



Meeting No.	17	Time:	9:00
Venue	Koorling Dandjoo Conference Room, 1 Adelaide Terrace, East Perth		

Work Health and Safety Commission Minutes – 1 November 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 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
Glenn McLaren	UnionsWA
Helen Brown	Executive Officer, WorkSafe

Guests

Mr Chris White	WorkCover WA
Mr Peter Payne	General Manager MARS Program - WorkSafe (for Agenda Item 4.2)
Mr Martin Ralph	Regional Inspector of Mines – WorkSafe (for Agenda Item 4.10)

Apology

Dr Matthew Davies	Expert member
-------------------	---------------

1. WELCOME, APOLOGIES, AGENDA

1.1 Opening and welcome

The Chairperson welcomed members and acknowledged the contribution of the A/Mines Safety Director, Ms Christina Folley, to the Work Health and Safety Commission ('WHSC') and wished Ms Folley well for her new position in the private sector.

1.2 Apologies

Dr Matthew Davies

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting, with the addition to Agenda Item 4.3 of a late paper regarding the proposed workplace exposure standard for welding fumes.

1.4 Declarations of Conflicts of Interest

Nil

2. PREVIOUS MEETING/S

2.1 Confirm minutes of previous meeting

The Minutes of the WHSC meeting of 4 October 2023, including changes tracked by an expert member, 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:

- *Item H – The WHSC will investigate possible measures to help address the high numbers of simple motor vehicle fatalities during work time, including a possible invitation to the Road Safety Commissioner to address the WHSC-* It was **AGREED** that further information will be gathered and analysed in an attempt to better understand potential contributing factors to vehicle fatalities during work time, and this item will be closed pending the further investigations.
- *Item B – Query with WorkSafe that road traffic fatalities are not included in work-related fatalities for the 2021-22 and 2022-23 periods –* WHSC members accepted the explanation that simple vehicle fatality data is not included in total fatalities to allow for consistency across the reporting period, given that this data has only recently become available. It was **AGREED** that WorkSafe will be asked to add simple vehicle fatalities to the graph showing total fatalities and to distinguish this data from the other fatality data.
- *LAC-A – LAC to consider the “National Guide for Working with Silica and Silica Containing Products” along with the Western Australian “Guidance Note: Stone benchtop fabrication and Installation” –* It was **AGREED** to close this item given the likely future change to regulations regarding silica and the necessity to revise the guidance materials when that occurs.

Incidental discussion took place about the progress of the proposed Code of Practice: *Tower cranes*. The A/WorkSafe Commissioner ('A/Commissioner') reported that the Construction Industry Safety Advisory Committee has been

reviewing the feedback provided by the WA Construction Safety Alliance. The Crane Industry Council of Australia has also raised some points relevant to Western Australian circumstances. It was **AGREED** to enter this code into the WHSC's table that tracks the status of codes and guides.

The WHSC **NOTED** the updated Action List.

ACTION 1 – Request that WorkSafe include simple vehicle fatality data in the graph of total fatalities in the Fatality Update Report, with this data distinguishable from the other fatality data.

ACTION 2 – Enter Code of Practice: *Tower cranes* into the WHSC's table that tracks the status of codes and guides.

2.3 Codes of Practice

The WHSC was presented with 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. There were queries from an expert member regarding the:

- revocation of the Code of Practice; *Styrene*, and the need for some sort of guidance; and
- the decision to wait until the development by Safe Work Australia (SWA) of material on biological hazards before updating the Code of Practice: *Prevention and control of legionnaires disease*, with concern that such a code may dilute the focus on the design issues for air-handling and water systems.

In response, it was agreed that guidance relating to styrene is necessary and that the revoked code was out of date. It was also agreed that the WHSC will wait to see the contents of SWA's guidance for biological hazards to determine whether it addresses the design of air-handling and water systems adequately.

The agenda paper also updated WHSC members on the outcome of the out-of-session consultation conducted in October 2023 regarding expansion of the scope of the draft Code of Practice: *Psychosocial hazards at work for fly-in fly-out (FIFO) workers in the resources sector* to include all industries. WHSC members endorsed this proposal.

The WHSC **NOTED** the update on codes of practice and guidance.

3. AGENDA ITEMS FOR NOTING

(discussed by exception)

3.1 HSR training – Issues and approvals

See Agenda Item 4.7

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

The WHSC was presented with the CISAC report of the meeting of 17 October 2023. As requested, the WHSC **ENDORSED** the appointment of Mr Jaime Rebelo, Director WorkSafe Industrial and Regional, as an additional government member of CISAC.

According to the report, key items at the CISAC meeting were:

- concern about the high volume of High Risk Work licence assessments being conducted by a diminishing number of assessors;

- the review of feedback from the WA Construction Safety Alliance regarding the model Code of Practice: *Tower cranes*; and
- the suggestion that the definition of “construction work” be amended for the mining and exploration sector, with the Chairperson undertaking to consult with the A/Director Mines Safety on this matter.

The WHSC **NOTED** the CISAC report.

3.3 **Mining and Petroleum Advisory Committee (MAPAC) – Meeting report**

Key points in the MAPAC report of the meeting of 11 October 2023 were the:

- definition of “construction work” in the context of the mining industry;
- the scope of the draft Code of Practice: *Psychosocial hazards at work for fly-in fly-out (FIFO) workers in the resources sector*;
- work undertaken by Dr Dean Laplonge into gendered violence in the mining industry;
- functionality of the Safety Regulation System (SRS) database; and
- presentation on the WorkSafe Mines Safety Directorate Annual Plan and focus areas.

The WHSC **NOTED** the MAPAC report.

3.4 **Agricultural Safety Advisory Committee – Meeting report**

Nil

3.5 **Legislative Advisory Committee – Meeting report**

Nil

3.6 **WorkSafe events and promotions update**

A key point of the update was the success of the following events in October for Safe Work Month 2023:

- *Breath easy: Occupational health and hygiene forum*
(380 in-person registrations and 391 Webex online registrations)
- *Psychosocial hazards industry forum*
(380 in-person registrations and 1,100 Webex online registrations)
- *Sowing the safety seeds: Agricultural safety forum*
(80 in-person registrations and 110 Webex online registrations)

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

3.7 **Regulatory Activity Report**

The WHSC **NOTED** WorkSafe’s Regulatory Activity Report for the period to 30 September 2023.

3.8 **Fatality Update Report**

It was **AGREED** to move this standing item out of Section 3 (“for noting”) of the Agenda into Section 4 (“discussion”) to facilitate analysis of the data.

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

3.9 **Exemptions**

The WHSC was presented with copies of two letters approving exemptions under the Work Health and Safety (General) Regulations 2022 (“WHS General Regulations”). Both exemptions related to regulation 246 (Items of plant to be registered).

On the topic of regulation 246 the A/Commissioner informed the WHSC that, since the collation of the information presented to the WHSC, a class exemption has been granted in relation to this regulation. An exemption has been granted from the requirement that an item of plant specified in Schedule 5 Division 2 cannot be used until that item of plant has been registered. The exemption permits the use of the plant for 30 days once an application for the registration of an item of plant has been submitted to the regulator, with conditions applying. Under the previous 'OSH' legislation plant could be used while applications for registration were being processed. This is not permitted under the new legislation and has caused inconvenience and delays. The A/Commissioner noted that this issue was not identified during the drafting of the WHS General Regulations and that other states are 'working around' the issue. The A/Commissioner reasoned that the exemption does not increase risk because when the application for registration is lodged, the relevant controls involved in assessing the safety of the plant have been implemented.

The WHSC **NOTED** the exemptions granted.

3.10 **Correspondence**

The WHSC **NOTED** the following correspondence:

- 3.10A – Ministerial approval to gazette the second edition of the Code of Practice: *Managing the risks of respirable crystalline silica from engineered stone in the workplace*.
- 3.10B – Resignation of WorkSafe Commissioner Darren Kavanagh from WHSC.
- 3.10C – Minister for Industrial Relations to Chairperson – Expectations for Government Boards and Committees

4. **STANDING ITEMS AND ITEMS FOR DISCUSSION**

4.1 **WorkCover WA report – standing item**

The Chief Executive Officer of WorkCover WA, Mr Chris White, was pleased to report that the *Workers' Compensation and Injury Management Act 2023* has been passed in Parliament. Public consultation is now underway regarding the accompanying regulations. The implementation date of 1 July 2024 remains in place.

Mr White also reported an increase in workers' compensation claims, following a period of downward trends, and an increase in the durations of absence from work associated with claims. Mr White referred to the WorkCoverWA [Industry Benchmark Report](#) for the reporting period 2019-20 to 2021-22 which is based on claim statistics for that period. It provides a three-year average of industry benchmarks that can be used for evaluation of the occupational safety and health performance of organisations.

The WHSC **NOTED** the WorkCoverWA report.

4.2 **MARS (Mental Awareness, Respect and Safety) Program update – Presentation**

Prior to Agenda Item 4.1 above, Mr Peter Payne, General Manager MARS Program, delivered a presentation to update the WHSC on the MARS Program. Mr Payne reiterated that the MARS Program is funded by the Mines Safety Inspection Levy that must be spent in the mining sector, which means that the program cannot be implemented in other industries.

The presentation focused on the reach and practical programs of the program. The programs are wide-ranging, such as the “24/7 Campaign” to promote WorkSafe’s 24-hour reporting line for sexual harassment, alcohol messaging focus groups, the “Mining Industry Summit: Driving respect” and the Mining and Energy Union bystander training.

In response to questioning about uptake of the programs, Mr Payne stated that analysis of the MARS Program has been underway for long enough for analysis of its uptake and effectiveness to be assessed. Mr Payne was of the view that the MARS Program could be applicable to other industries, should there be funding to do so, while a WHSC member queried its transferability, given the unique nature of the mining industry.

The A/Director WorkSafe Mines Safety, Christina Folley, made the point that if businesses consider human organisational factors, focusing on how human performance is shaped by conditions within the system, they should be ‘psychologically safe’. Ms Folley referred to the general principles set out in the WorkSafe website page [Human factors for major hazard facility, petroleum and geothermal energy operations](#).

The WHSC **NOTED** the MARS Program update.

4.3 **Workplace exposure standard (WES) for diesel particulate matter**

The WHSC was presented with a discussion paper relating to the recommendation by SWA of a workplace exposure standard (WES) for diesel particulate matter (DPM) of 15 µg /m³. The recommendation was raised at the October 2023 meeting by expert member Tracey Bence and deferred until this meeting.

At that time, Ms Bence raised an issue of due process in that SWA’s public consultation was based on a proposed WES for DPM of 15ug/m³ when SWA members ultimately voted on the lesser WES value of 10ug/m³ without further consultation on the measurability of a WES for DPM of 10ug/m³.

The agenda paper noted that the independent consultant’s *Research report – Workplace exposure standard for Diesel Particulate Matter* for which SWA sought feedback states that “Outside of the scope of the Project was for the WES derivation to take into consideration feasibility of measurement and attainability in current workplaces” (p.15).

Listed in the agenda paper were the results of a review of comments regarding measurability of the WES of 15ug/m³ in the publicly available submissions to the SWA consultation on the proposed WES for DPM. Eight submissions raised this matter, with six expressing concerns about measurability at the higher value of 15 ug/m³ and two contending that there would be no problem with measurability.

The Chairperson invited expert member Tracey Bence to speak on the matter. Ms Bence emphasised that, while it *is* possible to measure DPM (as Respirable Elemental Carbon) at such a low level, air sampling equipment for measuring will have to run consistently and for longer durations, measuring will become more costly and the sample will need to be perfectly retained and analysed with no sample loss if there is to be confidence in the result. The published uncertainty of the method (NIOSH 5040) is plus or minus 17% at 23ug/m³. In practical terms this means here is a considerable difference between 15 and 10 ug/m³. If SWA had consulted on a proposed WES of 10ug/m³, precision in measurability would have been more strongly contested.

The A/Commissioner drew attention to regulation 656B of the Work Health and Safety (Mines) Regulations 2022 which has set a WES of 100ug /m³ for DPM in the mining sector. It is understood that this would take precedence over SWA's WES list that must be adhered to according to regulation 49 of the Work Health and Safety (General) Regulations 2022 ('WHS General Regulations') and Work Health and Safety (Mines) Regulations 2022. In contrast, any change to the DPM WES list will automatically apply to industries other than mining.

Ms Bence stated that the issue of process also applies to the many other changes SWA is proposing for the WES list. She stated that it is important that parties subject to a new WES have confidence that the process is robust, is genuinely consultative, is drawing on the appropriate expertise and that implementation of workplace exposure standards is technically feasible. Ms Bence emphasised that as a Certified Occupational Hygienist she is not opposed to the proposed WES for DPM per se, but knows it must be practicable to implement if it is to reduce risk to worker health.

Expert member Lin Fritschi referred to the agenda paper and the Cancer Council's position that diesel engine exhaust levels "...monitored using elemental carbon, can be accurately and reliably measured at levels well below the WES proposed by the Cancer Council". Dr Fritschi is a member of the Cancer Council Occupational and Environmental Cancer Committee and consulted them regarding their position prior to the WHSC meeting. She reported that the Cancer Council believe that that they may have overstated the accuracy and reliability of the method for measuring DPM but nevertheless are of the view that the ability (or not) to measure DPM is not a reason to refuse to reduce it. Measurability is likely to improve with improvements in technology.

The A/Commissioner explained that, in the past, workplace exposure standards were aimed at protecting the health of most workers. Gradually a more conservative approach has been adopted whereby workplace exposure standards have been lowered to a level at which nobody will be affected. This means that sometimes workplace exposure standards will be harder to practically achieve and measure. If WorkSafe cannot measure an exposure level, it is unlikely that it will take compliance action. However general duties under the *Work Health and Safety Act 2020* require practical controls to be in place. An option to introduce practicability would be to amend regulation 49 (ensuring exposure standards for substances and mixtures not exceeded) by adding "where practicable". This was done in WA with regulation 57(2) of the WHS General Regulations, where "so far as is reasonably practicable" was added, as copied below:

A person conducting a business of undertaking at a workplace must, so far as is reasonably practicable, ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise.

This does not take away the expectation that all the necessary practical controls are in place.

An employer representative stated that there are approximately 30-40 chemicals in the proposed revised WES list for which there are measurability issues, and there is no plan to address this. Employers agreed in principle to the reduction of the WES for the majority of chemicals, but problems with measurability will create anxiety and confusion. The suggestion that technology will be developed to solve the measurability issues relates to laboratories rather than persons conducting a business or undertaking. The A/Commissioner added that laboratories will not necessarily be motivated to develop this technology.

Ms Bence suggested that a request to SWA from the WHSC could be how the measurability issues of DPM will be factored in and resolved during the transition period.

A union representative defended SWA's recommendation of a WES for DPM lower than that consulted on, saying it does not necessarily mean the process was flawed. Re-consulting on the lower WES would not necessarily have been practical and may lead to delays and adverse consequences. An expert member agreed in this instance but stated that there should be the opportunity to improve consultation as there are multiple WES decisions still to be made by SWA members.

The Chairperson stated that it would be useful for the WHSC to share their concerns with the Minister for Industrial Relations, and summarised the discussion by stating that the concern is about the transition and implementation of lower workplace exposure standards where measurability is an issue. While it is hoped that the WES for DPM will drive better measurement outcomes, a 'roadmap' for the process is needed.

A unions representative disagreed, stating that a three-year transition period is sufficient and it can be left to SWA to address implementation issues, adding that a WHSC debate about a regulatory amendment could take place following finalisation of the WES list. SWA could be encouraged to issue communications during the transition period. With regard to a roadmap for implementation, the union representative would prefer to consult on this outside of the WHSC and re-visit the matter at the next WHSC meeting, and suggested it is something that SWA needs to consider *after* finalisation of the WES list.

It was **AGREED** that:

- the WHSC's concern is for the WES for DPM to be implemented effectively, in light of measurability issues;
- SWA is to be encouraged, at a time to be decided, to develop a roadmap for this process *or* the WHSC will consider other ways to encourage and facilitate the transition process; and
- there will be further discussion on these matters at the next WHSC meeting.

An expert member encouraged WHSC members to listen to the webinar [Safe Work Australia – Update on WES Review](#) presented by Dr Rebecca Newton. This covers the SWA review of workplace exposure standards and the next steps. It will provide an idea of what will need to be done at a state level.

The Chairperson stated her view that if research is needed, it should be done at a national level since the standard is set nationally.

Attention turned to a late paper by an employer representative and distributed at the meeting, expressing concern regarding the WES for welding fumes. SWA members agreed to an immediate reduction to the WES for welding fumes to 1mg/m³ and agreed to amend the model WHS Regulations to include specific requirements for welding processes. The employer representative raised concern about the process of arriving at this decision, given that no scientific review or stakeholder consultation was undertaken despite being agreed to at the previous meeting. SWA members agreed overall that the WES for welding fumes should be lowered, however the employer representative believes that scientific evidence is

needed to determine the reduced level, after which public consultation should take place. It was suggested that an impact analysis will be required and this possibly needs to be raised with the Minister for Industrial Relations.

An expert member agreed with concerns about the unusual process for agreeing a lowered WES for welding fumes as there is now to be retrospective research. There are many individual components of welding fumes with workplace exposure standards that have still to be decided. The A/Commissioner stated that WorkSafe will wait to see the new model regulations regarding welding before deciding on the response. It was **AGREED** to note this concern, with the employer representative making the general point that where there has not been impact analysis at a national level, Western Australia will need to undertake impact analysis where appropriate.

On the topic of SWA decisions and WHSC's keenness for more insight into SWA's agenda and deliberations, an employer representative referred to proceedings in the [Senate Education and Employment Legislation Committee Estimate](#) on Wednesday 25 October 2023. In response to a question about public access to decisions made at SWA meetings, SWA's (former) Chief Executive Officer Michelle Baxter stated that there is currently "*no embargo on members who have attended a meeting where decisions have been reached communicating those decisions to their constituents; to their ministers, depending on which membership they are; or indeed to the public at large. There's no prohibition. We require no prohibition*" and "*They're not secret outcomes*". This may allow more open discussion at future WHSC meetings.

The WHSC **NOTED** the discussion concerning the WES for DPM and **AGREED** to further discuss the matter at the next meeting.

ACTION 3 – Discuss the WES for diesel particulate matter at the next WHSC meeting.

4.4 **Agriculture Inquiry – communications update**

The WHSC was presented with an update by WorkSafe regarding activities in response to the recommendations of the *Inquiry into the agricultural industry in Western Australia* concerning engagement, consultation and communications with the agriculture industry.

The initial focus of the campaign will be the Wheatbelt as it has the highest number of fatalities and serious injuries. A multi-faceted approach is planned and aims to raise awareness and change attitudes. Some aspects of this approach are to select a 'trial community' to, amongst other things, identify barriers and how to overcome them and trial the agricultural advisory service. Other ongoing communications include the:

- E-newsletter: Farm safety news alert
- Safe Work Month: *Sowing the safety seed – Agricultural Safety Forum*
- attendance at field days and agricultural shows
- monthly column in the Farm Weekly newspaper.

The Chairperson reminded the WHSC that as codes and guides come up for review, consideration needs to be given to inserting subsections dedicated to agriculture where possible.

The WHSC **NOTED** the update on communications for the agriculture industry.

4.5 **WorkSafe: The Way Forward Strategy**

The WHSC was provided with an overview of WorkSafe's commitments titled *WorkSafe: The way forward 2023-24 to 2025-26*. The A/Commissioner explained that it is an outward-facing, longer-term strategy for WorkSafe. It ties focus areas together and aligns with the national strategy while allowing for flexibility. The key priorities are:

- repeat hazard exposures (allows tailoring to different industry areas)
- psychosocial hazards (a complex area in which WorkSafe seeks to assist industry to build their capacity)
- respiratory hazards (focuses on silica and asbestos along with other areas, and aligns with WorkSafe's existing Dust Strategy)
- consultation and representation (the WHS Act centres around these two aspects, and WorkSafe seeks to further support Health and Safety Representatives).

WorkSafe intends to release periodic reports relating to the implementation of this strategy.

The A/Commissioner was commended on the focus on Health and Safety Representatives. In terms of the strategy's priority of respiratory hazards, an expert member referred to the Dust Strategy and the outcome of improved management of respiratory hazards, and asked how this is progressing. The A/Commissioner stated that an update regarding compliance and education will be published in December 2023. The occupational hygiene team is not fully staffed due to high staff turnover, and this has impacted results. In contrast, the asbestos team is fully staffed and achieving good results. The expert member emphasised that the concern is about "boots on ground".

The WHSC **NOTED** WorkSafe's *The Way Forward Strategy*.

4.6 **Legislative Advisory Committee (LAC) – Appointment of Chairperson**

The WHSC was presented with a paper seeking nominations and the appointment of a new chairperson to LAC, given that the WorkSafe Commissioner, Darren Kavanagh, is on extended leave and has given notice of his resignation.

The A/Commissioner, Ms Sally North, had indicated she is willing to take on the role of Chairperson of LAC. No other nominations were forthcoming, and Ms North was duly **ENDORSED** as the Chairperson of LAC.

4.7 **HSR training and issues**

The WHSC **ENDORSED** the approval out-of-session by the Chairperson of the following applications for:

- approval to deliver training to Health and Safety Representatives (HSRs) – Essential Training Pty Ltd, with Mark Small approved as the trainer; and
- additional nominated trainers –
 - Diane Wilkins – Training Services Australia
 - Ruth Jenkins – Training Services Australia
 - Tracey Talbot – Central Regional TAFE.

The WHSC did not endorse an application by a training provider for a particular additional trainer. This was based on the decision at the previous WHSC meeting that in-house training whereby an organisation uses its own staff to conduct

training of their HSRs is not permitted due to conflicts of interest. Discussion ensued about a trend of government agencies to exert undue control over HSR arrangements.

A brief discussion took place about assessment of HSRs at the conclusion of their training, with the relevant section of the previous Guide not proving useful. The Chairperson stated that there is no easy formula for assessment, and it is difficult to be more prescriptive. An employer representative referred to the difficulty of assessing engagement of HSRs during training when cultural differences may give the appearance that HSRs are not engaged when in fact they are.

The WHSC **NOTED** the discussion about HSR training issues.

4.8 Silica – standing item

Nil (discussed in terms of LAC Action Items)

4.9 Transitional provisions – standing item

Nil

4.10 Presentation - SRS (Safety Regulation System) data

Dr Martin Ralph, WorkSafe Regional Inspector of Mines, delivered a comprehensive presentation on the functionality of the Mines Safety Directorate's data management system SRS (Safety Regulation System). As the meeting had already run over time, and as some WHSC members had seen the presentation at the recent MAPAC meeting, several members left at this point.

The presentation was requested following comments at WHSC meetings regarding the value of data and the difficulty extracting it from SRS. It focused on health and hygiene sub-systems in SRS, and the SRS functionality that enables industry to:

- submit sampling results for personal exposure to airborne contaminants, noise and biological agents;
- submit a Health (and Hygiene) Management Plan (HHMP) and other documents that support effective health and hygiene hazard management;
- submit health and hygiene sampling results;
- provide further information including contributory factors and proposed actions for samples identified as exceedances;
- submit a HHMP revision;
- submit an annual review of a HHMP; and
- receive automated reminders for upcoming or overdue submissions.

WHSC members appreciated the functionality of SRS, which could provide for analysis of the extent and trends of exceedances, but noted that the data collected should be analysed and shared with industry to drive improvements in health and hygiene management .

The WHSC **NOTED** the presentation regarding SRS functionality.

5. OTHER BUSINESS

5.1 Nil

6. NEXT MEETING

6.1 CLOSE - Next meeting - 6 December 2023