

Terms of Reference – Family and Injured Workers Advisory Committee

Background

The Family and Injured Workers Advisory Committee (the Advisory Committee) is a Ministerially-appointed advisory body comprised primarily of people affected by a workplace incident involving death, serious injury or serious illness (affected persons) to drive improvements to better support the needs of affected persons in the Commonwealth jurisdiction.

The statutory framework for the Advisory Committee is the *Work Health Safety Act 2011* (Cth) (the WHS Act) and *Work Health and Safety Regulations 2011* (the WHS Regulations).

Functions of the Advisory Committee

The functions of the Advisory Committee are set out in clause 3C of Part 3A of Schedule 2 to the WHS Act. Broadly, the Advisory Committee:

- give advice and make recommendations to the Minister administering the WHS Act (the Minister) about the needs of persons affected by serious work-related incidents
- give advice about, and contribute to the development and review of, Commonwealth work health and safety regulator's policies, practices and strategies for liaising with, and providing information to, persons affected by serious work-related incidents. Commonwealth regulators are:
 - Comcare
 - the Australian Maritime Safety Authority (AMSA)
 - the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

It is not a function of this Advisory Committee to:

- direct the activities of the government or regulators
- provide advice or recommendations to the Minister on broad work health and safety, or industrial relations policy. The Advisory Committee may make recommendations on these matters to the extent it relates to the needs of persons affected by serious work-related incidents
- give or seek advice, or information, about a particular person or case from regulators, government or service providers. For example, representing or advocating for an outcome on behalf of an individual, or seeking information from regulators, government or service providers about a particular person or case.

NOTE: The Advisory Committee may consult with people affected by a workplace incident involving death, serious injury, or serious illness in order to perform its functions under the WHS Act and WHS Regulations.

Composition of the Advisory Committee

The Advisory Committee consists of the following:

- First co-chair
- Second co-chair
- At least 3 other members.

Members are appointed by the Minister in accordance with the WHS Act and subject to Australian Government approval processes. Eligibility for membership is set out in clause 3E of Part 3A of Schedule 2 to the WHS Act.

Roles and responsibilities

All members are required to fulfil the functions of the Advisory Committee.

The **co-chairs** have a leadership role in the Advisory Committee and will work together to help the Advisory Committee run effectively.

The first co-chair will:

- represent the lived experience members of the Advisory Committee
- work with the second co-chair to facilitate informed, inclusive, constructive and respectful discussion between members
- consult with the second co-chair to set meeting agendas, settle papers, and develop the advisory committee's workplan
- support the second co-chair with giving effect to the Advisory Committee's governance obligations, where appropriate.

The first co-chair may lead agenda items or meetings, in agreement with the second co-chair and the secretariat.

The second co-chair will:

- chair committee meetings by guiding discussion, managing time, facilitating decision-making and summarising outcomes
- facilitate trauma-informed, inclusive, constructive and respectful discussion between members at committee meetings
- consult with the first co-chair to set meeting agendas, settle papers and develop the Advisory Committee's workplan
- assist the Advisory Committee with giving effect to its governance and administrative management, including by being the primary liaison with the secretariat on matters of this nature.

All members:

- contribute to an open, supportive, inclusive and safe working environment using a trauma informed approach
- use their lived experience and/or expertise to identify structural issues that are likely to impact affected persons
- liaise with the co-chairs to ensure the Advisory Committee's annual workplan is representative of the goals and objectives of the Advisory Committee
- identify appropriate individuals who may be invited to attend Advisory Committee meetings
- represent the Advisory Committee in discussions with the Commonwealth, the Commonwealth regulators or other parties
- aim to educate themselves and other members about matters that enable the delivery of the functions of the Advisory Committee
- respect the sensitive nature of discussions, keep matters raised at meetings confidential, and not share private information gained from being on the Advisory Committee with others (confidentiality obligations are set out under section 271 of the WHS Act)
- abide by the code of conduct, to be developed by the Advisory Committee in its first year of operation.

The Minister may appoint a member with specialised expertise in grief and trauma. This individual would provide technical expertise to the Advisory Committee, ensuring that advice and recommendations are well-grounded in the context of grief and trauma.

Acting appointments

The Minister may appoint another member of the Advisory Committee to act as either the first or second co-chair, as permitted by clause 3G of Part 3A in Schedule 2 to the WHS Act. As per the WHS Act, the Minister is able to make an acting appointment if there is a vacancy in that position, the co-chair is absent from duty, overseas, or if the co-chair is unable to perform the duties of office.

Secretariat

The department administering the WHS Act (the department) will provide secretariat support to the Advisory Committee.

The secretariat is responsible for, amongst other incidental matters:

- supporting the co-chairs in giving effect to their roles, including supporting the management of governance and legal matters and training needs
- assisting the Advisory Committee to manage its budget
- settling meeting agendas in consultation with the co-chairs
- drafting meeting papers, minutes and inviting guests on behalf of the Advisory Committee
- managing meeting logistics, including travel for members and meeting venue arrangements
- taking minutes and performing other administrative tasks
- liaising with the Minister's office, Commonwealth regulators and other interested parties on behalf of the Advisory Committee
- supporting the management of the department's WHS obligations in relation to the Advisory Committee.

Regulators

The following people may be invited to attend meetings to inform discussions and/or provide technical advice to the Advisory Committee:

- Chief Executive Officer, Comcare
- Chief Executive Officer, AMSA
- Chief Executive Officer, NOPSEMA
- Deputy Secretary of the department.

If an invited person is unable to attend, the Advisory Committee may consider whether a representative or proxy is a suitable replacement.

As the above attendees are government officials attending in their capacity as officials, these individuals will not be paid travel allowance pursuant to clause 3F of Part 3A in Schedule 2 to the WHS Act.

Other invited participants

The co-chairs may invite additional participants to meetings of the Advisory Committee in consultation with the other Advisory Committee members and the secretariat.

By written invitation of the Advisory Committee, invited participants may include, but will not be limited to, WHS professionals, experts or officials (such as representatives of Safe Work Australia), academics, members of other advisory bodies (such as state-based lived experience committees) and affected persons.

Invited participants should only be invited to attend a meeting if they have a specific reason to attend that directly supports the Advisory Committee to give effect to its functions (e.g. to provide insight into a relevant agenda item or to report on relevant jurisdictional reforms). In deciding whether to invite a person, body or a representative of an organisation to participate in a meeting, the following should be considered:

- the appropriateness of the participation

- the impact of participation on the costs borne by the Commonwealth
- whether the person, body or organisation, is appropriately qualified or experienced to advise or provide information to the Advisory Committee.

If the invited participant is not able to attend the meeting, the Advisory Committee may consider whether a representative or proxy for the invited participant is a suitable replacement.

Invited participants are not members of the Advisory Committee and cannot contribute to voting processes but are required to comply with the privacy and confidentiality requirements set out in this document and relevant legislation.

Advisory Committee operating procedures

Meeting length and frequency

The Advisory Committee should hold meetings as necessary for the efficient performance of its functions. The Advisory Committee is expected to meet a minimum 4 times per calendar year.

The meetings may be in person, conducted via video conferencing, or a combination of in-person and video conferencing. The Advisory Committee may also receive updates, provide advice, and make decisions out of session by email correspondence or video conferencing, as required.

The co-chairs must both agree to call a meeting. Co-chairs, with the support of the secretariat, and in conjunction with members, will set the meeting times at the beginning of each financial year (see 'committee workplan') for the duration of the year, noting that additional ad hoc meetings may be necessary. The secretariat will provide appropriate notice of upcoming, ad-hoc meetings.

The length of individual meetings is to be agreed by the co-chairs, based on the substance of the agenda.

Advisory Committee workplan

The Advisory Committee will develop an annual forward workplan for each financial year.

The workplan should propose the Advisory Committee's objectives for that year, priority areas for review, consideration and recommendation, and timeframes. The workplan may identify specific projects or suggest sub-committees to lead on specific projects depending on the interests, expertise and availability of members.

The workplan may also include a mission or vision statement, setting principles that guide the Advisory Committee's advice and priorities.

The workplan will be monitored and evaluated by members quarterly.

The workplan should be developed with consideration to the Advisory Committee's budget.

Meeting agendas and papers

The co-chairs will develop meeting agendas in consultation with the secretariat and other members, who should advise the co-chairs if they have an item they would like to raise.

The Commonwealth regulators may contact the Advisory Committee or the secretariat to request additional agenda items for consideration. The co-chairs will determine if the request meets the Advisory Committee's scope and should be added to the agenda.

The secretariat will send the agenda and any papers to all members at least 10 business days before a meeting.

Meeting location

Meetings will take place at various locations across Australia with due consideration given to the convenience of the members.

Discussions on meeting locations or venues should be discussed and agreed with the secretariat and members.

Meeting attendance and quorum

Both co-chairs (or acting co-chairs) must preside at all meetings.

Quorum must be met to hold a meeting. Quorum is met if:

- both co-chairs are present, and
- at least half of the Advisory Committee members excluding the co-chairs are present.

A member that is unable to attend a meeting should advise the co-chairs in writing via the secretariat as soon as they become aware of their inability to attend, ideally no later than 5 working days before a meeting, unless there are exceptional circumstances.

If it is unlikely that quorum will be met, based on members notifying the secretariat before the meeting that they cannot attend, the meeting will be rescheduled. If rescheduling is not possible or practical, the meeting shall proceed, with any decisions held over until the next meeting where there is a quorum or handled out of session.

Decision making

Decisions or resolutions can be passed at the meeting or outside of meetings, if necessary.

At a meeting, a decision is taken to be passed if a majority is in favour of the decision. An even split will not constitute a majority.

The Advisory Committee has determined subclause 3Q(2) of Part 3A in Schedule 2 to the WHS Act applies to resolutions made outside of a meeting. That is, outside of meetings, a resolution is taken to have passed at a meeting if a majority of members indicate agreement with a resolution and all members were informed of the proposed resolution (or reasonable efforts had been made to inform all members). Reasonable efforts to inform all members include providing, where possible, members with at least 10 working days' notice of the proposed resolution and contacting members at least twice via both phone and email. In these circumstances, Advisory Committee members are to indicate their agreement with resolutions in writing by the date and time specified in the proposed resolution.

Where resolutions are made outside of a meeting, all members must record their position on the resolution, in writing, and provide that position to the co-chairs and the secretariat. Resolutions made outside of meetings must be recorded in the minutes for the subsequent meeting and recorded as a resolution taken outside of a meeting.

Meeting minutes and outcomes

The Advisory Committee must keep minutes of its meetings. Draft minutes, including action items, should be circulated within 2 weeks of a meeting.

Following each meeting, the co-chairs, supported by the secretariat, may notify the Minister of meeting outcomes and next steps.

Administration

Code of conduct

Members will develop a code of conduct, to formalise the behaviours and expectations of Advisory Committee membership. The code of conduct will also include guidance on standard procedures for conflict resolution, respectful discussions and information on escalating issues.

The code of conduct will be developed and agreed upon within the Advisory Committee's first 12 months of operation.

Advocacy

Outside advocacy roles

Members can maintain other advocacy roles, including in relation to the same matters the Advisory Committee will consider, but will need to be conscious of not appearing to undertake other advocacy activities in their capacity as members of the Advisory Committee.

Members will be provided with practical guidance on how to manage their Advisory Committee responsibilities to allow them to continue undertaking other advocacy work in a personal capacity.

Advocacy on behalf of individuals

In order for the Advisory Committee to fulfil its role in giving advice and making recommendations to the Minister about the needs of affected persons, the Advisory Committee may hear from other affected persons.

The Advisory Committee will only hear from the above individuals, in order to identify recurring themes, positive experiences and challenges in relation to the relevant processes.

The Advisory Committee may only seek formation from regulators, government or service providers for clarifying the identified recurring themes, positive experiences, and challenges in relation to the relevant processes.

The Advisory Committee will not provide advice or representation to any individual, their case or circumstances to the Minister, government, regulator or service providers.

Disclosure of interests

All members must manage conflicts of interest. Members must give written notice to the Minister of all interests that conflict or could conflict with the proper performance of the members functions.

The interests disclosed could be actual, perceived or potential conflicts for example, a member of the Advisory Committee may be involved in, or a member of, another support group that the Advisory Committee promotes.

In addition, members must disclose any actual, perceived, or potential conflicts of interest to the co-chairs and secretariat that arise during their appointment, including at a meeting, as soon as possible after conflicts are known to the member, and work with the secretariat to manage the conflict. This may include withdrawing from any discussion or decision-making processes in relation to that matter.

The secretariat will maintain a register of any actual, perceived or potential conflicts of interest and associated mitigation strategies. The register will be accessible to all members and relevant departmental employees. Disclosures must be recorded in the minutes of relevant meetings.

Resignation and termination

Members may resign in accordance with clause 3M of Part 3A in Schedule 2 to the WHS Act, by giving written notice to the Minister. Their resignation takes effect on the day it is received by the Minister, or, if a later day is specified in the resignation, on that later day. They also may also have their appointment terminated in accordance with clause 3N of Part 3A in Schedule 2 to the WHS Act.

Privacy and confidentiality

The Advisory Committee's records and other documents provided to, prepared by, or for the purposes of the Advisory Committee (for example correspondence to and from attendees) must remain confidential and are not to be circulated or published (see section 271 of the WHS Act for further details on confidentiality obligations).

Advisory Committee records are maintained by the secretariat and may be subject to the *Freedom of Information Act 1982 (Cth)*. Personal information will be treated in accordance with the *Privacy Act 1988 (Cth)*.

Invited participants should be asked to maintain privacy and confidentiality of the discussions, including the views expressed at the meeting and any information or documents given or circulated during the meeting. This requirement is not intended to prevent the invited participants from disclosing information with the consent of the person from whom the information was obtained or from whom the information relates, disclosing publicly available information, or reporting back to their relevant organisation. A failure to maintain privacy and confidentiality should be influential in any future decisions to invite the participant to meetings.

Advisory Committee representation

Members are required to maintain appropriate confidentiality in relation to the matters discussed by the Advisory Committee and manage conflicts-of-interest in accordance with these terms of reference.

Members should notify the co-chairs and the secretariat of contact or requests for comment related to their role as an Advisory Committee member.

Review of the terms of reference

The terms of reference will be reviewed within 12 months after the inaugural terms of reference are issued.