Safe Work Australia Consultation Paper – WHS incident notification

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

MTAA Submission

1. The Motor Trades Association of Australia (MTAA) thanks Safe Work Australia (SWA) for the opportunity to make a submission on the WHS incident notification Consultation Paper. MTAA supports initiatives that genuinely improve workplace health and safety outcomes in Australian automotive workplaces. Accordingly, MTAA is strongly supportive of initiatives that will, in practice, reduce work-related fatalities, injuries and illnesses. However, MTAA is concerned that the Consultation Paper proceeds on the premise that these important outcomes are to be achieved through a radical change to the current incident notification framework.

2. Whilst well-intentioned, in MTAA's view, such an approach is fundamentally at odds with the purpose, rationale and value of WHS incident notification. MTAA notes that the 2008 Review of the Model WHS Act traversed these matters in detail, establishing three primary WHS incident notification principles that underpin the current framework. These principles may be summarised as follows:

    - *only the most serious incidents causing, or which could have caused, fatality and serious injury or illness should be notified* [1];
    - *an imperative that obligation holders notify the regulator that an incident has occurred immediately and by the quickest means possible, to enable a timely response by the regulator* [2]*; and*
    - *the notification of such events should not require subjective assessment by the obligation holder*[3]

[1] Department of Employment and Workplace Relations, *National review into model occupational health and safety laws: Second report*, prepared by R Stewart-Crompton, S Mayman & B Sherriff, Australian Government, Canberra, 2009, page 184.
[2] Ibid. page 185.
[3] Ibid., pages 185-186.

3. Whilst MTAA considers the rationale for these principles self-evident, the 2008 Review also provided the historical context for its 'simplified notification process', so as to avoid the consequences of having incident notification requirements that were otherwise confusing and complex. The 2008 Review drew upon findings of the 2005 Review of the OHS legislation in the ACT to highlight these concerns:

> *"The disparity between reports received under the statutory reporting requirements in the OHS Act and what is known through workers' compensation claims data also suggests that there is some* ***confusion among employers about what must be reported and when … The result is a high level of non-compliance with the regulatory requirements and obscured understanding about the need to report serious incidents immediately."*** [4] [emphasis added]

4. These concerns are apposite to the options proposed in the Consultation Paper that seek to undo both the simplified notification process and underpinning incident notification principles. The outcome of such an approach is clear – the reinsertion of obstacles to PCBU compliance; the generation of data that is incomplete and unreliable; and greater compliance cost and red tape for business.[5] Such an approach disproportionately adversely impacts small businesses, who lack the expertise, time and resources to comply with anything other than a simple notification process.

5. MTAA notes that the appropriateness of these WHS incident notification principles were not contested by the 2018 Review. Rather, the 2018 Review focused on what was viewed as two additional missing principles – being firstly, that the test for serious incident or injury is an objective one, meaning that it does not matter whether a person actually received the treatment referred to in the provision[6]; and secondly, that incidents should be notified where there is a causal link to the work activity of the PCBU rather than the workplace[7].

6. Similarly, MTAA understands that the 2018 Review's recommendation that further assessment and analysis was required to determine the appropriateness of amending the

[4] Ibid., page 184.
[5] Ibid., see page 182.
[6] Safe Work Australia, *Review of the model Work Health and Safety Laws: Final report*, prepared by M Boland, Australian Government, Canberra, 2018, page 102.
[7] Ibid., page 103.

model WHS Act to provide a notification trigger for psychological injuries – was intended to remain subject to the WHS incident notification principles outlined above. [8] This intent is illustrated, albeit unsatisfactorily*, by a footnote that relevantly states:

> *"For occupational diseases and psychological injuries, a possible approach could be that, once the employer is notified of the injury (with a diagnosis) and provided with documentation showing work-related causation, they then notify the regulator."* [9]

*MTAA notes that such data is more appropriately obtained through accessing workers compensation data, with its utility subject to determining objective measures for the seriousness of the injury and the immediacy by which treatment was sought following an incident.

7. MTAA notes that the options provided in the Consultation Paper (other than those options outlined in Chapter 15) fail to consider this precedent work and appear to advocate 'solutions' that are antithetical to the WHS incident notification principles. That is, the options proposed seek to capture incidents that are non-serious and/or do not require immediate reporting and/or require subjective assessment by the PCBU.

8. MTAA notes that it is far from the first to raise such concerns. For example, previous submissions to SWA have highlighted a range of specific concerns relating to psychological injury notification[10] – including the creation of *"unintended consequences such as further confusion and significant burden for WHS regulators and business"*[11], that incident notification provisions are *"not designed to deal with types of situations such as psychological injuries that are not usually associated with an incident"*[12], and its inconsistency with *"policy intent of the incident notification provisions because of the distinct and subjective nature of psychological injuries."*[13]

[8] Ibid., see page 103.
[9] Ibid., see footnote 383, page 103.
[10] Safe Work Australia, *Decision Regulation Impact Statement: Recommendations of the 2018 Review of the model Work Health and Safety Laws*, Australian Government, Canberra, 2019, page 119.
[11] Ibid.
[12] Ibid.
[13] Ibid.

9. MTAA echoes these concerns and states that assessing whether a psychological injury arises from, or is exacerbated by, an incident in the workplace will likely be more difficult in nature than physical injuries and complicated by the fact that such injuries are less likely to be associated with a single incident or cause. This is why MTAA considers that the current incident notification framework is still appropriate. It does not preclude psychological injuries from being notified – rather, it limits notification for both physical and psychological injuries to those that are the most serious (and immediate) in nature and can be objectively assessed by the duty holder.

10. MTAA therefore views the options provided in the Consultation Paper as constituting a lost opportunity for meaningful, practical reform – and in particular, cautions against using psychosocial hazards as a proxy for psychological illness and injury.

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

Periodic Reporting of Incapacity Periods

11. MTAA does not support the proposed amendment of 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.

12. MTAA notes that the Consultation Paper does not provide adequate clarification regarding the specific purpose of the data collection, nor does it establish a need for such data collection. As outlined above, MTAA views the proposed change as wholly inconsistent with WHS incident notification framework principles. MTAA is also concerned that PCBUs will be required to make subjective judgements as to whether an employee's absence from work is work-related. This is particularly difficult where the absence is due to a psychological injury which may involve a multitude of non-work-related factors and where medical evidence and causes are unclear. This may result in both underreporting and overreporting (out of an abundance of caution). This will ultimately compromise the value of the data collected.

13. More reliable information is currently available from Australian workers compensation jurisdictions – who are more qualified than employers to determine whether an absence has arisen due to a work-related event. Therefore, to the extent that having reliable data of work-related capacity periods is necessary, the solution is to ensure all WHS regulators have access to workers compensation information, through legislative amendments where necessary. MTAA notes that such an approach is consistent with the [extensive] use of workers compensation data in the Consultation Paper.[14]

Attempted Suicide, Suicide and Other Deaths

14. MTAA does not support the proposed options in relation to suicide or other death due to work-related psychological harm. MTAA submits that the current arrangements already provide that a suicide is notifiable if it arises out of the conduct of the business or undertaking, with an attempted suicide notifiable when the person requires immediate treatment as an impatient in a hospital, or immediate treatment for specific injuries. MTAA notes that the Consultation Paper does not provide specific examples of situations where an attempted suicide in the workplace would not be notifiable under current arrangements. Rather, it simply speculates that *"some attempted suicides may not meet this [immediate treatment] notification requirement"*[15].

15. Accordingly, MTAA considers the proposed options inappropriate, requiring the PCBU to engage in subjective speculation and/or investigation of matters that they are not skilled in (creating a risk of further trauma); and that in the case of option 2, extend beyond matters arising out of the conduct of the business or undertaking. Such matters should be left to those with the knowledge and expertise required to deal with such sensitive matters – e.g. the Coroner in the case of suicide or crisis support services in the event of attempted suicide incidents.

16. These concerns are illustrated by the following excerpt from the Consultation Paper, which in MTAA's view serves to highlight the fundamental flaw inherent in such an approach:

[14] See for example, pages 18 and 27.
[15] Ibid., page 14.

> *"**PCBUs would be required to notify where there is a reasonable suspicion that the attempted suicide** arose out of the conduct of the business or undertaking, such as from severe, frequent or prolonged exposure to psychological hazards at work. **The PCBU would not be required to investigate or make an assessment of the factors leading to the attempt, or whether the incident was a genuine attempt by the person to end their life. The PCBU would however need to consider the psychosocial hazards in the workplace and whether these could have been a factor** (e.g. excessive work demands, exposure to trauma, bullying)."* [emphasis added]

In other words, a PCBU would be required to firstly, notify the WHS regulator if they have a reasonable suspicion of an attempted suicide, but would not need to investigate or assess whether the person actually attempted to commit suicide; and secondly, would need to consider whether psychological hazards in the workplace could have been a factor, but would not need to investigate or assess whether psychosocial hazards were actually a factor.

17. If a PCBU is not in a position to make a judgement as to whether particular psychosocial hazards have contributed to an attempted suicide in the workplace or whether there was even an attempted suicide in the workplace in the first place, they should not be required to notify the regulator. This poses an immense (and unjustified) burden on employers, particularly those in small businesses.

18. MTAA further notes that the Option 2 (optional add-on) proposal suggests employers should be held responsible for societal ills[16], a disturbing trend increasingly seen in the mental health space[17]. MTAA considers it poor public policy to hold persons responsible for matters clearly beyond their control.

Capturing Workplace Violence

19. MTAA does not support the proposed options in relation to capturing 'workplace violence'. As noted in the Consultation Paper, the current arrangements capture serious incidents of

[16] Similar concerns arise more generally regarding causality for psychological illness and injury.
[17] See for example, employer provisional payment liability under Victorian OHS Act.

'workplace violence' that result in death or serious injury or illness (requiring immediate treatment). The Consultation Paper also notes that *"even if an incident does not meet this threshold, it can still cause serious psychological harm to the person to whom it is directed or witnessed by."* [18] With respect, whilst this might be the case, it might also not be the case – depending upon an individual's personal characteristics and circumstances. Such speculative concern over a general potential for harm is inconsistent with the underlying principles of incident notification.

20. MTAA believes that all sexual assaults and serious physical assaults should be reported to the police and that law enforcement is the most appropriate authority for receiving such reports. As noted in the Consultation Paper[19], a number of WHS regulators have agreements in place with Police and other government agencies, which sets out when the parties will notify each other. MTAA recommends an approach where it is the police who notify the WHS regulator, rather than PCBUs. This approach should be extended to jurisdictions where this does not already occur.

21. In MTAA's view, the inappropriateness of the proposed approach to workplace violence (and the need to retain the current underpinning incident notification principles) is illustrated by the following annotated excerpt from the Consultation Paper:

> *"Notification of incidents involving assault and deprivation of liberty would require a risk of serious illness or injury, either physical, psychological or both. This would exclude, for example, hitting by young children or being temporarily locked inside a store* ***[how young?, how temporary?]****. It would also exclude assault where control measures prevent harm from being serious* ***[what constitutes 'serious harm' and how would such an exclusion apply in practice?]***
>
> *Notification would be required in relation to verbal, written or otherwise communicated threats of serious violence, that pose an immediate or imminent and serious risk to health and safety* ***[what constitutes 'serious violence'?, and how can***

[18] Op. Cit., page 18.
[19] Page 21

this be objectively determined in practice?]*. This would exclude threats where it is clear the person making the threat has no capacity or intent to carry out the threatened violence, or the threat does not involve serious violence* ***[again, how does one objectively determine someone's capacity to carry out threatened violence?, and how does this interrelate with psychological injury, where the perceived capacity to carry out the threat will be subjective/in the eye of the beholder?****]."*

22. MTAA also notes that whilst the Consultation Paper acknowledges the potential for overlap with investigations being undertaken by Police, it fails to adequately acknowledge the additional overlap with a range of other regulatory bodies – each with their own legislation, operational policies and obligations. As recognised elsewhere in the Consultation Paper, a number of other jurisdictions have coverage over matters (including the Fair Work Commission and the Australian Human Rights Commission[20]) that might fall within a broad definition of workplace violence. For this reason, MTAA cautions against the adoption of an expansive definition of workplace violence.

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?

23. MTAA is concerned by the conflation of disparate and qualitatively different types of conduct that have been placed under the umbrella of 'workplace violence' / 'occupational violence' in other jurisdictions. For example, MTAA is aware that both 'eye rolling' and 'sexual assault' are both referred to as occupational violence in at least one jurisdiction[21] – which may be particularly offensive to victims of sexual assault.

24. Put simply, workplace conduct that meets the objective definition for incident notification should be reported to the Police (who should then notify the WHS regulator, if required). Workplace conduct that does not meet the objective definition for incident notification should not.

[20] Page 29.
[21] WorkSafe Victoria, Occupational Violence and aggression: Safety basics, https://www.worksafe.vic.gov.au/occupational-violence-and-aggression-safety-basics

Periodic Reporting of Exposure to Traumatic Events

25. MTAA does not support the proposed options in relation to 'periodic reporting of exposure to traumatic events'. MTAA notes that WHS regulators already have visibility of exposures to trauma arising from fatalities, serious injuries and dangerous incidents arising out of the conduct of the business or undertaking through current notifiable incident requirements.

26. MTAA submits that it is neither reasonable or useful to place additional notification obligations on PCBUs that either do not arise out of the business or undertaking and/or that require a PCBU to become a subject matter expert in the field of psychological trauma (including, presumably, the subjective psychological make-up of each member of their workforce). If there is a specific issue in particular occupations (predominately public sector, as evidenced by workers compensation claims data), these should be specifically targeted through alternative means.

27. MTAA agrees with the concerns with the proposed approach identified in the Consultation Paper, which acknowledged that *"… the value of this approach may be limited"* [22] , and also noted the lack of a strong correlation with a breach of WHS duties and difficulties in determining whether a notification is required.[23] Accordingly, the practical effect may be to divert a PCBU's limited resources and attention from activities necessary to directly meet their primary WHS duties. MTAA notes that this position should be considered uncontentious, as the Consultation Paper itself acknowledges that *"…there is little value in notifying WHS regulators of exposures that do not arise from risks that could reasonably be managed by the PCBU."* [24]

28. Periodic reporting of exposure to traumatic events will require PCBUs to make assessments which they are simply unqualified to do and will require them to consult more regularly with medical professionals and external legal advisers to assist them. This will of course create an unreasonable burden in time and expense.

[22] Page 25.
[23] Page 25.
[24] Page 24.

Perioding Reporting of Bullying and Harassment

29. For the reasons already outlined, MTAA does not support the proposed options in relation to 'periodic reporting of bullying and harassment'. Incident notification should only apply to the most serious of incidents and not require subjective assessment of the duty holder.

30. As noted in the Consultation Paper, to the extent visibility of such matters is appropriate, WHS regulators already have access to a number of sources of data, including (most relevantly) workers compensation data. As noted earlier, to the extent that some WHS jurisdictions do not currently have such arrangements in place, this should be the focus.

31. MTAA notes that there is little utility in reporting to a regulator, complaints of incidents in the workplace that have not been substantiated (including those that are vexatious in nature). This is the case regardless of whether the incident relates to psychological or physical health. In addition to the administrative impost, the potential of adversely impacting a PCBU's reputation, and the integrity of the PBCU's investigatory processes – such a requirement will result in data that is neither meaningful nor actionable.

32. MTAA also notes, as recognised in the Consultation Paper, that a number of other jurisdictions have coverage over bullying and harassment matters (including the Fair Work Commission and the Australian Human Rights Commission[25]), each with differing definitions, duties and approaches. This should be rationalised to reduce red tape, not introduce more layers, to enable employers to focus on outcomes rather than duplication of non-value-adding processes.

33. MTAA further notes that a focus on prevention and early intervention is the most effective way of addressing bullying and harassment wherever it occurs. Such strategies are reliant on a shared understanding of responsibility, where everyone is accountable for their actions – rather than on the misperception that such matters are solely the responsibility of an employer/PCBU. Requiring a PCBU to periodically notify a WHS regulator does nothing to assist in changing this misperception – and will therefore not serve to encourage workers to report incidents in practice, as envisioned by the Consultation Paper.

[25] Page 29.

34. In MTAA's view, it will result in the opposite – with the potential involvement of a WHS regulator discouraging workers to report matters through the PCBU's internal processes, preventing both early intervention and timely resolution of complaints. Whilst this risk has been noted [26] in the Consultation Paper, its impact appears to have been materially underestimated. For example, an employee who works from home is highly unlikely to report at-home stresses to their employer (up to and including domestic violence) if they know that this information will be forwarded to the WHS regulator.

Long Latency Diseases - Exposure to Substances

35. MTAA acknowledges the Consultation Paper's recognition of the significant limitations with amending incident notification provisions in the context of exposure to substances – and the incident notification review conclusion that *"there are more appropriate mechanisms for providing WHS regulators with data on diagnoses than incident notification."* [27] MTAA shares this view. Any additional reporting requirements for WES exceedances should not form part of incident notification or periodic reporting requirements.

36. MTAA notes that the model WHS Regulations contain a substantial number of obligations on PCBUs with respect to hazardous chemicals and airborne contaminants, including a requirement to undertaking air monitoring and periodic health monitoring in prescribed circumstances. [28] Accordingly, MTAA is supportive of an approach focused on updating compliance materials to educate PCBUs on their existing requirements under the model WHS laws and model WHS regulations – as well as education campaigns to raise awareness of existing duties and control measures for airborne contaminants and hazardous chemicals in workplaces. This should precede and be evaluated, prior to the introduction of any further requirements on PCBUs.

Serious Head Injuries

37. MTAA does not support the proposed options in relation to 'serious head injuries'. As noted in the Consultation Paper, Safe Work Australia's analysis of the cited data from the Australian

[26] Page 29.
[27] Op. Cit., page 32.
[28] See for example, regulation 376 of the model WHS Regulations.

Institute of Health and Welfare *"shows that 93% of patients with a traumatic brain injury were hospitalised either the same day or the following day."* Whilst there is a degree of ambiguity regarding the term "immediate", MTAA notes that it does not matter whether the person actually receives the treatment immediately (or receives the treatment at all) – rather, it is whether the injury or illness could reasonably be considered to warrant such treatment.[29] Accordingly, MTAA submits that it is evident that the current notification arrangements are sufficient.

38. Whilst MTAA does not support any of the proposed options in their current form, MTAA notes that it does strongly support the proposed amendments to guidance material recommended in the 2018 Review (and provided in Chapter 15 of the Consultation Paper). MTAA notes that this element forms part of Option 3, together with Safe Work Australia's proposed new work incapacity notification periods (the latter of which is not supported by MTAA for the reasons provided earlier, unless it is limited to WHS regulators accessing workers compensation data directly).

Other Potential Gaps in 'Serious Injury or Illness'

39. MTAA does not agree that the examples provided in relation to 'bone fractures' and 'crush injuries' are not already covered by existing incident notification requirements. Whilst it may be hypothetically possible that there are scenarios involving serious crush injuries that have not been captured, no evidence has been provided of any such gap existing in practice.

40. Accordingly, MTAA does not support either of the proposed options. To the extent that there is any 'ambiguity' relating to incident notification in regard to serious bone fractures and/or serious crush injuries, this can be accomplished through clarification in the guidance materials.

Capturing Incidents Involving Large Mobile Plant

41. MTAA does not support the proposed option in relation to 'capturing incidents involving large mobile plant'. Incident notification should only apply to the most serious of incidents and not require subjective assessment of the duty holder.

[29] Comcare, *Guide to Work Health and Safety Incident Notification – A guide on notifying Comcare of 'notifiable incidents' under the Commonwealth Work Health and Safety Act 2011*, Australian Government , Canberra, page 5.

42. A dangerous incident includes both immediate serious risks to health or safety, and also a risk from an immediate exposure to a substance which is likely to create a serious risk to health or safety in the future.[30] As noted in the Consultation Paper, in relation to mobile plant, 37(g) captures specified incidents relating to high-risk plant items that are required to be design or item registered under the model WHS Regulations (e.g. Schedule 5)[31].

43. The proposed option therefore seeks to extend an additional incident notification duty for PCBUs in relation to mobile plant that have not be deemed high-risk. This additional duty applies despite SWA's acknowledgment that PCBUs are already subject to specific duties under the Regulations regarding the (non-high-risk) plant in question, including regulation 214.

44. MTAA notes that this will result in either a large number of notifications, creating an administrative burden for both PCBUs and WHS regulators – or, widespread non-compliance. This is effectively acknowledged in the Consultation Paper[32]. MTAA does not see the justification for the proposed amendment. Again, the most serious incidents are currently notifiable. To the extent that there is a concern that such incidents are not being notified, the solution is to provide further clarity in the guidance material.

Capturing the Fall of a Person

45. MTAA does not support the proposed option in relation to 'capturing the fall of a person'. Incident notification should only apply to the most serious of incidents and not require subjective assessment of the duty holder.

46. The purpose of incident notification is not for a PCBU to notify the WHS regulator anytime an incident relating to a PCBU duty arises. They are reserved for the most serious of events. Relevantly, a fall of a person will be serious where the person either dies or injures themselves and requires immediate medical attention. A fall, not involving plant, is not akin to the other dangerous incident settings, which each relate to high-risk settings. The current provisions should continue to apply. Again, MTAA notes the Consultation Paper's recognition that

[30] Ibid., page 6.
[31] Page 38.
[32] See for example, page 39.

specific duties already exist under the WHS Regulations (regulation 214) regarding falls by a person.

47. Again, MTAA notes that this may result in a large number of notifications, creating an administrative burden for both PCBUs and WHS regulators (or widespread non-compliance, as noted above). This is recognised in the Consultation Paper.

Addressing minor gaps and ambiguities in the current incident notification provisions

48. As outlined earlier, MTAA supports the implementation of the options outlined in Chapter 15 as the most appropriate way of addressing matters raised in the Consultation Paper.

49. Importantly, the proposals contained in the chapter are consistent with the incident notification principles underpinning the model WHS Act.

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.

50. MTAA notes that the proposed options would have a significant adverse impact on businesses, and small businesses in particular – which constitute over 97% of businesses in Australia. The cost of the additional administrative burden on an employer in reporting such matters is self-evident. Such red tape disproportionately impacts smaller businesses that do not have dedicated resources for dealing with such matters. This means that time is taken away from other matters, such as actually focusing on their primary duties under the model WHS Act to provide a safe workplace – as well as running their business to keep their workforce employed.

51. As noted earlier, MTAA is concerned that in addition to their inconsistency with the principles underpinning the incident notification framework, the options provided in the Consultation Paper promote an approach that will result in definite costs and uncertain benefits. Such an approach could perhaps be considered reasonably practicable if PCBUs had unlimited time, money and resources at their disposal. In practice, however, they do not.

52. Given the above, it is clearly imperative that a rigorous analysis of the regulatory impact be performed to determine the practical cost and benefits of the options proposed in the Consultation Paper. MTAA notes that the evidence being sought must therefore be obtained through a Regulatory Impact Statement – as previously identified by the Office of Impact Analysis. This should occur without further delay – the current consultation process is not an appropriate proxy for an independent regulatory impact analysis.

53. MTAA does note, however, that a Regulatory Impact Statement associated with the proposed *Victorian Occupational Health and Safety Amendment (Psychological Health) Regulations* estimated that the upfront compliance cost for small businesses was $11,000, with an estimated $4,000 in ongoing yearly compliance costs[33]. MTAA notes that the proposed Victorian Regulations are broadly analogous to what is being proposed in the Consultation Paper. For many small businesses, this is an unreasonable and impractical financial burden that cannot be absorbed.

Are there any likely unintended consequences of the proposed options(s)? How could these be best mitigated?

54. For the reasons outlined above (and as clearly articulated in the 2008 Review), the proposed options are likely to increase confusion and complexity, leading to uncertainty for PCBUs as to what must be reported and when – resulting in an increase in red tape, a high level of non-compliance with regulatory obligations, and an obscured understanding about the need to report seriously incidents immediately. That is, definite adverse consequences with unknown benefits to WHS outcomes.

55. In addition, such a myopic focus on PCBU compliance with process (over outcome), also further embeds the false notion that employers/PCBUs are solely responsible for safety in the workplace. MTAA notes that best practice outcomes are a result of work health and safety being seen as a shared responsibility in the workplace. The importance of this approach was specifically noted in the 2008 Review, when it made recommendation 146 (one of six incident notification recommendations) placing "*an obligation on workers to report any illness, injury,*

[33] Deloitte Access Economics, *Occupational Health and Safety (Psychological Health) Regulations Amendment 2022: Regulatory Impact Statement*, WorkSafe Victoria, 2022, page 13.

accident, risk or hazard arising from the conduct of the work, of which they are aware …"[34]

That is, the 2008 Review determined that:

> *"By placing this requirement in statute, we are enacting provisions that are consistent with [the] philosophy that all persons in the workplace should share responsibility for OHS."* [35]

56. MTAA suggests that steps to re-establish this philosophy as a primary focus for regulators (and stakeholders alike) should be prioritised.

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

57. MTAA does not accept the proposition that there is a gap in WHS regulator visibility such that the proposed radical departure from the current incident notification framework would be justified. As noted above, much of the data that is being sought through the proposals could be more reliably obtained through arrangements between the WHS regulator and the applicable workers compensation scheme and Police.

58. MTAA further notes that in relation to psychosocial hazards, WHS regulators are but one of a number of regulators operating in this space. MTAA recommends that this area needs to be rationalised to eliminate the current reality of over-lapping jurisdictions with competing requirements – which would then enable the appropriate sharing of information between regulators, based on clearly defined jurisdictions.

[34] Op. Cit., page 188.
[35] Ibid., page 187