Submission

October 23

Incident notification provisions in the model Work Health and Safety (WHS) Act

Options to improve WHS incident notification

Submission to Safe Work Australia

Contact

Laila Nowell

Manager

Health, Safety and People

The Chamber of Minerals & Energy of Western Australia Level 10, 2 Mill Street Perth WA 6000

Locked Bag N984 Perth WA 6844 **p** +61 8 9220 8500 **e** chamber@cmewa.com **w** cmewa.com

Contents

About CME 5
Executive Summary 5
Context 6
General Feedback – SWA Incident Notification Review 7
Consultation 7
Risk-Based Methodology 8
Practical Workability & Regulatory Approach 9
Presented Options 10
Chapter 5: Periodic reporting of incapacity periods 10
Chapter 6: Attempted suicide, suicide and other deaths 12
Chapter 7: Capturing workplace violence 13
Chapter 8: Periodic reporting of exposure to traumatic events 14
Chapter 9: Periodic reporting of bullying and harassment 14
Chapter 10: Long latency diseases – exposure to substances 15
Chapter 11: Serious head injuries 17
Chapter 12: Other potential gaps in 'serious injury or illness' 17
Chapter 13: Capturing incidents involving large mobile plant 18
Chapter 14: Capturing the fall of a person 18
Chapter 15: Addressing minor gaps and ambiguities in the current incident notification provisions 19
Conclusion 22

About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in WA. CME is funded by member companies responsible for more than 86 per cent of the WA's mineral workforce employment,[1] ranging from mining to manufacturing[2] and support services across over a hundred sites and a dozen commodities from exploration to production and closure.

The resources sector significantly contributes to local, state and Australian economies. In 2021-22, the WA resources industry generated $186.8 billion in gross value added, accounting for almost half of WA's economic activity.[3] The industry's exports totalled $233.6 billion, accounting for 95 per cent of WA goods exports and 66.1 per cent of national resources exports.[4]

The resources industry is also directly and indirectly responsible for a large share of employment in WA and the nation. In 2022-23, the WA resources industry employed 166,000 people, equivalent to 10.8 per cent of total employment in WA and 53.4 per cent of national mining employment.[5] Employment in the WA resources industry grew by 40 per cent between February 2020 (pre-COVID) and May 2023, accounting for around 70 per cent of growth in national resource sector employment.[6] Modelling based on CME's 2021-22 Economic Contribution Survey indicates spending by the WA resources industry supports at least 493,235 additional full-time jobs across Australia, including 259,959 full-time jobs in the state.[7]

Executive Summary

CME appreciates the opportunity to provide feedback as part of Safe Work Australia's (SWA) public consultation on potential options to improve the coverage and effectiveness of the incident notification provisions in the model Work Health and Safety (WHS) Act.

Key CME recommendations are outlined below, with further detail in the subsequent sections of this submission.

- CME supports a single Act approach to incident notification requirements, provided the issues identified below are addressed to ensure the legislative package is appropriate to the WA environment. This includes consideration to existing requirements within the industry-specific regulations in WA.
- CME recommends that SWA uphold the previous decision by the Office of Impact Assessment for a Regulatory Impact Assessment to the proposed legislative changes under the Incident Notification Review.
- CME supports a comprehensive consultation process and is concerned that the broad scope of the SWA incident notification consultation does not allow for detailed feedback by stakeholders, reducing the quality of guidance required for effective implementation.
- The proposed structure presented by SWA inhibits the resources sector's ability to progress a truly risk-based, outcomes focused regulatory framework. CME does not support an unnecessarily prescriptive reporting regime and recommends that the SWA amendments consider the successful implementation of a risk-based legislative framework within WA.
- CME considers the legislative framework in WA as appropriate, and recommends that SWA prioritise a skilled, trauma-informed response to psychosocial hazards, balanced across compliance regulators with relevant subject-matter expertise.

Regarding the options presented by SWA:

- Chapter 5 -
    - CME supports the presented option for periodic reporting of incapacity periods subject to safeguards that ensure that the approach does not duplicate existing frameworks in WA.

[1] Government of Western Australia, *2022 Economic indicators resources data*, full-time equivalents onsite under State legislation, Department of Mines, Industry Regulation and Safety (DMIRS), 21 April 2023.
[2] Mining includes mineral and petroleum commodities, whilst manufacturing includes alumina production, basic inorganic chemicals (lithium), basic non-ferrous metals (silicon), concrete and fertiliser explosives.
[3] 47.8 per cent. Australian Bureau of Statistics (ABS), *Cat 5220*, Table 6.
[4] DMIRS, *WA Mineral and Petroleum Statistics Digest 2021–22*; ABS, *Cat 5302*, Table 21; *Cat 5368*, Table 32a; *Cat 5220*, Table 6.
[5] May 2023 reference period. ABS, *Cat 6291.0.55.001 Labour Force, Australia, Detailed*, Table 5.
[6] Ibid.
[7] CME, *2021/22 Total direct economic contribution to Australia*, published June 2023.

  - CME recommends that if SWA chooses to replicate the reporting of incapacity periods as presented in the Work Health and Safety Act 2022 (WA), further guidance be developed to support the understanding and application of the 10-day incapacity period.
- Chapter 6 - CME does not support both proposed amendments pertaining to suicide and other deaths, due to the significant legal and practical complexities without clear demonstrable benefits.
- Chapter 7 - CME do not support the proposed options relating to workplace violence and considers the current regulatory regime appropriate, as it ensures that criminal matters are captured and investigated by the police.
- Chapter 8 - CME do not support the proposed options relating to the reporting of exposure to traumatic events and considers this approach as not trauma-informed. CME considers these exposures are appropriately captured under the current incident reporting framework.
- Chapter 9 -CME does not support the proposed options relating to the periodic reporting of bullying and harassment and considers this approach as not trauma-informed. CME believes these incidents are appropriately captured under the current reporting framework.
- Chapter 10 -
  - CME is supportive of reporting requirements that prevent adverse health outcomes and are implemented in a way that is effective in both improving compliance and reducing risk and believe this may be better explored as part of air and health monitoring regulations.
  - CME sees benefit in exploring guidance or an information sheet pertaining to on real-time monitoring, which could serve as a valuable resource to industry.
- Chapter 11 - CME considers the current reporting regime already covers the reporting of serious head injuries and would support updating existing guidance regarding the definition of 'immediate treatment' as presented in Option 3.
- Chapter 12 - CME provides support for Option 2 - including further clarifying detail on 'serious bone fractures' and 'serious crush injuries' in the legislation to support targeted reporting rather than presentation as an outpatient at an emergency department.
- Chapter 13 - CME supports including provisions for incidents relating to mobile plant equipment, as per the definitions of reportable dangerous incidents provided in the WA mining regulations.
- Chapter 14 - CME supports updating reporting requirements to capture fall incidents, but requires further consultation on the wording to ensure that it adequately captures intended incidents.
- Chapter 15 -
  - CME supports creation of an agreed formal mechanism for establishing the work-relatedness of an illness, injury, or condition.
  - CME supports development of guidance material for implementing the objective test across all sectors and jurisdictions.
  - CME supports including diagnosis (the objective test) as the basis of reportability rather than immediacy of treatment.
  - CME supports including diagnosis (establishing permanence) and the work-relatedness test as the basis for reportability of "loss of bodily function."
  - CME recommends further consultation before broadening the definition of medical treatment to include Paramedics, Registered Nurses and Aboriginal and Torres Strait Islander Health Workers and Practitioners.
  - CME supports improved guidance to PCBUs on exposures to bodily substances requiring notification.
  - CME supports improved guidance to PCBUs on notification requirements for infections as outlined in the model WHS Regulations (reg 699), with consideration to the duplication of reporting requirements to relevant health agencies (for example, the WA Department of Health).
  - CME supports amending and simplifying the definition of a dangerous incident to reduce complexity for duty holders.
  - CME supports amending the guidance material to better explain the types of incidents involving electric shock and electrical hazards that require notification and recommends that SWA consider the language used by WorkSafe WA in the WA Incident Notification – Interpretive Guideline.
  - CME supports the development of guidance around duties to notify and site preservation requirements in relation to acute vs cumulative incidents and operator/contractor duplication. However, CME does not consider this to be a priority activity for SWA.

Context

The health and safety of our people, including their physical and psychological safety, is the number one priority for the Western Australian (WA) resources sector. Acknowledging that our operations occur in challenging, high-risk, and frequently remote environments, we cannot stress enough the significance of safeguarding our personnel and ensuring their safe return home. While the resources sector is acknowledged as a pioneer in workplace health and safety (WHS), it remains unwavering in its dedication to continually enhancing safety and health procedures and results. Our industry acknowledges the vital role that WHS regulations play in establishing a clear, outcome-focused, and non-prescriptive framework in which to drive best practice safety.

WA harmonised its WHS legislation to align with the Model Work Health and Safety Act (the Model WHS Act) in 2022. CME provided support for the broad principles of harmonisation, recognising the benefits for businesses who operate across jurisdictions in dealing with consistent legislation. Throughout the consultation process towards the adoption of the Model WHS Act in WA, CME consistently raised concerns that industries (particularly the resources sector) would require relevant amendments to ensure the legislation is either an improvement or meets current best practice.

As such, CME is pleased that the WA framework utilised industry-specific regulation as seen with the WHS (Mines) Regulations 2022 (the Mines Regulations) and the WHS (Petroleum and Geothermal Energy Operations) Regulations 2022 (the PAGEO Regulations). These industry-specific regulations take into account the unique challenges presented in both industries, namely the challenges posed by remote working conditions, the technical and technological complexity of resource sector operations, and the additional issues created by an irregular and itinerant workforce (FIFO, DIDO, labour hire, etc).

Safe Work Australia (SWA) have provided stakeholders with the opportunity to provide feedback on potential options to improve the coverage and operation of the incident notification provisions in the model WHS Act (the Incident Notification Provisions). The options explored in this consultation paper are based on the findings of a review of the Incident Notification Provisions (the Incident Notification Review) undertaken by SWA in 2021-22. The Incident Notification Review identified opportunities to address specific gaps in the current notification requirements and expand the framework to capture a broader range of injuries, illnesses, hazards and harms. These opportunities have been presented by SWA through the release of the consultation on options to improve WHS incident notification (the Incident Notification Consultation). Significantly, the Incident Notification Consultation includes options to capture psychological injuries, illnesses and harm, and psychosocial hazards (including workplace violence, bullying and harassment), as well as periodic reporting (six-monthly) for certain incidents where immediate notification is not required.

CME appreciates the opportunity to provide feedback to the proposed Incident Notification Provisions. We hold significant concerns with the options proposed, which centre around the legal implications, practical implementation issues, and the potential harm for impacted persons as a result of implementing reporting requirements that possess limited demonstrable health and safety benefits. For example, there is lack of a trauma-informed approach in some of the requirements surrounding the response to psychosocial incidents and workplace violence and assault. Further detail on these concerns are provided in the submission below.

CME supports a single Act approach to incident notification requirements, provided the issues identified below are addressed to ensure the legislative package is appropriate to the WA environment. This includes consideration to existing requirements within the industry-specific regulations in WA.

General Feedback – SWA Incident Notification Review

The section below provides feedback on areas relevant to the broader review. This includes the current consultation process, potential issues with implementation, alignment with existing regulation, and the impact of the proposed changes on workplace health and safety regulation.

Consultation

CME holds significant concerns with the current and planned consultation process for Incident Notification Review. It is understood that prior to the National Cabinet changes to the Impact Analysis framework in April 2023, SWA informed SWA members that the Office of Impact Assessment (OIA) advised that a Regulatory Impact Statement was required for two of the proposed legislative changes. One of these legislative changes was the Incident Notification Review. CME welcomed this update, having previously communicated concerns with an expedited approach to regulatory development.

A Regulatory Impact Assessment (RIA) provides a full assessment of the impact of regulation, including analysis of the cost and benefits, ensuring that it delivers against its intended objectives without causing unduly adverse effects. The significant changes proposed through the SWA Incident Notification Review have considerable potential for substantial cost impacts, alongside—in some areas—limited demonstrable health and safety benefits. A Regulatory Impact Assessment would therefore be highly appropriate to this review, in order to ensure the proposed changes are fit for purpose.

However, a brief released online by the OIA on 9 June 2023 advised of changes which were agreed to by National Cabinet on 28 April 2023. It outlined the responsibilities of the OIA and Federal Relations Architecture, specifying that 'decision makers' are to determine whether a RIA is required. Subsequently, a new briefing was released in July 2023 by the OIA stated that these changes are retrospectively in effect from March 2023. In considering this brief and the publication of the Incident Notification Review for consultation, CME believes that SWA has formed a view that a RIA may not be required, as it has not been determined as necessary by the 'decision makers'.

CME is concerned that SWA proceeded with consultation on the Incident Notification Review without a RIA. As there was already an assessment by the OIA that determined a need for the RIA, CME requests clarity on the decision by SWA to not uphold the decision.

CME recommends that SWA uphold the previous decision by the Office of Impact Assessment for a Regulatory Impact Assessment to the proposed legislative changes under the Incident Notification Review.

The options presented in the SWA consultation paper to enhance the incident notification provisions within the model WHS Act are ambitious in their scope. This observation is not meant as a critique of the proposals, but rather as an acknowledgment that significant consultation and clarification would be necessary before many of these options could be put into practice. In certain cases, terminology would need to be refined and better defined, and the potential impact on the workload for both industry and regulatory bodies would also demand thoughtful deliberation.

The approach taken by SWA following the decision by the Office of Impact Assessment presents cause for concern, particularly given the short notice period provided for finalising stakeholder feedback. The broad scope of the review has significant impacts for the resources sector, necessitating CME to engage in wide-ranging consultation with representatives from various functions, including mental health and wellbeing, occupational hygiene, and injury management. Beyond this, CME has engaged with members who are subject matter experts in psychosocial safety, to ensure that the options presented by SWA are trauma informed. CME considers this process and the sheer volume of information being released for comment will likely impact the engagement of broader stakeholders in the review process.

CME supports a comprehensive consultation process and is concerned that the broad scope of the SWA incident notification consultation does not allow for detailed feedback by stakeholders, reducing the quality of guidance required for effective implementation.

Risk-Based Methodology

The currently regulatory environment within WA provides for the implementation of modern best practice, risk-based legislation. Risk-based legislation being, non-prescriptive and requiring duty holders to identify hazards, assess risks arising from those hazards, and then implement reasonably practicable control measures. CME acknowledges that there has been longstanding recognition of the effectiveness of a risk-based approach in fostering safety improvements whilst accommodating innovative technological change.

Compelling evidence exists to support the efficacy of a risk-based approach, such as the safety case model. Dr. Andrew Hopkins, a renowned authority on safety within high-hazard industries, asserted in 2012 that prescriptive regulatory frameworks requires the WHS regulators to essentially decide what constitutes safety within the sector.[8] This approach is prone to being complicated by swift changes in technology and operations, resulting in a perpetual struggle for legislation and regulation to keep pace—a costly endeavour for regulators, and one that may not be in the best interests of health and safety outcomes.

A risk-based safety case regime is underpinned by the principle that the legislation the health and safety objectives, and those responsible for the high hazard operations then develop the most appropriate risk-based methods for achieving those objectives. This regime is based on the premise that the ongoing management of health and safety is the responsibility of the person conducting a business or undertaking

[8] Andrew Hopkins. *Explaining safety cases*. April 2012.

(PCBU) and has been built into the PAGEO Regulations and Mines Regulations, which respectively call for the development of a safety case and mines safety management system.[9] [10]

Both of these systems are approved by the WA Department of Mines, Industry Regulation and Safety (DMIRS) and have multiple benefits, including:

- Enabling the operator to identify the specific hazards of a particular facility.
- Analysis of risks and planning of safe design and control measures.
- The focus upon operations and maintenance of the safety management system including control measures and control measure supports.
- The processes by which the workforce is consulted and participates in preparation or revision of safety systems and measures.
- The processes by which the safety system, and the procedures and assessments that it involves, are maintained in response to changes in facility design and operation.
- The manner in which all the above aspects are integrated into a comprehensive safety management system for ongoing identification of hazards and management of risks at the facility.[11]

The proposed structure presented by SWA inhibits the resources sector's ability to progress a truly risk-based, outcomes focused regulatory framework. CME does not support an unnecessarily prescriptive reporting regime and recommends that the SWA amendments consider the successful implementation of a risk-based legislative framework within WA.

Practical Workability & Regulatory Approach

There are several practical and administrative challenges associated with the proposed options that will affect their implementation and overall feasibility. These options introduce unwarranted complexity, uncertainty, and increase compliance and administrative efforts, without demonstratable benefit. Moreover, some of these proposed alternatives duplicate existing reporting obligations to the WA Department of Health or WA Police, as elaborated upon in subsequent sections of this submission.

Currently WA has a number of incident reporting requirements that are unique to other jurisdictions in Australia. A large number of these unique reporting requirements already cover areas that are proposed through the SWA Incident Notification Consultation. CME is broadly supportive of any requirements that enhance sharing and learning from incidents to improve the safety outcomes for industry. But any additions or changes to the Model WHS Act need to be either net reductive or net equivalent in the requirements of reporting.

The findings of the Australian Human Rights Commission's Respect@Work: Sexual Harassment National Inquiry Report (the Respect@Work Report) highlighted the challenges faced by WHS regulators in equipping themselves with the necessary expertise to investigate complaints of sexual harassment within the WHS legislative framework.[12] In this regard, CME acknowledges the Federal Government's commitment to allocate funding for the training of Comcare Inspectors, who serve as the relevant WHS regulators under the Commonwealth WHS Act. Additionally, CME continues to advocate for the need for appropriate resources to be allocated to DMIRS to effectively address the heightened emphasis on psychosocial hazards, including workplace sexual harassment, with the introduction of the psychosocial regulations in 2022. DMIRS have taken steps to address these concerns, with the provision of training to inspectors and engagement with specialist staff for the 24/7 reporting line, to triage incoming calls and ensure the service is provided in a trauma-informed manner.

CME recognises the pivotal role played by WHS regulators not only in enforcing and monitoring compliance with WHS legislation but also in educating and collaborating with industries to provide guidance on risk management. Striking the right balance between these roles in response to this issue is deemed crucial by CME. When it comes to psychosocial reporting or workplace violence, there is the risk of involving multiple regulators or agencies, including WHS regulators, police, as well as human rights and anti-discrimination agencies such as the Australian Human Rights Commission and the Equal Opportunity Commission. The involvement of different regulators implies that various approaches may be employed to address incidents of sexual harassment.

---

[9] *Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022* (WA).
[10] *Work Health and Safety (Mines) Regulations 2022* (WA). r.621.
[11] National Offshore Petroleum Safety and Environmental Management Authority. *The safety case in context: An overview of the safety case regime*. 20 May 2020.
[12] Australian Human Rights Commission. *Respect@Work: Sexual harassment national inquiry report*. 2020.

Some regulators may defer to the expertise of others. For instance, in the Government Response to the 'Enough is Enough' - Sexual harassment against women in the FIFO mining industry Report, the WA Government noted that "the processes for capturing information on sexual harassment and sexual assault are fundamentally different; sexual assault is criminal behaviour. As such, WorkSafe limits the surveys and audits which it conducts to sexual harassment only".[13] CME notes that multiple sections of the Incident Notification Consultation overlap with criminal reporting (workplace violence, sexual assault), health reporting (infections and zoonoses), and areas of expertise specific to medical and mental health professionals (suicide/attempted suicide and trauma, causal link and objective test).

CME, along with its member organisations, recognises the complexity arising from the potential involvement of multiple jurisdictions and emphasises the importance of adopting an intersectional approach to addressing workplace behaviours and workplace violence. This approach aims to acknowledge and respect the distinct roles of impacted persons, each regulatory body, and the police throughout the process.

The expansion of scope becomes evident when "immediate notification" is extended to situations which require intervention by law enforcement agencies. A number of these matters (e.g. suicide attempt, suicide due to work related psychological harm, some instances of workplace violence) necessarily involve police investigation, and potentially coroners. It is important that the matters subject to investigation by outside authorities are first notified to those authorities, and that these authorities are empowered to control the process unincumbered.

Logistical and administrative issues are also present in areas of the Incident Notification Consultation that pertain to psychosocial reporting. Such conditions may be precipitated by myriad cumulative factors, including family, social and cultural relationships, non-work-related trauma and genetic/biophysical circumstances. Establishing the underlying causes can take considerable time through an individual's access to medical treatment, private counselling, and engagement with employee assistance programs. Periodically reporting a period of incapacity from normal work is unlikely to be meaningful with respect to specific conduct of the business or undertaking, except for the rare exposure to a traumatic event.

Requiring PCBUs to report mandatorily on these matters to the WHS regulator is also in conflict with an appropriate trauma-informed incident response, as complaints may be notified to the regulator against an impacted person's wishes. An impacted person may prefer a resolution via informal means; however, mandatory reporting requires internal escalation, posing a potential further risk to psychological safety. Depending on the circumstances, de-identifying data may also not address privacy issues, as once the information is provided the WHS regulator has powers to intervene and obtain all necessary information.

CME considers the legislative framework in WA as appropriate, and recommends that SWA prioritise a skilled, trauma-informed response to psychosocial hazards, balanced across compliance regulators with relevant subject-matter expertise.

Presented Options

Chapter 5: Periodic reporting of incapacity periods

WA is acknowledged in the Incident Notification Consultation as the only Australian jurisdiction with a requirement for PCBUs to notify the regulator of incidents that, in a medical practitioner's opinion, are likely to prevent the person from being able to do the person's normal work for at least 10 days "after the day on which the injury or illness occurs".[14] The reporting requirement relating to the 10-day incapacity period presents difficulties for PCBUs in terms of consistency, due to the uncertainty that often arises as to exactly when the potentially reportable illnesses or injuries occurred. For example, a low-level injury event that lingers and eventually necessitates medical evaluation and modified duties. In certain instances, the regulator may perceive this as a delayed reporting, even though the injury has recently progressed to a more serious state. Further, psychosocial injuries often present challenges in determining their work-related nature due to their inherently complex and nuanced characteristics.

CME holds further concerns on the proposed options presented in Chapter 5 of the Incident Notification Consultation, with respect to the legal and practical issues associated with implementation. Establishing the

[13] Government of Western Australia. *Western Australia government response to the enough is enough' sexual harassment against women in the fifo mining industry.* September 2022.

[14] *Work Health and Safety Act 2020* (WA). s36(e).

work-relatedness of some injuries/illnesses resulting in 10-days or more of incapacity for normal work may present difficulties.

From a mine safety perspective, the periodic reporting requirements may already be captured under the quarterly reporting regime. Under the Mines Regulations, mine operators must give the regulator a work health and safety report each quarter.[15] This report must include:

- Number of relevant incidents
- Number of lost time injuries
- Days lost from work
- Number of restricted duty days
- Number of workers placed on restricted duties
- Number of treatment injuries
- Number of deaths[16]

The proposed reporting framework in Chapter 5 would duplicate these existing periodic reporting requirements for those operating under the Mines Regulations, while also creating a further administrative burden for those reporting under the General Regulations and PAGEO Regulations. It is understood that these changes aim to facilitate more thorough investigations and provide assurance of a direct connection to a work-related situation or context. However, if the option proposed by SWA was adopted in WA, there would need to be a review of the existing reporting requirements. This may involve superseding the current quarterly reporting process to alleviate the administrative burden.

CME is uncertain on the impact that periodic reporting would have on WHS outcomes, as the data provided would be lagging and aggregated. As such, it is unclear how the data will indicate possible preventative and corrective actions to the regulator. This, coupled with the fact that PCBUs may not have classed a 10-day incapacity period as work related, necessitates careful consideration of how regulators would approach this reporting requirement.

The reporting requirement may pose challenges when applied to casual workers, contractors and labour hire firms where there may be reluctance to disclose injuries/illnesses and/or take leave for such injuries/illnesses due to the loss of work opportunities and earnings. As a result, the reporting data is more likely to be skewed towards capturing the data of direct hire and full-time employees. The resulting findings will therefore be limited in their scope and of reduced relevance to the numerous branches of our industries that are serviced by casual, contract and indirect labour hire.

CME supports the presented option for periodic reporting of incapacity periods subject to safeguards that ensure that the approach does not duplicate existing frameworks in WA.

Recognising that *incapacity* has not been defined within the Model WHS Act, SWA present two considerations for the definition of incapacity:

1. Total incapacity for work, and
2. Incapacity for normal duties.

The first definition enables the combined reporting of psychosocial injuries resulting from hazards over an extended period or due to medical certification. Along with this, there needs to a be review of the necessity for immediate reporting of such cases. The latter option aligns with the WA incident notification framework, however, CME notes that this option will capture injuries and illnesses that do not necessarily result in a worker being unable to perform *all* forms of work. This will lead to the proposed periodic reporting including minor physical injuries, which may undermine the intent of the change: to improve the visibility of serious work-related injuries and illnesses.

However, the narrower definition of total incapacity for work may also compromise the intent of the proposed option, which is to capture a broader range of work-related psychological and physical injuries and illnesses. There is therefore a need for further precision around the definition of incapacity, as describing a medically determined condition that renders a person incapable of performing *the core competencies and tasks of their work role* (effectively unable to do their specific job) for a period of time. This may require further consultation and consideration to ensure that the intended incidents are captured.

In addition to the need for further precision around the definition of incapacity, there is a need for further clarity around the application of the 10-day incapacity period that signifies the “seriousness” of an illness or

[15] *Work Health and Safety (Mines) Regulations 2022* (WA). r.675W.
[16] *Work Health and Safety (Mines) Regulations 2022* (WA). Schedule 25.

injury and therefore constitutes a reportable event. If SWA choose to replicate the reporting of incapacity periods as presented in the WA WHS Act, CME recommends that further consideration be given to the definition and measurement of the 10-day incapacity period. The provision of examples and guidance would address potential confusion across PCBUs and regulators to the application of the 10-day incapacity period, particularly when it comes to diverse employment contracts and conditions.

CME recommends that if SWA chooses to replicate the reporting of incapacity periods as presented in the Work Health and Safety Act 2022 (WA), further guidance be developed to support the understanding and application of the 10-day incapacity period.

Chapter 6: Attempted suicide, suicide and other deaths

The Incident Notification Consultation notes that there is currently underreporting of suicide and other deaths due to psychological harm arising out of the conduct of a business or undertaking. The Incident Notification Consultation presents two options to address the outlined gaps:

1. Amending the definitions in the Model WHS Act to include attempted suicide in specific circumstances: when it results from psychological harm related to the business or undertaking or when it occurs at a workplace with a recognised suicide risk.[12]
2. A more encompassing amendment, proposing that attempted suicide by a worker be included in the definitions regardless of whether it arises from the persons conducting a business or undertaking or not.

The WA Inquiry into the mental health impacts of fly-in fly-out (FIFO) arrangements (the FIFO Inquiry) explored the reporting of suicide, attempted suicide, and other deaths on mine sites (including the accommodation camp).[17] A recommendation of the FIFO Inquiry was for the WA to introduce reporting requirements that would include any death, by any cause, whether the worker is on- or off-shift for mine sites.[18] As a result, the Mining Regulations note that a reportable incident encompasses situations where a person attempts suicide at a mine or any location associated with mining operations, including accommodations provided for mine workers.[19] Furthermore, an attempted suicide under the PAGEO Regulations or General Regulations may be notifiable where it causes serious injury.[20]

DMIRS provides that the suicide of a worker at their workplace should be considered notifiable, as it may be related to psychosocial hazards at the workplace.[21] CME and its member companies recognise the importance of notifying WHS regulators should there be attempted suicide, suicide or other deaths due to psychological harm arising out of the conduct of the business or undertaking. However, when considering the options presented by SWA and the existing notification framework for WA, CME considers further consideration should be given to the practicalities of the proposed options.

CME believes that both options pose significant challenges both legally and practically. Establishing a clear link between suicide and work-related events or hazards is extremely complex, due to the multifaceted nature of suicides, which often could involve a confluence of personal, workplace, and psychological factors. The interconnectedness of these makes it challenging to definitively attribute a suicide solely to workplace influences. To achieve this, it would require a nuanced and comprehensive examination that may extend beyond the scope of a typical workplace investigation. For example, the PCBU may need to make enquiries with family and friends to determine whether notification is required, and this could exacerbate trauma and raise privacy concerns without any demonstrable benefit.

In WA, if a definitive workplace link to a suicide can be established, it should be reported in a way that is person-centric and trauma informed. This process often involves collaboration with the coronial team and external bodies to determine the cause of death. In turn, this may prompt the WA regulator to assess the workplace's systems, processes, and controls to ensure the workplace has taken reasonably practical measures to ensure safety. However, it is acknowledged that defining this link remains a challenge. For example, determining if someone has attempted suicide due to workplace-related stress can be intricate, and raises questions about how the coroner establishes a psychosocial link. Importantly, the coroner's process can sometimes take up to 18 months to establish the cause of death as suicide.

[17] Government of Western Australia. *Inquiry into mental health impacts of FIFO work arrangements*. 2015.
[18] Ibid 13.
[19] *Work Health and Safety (Mines) Regulations 2022* (WA). r.5.
[20] Ibid 17.
[21] Government of Western Australia. *Interpretive guideline incident notification*. February 2023.

Similarly, in WA, the death of a person rising out of the conduct of a business or undertaking at a workplace is a notifiable incident. However, SWA have broadened their presented option to capture any "other death of a person due to exposure to psychosocial hazards (e.g. heart attack from work stress)". CME has significant concerns as to how PCBUs would be able to identify a clear link to the workplace in these situations. For example, if a worker has a heart attack or other organ failure while in the workplace, it is improbable that the underlying condition causing the incident could be characterised as purely "work-related." Rather, the causal link will incorporate a range of factors including genetic predisposition, diet, lifestyle, previous medical history, level of social and economic advantage, and a number of other circumstances external to the work environment. The possibility of legal and financial liabilities arising from the reporting of conditions with only a tenuous connection to the work environment presents a material risk of concern to many employers in our industries.

CME acknowledges that the causation behind suicide and other deaths is cumulative and complex. While such incidents may occur at home or at work, the cause could be from home or work, or the interaction of both. Therefore, industry is not in a position to determine the work-relatedness of a suicide or other deaths, which would affect the timing of reporting as presented in the SWA options.

CME does not support both proposed amendments pertaining to suicide and other deaths, due to the significant legal and practical complexities without clear demonstrable benefits.

Chapter 7: Capturing workplace violence

CME's members have been clear in their commitment to eliminate any instance of sexual assault, sexual harassment or other behaviours that threaten people's personal and psychological safety at work. Workplace sexual harassment was brought into sharper focus following the release of the Respect@Work Report, which acknowledged that the Model WHS Act both imposes a duty to eliminate or manage hazards and defines risks to a worker's health to include psychosocial health, this legal duty also extends to sexual harassment.

From a WA perspective, concerning reports regarding instances of sexual assault and harassment were the focus of sustained media coverage, leading to the WA Parliament Inquiry into Sexual Harassment against Women in the FIFO Mining Industry (the Sexual Harassment Inquiry). CME and its member companies provided public support to the Sexual Harassment Inquiry, issuing a joint statement and press conference to affirm their commitment to be open and transparent in its desire to improve safety for women at operations around WA.

The management of workplace behaviours is a complex and multifaceted area, requiring a suite of controls to be implemented. The varying size and nature of resources sector operations - spanning exploration, construction, production and closure - means that there is no 'one-size-fits-all' approach to workplace behaviours. Taking a risk-based approach, workplaces can implement practical work, health and safety controls, including considerations across prevention, risk, mitigation, response and recovery to drive the adoption of best practice management of workplace behaviour-related hazards and risks.

Industry supports the intent toward reporting of events provided in this chapter, but the options presented by SWA hold significant legal and practical issues associated with implementation. Through industry and the WA Government's response to the Sexual Harassment Inquiry, awareness has been developed around taking a victim-centric approach to the reporting of workplace violence. Creating a regime where there are instances that require notification to the regulator against the wishes of the impacted person is not trauma-informed. CME urges SWA to consider the practical rollout of these changes and how safety regulators would respond to reported incidents. The current proposal may subject the impacted person to multiple processes and interviews.

CME notes that under the Mines Regulations, this item is already covered under the risk-based provision of being required to report any "workplace incident that could have caused serious harm to a person, plant or structure."[22]

CME notes that some areas captured under the option presented are criminal acts. As such, there is potential for overlap or duplication of police processes.

CME do not support the proposed options relating to workplace violence and considers the current regulatory regime appropriate, as it ensures that criminal matters are captured and investigated by the police.

[22] *Work Health and Safety (Mines) Regulations 2022* (WA). r.5.

Chapter 8: Periodic reporting of exposure to traumatic events

SWA propose amendments to the Model WHS Act to require periodic reporting 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. CME is concerned with the subjectivity associated with judging what may 'experienced as traumatic'. Under current reporting requirements, regulators would already be notified of notifiable fatalities, serious injuries or dangerous incidents that arise out of the conduct of the business or undertaken. While these incidents are notifiable due to the physical harm or risk, CME understands that the regulator would be able to interpret the information with a psychosocial lens, instead of introducing additional reporting requirements that duplicate and overlap with the existing framework.

CME understands that psychosocial risk management solutions need to address workplace violence and exposure to traumatic events. However, this area is already adequately captured by the ten-day incapacity reporting requirement. As discussed earlier in the submission, the Mines Regulations include incapacity reporting requirements, which has assisted PCBUs with their understanding of reporting psychosocial events. This information is bolstered by further guidance developed by DMIRS, including the Gendered Violence information sheets and the Incident Notification - Interpretive Guideline.

Through industry's response to both the FIFO Inquiry and the Sexual Harassment Inquiry, there is increasing awareness and understanding of the importance of engaging with qualified experts who are professionally equipped to make effective judgments around the effects of trauma and psychosocial harms. PCBUs are not qualified to deem an exposure as traumatic or not, and the presented option requires asking affected persons questions and creating scenarios where further re-traumatisation can occur, thereby undermining the natural course of healing. The subjective nature of this option creates further ambiguity – a worker experiencing an exposure as potentially traumatic is very individualised, and what counts as "traumatic" for one person may not be experienced as such by another.

CME do not support the proposed options relating to the reporting of exposure to traumatic events and considers this approach as not trauma-informed. CME considers these exposures are appropriately captured under the current incident reporting framework.

Chapter 9: Periodic reporting of bullying and harassment

SWA presents two options for consideration in improving the targeting of bullying and harassment behaviours in workplaces:

1. Unreasonable behaviours: Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints OR instances, arising out of the conduct of the business or undertaking of
   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

   [including sexual harassment or harassment of any other kind]

   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.

2. Bullying, sexual harassment and harassment on protected grounds: Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints OR instances of
   a) workplace bullying

      repeated, unreasonable behaviour towards a worker(s) or group of workers

   b) workplace sexual harassment of a worker(s)

      that that involves unwelcome sexual advances, unwelcome requests for sexual favours or unwelcome conduct of a sexual nature

   c) workplace harassment of a worker(s)

      because of protected characteristics (e.g. race, sex, gender, sexual orientation, age, disability)

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.

Option 1 takes a broad approach with reporting being triggered by references to the seriousness or potential impact of the behaviour, whereas Option 2 requires reporting of defined and specific types of behaviours (e.g. bullying, sexual harassment and harassment based on race, sex, gender, sexual orientation, age or disability).

The proposed options appear to lack a trauma-informed focus, as complaints may need to be notified to the regulator against an impacted person's wishes. Again, de-identifying the data does not counter privacy concerns because of the regulator's powers to intervene and request further information. This will also introduce a significant administrative and operational impact to support the collection, analysis and collation of the data required.[23]

The impact of periodic reporting on WHS outcomes is unclear. SWA propose that WHS regulators will have appropriate visibility of the prevalence of bullying and harassment in workplaces, which will inform targeted compliance and education campaigns. However, there are a number of sources of information that provide this visibility, including proactive inspections or activities, exiting reporting requirements, anonymous reporting requirements, and engagements with the PCBU or workforce. The proposed benefit of aggregated lagging data is unlikely to indicate to the regulator any preventative and corrective actions.

CME advocates for harmonising and reinforcing existing reporting requirements, including clear definitions, thresholds and timeframes to enable businesses that work across jurisdictions to report a single set of metrics. Outside of the above concerns, CME encourages that SWA consider current reporting requirements (Workplace Gender Equality Agency and compliance with the *Sex Discrimination Act 1984)* and alignment with existing definitions (*Fair Work Act 2009* and *Sex Discrimination Act 1984).*

CME does not support the proposed options relating to the periodic reporting of bullying and harassment and considers this approach as not trauma-informed. CME believes these incidents are appropriately captured under the current reporting framework.

Chapter 10: Long latency diseases – exposure to substances

No options are presented for decision in Chapter 10 of the Incident Notification Consultation. The intent of this section is to improve knowledge of exposure to hazardous substances in the workplace that cause long latency disease. This includes information on current practices and an invitation to provide feedback on how recording and reporting latent diseases should be approached.

CME members express strong support for a risk-based approach, as detailed earlier in this submission. Each company has its own subset of agents of concern, which depend on myriad factors, and consequently have their own tailored risk-based approaches and invest heavily to ensure best practice management of risks posed by occupational exposures. The WA legislative framework requires employers, in consultation with workers, to identify hazards, assess risks and implement practical controls to protect workers' health and safety.[24] As such, CME addresses the SWA consultation questions in Chapter 10 as follows:

Should exposure to hazardous substances in the workplace that cause latent diseases be recorded and reported?

CME recognises the range of national and jurisdictional initiatives underway to improve WHS with regards to airborne contaminants and hazardous chemicals that cause long latency disease, and have been contributing consistently to the numerous public consultation processes around this issue. For example, CME previously provided commentary towards the *Lung Foundation Australia NSPS (National Silicosis Prevention Strategy and accompanying NAP [National Action Plan])* consultation which specifically mentioned a national silicosis register. CME recommended that any aggregated trends or insights from reporting should be relayed to industry to provide a broader view of workplace safety trends which could help identify areas that require targeted interventions.

While aggregated data is valuable, it is important to exercise caution when reporting individual exceedances. Recording and reporting exposure incidents may raise privacy concerns and workers may be hesitant to report incidents or health issues related to exposure if they fear their personal information will be disclosed.

[23] *Model Work Health and Safety Bill 2023* (Safe Work Australia). s171(1)(d)(i).
[24] *Work Health and Safety Act* 2020 (WA). s49.

Consideration should also be given to how the data would be contextualised. Isolated data points may not provide the full context needed to assess the actual risk profile of a workplace. Without considering factors like exposure duration and frequency, it may lead to unfounded conclusions. Therefore, the accuracy of data can be compromised if incidents are not reported consistently or accurately, which can lead to skewed risk profiles and potentially ineffective safety measures.

Further, under the Mines Regulations, sites must prepare and implement a health management plan (HMP).[25] The HMP must identify and consider all health hazards, including occupational, that may have an adverse effect on the health or safety of workers. The plan must also provide details of the implemented control measures to manage associated risks. This approach empowers companies to report on matters that are specifically relevant to their operations.

CME is supportive of reporting requirements that prevent adverse health outcomes and are implemented in a way that is effective in both improving compliance and reducing risk. CME believe that Workplace Exposure Standard (WES) exceedance reporting may be better explored as part of air and health monitoring regulations, rather than under incident notification or periodic reporting requirements. For example, in WA, this is encompassed within the Safety Regulation System (SRS) framework which allows users to lodge documents and data with the Department electronically. This includes health and hygiene sampling results.

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?

CME members are currently required under the Mining Regulations to utilise both health and air monitoring as part of their HMP.[26] CME note that these substances should be subject to ongoing research by SWA with industry consultation, drawing on expertise in epidemiology, toxicology, and occupational hygiene to ensure accuracy, practicality, and risk-based categorisation.

The optimal measuring method for these substances will differ depending on the analyte of interest. This includes:

- Atmospheric sampling which measures airborne concentrations of various hazardous chemicals including gases, dusts, fumes and mists. Time-weighted average (TWA), peak and short-term exposure limits (STEL) measurements are submitted via SRS.
- Biological sampling tests for the presence of a hazardous chemical, its metabolites or other biochemical indicators in workers' biological materials, usually as a blood or urine test, to determine how much has entered the worker's body (exposure monitoring) or assess the physiological impact of exposure (health surveillance).

Significant improvements in the ability for real time sampling has been observed in recent years, which can produce more accurate and expedient insights into a worker's exposure. While some operations still rely on traditional time-weighted methods, industry notes a shift towards real-time monitoring which enables a more accurate and proactive approach to the management of hazardous substances in the workplace. To facilitate this transition, CME see benefit in exploring guidance or an information sheet. For example, the International Council on Mining and Metals (ICMM) has already provided guidance on real-time monitoring, which serves as a valuable resource to industry.

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?

Exceedances are captured via a combination of traditional time-weighted and real-time air monitoring systems. These exceedances are then reported to the workplace regulator (under the WA-based mining regulations) via SRS. CME understands that the regulator is exploring how this information could be used to drive research and development with respect to best practice. As mentioned previously, CME believes that consideration should be given to providing aggregated data and trends to industry, as opposed to isolated data samples. CME members posit that this approach could offer increased efficiency, enhanced scientific rigor, and greater informational value to both the PCBU and the regulator. Furthermore, it may serve as an impetus for the continuous improvement of exposure prevention practices across the sector.

[25] *Work Health and Safety (Mines) Regulations 2022* (WA). r.675EB.

[26] *Work Health and Safety (Mines) Regulations 2022* (WA). r.50; r.368.

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?

CME member industries are already required to do this under the Mines Regulations.[27] As noted above, each company/operation has its own subset of agents of concern that often extends beyond restricted carcinogens to any variety of hazardous chemicals and substances.[28] If additional requirements were implemented, the risk assessment should consider the toxicity of the contaminant based on the most up to date literature.

CME is supportive of reporting requirements that prevent adverse health outcomes and are implemented in a way that is effective in both improving compliance and reducing risk and believe this may be better explored as part of air and health monitoring regulations.

CME sees benefit in exploring guidance or an information sheet pertaining to on real-time monitoring, which could serve as a valuable resource to industry.

Chapter 11: Serious head injuries

The Incident Notification Review explored how serious head injuries are captured in the current reporting framework. The Incident Notification Consultation proposes that amending the Model WHS Act to include the immediate notification of serious head injuries to WHS regulators would improve WHS outcomes, noting that the current reporting framework applies the threshold of 'requiring immediate treatment'. SWA also propose extending this option to capture both 'serious head injuries' or 'suspected head injuries'. Alternative options include updating guidance material to explain what is meant by immediate treatment and capturing serious head injuries through incapacity periods.

CME notes that the data provided in the Incident Notification Review indicates that "93% of patients with a traumatic brain injury were hospitalised either the same day or the following day, with the average length of hospitalisation being 6.8 days". Medical treatment occurring within this time would likely be captured under the existing threshold of immediate treatment. The removal of the immediate treatment threshold introduces a level of subjectivity where, "the PCBU makes a determination that it is 'serious'." This subjectivity is further extended with the proposed inclusion of 'suspected head injury'.

Option 3 proposes that SWA updates guidance material to explain what is meant by 'immediate treatment' and how this applies to serious head injuries. Industry would be supportive of this approach, noting that the existing definition of 'serious injury or illness' as stipulated in the WHS Act is sufficiently clear and well-established.[29] Any proposed changes must be carefully evaluated to determine whether they should be enshrined in legislation or better suited to guidance materials.

CME welcomes the development of guidance concerning serious head injuries and would support a collaborative effort between industry and regulators to ensure that reporting requirements align with emerging scientific understanding and promote a safer workplace.

CME considers the current reporting regime already covers the reporting of serious head injuries and would support updating existing guidance regarding the definition of 'immediate treatment' as presented in Option 3.

Chapter 12: Other potential gaps in 'serious injury or illness'

SWA provides two options around addressing other potential gaps in the notification system concerning 'serious injury or illness.'

The first is "to require immediate notification of all work-related injuries and illnesses requiring treatment as an outpatient in an emergency department." CME notes that for industries operating in regional and remote areas, sometimes the only option for medical treatment is the hospital emergency department due to a lack of other available medical services in the area. This would therefore result in the reporting of injuries and conditions that may not fit the definition of "serious injury or illness."

The use of the emergency department by a worker doesn't necessarily indicate that an emergency event or condition has occurred. For example, the incident response for the removal of foreign bodies that have

[27] *Work Health and Safety (Mines) Regulations 2022* (WA). r.387 – 388.
[28] *Work Health and Safety (Mines) Regulations 2022* (WA). s10; s14.
[29] *Work Health and Safety Act* 2020 (WA). s36.

entered the eye may differ for regional operations. Companies may lack the necessary equipment or specialised expertise on-site to provide treatment requiring transport to the closest medical treatment facility, which would likely be a hospital for regional operations. These occurrences, more often than not, can be promptly and adequately managed in a hospital setting without necessitating admission. As a result, data collected under this item may not achieve the regulator's objective of more comprehensively capturing serious work-related physical injuries and illnesses.

The second option under this chapter is "to specifically capture 'serious bone fractures' and 'serious crush injuries' requiring immediate treatment." The Mines Regulations refer to incidents necessitating medical treatment and encompasses the "suturing of a wound", "treatment of fractures", "treatment of bruises by drainage of blood" and "treatment of second- and third-degree burns."[30] Therefore, bone fractures requiring medical treatment would already be covered by these provisions. One can assume that this would extend to include a "serious" bone fracture or crush injury. CME understands that the SWA consultation paper indicates the extent to which such injuries are captured under current notification provisions around "loss of bodily function" and requirement for immediate treatment as a hospital inpatient (for bone fractures), and schedules concerning "serious laceration", amputation, and separation of skin from underlying tissue for crush injuries.[31]

The proposal to enhance notification coverage requires PCBUs to notify the regulator of all treatment provided as an outpatient in an emergency department aligns with the Mines Regulations, which mandate reporting on incidents "that results in illness or injury that requires medical treatment."[32] Filtering data through the criterion of presentation at an emergency department are addressed above, and are unlikely to improve the capture of work-related injuries which is the objective of this review of notification provisions.

Therefore, CME requests further clarity on the definition of what constitutes 'serious bone fractures' and 'serious crush injuries' before changes are considered. It was also argued that any changes and clarification should be included in the legislation, rather than in guidance material which creates further complexity in interpretation and application.

Beyond this, the requirement to notify of all incidents resulting medical treatment is consistent with the mining health and safety regulations currently followed in WA.

CME provides support for Option 2 - including further clarifying detail on 'serious bone fractures' and 'serious crush injuries' in the legislation to support targeted reporting rather than presentation as an outpatient at an emergency department.

Chapter 13: Capturing incidents involving large mobile plant

Mobile and fixed plant equipment used in mining, resources and construction operations can potentially expose workers to lethal hazardous risks if not adequately controlled. To adequately address and manage the risks, a precautionary approach is required from design, operation through to the maintenance of plant equipment, by all persons involved, and at all stages of the production cycle.[33]

The Model WHS Act already capture this condition of risk under the listed definitions of *dangerous incident*, providing the basis for statistical data and reporting on significant and critical events across industries.[34] The Mines Regulations reinforce these provisions in their explication of "reportable incidents": "damage to any plant, building or structure so as to impede its safe operations"; "damage to, or failure of, any part of a winding system, mine shaft conveyance, mine shaft or shaft plant"; "control is lost over a vehicle or other plant, or it unintentionally activates, moves or fails to stop."[35] CME is therefore supportive of the proposed option, and refers to the Mines Regulations as a potential model in this process.

CME supports including provisions for incidents relating to mobile plant equipment, as per the definitions of reportable dangerous incidents provided in the WA mining regulations.

Chapter 14: Capturing the fall of a person

CME acknowledges that there is a gap in the current reporting framework concerning the capture of falling risks and incidents. Indeed, it was mentioned that the Model WHS Act currently does not mention people but

[30] *Work Health and Safety (Mines) Regulations 2022* (WA). r.5.
[31] Safe Work Australia. *Consultation on options to improve WHS incident notification.* July 2023.
[32] *Work Health and Safety (Mines) Regulations 2022* (WA). r.5.
[33] Department of Mining, Industry Regulation and Safety. *Safety and Health Snapshot for the Western Australian minerals sector*, May 2020.
[34] Work Health and Safety Act 2020 (WA). s37.
[35] *Work Health and Safety (Mines) Regulations 2022* (WA). r.5.

rather "the fall or release from a height of any plant, substance or thing."[36] However, the requirement for a PCBU to report a fall of a person, which exposes the person to a risk of death or serious injury (without a notifiable injury occurring) may lead to a large volume of reports being processed unless the definition is clearly considered.

The Mines Regulations include a section (Part 4.4) relating to falls which outline provisions for managing the risks concerned with the potential for falling incidents, use of fall arrest systems and emergency and rescue procedures.[37] However, there is currently no provision for guidance on the reporting of fall incidents, beyond the generic requirement to report incidents or injuries that require medical treatment, which may have occurred as a result of a falling incident.

CME notes that the current national reporting framework around notifiable and dangerous incidents lacks a clearly defined threshold regarding the "dangerousness" of falls. While there is support to update the reporting framework to address this gap, CME cautions that there must be further consultation and careful consideration to the wording to ensure that any changes do not introduce further confusion and complexity.

CME supports updating reporting requirements to capture fall incidents, but requires further consultation on the wording to ensure that it adequately captures intended incidents.

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

There are several items addressed in this chapter to further strengthen PCBU understanding of notification requirements and deliver more reliable incident notification data. Each of these items will be addressed separately in this section. Where CME has provided support for the proposed options presented by SWA, it must be noted that further consultation will be required to ensure that the gaps are adequately addressed, and that the guidance information developed does not introduce further confusion or complexity.

Causal link principle

SWA proposes that there is a gap regarding the establishment of a causal link to the workplace in the reporting of notifiable incidents. CME agrees there is a lack of guidance on what counts as valid and verifiable evidence of a causal link to PCBU conduct, and would welcome further clarification on this point. The intent of this item - of further clarifying this principle to reduce the possibility and frequency of PCBUs notifying on incidents unrelated to the work organisation - is supported by CME but requires further guidance on a formal process for documenting the link of an incident, illness, or injury to the conduct of a business or undertaking.

WorkCover WA provides some guidance on this process, but this is primarily in relation to claims for worker's compensation, whereby the work-relatedness of a condition/injury must be established by a doctor/medical professional for a claim to be validated. In the case of workplace incidents that may not be the subject of worker's compensation claims, there is not necessarily a process for rigorously establishing the work-relatedness of an injury or illness. In some cases, particularly if the affected person is not a direct employee of the company concerned - i.e., a contractor or labour hire - it may be difficult to implement a process whereby sufficient information could be gathered on an individual's circumstances to fully establish the work-relatedness or otherwise of an injury or illness.

It was also argued that the counterexample provided in Chapter 6 of the Incident Notification Consultation — of a customer who has a heart attack in a workplace and whose condition is not attributable to the conduct of the workplace-is of limited usefulness for non-customer facing industries.

Therefore, while this point is supported in principle, there needs to be further guidance and resources provided on how to document the evidence of a workplace link outside of the worker's compensation claim context.

CME supports creation of an agreed formal mechanism for establishing the work-relatedness of an illness, injury, or condition.

Objective test

CME is supportive of this item of an objective criterion "requiring a person to have treatment of a kind specific in paragraphs (a)-(d)" provided there is a clearly defined and formalised process for making this determination of the requirement for of treatment, as referred to in the Model WHS Act:

In this Part, *serious injury or illness* of a person means an injury or illness requiring the person to have:

[36] *Model Work Health and Safety Bill 2023* (Safe Work Australia). s37.
[37] *Work Health and Safety (Mines) Regulations 2022 (WA). Part 4.4.*

- immediate treatment as an in-patient in a hospital; or
- immediate treatment for:
- the amputation of any part of his or her body; or
- a serious head injury; or
- a serious eye injury; or
- a serious burn; or
- the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
- a spinal injury; or
- the loss of a bodily function; or
- serious lacerations; or
- medical treatment within 48 hours of exposure to a substance, and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.[38]

Similar to the causal link process and establishment of a traumatic experience, this determination would need to be made by an appropriately qualified and competent professional, in this case a doctor or other medical professional. CME provides in-principle support for this item with the caveat that further guidance and resources need to be developed to define and formalise the process for the objective test so that it can be effectively implemented.

CME supports development of guidance material for implementing the objective test across all sectors and jurisdictions.

Immediate treatment

CME agrees that there was a need for further guidance and clarification around the definition of "immediate treatment." In the case of a clear causative event resulting in an acute injury the definition of treatment as "immediate" is straightforward. However, in the case of a cumulative-type injury that develops over time but nevertheless results in a treatable injury the "immediacy" of treatment might be less demonstrable.

It may be more useful to use diagnosis as the basis of reportability, not the timing or schedule around the delivery of treatment. In addition, there are difficulties with the application of immediate treatment in remote and regional operational contexts where there are significant barriers to accessing medical treatment and therefore significant delays in reporting related to treatment. It was also argued that there was sometimes confusion around responsibility for reporting in the case of incidents/injuries involving contractors and labour hire employees. Further clarity and guidance around these issues would be welcomed by the CME and its members.

CME supports including diagnosis (the objective test) as the basis of reportability rather than immediacy of treatment.

Immediate treatment as an inpatient in a hospital

The issues around reporting upon incidents requiring hospital treatment have been outlined earlier in this submission. For many mineral and resource operations in regional areas, sometimes the only option for medical treatment is a regional hospital, potentially resulting in reporting of non-serious injuries and conditions. Also, sometimes workers who have received considerable injuries may be taken straight to a specialist rather than to a hospital.

As a result, data collected under this item would not achieve the regulator's objective of more comprehensively capturing serious work-related physical injuries and illnesses. Therefore, this option was not supported by CME members.

CME supports including diagnosis (the objective test) as the basis of reportability rather than location of treatment.

Improving understanding of 'loss of bodily function'

CME members are generally supportive of the intent to improve understanding of the concept of loss of bodily function as it applies to incident notification.

A key issue raised by members was the distinction between temporary and permanent loss of a bodily function. Some members indicated that they would report only permanent loss of function through this category of the Act, which takes time to determine through testing and diagnosis. Other cases would be covered by generic medical treatment reporting. It was also noted that different industries would have

[38] *Model Work Health and Safety Bill 2023* (Safe Work Australia), s36

different priorities in terms of loss of function, hearing and vision being the main affected faculties mentioned in CME discussions on this point.

It was suggested that further definition and clarification be provided on the definition of loss of bodily function around the temporary vs permanent distinction, and focusing on those notifiable injuries and illnesses that have an identifiable work-related link. For instance, loss of consciousness and organ failure may be due to a range of preconditions external to the work environment and therefore not appropriate to report under the WHS notification provisions.

CME supports including diagnosis (establishing permanence) and the work-relatedness test as the basis for reportability of "loss of bodily function."

Medical treatment for exposure to substances

SWA propose to amend the definition of medical treatment "to capture the health professionals (in addition to doctors) who provide urgent treatment following exposure to a substance."

The issues surrounding the definition and delivery of "medical treatment" have been noted above in relation to illnesses and injuries in general ("Immediate treatment;" "Immediate treatment as an inpatient in a hospital"). From a safety management perspective, what matters in the case of exposure to substances is the seriousness of the outcome and diagnosis.

However, without clear guidance on what the broadened definition would capture, it is unclear whether this approach would appropriately address the issue presented by SWA. While it is recognised that this could in some instances reduce costs and claim duration by allowing on-site medical staff to manage treatment and issue certificates, the provision also poses a risk to employer oversight of the process. SWA proposes utilising a more inclusive definition of "health practitioner" to include a broader range of auxiliary/allied health workers in the definition of "medical treatment." CME cautions that SWA consider the broad scope of professions that fall under this definition, including physiotherapists, pharmacist, and chiropractors, as examples.

Given the issues and barriers involved in obtaining access to medical services in many regional and remote mining contexts, CME would provide support for the idea of broadening the definition of medical treatment to include paramedics and registered nurses. However, the broadening of this definition would require significant consultation and consideration of broader impacts (for example, interactions with workers' compensation). CME considers any changes must ensure the integrity of the regime is maintained and recognises the critical role played by medical practitioners with the appropriate qualifications in professional monitoring, service capability, and referral capacity to accurately diagnose and treat injuries and illnesses.

CME recommends further consultation before broadening the definition of medical treatment to include Paramedics, Registered Nurses and Aboriginal and Torres Strait Islander Health Workers and Practitioners.

Exposure to human blood and body substances

CME recognises that exposures to human blood and body substances is not generally considered a notification requirement as an exposure that requires medical treatment within 48 hrs. There are certain contexts within the WA resources sector where employees are routinely exposed to blood (cleaners, nurses etc) and yet there is not the impetus or tendency to report on it.

Therefore, further guidance and clarification for PCBUs on where notification is required (see 36c) would be welcomed by CME members. It would be important to consult with industry to ensure that roles that may have higher exposure (e.g. medics) are considered.

CME supports improved guidance to PCBUs on exposures to bodily substances requiring notification.

Infections and zoonoses

SWA proposes that there exists a general lack of awareness of requirements to report infections under r.699 of the WA Mining Regulations.[39] CME understands that there is a stronger awareness in WA of the reporting requirements for infectious diseases under the *Public Health Act 2016*, but less familiarity of the reporting process with the WHS regulator for these events. In this way, there appears to be a duplication of reporting requirements that could be streamlined through information sharing between the relevant government departments.

CME understands that through our response to COVID-19, there has been increased communication between the safety regulator and health department on these issues. For example, when Japanese encephalitis virus

[39] *Work Health and Safety (Mines) Regulations 2022* (WA). r.699.

(JEV) was detected in the regional WA. CME was invited to participate in regular meetings as an industry representative, alongside representatives from the Public Health Unit within the WA Department of Health. The primary purpose of these meetings was to provide public health updates as well as intended next steps to ensure regular the dissemination of pertinent information. The continued communication between these departments has reduced the need for duplicated infection reports. Further information and consultation on this guidance may address any overlapping reporting requirements,

CME supports improved guidance to PCBUs on notification requirements for infections as outlined in the model WHS Regulations (reg 699), with consideration to the duplication of reporting requirements to relevant health agencies (for example, the WA Department of Health).

Dangerous incident provisions – reducing complexity and improving PCBU understanding

The SWA Consultation paper contends the current definition of a "dangerous incident" in the Model WHS Act is complex and unclear: "an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure" to a series of prescribed events. There is then a series of examples of incident types which encompass the spectrum of what counts as a "dangerous incident."

Subject to broader consultation, CME is supportive of the option to amend the guidance material and simplify the wording of the definition around dangerous incidents, which currently are regarded as unnecessarily obtuse.[40]

CME supports amending and simplifying the definition of a dangerous incident to reduce complexity for duty holders.

Improving the electric shock provision

CME is supportive of amending and supplementing the guidance material relating to electric shocks. In a WA context, the Incident Notification - Interpretive Guideline[41] addresses this gap and provides that shocks due to static electricity and low voltage equipment should not be reportable. CME commends WorkSafe WA for taking a proactive approach in addressing this gap ahead of the Incident Notification Review.

The Incident Notification Consultation recognises a need for similar clarity of definition in the national provisions, providing a clear standard for reporting electric shocks that can be confidently utilised by PCBUs.

CME supports amending the guidance material to better explain the types of incidents involving electric shock and electrical hazards that require notification and recommends that SWA consider the language used by WorkSafe WA in the WA Incident Notification – Interpretive Guideline.

Duty to notify and site preservation requirements

CME is broadly supportive of this item but believes that the current regulations already sufficiently address site preservation. It is understood that the requirements for site preservation vary depending on incident, and are primarily applied in acute incidents, rather than cumulative injuries and conditions that occur over a longer period. Additionally, there is redundancy in reporting between operators and contractors, with both entities currently being required to report on the same incident, leading to unnecessary duplication in reporting.

CME agrees that guidance and clarification providing on distinguishing between acute and cumulative incidents and addressing the issue of redundant reporting, could be useful to industry. The development of this guidance should be informed by stakeholder consultation.

CME supports the development of guidance around duties to notify and site preservation requirements in relation to acute vs cumulative incidents and operator/contractor duplication. However, CME does not consider this to be a priority activity for SWA.

Conclusion

CME welcomes the opportunity to provide input into this review, and we look forward to ongoing engagement with SWA throughout the process.

[40] *Model Work Health and Safety Bill 2023* (Safe Work Australia). ss37.

[41] Ibid 17.

If you have any further queries regarding the above matters, please contact Laila Nowell, Manager – Health Safety and People.

Authorised by	Position	Date	Signed
Rebecca Tomkinson	Chief Executive Officer	6 October 2023	
Document reference	Document220		