

PUBLIC COMMENT

Consultation on WHS incident notification

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- defamatory material
- views or information identifying parties involved in hearings or inquests which are currently in progress, and
- specific or graphic details of cases involving suicide and attempted suicide, workplace violence, sexual assault, exposure to trauma, and bullying and harassment that may cause distress to other readers.

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Your details and background

Name or organisation

Australian Nursing and Midwifery Federation

General feedback

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

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 322,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF welcomes the opportunity to provide feedback to Safe Work Australia concerning Consultation on WHS Incident Notification. The ANMF believes this is important consultation that will hopefully lead to strengthened WHS laws around Australia.

The New South Wales Branch of the ANMF operates in conjunction with the New South Wales Nurses and Midwives' Association (NSWNMA). The ANMF submission should be read in conjunction with that of the NSWNMA. The ANMF supports its contents and recommendations. In addition, the ANMF supports the submission and recommendations of the ACTU unless otherwise stated.

Like the NSWNMA, the ANMF wants to highlight that the healthcare and social assistance sector has the largest number of serious injuries of any industry but is underrepresented in terms of regulator enforcement activity. Part of the reason for this is that many of the serious injuries are currently not notifiable under section 38 of the model WHS Act, despite causing considerable harm to our members.

The ANMF is very supportive of changes to increase the prominence of the hazards present in the environments where our members work. These are currently under recognised resulting in inadequate risk control responses from PCBUs (and other duty holders) and a lack of compliance activity by regulators.

Chapter 5 – Incapacity period

1	Amend the model WHS Act to require periodic reporting (six monthly) of periods of incapacity from normal work for ten or more consecutive days due to a psychological or physical injury, illness or harm arising out of the conduct of the business or undertaking
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Do you support the assessment of current gaps and impacts of addressing those gaps? Please provide any supporting information and evidence.

The ANMF believes there are clearly gaps as work-related psychological injuries or illnesses are rarely picked up under current reporting requirements.

The ANMF refers to and supports the submission of the NSWNMA for specific examples and evidence.

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

The ANMF believes the proposed option is a good starting point.

The ANMF is concerned that the proposal could motivate a PCBU to use an investigation as a mechanism to determine work relatedness (similar to workers' compensation law), as opposed to identifying risks and assessing controls.

Consideration should be given to the following to improve the proposed option:

1. Reporting be done more frequently (e.g. quarterly)
2. A presumption that all absences are work-related unless the PCBU can reasonably satisfy itself that this is not the case.
3. The number of days requiring reporting be reduced to 5 or more consecutive days.

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.

The introduction of reporting relating to periods of incapacity for work around Australia would be very helpful for ANMF members. It would provide for increased awareness, surveillance and understanding of the issues causing injuries to healthcare workers.

Chapter 6 – Attempted suicide, suicide and other deaths

Proposed options

Suicide or other death due to work-related psychological harm

Option number	Description
1 Suicide and other deaths	Amend the guidance material to clarify that the 'death of a person' (s 35(a)) captures: <ul style="list-style-type: none">• suicide of a person due to psychological harm arising out of the conduct of the business or undertaking• other death of a person due to exposure to psychosocial hazards (e.g. heart attack from work stress) arising out of the conduct of the business or undertaking• suicide of a person at a workplace where there is an identified risk of suicide in the workplace.
2 (Optional add-on) Suicide of a worker	Amend the definition of notifiable incident (s 35) in the model WHS Act to specifically capture: <ul style="list-style-type: none">• the suicide of a worker, whether or not the suicide arose out of the conduct of the business or undertaking.

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

Similar to the NSWNMA, the ANMF is particularly concerned about the lack of regulatory oversight and awareness of workplace suicide.

The ANMF is sadly aware of members who have died by suicide in circumstances relating to their workplaces and many more attempted suicides. These occurrences are largely not being reported to the relevant regulator or where they are reported, the regulator does not believe it has jurisdiction so there is no follow-up.

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

The ANMF supports Option 2. It is not appropriate for PCBUs to be trying to determine the relevant cause of a suicide or attempted suicide.

The ANMF refers to the case studies of the NSWNMA in support of Option 2. In addition, below is a case study from the QNMU Branch of the ANMF which is directly relevant as to why the ANMF supports Option 2.

Case study 1

[Redacted text block containing multiple lines of blacked-out content]

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.

The ANMF’s biggest stakeholders are our members. The impact of implementing Option 2 would likely be a significant cultural shift in how health care PCBUs approach suicide and the issue of psychosocial hazards in the workplace. It would go a long way to ensuring that the issue has prominence so that resources can be made available to address this issue.

¹ Queensland Nurses and Midwives’ Union of Employees

Chapter 7 - Capturing workplace violence

Options

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

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

There are enormous gaps in the current regulatory environment concerning workplace violence. For example, at present, an individual could walk into an emergency department with a loaded gun and threaten to kill workers and this would not meet any of the criteria under "dangerous incidents" including "near misses".

ANMF members are strangled, spat-on, choked, head-butted, punched and threatened with infected sharps waste such as needles. Many of these incidents may also not meet the current criteria under serious injury or illness. The notifiable incidents covered currently by WHS laws focus very heavily on physical hazards and there needs to be a move towards ensuring that psychosocial hazards are notifiable also.

Of all the topics to be addressed in this submission, workplace violence is the most serious for ANMF members. ANMF's branches have taken various steps to address workplace violence in the workplace:

1. The Victorian Branch has embedded its 10-point plan to address workplace violence into its main public sector enterprise agreement.²
2. The NSW Branch, in conjunction with NSWNMA has done detailed research on this topic to inform its decision making. The *Pich Report*³ is one such example which has been used by SWA in its consultation paper.
3. The SA Branch of the ANMF has implemented its own 10-point plan, based on the Victorian Branch's model, into their public sector enterprise agreement.⁴

The gaps in capturing workplace violence mean that most instances of workplace violence are not reported to government agencies, and are 'accepted' as part of the job. In the *Pich Report*, the top two factors that influenced the reporting of episodes of violence were:

- Don't expect anything to change in the long-term (56%)
- It is an accepted/expected part of the job (41%)⁵

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

The ANMF supports the immediate notification of serious workplace violence (Option 1). The ANMF does **not** support the Optional Add-On of alternative reporting arrangements for certain PCBUs.

In addition, the ANMF believes "spat-on" should be included in the definition of "serious physical assault". Such behaviour is a clear risk to the health and safety of workers, which was made very apparent during the COVID-19 pandemic.

The current incident notification regime in the model WHS Act does not provide parameters around the reporting of occupational violence that align with the realities of work in the health and social assistance industries.

The *Pich Report* made it clear that nurses, midwives and carers do not feel supported in reporting instances of workplace violence. Allowing PCBUs such as aged care facilities and health services to report incidents under a different set of arrangements would only entrench the perception that violence in these settings is somehow more acceptable.

Unfortunately, ANMF members interact with violent and aggressive people. This is particularly the case in areas such as mental health units and emergency departments of public hospitals. Allowing PCBUs in health to delay reporting violence in the workplace will put nurses, midwives and carers at risk of further harm. One example to highlight this is provided in a QNMU submission in 2017.⁶ It details how the current laws failed to capture occupational violence over an extended period of time.

² *Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2020-2024*, clause 103 'Occupational Violence and Aggression Prevention and Management'

³ J Pich et. al., *Violence in nursing and midwifery in NSW: Study report* (2019)

⁴ [ANMF SA Branch website](#)

⁵ J Pich, *op. cit.*, p 57

⁶ QNMU, [Submission to the Queensland Government's Finance and Administration Committee](#) (September 2017)

Case Study 2 - Mental health unit

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Many of the injuries sustained by ANMF members that result in significant time away from the workplace are not required to be reported as they do not need immediate admission to hospital and are not considered a serious injury or illness under s36 of the model WHS Act.

ANMF does not believe that health care workers should have lesser rights merely because they work in a place where occupational violence may be more common. **The ANMF completely rejects the Optional Add-On of alternative reporting arrangements for certain PCBU.**

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.

As Case study 2 demonstrates, long-term benefits of the new reporting regime will hopefully be more vigilance by PCBU to reduce and eliminate workplace violence. This will lead to less injuries being suffered by nurses, midwives and carers. It will also hopefully lead to fewer workers' compensation claims.

Specific question for this chapter

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?

The definition of a “serious physical assault” should including where a worker or other person in the workplace is spat on. Excluding spitting will be an obvious loophole for PCBUs in the health sector, who are well aware of the serious risks this behaviour poses to the health and safety of workers.

Chapter 8 - Periodic reporting of exposure to traumatic events

Options

Option number	Description
1	Amend the model WHS Act to require periodic reporting (six monthly) to the WHS regulator of instances where workers, or other persons at the workplace, are exposed to serious injuries, fatalities, instances of abuse or neglect that are likely to be experienced as traumatic by the worker or other person , where the exposure arises out of the conduct of the business or undertaking.
Optional add-on	Assess the need for WHS regulators to have the ability to approve alternative reporting arrangements for certain PCBUs with specific conditions.

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

The ANMF acknowledges that some traumatic events are inevitable in the healthcare and aged care settings. However, the consequences of such exposures is not inevitable. PCBUs must ensure they implement appropriate risk control measures to minimise the risk to workers.

The ANMF refers to the detailed submission of the NSWNMA and supports it.

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

The ANMF supports periodic reporting when workers 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.

Like the NSWNMA, the ANMF has substantial concerns regarding the optional add-on. The ANMF believes it will give the impression that PCBUs in the healthcare and aged care sectors are not required to manage these risks.

The ANMF supports the NSWNMA proposal: If any alternative reporting arrangements are to be made, certain thresholds must be set e.g.

- Any arrangements entered into must be agreed with relevant unions;
- PCBUs must have clear documented processes for recording and managing risks arising from exposure to traumatic events; and
- PCBUs must have clear evidence of consultative arrangements with workers/HSRs.

The ANMF supports the commentary in the SWA paper regarding site preservation.

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.

Periodic reporting of exposure to traumatic events would substantially increase awareness about the topic and make it clear that it is a WHS issue that needs to be managed by PCBU's.

Chapter 9 - Periodic reporting of bullying and harassment

Options

Option	Description
1 Unreasonable behaviours	<p>Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints OR instances, arising out of the conduct of the business or undertaking</p> <p>Of</p> <ul style="list-style-type: none"> a) repeated and unreasonable behaviour (bullying) towards a worker or group of workers, or b) unreasonable behaviour towards a worker(s) that a reasonable person would consider is abusive, aggressive, offensive, humiliating, intimidating, victimising or threatening <p><i>[including sexual harassment or harassment of any other kind]</i></p> <p>where the behaviour may reasonably be considered to have occurred (excluding vexatious or frivolous claims), and that exposes a worker(s) to a risk to their health and safety.</p>
2 Bullying; sexual harassment and harassment on protected grounds	<p>Amend the model WHS Act to include a duty to periodically report (six-monthly, de-identified data) to the WHS regulator on complaints OR instances</p> <p>Of</p> <ul style="list-style-type: none"> a) workplace bullying <i>repeated, unreasonable behaviour towards a worker(s) or group of workers</i> b) workplace sexual harassment of a worker(s) <i>that that involves unwelcome sexual advances, unwelcome requests for sexual favours or unwelcome conduct of a sexual nature</i> c) workplace harassment of a worker(s) <i>because of protected characteristics (e.g. race, sex, gender, sexual orientation, age, disability)</i> <p>where the behaviour may reasonably be considered to have occurred (excluding vexatious or frivolous claims), and that exposes a worker(s) to a risk to their health and safety.</p>

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

The ANMF broadly supports the assessment of current gaps and impacts of addressing those gaps.

A 2012 survey of registered nurses and midwives in Victoria found that 52% of them had witnessed some type of bullying behaviour.⁷ A 2022 study found that 61% of Australian perioperative nurses were exposed to workplace bullying.⁸

The increasing presence of bullying in Australia is reflected in recent Nursing and Midwifery Board of Australia (NMBA) policies. The NMBA published new Codes of Conduct for nurses and midwives⁹, effective from 1 March 2018. These have a specific section on bullying, clearly stating that it is not acceptable or tolerated. These codes are applicable to the vast majority of ANMF membership.

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

The ANMF supports Option 1 as it is a broader approach than bullying or harassment being linked to a breach of discrimination law. Similar to the ACTU, the ANMF suggests that (b) of Option 1 should be split and the reference to sexual harassment be a separate new point (c). The new wording for Option 1 should read as follows:

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; or*
- c) workplace sexual harassment of a worker(s), which may involve but is not limited to unwelcome sexual advances, unwelcome requests for sexual favours or unwelcome conduct of a sexual nature.*

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.

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.

Reporting of this bullying and harassment will enable ANMF branches to provide advice to members on the importance of reporting complaints to their employer. It will clearly benefit members as it will in the long-term likely lead to better regulator coordination of enforcement activities.

⁷ <https://doi.org/10.1016/j.ijnurstu.2012.06.007>

⁸ <https://doi.org/10.1111/ionm.13437>

⁹ [NMBA Professional standards](#)

Chapter 10 - Long latency diseases – exposure to substances

The ANMF refers to the detailed submission of the NSWNMA on this topic and supports its contents and recommendations.

Chapter 11 – Serious head injuries

Options

Option	Description
1	Amend the model WHS Act (s 36) to capture 'serious head injuries' (without applying the threshold of requiring 'immediate treatment').
2	Amend the model WHS Act (s 36) to capture ' <u>suspected</u> serious head injuries' requiring immediate treatment.
3	Address this potential gap through other options, including: <ul style="list-style-type: none">• updating the guidance material to explain what is meant by 'immediate treatment' and how this applies to serious head injuries (refer Chapter 15), and• capturing serious head injuries through an incapacity period (Chapter 5).

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

The ANMF supports the assessment of current gaps. Many serious head injuries are not currently reported due to different interpretations about what constitutes a serious head injury as well as what constitutes "immediate treatment".

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

Similar to the ACTU and the NSWNMA, the ANMF supports an option that includes both Option 1 and 2 i.e. a reporting model that covers the field.

These changes would make it more likely that serious head injuries sustained by nurses, midwives and carers would be reported.

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.

The practical impact of this change for ANMF members is improved regulator visibility and understanding of the serious head injuries being sustained by workers in the healthcare and aged care sectors.

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

Options

Option	Description
1	Amend the model WHS Act (s 36) to require immediate notification of all work-related injuries and illnesses requiring treatment as an outpatient in an emergency department.
2	Amend the model WHS Act (s 36(b)) to specifically capture 'serious bone fractures' and 'serious crush injuries' requiring immediate treatment.

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

The ANMF broadly supports the assessment of current gaps and impacts of addressing those gaps.

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

Similar to the ACTU and NSWNMA, the ANMF supports option 1.

The ANMF acknowledges that this may lead to more notifications however guidance material could be produced to clarify the obligations.

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.

The practical effect will be improved oversight of issues affecting nurses, midwives and carers.