



Meeting No.	14	Time:	9.00am
Venue	Microsoft TEAMS	Secretariat:	Department of Mines, Industry Regulation and Safety (DMIRS)

Work Health and Safety Commission Minutes – 2 August 2023

Attendees

Dr Patricia Todd	Chairperson
Mr Darren Kavanagh	WorkSafe Commissioner
Ms Christina Folley	A/Director WorkSafe Mines Safety
Dr Lin Fritschi	Expert member
Ms Tracey Bence	Expert member
Dr Matthew Davies	Expert member
Ms Jennifer Low	Chamber of Commerce and Industry WA (CCIWA)
Mrs Agnes McKay	CCIWA
Mr Owen Whittle	UnionsWA
Mr Glenn McLaren	UnionsWA
Ms Naomi McCrae	UnionsWA

Guests

Ms Laila Nowell	Chamber of Minerals and Energy WA (CME) (member-elect)
Mr Chris White	Chief Executive Officer, WorkCover WA
Ms Kate Bretherton	CCIWA

Executive Officer

Helen Brown	Senior Policy Officer, WorkSafe
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1 ADMINISTRATION

1.1 Opening and welcome

The Chairperson welcomed members and guests, specifically mentioning new expert member, Tracey Bence, who was attending her first Work Health and Safety Commission (WHSC) meeting.

1.2 Apologies

Nil

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

It was agreed that the following items will be added to the agenda:

- air handling systems; and
- consultation by Safe Work Australia (SWA) regarding options to improve the WHS incident notification process.

1.4 Declarations of conflict of interest

A CCIWA member registered a potential 'standing' conflict of interest in relation to training providers of Health and Safety Representatives, given that CCIWA is a training provider. The Chairperson noted that UnionsWA representatives are in the same position.

An expert member registered a potential conflict of interest in relation to Agenda Item 4.2 (presentation re Safe Work Australia's Data Improvement Project), saying that she has had contact with the presenter regarding an application.

New member Tracey Bence registered a potential conflict of interest in that she is an occupational hygienist in the mining industry and is President of the Australian Institute of Occupational Hygienists (AIOH). While the AIOH is a not-for-profit organisation, it has several commercial aspects. These include accreditation of universities that offer Masters courses in science and occupational hygiene, including Edith Cowan University, and producing training for entry level into the field of occupational hygiene.

The WHSC **NOTED** the conflicts of interest.

ACTION 1 – Record the Conflicts of Interest

2 PREVIOUS MEETING/S

2.1 Confirm minutes of previous meeting

The Minutes of the WHSC meeting of 5 July 2023 were **ENDORSED** as a true and correct record.

2.2 Review Action List from previous meeting

Action items on the Action List were discussed by exception.

The Chairperson noted Item C (Following further consideration, the Commissioner will notify the WHSC as to whether statistics within the Fatality Update Report for May 2023 can be shared externally). The WorkSafe Commissioner ('the Commissioner') informed the WHSC that WorkSafe is

looking to develop a document similar to the Fatality Update Report for the website. The Commissioner also stated that WorkSafe typically annually produces a document containing WHS statistics titled "State of the Work Environment". It was not produced last year but it is intended to resume production of this document.

The WHSC **NOTED** the Action List.

2.3 **Codes of Practice**

The updated table *Codes of practice and guidance for review or development* showing the status of items that have been the subject of a decision by the WHSC was presented. The items have now been prioritised with a ranking of 1, 2, 3 or 4 (1 = highest priority) and grouped accordingly.

An industry representative queried what has been decided regarding the two Codes of Practice: *Man overboard: prevention and response* and *Ferry and charter boat industry* and whether they are necessary. Both documents are out of date. The Chairperson stated that previous minutes will be investigated to find any decision on these documents. The Chairperson will consult WorkSafe and determine the numbers of people accessing these codes, and suggested reviewing and possibly eliminating some other items listed in the table.

The WHSC **NOTED** the updated table.

ACTION 2 – Review the minutes of the WHSC's meeting of 5 July to ascertain whether a decision was made regarding the two codes of practice above.

ACTION 3 – Discuss the next steps for the Codes of Practice: *Man overboard: prevention and response* and *Ferry and charter boat industry* at the next WHSC meeting.

3 **AGENDA ITEMS FOR NOTING** (discussed by default)

3.1 **HSR Training – Issues and approvals**

The WHSC was asked to consider the scenario of 'in-house' training of Health and Safety Representatives (HSRs) whereby training is delivered by 'internal' trainers (ie trainers who are employees of the organisation).

Potential concerns could be 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 potential concern is whether HSRs feel that they can act independently, given the nature of their training. It is possible that some organisations may prefer in-house training for the purpose of 'controlling the narrative' in terms of work health and safety issues within their organisation.

A worker representative suggested that conditions be imposed on training providers for in-house training arrangements. Another worker representative stated that in-house training conducted by employees of that organisation is not within the spirit of the *Work Health and Safety Act 2020*, and training would be better conducted by a third party. The Chairperson agreed that it is preferable that HSR training is conducted by a third party.

An industry representative undertook to contact an organisation with an in-house training arrangement for HSR training, to find out more about how the arrangement works.

A worker representative suggested that the register of training providers be consulted to determine which training providers are organisations that conduct in-house training of HSRs, and to investigate how this functions.

An expert member stated that there is an inherent conflict of interest when an employee of an organisation conducts in-house training of HSRs and when this employee is also the person to whom a HSR would take issues relating to work health and safety.

The Chairperson suggested that the matter could be addressed in audits of selected training providers.

The WHSC **AGREED** that this matter will be further investigated and will be an agenda item at the next WHSC meeting.

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 approval for the following training provider to deliver the one day refresher training course:
 - WA Skills Training
- **ENDORSED** the approvals for the following additional nominated trainers:
 - Training Services Australia – Julie Barker
 - Training Services Australia – Tanya Davies (subject to submitting evidence of course completion)
 - Pinnacle Safety and Training – Joshua Smith
 - North Metropolitan Health Service – Amy Rullo

ACTION 4 – Investigate issues surrounding in-house training by internal trainers, and include the matter as an agenda item for the next WHSC meeting.

3.2 **Construction Industry Safety Advisory Committee (CISAC) – Report**

The WHSC was presented with a report of CISAC's meeting of 18 July 2023.

The key points were:

- support of incorporation of the model WHS regulations concerning engineered stone into the Work Health and Safety (General) Regulations 2022;
- a report on the meeting between WorkSafe and the Housing Industry Association to discuss how falls in the housing construction sector may be prevented;
- recommended amendment of the references to Australian Standards in the Work Health and Safety (General) Regulations 2022 in relation to tilt-up elements in construction; and
- the publishing by Safe Work Australia (SWA) of the Model Code of Practice: *Tower cranes*.

In relation to CISAC's work on reviewing the *National Code of Practice for Precast, Tilt-up and Concrete Elements in Building Construction* (2008), the Commissioner reported that CISAC has had meetings and ongoing communication with industry experts who believe this code requires updating. The Draft SWA code will address these issues.

The WHSC **NOTED** the CISAC report.

*At this point, Philip Wise from SWA delivered his presentation regarding the Data Improvement Project, which is covered in section 4.2 of these minutes.

3.3 **Mining and Petroleum Advisory Committee – Report**

Nil

3.4 **Agricultural Safety Advisory Committee (ASAC) – Report**

The WHSC was presented with a report of ASAC's meeting of 21 July 2023, which was attended by the Hon Bill Johnston MLA, Minister for Industrial Relations. Key points were:

- the Minister expressed support for, and spoke briefly about, the Agricultural Industry Inquiry; and
- an update on the activities of the WorkSafe Agricultural Safety Implementation Work Group (formed to coordinate the response to the Agricultural Industry Inquiry) was noted with appreciation by the Chairperson.

The WHSC **NOTED** the ASAC report and **ENDORSED** the following changes to membership of ASAC:

- Country Women's Association representative – Ms Julie Hathway to replace Ms Nicola Kelliher; and
- Safe Farms WA – Ms Holly Freeman to replace Ms Maree Gooch as Executive Officer.

3.5 **Legislative Advisory Committee (LAC) – Report**

The LAC report of the meeting of 19 July 2023 was presented to the WHSC.

A key focus of the report related to decisions made concerning the draft Code of Practice: *Work health and safety and injury management systems for the Western Australian public sector* (draft Code). LAC decided that the format of the draft Code is to be consistent with other model codes, and that risks and hazards that are common across the public sector will be addressed in the draft Code.

The adoption of Safe Work Australia's Model Code of Practice: *Tower cranes* was discussed, with LAC agreeing that amendments would be needed to suit requirements unique to Western Australia, and consultation with industry will also be necessary, particularly in relation to accessing tower cranes.

The Chairperson advised the WHSC that the CCIWA has nominated Agnes McKay to fill the vacancy on LAC left by the resignation of Paul Moss and temporarily filled by Jennifer Low. The Chairperson thanked Jennifer Low for filling the vacancy temporarily, noting her very valuable contribution, and was pleased that Mrs McKay has agreed to take on this role.

The WHSC **NOTED** the ASAC report and **ENDORSED** the appointment of Agnes McKay to LAC.

3.6 **WorkSafe events and promotion update**

Key points of the WorkSafe events update presented to the WHSC were:

- plans for Safe Work Month 2023 where the theme will be *Our way forward: prioritising healthy and safe workplaces*; and

- the Work Health and Safety Excellence Awards whereby the first round of judging entries will be completed by 31 July, with a shortlist of finalists confirmed.

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

3.7 **Regulatory Activity Report**

WorkSafe's Regulatory Activity Report to 30 June 2023 was presented to the WHSC.

The WHSC **NOTED** the Regulatory Activity Report.

3.8 **Fatality Updated Report**

The WHSC **NOTED** the Fatality Update Report for June 2023.

3.9 **Exemptions under the *Work Health and Safety Act 2020***

Nil

3.10 **Correspondence**

The WHSC **NOTED** the email from the Cancer Council WA to the Chairperson of the WHSC expressing thanks for the WHSC's response regarding the inclusion of e-cigarettes in the WHS regulatory framework.

4 **STANDING ITEMS AND ITEMS FOR DISCUSSION**

4.1 **WorkCover WA report (standing item)**

The Chief Executive Officer of WorkCover WA, Mr Chris White, stated that Parliament resumes on 8 August 2023 and it is hoped that the Workers' Compensation and Injury Management Bill 2023 will be a high priority, with the nominal date of 1 July 2024 for commencement holding firm. Mr White also commented on the *Mining Industry Summit: Driving Respect* held on 1 August, reporting that it was enjoyable and well run.

An expert member referred a recent article [Prevalence and risk factors for silicosis among a large cohort of stone benchtop industry workers](#), showing one in three engineered stone workers in Victoria are contracting silicosis. The expert member queried why this trend is not reflected in Western Australian workers' compensation statistics. Mr White responded that he also finds this surprising and does not know the reason for the relatively low number of silicosis claims.

Another expert member reported that the AIOH has also been pondering on this issue, and had received feedback regarding the difficulty and cost of working through the workers' compensation system. Mr White commented that the South Australian situation is similar to Western Australia in terms of low claims for silicosis, and that work has been done to reduce the barriers to claiming, such as insurers must now pay for the medical testing. Mr White would be surprised if the alleged difficulty and cost of claiming were the reasons for progressing claims if the person wanted to, particularly if they had union support.

An expert member asked whether the use of CT methodology as opposed to x-rays for testing for silicosis in Western Australia has been adopted in other states. Another expert member commented that there is some reluctance to adopt the approach of Western Australia, possibly due to cost, equipment and

distance reasons. Another expert member reported that neither Victoria nor NSW are using CT scans for testing for silicosis.

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

4.2 **SWA Presentation – Data Improvement Project**

In view of the keen interest of WHSC members and guests in ensuring decisions are made based on reliable data, Mr Phillip Wise of SWA delivered an online presentation related to SWA's Data Improvement Project titled *Implementing a new data culture*.

Mr Wise explained that drivers of change were SWA's resource intensive processes for collecting and maintaining data, small data teams and siloed processes, suboptimal data infrastructure, increasing change in the labour market and working environment, and broader reforms to create a more data literate public service and to uplift data maturity. Mr Wise gave an overview of the establishment phases, and achievements so far.

At the conclusion of the presentation, Mr Wise drew attention to SWA's new data website, data.safeworkaustralia.gov.au, which delivers national work health and safety and workers' compensation data.

Mr Wise then took questions, including whether the project is finished. Mr Wise responded that the Data Improvement Project is part of an ongoing program.

Another question related to whether Australian Bureau of Statistics (ABS) data, which is currently used together with workers' compensation and fatality data to calculate rates, marries in with the SWA data. Mr Wise responded that the work involved in the Data Improvement Project has helped address the limitations of those data sources, with work being done by SWA's Strategic Issues Group and the ABS to refine alignment issues.

In response to a question regarding data 'lag indicators', Mr Wise responded that SWA is considering this issue including by investigating the sources of data in industry and different jurisdictions. In response to another question regarding whether a list of variables have been identified for analysing and measuring existing data sets, Mr Wise responded not at this stage but variables do exist for SWA's data sets.

The Chairperson expressed her appreciation to Mr Wise for delivering the informative presentation.

The WHSC **NOTED** the SWA presentation.

4.3 **Worksafe Compliance Projects Update**

The WHSC was presented with an *Overview of proactive projects – Worksafe General Industries 2022-2023*. Proactive inspections are undertaken in industries identified as having significant or increasing risks as opposed to, for example, reactive inspections where complaints, injuries, illnesses or dangerous incidents are investigated.

This overview set out the different focus areas of the proactive projects (below), accompanied by the number of inspections and notices issued:

- primary and secondary education
- take-away food

- Perth Royal Show
- commercial driver fatigue
- accommodation sector
- boilers in dry-cleaning
- major inspections of registered mobile cranes
- waste management
- flooring (asbestos focus).

*The gig economy and silica are to be reported on separately.

The Commissioner commented that this paper related only to general industries, and does not reflect the full WorkSafe effort. The information gathered on proactive inspections helps to inform internal processes and policies and to identify issues in industry, and is a helpful component of regulatory activities. The report identifies some trends and issues that cut across multiple work areas. WorkSafe is considering ways to communicate the outcomes of this type of report.

The WHSC **NOTED** the overview, with comments that the information was interesting, and expressions of appreciation to WorkSafe for sharing the information. An expert member suggested that the results of the inspections suggest that WorkSafe is targeting industries well.

4.4 **Update of information – Safe Work Method Statement for high risk construction work**

The WHSC was asked to note the revised information resources for Safe Work Method Statements (SWMS) for high risk construction work that have been recently published on the WorkSafe website. The approved *Construction work: Code of practice* outlines the requirements for SWMS and includes a sample template and guidelines (Appendix 5). Safe Work Australia (SWA) has also published the *Safe work method statement for high risk construction work - information sheet*.

The SWA information sheet has been revised to align with the Western Australian legislative requirements, along with a SWMS template consistent with Appendix 5 of the code.

An employer representative noted the SWA interactive tool for SWMS legislation is being developed and near completion.

The WHSC **NOTED** the publication of updated SWMS information sheet and template on the WorkSafe website.

4.5 **Cultural Awareness training for board members**

A paper was presented informing WHSC members of the requirement for them to complete the Public Sector Commission's online Aboriginal and Torres Strait Islander cultural awareness training. This is mandated by the Public Sector *Commissioner's Instruction 29* which applies to all public sector employees and bodies, including boards established under their own legislation.

The WHSC **NOTED** the requirement for members to complete cultural awareness training.

4.6 **Update – Code of practice: *How to manage work health and safety risks***

The revised Code of practice: *How to manage work health and safety risks* was presented to the WHSC for endorsement for gazettal. The minor change was

the inclusion of a Hierarchy of Control Measures diagram in section 4.1 that was inadvertently omitted in the previous version.

An employer representative questioned whether the WHSC ever received legal advice sought at the meeting of 4 May 2022 concerning whether WorkSafe's wording regarding the application of the hierarchy of controls measures to minimising risks presented any legal issues, given that it amends SWA's wording in model codes. SWA's wording is:

“The WHS Regulations require duty holders to work through the hierarchy of control measures when managing certain risks to health and safety; however, it can be applied to any risk...”

The use of the words “certain risks” and “however, it can be applied to any risk” both imply exclusions and could be read to imply that managing risks through hierarchy of controls is optional. This is despite regulation 36 of the Work Health and Safety (General) Regulations 2022 which requires duty holders to implement control measures in line with the hierarchy of controls for all risks that cannot be eliminated. The ambiguity created confusion for WorkSafe inspectors. Hence the WorkSafe wording used is:

“The WHS Regulations require duty holders to work through the hierarchy of control measures when it is not reasonably practicable for a duty holder to eliminate risks to health and safety”.

It was **AGREED** that previous minutes will be investigated to determine whether legal advice was received relating to the hierarchy of controls (see addendum to Minutes regarding the legal advice received).

The employer representative also questioned why the first paragraph in section 4 of the amended code, and the diagram, is different to the sections on the hierarchy of controls in other codes. The employer representative informed the WHSC that SWA is currently updating the model Code of practice: *How to manage work health and safety risks* to incorporate psychosocial references, and suggested waiting to incorporate those changes along with the changes relating to the hierarchy of controls. This would prevent having to re-publish again within a short space of time.

It was **AGREED** not to endorse the amended Code until WorkSafe has been consulted regarding the matters raised above.

The WHSC **NOTED** the amendment to the Code of practice: *How to manage work health and safety risks*.

ACTION 5 – Consult previous minutes to locate the legal advice concerning WorkSafe's wording regarding the need to apply the hierarchy of controls measure to minimising risks.

ACTION 6 – Discuss with WorkSafe the issues raised above regarding the Code of practice: *How to manage work health and safety risks*.

4.7 **Minor and technical amendments to WHS Regulations**

A table and accompanying explanatory paper were presented to the WHSC, showing proposed minor and technical amendments to the Work Health and Safety (General) Regulations 2022 and the Work Health and Safety (Mines) Regulations 2022. Since commencement of this legislation, a number of minor drafting errors and technical oversights have been identified that require amendment. The proposed amendments are contained in the Work Health and Safety Regulations Amendment Regulations (No. 2) 2023. It is expected that the amendments will be gazetted in August 2023.

The WHSC **NOTED** the proposed minor and technical amendments.

4.8 **Silica** (standing item)

An expert member commented that there is no roadmap for any of the future workplace exposure standards and tracking of the National Silica Prevention Strategy. The Asbestos Safety and Eradication Agency has taken stewardship of the action plan for the Strategy. A number of Western Australian stakeholders would like to receive updated information from SWA on these matters.

4.9 **Transitional provisions** (standing item)

The Commissioner alerted the WHSC to the website information about transitional provisions, and reminded the WHSC of new training requirements for High Risk Work licences and asbestos removalists. The Commissioner also stated that fees for some licences including asbestos assessors have been amended.

4.10 **SWA Update** (standing item)

The Chairperson referred to the call from SWA seeking feedback on a range of potential options to improve the coverage and operation of the incident notification provisions in the model Work Health and Safety legislation. It was agreed to place this item on the agenda for the next meeting with a view to making a submission to SWA.

ACTION 7 – Include discussion of potential options to improve the coverage and operation of the incident notification provisions in the model Work Health and Safety legislation on the agenda for the next WHSC meeting.

4.11 **COVID-19** (standing item)

The Commissioner reported that this standing item has been removed from the LAC agenda. It was **AGREED** that this item will also be removed from the WHSC agenda, however members are welcome to raise matters relating to COVID-19 if they see fit.

5 **OTHER BUSINESS**

5.1 **Air handling in water systems**

An expert member drew attention to a recent report by the Western Australian Auditor General titled *Performance Audit – Regulation of air-handling and water systems*, reporting on a small number of audits of facility owners and managers and the way they are managing indoor air quality in relation to air-conditioners. The findings were generally that management of air quality was poor.

The expert member referred to the Code of Practice: *Prevention and Control of Legionnaires Disease* (2010) and questioned whether the WHSC needs to act

by revising this Code, and suggested that this matter and the Auditor General's report be on the agenda for the next meeting. Another expert member stated that having access to clean air is a basic human right, adding that there is some relevant scientific research about indoor air quality and that there was more to managing COVID-19 than hand washing. It was **AGREED** that the Auditor General's report will be circulated to members and guests of the WHSC.

An industry representative referred to information SWA is developing concerning biological hazards, with a focus on transmission. This will include a section on airborne transmission which may be relevant to the topic of air handling in water systems. There may need to be some communications to the public about air-conditioning ventilation. It was suggested that the WHSC link this matter to the SWA project concerning biological hazards.

ACTION 8 - The Auditor General's report *Performance Audit – Regulation of air-handling and water systems* will be circulated to members and guests of the WHSC.

5.2 Hand-held laser welders

A unions representative reported that there has been a large importation of hand-held laser welders into Western Australia. They are a 'Class IV' product and the requirements surrounding the use of imported Class IV products has been overlooked by the regulator. The union representative intends to write to the Commissioner about this matter.

5.3 Query re Regulatory Activity Report

An expert member queried the increase shown in the Regulatory Activity Report of calls and emails to the Customer Help Centre and of injury/disease notifications to WorkSafe for the 2022-23 financial year period. The expert member also referred to the statistics in the Regulatory Activity Report relating to the Safety and Health Tribunal, and asked of the relevance of this body to the WHSC.

The Commissioner responded that it is difficult to be sure of the cause of the increase in the statistics referred to above, however it could be due to things such as COVID-19 and campaigns by WorkSafe that generate interest. For example, the *Mining Industry Summit: Driving Respect* held yesterday has already resulted in calls and notifications to WorkSafe. The increase in injury and disease notifications, particularly from the mining industry, may be due to the new notification requirements introduced in the WHS legislation. It is interesting note that the number of injury and disease notifications from the mining industry is similar to the number from general industry. As there are 160,000-180,000 employee in the mining industry and 2,000,000 in general industry, this suggests that notifications from general industry are 'underdone'.

The Commissioner explained that the Safety and Health Tribunal is established under the *Work Health and Safety Act 2020* to deal specifically with WHS matters. Decisions made by WorkSafe, the State Mining Engineer and the regulator are reviewable and heard by the Safety and Health Tribunal.

5.4 Fatality of electrician in roof space

An expert member drew attention to the recent fatality of an electrician in a roof space, and questioned whether WorkSafe's guidance regarding working in roof spaces is still available and current. The Commissioner responded that he will investigate what guidance is available, and commented that the fatality is a tragic reminder of the risks involved in working in roof spaces. The

Commissioner noted the significant number of recent workplace fatalities involving young people, and this will be investigated for trends. The Executive Officer reported that the guidance relating to working in roof spaces has recently been amended by WorkSafe, and is currently awaiting approval.

6 NEXT MEETING

The meeting closed at 10.48am.

The next WHSC meeting is on 6 September 2023.

ADDENDUM

In section 4.6 above of the Minutes, it was agreed that previous Minutes would be investigated to ascertain whether legal advice was ever received regarding whether there are any legal issues arising from the use of the WorkSafe wording below in relation to the need to apply the hierarchy of controls measures to risk minimisation:

“The WHS Regulations require duty holders to work through the hierarchy of control measures when it is not reasonably practicable for a duty holder to eliminate risks to health and safety”.

This differs from the SWA wording which is:

“The WHS Regulations require duty holders to work through the hierarchy of control measures when managing certain risks to health and safety; however, it can be applied to any risk...”

Past minutes were investigated following the meeting. The Minutes of the WHSC meeting of 1 February 2023 state:

“Mr Munns informed the Commission that the legal advice is that the DMIRS wording concerning the hierarchy of controls (which amends Safe Work Australia’s wording in model codes) does not create any legal issues and makes the information clearer. A summary of the legal advice will be circulated after the meeting”.