



Meeting No.	20	Time:	9:00
Venue	Koorling Dandjoo Conference Room, 1 Adelaide Terrace, East Perth		

Work Health and Safety Commission Minutes – 6 March 2024

Attendees

Dr Lin Fritschi	Acting Chairperson
Ms Sally North	Ex-officio member - A/WorkSafe Commissioner
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)
Mrs Agnes McKay	Member – nominated by CCIWA
Mr Owen Whittle	Member – nominated by UnionsWA
Dr Patricia Todd	Guest (term as Chairperson expired; process underway for reappointment)
Ms Michelle Gadellaa	Guest – appointment pending – nominated by Chamber of Minerals and Energy Western Australia (CME)
Ms Dana Woolfe	Guest – representing UnionsWA
Mr Adrian Barrett	Guest – representing UnionsWA
Ms Helen Brown	Executive Officer – Senior Policy Officer, WorkSafe

Apologies

Naomie McCrae	Member – nominated by UnionsWA
Mr Glenn McLaren	Member – nominated by UnionsWA
Chris White	Regular guest – Chief Executive Officer, WorkCover WA
Dr Martin Ralph	Ex-officio member - A/Director WorkSafe Mines Safety

1 WELCOME, APOLOGIES, AGENDA

1.1 Opening and welcome

The A/Chairperson opened the Work Health and Safety Commission ('WHSC') meeting and: (i) welcomed guests Ms Dana Woolfe and Mr Adrian Barrett; (ii) updated the meeting on arrangements regarding the expiry of the terms of seven members on 3 April 2024; and (iii) notified members about the inadvertent non-payment of sitting fees since the first quarter of 2023.

1.2 Apologies

Ms Naomi McCrae, Mr Glenn McLaren, Mr Chris White, Dr Martin Ralph

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting, with an expert member adding an item regarding the NSW Auditor General's findings concerning SafeWork NSW.

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 7 February 2024 were **ENDORSED** as a true and correct record, subject to the amendments proposed by Ms Tracey Bence being incorporated.

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.

- Action Item I (*Recommended to WorkSafe adding 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*):

It was agreed that this item be considered 'in progress' rather than 'completed'.

- Action Item Q (*The adapted model Code of Practice: Tower cranes will be presented to the next WHSC meeting 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/Chairperson anticipated that the code will be presented to the next meeting. The A/WorkSafe Commissioner stated that the draft with amendments suggested by industry associations will now be referred to WorkSafe's Construction Team Manager.

- Action Item S [*Review the role and functioning of the Affected Families and Workers Advisory Committee (AFWAC)*]:

The Chairperson was to attend the next AFWAC meeting as part of the review. The A/WorkSafe Commissioner informed the WHSC that the meeting

has not taken place due to a change in WorkSafe personnel and consequent attempts to ensure a smooth transition for the benefit of AFWAC members.

- Action Item R (*Discuss the next steps for the Codes of Practice: Man overboard: prevention and response and Ferry and charter boat industry at the next WHSC meeting*):

This matter has been on hold awaiting finalisation of a Memorandum of Understanding (MOU) between the Australian Maritime Safety Authority (AMSA) and Australian jurisdictions. The A/WorkSafe Commissioner commented that boating is a complex area because AMSA, the Department of Transport, WA Police and WorkSafe are all regulators but acknowledged the need for guidance. It was noted that the Code of practice: *Ferry and charter boat industry* is not a Commission for Occupational Safety and Health/WHSC code but a Department of Planning and Infrastructure code. It was agreed that information will be presented to the next WHSC regarding the progress of the MOU.

- Action Item LAC-A – [*LAC to review various Safe Work Australia (SWA) publications with a view to adoption*]:

In relation to SWA's *Guide to inspecting and maintaining elevating work platforms* the A/WorkSafe Commissioner suggested that this would be better addressed by CISAC than LAC. A CCIWA representative commented that the roles of CISAC and LAC are unclear; matters of a technical nature relating to construction could be referred to CISAC rather than LAC. It was **AGREED** that the SWA Guides relating to managing risks of industrial rope access systems, concrete pumping and elevating work platforms will be referred to CISAC for a technical review before going to LAC to determine whether they should be adopted and adapted in Western Australia. The A/WorkSafe Commissioner noted that LAC is already addressing the SWA guide relating to prefabricated concrete. An expert member noted changes in operator licensing for telehandlers in Victoria, in the context of elevating work platforms.

The WHSC **NOTED** the Action List.

ACTION 1 – Update the next WHSC meeting on the progress of the MOU between AMSA and WorkSafe and related matters.

ACTION 2 – The WHSC will ask CISAC to conduct a technical review of the SWA guides relating to managing risks of industrial rope access systems, concrete pumping and elevating work platforms.

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. Discussion included that:

- the draft 'Public Sector' code of practice will be presented to the next WHSC meeting for review, and will be circulated well in advance of the meeting;
- there is a need for the *Guidance for alcohol and other drugs in the workplace* to be updated, with the use of therapeutic cannabis in the workplace now an issue. The development of this guide was influenced by Dr Steve Allsop and it was suggested that his academic group could be contacted for assistance with the update. The A/WorkSafe Commissioner responded that this was

suggested at the December 2023 meeting of LAC however it was decided that the current version is so outdated that it needs revision before external advice is sought. It has been suggested that the guide contain information on medicinal drugs generally.

The issue of timeframes for the development or revisions of codes of practice and guidance was also discussed, with concern expressed about the backlog and length of time taken for this work. Dr Todd suggested using external experts to assist WorkSafe. The A/WorkSafe Commissioner commented that additional resources have been sought for the budget which is currently being considered by the Department of Treasury, adding that there have been significant demands on WorkSafe's Safety Education Team and there have been problems recruiting appropriate staff.

An expert member commented that decisive action is needed, such as asking the Minister for Industrial Relations for more resources. It was **AGREED** that a letter to the Minister for Industrial Relations be sent, outlining the increased demands on the WorkSafe drafting team due to the introduction of the new WHS legislation and the resulting backlog, and endorse WorkSafe's recent request for additional resources in their budget to address the backlog and on an ongoing basis. The A/WorkSafe Commissioner informed the WHSC of the additional pressure that will be imposed on the drafting staff due to the imminent update of the WorkSafe website. An expert member suggested including in the letter acknowledgement that WorkSafe has done very well over the last couple of years in dealing with the introduction of the WHS legislation.

ACTION 3 – Circulate the draft 'Public Sector' code of practice well in advance of the next meeting.

ACTION 4 - A letter to the Minister for Industrial Relations will be sent, outlining the increased demands on the WorkSafe drafting team due to the introduction of the new WHS legislation and the resulting backlog, and requesting additional resources to address the backlog and on an ongoing basis.

3 AGENDA ITEMS FOR NOTING – STANDING ITEMS

3.1 Training of Health and Safety Representatives – approvals and issues

Nil

3.2 Construction Industry Safety Advisory Committee (CISAC) – Report

The WHSC was presented with the report of the CISAC meeting of 20 February 2024, which sought endorsement for the development of a code of practice for precast, tilt-up and concrete elements based on the *National Code of Practice for Precast, Tilt-up and Concrete Elements in Building Construction*.

It was **AGREED** that there was not enough information for WHSC to provide endorsement for a new code and that CISAC will be asked to provide more information. A CCIWA representative noted that SWA can be asked, via the WA representative, to request an update of specific SWA guidance where gaps are identified. Western Australia could then adopt any revised version, with SWA resources having been used rather than WorkSafe resources. CISAC will be asked to:

- provide details of any gap analysis between SWA guidance, the national code and the applicable Australian Standard; and

- consider the alternative of asking SWA to update their guidance which can then be adopted by Western Australia.

The A/WorkSafe Commissioner commented on the view of the Housing Industry Association (HIA) that the Code of Practice: *Managing the risks of falls in housing construction* should be amended to make it more relevant to the methods of housing construction in Western Australia (WA). Most housing roofs in WA are stick framed, using a network of horizontal and vertical individual rafters to support the roof structure, whereas other jurisdictions use truss roofs which are built in a factory and then hoisted onto the building. The HIA will provide more information to CISAC regarding potential amendments to the code addressing the risks of falls while working on roofs. The HIA's concerns centre around regulation 79 (specific requirements to minimise risk of fall) of the Work Health and Safety (General) Regulations 2022 which is subject to a transitional arrangement ending 30 March 2025. This has different requirements to regulation 3.55 of the Occupational Safety and Health Regulations 1996 that is currently in place.

A UnionsWA representative commented that closing the transitional arrangements for managing the risks of falls in the residential housing industry is a matter that is overdue for attention.

The A/Chairperson commented that the CISAC report does not provide sufficient background and details on the matters discussed and requested that future reports provide more detail.

The WHSC **NOTED** the CISAC report.

ACTION 5 – CISAC will be asked to provide more evidence of the need for a code of practice for precast, tilt-up and concrete elements and to consider the alternative option of requesting that SWA update the related guidance.

ACTION 6 – CISAC will be asked to provide more detailed reports of their meetings in future.

3.3 Mining and Petroleum Advisory Committee (MAPAC) – Report

The WHSC **NOTED** the report of the MAPAC meeting of 14 February 2024 where the main points of discussion were:

- the definition of “construction work” in the mining industry;
- the development of an action plan for WorkSafe Mines Safety Directorate in response to the review of its strategic plan;
- the transition period of three years for holders of statutory positions in the mining industry to comply with the requirements of the *Work Health and Safety Act 2020* (WHS Act), and WorkSafe options to help facilitate the transition; and
- the WorkSafe Mines Safety Directorate focus for 2024 on contractor management and the proposal to develop a contractor management guide.

3.4 Agricultural Safety Advisory Committee (ASAC) – Report

Nil

3.5 Legislative Advisory Committee (LAC) – Report

Nil

3.6 WorkSafe events and promotions update

The WHSC **NOTED** the WorkSafe events and promotions update with events for March 2024 being:

- Wagin Woolarama – 8-9 March
- School of Educations Careers Fair 2024 – 12 March; Curtin University Careers Fair 2023 – 15 March; Murdoch Launchpad Careers Fair 2023 – 20 March; The Big Meet (careers expo) – 25 March
- Class B Asbestos Licence Holders Information Forum – 18 March
- Radiation Management Workshop – 27 March.

3.7 Regulatory Activity Report

The WHSC **NOTED** WorkSafe's Regulatory Activity Report to 31 January 2024, with the A/Chairperson noting the corrections sought at the previous meeting have been made.

3.8 Exemptions granted under WHS legislation

Nil

3.9 Correspondence

The WHSC **NOTED** the following correspondence:

- Minister for Industrial Relations to Chairperson WHSC – Appointment of Dr Lin Fritschi as Deputy Chairperson of WHSC.

4 ITEMS FOR DISCUSSION

4.1 WorkCover WA report (standing item)

Nil

4.2 Fatality Update Report

The WHSC **NOTED** the Fatality Update Report for January 2024, with appreciation expressed for the monthly reports.

4.3 Definition of 'construction' in mining

A paper was presented asking the WHSC to consider the practical application of the definition of 'construction' on mine and exploration sites and whether further examination is required from a regulatory perspective.

The definition of construction work in Western Australia's now repealed Occupational Safety and Health Regulations 1996 generally did not apply to the mining sector. The harmonised work health and safety (WHS) laws brought health and safety in the mining and petroleum industries under the new WHS Act. This resulted in the same regulations applicable to construction work being included in both the *Work Health and Safety (General) Regulations 2022* and *Work Health and Safety (Mines) Regulations 2022*.

Concerns raised at MAPAC by industry representatives, particularly in relation to repairs and maintenance work, include:

- duplication created by the overlap in requirements between the Mine Safety Management System and construction regulations;
- the consequence of everyone on site now requiring a white card (general construction induction training required under regulation 317) which is deemed of little value; and
- a lack of clarity on what constitutes minor work.

Within MAPAC concerns were expressed about the consequences of potentially having different definitions - and therefore differing safety regulation - of construction work in mining and general industry in WA and a different definition to that of other states.

MAPAC has been unable to reach consensus on the matter of regulatory change regarding the definition of “construction” in the mining industry, hence the referral to the WHSC. Dr Todd, who is also the Chairperson of MAPAC, gave an overview of the issue, saying that what constitutes ‘minor work’ is a key issue and that WorkSafe has endeavoured to address this through [Construction on a mine site – frequently asked questions](#). Dr Todd commented that MAPAC has struggled to obtain concrete examples of the problem.

Dr Todd asked the A/WorkSafe Commissioner whether WorkSafe has confidence in Mine Safety Management Systems (MSMSs) given that the WHS legislation is relatively new. The A/WorkSafe Commissioner responded that the standard is variable and WorkSafe is still working with stakeholders to convey what is expected in MSMSs, but noted that this is likely the same for the adoption of many of the new WHS regulations.

The CME representative commented that the issue of the definition of construction in the mining industry is causing considerable duplication and confusion. The issue is not answered by FAQs or SWA guidance as the issue is unique to WA, and CME is seeking regulatory change. Robust policy work and consultation is needed to investigate the issue.

A UnionsWA representative recommended that consultation with CISAC and other construction stakeholders take place and a paper summarising CISAC’s fulsome consideration of the matter be provided before the WHSC can make a decision. Dr Todd stated that the WHSC needs to know what employers actually want in terms of regulatory change. A CCIWA representative stated that regulatory change is likely to be required to solve the problem of regulatory overlap. This could include “carving out” the types of work on mine sites to which regulations relating to general construction work do not apply, with these types of work covered much more comprehensively by regulations specific to mining. An expert member expressed the view that MSMSs are specific to companies and sites, and it is problematic to expect that they can substitute for regulations.

It was **AGREED** that the WorkSafe Policy Team be asked to collate the issues accompanied by the relevant regulations into a table for further discussion.

ACTION 7 – Request that the WorkSafe Policy Team collate into a table the specific issues and related regulations in relation to the matter of the definition of ‘construction’ in mining.

4.4 State of the work environment report

The WHSC **NOTED** the Report: [State of the work environment – Work-related traumatic injury fatalities in Western Australia – 2012-13 to 2021-22p](#), with the A/Chairperson noting with pleasure the downward trend in fatality incidence rates.

4.5 Governance matters

The WHSC **NOTED** the paper outlining the need for the WHSC to comply with the Government's expectations and instructions concerning the governance obligations of boards and committees. In relation to the WHSC, this includes the need for members to complete:

- an Annual Conflict of Interest Declaration
- [cultural awareness training](#)
- integrity training (when it becomes available).

4.6 Industry codes of practice

The WHSC was asked to make a decision regarding whether it will endorse 'industry' codes of practice in future, given that it has outdated guidelines for the development of industry codes of practice on the WorkSafe website. Industry codes emanate from industry, such as from industry associations.

The now repealed *Occupational Safety and Health Act 1984* provided that "any" code may be approved by the Minister "upon the recommendation of the Commission" [ref: s 57(1)]. Thus, for the Minister to approve a code under the OSH Act, the Minister had to first receive a recommendation to do so by the Commission for Occupational Safety and Health (COSH). In contrast, under the WHS Act, the Minister can approve a code without it being recommended by the Commission.

Comments included that, in the past, some industry codes endorsed by the Commission for Occupational Safety and Health (COSH):

- fell into a state of disrepair or were revised without consultation with COSH;
- were used as a commercial tool; and
- were not actually endorsed by COSH.

Dr Todd referred to the issues created, resource implications and time wasted by the submission of a substandard industry code of practice to the WHSC. A CCIWA representative stated that industry codes of practice have a role in informing the WHSC about safety matters in industry and questioned whether the WHSC should have a role in assisting industry. The A/Chairperson responded that the WHSC can be open to the idea for the need for a particular code rather than lending its name to industry codes.

The A/WorkSafe Commissioner commented that there is nothing in the WHS Act relating to the WHSC's functions that would make it necessary for the WHSC to be involved in industry codes and expressed concerns about industry codes endorsed by the WHSC becoming out of date. WHSC endorsement of an industry code is not "ownership" of the code and as such the WHSC's control of such codes is limited.

It was **AGREED** that the WHSC will no longer endorse codes of practice produced by industry bodies, and the website guidance on developing industry codes of practice will be removed.

ACTION 8 – The *Guideline for the development of industry codes of practice for approval under the Occupational Safety and Health Act 1984* will be removed from the WorkSafe website.

4.7 Resources for new and young workers

Further to an agenda item on the topic of resources for new and young workers at the previous WHSC meeting, the WHSC was provided with a summary of the WorkSafe resources that are aimed at school students, apprentices and vocational trainees before they become recognised workers. These resources include:

- the [SmartMove](#) online educational program;
- visits to schools by WorkSafe Community Education Officers to deliver presentations to VET students on completion of accredited units in work health and safety when invited to do so by schools; and
- website FAQs and other information.

Dr Matt Davies referred to the changing nature of work and the impact on proper induction and training for new and young workers. Dr Davies had attempted to use the SmartMove program and found that the instructions for the password are incorrect, the program froze, the style is old, the fixed time for reading is disempowering, and the spread and scope of the additional modules could be improved given the types of workplaces that young people are involved in. In terms of refreshing the program, Dr Davies suggested that: (i) NSW has resources for young people that are very engaging and could be used; and (ii) end users and volunteer undergraduate health and safety students could be involved. Dr Davies is prepared to be involved in this project, as is Ms Tracey Bence.

The WHSC **NOTED** the information about WorkSafe resources aimed at young people.

ACTION 9 – Provide feedback to WorkSafe on the experience of using SmartMove.

4.8 Issues arising from audit of HSR training providers

The WHSC was asked to make a decision on the following three issues raised by auditor, Dr Irene Ioannakis, of the delivery of training to health and safety representatives (HSRs): (i) outdated qualifications of trainers; (ii) class sizes; and (iii) third party arrangements.

Outdated qualifications

Dr Ioannakis was consulted about solutions to the matter of outdated qualifications of HSR trainers. The relevant qualifications are *Certificate IV in Work Health and Safety* and *Certificate IV in Training and Assessment*. Dr Ioannakis advised that it would be impractical to insist on current qualifications and suggested that the WHSC require a verification of competency if a qualification submitted by an applicant has been superseded. Registered Training Organisations are familiar with this process.

There were mixed views on this, with a lengthy discussion. Comments from those in agreement included that:

- a holistic approach should be taken, with experience also being an important indicator of suitability to train;

- trainers are not required to develop programs or learning materials and follow a prescribed course;
- it would be too onerous and expensive for trainers to maintain current qualifications and many experienced trainers may leave the industry if required to do so;
- the principles of a *Certificate IV in Work Health and Safety* don't change despite updates to the course – it is legislation and industry experience that change therefore it is industry experience that is more relevant;
- weight should not be given to having a current *Certificate IV in Work Health and Safety* because the course is not well regarded and in need of review;
- other jurisdictions do not require current qualifications; and
- the auditor found the quality of training delivered by the seven training providers audited to be very good.

Comments from those who believe current qualifications should be required include that:

- it is standard operating procedure for an RTO's trainers to have current qualifications;
- it is not too onerous to update qualifications, particularly a Recognition of Prior Learning process;
- a transition process may help mitigate the risk of trainers leaving the industry if required to update their qualifications;
- a requirement to have current qualifications is unlikely to result in wholesale resignations in the sector; and
- it is not unusual for an education professional to be required to update their skills.

A UnionsWA representative expressed interest in determining the extent to which qualifications of existing trainers are outdated. It was **AGREED** to provide for the next meeting: (i) a collation of the versions of qualifications of existing trainers, with a particular interest in the *Certificate IV in Work Health and Safety*; and (ii) the competencies required for *Certificate IV in Work Health and Safety*.

Recommended class size

The Commission has previously considered the matter of optimal class sizes for training of HSRs, following questions from training providers. The auditor found that trainers provided a positive environment for learning regardless of the class size but recommended 10-15 participants as a guide before taking account of any relevant factors such as (but not limited to) age range, gender mix, participants' cultural, social and ethnic background, level of expertise, level of experience and place of employment. Very small classes may be unavoidable in some regional areas.

It was **AGREED** that the *Guide – Operating as an approved provider of health and safety representative (HSR) training in Western Australia* ('the Guide') will be amended to include advice that 10-15 students is the recommended optimal class size with small variations under particular circumstances.

Third party arrangement

Prior to the audits being commenced, concern had been expressed that some HSR training may be occurring via third-party arrangements. This raised questions as to whether the RTOs and/or trainers involved have been approved formally and, secondly, that there is clarity about responsibility for such functions as accurate advertising, enrolment of students, processing of fees, issuing of certificates and so forth.

Dr Ioannakis concluded “the arrangements identified during the audit process do not constitute third-party arrangements” and that there was no evidence that suggested that the WHSC should be concerned about this occurring from the sample she audited.

ACTION 10 – The next WHSC meeting will be provided with: (i) a collation of the versions of qualifications of existing trainers, with a particular interest in the *Certificate IV in Work Health and Safety*; and (ii) the competencies required for *Certificate IV in Work Health and Safety*.

ACTION 11 – Amend the Guide for HSR training providers to include advice about optimal class size.

4.9 Safe Work Australia (SWA) update (standing item)

The WHSC **NOTED** the draft agenda for the SWA meeting of 21 March 2024. The A/WorkSafe Commissioner explained that SWA has been focused on work surrounding the prohibition on engineered stone in preparation for the WHS Ministers meeting in March. This includes the definition of engineered stone, regulations for crystalline silica processes and details of a transition period.

In response to a question, the A/WorkSafe Commissioner stated that there may need to be communication to stakeholders regarding awareness of the risks of exposure to welding fumes. An expert member referred to the chrome component of welding fumes and its relationship to cancer and queried the progress of SWA’s non-threshold genotoxic carcinogen list. A timeframe could not be given regarding finalisation of the list.

4.10 Silica (standing item)

Nil

4.11 Transitional provisions (standing item)

With the approach of the end of the longer transitional period for various aspects of the WHS legislation, the WHSC **NOTED** WorkSafe’s [Work Health and Safety \(General\) Regulations 2022 – Transitional and savings provisions: Information sheet](#).

4.12 Guide – First steps to farm safety

The WHSC **NOTED** WorkSafe’s recently published [First steps to farm safety: Guide](#) which was produced in response to Recommendations 6.1 and 6.2 of the *Inquiry into the agricultural industry in Western Australia – Report to WorkSafe Commissioner*. A CCIWA representative expressed approval at the simplicity of the language used in the Guide. The A/WorkSafe Commissioner commented that the Guide will be distributed at events and WorkSafe will be interested in feedback. An expert member noted that the guide does not address siloes and confined spaces.

5 OTHER BUSINESS

- 5.1 An expert member drew attention to the critical [Performance Audit – Effectiveness of SafeWork NSW in exercising its compliance functions](#) (27 February 2024) by the NSW Auditor General, with key criticisms including that SafeWork NSW does not effectively use available data to strategically target its activities or assess its performance. Another key finding was that SafeWork NSW was too slow to effectively respond to the emerging risk of respirable crystalline silica in manufactured stone.

This led the expert member to comment on the lack of focus on the supply chain and how plant and materials come through to the workplace. Hazardous material can be imported, such as engineered stone, and this is at odds with the duty of care under ss 24-25 of the WHS Act. The A/WorkSafe Commissioner noted that WorkSafe is doing some proactive work on agricultural machinery suppliers.

6 NEXT MEETING

- 6.1 3 April 2024 – Next WHSC meeting