



<b>Meeting No.</b>	<b>16</b>	<b>Time:</b>	<b>9:00</b>
<b>Venue</b>	<b>Koorling Dandjoo Conference Room, 1 Adelaide Terrace, East Perth</b>		

## Work Health and Safety Commission Minutes – 4 October 2023

### Attendees

Dr Patricia Todd	Chairperson
Ms Sally North	A/WorkSafe Commissioner
Ms Christina Folley	A/Director WorkSafe Mines Safety
Ms Tracey Bence	Expert member
Dr Matthew Davies	Expert member
Dr Lin Fritschi	Expert member
Ms Laila Nowell	Chamber of Minerals and Energy of Western Australia (CME)
Ms Jennifer Low	Chamber of Commerce and Industry (CCIWA)
Mrs Agnes McKay	Chamber of Commerce and Industry (CCIWA)
Mr Owen Whittle	UnionsWA
Ms Naomi McCrae	UnionsWA
Helen Brown	Executive Officer, WorkSafe

### Guests

Mr Chris White	Chief Executive Officer, WorkCover WA
Mr Ian Munns	Deputy Director General, Department of Mines, Industry Regulation and Safety (DMIRS) (for Agenda Items 4.2 and 4.3)
Mr Graham James	Regional Inspector of Mines, WorkSafe (for Agenda Item 4.3)

## Apologies

Glenn McLaren

UnionsWA

## 1 ADMINISTRATION

### 1.1 Opening and welcome

The Chairperson opened the meeting and welcomed attendees following a group photo of Work Health and Safety Commission (WHSC) members for the purpose of DMIRS' Annual Report 2022-23.

### 1.2 Apologies

Glenn McLaren

### 1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting, along with a request to include in "Other Business" an update on the outcome of the investigation into a fatality on a building site at Curtin University on 13 October 2020.

### 1.4 Declarations of Conflicts of Interest

Nil

## 2 PREVIOUS MINUTES

### 2.1 Confirm minutes of previous meeting

The Minutes of the WHSC meeting of 6 September 2023 were **ENDORSED** as a true and correct record.

### 2.2 Review Action List from previous meeting

WHSC members reviewed the updated Action List, discussing items by exception as follows:

- *Items A and B – Code of Practice: Occupational Safety and Health in call Centres* – When reviewing this code, an expert member suggested referring to WorkSafe Queensland's webpage "Health and safety in contact centres". This will be investigated with a view to possible discussion at the next WHSC meeting.
- *Item C - The adapted model Code of Practice: Tower cranes will be presented to the WHSC*: The Chairperson noted that this code is still being considered by the Construction Industry Safety Advisory Committee, who did not have a quorum at their last meeting.
- *Item W – Explore programs already available concerning psychosocial safety*: It was decided to close this item as all avenues have been exhausted. The Chairperson stated that the presentation regarding the MARS Program scheduled for later this meeting will contain information relating to this matter.
- *LAC items*: At the WHSC meeting of 6 September 2023, an expert member queried the items assigned by the WHSC to the Legislative Advisory Committee (LAC), with some items being several years old. The Executive Officer has investigated but found little to shed light on the items, due to the frequent changing of support personnel and the current lack of a chairperson.

The WHSC **NOTED** the Action List.

### **Visit from Minister for Industrial Relations**

At this point, at approximately 9.50am, the Minister for Mines and Petroleum; Energy; Hydrogen Industry; Industrial Relations, the Hon Bill Johnston MLA ('Minister Johnston'), arrived at the meeting for a scheduled visit. Minister Johnston was accompanied by Mr John Welch (Principal Policy Advisor), and Ms Emily Meagher (Policy Advisor).

Minister Johnston addressed the WHSC, stating that he has held the Industrial Relations portfolio for six years having formerly been a union official, and has a strong motivation to see good outcomes for work health and safety. Minister Johnston expressed appreciation to WHSC members for their contribution. Other key points of the address are listed below:

- There is a focus on psychosocial risks in the workplace, with new regulations about managing these risks introduced into the Work Health and Safety (General) Regulations 2022 last year. The *Enough is Enough – Sexual harassment against women in the FIFO mining industry* highlighted the psychosocial hazards women face in the mining industry, however Minister Johnston emphasised that it is also a significant problem in other industries and more work is needed. Minister Johnston acknowledged the Community Development and Justice Standing Committee for their work in producing the report.
- The WA Government is looking at ways to reinvigorate Health and Safety Representatives (HSRs). There are many non-unionised workplaces where there are no HSRs. WorkSafe has been asked to present proposals to improve communication and relationships with HSRs.
- When the WA Labour Government came to power, resources for WorkSafe were less than other States. Funding has since been increased.

WHSC members were given the opportunity to question and make comments to Minister Johnston. The main points of discussion are listed below.

- Appreciation was expressed to Minister Johnston for retaining the WHSC while equivalent bodies have been abolished in other States.
- MARS Program materials are generic enough to be adapted to other industries. The resources required to do this will need to be examined.
- On being questioned about what he saw as the WHSC "working well", Minister Johnston referred to the WHSC members as being "social partners". The very act of coming together to discuss issues is important work. Without the staged conflict that occurred in the past, it is good to have the tripartite WHSC. Mr Johnston particularly appreciates feedback from the WHSC on the implementation of the new WHS legislation and any unintended consequences.
- Two members commented that the WHSC has been focused on amending codes and guides following the introduction of the WHS legislation but is now ready to be more proactive. Minister Johnston stated that while the WHSC does not need a specific allocation of funds, there may be times when they

seek funding for research, and this would be considered by the Government. Minister Johnston gave the example of WA being the first State to introduce CT scans to detect silicosis as a result of scientific research.

- In the context of enforcement action by WorkSafe, Minister Johnston noted that in the event of a workplace incident, the media often automatically speculates about penalties when in fact enforceable undertakings are often the first step initiated by WorkSafe. Employers lobbied for the introduction of enforceable undertakings and it is now used as regulatory tool (see Part 11 of the *Work Health and Safety Act 2020*).
- There is much work to do to develop 'safety mindsets' in the agricultural industry. Minister Johnston has recently met with an industry group seeking to conduct an information campaign and asked the group to return to him with support from across the agricultural industry.
- Minister Johnston was heard by a WHSC expert member speaking at the *Breathe easy – occupational health and hygiene forum* on 3 October 2023, and he was commended for his opening remarks in which he drew parallels between sustainability and WHS. Getting work health and safety right is good for business.
- Concern was expressed by Minister Johnston regarding the possible extent of silicosis in the mining industry, noting recent reports of a case at Newmont's Boddington gold mine. An expert member shared that the Data relating to silica exposure in the mining industry is not easily accessible, and this is an example of where strong data can provide a proper framework to inform decision-making. Minister Johnston was asked to ensure that DMIRS' CARS (Compliance and Regulation System) Transformation Project is fully funded to improve visibility over silica air monitoring data.

Following this, Minister Johnston, his staff and WHSC members and guests adjourned for morning tea and mingling.

### 2.3 Codes of Practice

The WHSC **NOTED** 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.

## 3 AGENDA ITEMS FOR NOTING

(discussed by exception)

### 3.1 HSR Training – Issues and approvals

See Agenda item 4.5

### 3.2 Construction Industry Safety Advisory Committee (CISAC) – Meeting report

The WHSC was presented with the CISAC report of the meeting of 19 September 2023 which had taken the form of a discussion due to the lack of a quorum. Key points were that the CISAC Chairperson asked members to prepare responses for the next meeting concerning:

- comments by the WA Construction Safety Alliance regarding the draft Code of Practice: *Tower cranes*; and
- any amendments that are required to the Australian Standard AS3850 *Prefabricated Concrete Elements* to produce a code suited to WA conditions.

The WHSC **NOTED** the CISAC report.

3.3 **Mining and Petroleum Advisory Committee – Meeting report**  
Nil

3.4 **Agricultural Safety Advisory Committee – Meeting Report**  
Nil

3.5 **Legislative Advisory Committee – Meeting report**  
Nil

3.6 **WorkSafe events and promotions update**

The WorkSafe events and promotions update presented to the WHSC centred on Safe Work Month 2023 (WA) which is currently underway, with the theme of [Our way forward: Prioritising healthy and safe workplaces](#). Included in the events is the WHS Excellence Awards which will be held on 27 October 2023 at Optus Stadium.

A question regarding the timing of the planned “asbestos discussion forums” listed in the update for December was taken on notice.

The WHSC **NOTED** the update.

**ACTION 1** – Seek further information from WorkSafe concerning the date and venue planned “asbestos discussion forums” for December 2023.

3.7 **Regulatory Activity Report**

The WHSC **NOTED** the Regulatory Activity Report to 31 August 2023.

3.8 **Fatality Update Report**

The Fatality Update Report for August 2023 was presented to the WHSC. As a result of a query at their previous meeting, the WHSC was pleased to note that the report now includes details of the type of vehicle and location for road traffic collisions.

The significant increase in bystander fatalities was queried, with the WorkSafe Commissioner responding that it was possibly due to increased awareness of reporting obligations.

A query regarding road traffic collision fatalities not being included in work-related fatalities for the 2021-22 and 2022-23 periods will be followed up with WorkSafe.

The WHSC **NOTED** the Fatality Update Report.

**ACTION 2** – Query with WorkSafe regarding road traffic collision fatalities not being included in work-related fatalities for the 2021-22 and 2022-23 periods.

3.9 **Exemptions – Granted under Work Health and Safety (General) Regulations 2022**  
Nil

### 3.10 Correspondence

The WHSC **NOTED** the following correspondence:

- 3.10A – Submission to Safe Work Australia in response to *Consultation Paper – Incident notification*
- 3.10B – Chairperson to Minister – Amendment to Code of Practice for managing risk
- 3.10C – Minister to CME – Permanent appointment of Laila Nowell to WHS Commission

The Chairperson also noted correspondence inadvertently not tabled, being a letter dated 22 September 2023 from the Minister for Industrial Relations approving gazettal of the second version of the Code of Practice: *Managing the risks of respirable crystalline silica from engineered stone in the workplace*.

## 4 STANDING ITEMS AND ITEMS FOR DISCUSSION

### 4.1 WorkCover WA report (standing item)

The Chief Executive Officer of WorkCover WA, Chris White, was very pleased to report that the Workers' Compensation and Injury Management Bill 2023 has almost passed through Parliament, therefore the implementation target of 1 July 2024 still stands. It is planned to commence consultation regarding the accompanying regulations via the WorkCover WA website on 13 October 2023. There is a small number of contentious issues such as provisional payments while a decision is being made, and the policy implications relating to audiometric testing. Mr White emphasised that the new legislation is a "re-write" rather than reform.

Mr White also reported that there have been no new silicosis claims since June 2023, with discussion taking place about the possible reasons for this.

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

### 4.2 Tax ruling on sitting fees

Mr Ian Munns, DMIRS Deputy Director General, gave an overview of the correct Pay as You Go (PAYG) treatment of sitting fees paid to members of the WHSC, the Mining and Petroleum Advisory Committee and various committees and working groups. There had been some confusion on this matter, with DMIRS awaiting an Australian Taxation Office ruling which was delivered on 12 September 2023.

A summary of the advice for WHSC members is that:

- if their sitting fees are required to be paid to their employer, they must supply evidence, and PAYG withholding will not be applicable; or
- if their sitting fees are not required to be paid to their employer, PAYG withholding is applicable.

Members were asked to notify the Executive Officer if they wish to claim sitting fees where they have not claimed previously.

The Chairperson thanked Mr Munns for attending to explain the tax ruling on sitting fees, and the WHSC **NOTED** the information provided.

#### 4.3 **CARS (Compliance and Regulation System) Transformation Project**

Mr Graham James of WorkSafe delivered a presentation on the CARS Transformation Program which is intended to simplify and standardise the administration of regulatory compliance and improve efficiency and effectiveness by creating a modern fit-for-purpose cloud-based solution.

Mr James explained that the program involves replacing the two legacy systems of SRS (Safety Regulation System) and WISE (WorkSafe Information Systems Environment) that were developed in different government agencies under previous legislation. The new system will support all the required functionalities of the WHS legislation. It will allow greater transparency for individuals and regulated parties, improve business intelligence and reporting, and reduce timeframes for investigations, prosecution and enforcement. It is expected that the project will be completed in 2026.

In response to questions, Mr James stated that:

- the systems of other regulators could not be adopted because those regulators were also seeking new systems;
- there will be a capacity to download raw data; and
- the extent to which data can be extracted will be determined by the funding for the program.

The Chairperson thanked Mr James for the presentation which was cut short due to the arrival of Minister Johnston. Mr James will be invited to complete his presentation at the next meeting to speak to questions remaining from meeting of 4 October 2023 .

The WHSC **NOTED** the presentation.

**ACTION 2A** - Mr Graham James will be invited to complete his presentation on the CARS Transformation Project at the next meeting to speak to questions remaining from meeting of 4 October 2023.

#### 4.4 **Registration of air-handling and water systems**

The WHSC discussed the Auditor General's report *Performance Audit – Regulation of Air-handling and Water Systems* ('the Report') dated 21 April 2023 to determine whether any action is required by the WHSC.

The Auditor General investigated the management of air-handling and water systems of several State and local government entities. The Report explains how the growth of Legionella bacteria in air-handling and water systems can, in rare instances, result in a serious lung infection known as Legionnaires' disease.

The Report found that there are gaps and inconsistencies in how the entities maintain and test their air-handling and water systems and that the existing regulatory framework requires improvement. It recommended that the Department of Health and local government work together to support property owners through education awareness.

The WHSC agreed that, while the Department of Health regulates air-handling and water systems, it is also a WHS matter.

It was **AGREED** that the WHSC will:

- contact the Department of Health urging action on the findings of the Report;

- contact the Auditor General to emphasise that the matter of air-handling and water systems is a work health and safety issue as well as a health issue; and
- request that WorkSafe include information regarding regulatory requirements for air-handling and water systems in government buildings in their newsletter.

**ACTION 3** – Contact the Department of Health and Attorney General to emphasise the WHS aspect of maintenance of air-handling and water systems.

**ACTION 3A** – Request that WorkSafe conducts some awareness raising of legionella risk management.

#### 4.5 **Health and Safety Representative (HSR) training – approvals and issues**

The WHSC was presented with a paper seeking:

- endorsement by the WHSC of applications by HSR training providers for additional nominated trainers that were approved out-of-session by the Chairperson;
- a decision on whether ‘in-house’ training by internal employees (rather than external trainers) should be allowed and/or whether conditions should be attached; and
- a discussion on an approach to the issue of the maximum/ideal number of students in a HSR training course.

##### ‘In-house’ training

With regard to ‘in-house’ training, the Chairperson emphasised that the concern is not about ‘in-house’ training per se, but ‘in-house’ training where the organisation uses its own employees to conduct the training (rather than an external contractor). The Executive Officer had sought advice from all other States on how they address this matter. Response varied with one State not allowing it and others using audits once or twice a year to monitor training. Comments were that such arrangements present a conflict of interest through the lack of independence of the trainer, and compromises the integrity of the course. HSRs may feel constrained in raising WHS matters if the person they would report them to was also their trainer and a senior member of staff. Another key concern in such an arrangement is that it is unlikely that HSRs are given the option of choosing a training course, as required by section 72(1)(c) of the *Work Health and Safety Act 2020*.

An alternative view was that the risks could be managed by safeguards such as audits, as other States do, however it was noted that there is no regular audit program for HSR training providers in WA.

It was **AGREED** that ‘in-house’ training where the trainer is an internal employee will not be permitted. Due to time constraints, discussion on the practical implications of this decision was deferred to the next meeting.

##### Assessment of HSRs at conclusion of training

Discussion then turned incidentally to the matter of assessment of HSRs in relation to the requirement below from the *Guide – Operating as an approved provider of health and safety representative (HSR) training in Western Australia*:

There is no formal assessment for the HSR training course, but the facilitator must make a decision about engagement and the achievement of learning outcomes for each individual participant. Participants must have obtained an appropriate level of



understanding of the knowledge and skills necessary to perform the role of an HSR before they are deemed to have completed the HSR training course.

A member expressed concern with making this “judgement call”, saying that a HSR is elected and is a functioning HSR, and that there is no clear criteria for assessing whether the HSR is competent by the end of the course. HSRs may not engage during the course for cultural reasons. Another member stated that the trainer must take into account characteristics specific to individuals that affect their engagement. It was **AGREED** that the previous guide better expressed the need for trainers to ensure that HSRs are competent, and this will be investigated.

#### Class size

A brief discussion took place on a threshold for maximum class sizes for HSR training. One view is that there should not be more than 25 HSRs in a class. An expert member who lectures at a university stated that 16 is usually the ideal class size in adult education. Dr Irene Ioannakis, the auditor currently auditing training of HSRs, has expressed concern about class sizes being potentially too small to allow effective interaction, however it was noted that in regional areas this may be unavoidable. It was **AGREED** to seek the views of Dr Ioannakis on ideal class sizes, at the conclusion of the auditing program.

#### HSR training approvals

The WHSC **ENDORSED** the following applications for additional nominated trainers as approved out-of-session by the Chairperson:

- Mark Heron – Murray House Resource Centre
- Damien Jameson – North Regional TAFE.

#### Course materials

An update on the review of the course materials for Health and Safety Representative training was provided by the Chairperson who has met with WorkSafe. Western Australia’s course materials are based on those of NSW, who have shared their updated course materials. It is difficult to determine whether the content of these voluminous materials has changed. WorkSafe will invite trainers to contribute to a review of the NSW course materials.

**ACTION 4** – Investigate the practical implications of the decision that ‘in-house’ training using an internal employee as a trainer will not be permitted.

**ACTION 5** – Investigate the wording in the previous guide for HSR training providers regarding the requirement to assess the learning of HSRs at the conclusion of training.

**ACTION 6** – Seek the views of Dr Ioannakis with regard to ideal class sizes on completion of the auditing program.

#### 4.6 **Code of Practice: Psychosocial hazards at work for fly-in fly-out (FIFO) workers in the resources sector**

The WHSC was presented with a draft version of the *Code of Practice: Psychosocial hazards at work for fly-in fly-out (FIFO) workers in the resources sector* (‘FIFO Code’) for discussion and review. It is a revision of the existing *Code of Practice: Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sector*. The amendment to the FIFO Code was prompted by Recommendation 23 of the *Enough is Enough – Sexual harassment against women in the FIFO mining industry* report.

The FIFO Code was sent to WHSC members on 8 September 2023 to allow several weeks for review and preparation of feedback. The version sent did not include

amendments subsequently proposed by a sub-group of the Mining and Petroleum Advisory Committee (MAPAC), therefore the WHSC was not in a position to make a decision on the FIFO Code. A general discussion took place, with several members seeking a broadening of scope so that it encompasses other resources-type of work. It was felt that this matter requires further discussion. Different views were expressed by employer or union representatives, however both groups agreed that concerns could be dealt with during the public consultation phase. MAPAC will review the amended FIFO Code on 11 October 2023. It was **AGREED** that the matter of the scope will be revisited following the MAPAC meeting if necessary, and that a referral to a sub-group or to the Legislative Advisory Committee may be needed.

The WHSC **NOTED** the revised draft FIFO Code.

4.7 **MARS (mental awareness, respect and safety) Program update**

This item as deferred until the next meeting due to time constraints.

4.8 **Silica** (standing item)

This matter was discussed as part of Minister Johnston's visit .

4.9 **Transitional provisions** (standing item)

This was not discussed due to time constraints.

4.10 **Safe Work Australia (SWA) update**

A brief discussion took place on matters arising at the SWA meeting of 6 September 2023. An expert queried what she understood to be a decision by SWA to endorse a diesel particulate matter workplace exposure standard (WES) of 10ug/m<sup>3</sup> which is lower than what was consulted on (15ug/m<sup>3</sup>), and expressed concerns about the process by which the WES recommendation was tabled at the lower level, as there are measurability issues that should have been presented. Discussion took place about the possibility of WHSC contacting the federal WHS Minister Tony Burke for about this matter. Further discussion was deferred.

\*The last few agenda items were addressed in a hurried fashion due to the length of the meeting.

## 5 **OTHER BUSINESS**

- 5.1 An expert member sought an update on the outcome of WorkSafe's investigation into a fatality on a building site at Curtin University on 13 October 2020, expressing concern that the three-year statute of limitations is about to expire. The A/WorkSafe Commissioner assured the WHSC that finalisation of the matter is imminent.

## 6 **NEXT MEETING**

- 6.1 **CLOSE** - Approx. 12.30PM  
Next meeting - 1 November 2023