



Australian Government

Australian Taxation Office

# Your details and background

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## Australian Taxation Office

Submission to Safe Work Australia on WHS incident notification

## General feedback

Please provide any general feedback about the issues raised in the consultation paper here.

The Australian Taxation Office welcomes the opportunity to provide feedback on proposed reforms to Work Health and Safety incident notification requirements. Overall, we agree there are opportunities for improvement to capture serious incidents and injuries including serious psychological injuries that have arisen from work.

We have some concerns regarding a few of the proposed options which we believe will lead to over-reporting of incidents to regulators, as well as inaccuracy and inconsistency amongst employers due to subjectivity. Too much data may inadvertently provide less visibility to regulators and detract from serious incidents.

The key themes of our submission relate to:

- Absence of 10 days or more is not an appropriate indicator or trigger of a serious injury or illness as there are many other factors that influence time off work. This periodic reporting mechanism would also be incorrectly conflated with workers compensation processes.
- The determination of whether a psychological injury or illness had arisen out of the conduct of the business or undertaking is more often than not cannot be definitively determined and is perceptive/subjective.
- To meet some of the proposed options, some organisations may inadvertently re-direct some efforts away from supporting the staff member as a priority to meeting notification reporting requirements, such as investigating causal link to work.

- In setting up the reporting infrastructure to meet some of the proposed options, some organisations may develop a system-centred approach rather than a person-centred approach, which is at odds with recommendations from the Respect@Work report.

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

Chapter 5

Periodic reporting – periods of incapacity for work

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

There is room for improvement

Serious injuries, illness or diseases resulting from exposure over time should be included, where it has been identified it is work-related.

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

We don't support this option in its current form. Our view of the proposed trigger (10 or more days of absence from work) by itself is not an accurate indicator for serious injuries or illnesses. There would need to be other indicators for efficacy. We anticipate this option in its current form will lead to over-reporting of employees with access to leave entitlements and under-reporting of employees who don't. Not all absences from work will necessarily be psychological in nature, and time off work for a psychological injury is also impacted by:

- Personal attitude to work
- Ability to access treatment quickly
- Availability of leave entitlements
- Nature of the work and job available job support
- Home responsibilities

Furthermore, the cause of psychological injuries and illnesses (particularly the ones developed over time) are often complex and difficult to determine as arisen from the conduct of business or undertaking. Psychological injuries are dependent on a number of personal factors such as:

- Pre-existing comorbidities
- Personal motivation to stay at work/return to work
- Personal support mechanisms such as family and friends
- Personal coping strategies

We believe employers should focus their efforts as a priority on supporting staff to recover and return to work from their psychological injuries and illnesses, irrespective of work-related or not. We anticipate many organisations will need to re-direct some resource away from supporting recovery, to focus on investigating causal factors for the purpose of meeting this proposed option 1. This may counter the intention of the WHS Act. The trigger of 10 days would also place an unnecessary burden upon organisations and is unlikely to yield any tangible benefit.

**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.**

Our current systems do not automate this type of reporting and we will need to dedicate resource to manually review and compile this data. We anticipate we will need to develop staff capability to identify and investigate every 10 day or more absences to determine the cause and if the injury or illness had arisen from the conduct of business or undertaking.

We anticipate many organisations would want assurances that intel from the increased reporting would be utilised by regulators, and that regulators would have the resources to analyse and develop actionable insights from the data collected. Option 1 in its current form will likely include both over-reporting and under-reporting, thus regulators would need to direct additional resource for data cleansing. The ATO has a robust injury management system focussed on early, safe and sustainable return to work. The proposed trigger of 10 days is not supported by research nor appropriate. Additionally the ability to draw a nexus between an injury/illness and work is unlikely to be able to be determined on the balance of probabilities for the majority of absences,

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

The increased administrative burden may mean organisations will need to re-direct some resource and efforts away from supporting staff recovery, to investigating causal factors. This could be mitigated through not pursuing this change which as noted above is not appropriate nor required.

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

We suggest additional triggers that must be met to improve data integrity, and retrospective reporting of cases that evolve into work related psychosocial injuries.

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

Chapter 6

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

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

There is room for improvement

Investigations into the cause of suicide are very complex.

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

Option 1 would be a time consuming and difficult process to investigate (particularly if the incident did not happen in the workplace) to determine the cause. The investigation would likely be done by the Police rather than the PCBU. Where a PCBU conducts an investigation, the process may create further trauma for the deceased's family.

Option 2 – would be preferable as it is not an administrative burden to notify the regulator of all known suicide or attempted suicides, where an investigation into the cause is not required.

**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.**

For option 2, we will update our current policies and processes, and provide additional training to our staff to report all suicides and attempted suicides to the regulator. We don't anticipate this to be an administrative burden as numbers would be very low.

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

For option 2, it will be difficult for the regulator to determine which of the notifications are work-related and which are not. An investigation by the PCBU may also lead to further trauma for the deceased's family.

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

Chapter 7

Immediate notification – psychosocial hazards – workplace violence

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

There is room for improvement

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

We support option 1 on the assumption that privacy of parties involved are maintained, and notification is only done after the alleged incident has been investigated and substantiated.

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.

We currently already investigate all allegations of bully harassment, including sexual harassment. We also currently investigate other serious matters such as physical assault.

We support notifying the regulator of all such incidents after an investigation and where substantiated, however this may be a lengthy process.

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

It is possible there may be staff less likely to report such incidents if they are aware information will be forwarded to the regulator or other external for possibly further investigation.

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

We do support this option where employers are only required to report on substantiated cases and de-identified to protect privacy.

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

Chapter 9

Periodic reporting – psychosocial hazards – bullying and harassment

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

Chapter 9

Room for improvement

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

Chapter 9

We support option 2 as we currently already investigate all allegations of bullying, sexual harassment and workplace harassment (on the grounds of sex or other forms). This is also likely to be the terminology used across organisations as described in the Fair Work Act, Sex Discrimination Act, Disability Discrimination Act and Racial Discrimination Act. We are also of the view option 2 will align and support the recent Positive Duty requirements under the Sex Discrimination Act. Our existing organisational guidelines and reporting infrastructure can provide this data to the regulator.

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.

Chapter 9

We anticipate our internal administrative guidelines on bullying, harassment and sexual harassment matters will need to be adjusted to consider if the behaviour posed a risk to health and safety and if the behaviour had reasonably been considered to have occurred.

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

There may organisations that don't currently have the reporting infrastructure to capture all allegations of bullying, sexual harassment and workplace harassment on the grounds of sex (or other forms of harassment). If option 1 or 2 was to be implemented, some organisations may develop a system-centred approach rather than a person-centred approach in an attempt to meet the new incident notification requirements. This may

have unintended consequences as it may not always protect the dignity of victims and may even create further trauma.

The requirement to report all complaints (irrespective if substantiated or not) may also detract regulators from the more serious allegations.

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

Chapter 11

Serious head injury

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

Yes, agree there is a gap

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

Option 2 - report suspected serious head injuries requiring immediate treatment.

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

Chapter 12

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

There is room for improvement.

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

We don't support option 1 as that would result in over-reporting and likely detract the regulator from the more serious matters.

We support option 2 if there are very clear guidelines to define what are serious fractures, so as not to over-report and detract the regulator from serious injuries

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.

We anticipate option 2 will be reasonably easy to implement where the regulator has provided very clear guidelines to define what are serious fractures.

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

Option 1 will lead to over reporting and may detract the regulator from the more serious matters.

## **Additional questions (for specific chapters)**

### **Chapter 7 - Capturing 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?

For consideration- family or domestic violence (or threats of), inside or outside of the workplace. We currently have policies that covers both support for staff affected by family and domestic violence, and zero tolerance of staff that are perpetrators of family and domestic violence.

Should these matters become notifiable there would need to be consideration into developing a person-centred approach so as not to cause further distress or trauma to the victim for the purpose of incident notification to the regulator. Whether full disclosure of information to the regulator is permitted or required by law should also be explored in situations where there is a serious and imminent threat of harm to an individual or others in the workplace. Consideration should also be given to situations where the alleged victim does not consent to notifying of an incident. The ATO has significant privacy protocols in place for staff affected by family or domestic violence, a requirement to report on these instances may impact staff's confidence in these privacy protocols.