17 May 2023
The WHSC **NOTED** the LAC meeting reports, which focused on regulatory reforms to manage the risk of respirable crystalline silica in the workplace, and the *Inquiry into the agricultural industry in Western Australia* report.

Clarification was given regarding a reference in the report to the prohibition of silica affecting the construction and mining industries. This reference was in the context of unintended consequences of further regulation regarding working with silica.

3.6 **WorkSafe events and promotions update**

The WorkSafe events and promotions update detailed two recent events:

- A series of recent works in the mining industry conducted by the WorkSafe Mines Safety Directorate titled *How tough are we now? The psychosocial wellbeing of mine site workers*.

- WorkSafe Industrial and Regional Directorate's participation in the Careers Expo 2023 + VET Expo on 18-21 May at the Perth Convention and Exhibition Centre.

Jennifer Low and Owen Whittle agreed to be the WHSC representatives on the judging panel for the Work Health and Safety Excellence Awards 2023.

It was suggested that OHS Masters students may be a potential pool when recruiting. The A/WorkSafe Commissioner mentioned WorkSafe's participation in the Careers Expo 2023 + VET Expo, but was receptive to the idea of engaging with OSH Masters students.

A member questioned whether WHSC members could receive invitations to 'invitation only' events held by WorkSafe, such as the Human Factors Forum. This will be followed up.

The WHSC **NOTED** the WorkSafe events and promotions update.

ACTION 2 – The EO will ask WorkSafe whether WHSC members can be invited to 'invitation only' events.

3.7 **Regulatory Activity Report**

The Regulatory Activity Report to 30 April 2023 was reviewed and **NOTED** by the WHSC.

Noting that no applications to become an Accredited Asbestos Assessor have been received during in the 2022-23 period, the Chairperson queried whether the application fee has been reduced as planned. The A/WorkSafe Commissioner responded that this has not taken place yet due to the need to seek clarification regarding the Commissioner's powers in this respect. Currently WorkSafe is working through the mechanics of reducing the fee, and it is hoped that the reduction will be in place by the beginning of the new financial year.

The A/WorkSafe Commissioner also referred to the lack of data in the report relating to audits of WHS licence holders and accredited assessors, saying that this was due to complications arising from the restructure of WorkSafe. It is expected that this problem will be soon overcome.

Following a query regarding whether enforceable undertakings (as per section 216 of the *Work Health and Safety Act 2020*) can be included in the Regulatory Activity Report, the A/WorkSafe Commissioner agreed to investigate.

ACTION 3 – A/WorkSafe Commissioner to investigate adding enforceable undertakings to the Regulatory Activity Report.

3.8 **Fatality Update Report**

The WHSC **NOTED** the Fatality Update Reports for April and May 2023.

3.9 **Exemption certificates**

The WHSC was informed of exemptions granted to four entities under the Work Health and Safety Regulations 2022 for the period 16 March to 10 May 2023 inclusive, which included exemptions relating to:

- regulation 459(a) (asbestos removal supervisor must be present for Class A asbestos removal work)

- regulation 472(1)(a) (asbestos removalist must ensure asbestos waste is contained and labelled in accordance with Schedule 9 clause 8 before the waste is removed from an asbestos removal area)
- regulation 425 (asbestos register)
- regulation 246 (items of plant to be registered)
- regulation 452(3)(b) (identification and removal of asbestos before demolition)
- regulation 453(1)(b) (Identification and removal of asbestos before demolition of residential premises).

It should be noted that there are generally conditions attached to these exemptions. The WHSC **NOTED** the report on exemptions granted.

3.10 Correspondence

- 3.10A – Minister to Chairperson of WHSC – Approval for revocation of Code of Practice: *Styrene*
- 3.10B – Notification to Royal Australian College of General Practitioners – Update re medical fitness to drive [reg. 184D of Work Health and Safety (General) Regulations 2022].

The WHSC **NOTED** the correspondence above.

3.11 Affected Families and Workers Advisory Committee (AFWAC) – Meeting report – 27 April 2023

The Chairperson suggested that a review of the role of AFWAC may be warranted, given that a quorum is usually not achieved. Perhaps a committee is not the most appropriate mechanism for addressing how bereaved families and affected workers are supported. The A/WorkSafe Commissioner will pursue this matter. A member commented that committee members are often from regional areas and this is an impediment to attending meetings; consideration could be given to this issue.

The WHSC **NOTED** the AFWAC report.

ACTION 4 – The A/WorkSafe Commissioner will review the role and functioning of the Affected Families and Workers Advisory Committee.

4 STANDING ITEMS AND ITEMS FOR DISCUSSION

4.1 WorkCover WA report (standing item)

The Chief Executive Officer of WorkCover WA reported on workers' compensation matters. The Workers' Compensation and Injury Management Bill 2023 is on track for passage through parliament. Any delay would compromise the implementation planned for next year. With the recent changes in Cabinet, it is hoped that the priority for the passing of the Bill does not change. WorkCover WA is poised to undertake consultation on the accompanying regulations as soon as possible.

A major and successful event was held by WorkCover WA last week where stakeholders gathered for engagement on workplace rehabilitation and other changes.

The WHSC **NOTED** the WorkCover WA report.

4.2 **WHSC Strategic Plan – follow up to Strategic Planning Workshop**

The Chairperson sought confirmation from members and guests that they approved of the 'plan on a page' Strategic Plan previously circulated. It was **AGREED** that the plan is accepted.

The Chairperson also sought feedback on the process for developing the Strategic Plan. The feedback expressed was that the process was very smooth and effective. It helped clarify the focus of the WHSC. The Chairperson thanked members and guests again for their participation.

Discussion then turned to operationalisation of the Strategic Plan, and fleshing out the broad strategic initiatives to include actions to be taken. One view was that the Strategic Plan is 'concrete' enough and does not need much further detail, while another view was that some strategic initiatives are broad and need further detail.

The Chairperson asked members and guests to send through any actions according to their expertise and views that they believe should be part of one of the strategic initiatives. It was agreed that items on the Strategic Plan be numbered to facilitate reference to the Plan.

The WHSC was reminded of the need for prioritisation of items on the Strategic Plan so that the most important items are addressed.

ACTION 5 – Members and guests will be sent the Strategic Plan and a copy of initiatives collated at the Workshop, with a view to them responding with any particular points they wish to be incorporated within the strategic initiatives.

4.3A **Silica: Amendments to Code of Practice *Managing the risks of respirable crystalline silica from engineered stone in the workplace***

The WHSC **ENDORSED** the minor amendments sought by the Construction Industry Safety Advisory Committee to the Code of Practice: *Managing the risks of respirable crystalline silica from engineered stone in the workplace*, as well as additional minor amendments proposed by senior WorkSafe staff. The amendments simply make more explicit the specific requirements of the Work Health and Safety (General) Regulations 2022 in relation to managing the risks of working with silica.

The WHSC **AGREED** that, due to the minor nature of the amendments to the Code, public consultation is not required. The Code is based on the Safe Work Australia code.

4.3B **Silica: Safe Work Australia – May 2023 News Update – National approach to silica**

The WHSC was presented with an extract from the Safe Work Australia (SWA) May 2023 News Update which announced that Australia's work health and safety (WHS) Ministers have agreed to: (i) implement SWA's recommendations for additional regulation of all high risk work with silica containing materials; and (ii) give further consideration to a prohibition on the use of engineered stone. SWA recently concluded public consultation on options for prohibition on the use of engineered stone. The one hundred responses received will help inform strategies to manage the issue. An expert member recommended that the submission by the Australian Institute of Occupational Hygienists be circulated as it is very well argued and researched.

ACTION 6 – Circulate the submission to SWA by the Australian Institute of Occupational Hygienists in relation to options for prohibition on the use of engineered stone.

4.3C **Silica** (standing item)

An employer representative referred to SWA's recent amendments to the model Work Health and Safety Regulations in relation to engineered stone, in particular, an express prohibition on the uncontrolled processing of engineered stone products which has been introduced in regulation 184A of Part 4.9. Where this Part previously focused on the controlled use of power tools on engineered stone, the focus is now on any type of 'processing' of engineered stone, which is prohibited unless the processing is controlled. Definitions of 'processing' and 'engineered stone' have been introduced. The employer representative referred to the concerns of industry in that the definition of engineered stone encompasses marble in some situations.

The AWorkSafe Commissioner noted that the WHS regulations are set up differently in WA to most other jurisdictions in respect to mining. Additional regulations relating to working with silica will be closely monitored as there are already requirements for managing the risks of silica in the Work Health and Safety (Mining) Regulations 2022. Consideration will be given to adopting the new model regulations for silica in the sectors that require it.

The Chief Executive Officer of WorkCover WA informed the meeting that the last workers' compensation claims relating to silica were received in February 2023.

4.4 **Addressing e-cigarettes within the regulatory framework**

The WHSC considered a letter dated 16 March 2023 from the Cancer Council WA recommending that:

- current regulations made under the *Work Health and Safety Act 2020* be strengthened in relation to e-cigarettes; and
- a code of practice that sets out health and safety duties in relation to e-cigarettes be developed.

The Cancer Council WA claims that while current WHS legislation deals with tobacco smoke, it generally does not deal with e-cigarette aerosols. However, the Public Transport Authority Regulations 2003 extend the definition of "smoke" to include e-cigarette use. The definition of "smoke" in regulation 11(1A) is:

Smoke (*when used as a verb*) means consume, hold or otherwise have control over-

- (a) an ignited tobacco product; or
- (b) an e-cigarette that is generating or releasing (*whether or not by burning*) smoke, an aerosol vapour.

Regulations 11(1) and 11(2) make it an offence to smoke in or on conveyance, or in or on a facility in respect of which a notice is displayed that smoking is prohibited.

Employee representatives supported amending the WHS regulations to incorporate e-cigarettes as evidence is growing about the harm e-cigarettes can cause, including by secondary exposure. It was suggested that the WHSC get on the 'front foot' on this matter. The prevalence of vaping is rapidly increasing.

An employer representative referred to an article in the Australian Journal of General Practice in 2022 that stated that many e-cigarette aerosols do not contain nicotine, and if they do it is generally in very small amounts. Some employees find

that vaping provides a break to de-stress. The Chairperson responded that vaping could be treated in the same way as cigarette smoking where it is permitted in designated areas.

An employer representative suggested that it may be more practical to amend the Alcohol and Other Drugs Guidance than amending legislation. Other points made were that legislation relating to aviation may deal with e-cigarette aerosols, and that nicotine labelling on e-cigarettes is not reliable.

The WHSC **AGREED** to: (a) recommend to the Minister for Industrial Relations that the sections of the WHS legislation dealing with tobacco smoke be amended to include e-cigarette aerosols; and (b) that the Alcohol and Other Drugs Guidance be updated to address e-cigarette aerosols.

ACTION 7 – Respond to the Cancel Council WA, advising of the WHSC’s decision in relation to e-cigarette aerosols.

ACTION 8 – Recommend to the Minister for Industrial Relations that the sections of the WHS legislation dealing with tobacco smoke be amended to include e-cigarette aerosols.

ACTION 9 – Recommend to WorkSafe that the Alcohol and Other Drugs Guidance be updated to address e-cigarette aerosols.

4.5 **Agricultural Inquiry – Responses and way forward**

The WHSC was presented with the following documents for discussion:

- *Inquiry into the agricultural industry in Western Australia – Report to the Worksafe Commissioner* (the Agricultural Report)
- *Worksafe Commissioner’s response to the report* (the Response); and
- an overview of guidance developed by other jurisdictions relating to safety in the agricultural industry.

Discussion centred around Recommendation 6 of the Report and the WorkSafe Commissioner’s responses, which are:

6.1 That a suite of codes of practice and guidance notes directed to the agricultural industry and its various sectors be developed.

Response: Supported. Codes of practice and guidance notes will be referred to the Work Health and Safety Commission for consideration.

6.2 The codes of practice and guidance notes be written as simple ‘how to’ and ‘how not to’ documents.

Response: Supported. WorkSafe will support the Work Health and Safety Commission in the development of user friendly and industry-relevant information for the agricultural sector. This assistance will be a WorkSafe priority.

The Chairperson stated that materials need to be developed that are of use to both the regulator and the agricultural industry. There are existing materials in other jurisdictions, including handbooks, that could be used as a basis for new material. A handbook would be suitable for industry whereas a code would be more useful to the regulator.

The AWorkSafe Commissioner noted that there is already a suite of guidance that is relevant to the agriculture industry (such as *Falls prevention in the agricultural sector guide* and *Quad bikes in the workplace guide*), and suggested that the WHSC identify gaps in guidance. Another suggestion was to insert examples relating to agriculture into existing relevant codes. The Chairperson agreed with these suggestions, saying that the “how to” belongs in a handbook. Rather than

develop an 'agriculture code of practice', safety in specific aspects of the agriculture industry could be incorporated into existing codes.

The A/Director WorkSafe Mines Safety commented that this approach would be consistent with the resources sector, whereby there are some codes specific to that industry but in other circumstances it is expected that WHS codes of practice apply. It is interesting to note that mechanisms of fatal injuries in agriculture are similar to those for underground mining. In a similar vein, another attendee expressed some wariness about the 'specialness' of agriculture, and added that a handbook addressing all risks in agriculture would be a very voluminous document. Putting resources into educating upcoming workers in the agricultural industry rather than the current generation would be a better option.

An employer representative suggested that the agricultural industry is unlikely to be receptive to a large handbook. The A/Director WorkSafe Mines Safety referred to the approach taken with exploration whereby abbreviated codes are broken down into 'glove-box' handbooks. Comments received from mine industry workers at the recent series of events in the mining industry titled *How tough are we now? The psychosocial wellbeing of mine site workers* were that WorkSafe's guidance is often too complex. An expert member stated that those in the agricultural industry respond best to information delivered in person. Direct contact with farmers, rather than through peak bodies, would be ideal.

The A/Director WorkSafe Mines Safety undertook to provide an informative paper about education and the different types of engagement approaches to suit the situation. An employer representative stressed the need to invest time in interacting with workers on safety issues, particularly where this is a poor safety culture. A remote approach may be interpreted as a lack of care, knowledge and priority.

The Chairperson stated having advisers rather than inspectors may help get the message across in the agriculture industry. The A/WorkSafe Commissioner informed the WHSC that WorkSafe is considering reinvigorating a previous program conducted with WorkCover WA whereby advisers visit eligible businesses who have opted in. The advisers would do assessments and make recommendations, particularly in relation to high risk issues. The benefit is in the advisers not being WorkSafe or DMIRS employees. An expert member suggested a network of champions might also be beneficial.

The Chairperson steered the discussion to covering what the WHSC can do to support bringing about change and improvements in safety in the agriculture industry. The Chairperson emphasised the conclusion drawn by the Legislative Advisory Committee (LAC) that aspects of agriculture where the highest number of fatalities are occurring should be targeted. Existing codes can be updated accordingly with references to the agriculture industry. The useful data provided at the recent LAC meeting by an employer representative will be accessed.

The A/WorkSafe Commissioner reported that WorkSafe's Agricultural Working Group is also seeking more specific data to guide the response to the Report. However, data is limited by under-reporting in relation to injuries.

An employee representative suggested engaging with regional agricultural schools and high schools. The A/WorkSafe Commissioner responded that it is planned to engage with agricultural schools.

An employer representative reminded the WHSC about the [SWA agriculture tool](#) that provides information about duties of PCBUs and workers in the agriculture industry under the model WHS laws. This tool could be helpful when developing material.

An expert member suggested a survey of regional health services or general practitioners regarding agricultural workplace injuries. In response, another expert member undertook to investigate whether medical practices that conduct sentinel surveillance can help on this matter.

An employee representative queried whether producing a handbook for the agriculture industry is a priority given other urgent priorities, and suggested that a handbook could soon become outdated. The Chairperson suggested that basing a handbook on the guidance of other jurisdictions would save time. Another employee representative believed that a small 'glovebox' guide is a better concept than a large handbook.

The Chairperson summarised the discussion and the suggested approach:

- draw on more data to highlight specific hazards in the agricultural industry so that the relevant codes of practice can be amended with an agricultural perspective;
- Inspectors be consulted as to their views on the most appropriate form of guidance material; and
- guidance material developed could be adapted from the guidance of other jurisdictions to save time.

ACTION 10 – The WHSC's recommended approach to Recommendation 6 of the Agricultural Report will be conveyed to WorkSafe.

4.6 **Forum for HSR training providers – 3 April 2023 – Report and issues arising**

The WHSC was provided with a summary of the discussion at the Forum for HSR training providers held on 3 April 2023. The Chairperson informed the WHSC that the Forum was well received by training providers. Discussion took place on significant issues that arose.

Training providers consistently felt that the curriculum materials were too dense and were unsure to what extent they were permitted to amend the materials. The Chairperson emphasised at the Forum that training providers can contextualise the materials to suit the audience, and may amend the materials so long as the objectives of the course are met. The Chairperson flagged the need for review of the course materials, stating that the extent of the review must be considered and carried out in conjunction with WorkSafe. Some training providers volunteered to assist with this process.

Some training providers believed that the 'HSR Handbook' previously given to HSRs on completion of the course should be re-introduced. The Chairperson agreed with a suggestion that training providers could produce a handbook for their graduating students. The A/Director WorkSafe Mines Safety was able to bring up a copy of the old HSR Handbook during the meeting; it could be adapted to reflect the new legislation. The A/WorkSafe Commissioner drew attention to the fact that there is a two-page current information sheet available for HSRs on the WorkSafe website. It was **AGREED** that the current information sheet for HSRs will be compared with the old handbook to see whether anything further is needed.

Training providers generally preferred the previous system whereby representatives from WorkSafe visited during the five-day course where feasible, rather than the current WorkSafe online webinar component of the course. They felt that the former arrangement helped create a connection between HSRs and WorkSafe, and reassured HSRs that they have an important role. The Chairperson believes that this matter is already under consideration by WorkSafe.

The requirement for HSR training providers to sight and verify evidence of the participant's identity prior to commencing training was queried, given that it is unlikely someone would fake their identity for the purpose of being able to do the five-day training course. Normally an employer would register a HSR for training. It was **AGREED** that training providers should no longer be required to obtain proof of identity of HSRs enrolling in their courses.

Training providers generally agreed that WorkSafe should re-establish the collection of contact details of HSRs to facilitate a programme of communication. The Chairperson stated that this is something that has already been flagged with WorkSafe, and the WHSC will encourage this initiative.

The WHSC **NOTED** the report on the Forum for training providers.

ACTION 11 – Make initial contact with relevant personnel in WorkSafe regarding a review of course materials for the five-day HSR training course.

ACTION 12 – Compare the current information sheet for HSRs with the old Handbook to determine whether anything further is required.

4.7 **Request to deliver an online refresher training course ('one off')**

The WHSC considered a submission by a training provider seeking approval to deliver a one-day HSR Refresher Training course online. Such approvals are only granted by exception and on a case-by-case basis, given that the WHSC's policy is that face-to-face training is more effective.

In this instance, training would be conducted for HSRs from a large organisation who work in regional or remote locations that are not near to an actual training provider. Travelling to face-to-face training would be costly and time-consuming, and would create resourcing problems for these first responders. Group sizes would be 9-10 people, and the course would be interactive.

Concerns were expressed that HSRs would still be expected to undertake their normal duties during training. Another comment was that in the event of HSRs being called away for an emergency during the course, the loss to the organisation would be less than if flights and accommodation had been paid for.

The WHSC **AGREED** that approval is granted in this instance for HSR refresher training to be conducted online, on the basis that HSRs are released from their duties for the work day, and on the basis that it is a pilot program for which the WHSC requires feedback.

4.8 **Public Sector Safety Management System Code of Practice**

The draft Code of Practice: *Work health and safety and injury management systems for the Western Australian public sector* was presented to the WHSC. Approval was sought for the Public Sector Work Health, Safety and Injury Management Advisory Committee (PSWHSIM Committee), which has public sector and union representation, to establish a working group to undertake a review of the draft and report back to the WHSC.

A robust discussion ensued. An employee representative expressed disappointment that the Code did not address the matter of increased violence and aggression towards members of the public sector who interact with the public, such as health and education personnel. It was also suggested that bullying is very prevalent in the public sector. The Code is generic and simply explains the structure of a safety management system. It has taken years to develop and is felt by some to be different to what was intended. Another employee representative questioned whether the Code would be helpful in such a generalised format.

An employer representative stated that these issues were raised at the December 2022 meeting of the WHSC where it was agreed that the WHSC would seek clarification about the inclusion of matters relating to exposure to vicarious trauma by public officers, and also whether the Code would apply to local government. It is not a useful document and the concerns of the WHSC have not been addressed.

The Executive Officer responded that, following the December 2022 meeting, the matters raised above were followed up. A paper was presented to the February 2023 meeting of the WHSC, whereby WorkSafe's General Manager Information and Stakeholder Engagement provided the following response:

The code will cover the approach and principles to be applied for managing workplace health and safety, and injury management and return-to-work programs, in a systematic way that can be applied to diverse workplaces within agencies, and scalable to the agency's operational size. It will also be applicable to local government.

The code will be supported by a suite of guidance in a public sector one-stop shop, hosted in the SmartPlan section of the new SafetyLine Hub. To assist in hazard identification and risk management activities undertaken to populate the management system for a public sector agency, content will include a directory of codes covering hazards that could be encountered in public sector workplaces, as well as tailored templates, audits and other publications. This will include links to useful resources from other jurisdictions, such as the recently released toolkit [Preventing Vicarious Trauma](#) produced by the CPSU (Victorian Branch). The one-stop shop will also house WorkCover WA information and guidance relating to injury prevention and management. Links will be provided to the latest approved information and guidance, which mitigates the potential for misalignment of content.

The WorkCover WA representative stated that the PSWHSIM Committee is not built for the task given; it is an advisory committee that meets occasionally. However, the WorkCover WA representative also stated that the WHSC has an obligation to consider the view of the PSWHSIM Committee, which is that it is not feasible to produce a code that addresses all hazards and risks in an entity as large and diverse as the public sector. The best solution may be a more generic, problem solving based approach.

An employee representative recommended that the Code be referred to the Legislative Advisory Committee for further consideration.

With regard to the format that might be deemed suitable for a public sector code of practice, the Chairperson stated that she has previously questioned the suitability of a code of practice and how one could be developed for the public sector given that, for example, the WHSC decided that the agriculture industry is too diverse for a single code of practice to be developed for it.

An employee representative reiterated that the problem is that the public sector's unique problems regarding exposure to violence and aggression from the public has not been addressed. An expert member supported this, saying that the issue is significant and must be addressed. The Chairperson questioned how the Code can address this hazard and not all other hazards, and suggested that this matter would be better addressed by reference to existing psychosocial codes.

An employer representative suggested that exposure to violence and aggression in the public sector could be covered in the Code of Practice: *Violence and aggression at work*, and suggested producing guidance that directed people to contexts and codes specific to their workplace. The employer representative queried what a public sector code of practice is intended to achieve.

Given that the decision has already been made to produce a code of practice, the A/WorkSafe Commissioner suggested maintaining a risk based format and building onto it information about common and significant hazards ('priority areas') across the public sector. This could include hazards such as violence and aggression from the public and hazards associated with transport.

An expert member stated that this issue highlighted the question of how best to inform an industry, given the plethora of hazard specific requirements. An employer representative stated that this issue was identified in the Boland Report, and as a result the Agriculture Tool was developed by SWA. This tool helps PCBUs and workers navigate their duties under the WHS laws.

The WorkCover representative will update the PSWHSIM Committee on the WHSC's discussion when it meets on Monday 12 June 2023.

It was **AGREED** that the Code be referred to the Legislative Advisory Committee for further discussion about its structure.

ACTION 13 – Refer the draft Code of Practice: *Work health and safety and injury management systems for the Western Australian public sector* to the Legislative Advisory Committee for further discussion about its structure.

4.9 **Code of Practice: *Excavation work* – Proposed approach to amendments**

In relation to amending the Code of Practice: *Excavation*, WorkSafe requested that the WHSC consider adapting the SWA model Code of Practice: *Excavation work* to the Western Australian legislative environment. This would produce a consistent approach with the code of practice similar in style, structure and content to the model code.

When the Code of Practice: *Excavation* was gazetted in March 2022 under the OSH legislation, the WHSC recommended the code be reviewed post promulgation of the *Work Health and Safety Act 2020*. At the February 2023 meeting of the Commission, members agreed to prioritise updating the OSH code. The Commissioner requested that the revision incorporate the lessons learnt from the workplace fatality of a 26 year old man in Mosman Park in October 2018 whereby the trench in which he was working filled with sand and water following a burst water main.

An employee representative referred to the many hours spent by CISAC developing the Code, and felt that putting that version aside would waste the efforts of CISAC. The Code currently reflects Western Australian conditions, such as the

soil types. An expert member stated that the Code is fit for purpose for local conditions and that should take primacy.

Given the amount of work done on the Code comparatively recently, the WHSC **AGREED** that it would be preferable at this point to retain the Code and add information relating to emergencies and rescues. The Code will be subject to future reviews.

4.10 **Construction Industry Safety Advisory Committee** – Meeting report – 16 May 2023

The WHSC was presented with a report on the CISAC meeting of 16 May 2023, with the main focus being:

- a review of the National Code of Practice for Precast, Tilt-up and Concrete Elements in Building Construction;
- discussion about the composition of membership of CISAC; and
- consideration being given to developing guidance based on the Crane Industry Council of Australia's *Single Crane Dual Hook Operation* Guidance Note.

CISAC requested that regulation 306A in the Work Health and Safety (General) Regulations 2022 be amended to include a reference to the current version of Australian Standard 3850. The WHSC agreed with this proposal and the A/WorkSafe Commissioner will follow up.

CISAC also requested that CISAC's Terms of Reference be amended to increase WorkSafe representation to two officers, consistent with other advisory committees. The WHSC **ENDORSED** this recommendation.

An employer representative expressed confusion about reports from advisory committees, saying that it is not always clear who is directing what work and how it is being tracked. It may be useful to have recommendations at the start of the documents and more context be provided. For example, with regard to the suggestion at a CISAC meeting to develop guidance based on the Crane Industry Council of Australia's *Single Crane Dual Hook Operation* Guidance Note, what is the next step? The A/WorkSafe Commissioner stated that, in this case, it was agreed to firstly discuss the matter with technical experts within WorkSafe.

4.11 **International Labour Organisation – Proposed new Instrument – Biological Hazards**

The WHSC was asked whether it will provide 'in principle' support to a proposal by the International Labour Organisation (ILO) to develop a new instrument on biological hazards in the workplace. The Governing Body of the ILO has noted a regulatory gap in standards concerning biological hazards.

The Department of Employment and Workplace Relations represents Australia at the International Labour Conference and on the governing body of the ILO, and has requested Western Australia's comment on the proposal to develop a new instrument/s on biological hazards in the workplace. Subject matter experts within the Occupational Health Hygiene and Noise Team of the WorkSafe Service Industries and Specialists Directorate have also been consulted and are reviewing the content of the report, and their comments will be incorporated into WorkSafe's response.

An expert member stated that this proposal has significant implications for Australia, and will require thorough analysis. SWA is developing its own guidance and code. Sometimes international codes do not match Australia's circumstances.

The WHSC **AGREED** to provide ‘in principle’ support to the ILO proposal to develop an instrument relating to biological hazards, noting that more detail is required for thorough analysis. The concept will be further discussed at a future meeting when more specific detail becomes available.

4.12 **Statement of Regulatory Intent – Amendments**

On introduction of the new WHS legislation on 31 March 2022, a Statement of Regulatory Intent (SORI) was published to provide the principles for the regulatory approach that WorkSafe would use for the first twelve months. We are now in the second year of the longer transitional period and the SORI has been revised accordingly, and was presented to the WHSC.

The A/WorkSafe Commissioner highlighted the main changes. One is that where new provisions or transitional arrangements apply (as opposed to all regulatory provisions) inspectors will continue to take a supportive and educative approach to compliance in relation to low risk breaches. This will be where duty holders have made genuine attempts to comply with legislative requirements. New provisions are those that commenced on 31 March 2023 following a transition period of 12 months.

The other main change is the inclusion for clarity of a new section (section 10) titled *Approach to WHS undertakings and independent WHS reports*, which explains the use of WHS undertakings as an alternative to prosecution in some situations. It also explains the powers of the regulator to require a report from a PCBU that relates to work health and safety generally or in relation to a specific matter.

The WHSC **NOTED** the revised Statement of Regulatory Intent.

4.13 **Compliance and Enforcement Policy – Updates**

The WHSC was presented with WorkSafe’s revised Compliance and Enforcement Policy. The main change is the insertion of a new section titled “Requiring production of independent report” (section 8.6) under the “Compliance and enforcement tools” section. It explains the power of the regulator under section 155B of the *Work Health and Safety Act 2020* to require an independent report from a PCBU that relates to work health and safety at any workplace of the business or undertaking, generally or in relation to WHS matters including a particular accident or other occurrence at any workplace of the business or undertaking.

The WHSC **NOTED** WorkSafe’s revised Compliance and Enforcement Policy.

4.14 **Consultative arrangements between WorkSafe and Comcare**

A paper giving an overview of the consultative arrangements between WorkSafe and Comcare was presented to the WHSC. At the previous WHSC meeting, discussion took place about the lack of clarity for Health and Safety Representatives and workers concerning the jurisdiction of WorkSafe and Comcare at Western Australian defence facilities. At that meeting the WorkSafe Commissioner undertook to provide the Commission with an overview of the Memorandum of Understanding between the two parties. Due to time constraints this paper was not discussed and will be revisited at the next meeting.

4.15 **Transitional provisions (standing item)**

Nil

4.16 **Safe Work Australia Update** (standing item)
The WHSC **NOTED** the agenda paper for the SWA meeting of 8 June 2023.

4.17 **COVID-19 pandemic and recovery** (standing item)
Nil

5 **OTHER BUSINESS**

5.1 **Members to advise**
Nil

6 **NEXT MEETING**

6.1 Meeting closed at 12.20pm.
Next meeting – 5 July 2023