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Australian Government

Comcare

# WHS NOTIFICATION

Reducing work-related fatalities, injuries  
and illnesses through increased WHS  
regulator visibility of health and safety  
incidents

Comcare Submission

14 September 2023

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## Introduction

Comcare welcomes the opportunity to provide this submission in response to the consultation paper *WHS incident notification – Reducing work-related fatalities, injuries and illnesses through increased WHS regulator visibility of health and safety incidents* (Consultation paper).

Comcare notes that the options presented in the paper are based on the findings of a review of the incident notification provisions undertaken by Safe Work Australia (the Agency) in 2021-2022.

Comcare's submission focusses on the operational and technical aspects of the incident notification framework as a result of experience gained from dealing with incident notification provisions on a daily basis. This includes interactions with duty holders about notification provisions, responding to specific queries, or engaging with stakeholders through educational activities.

It is Comcare's experience that the current notification provisions present undue difficulties and complexities for all stakeholders. It is important that any proposed changes to the notification provisions are as clear and effective as possible and don't add further complexity or ambiguity for stakeholders.

## Comcare's role

Comcare is a statutory authority established under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Comcare has a number of powers and functions conferred under the *Work Health and Safety Act 2011* (WHS Act) and SRC Act. Comcare is also responsible for managing the Commonwealth's asbestos-related claims liabilities under the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*.

Comcare supports participation and productivity nationally through healthy and safe workplaces that minimise the impact of harm.

Comcare works with employers, workers and their representatives, providers, and other stakeholders to improve work health, safety and rehabilitation. Our aim is to make workplaces safer and healthier by preventing harm, supporting early intervention, encouraging adoption with better practice guidance, and ensuring effective compliance with the work health and safety (WHS) legislative framework. We also strive to improve work health and safety outcomes through programs that encourage and promote the health benefits of good work.

Under the WHS Act, Comcare is the regulator for employers in the Commonwealth, who are primarily comprised of:

- Commonwealth departments and agencies
- national companies licensed under the SRC Act
- members of the Australian Defence Force when not at war, including reservists and cadets.

## Comcare's views on the proposed options

In Comcare's view, the incident notification provisions should ensure that WHS matters of a serious nature are immediately brought to the regulator's attention. This allows the regulator to act quickly on matters that the regulator considers warrant an immediate regulatory response.

For the provisions to function effectively, they need to:

- be easy for duty holders to quickly understand and apply, to avoid delay or disturbance of the incident site, and
- identify notifiable incidents that warrant immediate notification and may require an immediate regulatory response.

The incident notification provisions in Part 3 of the WHS Act present undue difficulties and complexities for compliance by duty holders.

It is Comcare's view that some of the proposed amendments and updates to guidance material will assist in resolving areas of uncertainty and complexity for duty holders and WHS regulators however, others may create further complexity for duty holders.

### Chapter 5 - Periodic reporting of incapacity periods

The objective of Chapter 5 is to improve WHS outcomes to ensure WHS regulators have visibility of serious work-related injuries that do not arise immediately or from acute incidents, as is primarily the case with a psychological injury, illness or harm.

The option proposed in Chapter 5 is to require periodic reporting (6 monthly) of periods of incapacity from work of ten or more consecutive days.

Comcare agrees with the Agency that there is a gap in the visibility for regulators in respect of these psychological injuries and illnesses arising out of work. It is Comcare's view that requiring notification for 'an absence of work' as opposed to 'periods of incapacity' could help address this gap.

#### Batched Notifications

Comcare does not agree that periodic or batched notification requirements are appropriate. Delayed notifications are inconsistent with the primary purpose of incident notification as expressed in paragraph 155 of the [Model Work Health and Safety Act Explanatory Memorandum](#) (explanatory memorandum) to "enable the regulator to investigate serious incidents and potential work health and safety contraventions in a timely manner". Permitting delayed notifications implies that the notified incidents are either not serious or do not need to be investigated in a timely manner.

Delayed notifications appear to be directed at providing the regulator with information for data analyses rather than triggering a timely regulatory response. There are mechanisms already available to regulators, such as those identified on page 27 of the Consultation paper, to obtain this sort of information without the need for increasing notification burdens.

Creating a new category of notification requirement (ie. not requiring immediate notification) will increase the regulatory burden on PCBU's and may lead to further confusion in respect of notification requirements and possible duplication of reporting. It will also increase the regulatory burden on regulators to explain the alternative requirements and monitor and triage incoming notifications.

### Immediate notification of incapacity periods

Comcare is of the view that immediate notification of an 'absence from work' for a specified period of time could assist duty holders in understanding this is an important indicator in identifying potential risks to health and safety of workers.

While Comcare supports the concept of immediate notification of a defined absence from work, Comcare recommends that this could be achieved through the addition of a new subsection 36(d) which would expand the meaning of 'serious injury or illness' to include 'an absence from work for the period of ten consecutive work days due to work related psychological, injury, illness or harm'. Alternatively, this phrase could be added as a new sub-regulation 699(c).

Comcare is concerned that the use of 'period of incapacity' may introduce confusion with similar terminology in workers' compensation Acts. Therefore, Comcare proposes that the Agency considers 'an absence from work' as opposed to a 'period of incapacity' for the following reasons:

- a PCBU may believe it needs to determine whether the worker was 'able' to work during the absence; and
- the word 'incapacity' has a defined meaning in the *Safety, Rehabilitation, and Compensation Act 1988* (Cth) which is different to a simple absence from work for a defined period.

Notification requirements linked to a defined absence from work has the advantage of limiting the regulatory burden as it is a straightforward process for the duty holder to determine whether notification is required. However, it would only enable regulators to see a limited number of serious psychological risks arising at work. Other psychological risks and incidents could also be made more visible to regulators by:

- adding new paragraph 36(b)(ix) of 'deliberate or intentional self-harm' so that the meaning of 'serious injury or illness' would be expanded to include circumstances of immediate treatment for self-harm (as referred to in Chapter 6 below); and
- adding new subsection 37(m) of 'psychological assault' to expand the meaning of 'dangerous incident' to include unreasonable behaviour which creates a risk to health and safety because it is aggressive, abusive, offensive, harassing, humiliating, intimidating or threatening (as referred to in Chapter 7 below).

## Chapter 6 – Attempted suicide, suicide and other deaths

Chapter 6 proposes to increase reporting of attempted suicide, suicide and other deaths due to psychological harm arising out of a business or undertaking.

Comcare agrees there is a gap in reporting suicide, attempted suicide, and serious self-harm incidents which have arisen out of the conduct of the business or undertaking. Comcare is of the view that specific reporting requirements relating to self-harm arising out of a business or undertaking will assist duty holders to better recognise the psychological harm that work can cause, and reconsider how the duty holders can minimise such risks.

### Suicide or other death due to work related psychological harm

There are two options relating to suicide:

- Option 1, amend the guidance material to clarify that the reference to 'death of a person' in section 35 captures suicide and other deaths due to psychosocial hazards arising out of the conduct of a business or undertaking, and
- Option 2, amend section 35 to include the suicide of a person regardless of whether the suicide arose out of the conduct of a business or undertaking.

Comcare notes the benefits of Option 1 over Option 2.

Comcare believes Option 1 will limit the under-reporting as identified in Chapter 6 of the Consultation paper.

Comcare is of the view that Option 2 does not offer the same advantages. Option 2 would also require section 38 to be amended as this is the provision which triggers notification. Section 38 currently requires a 'notifiable incident' (as defined in section 35) to be notified only if it has arisen out of the conduct business or undertaking. Requiring notifications of incidents which have not arisen out of the conduct business or undertaking could lead to further confusion in so far as reporting requirements are concerned.

Further, distinguishing 'suicide' from 'death of a person' in the notification provisions would increase the regulatory burden by requiring duty holders to make this assessment.

Comcare does not agree that regulators are better placed than duty holders to make sensitive enquiries in determining whether a suicide arose out of the conduct of a business or undertaking, as PCBU's would ordinarily have access to information relevant to such consideration and assessment.

### Attempted suicide

There are two options relating to attempted suicide:

- Option 1, amend either section 35 or section 36 to capture attempted suicide due to psychological harm arising out of a business or undertaking, or at a workplace where there is an identified risk of suicide in the workplace.
- Option 2, amend either section 35 or section 36 to capture attempted suicide regardless of whether it arose out of the conduct of a business or undertaking.

Consistent with the discussion above, Comcare notes the advantages of Option 1 over Option 2 which we consider risks introducing confusion regarding notification requirements.

Comcare notes the potential drawbacks of Option 2 for the reasons stated above in relation to the same proposal in respect of suicide.

Comcare recommends that a new subsection 36(b)(ix) of 'deliberate or intentional self-harm' should be created to expand the defined meaning of 'serious illness or injury'. Comcare believes the term 'attempted suicide' should be avoided as it requires assessment of the intended outcome. Serious self-harm arising out of a business or undertaking should be notifiable regardless of whether the person's intention was to die.

The advantage of using both words in the phrase ‘deliberate or intentional’ is that it would limit interpretations which would avoid a required notification, as ‘deliberate or intentional’ can apply to either or both the action of the person and their intended outcome.

The advantage of using section 36(b) instead of section 35 is that it would limit regulatory burden by only requiring notification of serious cases of deliberate or intentional self-harm. Further, the requirement for ‘immediate treatment’ in section 36(b) also relieves regulatory burden on the duty holder to consider whether suicide had been attempted and the need to consider information such as diagnosed mental health conditions.

The explanatory memorandum and guidance material could highlight that:

*A PCBU must immediately notify the regulator when it becomes aware that a person has required immediate treatment (physical or psychological) for deliberate or intentional self-harm, regardless of whether there was suicidal intent or not, and there is a causal connection between the self-harm and the conduct of the business or undertaking of the PCBU. Notification may be required even where there has been no prior history or diagnosis of psychological injury or illness.*

## Chapter 7 – Capturing workplace violence

Chapter 7 looks to ensure WHS regulators have appropriate visibility of incidents involving serious workplace violence or threats of serious violence.

The one option is to require immediate (de-identified) notification of sexual assault, serious physical assault, the deprivation of a person’s liberty and threats of serious violence which arise out of the conduct of the business or undertaking and exposes a person to a serious risk to their health and safety. There is also an optional add on to include a power to permit WHS regulators to approve alternative reporting arrangements for some duty holders.

Comcare agrees there is a gap in reporting dangerous incidents of workplace violence which do not result in a fatality or serious harm. Comcare is of the view that this gap needs to be addressed, as significant psychological harm can arise from such incidents. Notification requirements related to workplace violence arising out of the business or undertaking will assist duty holders to recognise the physical and psychological risks associated with such incidents and consider how they can minimise these risks.

Comcare supports the Agency’s proposed option, and the optional add on to enable regulators to provide for alternative reporting arrangements.

The optional add on could be achieved by prescribing the new requirements in the model WHS Regulations under section 37(l), which would enable regulators to provide for alternative reporting arrangements through exemptions for individuals or classes of persons under the model WHS Regulations. Alternatively, a new subsection in section 38 could give the regulator power to grant exemptions, with conditions, where the matters in Regulation 685 have been considered.

The explanatory memorandum and guidance material will need to clearly explain behaviours that would require notification and those that would not. For instance, domestic violence occurring in a work from home circumstance would require notification.

Further, some of the terms may need statutory definitions. For instance, physical violence and deprivation of liberty will need to exclude lawful activities at workplaces, such as police and correctional institutions, where such behaviour lawfully occurs.

Comcare believes the above options do not adequately address under reporting of psychological harm which arises other than in relation to physical/sexual assault, threat of physical/sexual assault, or deprivation of liberty. This could be improved by expanding the definition of 'dangerous incidents' in section 37 to include 'psychological assault' as raised above in Chapter 5. Comcare would support the ability for the regulator to approve alternative reporting arrangements, for instance, particular industries are only required to notify specific types of incidents or have particular information in the notification.

## Chapter 8 – Periodic reporting of exposure to traumatic events

The objective of Chapter 8 is to ensure WHS regulators have appropriate visibility of exposures to traumatic events to enable better targeted compliance and education activities.

The option is to require periodic reporting (6 monthly) of instances where workers are exposed to traumatic events where the exposure arises out of the conduct of the business or undertaking. There is also an optional add on to enable WHS regulators to approve alternative reporting arrangements for some PCBUs.

Comcare does not support the option, or the optional add on.

Comcare does not agree that periodic or batched notification requirements are appropriate as discussed in this submission at Chapter 5.

Comcare would consider support of a new subsection in section 36 of 'serious illness or injury' arising from 'exposure to one or more traumatic events'. This category would capture incidents where immediate treatment, or medical treatment was not sought soon after the event.

A problem with reporting on exposure to traumatic events is that the traumatic event is unlikely to be reportable of itself (as otherwise there would be no need for such a provision). Therefore, the main benefits of reporting on exposure to traumatic events would be to refocus the duty holder on the need to ensure the health and safety of workers who are present at such events and to enable the regulator to ensure that appropriate supports for such workers are in place. These benefits are of limited value so would need to be weighed against the disadvantages of extra reporting requirements.

## Chapter 9 – Periodic reporting of bullying and harassment

The objective of Chapter 9 is to ensure WHS regulators have appropriate visibility of the prevalence of bullying and harassment to inform targeted compliance and education activities.

There are two options:

- Option 1, is to require periodic reporting (6 monthly) of de-identified data of complaints or instances of repeated and unreasonable behaviour (bullying) or unreasonable behaviour toward a worker that is reasonably considered abusive, aggressive, offensive, humiliating, intimidating, victimising or threatening where the behaviour:
  - may reasonably have been considered to have occurred,
  - arose out of a business or undertaking, and
  - exposes a worker to a risk to their health and safety.
- Option 2, is to require periodic reporting (6 monthly) of de-identified data of complaints or instances of workplace bullying, sexual harassment of a worker, or workplace harassment of



a worker where the behaviour may reasonably be considered to have occurred and exposes a worker to a risk to their health or safety.

Comcare does not support either Options 1 or 2.

Comcare does not agree that periodic or batched notification requirements are appropriate as discussed in this submission at Chapter 5.

Comcare would support a new subsection in section 37 of 'psychological assault' (as referred to in Chapters 5 and 7) with an ability to allow for alternative reporting arrangements as discussed in regard to Chapter 7 above.

## Chapter 10 – Long latency diseases – exposure to substances

As identified in the Consultation paper, the incident notification provisions cover exposure to substances in two ways:

- section 36 requires PCBU to notify the regulator of a serious injury or illness requiring medical treatment within 48 hours of exposure to a substance (ie. chemicals, airborne contaminants and human and/or animal blood and body substances), and
- section 37 requires PCBU to notify a dangerous incident that poses a serious risk to a person's health or safety emanating from an immediate or imminent exposure to an uncontrolled, escape, spillage or leakage of a substance.

There are also notification requirements in relation to air and health monitoring in certain circumstances in the model WHS Regulations.

However, as currently drafted, the model WHS Act and Regulations do not adequately address regulator visibility of long latency disease, as a result of exposure to hazardous substances and airborne contaminants.

While the model WHS Regulations require duty holders to ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture (regulation 49), there is no requirement for duty holders to notify the WHS regulator when the workplace exposure standard (WES) has been exceeded.

Duty holders are currently required to notify the WHS regulator to provide a copy of an adverse health monitoring report where health monitoring detects relevant injury or diseases or recommends the PCBU undertake remedial measures.

To enable regulators to more effectively regulate exposure to hazardous substances and airborne contaminants, amendments to the WHS Act and Regulations are required.

Comcare considers that there would be benefit in the following amendments:

- Expand section 37 so that exceedances of the WES are considered a dangerous incident.
- Create a new sub regulation within regulation 50 that requires the duty holder to report results of air monitoring carried out under this regulation that exceeds the WES to the WHS regulator as soon as reasonably practicable.
- For certain types of work where there is a likelihood that workers and others will be exposed to airborne contaminants, such as high-risk silica processes, that this work should be notified

to the regulator before work commences – similar to the notification requirements for lead risk work.

Comcare considers that requiring notification before high-risk work commences provides regulators with visibility of this work, enabling them to proactively work with the duty holder early in the process and ensure that the duty holder is doing what is reasonably practicable to manage risks.

Comcare acknowledges the work being undertaken by the Agency in relation to hazardous substances and airborne contaminants but notes that this work is limited (at this stage) to crystalline silica containing materials and the revised WES.

## Chapter 11 – Serious head injuries

Comcare supports the Agency's assessment that the incident notification provisions do not adequately capture serious head injuries. This is because section 36(b)(ii) notification threshold is a serious head injury that requires "immediate treatment". As identified in the Consultation paper, as currently drafted, the provisions do not capture a head injury that worsens over time for example, brain clots and brain bleeds.

To address this issue, it is Comcare's view that Option 1 is preferred. This option requires amendments to the model WHS Act to capture 'serious head injuries' without applying the threshold of requiring 'immediate treatment'.

In Comcare's view, this option would meet the policy intention of the incident notification provisions.

Comcare notes the Agency's assessment that the lack of the 'immediate treatment' threshold to assist determining seriousness may result in under and over reporting and confusion for duty holders.

While WHS regulators may see an increase in notifications for serious head injuries if the threshold of 'immediate treatment' is removed, Comcare considers that *all* head injuries should be considered 'serious'. This is because a blow to the head can injure the brain or spinal cord even when there are no visible signs of trauma to the scalp or face. This means that concussions which may not meet the current thresholds would be notifiable under the amended provisions.

To reduce under and over reporting, and to assist duty holders' understanding of the application of the notification requirements for serious head injuries, Comcare supports the Agency updating the guidance material to provide clarity on the types of injuries that must be notified.

## Chapter 12 – Other potential gaps in 'serious injury or illness'

Chapter 12 notes that there are potential gaps in the current arrangements and provides two options:

- Option 1 – amend the model WHS Act to require immediate notification of all work-related injuries and illnesses requiring treatment as an outpatient in an emergency department.
- Option 2 – amend the model WHS Act to specifically capture 'serious bone fractures' and 'serious crush injuries' requiring immediate treatment.

### *Option 1*

Comcare notes that the Consultation paper states that “The incident notification provisions are largely effective in capturing physical injuries and illnesses that require ‘immediate treatment’ as an inpatient in hospital...”. However, Comcare is aware that section 36(a) causes confusion for duty holders in the Commonwealth jurisdiction in relation to determining what an ‘in patient’ is and the definition of a ‘hospital’.

#### *‘In patient’*

The term ‘in-patient’ is not defined for the purposes of section 36. In general usage, an ‘in-patient’ is a patient who has undergone a hospital’s admission process to receive treatment and/or care. At this general level, an in-patient is contrasted with an emergency department patient, who presents at a hospital’s emergency department and is treated within the emergency department without being admitted.

Given the serious and acute nature of the injuries and illnesses that require ‘immediate’ treatment as an in-patient in a hospital, Comcare’s view is that patients who need this type of treatment are most likely to arrive at a hospital at the emergency department and to then be quickly transferred to a ward (which could be the intensive care unit).

Unfortunately, there is no simple way to predict whether a particular patient who has presented at an emergency department will be admitted. The decision whether to admit an individual patient is a clinical decision and can be influenced by a complex array of factors that are out of control of the patient, including a hospital’s capacity.

#### *“Hospital”*

There is no definition of ‘hospital’ for the purposes of section 36(a). In general terms, a ‘hospital’ is a facility where medical and/or surgical treatment and associated care is provided for sick or injured people. However, the word does not have a precise usage that draws clear distinctions between a ‘hospital’ and other health care facilities.

However, ‘hospitals’ may not be the only health care facility that can provide ‘immediate treatment’. Within the Commonwealth jurisdiction, there are a number of other facilities whereby ‘immediate treatment’ may be given including, Australian Defence Force field hospitals and hospitals onboard vessels, International Health Medical Services facilities and other international settings.

While Comcare supports amending the model WHS Act to include the notification of all work-related injuries and illnesses requiring treatment as an outpatient in an emergency department as a solution to the issue of ‘in patient’ versus ‘outpatient’, it is noted that WHS regulators could be inundated with notifications if “all work-related injuries and illnesses” requiring treatment were to be notified.

Comcare recommends caution in drafting the provisions to ensure there are clear parameters that only the most serious work-related health and safety incidents are notifiable to the regulator.

Comcare notes that Chapter 15 proposes to amend guidance material to provide information for duty holders on the description of ‘immediate treatment’ and ‘immediate treatment as an inpatient in a hospital’. In updating the guidance in relation to what is considered a ‘hospital’, Comcare recommends that this includes the non-traditional healthcare settings such as field hospitals, vessels etc that may provide ‘immediate treatment’.

## Option 2

One of the most frequently used subsections is section 36(b)(vii) the loss of a bodily function and is often the subject of inquiries for clarification. One of the questions often asked is whether a fracture is the 'loss of a bodily function' with increases in the number of inquiries following the removal of 'fractures' as an exclusion from loss of bodily function (page 3 Safe Work Australia *Incident Notification Information Sheet*).

Explicitly capturing 'serious bone fractures' and 'serious crush injuries' within injury types in section 36(b) would remove the ambiguity and vagueness for PCBU's in relation to 'loss of bodily function'.

Therefore, Comcare supports Option 2, noting the Agency's assessment that guidance would need to specify what types of fractures and crush injuries are notifiable.

## Chapter 13 – Capturing incidents involving large mobile plant

Comcare agrees with the assessment in the Consultation paper that there is currently a gap in relation to the requirement to notify dangerous incidents involving plant that are not required to be authorised/registered under the model WHS Regulations.

Comcare considers that items of plant that are not required to be authorised/registered do not pose less of a risk than registered plant and as such should be covered by the notification provisions.

Comcare supports amendments to the section 37 dangerous incident provisions 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 other person to a serious risk to a person's health or safety.

Comcare also supports updated guidance with clear examples to demonstrate the proposed amendments.

## Chapter 14 – Capturing the fall of a person

Comcare agrees with the assessment in the Consultation paper that the incident notification provisions currently do not capture the fall of a person unless the incident results in a fatality or serious injury, or involves another notifiable dangerous incident.

Comcare notes that section 37(f) of the model WHS Act (fall or release from a height of any plant, substance or thing) is one of the incident notification provisions that duty holders have identified as confusing and ambiguous resulting in inquiries and requests for advice on whether a 'person' is a 'thing'.

It is Comcare's view that there is no clear expression of the policy intent behind section 37 of the model WHS Act and the incidents that provision was intended to capture. However, Comcare contends that it is unlikely the word 'thing' in section 37(f) was intended to include a person, and only applies to inanimate objects.

We note that the Safe Work Australia *Incident Notification Information Sheet* does not provide any guidance on whether section 37(f) of the model WHS Act is intended to capture a person falling from height. The explanatory memorandum does not contain any specific guidance on the operation of section 37(f).

Comcare supports the proposal to amend section 37 to include the fall of a person that exposes a person to a serious risk of death or serious injury however, caution is needed in drafting the provisions to ensure that the provision does not capture all 'slips, trips and falls' or minor incidents.

Comcare supports the updating of guidance material which provides clear examples of the types of incidents that are captured under the new provision.

## Chapter 15 – Addressing minor gaps and ambiguities in the current incident notification provisions

### *Amendments to guidance material*

Comcare notes that the substance of this chapter reflects amendments to guidance material to assist duty holders understanding of the notification requirements. Comcare supports the amendments proposed.

### *Further amendments to the model WHS Act*

The chapter also proposes amendments to the model WHS Act with respect to some key elements of the notification provisions:

- the causal link principle
- the objective test
- medical treatment for exposure to a substance
- dangerous incidents – reducing complexity and improving duty holder understanding
- improving the electric shock provision
- duty to notify and site preservation requirements.

Comcare supports the proposed amendments as outlined in the Consultation paper and provides the following commentary on the causal link principle, the objective test, medical treatment for exposure to a substance and dangerous incidents.

### *Causal link principle*

Comcare supports the proposal to amend the model WHS Act to prominently reflect the 'causal link principle' and provide greater clarity for duty holders on what is (and is not) notifiable.

In its submission to the Review of the model WHS laws Consultation Regulations Impact Statement (CRIS), Comcare noted that the "notification duty in s. 38 is imposed in relation to a notifiable incident 'arising out of' the conduct of the business or undertaking. The degree of the connection between the incident and the business or undertaking is hard to articulate." (page 10)

Comcare submits that redrafting section 35 to reflect how the provision is represented in the *Incident Notification Information Sheet* would clarify the causal link issue as it is Comcare's view that duty holders refer to section 35 when determining what is notifiable.

### *Objective test*

Comcare supports the proposal to amend the incident notification provisions in sections 35 – 37 to ensure they clearly reflect that the test for serious injury or illness is an objective test.

Comcare notes that as the provisions are currently drafted, many duty holders do not fully comprehend the objective nature of provisions and its references to a person's requirement or need for treatment. The tendency is to focus on the treatment a person receives. This can lead to unnecessary effort in considering questions such as whether a medical facility is a "hospital" or whether an injury is technically a "laceration". It can potentially result in delays in notifying the regulator of an incident if the notifier waits to confirm the treatment has been received by a person.

#### *Medical treatment for exposure to a substance*

Comcare supports amendments to the definition of 'medical treatment' for the purposes of section 36(c) of the model WHS Act to capture the health professionals (in addition to doctors) who provide urgent treatment following exposure to a substance.

The Consultation paper asks respondents to identify the types of health professionals that should be covered by the definition of medical treatment. Noting that it is likely to be first responders who will provide treatment immediately following exposure to a substance, the range of health professionals would include paramedics who will assess the person's medical condition before taking the patient to hospital. Paramedics can provide advanced life support, perform clinical procedures, administer oxygen, drugs etc.

Where a person presents at an emergency department at a hospital, the medical staff, specialists and healthcare professionals who may treat the person in the emergency or other health department include:

- emergency physicians
- registrars
- hospital medical officers
- interns
- nurse practitioners.

Consideration should also be given to medical treatment provided in the field or on vessels by trained medics.

#### *Dangerous incident provisions – reducing complexity and improving duty holder understanding*

Comcare supports the proposed amendment to section 37 to "simplify the opening words to reduce complexity for duty holders but ensure the policy intention does not change."

Comcare noted in its CRIS submission that the introductory words of section 37 contain multiple concepts, and the relationship between them can be difficult to interpret. "There must be an 'incident'; the incident must be 'in relation to a workplace'; the incident must 'expose' a worker (or any other person) to a 'risk to the person's health or safety'; the risk must be a 'serious' risk; the risk must 'emanate' from 'exposure' to one of the listed hazards; and the exposure must be 'immediate or imminent'." (page 10)

Simplifying the introductory words and reducing the complexity of the provisions may improve duty holder understanding of the provisions.