



23 November 2018

Your Ref: A725356  
Our Ref: WS0616/2017  
Enquiries: Ian Munns

Hon Adele Farina MLC  
Chair  
Standing Committee on Public Administration  
Parliament House  
4 Harvest Place  
WEST PERTH WA 6005

By email: [lcpac@parliament.wa.gov.au](mailto:lcpac@parliament.wa.gov.au)

Dear Ms Farina

#### **Inquiry into WorkSafe**

Thank you for the opportunity to provide answers to eight questions in relation to health surveillance requested by the Standing Committee on Public Administration for the Inquiry into WorkSafe on 20 November 2018.

Please find attached the response to the questions of the Department of Mines, Industry Regulation and Safety.

Should you have any queries, please contact me on \_\_\_\_\_ or by email:

Yours sincerely

Ian Munns  
**A/Deputy Director General Safety**  
**WorkSafe Western Australia Commissioner**

**Department of Mines, Industry Regulation and Safety**

**Answers to eight questions requested on 20 November 2018**

***Inquiry into WorkSafe***

Department of Mines, Industry Regulation and Safety

23 November 2018

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## Answers to eight questions

### Question 1

For each of the last five years, how many health surveillance notices have been issued by WorkSafe?

#### Answer

The table below provides the number of improvement notices issued for health surveillance under regulation 5.23 for each of the last five calendar years.

The total number of notices issued by inspectors was 64. The number of notices recorded in WISE was 66. It was identified that two notices were never issued.

Year	Number of notices issued for health surveillance under regulation 5.23
2014	18
2015	16
2016	8
2017	10
2018 <sup>*)</sup>	12

Table 1: Number of notices issued for health surveillance under regulation 5.23 recorded in WISE on 20 November 2018: 2014 - 2018

<sup>\*)</sup> recorded in WISE between 1 January 2018 and 20 November 2018

### Question 2

In respect of those health surveillance notices, how many were the subject of a reference for review under section 51 of the Act? What was the outcome of the review?

#### Answer

Four notices were reviewed under section 51 of the Act in the last five years. In each of the requests for review the duty holder requested an extension of time.

Year	Number of notices for health surveillance under regulation 5.23 reviewed under section 51	Outcome of the review
2014	1	Affirmed and time extended
2015	0	N/A
2016	0	N/A
2017	2	Affirmed and time extended
2018 <sup>*)</sup>	1	Affirmed and time extended

Table 2: Of the notices issued under regulation 5.23 in the calendar year, the number of notices that was subject of a review under section 51 of the Act and the outcome of the review: 2014 - 2018

<sup>\*)</sup> recorded in WISE between 1 January 2018 and 20 November 2018

### Question 3

What particular incident gave rise to the issuing of the memorandum of 30 October 2018?

#### Answer

A disagreement between one inspector and the Manager of the Regional and Primary Industries Team about when to issue notices in relation to health surveillance for organophosphates gave rise to a number of actions, including the issuance of the memorandum of 30 October 2018. The disagreement had been ongoing for some time.

Additionally, the Commissioner conducted a review of improvement notices issued under Regulation 5.23 over a sample period of time and identified that, in his view, many would not be defensible when challenged.

### Question 4

For each of the last five years, how many health surveillance notices were withdrawn by the issuing inspector? In respect of each withdrawal, what was the reason for the withdrawal?

#### Answer

Year	Number of health surveillance notices issued under regulation 5.23 by year of issuance, which were subsequently withdrawn by the inspector
2014	0
2015	0
2016	1
2017	1
2018*)	0

Table 1: Number of notices issued for health surveillance under regulation 5.23 recorded in WISE on 20 November 2018: 2014 - 2018

\*) recorded in WISE between 1 January 2018 and 20 November 2018

#### Reason for withdrawal notice issued in 2016

Improvement notice 40700209 was issued by an inspector in the Regional and Primary Industries Team on 3 October 2016. After a discussion between the Team Manager and the inspector about the grounds for which the notice was issued, the inspector withdrew the notice on 28 February 2017.

#### Reason for withdrawal of the notice issued in 2017

Improvement notice 41000027 was issued by an inspector in the Occupational Health, Hygiene and Noise Team on 6 July 2017. Following further enquiries and a follow up visit by the inspector and the inspector occupational health nurse, it was identified that the hazardous substance used at the workplace did not contain isocyanates. Subsequently, the notice was withdrawn by the inspector on 31 July 2017.

### **Question 5**

What is the process for an inspector to withdraw a health surveillance notice?

#### **Answer**

Information about withdrawing a notice and the procedure for withdrawing a notice is provided in Paragraphs 3.7 and 3.11 of the WISE Handbook. A copy of the relevant parts of these paragraphs is provided in Attachment 5.1. A template letter is also available in Inspector Resources for withdrawing a notice.

### **Question 6**

Please provide a list of appointed medical practitioners, the location of each and the cost of obtaining health surveillance.

#### **Answer**

Health surveillance must be supervised by an Appointed Medical Practitioner (AMP). In accordance with regulation 5.1, this is a medical practitioner who is adequately trained to conduct health surveillance in relation to the relevant hazardous substance in question and has been appointed by the employer after consultation with the worker(s).

Any doctor who is a fellow of the Australian Faculty of Occupational and Environmental Medicine will have the necessary training and experience in relation to health surveillance. A list of these practitioners including their names and locations can be found on the Royal Australasian College of Physicians (RACP) website:

<https://www.racp.edu.au/about/college-structure/australasian-faculty-of-occupational-and-environmental-medicine/find-a-consultant>

This list however is not exhaustive and there are other doctors in Western Australia with experience in health surveillance. An internal list of medical practitioners with experience in health surveillance is provided in Attachment 6.1.

Where a doctor may not have done health surveillance for hazardous substances previously, it is essential for them to contact WorkSafe's occupational physician to discuss the required health surveillance and to ensure they are aware of their duties under the Regulations.

Schedule 5.3 of the Occupational Safety and Health Regulations 1996 provides a list of hazardous substances for which health surveillance is required and the type of health surveillance that is required for each substance.

As an example, a price list including health surveillance of a large health surveillance provider obtained by the department on 21 November 2018 is provided in Attachment 6.2. It is likely that the cost of health surveillance across providers will vary and also depend on the cost of the prescribed tests in Schedule 5.3.

## Question 7

The Committee is interested to know what happens to the information obtained as a result of health surveillance:

- i. Is it provided to the person's general practitioner?
- ii. Is it provided to the person?
- iii. Is it provided to the Department of Health?
- iv. Is it provided to WorkSafe and, if so, what does WorkSafe do with the information?
- v. Is the person required by WorkSafe to undergo further health surveillance?
- vi. Is the issuing inspector notified, and thereafter required to maintain surveillance of the workplace and, if necessary, pursue follow-up health surveillance on the worker in question on an annual basis?

## Answer

- i. Not routinely.
- ii. Yes.
- iii. No, unless a medical condition which is notifiable under legislation administered by the Department of Health is diagnosed. For example, cancer is a notifiable diagnosis. Further information about obligations under which health professionals must report conditions and diseases is provided on the website of the Department of Health:  
[https://ww2.health.wa.gov.au/Articles/A\\_E/About-statutory-medical-notifications-in-Western-Australia](https://ww2.health.wa.gov.au/Articles/A_E/About-statutory-medical-notifications-in-Western-Australia)
- iv. Yes. The information is reviewed by WorkSafe's contract occupational physician. If the physician ascertains that the exposure to the substance may not be sufficiently controlled, the physician arranges for an inspector in the Occupational Health, Hygiene and Noise (OHHN) Team to conduct a workplace inspection.  
If the physician has concerns in relation to the correct medical follow-up for the worker, the physician contacts the Appointed Medical Practitioner (AMP) who provided the health surveillance to discuss recommendations for further assessments, tests or treatment, including referral to an appropriate specialist if required.
- v. The AMP makes recommendations for the frequency of health surveillance tests and medical reviews. The frequency of health surveillance tests and medical reviews will depend upon the substance, the exposure risks including the frequency of use and extent of potential exposure, and other health risk factors. Guidance on the frequency of health surveillance tests and medical reviews is available from Safe Work Australia.
- vi. Not routinely. If notices were issued, verification work may be conducted to check compliance. However, as further health surveillance results are received and reviewed by WorkSafe's contract occupational physician, and trends or issues of concern are noted through this process, an inspector in the OHHN Team would be assigned to inspect the workplace if needed.

**Question 8**

Of the health surveillance notices issued during the last five years, how many results of concern that indicated increased levels of risk to the health of a worker, and what action was taken in respect to those results?

**Answer**

Where the contract occupational physician arranges for an inspector to conduct a follow up visit, the inspector creates an investigation of the type 'health surveillance'.

An identification of health surveillance investigations, where in the past a notice was issued under Regulation 5.23, would require a time intensive manual extraction of the WISE history of each health surveillance investigation in the last five years.

Data in relation to all health surveillance investigations (completed and in progress) created in the last five years and the number of notices issued as a result of these investigations is readily available.

Between 01-01-2014 and 21-11-2018, 169 investigations of the type health surveillance were created. As part of these investigations, 172 improvement notices were issued.



## LIST OF ATTACHMENTS

Attachment	Name
Attachment 5.1	Relevant parts of the WISE Handbook in relation to withdrawing notices
Attachment 6.1	Internal list of appointed medical practitioners
Attachment 6.2	Price list medical provider – including health surveillance

## OVERVIEW OF EIGHT QUESTIONS

No	Questions
1	For each of the last five years, how many health surveillance notices have been issued by WorkSafe
2	In respect of those health surveillance notices, how many were the subject of a reference for review under section 51 of the Act? What was the outcome of the review?
3	What particular incident gave rise to the issuing of the memorandum of 30 October 2018?
4	For each of the last five years, how many health surveillance notices were withdrawn by the issuing inspector? In respect of each withdrawal, what was the reason for the withdrawal?
5	What is the process for an inspector to withdraw a health surveillance notice?
6	Please provide a list of appointed medical practitioners, the location of each and the cost of obtaining health surveillance.
7	<p>The Committee is interested to know what happens to the information obtained as a result of health surveillance:</p> <ul style="list-style-type: none"> <li>i. Is it provided to the person's general practitioner?</li> <li>ii. Is it provided to the person?</li> <li>iii. Is it provided to the Department of Health?</li> <li>iv. Is it provided to WorkSafe and, if so, what does WorkSafe do with the information</li> <li>v. Is the person required by WorkSafe to undergo further health surveillance?</li> <li>vi. Is the issuing inspector notified, and thereafter required to maintain surveillance of the workplace and, if necessary, pursue follow-up health surveillance on the worker in question on an annual basis?</li> </ul>
8	Of the health surveillance notices issued during the last five years, how many results of concern that indicated increased levels of risk to the health of a worker, and what action was taken in respect to those results?

## ATTACHMENT 5.1 Relevant parts of the WISE Handbook in relation to withdrawing a notice

Paragraph 3.7 and Paragraph 3.11 of the WISE Handbook relate to withdrawing notices in WISE. The relevant parts of these paragraphs are provided below.

### 3.7 Withdrawing a notice

- The word “**withdraw**” is generally used when the action is initiated by the issuing inspector. The ability of an inspector to withdraw a notice is derived from the *Interpretation Act*. No person other than the issuing inspector can legally withdraw a notice.
- To withdraw a notice, **the recipient must be advised**. Simply removing a notice from WISE or flagging it as “withdrawn” is an administrative process and does nothing to affect the legal status of the notice. It is not until the recipient is advised that the notice is legally withdrawn.
- There is no legal difference in status between a withdrawn notice and a cancelled notice. Rather, the different terminology has arisen as a matter of custom. From a practical point of view, the use of different terminology enables us to distinguish between those notices that have been cancelled through the processes under the OSH Act, and those that have been withdrawn by the issuing inspector. For this reason, the custom has been retained.
- A notice may be withdrawn where the issuing inspector considers the notice was incorrectly issued or the circumstances leading to the issuance of the notice no longer apply (eg notice issued to the incorrect entity or the business has since closed down). In some circumstances it will be appropriate to issue a new notice when withdrawing an incorrect notice. It is not appropriate to withdraw a notice while it is under review.
- If a notice cannot be withdrawn, for instance when the issuing inspector is no longer employed with WorkSafe, or the notice is very old and it is not appropriate to write to the recipient to withdraw it, or the legal entity the notice is issued to does not exist anymore, then refer to the Section “Inactive notices”.
- The procedure for changing the Status of a notice in WISE to “withdrawn” is included in Section 3.11.

### 3.11 Procedure for changing the status of a notice to “non-compliance”, “withdrawn”, “inactive” or “never issued”

#### Role of the inspector

- The inspector sends an email to the Operational Director and a copy to his/her Team Manager with the request to change the status of a notice in WISE to “non-compliance”, “withdrawn”, “inactive” or “never-issued”.
- The inspector explains the reason for the request in the email.
- If a request is made to change the status to “non-compliance”, the inspector also provides the new notice number (refer to Section 3.4, sub heading “Partial compliance achieved” for further details of circumstances where this is appropriate).
- The inspector links the WISE investigation in which the notice is issued to the Team’s Work Activities Objective file and creates a folder for the investigation. The name of the folder starts with the investigation number followed by the legal entity (ie 12345 ABC Pty Ltd). If an investigation file was already created and linked to the WISE investigation, correspondence can be saved in the investigation file.
- If a request is made to change the status to “withdrawn”, the inspector reviews and signs the letter to be sent to the recipient of the notice, which is prepared by the Operational Director.

### Role of the Operational Director

- The Operational Director reviews the request to change the status of a notice to “non-compliance”, “withdrawn”, “inactive” or “never issued”.

If a request is made to change the status to “withdrawn”:

- the Operational Director liaises with the Director Reviews and Legal Services or an alternative assigned person in Legal Services to ensure that there is no policy impediment to the withdrawal of a notice (a policy impediment most frequently arises with respect to a notice that is already under review).
  - The Operational Director prepares correspondence to the recipient of the notice for the issuing inspector to sign.
- The Operational Director changes the status in WISE.
  - The Operational Director sends an email to the inspector and the Team Manager confirming that the request has been completed.
  - The Operational Director files all emails and copies of correspondence on the appropriate folder in the Team's Work Activities Objective file or in the investigation file, if available.
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Paragraph 3.11 in the WISE Handbook continues with screen shots and technical instructions for the Director on how to change the status of a notice to ‘withdrawn’ in WISE. As this is not relevant to the question, this part has not been provided.