

Work Health and Safety Commission MINUTES – 2 November 2022

Meeting No:	7	Time:	9.00 am
Venue	Kaartdijin Conference Room 1 Adelaide Terrace, Perth	Secretariat:	Department of Mines, Industry Regulation and Safety (DMIRS)

Attendees

Dr Patricia Todd	Chair
Mr Darren Kavanagh	WorkSafe Commissioner (Commissioner) (via TEAMS)
Dr Matthew Davies	Expert Member
Dr Julia Norris	Expert Member
Ms Christina Folley	Acting Director Mines Safety, DMIRS
Ms Jennifer Low	Chamber of Commerce and Industry WA (CCI)
Ms Naomi McCrae	UnionsWA
Mr Glenn McLaren	UnionsWA
Mr Owen Whittle	UnionsWA
Ms Laila Nowell	Chamber of Minerals and Energy (CME) (temporary member)

Guests

Mr Ian Munns	Deputy Director General Safety Regulation, DMIRS (via TEAMS)
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Apologies

Dr Lin Fritschi	Expert member
Mr Chris White	Chief Executive Officer, WorkCover

Executive Support

Mr Vachel Spirason	Manager Policy, DMIRS
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1 ADMINISTRATION

1.1 Opening and welcome

The Chair opened the meeting, welcoming members.

1.2 Apologies

Apologies were accepted from Dr Lin Fritschi and Mr Chris White.

1.3 Confirmation of agenda

The agenda was confirmed as the business of the meeting.

1.4 Declarations of Conflicts of Interest

No conflicts of interest were declared.

1.5 Other Business admitted by the Chair

Various items were raised for discussion later in the meeting.

2 PREVIOUS MEETING

2.1 Confirmation of previous meeting minutes

The Commission **ENDORSED** the minutes of WHSC Meeting 6 held on 5 October 2022.

2.2 Review action list from previous meeting

Due to problems with the recording of this meeting, not all discussion regarding action items was audible. Discussion that was audible is summarised below:

Action item	Comments
H - The WorkSafe Commissioner ('the Commissioner') will investigate the reasons behind the increase in the number of fatalities where it has not been confirmed that they are a result of work-related traumatic injury, and how many of those are approaching the deadline of falling outside the statute of limitations.	The WorkSafe Commissioner advised that there are 4-5 matters close to the end of statute. Reasons can be matters are still before the courts or WorkSafe is waiting on information/evidence from other entities such as WAPOL and the Coroner's Court. There has also been a large increase in matters reported, and an increase in incidents referred by WAPOL.
G - The WorkSafe Commissioner will seek clarification from SWA as to whether their minutes can be circulated.	The Commissioner confirmed that SWA does not permit circulation of their minutes. It has been agreed with DMIRS that an agenda paper providing a synopsis of matters discussed at the recent SWA meeting/s will be a standing item at Commission meetings.

Action item	Comments
<p>J - The WorkSafe Commissioner will provide an out-of-session update on the Public Sector Code of Practice.</p>	<p>The Chairperson passed on an update from the EO of the Public Sector WHS and IM Advisory Committee. Feedback on the proposal from the Committee for a code of practice on public sector WHS management systems with supporting guidance will be discussed at the next Advisory Committee meeting on 8 December 2022. Once the proposal has been finalised and endorsed by the Committee, it will be submitted to the Commissioner and WHSC for consideration.</p>
<p>Q - Commissioner to provide advice to the Commission in relation to SWA progress to include the prohibition of dry cutting of stone in the national model WHS Regulations.</p>	<p>The Deputy Director General advised via a TEAMS message that regulation 184A was inserted into the WA's new WHS Regulations. This sets out the controls to be applied when dry cutting engineered stone products with power tools. While it will not solve all problems, it is a good start. Therefore Commission members agreed that action item Q can be marked as "completed".</p>

Members **NOTED** the progress of the action items.

2.3 Codes of Practice

The Commission noted the agenda paper and accompanying tables that provide an update to the progress of development and review of codes of practice.

The Chair requested that the Code of Practice: *Managing Electrical Risks in the Workplace* be circulated to members in advance of the next meeting to allow time for review, if possible.

A CME member queried whether the Code of Practice: *Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors* is being amended to align with the 'psychosocial codes' (Psychosocial hazards in the workplace, Violence and aggression at work, Workplace behaviour) or only the Psychosocial hazards in the workplace code. The Director Mines Safety will follow up.

A CCI member requested that members be presented with both the original and marked up versions of amended codes for review.

The Commission **NOTED** the information provided in the agenda paper.

ACTION 1

The Code of Practice: *Managing Electrical Risks in the Workplace* is to be circulated to members for review as soon as it is available.

ACTION 2

The Director Mines Safety will follow up regarding whether the Code of Practice: *Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors* is to be amended to align with which of the 'psychosocial codes'.

2.4 Commission Work Plan

Members were presented with the Commission Work Plan. In relation to the proposed development of an autonomous machinery code of practice, an expert member recommended the book titled “Machines Behaving Badly” by Toby Walsh, and suggested the author could speak at a future meeting.

A UnionsWA member referred to the use of hydrogen as a renewable energy, and expressed concerns about its potential impact on health and safety, stating that hydrogen technology is not straightforward. The Deputy Director General provided via a Microsoft TEAMS message a link to DMIRS’ information sheet titled [Storage of Hydrogen](#). The WorkSafe Commissioner reminded members that dangerous goods fall outside the ambit of the WHS legislation.

The Commission **NOTED** the information provided in the agenda paper and Commission Work Plan.

3 ITEMS FOR NOTING

3.1 HSR Training – Updates and Approvals

The Commission is taken to have:

ENDORSED the approval out of session by the Chairperson of the application for a new HSR training provider:

- Australian Trade Union Institute and their nominated trainer David Smithwick.

ENDORSED the approval out of session by the Chairperson of the applications for additional trainers:

- Australian Trade Union Institute – Christopher Hughes
- Combined Team Services – Kirsten Borgas
- Felgate Safety Training – Brenda Morgan
- South Regional TAFE – Nadene Baldwin.

A UnionsWA representative questioned how the newly approved HSR training provider (the Australian Trade Union Institute) proposes to conduct training in WA given that they and the nominated trainers are based in Melbourne. The Chairperson responded that the provider had undertaken to conduct training in Western Australia. This raised the broader issue of RTOs subcontracting out their training, which the UnionsWA member suggested is not permitted under TAC (Training Accreditation Council) policy.

The Commission **NOTED** the discussion concerning subcontracting by HSR providers.

3.2 Construction Industry Safety Advisory Committee (CISAC) report – Meeting 18 October 2022

The Commission **NOTED** the CISAC report.

3.3 Mining and Petroleum Committee Advisory Committee (MAPAC) report – Meeting 19 October 2022

The Commission **NOTED** the MAPAC report.

3.4 Agricultural Safety Advisory Committee report (no report)

3.5 WorkSafe events report (no report)

3.6 Regulatory Activity Report

The Commission **NOTED** the Regulatory Activity Report.

3.7 Fatalities and Significant Incidents Report (no report)

3.8 Exemptions

The Commission **NOTED** the exemption.

3.9 Correspondence

- Department of Transport to Chairperson – Response to query concerning regulation of charter boat industry (10/10/2022).
- Master Builders Association to Chairperson – New member Mr Brett Mainwaring to replace Mr Michael Timpson on CISAC (18/10/2022).
- Minister for Industrial Relations to Forest Industries Federation (WA) Inc - Code for Native Forest and Plantation Logging (21/10/2022).

A UnionsWA member referred to the Department of Transport correspondence that advises there is now Commonwealth legislation regulating the charter boat industry, and asked whether WA's Codes of Practice "Man Overboard Prevention and Response" and "Ferry and Charter Boat Industry" are therefore obsolete. The Chairperson responded that this will be further investigated, and a response from the Australian Maritime Safety Authority (AMSA) to the letter previously sent may make things clearer.

The Commission **NOTED** the discussion concerning regulation of the charter boat industry and **ENDORSED** the nomination of Mr Brett Mainwaring as the Master Builders Association representative on CISAC, replacing Mr Michael Timpson.

ACTION 3

The Chairperson will follow up with AMSA to ascertain whether WA's codes of practice relating to the charter boat industry are obsolete.

4 ITEMS FOR DISCUSSION

4.1 COVID 19 Pandemic and Recovery

A CCI member noted that Queensland has introduced a 'traffic light system' to show what the COVID status is at any one time and the appropriate responses, and that this is based on a Commonwealth approach that has not been publicised.

An expert member was astounded by SWA's negligence in that its COVID advice is from 2020 and does not acknowledge airborne transmission. Organisations such as RAC Arena rely on and repeat this advice. Members **AGREED** that the Chairperson would write to SWA to request that the advice be updated.

The Commission **NOTED** the COVID discussion.

ACTION 4

The Chairperson will write to SWA to request that their COVID advice be updated.

4.2 Safe Work Australia (SWA) update

The WorkSafe Commissioner informed members that he has approval to report on previous SWA activities but has nothing further to report at this stage.

4.3 WorkCover WA verbal update

The WorkCover representative was not in attendance and therefore no update was provided.

4.4 Code of Practice versus Guide

The Commission continued the debate concerning the criteria for developing a code of practice rather than a guide, and vice versa, with the results of the Chairperson's research a starting point for discussion.

A CCI member supported SWA's [Codes of Practice and Guidance Material Fact Sheet](#), and stated that the Commission needs to follow a set process to determine whether a code or guide is required. Western Australia has more codes than nearly any other state with many overlapping, which creates confusion. Small business does not find them practical or useful. A CME member supported this. In contrast, a UnionsWA member reported that UnionsWA often receives requests for codes to be produced.

A CCI member stated that guides are preferable in that they can be produced more quickly to respond to emerging issues and can be amended more quickly and easily. A UnionsWA member responded that this is partly due to the Commission's processes over the years which have allowed codes to become outdated.

Messages from the Deputy Director General sent via Microsoft TEAMS were read to the meeting:

"Codes of Practice cannot add or subtract from the legal requirement but are intended to provide guidance on practical steps for compliance. Status is important for Improvement Notices (section 204) and court proceedings (section 275). But conceptually a guide can be admitted to court as evidence of what is reasonably practical but has a bit more of a convoluted pathway. The critical section of the Act is section 18 so factsheet, guidance note etc, all potentially have a place."

"One issue to consider is the time it takes to produce the differing types of guidance. A code of practice is more arduous and time consuming so the question may come down to how responsive we want to be. Guidance could be developed as a start with a view that a code of practice can be developed as a subsequent follow-up product."

An expert member commented that there is a role for both codes and guides. It is important how such documents are communicated, particularly to small businesses who may not have in-house health and safety professionals. A CME member agreed, saying that CME helps communicate health and safety obligations to its members, but not all small businesses are covered.

The Chairperson acknowledged the issue of communication of codes and said it was a separate issue to be considered. The Commission could seek feedback from industry and unions about codes.

A CCI member suggested that a principle be added to SWA's *Code of Practice and Guidance Material Fact Sheet*, being that existing codes and guides should be canvassed for relevant information. The Chairperson considered that this should be simply noted as it is an inherent part of the process.

The EO advised that DMIRS' Policy and Data Intelligence Branch is currently working towards producing a template that can be used to help determine whether a code is needed.

It was **AGREED** that the criteria for determining a code of practice, as listed in SWA's *Code of Practice and Guidance Material Fact Sheet*, be used when determining whether a code of practice is necessary.

4.5 Elevated Work Platform – whether a code of practice is needed

The Commission discussed the results of the desktop review provided to assist with deciding whether an Elevated Work Platform (EWP) Code of Practice is necessary. A CCI member expressed thanks for the information and commented that there appears to be an abundance of guidance already available and not a large number of incidents. The Director Mines Safety drew attention to the fact that the data regarding incidents and injuries only related to the mining industry, and there are significantly more incidents involving EWPs than reflected in the data.

A UnionsWA member responded that when incidents occur they are usually fatal. There is no detailed guidance available. The WorkSafe Victoria document – *Industry Standard: Elevating work platforms, For the safe use of elevating work platforms* is a very good document that a code could be based on.

A CCI member stated that the issue of whether to develop an EWP Code of Practice was debated at SWA, with the decision made not to proceed.

An expert member expressed surprise that there is no EWP Code of Practice given the extensive and long term use of EWPs and the likely future increased use, such as for maintenance of wind turbines.

After taking into account the principles of SWA's *Code of Practice and Guidance Material Fact Sheet*, the Commission **AGREED** to CISAC's recommendation of the development of an EWP Code of Practice. The Commission noted CISAC's support of the straightforward language and effective use of diagrams in the WorkSafe Victoria's document – *Industry Standard: Elevating work platforms, For the safe use of elevating work platforms*. A UnionsWA member stressed that this type of very readable communication is what industry and workers find most useful.

Discussion turned to where the development of an EWP Code of Practice would fall in terms of the Commission's priorities. The Chairperson suggested that DMIRS be consulted with regard to their priorities and workload and the need to emphasise the type of language to be used.

ACTION 5

The Commission will notify CISAC that their recommendation to develop an Elevated Work Platform Code of Practice has been accepted.

ACTION 6

The Commission will consult with DMIRS regarding their priorities and workload in respect of development of codes of practice, and convey CISAC's request that the simple language and effective diagrams used in the Victorian document *Industry Standard: Elevating work platforms, For the safe use of elevating work platforms* be used in the Elevated Work Platform Code of Practice.

4.6 Enough is Enough Report

The WorkSafe Commissioner gave a verbal update on the response to the *Enough is Enough Report*, stating that the Commission Chair will receive a letter shortly outlining which recommendations of the report relate to the Commission. It will include matters relating to the *Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sector* and development of an accommodation code of practice.

A UnionsWA member emphasised that the recommendations of the Report are relevant to all sectors, not just the mining sector.

4.7 Annual Report 2021-2022 for HSR training courses

The *Annual Report: Training courses for Health and Safety Representatives for 2021-22* and *Training courses for health and safety representatives snapshot 2021-22* were reviewed by the Commission. Comments included that the number of HSRs trained (3,882) was pleasing given COVID, as is the significant level of training outside of the metropolitan area. The Chairperson commented that data relating to the amount of training carried out by individual RTOs will be sought.

The Commission **NOTED** the minor amendments to the following publications and **APPROVED** their publication:

- *Guide: operating as an approved provider of health and safety representative (HSR) training; and*
- *Guide: Health and safety representative (HSR) refresher training course requirements.*

The Commission **NOTED** the *Annual Report: Training courses for Health and Safety Representatives for 2021-22* and *Training courses for health and safety representatives snapshot 2021-22*.

ACTION 7

The Commission will seek data relating to the amount of HSR training conducted by each RTO.

4.8 Bush Fire Brigade Volunteer Code of Practice

The Commission discussed the proposal by the WA Local Government Association (WALGA) that the Commission develop a Bush Fire Brigade (BFB) Volunteer Code of Practice. WALGA also claimed that they have been unable to obtain clarification from the Department of Fire and Emergency Services (DFES) regarding what constitutes a 'competent' volunteer firefighter.

Commission members noted the agenda paper that shows sufficient guidance on this matter already exists, being:

- a WorkSafe website document "Guide – Work health and safety for volunteer organisations"; and
- a WALGA webpage that includes a link to a comprehensive document titled "Understanding WHS Obligations for Bushfire Volunteers – a practical guide to assist local government leaders meet their obligations".

A UnionsWA member claimed that there is no ambiguity in the WHS legislation regarding BFB volunteers, and that there had been a concerted campaign to create concern and confusion about Shires' duties regarding the health and safety of BFB volunteers. A code of practice will not resolve WALGA's concerns and the issue falls under DFES' jurisdiction.

The Deputy Director General contributed the following comment via Microsoft TEAMS messaging:

“I agree that a Code of Practice is not required for Bush Fire Fighters. I just undertook to bring to the WHSC. The underlying issue is concern with Local Government CEO's around due diligence. A different solution could be developed by DMIRS working with DFES.”

It was suggested that DMIRS could draw attention again to their resource material regarding volunteers. The Commission **AGREED** that the matter is covered by existing documents, and a Bush Fire Brigade Volunteer Code of Practice is not necessary.

4.9 Confidentiality – WHS Commission information

The Chairperson explained that this item is simply a reminder of Commission members' obligations regarding the use of information provided to the Commission and associated committees' members as well as the confidentiality of sensitive information, as per the Terms of Reference which require that members:

- do not disclose confidential information acquired in the course of their Commission and advisory committee duties to outside parties;
- do not use official information for personal, commercial or political gain for themselves or others, or to the detriment of others;
- respect the privacy of individuals and the security of personal information; and
- be especially cautious when having access to information could be seen as creating a conflict of interest.

4.10 WHS transitional arrangements

A CCIWA member raised the matter of WHS transitional arrangements, saying that there are various different transition periods and raising the possibility of the Commission monitoring the expiry of these periods.

For example, the WHS legislation changed the classes of asbestos licences and the expiry of the transition period is looming for asbestos removal licences issued under the OSH legislation. Work carried out under a WHS Class A asbestos removal licence must be inspected by a licensed asbestos assessor. There is currently no training available in WA for asbestos assessors and people must travel interstate for training. It would be interesting to know whether anyone in WA has applied to be accredited as an asbestos assessor and paid the \$7,500 fee (compared to much lower fees in other states). It was **AGREED** that DMIRS will be consulted regarding the expiry of transition periods and the issue of there being no training available in WA for asbestos assessors, and no listed licensed asbestos assessors.

A CME member stated that it would be easier to monitor the expiry of transition periods if WorkSafe's website information [WHS transition arrangements](#) listed the different transition periods in order of their expiry.

ACTION 8

The Commission will consult with DMIRS regarding the monitoring of expiry of transition periods and the issue of there being no training available in WA for the new asbestos removal licences.

5. OTHER BUSINESS

5.1 DMIRS restructure

The Deputy Director General informed the Commission about a proposed DMIRS restructure that will affect WorkSafe, arising from an Agency Capability Review. The proposal involves the formation of a new group named WorkSafe lead by the Worksafe Commissioner, which will replace the Safety Regulation Group.

The Directorates of Mines Safety, Petroleum Safety, General Industries and Dangerous Goods will fall within Worksafe. The Labour Relations Directorate will be moved out of WorkSafe, and Deputy Director General Ian Munns will no longer be in Worksafe. Currently staff have the opportunity to provide feedback. Implementation would be late this year or early next year.

5.2 WHS Excellence Awards

A CCI member commented that the awards event was good, and wondered whether the video presentations accompanying each award are publicly available. The CCI member commented that it was pleasing to have a separate psychosocial awards category and that it was hoped that this will assist in increasing awareness that psychosocial risk management consists of much more than health and wellbeing initiatives.

5.3 Proposed code of practice for Native Forest and Plantation Logging

A UnionsWA member referred to the correspondence from the Minister for Industrial Relations to Forest Industries Federation (WA) Inc responding to the request for funds for a new Code of Practice for Native Forest and Plantation Logging. A UnionsWA member stated that the Code of Practice for Timber Plantations apparently expired with the introduction of the WHS legislation but is not on the Commission's list for codes to be reviewed or revoked. It is concerning that, if this is the case, there may be other codes that the Commission is unaware of. It was **AGREED** that clarification will be sought.

ACTION 9

The Commission will seek further information about the former Code of Practice for Timber Plantations.

5.4 Miscellaneous

The Chairperson reported on the recent Asbestos and Safety Eradication Agency presentation regarding the National Residential Heat Map, and commented that there is much to be done. The Map will only be as good as the information entered into it. The DFES officers present noted serious flaws in the information.

An expert member drew attention to the Perth Safety Symposium on 25 November 2022. Some presentations will be on silica, psychosocial hazards with a FIFO focus, and COVID decision-making. The program will be circulated to Commission members.

A CCI member reiterated that when codes are sent to advisory committees, as indicated in the tables for agenda item 2.3, they are sent for the purpose of obtaining feedback which will be conveyed back to the Commission. A UnionsWA member noted that the advisory committees generally have no illusions regarding who is ultimately responsible for codes. The Executive Officer informed members that DMIRS is currently working on more defined and consistent procedures between committees, and between committees and DMIRS.

A UnionsWA member, followed by the Chairperson and Commission members, thanked Dr Norris, it being her final meeting. Dr Norris will be difficult to replace.

6.0 CLOSE AND NEXT MEETING

There being no further business, the Chair declared the meeting closed at approximately 11.30am.

The next meeting is scheduled for 7 December 2022.

**MINUTES OF MEETING NO: 7 OF THE WORK HEALTH AND COMMISSION
HELD ON 2 NOVEMBER 2022**

ENDORSED AS A TRUE AND ACCURATE RECORD OF THE MEETING

Dr Trish Todd

Chair

Date