WHS INCIDENT NOTIFICATION

Australian Manufacturing Workers' Union

Adverse health effects resulting from exposure to substances in the workplace is hidden as a result of the extreme low levels of workers compensation claims reflecting most WHS regulators sole source of lag information. Of concern is also the long latency for many of these illnesses to present within exposed workers, meaning that by the time WHS regulators become aware of them decades may have passed with tens of thousands of workers receiving ongoing and ever-increasing dosages of harmful substances.

PUBLIC COMMENT

Consultation on WHS incident notification

Your details and background

(Please leave blank if you wish to remain anonymous)

Name or organisation

Australian Manufacturing Workers' Union

Email used to log into Engage

[redacted]

1. *Which chapter you are referring to in your response below?*

Chapter 5, Periodic reporting – periods of incapacity for work

2. *Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.*

We support the assessment that, in summary, the current matters requiring notification are limited to traumatic incidents. As a result, the regulators are blind to incidents which cause a significant portion of all injuries.

A broader and more comprehensive response from WHS regulators to the risks prevalent in our workplaces was recognized in May 2021 when WHS Ministers agreed that,

- the incident notification provisions capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements; and

- WHS regulators have appropriate visibility of work-related psychological injuries and illnesses.

The current reliance on workers compensation data has proven less the ideal as a result of delays in the provision of this information, meaning that proactive interventions by regulators comes too late to avert the injury, as well as a dependence on workers compensation claims being accepted so as to form the data. It is particularly problematic where the definition of a worker under the WHS law does not align with any jurisdictions definition of a worker for the purpose of workers compensation.

3. *Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.*

Amend the model WHS Act to require periodic reporting (six monthly) of periods of incapacity from normal work for ten or more consecutive days due to a psychological or physical injury, illness or harm arising out of the conduct of the business or undertaking.

The AMWU notes that there are a number of possible options for periodic reporting and has previously expressed that a mirroring of the former NSW OHS Regulation[1] clause 341 (a) & (b) provides the best compromise whilst having confidence that it would be achievable as it was successfully adopted for a decade.

Putting aside the threshold issue of how many days a worker must be absent from work, we consider that the six-monthly period is a risk, as we foresee significant non-compliance by PCBUs due to the administrative activity of notification being separated from the time other injury related administrative tasks are being completed.

To avoid this mass non-compliance, we recommend that notice to regulators should be immediate as of the time the injury threshold has been met.

4. *What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?*

The notification of these matters will drive more targeted intervention by the regulators, subject to regulators holding up their end, in addressing the non-compliances which are leading to these injuries. The impact of this will be two-fold, both in relation to those workers whose injury has triggered the notification reducing the risk of a further aggravation, degeneration or reinjury and more broadly to the workplace reducing the risk to other workers.

Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.

We note that significant research has been conducted into the effectiveness of regulator intervention to reduce injuries. We note it has been concluded that, "*general deterrence is less effective in reducing injury incidence and severity, whereas specific deterrence with regards to citations and penalties does indeed have impact*"[2]

5. *Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?*

6. *Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?*

Adoption of the former NSW OHS Regulation clause 341 (a) & (b).

[1] https://legislation.nsw.gov.au/view/whole/html/2006-02-03/sl-2001-0648#ch.12-pt.12.1
[2] Tompa, Emile, et al. "Systematic Review of the Prevention Incentives of Insurance and Regulatory Mechanisms for Occupational Health and Safety." Scandinavian Journal of Work, Environment & Health, vol. 33, no. 2, 2007, pp. 85–95. JSTOR, http://www.jstor.org/stable/40967630. Accessed 6 Sept. 2023.

1. Which chapter you are referring to in your response below?

Chapter 6, Immediate notification - attempted suicide, suicide and other deaths related to psychological harm.

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

The AMWU concurs there is currently underreporting of suicide and other death due to psychological harm arising out of the conduct of a business or undertaking. We are also aware that some attempted suicides may not meet this notification requirement.

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU supports the adoption of options 1 & 2 as this will reduce PCBUs having to navigate when and when not to notify, at the same time providing the clarity that suicide is a notifiable incident.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?

Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.

5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?

1. Which chapter you are referring to in your response below?

Chapter 7, Immediate notification – psychosocial hazards – workplace violence

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

The AMWU supports the assessment of the current gaps, that current notification fails to address both the severity of the incident in the absence of a death, or a person being admitted as a patient and misses the trauma including vicarious trauma that such events can cause leading to psychological injuries.

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

We support option 1 only, and do not support the proposal to, *introduce a power to permit WHS regulators to approve alternative reporting arrangements for certain PCBUs with specific conditions*.

We note that many of the WHS regulators have provided submissions to a number of SafeWork Australia consultations arising from the WHS Act review and frequently expose a vested interest, normally based on protecting their reputation, so as to deflect accusations of impropriety or ineffectiveness. We foreshadow, that to provide regulators with an ability to set conditions for certain PCBUs would likely delay notification, or worse, hide the true numbers. Based on previous experience we suspect that there could likely be a concentration of these 'special conditions' provided to government departments/agencies and their contractors.

This optional add on, risks undermining the purpose of the notification. Workers regardless of their industry or vocation should be provided a safe and healthy workplace, without risk to violence.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?

Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.

5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?
7. Are there particular types or circumstances of workplace violence that you think should or should not be notifiable to the WHS regulator that are not dealt with by the proposed option and descriptions? What would be the implications of including or excluding these incidents?

1. Which chapter you are referring to in your response below?

Chapters 9, Periodic reporting – psychosocial hazards – bullying and harassment.

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

The AMWU supports that the reporting of dangerous incidents remains imperative to the purpose of requiring notification and that psychosocial hazards including bullying and harassment should be considered and dealt with as a dangerous incident.

Our experience has shown that bullying and harassment is largely a failure of the PCBU to have in place appropriate health and safety management systems and failure to adequately resource those management systems including supervision. The intervention of a regulator in instances of reported bullying or harassment will assist in preventing injury to worker health.

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

We support option 2,

Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints or instances.

Of

a) workplace bullying
repeated, unreasonable behaviour towards a worker(s) or group of workers

b) workplace sexual harassment of a worker(s)
that that involves unwelcome sexual advances, unwelcome requests for sexual favours or unwelcome conduct of a sexual nature

c) workplace harassment of a worker(s)
because of protected characteristics (e.g. race, sex, gender, sexual orientation, age, disability)

where the behaviour may reasonably be considered to have occurred (excluding vexatious or frivolous claims), and that exposes a worker(s) to a risk to their health and safety.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?

Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.

5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?

1. Which chapter you are referring to in your response below?

Chapter 10 - Long latency diseases – exposure to substances

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

The AMWU notes a lack of consistency by WHS regulators regarding the application of notification when there are exposures to substances. This in itself reflects confusion and a failure of the legislation to adequately express regulatory intent. The object of the legislation appears forgotten with this regard.

At the same time there is a duty on PCBUs to ensure that no person in the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture. The duty to ensure that no person is exposed to a level of airborne contaminant above the workplace exposure standard (WES) is absolute and not qualified by so far is as is reasonably practicable.

Adverse health effects resulting from exposure to substances in the workplace is hidden as a result of the extreme low levels of workers compensation claims reflecting most WHS regulators sole source of lag information. Of concern is also the long latency for many of these illnesses to present within

exposed workers, meaning that by the time WHS regulators become aware of them decades may have passed with tens of thousands of workers receiving ongoing and ever-increasing dosages of harmful substances.

The Australian Safety and Compensation Council, the SWA predecessor, report Occupational Cancer in Australia, April 2006[3] estimated that *about 11% of incident cancers in males and 2% in females may be caused by occupation. This equates to about 5000 cancers a year*.

The report concludes that, *very little co-ordinated information is available in Australia on how many people are potentially exposed to known or suspected carcinogens, how aware workers are of carcinogenic substances, whether regulations about carcinogenic substances are being followed, how many cancers are caused by occupational exposure to carcinogens, and what preventive activities including workplace controls are being undertaken*.

But cancer is only one of a number of significant health impacts from exposure to substances. The failure to require mandatory reporting of exceedances of workplace exposure standards has facilitated an industry culture that such exposures are of little importance and low levels of education.

Other issues include,

- when an individual is diagnosed, they may no longer have any association with the workplaces where their exposures occurred. In these circumstances, reporting is likely to be incomplete as it would rely on the PCBU being aware that a former worker has received a diagnosis, and that a causal link to a particular workplace had been established.

- There is no requirement under the model WHS laws for a PCBU to maintain contact with a previous worker who was, or may have been, exposed to a hazardous chemical in the workplace, and

- the limited ability of WHS regulators to effectively respond to a notification, particularly in the case that either or both the PCBU and exposure sites no longer exist.

We support that air and health monitoring are preferable ways of detecting exposures and health impacts from substance exposure (rather than disease diagnosis) as it allows for early identification of potential harm, provided the monitoring is undertaken at regular intervals.

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU supports requiring PCBUs to notify the WHS regulator when a workplace exposure standard (WES) is exceeded and any irregular health monitoring report.

[3] https://www.safeworkaustralia.gov.au/system/files/documents/1702/occupational_cancer_australia_april_2006.pdf

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?

Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.

5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?
7. Should exposure to hazardous substances in the workplace that cause latent diseases be recorded and reported? If so, for which substances?

   Yes.

   All substances for which there is a Workplace Exposure Standard (WES) or which are prohibited or restricted.
8. How are exposures to hazardous substances currently measured in the workplace (for example, air and health monitoring)? Do you have suggestions for options to improve monitoring to provide a better understanding of exposure to hazardous substances in the workplace?

   Most exposures across all Australian workplaces are not measured and often not identified due to the failure of PCBUs to manage the risks of airborne contaminants. Requirements to determine whether there is a risk to health are ignored even in industries where the risks are well known.

   A survey of AMWU members who weld (metal fabrication) conducted in July 2023 asked,

   Does your employer regularly have workplace environment monitoring carried out by a professional (occupational hygienist)?

ANSWER CHOICES	RESPONSES
Yes	19.17%
No	56.23%
Don't Know	24.60%

   How often does your employer send you for a health monitoring medical examination?

ANSWER CHOICES	RESPONSES
At least every 2 years	22.36%
Occasionally	18.85%
Never	58.79%

9. With regards to air monitoring, how are exceedances of the WES captured? Do you think recording and reporting WES exceedances is a good way to identify exposure to hazardous substances in the workplace? What other ways could exposures be recorded and reported?
   Air monitoring should be carried out by a qualified occupational hygienist. Hygienists are trained to interpret air monitoring readings and results should be provided in reports against relevant Workplace Exposure Standards (WES). WES are available on the SWA website[4]. Notifying WES exceedances is a good way to identify where there has been an exposure to hazardous substances in the workplace.

10. Should PCBUs be required to keep records of statement of exposure documents and make them available for inspection by the regulator? Should the statement of exposure requirement be broadened from prohibited or restricted carcinogens to include other substances which are known to cause long latency diseases? If yes, how should these substances be identified?

    The AMWU supports a requirement which would require PCBUs to keep records of statement of exposure documents and make them available for inspection upon request of an affected worker, their HSR or any other person with a statutory right. We also support the provision of a statement of exposure to any worker exposure above a WES of a substance.

1. Which chapter you are referring to in your response below?

Chapter 11 Serious head injuries

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

Yes

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU support option 1, Amend the model WHS Act (s 36) to capture 'serious head injuries' (without applying the threshold of requiring 'immediate treatment'). This should be accompanied with guidance explaining what is meant by 'serious head injury' as s36(b)(ii) is unlikely to be of assistance.

Asking industry to interpret 'suspected' serious is likely to lead to disputation regarding interpretation and inconsistence on application.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?
   Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.

[4] https://www.safeworkaustralia.gov.au/sites/default/files/2022-09/workplace_exposure_standards_for_airborne_contaminants_-_1_october_2022.pdf

5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?

1. Which chapter you are referring to in your response below?

Chapter 12, Other potential gaps in 'serious injury or illness'

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

Yes

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU support option 2, Amend the model WHS Act (s 36(b)) to specifically capture 'serious bone fractures' and 'serious crush injuries' requiring immediate treatment.

We are not concerned with option 1 or the likely increase in the volume of notifications to WHS regulators but have concern that a strict application could disadvantage those in regional and rural communities who may not be treated as an outpatient in an emergency department.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?
   Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.
5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?

1. Which chapter you are referring to in your response below?

Chapter 13, Capturing incidents involving large mobile plant.

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

Yes

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU, supports the option presented, to amend the dangerous incident provisions (s 37) in the model WHS Act to require immediate notification of the malfunction or loss of control of powered mobile plant that exposes a worker or any other person to a serious risk to a person's health and safety.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?
   Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.
5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?

1. Which chapter you are referring to in your response below?

Chapter 14, Capturing the fall of a person.

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

Yes

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU supports the option presented, to amend the dangerous incident provisions (s 37) in the model WHS Act to include the fall of a person that exposes a person to a serious risk to health and safety (death or serious injury).

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?
   Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.
5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?

1. Which chapter you are referring to in your response below?

Chapter 15, Addressing minor gaps and ambiguities in the current incident notification provisions.

2. Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

Yes

3. Do you support the proposed option(s)? Please explain why or why not and provide relevant evidence to support your views where possible.

The AMWU supports the proposed options as expressed under,

- Causal link principle
- Objective test
- Amending the description of 'immediate treatment' in guidance
- Immediate treatment as an inpatient in a hospital
- Improving understanding of 'loss of bodily function'
- Medical treatment for exposure to a substance
- Exposure to human blood and body substances
- Infections and zoonoses
- Dangerous incident provisions - reducing complexity and improving PCBU understanding
- Improving the electric shock provision
- Duty to notify and site preservation requirements.

4. What practical impact, including costs and benefits, would the option(s) have on you, your organisation or your stakeholders?
   Please provide any details or evidence supporting your views, including the option's likely impact on WHS outcomes or any compliance costs or concerns.
5. Are there any likely unintended consequences of the proposed option(s)? How could these be best mitigated?
6. Do you have another suggestion or preferred option for addressing the gap in WHS regulator visibility?
7. Medical treatment for exposure to a substance - What health professionals should be covered by the definition of 'medical treatment'? Please provide reasons, including examples of what treatment the health professional is likely to provide for which type of exposure.

END