

Incident Notification Review

ACCI Submission

September 2023



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Executive Summary

The Australian Chamber of Commerce and Industry (ACCI) and our member network strongly supports a greater emphasis on managing risks to prevent serious physical and psychological incidents in the workplace and improvements to data collection to aid in evidenced-based decision making and compliance activities.

ACCI is a member of Safe Work Australia and its Strategic Issues Group – Work Health and Safety (SIG-WHS), which has oversight of the development and evaluation of the Model Work Health and Safety (WHS) Laws and we have been active participants in SWA discussions surrounding the incident notification review over the last few years.

In preparing this submission, ACCI consulted with members of our national WHS Committee which include, Chambers of Commerce and Industry and Industry Associations across all industries and business sizes.

ACCI **does not support periodic reporting of incapacity periods** and notes that the SWA project on addressing the evidence gap for work-related diseases and exposures will address the perceived needs gap in conjunction with workers' compensation claims data for sustained absences arising from work-related injuries and illnesses (including psychosocial injuries).

We **do not support periodic reporting of unreasonable behaviours or bullying; sexual harassment and harassment** on protected grounds and again note that the SWA project on addressing the evidence gap for work-related diseases and exposures will address perceived needs gap.

We **do not support periodic reporting of exposure to traumatic events**.

We **support in principle immediate notification of workplace violence incidents** but note that this is unnecessary duplication with other agencies and that greater inter-agency collaboration could achieve the same outcome.

We **do not support amendments to capturing suicide and other deaths or attempted suicide** in the incident notification provisions as proposed.

We **do not support amendments to serious head injury notifications** as proposed but do **support updating relevant guidance materials**.

We **do not support amendments to other potential gaps in serious injury or illness** notification requirements.

We **do not support amendments to capture incidents involving large mobile plant or the fall of a person** as proposed.

ACCI **supports all proposed options for addressing minor gaps and ambiguities** in the current incident notification provisions.

General Feedback

As noted in the consultation paper, Safe Work Australia conducted a review of the incident notification provisions (the 'SWA Review') in 2021-22 following WHS Minister agreement to the DRIS recommendation to "review the incident notification provisions in the model WHS Act". The SWA Review identified opportunities to address specific gaps in the current notification requirements and possible expansion of the framework to capture a broader range of injuries, illnesses, hazards and harms (e.g., long latency diseases).

It was during SWA Member discussions of the SWA Review outcomes paper in 2022 that two regulators suggested a second reporting pathway be established for injuries, illnesses and incidents with no immediate reporting or site preservation requirements, or injuries where there is prolonged time between exposure and diagnosis such as psychological injuries and illnesses.

It was ACCI's position then as it is now, that any consideration of additional reporting requirements to provide more data and information and greater visibility of psychological injuries and psychosocial hazards should be separate to a review of, and amendments to, the incident notification provisions.

ACCI and our members hold significant concerns around a number of proposals within the paper that; extend reporting obligations for incidents that are already captured by other government agencies, such as the police, workcover authorities or respective coroners, are not clearly defined as (or causation cannot be readily established in relation to) work-related injuries or illnesses; and are inconsistent with, or duplicate other regulatory regimes. We would, however, support a review of any agreements or MOUs currently in place to ensure that incident and injury data sets already being captured by various government agencies are being shared appropriately.

Expanding the framework as proposed would generate a data set that lacks veracity, which rather than informing regulatory policies would likely give rise to misguided priorities and resourcing by WHS Regulators.

Referring to the National Compliance and Enforcement Policy, "regulators monitor compliance with work health and safety laws in a number of ways ...which includes incident notifications. Incident notifications and requests to respond to work health and safety issues are triaged to determine an appropriate regulatory response. Consistent with the principles of proportionality and responsiveness, resources available for investigation of incidents are devoted to the most serious cases." It is not possible for work health and safety regulators to investigate all issues of non-compliance or respond to all incidents or complaints.

The latest statistics indicate that in 2020-21, 59,900 reactive workplace visits were conducted by 1,374 active field inspectors. The number of field active inspectors per 10 000 employees is 1.1.

We do not believe that regulators will have the appropriate resources and capacity to adequately address the increased rate of incident notifications that will result from the proposed changes and that it would rather draw regulator focus and resources away from high-risk activities that genuinely save lives.

Furthermore, where businesses have current incident notification systems, these always link to incident management and Workers' Compensation processes – where existing business process (understood by all) and reporting capability exists. Making changes that go outside of this will take away from higher risk reduction activities within businesses which genuinely reduce injuries and fatalities.

Feedback from members indicate that the proposals for periodic reporting or those that are psychosocial related, will require both system (incident reporting classification types) and reporting upgrades. This is

not a quick and easy change as there is no current pathway designed to capture a change in information type. This will also incur upgrade costs to the service provider, and dependant on expected timeframes may create the need to reprioritise on existing upgrade requests designed to improve the function of WHS management systems.

Training would also need to be rolled out across businesses following any changes to system and hazard standards.

Purpose of the incident notification provisions

The 2008 National Review set out that the intent of the incident notification provisions was that – only the most serious incidents which caused, or could have caused, fatality and serious injury or illness should be notified.

The Explanatory Memorandum (EM) for the WHS Bill 2011 states that the primary purpose of incident notification is to enable the regulator to investigate serious incidents and potential work health and safety contraventions in a timely manner.¹ Further, the EM also states that the duty to report incidents under section 38 is linked to the duty to preserve an incident site until an inspector arrives or otherwise directs so that evidence is not compromised.

The SWA Review confirmed that *“the incident notification provisions in the model WHS Act are largely effective in capturing the range of serious work-related injuries and illnesses and dangerous incidents of which WHS regulators need to be immediately notified. However, there are opportunities to address some specific gaps in coverage and provide greater clarity for duty holders.*

*The review found that **the incident notification framework is not appropriate for injuries and illnesses that develop over time and are not associated with a specific incident.** Other sources of information, outside of incident notification, would be more effective in providing WHS regulators with improved visibility of these injuries and illnesses, without the significant regulatory burden on duty holders. This includes results of workplace surveys, disease registries, as well as other requirements under the model WHS laws.”*

Incident reporting is not designed for “catching an issue early” or monitoring trends. It is reporting on serious incidents that have occurred so that regulators can ensure high-risk activities are investigated and learnings are obtained (and shared) to prevent further incidents. It is not meant to be used for directing upstream action for general prevention.

There is no evidence presented that the current incident notification framework is not effective in delivering its legislative objective, rather, several options proposed in the consultation paper seek to expand the objective and coverage of the framework based on requests from WHS regulators.

The need for a RIA process

In March 2023, the Agency confirmed that following a preliminary assessment process the Office of Impact Analysis confirmed that an Impact Analysis (IA) would be required. The Agency subsequently began work on this with Members and Deloittes.

At the June 8, 2023 meeting of SWA Members, ACCI was advised of the changes to the IA framework for decisions within the Federal Relations Architecture and that this may impact several regulatory impact

¹ Ref paras 96 and 97 of the *Work Health and Safety Bill 2011 – Explanatory Memorandum*.

statement (RIS) processes underway. Since then, the Agency has released the incident notification framework paper as a Consultation paper rather than a Consultation RIS.

The Consultation paper asks for feedback on pre-determined options to improve the incident notification framework, however the options presented do not include the status quo. The paper presents no evidence or preliminary data to suggest that the proposed options for additional incident notification requirements will be effective at improving health and safety outcomes and most relevantly, it does not appropriately conduct a cost benefits analysis which is critical to ensuring that any proposed options will be likely to achieve an overall benefit compared to any direct or indirect costs.

Lastly, the paper in our opinion doesn't adequately consider alternative non-regulatory options such as the feasibility of survey data sets.

ACCI and our members strongly believe that a cost benefit analysis is needed to appropriately inform decision makers choices and that a formal RIA process is the best way to achieve this. Given the paper has been released as a Consultation paper, we would stress that at a minimum, a second summary paper with stakeholder positions, evidence for and against proposals and a cost benefit analysis needs to be produced prior to any Member discussion and decision.

Periodic reporting proposals - Addressing the need for data through alternative means

In the Consultation paper, periodic reporting requirements have been proposed as a way of ensuring WHS Regulators have visibility of harm that develops over time, for example, from frequent or prolonged (but lower severity) exposures to hazards. This is particularly applicable to psychological injuries, illnesses and harm; however, it is proposed that it be broadly applied to also capture physical injuries and illnesses.

The proposals for periods of incapacity for work, bullying and harassment, and exposure to trauma are all linked to periodic reporting.

As the paper notes, any new mandatory requirements need to be justified and show evidence of improving WHS outcomes and address a clear gap in WHS regulator visibility that cannot be adequately addressed through other sources.

We are of the view that the periodic reporting requirements are not fit for purpose, would create an undue burden on businesses with unknown benefits to WHS outcomes and there is an alternative method to adequately address any perceived information gaps.

Since the incident notification review began in 2021, SWA has since begun a new project on addressing the evidence gap for work-related diseases and exposures.

Common objectives for a national WHS surveillance system include measuring the burden or impact of work-related injuries and illnesses, detecting new or emerging hazards, supporting action to address identified issues, identifying higher risk industries, occupations and cohorts, and informing the development, implementation and evaluation of policies or interventions.

SWA Members agreed in September 2023 (shortly after this Consultation paper was released) to publish the *Beta Occupational Hazards Dataset* the Agency had developed as an analysis report and for the

Agency to continue to explore how the data can be developed further for the Australian context in line with feedback from stakeholders.

Members also agreed to the Agency developing a proposal for future consideration by Members for an updated **Australian worker exposure survey**, continued advocacy from the Agency and Members for improved occupational and work-exposure information collection and the Agency to **undertake further analysis of linked data to improve WHS surveillance**.

The data sets should be able to identify industries and sub sectors of concern and depending on data variables like postcode could help target proactive inspections and compliance activities.

This agreed program of work directly addresses the need for greater regulator visibility of exposure to harm, detecting emerging hazards and identifying higher risk industries, occupations and cohorts for targeted action. It also significantly reduces the direct burden on both businesses and regulators/government in utilising SWA's data expertise and those of partner data agencies.

Furthermore, this program of work is already underway whereas determining new notification requirements, how to operationalise these and then implementing them would take significant time and resources.

Periodic reporting – periods of incapacity for work

Chapter	Issue	Proposed Option(s)	ACCI position and high-level rationale
5	Periodic reporting of incapacity periods	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	Do not support. SWA project on addressing the evidence gap for work-related diseases and exposures will address the perceived needs gap in conjunction with workers' compensation claims data for sustained absences arising from work-related injuries and illnesses (including psychosocial injuries).

ACCI and our members do not support this option as we believe that this proposal would fundamentally change the intent of the incident notification regime, not necessarily improve safety and health outcomes and impose a significant burden and cost to stakeholders.

When SWA Members attended the Incident Notification workshop in 2022, it was clear that participants were unclear on how best to capture psychological injuries and hazards and could not agree to the scope. The Consultation paper has not fleshed out all the concerns raised or explored how this would be operationalised, including any framework to assist in determining whether or not the injury is in fact work-related. Furthermore, the option includes several elements and choices that interact in different ways with each other, for example: 'incapacitated from work' or 'incapacitated from normal duties', psychological illness or injury or both psychological and physical.

In our own discussions, employer representatives noted the following concerns:

- **Periodic reporting:** the proposal is for six-monthly batched reports. It is unclear what the rationale is for six months and not annual or another time period, nor how the six-month date would be determined.
- **Nature of reports:** the paper does not specify what the reports would look like in much detail. If a medical certificate is used as evidence for example that medical certificate may only have 'unfit for work' and x amount of days on it with no information about the illness or injury or mechanism of injury. This would not assist regulators in identifying possible breaches of WHS duties.
- The paper notes that some periods of incapacity may be captured where a PCBU has not breached WHS duties e.g., performance management and then the worker takes leave. The paper suggests the PCBU would judge the situation and exclude these types of absences. This would introduce further subjectivity and complexity to what should be a straightforward notification system.
- **Who reports:** duplication of reports would need to be avoided. Which PCBU reports where there are multiple PCBUs? Is it the 'place of injury' PCBU? How would this work for large construction sites for instance with multiple PCBUs.
- **Workers:** note the definition of workers in the Act also captures volunteers and casuals etc. Definitions also vary between states. Access to leave is not uniform for all categories of workers and would be the method by which to track 10 days or more of absence from work or normal duties.
- **Incapacitated from 'normal duties':** does not necessarily indicate severity of injury and incident notifications should only be for 'serious' injuries or illnesses.
- **Reporting systems:** most PCBUs don't capture 'incapacity for work' in current systems. Businesses would need to set up or modify existing systems to be able to capture this information and report it.

How PCBUs may capture workers off for 10 or more days:

- Timesheets
- It would be obvious that someone was not at work but how would I know it was notifiable. I don't think an employer should be in their employee's private business. Where is the privacy in that?
- We would have a register sit with our internal HR manager who would monitor the days off
- Assessing roster and work hours at each pay day, manually calculating sick/leave days
- Xero tells us when someone isn't turning up & the manager of that staff member would be aware as well
- Our payroll system would pick it up.
- Workers clock on to a timeclock - time sheets are recorded Would have to move our salary employees to timeclock as well.
- Captured via time sheet and knowledge of daily attendance
- Ask where they are

- If the business was able to set up a reliable system to monitor for 10 or more days 'off work' or 'normal duties' then the next threshold would be around **evidence** which the consultation paper suggests could be: medical certificate, reports from supervisors or self-reports.

- Typically, if a worker is off work for 2 or more days the business policy is to require a medical certificate. The med cert does not need to provide specified details, only whether they are unfit for work/fit for work. PCBU's may not be aware of the nature of the 'incapacity' and there are valid reasons to not ask for further details depending on the nature of the particular case. If the work-relatedness is questionable then an employer may discuss the option of workers' compensation (WC) with the worker. A decline to pursue a WC claim may be because the injury is non-work related or because the worker does not wish to pursue one. It is unclear what an employer would need to do to cover all of these requirements and situations easily.
- **Work-relatedness automatic exclusions** should be stipulated such as: performance management, journey related injuries/ or in a break from work, misconduct situations or situations where the worker was impaired due to drug and alcohol use and evidence of non-work related stressors.
- **10 or more business days or calendar days?**
- **No site preservation would be required.** This would need to be clearly explained and communicated so that PCBU's were aware of the different notification requirements to existing notifiable incidents.

Periodic reporting of bullying and harassment

Chapter	Issue	Proposed Option(s)	ACCI position and high-level rationale
9	Unreasonable behaviours	<p>Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints <u>OR</u> instances, arising out of the conduct of the business or undertaking</p> <p>Of</p> <ul style="list-style-type: none"> a) repeated and unreasonable behaviour (bullying) towards a worker or group of workers, or b) unreasonable behaviour towards a worker(s) that a reasonable person would consider is abusive, aggressive, offensive, humiliating, intimidating, victimising or threatening <p><i>[including sexual harassment or harassment of any other kind]</i></p> <p>where the behaviour may reasonably be considered to have occurred</p>	<p>Not supported.</p> <p>SWA project on addressing the evidence gap for work-related diseases and exposures will address perceived needs gap.</p> <p>There is no current statutory definition of 'Unreasonable behaviour' and the concept is inconsistent with other regulatory frameworks that already comprehensively deal with bullying and harassment (incl. under the FW Act, Sexual Discrimination Act and WHS laws.)</p>

		(excluding vexatious or frivolous claims), and that exposes a worker(s) to a risk to their health and safety.	
	Bullying; sexual harassment and harassment on protected grounds	<p>Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints <u>OR</u> instances</p> <p>Of</p> <ul style="list-style-type: none"> a) workplace bullying <i>repeated, unreasonable behaviour towards a worker(s) or group of workers</i> b) workplace sexual harassment of a worker(s) <i>that that involves unwelcome sexual advances, unwelcome requests for sexual favours or unwelcome conduct of a sexual nature</i> c) workplace harassment of a worker(s) <i>because of protected characteristics (e.g. race, sex, gender, sexual orientation, age, disability)</i> <p>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.</p>	<p>Not supported</p> <p>Refer to comments directly above. These matters are caught within the jurisdiction of other agencies such as the Fair Work Commission and Human Rights Commission and therefore incidences of sexual harassment, bullying are already captured within those respective reporting and data frameworks.</p> <p>Greater cross-agency collaboration to improve data sharing should be explored.</p>

The objective of this proposal is to improve WHS outcomes by ensuring WHS regulators have appropriate visibility of the prevalence of bullying and harassment in workplaces to inform targeted compliance and education activities.

We would argue that regulators already have multiple sources of information to provide visibility and inform compliance and education activities in relation to bullying and harassment.

If the issue is then the ability for regulators to identify individual PCBU's not managing these risks, then this should be a matter of regulator resourcing and funding to allow for sufficient inspectors to conduct proactive and reactive inspections.

Once again, we believe that the SWA project on addressing the evidence gap for work-related diseases and exposures could address this needs gap by looking at exposure to 'unreasonable behaviours' etc.

ACCI does not support this proposal and is concerned about creating further confusion with another set of definitions that are inconsistent with other employment legislation, increased administrative burden of periodic reporting for unknown WHS benefits and issues with the criteria of a 'complaint' and defining this in a consistent manner with existing laws and investigation practices.

Differences in definitions:

- **Definition of bullying:** the proposed definition is a simplified version from the Fair Work Act. There is a difference in the language used as under the FWA it includes “creates a risk” while the proposed definition uses “exposes the worker to a risk”. It is possible then that the FWA creates a lower burden of proof for bullying as it only requires the possibility that an act creates a risk as opposed to exposing the worker to a risk. As a result, there could be a difference in how bullying is understood under the two instruments which would lead to multiple reporting systems having to be set up.
- **Definition of sexual harassment:** the proposed definition contains similarities to the Sex Discrimination Act which is also incorporated in the Fair Work Act. The proposed definition implies that sexual harassment which involves unwanted sexual advances, unwelcome requests for sexual favours or unwelcome conduct of a sexual nature is all that needs to be reported. The proposed definition does not include a definition of conduct of a sexual nature which is included under the SDA. From case law, it is clear both written and oral statements can fall into this category however this is not always understood by employers and employees. This could cause issues when it comes to reporting. The proposed definition also does not consider the overall circumstances that can be taken into account such as sex, age, relationships and so forth. This means that sexual harassment could be interpreted more narrowly and employers may fail to report due to not understanding that behaviours to one person but not another might not be appropriate due to that expanded context.
- **Definition of unreasonable behaviour:** the proposed definition is broader than the bullying definition under the Fair Work Act. This is because it includes behaviour which a reasonable person would consider is abusive, aggressive, offensive, humiliating, intimidating, victimising or threatening, but does not include a requirement to have this be repeated. “Repeated” is an aspect which is often in issue during complaints. Where behaviours are unreasonable but are not repeated they don’t constitute bullying.
- **Workplace harassment due to their protected characteristic:** the proposed definition is filled with ambiguity, as an extensive list of protected characteristics is not provided merely ‘e.g.’ which leave the possibility several other characteristics could be included. No definition is currently provided in the WHS Act. Across states and federal legislation there are differences in what characteristics are protected or not. For example, religion is a characteristic which is not listed here (but could potentially be included due to the open ended list). It is included under the Fair Work Act as a protected attribute. The Fair Work Act includes a number of protected attributes which are not included here which could create issues with reporting requirements and confusion for businesses having to comply with multiple requirements where definitions differ.

- **Excluding vexatious or frivolous complaints:** the proposed definitions require the reporting of complaints, not just conduct that has been found to have occurred, however it excludes vexatious or frivolous complaints. In order for PCBUs to assess if complaints are vexatious or frivolous often an investigation needs to take place. It also creates the possibility of PCBUs incorrectly considering complaints vexatious or frivolous and not reporting or investigating them. The complaint would also need to be contemporaneous.

Traumatic events

Chapter	Issue	Proposed Option(s)	ACCI position
8	Periodic reporting of exposure to traumatic events	Amend the model WHS Act to require periodic reporting (six monthly) to the WHS regulator of instances where workers, or other persons at the workplace, are exposed to serious injuries, fatalities, instances of abuse or neglect that are likely to be experienced as traumatic by the worker or other person, where the exposure arises out of the conduct of the business or undertaking.	Do not support periodic reporting
		Assess the need for WHS regulators to have the ability to approve alternative reporting arrangements for certain PCBU's with specific conditions.	Do not support

ACCI notes that the stated objective is to improve WHS outcomes by ensuring WHS regulators have appropriate visibility of exposures to traumatic events to inform more targeted compliance and education activities.

We do not support periodic reporting and instead propose that targeted research and improved data sources could be used to achieve the desired objectives.

We do not support this proposed option for several reasons. These include:

- The proposal is for **periodic reporting** by all PCBU's. Considerable costs would be incurred, and additional resources needed in order for each PCBU to set up an appropriate system to ensure recording of events that match the agreed definition and the correct process to notify regulators.
- **Ambiguous phrasing:** the requirement to report incidents "that are likely to be experienced as traumatic" is vague and ambiguous. PCBU's will not be able to easily identify whether an incident is likely to be experienced by the worker or another person as traumatic. Any proposal of this nature would require clear and appropriate definitions and guidance.
- Further, while "serious injury" is defined under the WHS Act, and fatalities could take on its ordinary meaning, there are no definitions for "incidents of abuse" or "incidents of neglect".
- What detail would be **reported** is unclear and the usefulness of this information to regulators.
- **Site preservation requirements** need to be clearly articulated particularly if linked to a physical event like a vehicle incident or fall from height.
- **Traumatic incident exposure is most often not foreseeable** so usefulness in identifying breaches of WHS duties is unclear. The focus should be on incident prevention and good emergency response procedures as appropriate.
- The traumatic exposure event could be an activity that forms part of the **inherent requirements of the job** (for example, the Kozarov case where the young solicitor was a prosecutor in the serious sex offences unit). If the activity is an inherent requirement of the job, operationally, the notification requirements will be extremely difficult to comply with. This will lead to low credibility and low compliance and greater visibility of potential risks should be identified in another way.

An alternative is targeted research. We would note the significant research and intervention efforts in the last few years for first responders and the potential lessons learnt from this that regulators could use to inform their compliance and education activities, and which could be applied to other high-risk industries. Furthermore we link back to the SWA project on filling evidence gaps and the planned Australian Worker Exposure Survey which could also collect information on traumatic event exposure.

Workplace Violence

Chapter	Issue	Proposed Option(s)	ACCI position
7	Capturing workplace violence	<p>Amend the model WHS Act to require immediate notification (de-identified) to the WHS regulator of:</p> <ul style="list-style-type: none"> a. a sexual assault <ul style="list-style-type: none"> - including any sexual behaviour or act which is threatening, violent, forced, coercive or exploitative and to which a person has not given consent or was not able to give consent² b. a serious physical assault <ul style="list-style-type: none"> - including where a worker or other person in the workplace is assaulted with a weapon, punched, kicked, struck, beaten, shoved or bitten by another person c. the deprivation of a person's liberty <ul style="list-style-type: none"> - including being trapped, confined or detained by another person, and d. an express or implied threat of serious violence that causes genuine and well-founded fear of death, serious sexual assault or serious injury or illness <p>arising out of the conduct of the business or undertaking and that exposes a worker or any other person to a serious risk to a person's health and safety.</p>	Support in principle – but note that this is unnecessary duplication with other agencies and greater inter-agency collaboration could achieve the same outcome.
	Optional add-on	Introduce a power to permit WHS regulators to approve alternative reporting arrangements for certain PCBUs with specific conditions.	Not supported

We would start by noting that sexual assault, serious physical assault, deprivation of a person's liberty and threats of serious violence are recognised by ACCI and our members as significant WHS risks that must be appropriately identified and managed in every workplace.

Our main concerns lie with the proposed definitions and cross-over with police jurisdiction and the criminal code.

Due to their nature, these instances of violence are criminal acts and are foremost a police response and investigation. Jurisdictional criminal codes have their own definitions of assault and deprivation of liberty

² This description is consistent with wording in the [Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety](#).

which conflict with the proposed definitions in the consultation paper. We would want to see as consistent definitions as possible if definitions are used in the drafting.

One way to ensure greater consistency is to model this requirement off the ACT requirement for sexual assault reporting. We prefer the ACT approach as it mimics the principles of the current IN system in that an established independent threshold is met and an appropriate authority determines the seriousness of the incident e.g., medical professionals certify injuries etc and in this case the police and criminal standards certify the seriousness of these poor behaviours.

ACT model

From 9 June 2022, PCBU's in the ACT are required to immediately notify the WHS regulator of a sexual assault incident. A sexual assault incident is defined as *'an incident (including a suspected incident) in relation to a workplace, that exposes a worker or any other person at the workplace to sexual assault'*³. The [WorkSafe ACT](#) website explains:

"For this purpose, sexual assault is:

- a sexual assault that has been **reported to the Police**, OR a sexual incident that **could be referred to police for an investigation**, AND*
- is an act, sexual in nature, inflicted on someone, that a reasonable person believes has sexual connotations, OR*
- is an act inflicted on someone for the purpose of sexual arousal or sexual gratification, AND*
- includes sexual touching or sexual intercourse without consent."*

The definitions for all four instances need further discussion due to concerns about meeting the 'serious' threshold. For example: although specified as 'serious physical assault' the definition refers to being 'kicked, bitten or shoved'. The rationale is that these instances may not be considered notifiable under current requirements but could still result in psychological injury. We would argue that these would likely be minor injuries or otherwise captured under existing notification requirements and the possibility of psychological injury is not the intent of the provisions.

The 'serious' threshold should be maintained and so if these instances were to proceed then the definitions would need to be revised to only capture the most serious instances not otherwise captured and meet the threshold of warranting police reporting.

The duty to preserve the incident site should not be applicable here if this amendment was to proceed.

Privacy concerns

A key concern noted that still needs to be addressed is how to appropriately ensure the confidentiality and privacy of workers, particularly in cases of sexual or physical assault if these instances become mandatory notifiable incidents.

The paper notes that the requirements on PCBU's could be limited to de-identified information where PCBU's must not provide any information to the WHS regulator that discloses the identify of any person involved. In small businesses or work sites however de-identified information may still be easily linked to a particular worker and this would need to be appropriately managed.

³ [Work Health and Safety Act 2011 \(ACT\)](#)

Appropriate guidance would need to be developed on the level of information to be reported to the regulator and how a PCBU would be expected to respond to any of these instances in regard to record keeping and appropriate investigations.

Consideration must also be given to situations in which a worker does not want any further action taken or to engage with investigators. Even systems-level approaches would need to be managed carefully in order to avoid inflicting further harm on a worker through ongoing discussion of an incident or perception of blame for example.

Regulator capabilities

At present it is unclear if regulator inspectorates have the necessary skills and capabilities to manage these investigations and liaison with police and other agencies. This is critical if the number of reports is expected to increase due to changes to notification requirements.

A lack of response or capacity to respond could be counterproductive and undermine the importance of addressing workplace violence.

Given current police jurisdiction, the police have the most appropriate skills and training to conduct investigations into these matters. If WHS regulators were to be expressly notified of these matters a review of appropriate skills and training would need to be conducted and potentially further training rolled out in order to address these matters appropriately. How police and regulators cooperated on these investigations would also need to be further explored so that workers and PCBUs did not have to go through multiple interviews and duplicative processes.

It is understood that some WHS regulators have agreements with the police to notify the regulator of these incidents. For example, the memorandum of understanding between the Victorian WorkCover Authority and Victoria Police requires each party to notify the other of fatalities, allegations of bullying and other incidents that may be of interest.

Jurisdictional regulators should look at forming, if they do not already, a memorandum of understanding between themselves and the police in order to receive notification of these matters. This would remove any additional burden being placed on businesses whilst allowing for greater visibility of these instances by WHS regulators.

Attempted suicide, suicide and other deaths

Chapter	Issue	Proposed Option(s)	ACCI position
6	Suicide and other deaths	<p>Amend the guidance material to clarify that the 'death of a person' (s 35(a)) captures:</p> <ul style="list-style-type: none"> suicide of a person due to psychological harm arising out of the conduct of the business or undertaking other death of a person due to exposure to psychosocial hazards (e.g. heart attack from work stress) arising out of the conduct of the business or undertaking suicide of a person at a workplace where there is an identified risk of suicide in the workplace. 	Not supported
	(Optional add-on) Suicide of a worker	<p>Amend the definition of notifiable incident (s 35) in the model WHS Act to specifically capture:</p> <ul style="list-style-type: none"> the suicide of a worker, whether or not the suicide arose out of the conduct of the business or undertaking. 	Not supported
	Attempted suicide	<p>Amend the definition of notifiable incident (s 35); or serious injury or illness (s 36) in the model WHS Act to capture:</p> <ul style="list-style-type: none"> attempted suicide of a person due to psychological harm arising out of the conduct of the business or undertaking, and attempted suicide of a person (where the attempt carries a high risk of death or serious harm) at a workplace where there is an identified risk of suicide in the workplace. 	Not supported
	(Optional add-on) Attempted suicide of a worker	<p>Amend the definition of notifiable incident (s 35); or serious injury or illness (s 36) in the model WHS Act to specifically capture:</p> <ul style="list-style-type: none"> attempted suicide of a worker whether or not the attempted suicide arose out of the conduct of the business or undertaking. 	Not supported

The rationale for the options in this chapter are to provide regulators with greater visibility of suicide or attempted suicide due to psychological harm arising out of the conduct of the business or undertaking.

The elements of the proposed definition include: the link to psychological harm (suicide due to psychological harm), arising out of the conduct of the business or undertaking and where there is an identified risk of suicide in the workplace.

Determining whether or not the death of a worker is due to psychological harm experienced at the workplace is incredibly difficult. A number of cases have been litigated extensively where this has been a matter of debate and requires specialist information including from treating psychologists and doctors which the employer will not reasonably be expected to have access to.

Due to the sensitive and complex nature of suicides it is currently a matter for a coroner to determine the cause of death. This also applies to a 'other death of a person due to exposure to psychosocial hazards' such as a heart attack from work stress.

Suicide as an indicator of psychosocial risk

Suicide or attempted suicide is not necessarily an indicator of work-related psychosocial risk with limited evidence of an association.

The evidence for an association with suicide itself appears to be more limited. In a population-based, case-control study of 9,000 (84% male) deaths by suicide in Australia between 2001 and 2012, low job control and high job demands, estimated through a job exposure matrix, were associated with suicide after adjustment for age and socio-economic status; this, however, was true only for men, high job demands actually appearing to be 'protective' for women.

It appears that adverse experiences at work are a risk factor for male suicide, while not being associated with an elevated risk among females. Future studies on job stressors and suicide are needed, both to further understand the biobehavioral mechanisms explaining the link between job stress and suicide, and also to inform targeted prevention initiatives.⁴

In 2022, the HSE Workplace Health Expert Committee (WHEC) provided an independent report to the HSE on work-related suicide. The WHEC was asked to consider the occupational factors that may contribute to the risk of suicide and concluded:

While there is strong evidence of variation in suicide risk between occupations, the determinants of this appear complex, encompassing societal, cultural and individual factors which probably change with time.

The evidence for a direct role of psychosocial work stressors, including social isolation, bullying, job strain and imbalance, on the risk of suicide is limited and somewhat inconsistent, with low job control showing the best evidence thus far.

Suicide not infrequently occurs in spatio-temporal clusters, but it appears that this has not been formally studied in the context of individual workplaces or employers. This is perhaps unsurprising since the identification of a true organisational cluster, even in the context of a large employer, is

⁴ Milner A, Spittal MJ, Pirkis J, Chastang JF, Niedhammer I, LaMontagne AD. Low Control and High Demands at Work as Risk Factors for Suicide: An Australian National Population-Level Case-Control Study. *Psychosom Med*. 2017;79(3):358-64

very difficult. Further research into workplace (rather than 'occupational') suicide and suicidal ideation and their workplace correlates would be useful but would probably have to be undertaken across multiple organisations.

Other sources of information

Regulators already have the means to liaise with Coroners Office on their investigations and the likelihood of the suicide being work-related in order to take appropriate action. In regard to attempted suicide, current provisions already capture attempted suicide where immediate treatment is required.

We would further note the national work being done at present on improving the data and monitoring of suicide or attempted suicide that would address the need articulated by regulators without introducing additional burdens on business including privacy concerns.

The National Suicide Prevention Office, together with the Australian Institute of Health and Welfare (AIHW), has established Australia's first national suicide and self-harm monitoring system.

The system is designed to improve the quality, accessibility and timeliness of data on deaths by suicide and on self-harming and suicidal behaviours. It aims to provide a better understanding of suicide and self-harm in Australia by:

- explaining the nature and extent of suicidal and self-harming behaviours
- improving the quality and breadth of data available to help identify trends, emerging areas of concern and to inform responses
- highlighting those at increased risk.

The latest update in April 2023 includes the most recent data available from suicide registers and ambulance attendances for suicide ideation, suicide attempts and self-harm behaviours. The database also includes an Analyst Portal (the Portal) for the sharing of content from Commonwealth and jurisdictional data custodians and other approved users, such as Primary Health Networks, NGOs and researchers.

Data is updated regularly according to a publicised schedule. For example, the suicide register data is updated monthly.

Where current gaps in the data are identified the data custodians and oversight committee have openly encouraged other agencies to collaborate on data needs which may include how best to incorporate occupational identifiers or mechanism of injury.

Long Latency Diseases

ACCI notes the extensive work already underway in relation to improving both the management and notification of diseases.

1. Should exposure to hazardous substances in the workplace that cause latent diseases be recorded and reported? If so, for which substances?

- No
- The deemed diseases list adequately captures where there is a credible link between work exposure to a hazardous substance and a latent disease. ACCI is supportive of the deemed diseases methodology and review process and does not believe additional diseases should be added unless they meet the current criteria.
- There are also other mechanisms for capturing data relating to work-related latent diseases, such as the soon to be established National Occupational Respiratory Disease Registry.
- We would further note that a PCBU may not be breaching their duties by 'exposing' the worker to hazardous substances due to the use of controls and RPE. Recording would be subject to existing risk management and other duties.

2. 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?

- There are variations in exposure monitoring depending on the nature of work, hazardous substance and business type. Some examples are provided below.
- Air monitoring by a registered occupational hygienist is one method. Another is the use of personal monitoring sensors e.g., HCN is generally monitored via personal monitoring HCN sensors and ambient monitoring units, with alarms triggered when the designated exposure limit has been met.
- Part of air monitoring may also be task or job specific monitoring.
- Emissions monitoring is also conducted depending again on the nature of the substance and business.
- There is also some advancement of real-time monitoring devices for dust and silica for example.

3. 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?

- Not supported.
- Improvements should look at increasing the availability of Occupational Hygienists who can provide expert advice to businesses and considering subsidies for smaller businesses due to the high costs of these services and therefore their prohibitive nature.

- A more consistent framework should be emphasised. The more complicated and divergent practices are the more confusion for business and likelihood of non-compliance. Furthermore there is significant variation in choices around testing/samples which can give different results.
- 4. 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?**
- No
 - See previous point on 'exposure' and duties.
 - Although we note that this may be good practice in larger businesses who would make records available to regulators on request, smaller businesses do not necessarily have the resources and support to do this and not doing this is not necessarily a breach of duties or a good indicator of poor risk management.

Head Injuries

Chapter	Issue	Proposed Option(s)	ACCI position
11	Serious head injuries	Amend the model WHS Act (s 36) to capture 'serious head injuries' (without applying the threshold of requiring 'immediate treatment').	Not supported
		Amend the model WHS Act (s 36) to capture ' <u>suspected</u> serious head injuries' requiring immediate treatment.	Not supported
		Address this potential gap through other options, including: updating the guidance material to explain what is meant by 'immediate treatment' and how this applies to serious head injuries (refer Chapter 15), and capturing serious head injuries through an incapacity period (Chapter 5).	Support noting we do not support the option of a new incapacity period category.

ACCI supports option 3, updated guidance, as this option maintains the threshold criteria of 'serious' and 'immediate treatment' and will provide further clarity to duty holders.

The data provided reinforces that the majority of traumatic brain injuries involve hospitalisation that day or the following supporting the use of 'immediate treatment' as an appropriate threshold. The protocol should be that following an incident, the worker is referred to a medical practitioner or hospital who would then determine whether a serious head injury has been sustained. Such a diagnosis would therefore then trigger a notification under the existing regime. Introducing a 'suspected head injury' category creates a level of subjectivity which the PCBU may not (nor should they be required to) apply following a suspected head injury.

Serious Injury or illness

Chapter	Issue	Proposed Option(s)	ACCI position
12	Other potential gaps in 'serious injury or illness'	Amend the model WHS Act (s 36) to require immediate notification of all work-related injuries and illnesses requiring treatment as an outpatient in an emergency department.	Not supported
		Amend the model WHS Act (s 36(b)) to specifically capture 'serious bone fractures' and 'serious crush injuries' requiring immediate treatment.	Supported

In regard to option 1 there is some concern that the proposed definition would lower the threshold from 'serious' due to the nature of some outpatient treatments.

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

Mobile Plant

Chapter	Issue	Proposed Option(s)	ACCI position
13	Capturing incidents involving large mobile plant	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.	Not supported

ACCI and members do not feel that sufficient justification has been provided to warrant this change and that the change would result in unintended consequences with little direct safety improvement.

We would have significant concerns about including a 'malfunction' or 'loss of control' that 'exposes' a worker or person to a safety risk. The scope is too broad and, again, it is unclear how this would be applied objectively? At the very least, the obligation to notify should only arise if the malfunction or loss of control 'results' in a person being exposed to serious risk or injury. In practice, incidents such as these would already be tracked and reviewed via a PCBU's internal reporting and WHS Management systems to ensure any issues are addressed promptly.

Falls

Chapter	Issue	Proposed Option(s)	ACCI position
14	Capturing the fall of a person	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).	Not supported

If the existing regime is deficient in that the fall of a person is not necessarily understood to be captured, ACCI would propose that a better option to address this concern is through clarifying guidance.

Guidance could be modified to state that the fall of a 'thing' includes the fall of a person and with additional information about the types of falls that expose a person to a risk of death or serious injury. To be supported, this would need to include practical information that excludes low level falls and a two-metre threshold so that only high-risk situations are captured.

Addressing minor gaps and ambiguities in the current incident notification provisions

Causal link principle

Option	ACCI position
Amend the model WHS Act to prominently reflect the 'causal link principle' and provide greater clarity for PCBU's on what is (and is not) notifiable.	Support. Previously recommended/ supported by ACCI.

Objective test

Option	ACCI position
Amend the incident notification provisions in ss 35-37 of the model WHS Act to ensure they clearly reflect that the test for serious injury or illness is an objective test. Improved guidance for PCBU's on the intention and application of the objective test.	Support Previously supported by ACCI.

Amending the description of 'immediate treatment' in guidance

Option	ACCI position
Amend the description of 'immediate treatment' ⁵ in guidance material to reflect the urgent medical care provided following a serious injury or illness.	Support.

Immediate treatment as an inpatient in a hospital⁶

Option	ACCI position
Amend the guidance material to provide information for PCBU's on how treatment is commonly provided to patients and define key terminology.	Support

⁵ The [information sheet](#) explains that 'immediate treatment' means the kind of urgent treatment that would be required for a serious injury or illness. It includes treatment by a registered medical practitioner, a paramedic or registered nurse.

⁶ Under s 36(a), a PCBU must notify the WHS regulator if a person is required to have 'immediate treatment as an in-patient in hospital'. The intention is to capture injuries and illnesses of the most serious nature.

Improving understanding of ‘loss of bodily function’

Option	ACCI position
Amend guidance material to better describe the injuries and illnesses that are notifiable under ‘loss of bodily function’.	Support

Medical treatment for exposure to a substance

Option	ACCI position
Amend the definition of medical treatment in the model WHS Act for the purposes of s 36(c) to capture the health professionals (in addition to doctors) who provide urgent treatment following exposure to a substance.	Support

Exposure to human blood and body substances

Option	ACCI position
Improve guidance for PCBU on the exposures to blood and body substances that require notification to WHS regulators.	Support

Infections and zoonoses

Option	ACCI position
Improve guidance for PCBU to prominently describe notification requirements for infections and zoonoses prescribed in the model WHS Regulations (reg 699).	Support.

Dangerous incident provisions - reducing complexity and improving PCBU understanding

Option	ACCI position
Amend guidance material to provide improved general explanation of the dangerous incident provision and what circumstances require notification. Amend s 37 to simplify the opening words to reduce complexity for duty holders but ensure the policy intention does not change.	Support – clarify ‘exposure’ noting outcome of recent r49 discussion with SWA Members.

Improving the electric shock provision

Option	ACCI position
<p>Amend dangerous incident provisions (s 37(e)) in the model WHS Act to 'electric shock, electrical explosion and arc flash explosion' to better capture exposures to electrical hazards.</p> <p>Amend guidance material to better explain the types of incidents involving electric shock and exposure to electrical hazards that require notification.</p>	Support

Duty to notify and site preservation requirements

Option	ACCI position
Amend the model WHS Act to include a duty for the PCBU and person with management or control of a workplace to notify the other (where that is a different person) when they become aware that a notifiable incident has occurred.	Support – conditional on this only applying to notifiable incidents that require site preservation.
Amend the duty to preserve incident sites (s 39(1)) in the model WHS Act so that it provides that a site must not be disturbed until an inspector directs.	<p>Support.</p> <p>Should capture 'until an inspector directs' and this should allow for flexible arrangements such as during COVID when video link was used.</p>
Amend guidance to provide more detailed information to PCBUs about the duty to notify and site preservation.	Support. This was an ACCI recommendation previously.

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The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people.

ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth, and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education, and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

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