

The current incident reporting framework, outlined in the model WHS legislation, mandates that a PCBU must notify the safety regulator of specific incidents, including deaths, serious injuries or illnesses, and dangerous incidents. That current notification framework applies to incidents which arise out of the conduct of the business or undertaking at a workplace. Safe Work Australia's proposed amendments in relation to clarifying existing reporting obligations are welcome. However proposed amendments to psychosocial risk incident reporting seek to introduce language which is, in a number of respects, ambiguous and open for interpretation. For example, some proposed changes have a link to the workplace, for example, using language such as "work related", "arising from business operation" and "linked to business activities". As has been apparent from the current notification requirements, there are many incidents where it is not clear if there is a link to the workplace. This raises issues of who will ultimately assess whether these incidents are notifiable, and what are those persons' skills or qualifications in assessing them to be e.g., their particular expertise in assessing psychosocial risks.

Other proposed changes by Safe Work Australia do not require any link to the workplace and are purely event based. This appears at odds with the general obligations in the model WHS legislation which require a causal link to the business or undertaking.

Other changes, for example in relation to workplace violence, require notifications in all cases. It is unclear whether any regulatory impact has been undertaken to assess how such notifications will impact a situation where, for example, an incident investigation is yet to have commenced or be completed and the alleged perpetrator is to be given due process whilst the investigation is undertaken. This is even more significant when external authorities such as the police may have become involved and are investigating a criminal offence.

Without clear and unambiguous regulatory guidance (which has not been developed and which needs to be provided so that PCBUs can consider the impacts) the proposed changes may lead to confusion and complexity for workplaces.

Implementing the proposed changes will undoubtedly place significant administrative burdens on PCBUs, strain safety regulator resources, and divert focus from immediate safety concerns.

Policymakers should carefully consider the efficacy of the current framework, necessary guidance and evaluate potential consequences before introducing unnecessary changes.