



Meeting No.	19	Time:	9:00
Venue	Koorling Dandjoo Conference Room, 1 Adelaide Terrace, East Perth		

Work Health and Safety Commission Minutes – 7 February 2024

Attendees

Dr Patricia Todd	Chairperson
Ms Sally North	Ex-officio member - A/WorkSafe Commissioner (via Microsoft TEAMS)
Dr Martin Ralph	Ex-officio member - A/Director WorkSafe Mines Safety
Dr Lin Fritschi	Expert member
Dr Matt Davies	Expert member
Ms Tracey Bence	Expert member
Ms Jennifer Low	Member – nominated by Chamber of Commerce and Industry of Western Australia (CCIWA) (via Microsoft Teams until 10.10am)
Mrs Agnes McKay	Member – nominated by CCIWA
Mr Owen Whittle	Member – nominated by UnionsWA
Mr Glenn McLaren	Member – nominated by UnionsWA
Ms Michelle Gadellaa	Guest – appointment pending – nominated by Chamber of Minerals and Energy Western Australia (CME)
Chris White	Regular guest – Chief Executive Officer, WorkCover WA
Helen Brown	Executive Officer – Senior Policy Officer, WorkSafe

Apologies

Naomie McCrae	Member – nominated by UnionsWA
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1 WELCOME, APOLOGIES, AGENDA

1.1 Opening and welcome

The Chairperson opened the meeting at 9.02am and welcomed those present. Particular mention was made of guest Ms Michelle Gadellaa whose appointment to the Work Health and Safety Commission (WHSC) is pending, following nomination by CME to replace Ms Laila Nowell.

1.2 Apologies

Naomi McCrae

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

1.4 Declarations of conflicts of interest

Nil

2 PREVIOUS MEETINGS

2.1 Confirmation of Minutes of previous meeting

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

2.2 Review Action List from previous meeting

Items on the Action List arising from the previous meeting were discussed by exception, as recorded below.

- Item G (Seek information on the future of the WorkSafe Commissioner's Statement of Regulatory Intent (SRI)): The A/WorkSafe Commissioner gave an overview of the function of the SRI, stating that it had served its purpose and will be discontinued shortly.
- Item M (Review the role and functioning of the Affected Families and Workers Advisory Committee (AFWAC)): The Chairperson stated that the next stage of the ongoing review of AFWAC will be attendance at the next AFWAC meeting by the Chairperson.
- Item K (The adapted model Code of Practice: *Tower cranes* will be presented to the next WHSC to decide whether further consultation is warranted or whether the WHSC will recommend that the adapted model code be adopted in Western Australia): The A/WorkSafe Commissioner stated that technical officers from the WorkSafe Group have met with representatives of the Crane Industry Council of Australia and the WA Construction Safety Alliance, which was very useful for progression of this project.
- Item I (Request that WorkSafe publicise the need for maintenance of air-handling and water systems): Tracey Bence thanked the WorkSafe Group for publishing *Code of practice: Managing the work environment and facilities* information about the risk and obligations associated with Legionella's disease in relation to air-handling and water systems.

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

2.3 Codes of practice update

The WHSC was presented with the 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. It was noted that WorkSafe has prioritised the following two codes:

- Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sector
- Work health and safety and injury management systems for the Western Australian public sector ('public sector code').

It is expected that the public sector code will be presented to the next WHSC meeting.

A CCIWA representative expressed concern that the Legislative Advisory Committee (LAC) is now meeting bi-monthly rather than monthly, and this does not help the backlog of work to be done with codes of practice and guidance. The representative expressed a willingness to meet more regularly if that would be useful. The A/WorkSafe Commissioner acknowledged the backlog but questioned the extent that LAC is relied on for this work. Resourcing of WorkSafe's Safety Education team has also been an issue.

A UnionsWA representative was supportive of monthly LAC meetings and commented that the majority of LAC meetings were cancelled in 2023, adding that WHSC decisions could have been actioned more quickly if LAC had met more regularly.

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

3 AGENDA ITEMS FOR NOTING – STANDING ITEMS

(Discussed by exception)

3.1 Training of Health and Safety Representatives – Approvals and issues

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

- for additional nominated trainers:
 - Kate Green – Pinnacle Safety and Training
 - Linus Boon – North Metropolitan Health Service (cannot train NMHS staff)
 - Peter Todd – North Metropolitan Health service (cannot train NMHS staff).
- to become an approved training provider:
 - Training Ahead Australia (nominated trainer Richard O'Brien)
 - Perth Training Institute Pty Ltd (nominated trainer Johnny Ruocchio).
- to deliver refresher training:
 - Essential Training.

The WHSC discussed a 'one off' request by a training provider to deliver refresher training online to one person from an inland area in the Great Southern due to the

travelling time and expense for that person to travel for one day of training. WHSC members generally felt that individual training does not allow for discussion and the sharing of ideas, and the WHSC's policy is that training must be face-to-face except in exceptional circumstances. The request was not endorsed.

3.2 Construction Industry Safety Advisory Committee – Report

Nil

3.3 Mining and Petroleum Advisory Committee (MAPAC) – Report

The WHSC **NOTED** the MAPAC report of the meeting of 13 December 2023 where the key points of discussion were:

- confusion about the definition of construction work under the Work Health and Safety (Mines) Regulations 2022 in the context of mining;
- the tabling of the report *Addressing psychosocial hazards and risk factors at Western Australian mining operations* which covers WorkSafe Mines Safety actions over the past two decades to address psychosocial hazards in the mining industry.

The WHSC **NOTED** the MAPAC report.

3.4 Agricultural Safety Advisory Committee (ASAC) – Report

The WHSC **NOTED** the ASAC report of the meeting of 15 December 2023 where the key points of discussion were:

- the current status of the response to recommendations of the Agricultural Industry Inquiry;
- establishment of a specialist agricultural team within WorkSafe;
- the WorkSafe farm safety guide *First Steps in Farm Safety* which is close to being finalised; and
- ASAC member Dr Marcus Cattani's agenda paper suggesting two projects to assist the agriculture industry.

The report referred to funding by WorkSafe of the projects suggested by Dr Cattani. An expert member queried whether funding has been given and what the process involved. This matter will be followed up. The A/WorkSafe Commissioner confirmed that no funding has been given.

WHSC members expressed interest in reviewing the *First Steps in Farm Safety* guide before it is published.

ACTION 1 – Request to WorkSafe that WHSC members have access to the draft *First steps in farm safety guide*.

ACTION 2 – Seek information on the process for Dr Marcus Cattani to obtain funding from WorkSafe for projects promoting safety in the agriculture industry.

3.5 Legislative Advisory Committee (LAC) – Report

The WHSC was presented with the LAC report of the meeting of 20 December 2023 where key points of discussion were:

- the *Alcohol and other drugs at the workplace guidance note* and possible approaches to revision, noting that both tobacco and vaping in the workplace need to be addressed;
- amendments to the LAC Terms of Reference to address inconsistency relating to the appointment of the chairperson; and
- the nomination by CME of Ms Michelle Gadellaa to replace Ms Naomi Plummer on LAC.

The WHSC **NOTED** the LAC report and **ENDORSED**:

- the revised version of the LAC Terms of Reference; and
- the appointment of Ms Michelle Gadellaa to LAC.

3.6 WorkSafe events and promotions update

The WHSC **NOTED** the WorkSafe events and promotions update, with upcoming events in which WorkSafe is involved being the:

- asbestos discussion forum in late February (date and venue to be advised)
- sponsorship of the 2024 Centre for Transformative Work Design Conference on 13-14 February; and
- the Wagin Woolorama on 8-9 March.

The WHSC was informed that the asbestos discussion forum is now likely to be in March and is aimed at Class B removalists.

ACTION 3 – Notify WHSC members of the date of the asbestos discussion forum when the date is finalised.

3.7 Regulatory Activity Report

The WHSC was presented with WorkSafe's Regulatory Activity Report for the period to 31 December 2023.

The accuracy of the figures relating to total calls and emails to the Customer Help Centre was queried, as was the estimate of 20% more calls and approximately one third more emails by the end of the financial year. This matter will be followed up.

WorkSafe was commended on accepting the first Enforceable Undertaking under regulation 216 of the *Work Health and Safety Act 2020* (WHS Act). This involves WorkSafe accepting a written undertaking in relation to a contravention of the WHS Act instead of imposing a penalty. [WorkSafe and Fortescue agreed to an Enforceable Undertaking](#) in relation to the prosecution of Fortescue for failing to supply documents to WorkSafe and answer questions. As part of the Enforceable Undertaking, Fortescue will deliver wide-ranging strategies to address inappropriate workplace behaviours in the mining industry and has committed to spending \$1.4 million. The A/Worksafe Commissioner stated that this has the potential to benefit the broader mining sector rather than just Fortescue, and the benefits will outweigh (both monetarily and in practical terms) the imposition of a fine. The A/Director WorkSafe Mines Safety emphasised that there is a team monitoring compliance with

the Enforceable Undertaking. A WHSC member noted that WorkSafe's action sends the message that no organisation is too large to escape regulation.

ACTION 4 – Investigate the data in the Regulatory Activity Report relating to total calls and emails to the Customer Call Centre, including the estimated 20% increase in calls and approximately one third more emails for the 2023-24 period.

ACTION 5 – Circulate information from the WorkSafe website regarding the Enforceable Undertaking accepted from Fortescue by WorkSafe.

3.8 Exemptions – granted under WHS legislation

Nil

3.9 Correspondence

- 3.9A – Temporary appointment of Ms Adrienne LeBombard as CME nominee for WHSC
- 3.9B – WorkSafe Group social media and News Alert – Information regarding Legionnaire's disease
- 3.9C – Nomination by CME of Michelle Gadellaa for membership of the WHSC and MAPAC.

The WHSC **NOTED** the correspondence above.

4 ITEMS FOR DISCUSSION

4.1 WorkCover WA report (standing item)

The Chief Executive Officer of WorkCover WA, Mr Chris White, gave a verbal report on WorkCover WA matters, stating that the *Workers Compensation and Injury Management Act 2023* (WCIM Act) and accompanying regulations are on track for implementation on 1 July 2024.

In relation to the consultation process for the draft regulations to accompany the WCIM Act, Mr White commented on feedback received in response to *Implementation Consultation Paper 20: Noise Induced Hearing Loss*. This consultation paper outlines two substantive changes compared to current arrangements, being the discontinuation of: (i) preliminary testing (or 'baseline testing') by approved audiometric officers; and (ii) mandatory hearing tests of workers paid for by employers.

Mr White noted that the feedback generally opposed these changes. Insurers particularly wish to see baseline testing retained as it helps to identify in which workplace the damage to hearing occurred. However, WorkCover WA intends to persist with the elimination of baseline testing and recommend such to the Minister for Industrial Relations. Mr White stated that of 100,000 audiometric tests, only 17 resulted in successful claims, with a high level of inaccuracy and wasted energy.

Mr White commented that testing conducted under regulation 58 (Audiometric testing) of the Work Health and Safety (General) Regulations 2022 and Work Health and Safety (Mines) Regulations 2022 is still relevant.

This generated considerable discussion, given the confusion that could arise with the changes referred to above and the fact that regulation 58 will take effect on 31 March 2024 on expiry of the transition period. WHSC members were interested in any plans to notify industry of these changes, and suggested information be

incorporated into WorkSafe events. The WorkSafe Mines Safety has already issued information on social media about the forthcoming commencement of regulation 58.

ACTION 6 – Determine what WorkSafe’s plans are to communicate to industry information regarding the commencement of regulation 58 (Audiometric testing).

4.2 **Fatality Update Report**

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

4.3 **New positive duty under *Sex Discrimination Act 1984* (Cth)**

The WHSC **NOTED** the agenda paper explaining amendments to the *Sex Discrimination Act 1984* (Cth) (‘SD Act’) that introduce a new [positive duty in relation to sexual harassment and gender-based discrimination in the workplace](#). There are new functions and powers for the Australian Human Rights Commission to monitor and assess compliance with the positive duty.

A legal obligation now exists to take ‘reasonable and proportionate measures’ to eliminate certain unlawful conduct as far as possible. It is about being proactive and preventing harm before it happens rather than responding once the harm has already occurred. The positive duty complements existing obligations under the WHS laws. Satisfying WHS duties may not mean that the positive duty under the SD Act is satisfied and vice versa.

4.4 **Model Code of Practice: *Sexual and gender-based harassment***

The WHSC was asked to decide whether to recommend to the Minister for Industrial Relations that Safe Work Australia’s new model [Code of Practice: *Sexual and gender-based harassment*](#) (‘new model Code’) be adopted in Western Australia.

The WHSC was supportive of the new model Code. Appreciation was expressed to WorkSafe for the comments of the Safety Education team in the agenda paper regarding amendments that would need to be made if the new model Code were to be adopted in Western Australia.

Concern was expressed at overlap with the three existing Western Australian ‘psychosocial codes’ below, and the confusion this may cause:

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

It was felt that, at a minimum, the information in the Code of Practice: *Workplace behaviour* (‘Workplace Behaviour Code’) that relates to sexual and gender-based harassment should be removed if and when the new model Code is adopted. Ultimately the Workplace Behaviour Code could be revoked and the contents redistributed into the other psychosocial codes. It was felt that LAC could assist with this.

With regard to confusion in industry about codes of practice and which one is applicable, it was suggested that the list of Codes of Practice on the WorkSafe Group’s website be amended to include an overview of the purpose and contents of each code and when they should be used (a ‘blurb’).

ACTION 7 – Recommend to WorkSafe the adoption of the model Code of Practice: *Sexual and gender-base harassment*, taking into account the amendments that would be required.

ACTION 8 – LAC is to review the Code of Practice: *Workplace behaviour* with a view to removing the content relating to sexual and gender-based harassment and ultimately revoking it and redistributing the contents to the other psychosocial codes.

ACTION 9 – Recommend to WorkSafe to add a 'blurb' to accompany each code of practice listed on the WorkSafe website, to provide an overview of the purpose and contents of each code and when they should be used.

4.5 **Prosecutions under work health and safety (WHS) legislation**

A paper was presented to the WHSC on the topic of prosecutions under the WHS legislation. This was prompted by comments at the previous meeting that Western Australia has a lower rate of prosecutions than other jurisdictions and that no prosecutions have taken place under the WHS legislation since it commenced.

The data in the paper showed that, while no prosecutions have taken place under the WHS legislation since it commenced in Western Australia on 31 March 2022, there have been prosecutions in only two other jurisdictions since 31 March 2022 (one in NSW and seven in Victoria). This can be explained largely by the lag between offences and court decisions.

Analysis of Safe Work Australia data relating to legal proceedings resulting in a conviction, order or agreement was presented. The data for the 2021-22 financial year showed that, out of six Australian states, WA is ranked:

- 4th for proceedings per 100,000 businesses; and
- 5th for proceedings per 1,000,000 employees.

WorkSafe data analysts suggested that the ranking based on the number of businesses may be preferable to ranking based on the number of employees because it is usually the entities that are being prosecuted.

It was noted from the data that the penalties imposed in Western Australia tend to be higher than in other states. Appreciation was expressed to WorkSafe for providing the data. It was **AGREED** that a similar exercise be conducted in one year to compare the prosecution data.

The WHSC **NOTED** the data and analysis relating to prosecutions under the WHS legislation.

4.6 **Outdated qualifications of trainers of Health and Safety Representatives (HSRs)**

A recent audit of providers of training to HSRs revealed that, while the quality of training was found to be high, many trainers have outdated qualifications. A paper was presented on this matter, with the WHSC being asked to determine what future action, if any, is needed. Options suggested by the auditor for future action to address the matter were included.

The qualifications required are *Certificate IV in Work Health and Safety* and *Certificate IV in Training and Assessment*. The paper noted the [Standards for Registered Training Organisations](#) that are relevant to Registered Training Organisations. A survey of other jurisdictions found that they generally do not require trainers to maintain their qualifications.

While some members were of the view that ideally trainers' qualifications should be up-to-date, others felt that it may be unnecessary to require them to be recertified given that:

- experience is also very important, and the combination of qualifications and experience should be the determinant;
- trainers are delivering a very prescriptive course that is provided to them;
- trainer competency is the key to best learning outcomes; and
- it may not be feasible for trainers to take time off work to supplement or earn again their required certificates, particularly if a superseded course is not equivalent to its successor.

The option of requiring trainers to renew their approval to deliver training every five years was suggested. This would give the WHSC the opportunity to review each trainer's qualifications and experience. Another consideration is whether a requirement for current qualifications would be applied retrospectively or prospectively.

While the WHSC tended to support the idea of trainers maintaining their qualifications, it was **AGREED** to conduct a mapping and comparison exercise of the versions of the *Certificate IV in Work Health and Safety* and *Certificate IV in Training and Assessment* for the purpose of:

- ascertaining the extent of change between versions of the courses;
- determining what is involved in updating qualifications in terms of the number of units and the time involved; and
- helping to decide whether it is necessary to mandate maintenance of qualifications.

ACTION 10 – Conduct a mapping and comparison exercise of the versions of *Certificate IV in Work Health and Safety* and *Certificate IV in Training and Assessment* while also ascertaining what is involved in updating the qualifications.

4.7

Working conditions for new and young workers

Expert member Dr Matt Davies presented a paper proposing a review of existing materials and practices that convey essential WHS messages to school students, apprentices and vocational trainees before becoming recognised workers. This was accompanied by a power-point presentation providing background data including some studies that show young workers have significantly higher rates of occupational injury than adult workers but a lower fatality rate than other cohorts.

Some suggestions for delivering messages about WHS to young workers were inclusion in the primary school curriculum and VET programmes. The A/WorkSafe Commissioner commented that WorkSafe's Smartmove program has been widely taken up by high schools; anything additional to this program would require additional resources and would need to be considered in relation to other priorities.

It was **AGREED** to investigate the resources WorkSafe has that are aimed at young people and report back to the next meeting.

ACTION 11 – Investigate the resources WorkSafe has that are aimed at young people.

4.8 Review of white card system

The WHSC **NOTED** information concerning the commencement of a review of the white card system by the Western Australian Building and Construction Consultative Committee.

Regulation 316 of the Work Health and Safety (General) Regulations 2022 requires a person conducting a business or undertaking to ensure that general construction induction training is provided to a worker who is to carry out construction work. A worker who successfully completes the course receives a 'white card'. This requirement is duplicated in the Work Health and Safety (Mines) Regulations 2022.

A key area of interest is to review the white card training and qualification process and assess its efficacy and vulnerability to fraud.

4.9 Welding fumes – Workplace Exposure Standard

Discussion took place on the reduction of the workplace exposure standard (WES) for welding fumes from an 8-hour time weighted average of 5 mg/m³ to 1 mg/m³. It was noted that this was a decision of the WHS Ministers that would take immediate effect and was announced on 18 January 2024 via an update to the *Workplace exposure standards for airborne contaminants* (2024). Concern was expressed that there was no 'lead time' for businesses to manage the significant reduction in the WES, with time not allowed for establishing the need for any training and expenditure on weld fume mitigation. More messaging to industry is needed before future WES announcements.

ACTION 12 – Request that WorkSafe presents a summary to the next WHSC meeting of messaging to industry about the change in the WES for welding fumes and their plans for regulating compliance with it.

4.10 Vehicle roll-aways – Update to model Code of Practice: *Managing the risks of plant in the workplace*

The WHSC was presented with SWA's updated model Code of Practice: *Managing the risks of plant in the workplace*. The amendment consists of the addition of guidance on vehicle roll-aways (Section 4.6 "Roll-aways"). SWA defines a vehicle roll-away as "the unintentional movement of a vehicle that has not been properly immobilised" and states that this is a major cause of work-related fatalities and injuries in Australia.

The WHSC welcomed the amendment. It was **AGREED** that Western Australia should adopt the amendment with the addition of information regarding the use of V-drains and dirt mounds as barriers, particularly given that large wheel chocks would be needed for large vehicles (and that itself poses a risk to the worker using them) and most injuries involve large vehicles.

ACTION 13 – Liaise with WorkSafe regarding amendment to the Code of Practice: *Managing the risks of plant in the workplace* to include the SWA guidance on vehicle roll-aways, with the additional inclusion of the use of V-drains and dirt mounds for large vehicles.

4.11 SWA update (standing item)

In response to queries from WHSC members, the A/WorkSafe Commissioner gave an update on the following agenda items from the Safe Work Australia (SWA) meeting of 7 December 2023:

- Incident notification review – SWA is currently analysing stakeholder feedback, and policy options will be presented to SWA's March 2024 meeting.

- Requirement for competent persons in relation to asbestos-related tasks – SWA will undertake further work to explore issues raised during the recent public consultation surrounding competent persons for asbestos-related tasks.
- Regulation of non-threshold genotoxic carcinogens (NTGCs) – SWA members noted stakeholder feedback in response to the NTGCs survey.

An expert member commented that with regards to the review of air/health monitoring requirements in the model WHS laws, a review of the interaction of various provisions in the WHS legislation will take place.

Another expert member referred to the SWA agenda item regarding publication of the Interactive Safe Work Method Statement (SWMS) tool. It was **AGREED** that a link to this tool will be circulated to members.

ACTION 14 – A link to SWA'S Interactive Safe Work Method Statement Tool will be circulated to WHSC members.

- 4.12 Amendment to Terms of Reference – Legislative Advisory Committee (LAC)**
The WHSC **ENDORSED** amendments to the LAC Terms of Reference to correct an inconsistency regarding the appointment of the Chairperson.

- 4.13 Silica (standing item)**
The WorkSafe Commissioner stated that the next definitive statement regarding the prohibition for engineered stone is likely to be delivered after the March 2024 meeting of WHS Ministers, where an update on the announcements in the communique released following the WHS Ministers meeting of 13 December 2023 will be provided.

- 4.14 Transitional provisions (standing item)**
Nil

5 OTHER BUSINESS

5.1 Members to advise

An expert member briefly raised the following matters.

- Some Australian Standards are now freely available for non-commercial use, which is a positive step.
- Dr David Biggins has passed away. Dr Biggins had a connection with the WHSC, was a driving force in establishing the role of health and safety representatives and was an avid supporter of workplace health and safety.

ACTION 15 – Circulate to WHSC members the link to access free Australian Standards.

6 NEXT MEETING

- 6.1** 6 March 2024
CLOSE – Meeting closed at 11.50am