Australian Government

Comcare

GUIDE TO WORK HEALTH AND SAFETY INCIDENT NOTIFICATION

A guide on notifying Comcare of 'notifiable incidents' under the Commonwealth *Work Health and Safety Act 2011*

INCIDENT NOTIFICATION SUMMARY

HOW TO NOTIFY

To notify Comcare of a notifiable incident under the Commonwealth *Work Health and Safety Act 2011*:

- telephone 1300 366 979, or
- complete and submit the online incident notification form, or
- download and complete the incident notification form and email it to notify@comcare.gov.au.

You can access the online incident notification form or download the print version of the form at the Comcare website: www.comcare.gov.au.

If you telephone 1300 366 979 outside Comcare's office hours, you can choose to be redirected to an on-call inspector from the relevant Comcare office.

WHAT IS A NOTIFIABLE INCIDENT

A notifiable incident means:

- the death of a person, or
- a serious injury or illness of a person, or
- a dangerous incident.

DUTY TO NOTIFY OF NOTIFIABLE INCIDENTS

A person who conducts a business or undertaking must ensure that Comcare is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred. The notification must be given by the fastest possible means.

If you are in any doubt about whether the duty to notify applies in a particular case, the best course of action is to notify Comcare of the incident to ensure that you have complied with your statutory obligations.

DUTY TO PRESERVE INCIDENT SITES

The person with management or control of a workplace at which a notifiable incident has occurred must ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

If you are unsure whether an incident site needs to be preserved, please telephone Comcare on 1300 366 979.

INTRODUCTION

LEGISLATIVE FRAMEWORK

The Commonwealth *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulations 2011* (WHS Regulations) implement model work health and safety laws that have been adopted in most of the Australian states and territories.

The object of the WHS Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. The WHS Act aims to protect workers against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work, with a view to attaining the highest level of protection as is reasonably practicable.

An important part of the framework is incident notification.

Section 35 of the WHS Act defines a category of incidents called 'notifiable incidents'.

Section 38 requires a person who conducts a business or undertaking (PCBU) to ensure that Comcare is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the PCBU's business or undertaking has occurred. The notification must be given by the fastest possible means. The PCBU is required to maintain certain records about notifiable incidents.

Section 39 deals with the related topic of preservation of incident sites. Section 39 imposes a duty on the person with management or control of a workplace at which a notifiable incident has occurred. Subject to certain exceptions, that person must ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

The purpose of this guide is to help persons covered by the WHS Act to meet their duties to notify Comcare of notifiable incidents and to preserve incident sites.

DEFINED TERMS

The following terms are defined in the WHS Act. They are used in this guide according to their definitions.

Term	Defined in …
Dangerous incident	Section 37
Medical treatment	Section 4
Notifiable incident	Section 35
Person conducting business or undertaking (PCBU)	Section 5
Persons with management or control of a workplace	Section 20
Plant	Section 4
Serious injury or illness	Section 36
Structure	Section 4
Substance	Section 4
Worker	Section 7
Workplace	Section 8

WHAT IS A NOTIFIABLE INCIDENT?

THREE TYPES OF NOTIFIABLE INCIDENT

Section 35 of the WHS Act defines a 'notifiable incident' as:

> the death of a person, or

> the serious injury or illness of a person, or

> a dangerous incident.

The WHS Act does not elaborate on the meaning of 'death'. However, there are definitions of 'serious injury or illness' in section 36 and 'dangerous incident' in section 37.

WHAT IS A SERIOUS INJURY OR ILLNESS?

Section 36 of the WHS Act provides that a serious injury or illness of a person is an injury or illness requiring the person to have certain types of treatment.

The following table sets out the relevant types of treatment and gives examples of what is and is not included.[1]

Type of treatment	Includes …	Does not include …
Immediate treatment as an in-patient in a hospital	Admission into a hospital as an in-patient for any duration, even if the stay is not overnight or longer	Out-patient treatment provided by the emergency section of a hospital (i.e. not requiring admission as an in-patient) Admission for corrective surgery which does not immediately follow the injury (e.g. to fix a fractured nose)
Immediate treatment for the amputation of any part of the body	Amputation of a limb such as arm or leg, body part such as hand, foot or the tip of a finger, toe, nose or ear	
Immediate treatment for a serious head injury	Fractured skull, loss of consciousness, blood clot or bleeding in the brain, damage to the skull to the extent that it is likely to affect organ/face function Head injuries resulting in temporary or permanent amnesia	A bump to the head resulting in a minor contusion or headache
Immediate treatment for a serious eye injury	Injury that results in or is likely to result in the loss of the eye or total or partial loss of vision Injury that involves an object penetrating the eye (for example metal fragment, wood chip) Exposure of the eye to a substance which poses a risk of serious eye damage	Eye exposure to a substance that merely causes irritation
Immediate treatment for a serious burn	A burn requiring intensive care or critical care which could require compression garment or a skin graft	A burn that merely requires washing the wound and applying a dressing
Immediate treatment for the separation of skin from an underlying tissue (such as de-gloving or scalping)	Separation of skin from an underlying tissue such that tendon, bone or muscles are exposed (de-gloving or scalping)	Minor lacerations

1 The types of treatment appear in section 36(a)-(b). The examples are based on Safe Work Australia's *Incident Notification Information Sheet* (November 2015).

Type of treatment	Includes …	Does not include …
Immediate treatment for a spinal injury	Injury to the cervical, thoracic, lumbar or sacral vertebrae including the discs and spinal cord	Acute back strain
Immediate treatment for the loss of a bodily function	Loss of consciousness, loss of movement of a limb or loss of the sense of smell, taste, sight or hearing, or loss of function of an internal organ	Mere fainting A sprain or strain
Immediate treatment for serious lacerations	Deep or extensive cuts that cause muscle, tendon, nerve or blood vessel damage or permanent impairment Deep puncture wounds Tears of wounds to the flesh or tissues—this may include stitching to prevent loss of blood and/or other treatment to prevent loss of bodily function and/or infection	
Medical treatment within 48 hours of exposure to a substance	'Medical treatment' is treatment provided by a doctor Exposure to a substance includes exposure to chemicals, airborne contaminants and exposure to human and/or animal blood and body substances	First aid administered by a first aid officer

It does not matter whether the person actually receives the treatment, just that the injury or illness could reasonably be considered to warrant such treatment. Consider the following situations:

> A worker drops a heavy weight onto his foot but does not seek immediate treatment as he thinks that the steel-capped boots he was wearing have protected him from serious injury. However, when he later takes off his boots it becomes apparent that his foot is broken.

> A person does not receive immediate treatment for a condition based on religious beliefs or cultural norms. For example, the person might refuse a blood transfusion or decline treatment from a doctor of the opposite sex.

In addition to the injuries or illnesses that are defined by the type of treatment required, two types of illness are specifically included in the definition of 'serious injury or illness'.

The first is any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work:

> that involves providing treatment or care of a person

> that involves contact with human blood or body substances

> that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products.[2]

The second type of specified illness is certain occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products.[3]

2 WHS Regulations, regulation 699.

3 WHS Regulations, regulation 699. The relevant occupational zoonoses are Q fever, Anthrax, Leptospirosis, Brucellosis, Hendra Virus, Avian Influenza and Psittacosis.

WHAT IS A DANGEROUS INCIDENT?

Under section 37 of the WHS Act, a dangerous incident is 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:

- an uncontrolled escape, spillage or leakage of a substance
- an uncontrolled implosion, explosion or fire
- an uncontrolled escape of gas or steam
- an uncontrolled escape of a pressurised substance
- electric shock
- the fall or release from a height of any plant, substance or thing
- the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations[4]
- the collapse or partial collapse of a structure
- the collapse or failure of an excavation or of any shoring supporting an excavation
- the inrush of water, mud or gas in workings, in an underground excavation or tunnel
- the interruption of the main system of ventilation in an underground excavation or tunnel.

An electric shock includes, for example, a minor shock resulting from direct contact with exposed live electrical parts (other than 'extra low voltage') including shock from capacitive discharge. It does not include:

- shock due to static electricity
- 'extra low voltage' shock (i.e. arising from electrical equipment less than or equal to 50V AC and less than or equal to 120V DC)
- use of a defibrillator to shock a person for first aid or medical reasons.[5]

For most hazards such as plant, or a structure collapsing, a person will need to be in the immediate vicinity to be exposed to a serious risk to their health and safety.

However, some hazards such as an uncontrolled leak of a hazardous gas or a fire can travel towards a person and expose them to a serious risk to health and safety away from the original source.

A dangerous incident includes both immediate serious risks to health or safety, and also a risk from an immediate exposure to a substance which is likely to create a serious risk to health or safety in the future, for example asbestos or chemicals.

4 See the items of plant requiring registration and the items of plant requiring registration of design listed in Schedule 5 to the WHS Regulations.

5 The examples come from Safe Work Australia's *Incident Notification Information Sheet* (November 2015).

DUTY TO NOTIFY OF NOTIFIABLE INCIDENTS

THE NOTIFICATION DUTY

Section 38 of the WHS Act requires a PCBU to ensure notification is made to Comcare immediately after becoming aware that a notifiable incident has occurred which arises out of its business or undertaking. Failure to comply with the notification duty is an offence.

Notification allows Comcare to promptly address risks to health and safety. It also enables Comcare to investigate deaths, serious injuries, illnesses or dangerous incidents in a timely manner. However, Comcare's decision to conduct any inspection is governed by the WHS Act, and is not necessarily connected to notifications received by virtue of section 38.

WHO OWES THE DUTY?

The duty to notify is not transferable,[6] but more than one PCBU may concurrently have a duty to submit an incident notification to Comcare regarding the same incident.[7] If the notifiable incident arises out of a particular PCBU's business or undertaking, that PCBU must notify Comcare, irrespective of whether the notifiable incident also arises out of the business or undertaking of another PCBU.

Although the duty to notify Comcare in section 38 of the WHS Act is one owed by the PCBU, the way in which the PCBU discharges this duty may involve arranging for another entity or person to submit notifications on their behalf. For example this could be:

- the person with management or control of the workplace
- the supervisor of the injured worker
- any other person with identified responsibility to notify.

CONNECTION TO THE BUSINESS OR UNDERTAKING

The notification duty relates to a notifiable incident 'arising out of the conduct of [the PCBU's] business or undertaking'. The WHS Act does not define what comes within the 'conduct of the business or undertaking'. However, it generally refers to business activities or work (including services) undertaken in the course of business. As well as a PCBU's core activities, this would include ancillary activities such as arranging maintenance or supplies.

When assessing whether an incident arises out of the conduct of its business or undertaking, the PCBU should consider the broad range of activities that can be attributed to the business or undertaking. It is also important to be aware that although there must be a connection between the business activities of the PCBU and the notifiable incident, these business activities may not be the direct or sole cause of the notifiable incident.

Please refer to the Scenarios later in this guide for examples where an incident can be considered to arise out of the conduct of a PCBU's business or undertaking.

6 WHS Act, section 14.

7 See WHS Act, section 16.

TIMEFRAME FOR NOTIFYING

Section 38 of the WHS Act requires a PCBU to ensure Comcare is notified 'immediately' after becoming aware that a notifiable incident has occurred from the conduct of the business or undertaking. This means there must be no delay between the PCBU becoming aware of the incident and the submission of a notification to Comcare.

Comcare will adopt a common-sense approach to assessing whether a PCBU has notified within the immediate timeframe. Comcare needs to be satisfied that the PCBU has notified as immediately as the particular circumstances permit.

In general, Comcare considers that a PCBU 'becomes aware' of a notifiable incident at the time that any of their workers in supervisory or managerial roles become aware of that incident. For example, if a worker suffers a serious injury and notifies their immediate supervisor, it is at this point it is considered that the PCBU is aware of the incident and internal notification procedures should commence.

This does not mean that a PCBU can delay submitting a notification until a particular individual or office holder is made aware of its occurrence. It is also essential that the PCBU develop appropriate internal communication systems to ensure that incidents are promptly brought to its attention. This will ensure an assessment can be conducted and the PCBU can decide whether it needs to notify Comcare.

METHOD OF NOTIFICATION

A notification under section 38 must be given by the fastest possible means, either by telephone or in writing.[8] Notifications may be made through a centralised reporting system and PCBUs must ensure that all workers are aware of their need to report local incidents through internal procedures that support the centralised business reporting system.

If you make a notification by telephone, Comcare may require that you also provide the notification in writing within 48 hours.

A written notification must be in a form, or contain the details, approved by Comcare.[9] The incident notification form on the Comcare website has been designed to assist PCBUs to meet their reporting obligations.

It is a legal requirement to provide all of the details requested in the form. A clear description of the incident with as much detail as possible will help Comcare assess whether or not the incident is notifiable and may negate the need for Comcare to contact you for further information. However, you need only include the information available to you about the incident at the time of submitting the notification. You may submit a notification with fields marked 'unknown', but you will need to provide that information later.

UPGRADING A NOTIFICATION

Where Comcare has been notified of an incident and the PCBU receives information that changes the incident type, the PCBU must ensure Comcare is notified of those changes. For example, if a notified serious injury or illness later results in death, Comcare must be advised about the changed situation immediately after the PCBU becomes aware of the changes. This will require the PCBU to submit another incident notification form, making sure the section regarding previous notification of the incident has been completed and any other details are provided as required.

KEEPING RECORDS

Section 38(7) of the WHS Act requires a PCBU to keep a record of each notifiable incident for at least five years from the date Comcare was notified.

As a matter of prudence, these records should include any directions or authorisations given by Comcare inspectors at the time of notification (including authorisations to disturb incident sites).

8 WHS Act, section 38(2)-(3).

9 WHS Act, section 38(5).

DUTY TO PRESERVE INCIDENT SITES

The person with management or control of a workplace at which a notifiable incident has occurred must ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until a Comcare inspector arrives at the site or any earlier time that an inspector directs. The site includes any plant, substance, structure or thing associated with the notifiable incident. Failure to comply with the site preservation duty is an offence.

If the incident site is confined to a particular part of a workplace—and no immediate risk to health and safety remains for people in other parts of the workplace—it is not necessary to isolate or preserve the entire workplace.

The site preservation duty does not prevent any action:

- to assist an injured person
- to remove a deceased person
- that is essential to make the site safe or to minimise the risk of a further notifiable incident
- that is associated with a police investigation, or
- for which a Comcare inspector has given permission.[10]

An inspector may direct that the site preservation duty no longer applies, or give permission to disturb an incident site, in person or by telephone. You can telephone Comcare on 1300 366 979 if you wish to seek to disturb the incident site. The sooner Comcare is notified, the sooner the site can be released.

10 WHS Act, section 39(3).

FREQUENTLY ASKED QUESTIONS

What is the relationship between incident notification and workers' compensation?

Notification of an incident under the WHS Act is separate to, and distinct from, making a claim for workers' compensation. In some situations a notifiable incident may also result in a worker's compensation claim, however the lodgement of a claim is separate to WHS notification. PCBUs must ensure Comcare is notified of any incidents that meet the notification criteria, whether or not a claim for compensation is made.

A suicide has occurred at the workplace. Do I need to notify Comcare?

A suicide, being the death of a person, is a notifiable incident. Whether the PCBU has a duty to notify Comcare will depend on whether the suicide arises out of the conduct of the PCBU's business or undertaking.

Is an attempted suicide a notifiable incident?

An attempted suicide could be a notifiable incident if, for instance, the person requires immediate treatment as an in-patient in a hospital. Whether the PCBU is required to notify Comcare of the incident will depend on whether it arises out of the conduct of the PCBU's business or undertaking.

Do I need to notify Comcare about bullying?

Workplace bullying is a work health and safety issue that can cause physical or psychological injury (or both) to the victim. Workplace bullying could be a notifiable incident if the victim requires one of the types of treatment listed in the definition of 'serious injury or illness'.

Regardless of whether or not workplace bullying results in a notifiable incident, it is still considered a workplace issue that should be subject to the same hazard identification, risk assessment and risk control processes as any other hazard. PCBUs should recognise bullying as a significant workplace hazard that poses a potential threat to the health and safety of all persons at the workplace.

A worker has contracted a disease. Is this a notifiable incident?

The incident notification provisions of the WHS Act do not deal separately with 'diseases'. A worker contracting a disease can be a notifiable incident if it comes within the defined criteria, for example because the condition is caused by exposure to a substance and the worker requires medical treatment within 48 hours.

Some diseases are also reportable to the relevant Department of Health as public health issues.

Do I need to notify Comcare of incidents that relate to contractors?

Workplaces shared by a Commonwealth entity and one or more state-based contractors may be covered by both the WHS Act and state or territory work health and safety laws. For example, the Department of Defence engages an asbestos removal company to carry out asbestos removal work at Randwick Army Barracks in Sydney and a dangerous incident occurs. As the incident has occurred at a place where work is carried out for Defence, Defence must notify Comcare, and the asbestos removal company must ensure the NSW regulator is notified of the incident.

I am based overseas and a notifiable incident has occurred. Do I need to notify Comcare?

Yes. Notifiable incidents which occur overseas must be notified to Comcare in accordance with section 38 of the WHS Act, provided they arise out of the conduct of a PCBU's business or undertaking. For instance, notifiable incidents involving Commonwealth officials at Australian embassies overseas need to be notified to Comcare.

Should I investigate an incident before notifying?

No. Notifications must be made immediately. Comcare acknowledges that all the relevant information may not be immediately available, but the PCBU must still notify immediately upon becoming aware that a notifiable incident has occurred and that incident arises out of the conduct of its business or undertaking. Once further information is received you can contact Comcare to add to or alter information pertaining to the incident you have already notified.

Further information could include police reports, medical reports, legal responses and investigation outcomes.

NOTIFICATION SCENARIOS

The suggested answers in the following scenarios may assist in understanding the incident notification duty.

SCENARIO 1: WORKER ASSAULTED IN CAR PARK

A worker is assaulted in a public car park adjacent to her workplace while walking back to work after a client meeting. The PCBU's policy requires that the worker wear her uniform and name badge which clearly identify her as a worker.

During the attack the assailant stated loudly that he was upset about actions taken by the PCBU that had adversely affected him. As a result of the attack the worker suffered serious lacerations to her face and hands and was subsequently taken to hospital in an ambulance. The worker was treated for her injuries as an in-patient in hospital and required stitches for a deep cut to her forehead. She was provided with a medical certificate for one week off work.

Questions	Suggested answers
Did a notifiable incident occur?	Yes. There was a serious injury or illness. The worker required immediate treatment as an in-patient in a hospital, and also required immediate treatment for serious lacerations.
Was the PCBU required to notify Comcare of the incident?	Yes. The incident arose out of the conduct of the PCBU's business or undertaking. The worker was assaulted because she was a worker of the PCBU.

SCENARIO 2: VOLUNTEER AT CONFERENCE

While working as a volunteer at a Commonwealth organisation's annual conference, a university student suffers serious burns to his hands and arms while filling an urn with boiling water. At the time, he was preparing the tea/coffee making facilities before the arrival of conference guests.

The volunteer is attended to at the scene by a first aid officer, then by ambulance officers who transport him to hospital where he receives immediate treatment for his injuries. The volunteer remains in hospital for several hours for observation but is not admitted.

Questions	Suggested answers
Did a notifiable incident occur?	Yes. There was a serious injury or illness. The student required immediate treatment for a serious burn; however, he did not receive treatment as an in-patient at the hospital.
Was the PCBU required to notify Comcare of the incident?	Yes. The incident arose out of the conduct of the PCBU's business or undertaking. The student suffered the burns while carrying out work for the Commonwealth organisation. Note that a volunteer is one type of worker as defined in section 7 of the WHS Act.

SCENARIO 3: FORKLIFT LOSES LOAD

A worker is driving a forklift, when it loses its load. The load lands next to a group of her colleagues. The workers are shaken, but no one received any injuries.

Questions	Suggested answers
Did a notifiable incident occur?	Yes. There was a dangerous incident at a workplace. The workers were exposed to a serious risk to their health or safety emanating from an immediate or imminent exposure to the fall or release from a height of a plant, substance or thing.
Was the PCBU required to notify Comcare of the incident?	Yes. The incident arose out of the conduct of the PCBU's business or undertaking. The worker was using the forklift to carry out her duties for the PCBU at the workplace.

SCENARIO 4: HEART ATTACK WHILE AT WORK

A staff member sitting at his desk complains of chest pain and pain radiating down his left arm. The first aid officer attends and the worker is sent to hospital by ambulance. He is diagnosed as having suffered a heart attack and admitted, eventually having two months off work. There were no previous occurrences of chest pain and the staff member reports that he was not feeling under pressure at work.

Questions	Suggested answers
Did a notifiable incident occur?	Yes. There was a serious injury or illness. The staff member required immediate treatment as an in-patient in a hospital.
Was the PCBU required to notify Comcare of the incident?	No. There is nothing to suggest the heart attack was related to work. However, if there was evidence that the staff member was experiencing high levels of work-related stress before suffering the heart attack, the answer could have been different as it is possible that the heart attack was related to the conduct of the PCBU's business or undertaking.

SCENARIO 5: MOTOR VEHICLE ACCIDENT

A staff member is traveling to conduct a home visit as part of her normal duties. She is driving a vehicle provided by the PCBU. While stopped at traffic lights, a truck collides with the back of her vehicle. The worker is shaken and sustains minor bruises but is otherwise unharmed. She consults her GP the next day and is diagnosed as having a whiplash injury resulting in three days off work.

Questions	Suggested answers
Did a notifiable incident occur?	No. There was no serious injury or illness, as the staff member did not require one of the relevant types of treatment.
Was the PCBU required to notify Comcare of the incident?	No. The incident was not a notifiable incident. If the incident had been a notifiable incident, the PCBU would have been required to notify Comcare as the incident occurred while the staff member was carrying out her normal duties for the PCBU's business or undertaking. (Note that a vehicle can be a workplace according to the definition in section 8 of the WHS Act).