



Meeting No.	18	Time:	9:00
Venue	Koorling Dandjoo Conference Room, 1 Adelaide Terrace, East Perth		

Work Health and Safety Commission Minutes – 6 December 2023

Attendees

Dr Patricia Todd	Chairperson
Ms Robyn Parker	(for A/WorkSafe Commissioner)
Dr Martin Ralph	A/Director WorkSafe Mines Safety
Dr Lin Fritschi	Expert member
Dr Matt Davies	Expert member
Ms Tracey Bence	Expert member (via Microsoft TEAMS from approx.10am)
Ms Laila Nowell	Chamber of Minerals and Energy of Western Australia (CME)
Ms Jennifer Low	Chamber of Commerce and Industry (CCIWA) (via Microsoft TEAMS from)
Mrs Agnes McKay	CCIWA (to 11.30am)
Mr Owen Whittle	UnionsWA
Ms Naomi McCrae	UnionsWA (via Microsoft TEAMS)
Helen Brown	Executive Officer, WorkSafe

Apologies

Sally North	A/WorkSafe Commissioner
Chris White	WorkCover WA
Glenn McLaren	UnionsWA

1. WELCOME, APOLOGIES, AGENDA

1.1 Opening and welcome

The Chairperson opened the meeting, welcoming the acting public sector representative, Dr Martin Ralph, and the A/Executive Director Regulatory Support, Ms Robyn Parker (standing in for A/WorkSafe Commissioner). The Chairperson also acknowledged the efforts of Laila Nowell, who has given notice of her resignation from CME and the Work Health and Safety Commission (WHSC), and wished her well.

1.2 Apologies

Sally North, Glenn McLaren, Chris White

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting, with the addition of items from Dr Matt Davies to Section 5 ("Other business") of the agenda.

1.4 Declarations of Conflicts of Interest

Dr Ralph expressed a conflict of interest in terms of Agenda Item 4.2 and Mr Owen Whittle in terms of Agenda Item 4.8. This was **NOTED** by the WHSC. It was felt that this could be managed and it would be unnecessary for Dr Ralph and Mr Whittle to leave the room during discussion of these items, although Mr Whittle preferred to so.

2. PREVIOUS MEETING/S

2.1 Confirm minutes of previous meeting

The Minutes of the WHSC meeting of 1 November 2023 were **ENDORSED** as a true and correct record, subject to tracked amendments by expert member Ms Tracey Bence and correction of Dr Lin Fritschi's role with the Cancer Council.

2.2 Review Action List from previous meeting

The WHSC **NOTED** the Action List arising from the November 2023 meeting of the WHSC, with the CME representative stating that the planned review of the listed Safe Work Australia (SWA) guides by the Legislative Advisory Committee should be prioritised. It was also noted that item F (*seek the views of Dr Ioannakis with regard to ideal class sizes on completion of the auditing program*) was completed.

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. Points of note were that:

- the adaption of SWA's model Code of Practice: *Tower cranes* will proceed following completion of consultation with various stakeholders such as the WA Construction Safety Alliance and the Crane Industry Council of Australia; and
- the *Guidance for alcohol and other drugs in the workplace* is in urgent need of updating to include matters including medicinal cannabis.

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

3 AGENDA ITEMS FOR NOTING – STANDING ITEMS

(discussed by exception)

3.1 Health and Safety Representative (HSR) Training – Issues and approvals

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

- Brenden Moebus – Pinnacle Safety and Training
- Iain Leishman – Pinnacle Safety and Training.

3.2 Construction Industry Safety Advisory Committee (CISAC) – Report

The report of CISAC's meeting of 21 November 2023 was **NOTED** by the WHSC, with the main points being:

- a request for a report by mid-February 2024 of the deliberations of the working group of the Crane Industry Council of Australia in relation to the adaption of the SWA Code of Practice: *Tower cranes*; and
- agreement in principle that the content of the SWA *Guide to managing risk in construction: Prefabricated concrete* will be issued as a code of practice and modified for Western Australian compliance, pending the views of several absent CISAC members.

3.3 Mining and Petroleum Advisory Committee (MAPAC) – Report

Nil

3.4 Agricultural Safety Advisory Committee (ASAC) – Report

The report of ASAC's meeting of 20 October 2023 was **NOTED** by the WHSC, with key topics being:

- an overview of the recommendations of the Agricultural Industry Inquiry and the progress of their implementation;
- the activities of WorkSafe's Agricultural Safety Implementation Work Group;
- a presentation by Dr Marcus Cattani of Edith Cowan University titled *Improving Agricultural Health and Safety Performance*; and
- the inaccuracy of the article in the *Farm Weekly* of 21 September 2023 titled *Government thinks gravel pits are super pits*.

3.5 Legislative Advisory Committee – Report

(see Agenda Item 4.2)

3.6 WorkSafe events and promotions update

The WHSC **NOTED** the WorkSafe events and promotions update, with the key points being:

- the WHS Excellence Awards that took place on 27 October 2023 with 302 'in person' registrations; and
- the forthcoming 'hybrid' asbestos discussion forum on 11 December at the Mason Bird Building in Cannington, which is the last event for 2023.

3.7 Regulatory Activity Report

The WHSC **NOTED** WorkSafe's Regulatory Activity report to 31 October 2023, which presents data relating to customer service notifications, licensing and accreditations, investigations, notices, major investigations and prosecutions, and exemptions granted.

An expert member queried the low rate of prosecutions relating to work health and safety (WHS) in Western Australia compared to the national average. It was **AGREED** that a paper comparing national and Western Australian statistics will be presented at the February 2024 WHSC meeting.

ACTION 1: A paper comparing the Western Australian and national statistics relating to prosecutions will be presented at the February 2024 meeting of the WHSC.

3.8 Fatality Update Report

The WHSC **NOTED** the Fatality Update report for October 2023.

3.9 Exemptions

The class exemption granted by the A/WorkSafe Commissioner in relation to regulation 246 of the Work Health and Safety (General) Regulations 2022 and the Work Health and Safety (Mines) Regulations 2022 was **NOTED** by the WHSC.

The exemption is 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, which is a new requirement under the WHS legislation. The exemption is valid for a period of 30 days from the time the application for item of plant registration has been submitted. The A/WorkSafe Commissioner reasoned that in granting the class exemption there is no increase in risk because at this stage of the process the relevant controls involved in assessing the safety of plant have been implemented.

3.10 Correspondence

- Minister for Industrial Relations to Chairperson WHSC – Response to letter re e-cigarette aerosols in workplaces.
- Chairperson to Minister for Industrial Relations – Request for appointment of Dr Lin Fritschi as Deputy Chairperson of WHSC.

The WHSC **NOTED** the correspondence.

4 ITEMS FOR DISCUSSION

4.1 WorkCover WA report (standing item)

Nil

4.2 Legislative Advisory Committee (LAC) Report

The LAC Report sought the appointment of Dr Martin Ralph to LAC to replace the former A/Director WorkSafe Mines Safety, Christina Folley. The WHSC **ENDORSED** the appointment of Dr Ralph to LAC and acknowledged the contribution of Christina Folley.

4.3 Rationalisation of 'psychosocial' codes of practice

The WHSC was presented with a paper seeking endorsement for a proposal by WorkSafe to rationalise WA's three 'psychosocial' codes of practice by consolidating them into one code based on SWA's model Code of Practice: *Psychosocial hazards at work* ('model Psychosocial Code'). The three 'psychosocial' codes of practice are:

- Psychosocial hazards in the workplace
- Violence and aggression at work
- Workplace behaviour.

WorkSafe also proposed that the feasibility of consolidating the 'FIFO Code' and proposed 'Accommodation Code' be investigated and proposed the adoption and adaption of SWA's soon-to-be-published model Code of Practice: *Sexual and gender-based harassment* ('model Sexual Harassment Code').

WorkSafe's reasons for the proposal relate to overlap between the codes. If a change is made to one of the psychosocial codes, then it is necessary for

WorkSafe to check and possibly amend all of the overlapping codes. The overlap can also be confusing for stakeholders and can mean the three codes have different approaches to the same topics.

The Chairperson explained that the proposal was prompted by the current development of a new FIFO Code and its relationship to the psychosocial codes. The Chairperson commented that rather than replacing the psychosocial codes with the model Psychosocial Code, it would more likely be a blending of the existing codes, with the proposal more akin to an amalgamation than a fundamental analysis of existing content.

A lengthy discussion took place, with various hurdles and practical considerations relating to this proposal being identified. The main comments and questions have been grouped in themes below.

The three psychosocial codes of practice

- The three psychosocial codes were developed based on application to specific issues in workplaces.
- They were developed following a well-litigated discussion and 14-15 months of drafting. Representatives of both unions and employers commented that many compromises were made in the drafting process and that these issues would inevitably rise again if a review was undertaken, necessitating a lengthy process.
- WA led the way in developing the first two psychosocial codes of practice in Australia.
- The titles of the three psychosocial codes are more meaningful and specific to small businesses than the more generic title of “Psychosocial hazards at work”.
- UnionsWA has found having three codes to be very useful, particularly given the increase in workplace violence from external sources and having a code devoted to that topic. The Code of Practice: *Violence and aggression at work* has been used extensively in the health sector and has made a difference.
- There was concern that the model Psychosocial Code does not adequately cover the content of Western Australia’s Code of Practice: *Violence and Aggression at work*.
- The CME representative has found that members have struggled with overlap between the three psychosocial codes which can address the same topic in a different way - one code would be preferable.
- The existing codes use different language in some contexts to what is used in other jurisdictions and therefore do not align with resources being produced by SWA; this could be addressed as an interim measure.

Motivator for change

- What best meets the needs of persons conducting a business or undertaking and workers needs to be prioritised over administrative issues.

SWA codes

- SWA codes are not necessarily superior and tend to be less practical and more generic.
- While part of the WHSC Strategic Plan is to align publications with SWA, we also need to consider what works best for WA.

Model Psychosocial Code

- The model Psychosocial Code is extremely light on detail, without even a clear description of what constitutes violence and aggression at work.

Issues with process of amalgamation

- When amalgamating documents, the result can be one large document that is not easy to use, is generic and lacks specific guidance.
- If the amalgamation were to proceed, a consultation process would be necessary.
- Amalgamating the psychosocial codes would inevitably be a lengthy process at a time when there are many other priorities.
- Have any gaps in the current psychosocial codes been identified in this evolving space?
- There will be no quick way to amalgamate the psychosocial codes – the usual consultation processes would need to be undertaken, and it cannot be assumed that there is no room for improvement of the codes.
- When the WHS legislation was introduced, the psychosocial codes were revised without a review of the content; any further revision should involve analysis of the content to identify gaps, additional content needed and any other amendments that may be necessary.
- There is an obligation on the WHSC to reflect the current state of knowledge.

Reasons to postpone amalgamation

- There is much happening in the sphere of psychosocial hazards in the workplace – it would be better to wait while things are evolving quickly.
- SWA is planning 9-10 guidance documents to support the model Psychosocial Code which may be relevant to this proposal.

Model Sexual Harassment Code

- When SWA publishes the model Sexual Harassment Code, the WHSC can review the Code of Practice: *Workplace behaviours* in the context of possible amalgamation; until that time a decision cannot be made.

Other

- There are many more codes of practice aimed at male-dominated industries than female-dominated industries, such as for abrasive blasting, construction work, demolition work, spray painting and powder coating, managing risks in stevedoring and how to safely remove asbestos. There are few codes that address predominantly feminised workforces (eg nursing) which the violence and aggression code does.
- Codes of practice are placed on the WorkSafe website as a link with no overview or explanation; if this were to be provided it may alleviate confusion about which code to use.

It was **AGREED** that the three existing psychosocial codes of practice should be retained and to await the model Sexual Harassment Code to review it in relation to the Code of practice: *Workplace behaviour*.

The CME representative commented that CME is supportive of combining the FIFO and accommodation codes. The Chairperson responded that this matter will be discussed at the MAPAC meeting on 13 December 2023.

It was agreed that there is much to be resolved in terms of the scope of the FIFO Code, with the suggestion that this could be discussed by LAC.

It was **AGREED** that the table accompanying this agenda item (illustrating overlap of the psychosocial codes of practice) will be added to the table *Codes of practice and guidance for review or development* that is presented in standing Agenda Item 2.3.

ACTION 2: The table accompanying this agenda item (illustrating overlap of the psychosocial codes of practice) will be added to the table *Codes of practice and guidance for review or development* that is presented in standing Agenda Item 2.3.

4.4 Review of Affected Families and Workers Advisory Committee (AFWAC)

The WHSC was presented with a paper commencing a review of AFWAC, which is a forum for people affected by fatalities and serious injuries in the workplace to provide advice to relevant government agencies about the liaison and support services offered following serious workplace incidents. AFWAC was formed in response to criticisms of WorkSafe's failures in dealing with family members who had suffered loss.

The Chairperson noted that one of the [National Principles to support families following an industrial death](#) is that "bereaved families and seriously injured workers and their families have the opportunity to give feedback to government and advocate for change or reform to meet the needs of those significantly impacted by industrial death or serious injury". Therefore, AFWAC is important and should continue. The Chairperson has so far consulted with the Family Support Liaison Officer, the Executive Officer and one of the Co-Chairpersons of AFWAC.

WHSC members participated in discussion while being mindful of the dilemma posed by the need for support of those who have lost a loved one in a workplace accident and this not being the purpose of AFWAC. The general conclusions drawn were that:

- although AFWAC is a subcommittee of the WHSC, there has been no interaction between the two groups;
- AFWAC should continue as a subcommittee of the WHSC and report on their deliberations and activities to provide the WHSC with an insight into the issues faced by affected families and workers;
- AFWAC's primary role is not to provide support to grieving families and workers but to take a 'big picture' approach by working on issues and processes to improve future interactions with those affected;
- it is important for AFWAC members to be aware of the terms of reference, for each meeting to have a clear agenda and for the Chairperson to ensure that AFWAC operates within these parameters;
- requests by AFWAC members for practical measures in response to the loss of their loved one, such as changes to regulations, should be escalated to the WHSC for consideration; and
- given that a number of the members have been on AFWAC since its inception, it may be time to consider renewal.

It was **AGREED** that the Chairperson will follow up the discussion with the A/WorkSafe Commissioner.

4.5 Update – Impact analysis for amendments to WES list

An update was provided to the WHSC on the status of impact analysis for various SWA undertakings, including for amendments to workplace exposure standards, incident notification, crane licensing and non-threshold genotoxic carcinogens.

In response to a question, expert member Ms Tracey Bence spoke of concern expressed amongst occupational hygienists at the meeting on 6 December 2023 of the Australian Institute of Occupational Hygienists, in relation to SWA's methodology in setting new workplace exposure standards and particularly about consultation processes.

The WHSC **NOTED** the update.

4.6 Workplace Exposure Standard (WES) for diesel particulate

WHSC members resumed the discussion from the November 2023 meeting on the topic of the proposed workplace exposure standard (WES) for diesel particulate matter (DPM). At the previous meeting some members expressed concern about the measurability of the WES for DPM of 10ug/m³, with no agreement reached at that meeting on the next steps to be taken by the WHSC on this matter.

Expert member Tracey Bence spoke of the need for a plan for sampling and analysis at a national level to make the transition manageable. The solution is within nationally accredited laboratories.

Expert member Dr Matt Davies reflected on issues with mandating workplace exposure standards, stating that it shifts the situation from a hygiene issue to a compliance issue. This is convenient for regulators and managers who collect samples that are assumed to be representative, but it is not that simple. A sample is a sample of a distribution at that point in time. Each measurement is affected by many factors, and there is wide variability. One sample taken over a short period of time is not representative. To take a more representative sample, such as over a period of eight hours, would be very costly and time-consuming.

It was **AGREED** to convey the WHSC's concerns to the A/WorkSafe Commissioner regarding the measurability of the proposed WES for DPM to inform discussions of the matter at a national level.

ACTION 3: Convey the WHSC's concerns to the A/WorkSafe Commissioner regarding the implementation of the proposed WES for DPM due to measurability issues, and the consequent proposal by the WHSC that national initiatives commence to ensure a smooth and timely transition.

4.7 Annual Report – Health and Safety Representative (HSR) training

HSR training providers are required to submit an annual report. The WHSC was presented with the consolidated data in the *Training courses for health and safety representatives Annual Report 2022-23* ('the Annual Report'). Interesting points to note were that:

- 6,190 people were trained, with 5,569 in the five-day course and 621 undertaking refresher training;
- 48% more people completed the five-day course than in the previous four years (averaged);
- two-thirds of the five-day course attendees were male;
- for the second year in a row, there were more regional than metropolitan participants in the five-day course;

- the largest number of HSRs undertaking the five-day course were employed in mining and petroleum, followed by health care and education and training; and
- plant and machine operators, professionals and tradespersons represent the highest percentage of HSRs trained, with salespersons and personal service workers being the lowest.

The Chairperson expressed satisfaction with the increase in HSRs trained and presumed that it is due to the new WHS legislation and the need to update HSRs. A UnionsWA representative reflected that the increase may be associated with the allocation of increased resources by WorkSafe for promotion and education of HSRs, and acknowledged WorkSafe's support.

The A/Director Mines Safety commended those in WorkSafe responsible for the annual report, stating that the data will be very useful to training providers.

Expert member Dr Lin Fritschi queried the small number of HSRs from NOPSEMA who received training, as indicated in Figure 7 of the Annual Report. This query will be followed up.

The WHSC **NOTED** the *Training courses for health and safety representatives Annual Report 2022-23*.

ACTION 4: Seek clarification on the number of HSRs trained from NOPSEMA.

4.8 Report – Audit of providers of training for HSRs

The WHSC was provided with an abridged version of the very comprehensive *Report – Audit of the Five-day Health and Safety Representatives (HSR) Training Courses being delivered by the Western Australian Work Health and Safety Commission (WHSC) Approved Providers* ('the Report') by Dr Irene Ioannakis ('the auditor'). Details of individual providers were extracted from the Report.

The WHSC used funds provided by WorkSafe to engage the auditor to undertake an audit of the delivery of training for HSRs by selected training providers. The audit aimed to cover a variety of different arrangements, with eight training providers selected for audit on the basis of:

- (i) size
- (ii) location
- (iii) length of time since approval to deliver training
- (iv) whether a third party is contracted to deliver training on behalf of the training provider.

The audit took place during the period 28 August – 8 November 2023. Matters relating to training and administration were investigated. The auditor rated the auditable aspects as "compliant", "not compliant" or "unable to verify".

The Chairperson noted that the auditor was very impressed by the high quality of training observed. Issues identified were of an administrative nature and were generally rectified within a short period. The Chairperson stated that it was not intended at this meeting to discuss in depth issues raised but to identify issues for future discussion.

A UnionsWA representative congratulated the Chairperson on bringing the audit program to fruition. The Chairperson acknowledged WorkSafe for providing the

funds for the audit and commented that it was 'money well spent' and hopefully the audit program will be repeated in future. Issues identified for future discussion are briefly discussed below.

Out of date qualifications

The auditor found that the qualifications of many trainers are out of date. Points raised by WHSC members were that: (i) Registered Training Organisations are required to have trainers with current qualifications; (ii) trainers are provided with a very prescriptive course outline to follow; (iii) the HSR training courses are unaccredited; (iv) statements of attainment are not issued to HSRs who complete the training course and assessment requirement for units of competency do not necessarily apply; (v) whether training competencies is the domain of the WHSC; (vi) other professions such as teaching have personnel with out of date qualifications but they generally also have programs of personal development; and (vii) the combination of qualifications and experience is important.

Class sizes

The auditor made a recommendation about optimal class sizes. The WHSC could consider whether to adopt this recommendation, given that questions have been received from training providers on the matter.

Training materials

The auditor commented on the training materials. Currently the WHSC is in the process of obtaining feedback from training providers regarding the updated NSW course materials. Feedback combined with the auditor's comments can be considered.

Third party arrangements

The WHSC has previously been concerned about the matter of sub-contracting. The auditor found no evidence of sub-contracting taking place, but instead incidences of a third party using the training provider's premises or a trainer being the third party. The auditor did find some 'tidying up' to be necessary for issues such as who is advertising the course, who is processing the applications and whose name is on the certificate. Training providers may need reminding about who is ultimately responsible.

The A/Director WorkSafe Mines Safety emphasised that there are errant behaviours by registered training organisations (RTOs), giving examples. Auspicing arrangements can be used by some RTOs as a way of evading their responsibilities.

The Chairperson stated that these points will be discussed at future meetings and urged those present to raise any other issues they identified in the Report that they believe should be discussed.

The WHSC **NOTED** the Report.

4.9 Work Health and Safety Commission Annual Report

The *Work Health and Safety Act 2020* provides that the Commission must, on or before 31 October each year, prepare and submit to the Minister a report of its operations for the year ending on the preceding 30 June. The WHSC was presented with a copy of the *Work Health and Safety Commission Annual Report 2022-23*, which was compiled by the Chairperson in conjunction with WorkSafe.

The WHSC **NOTED** the *Work Health and Safety Commission Annual Report 2022-23*.

4.10 SWA update (standing item)

The WHSC **NOTED** the agenda for SWA's meeting of 7 December 2023.

It was **AGREED** that an update will be sought for the next WHSC meeting on outcomes of the SWA discussion of the agenda item "regulation of crystalline silica processes at work".

ACTION 5: An update will be sought from the A/WorkSafe Commissioner for the next WHSC meeting on outcomes of the SWA discussion of the agenda item "regulation of crystalline silica processes at work".

4.11 Silica (standing item) – Proposal for recommendation re prohibition on engineered stone

Expert member Tracey Bence submitted a paper recommending that the WHSC advise the Minister for Industrial Relations to support:

- a prohibition on the use of all engineered stone (irrespective of silica content) and amendments to the WHS accordingly; and
- regulation to deal with legacy engineered stone and other high risk silica processes in workplace settings where risk is founded on nature and the concentration of dust emissions, rather than triggered by a specific concentration or percentage of silica in a product or process.

Ms Bence stated that the purpose of the paper is to emphasise that it is the dust from engineered stone, rather than the material itself, that is the issue. The paper addressed the inherent difficulties in suppressing dust from engineered stone and the toxic nature of this dust due to the ultrafine and easily absorbed dust particles. Also covered were the other toxic components of engineered stone including volatile organic compounds, heavy metals, amorphous silica, recycled glass and pigments that combine to form a 'cocktail' of dust emissions.

The WHSC **AGREED** that the Minister for Industrial Relations has already made an announcement regarding the plan to prohibit the use of engineered stone, and it is premature to give the Minister direction while discussions at a national level are still taking place. It was also **AGREED** that this topic will be discussed at the next WHSC meeting when there is more clarity on the details of the ban and the national direction for regulation of all workplace silica processes.

Expert member Dr Lin Fritschi referred to an interesting paper by Chandee Ramkissoon titled *Understanding the pathogenesis of engineered stone-associated silicosis: The effect of particle chemistry on the lung cell response*. It was **AGREED** that this paper will be circulated to WHSC members and guests.

ACTION 6: Circulate to WHSC members and guests the paper *Understanding the pathogenesis of engineered stone-associated silicosis: The effect of particle chemistry on the lung cell response* by Chandee Ramkissoon.

ACTION 7: Discuss the ban on the use of engineered stone at the WHSC meeting of 7 February 2024, by which time there will be more clarity on the matter.

4.12 Transitional provisions (standing item)

The CME representative noted that the WorkSafe Commissioner's Statement of Regulatory Intent applies until March 2024, and questioned its future after that. This question was taken on notice. A UnionsWA representative expressed interest

in this matter given that there have been no prosecutions under the WHS legislation.

ACTION 7: Seek information about the future of the Statement of Regulatory Intent beyond March 2024.

5 OTHER BUSINESS

5.1 Members to advise

Expert member Dr Matt Davies raised two issues for the agenda of the February 2024 meeting of the WHSC. These centre around:

- how well we reach youth who will soon be entering the workforce, because there is concerning evidence about the exposure to risk by young workers, particularly in the gig economy; and
- the supply chain (eg manufacturers, importers, suppliers), and how much enforcement activity is focused on this area and how can equipment be better assessed before 'landing' in workplaces.

The Chairperson asked Dr Davies to include in the agenda papers the evidence and information he referred to.

6 NEXT MEETING

- 6.1 Next meeting – 7 February 2024
Meeting closed 11.45am.