

Guide to work health and safety incident notification

How to decide whether you need to notify
WorkCover of an injury, illness or dangerous
incident under the requirements of the
Work Health and Safety Act 2011

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Contents

Introduction	4
Legislative framework	4
Where to find key concepts in the legislation	4
Where to find explanations of concepts that are relevant to incidents	4
Incident notification process	5
What types of incidents do I need to tell workcover about?	5
Incident notification and inspections	5
Who is responsible for notifying?	5
When is an injury or illness serious?	6
What is a dangerous incident?	7
How do I notify?	7
What information do I need to provide to workcover when I notify?	7
Preserving the site – can work continue where the incident occurred?	8
Upgrading notifications	8
Do I need to keep a record of the incident?	9
Contact details	9
Interpretation of terms used in the legislation	9
Interpretation of words used in section 36 ‘what is a serious injury or illness’	9
Interpretation of words used in section 37 ‘what is a dangerous incident’	11
Interpretation of words used in section 38 ‘duty to notify of notifiable incidents’	11
Frequently asked questions	12
Does incident notification relate to workers compensation?	12
Is suicide notifiable under work health and safety laws (WHS laws)?	12
Is attempted suicide notifiable under WHS laws?	12
Is bullying notifiable under WHS laws?	12
Do I need to notify incidents that relate to contractors?	13
What does a ‘person with management or control of a workplace’ mean?	13
I am a person conducting a business or undertaking – can I wait until I have conducted a full investigation into the incident before notifying?	13
What does ‘reasonably practicable’ mean in relation to ensuring health and safety?	13
Where can I view the relevant legislation?	13
Notification decision flowchart	14

Introduction

Has a death, injury, illness or dangerous incident occurred at your workplace? If so, you may be legally required to notify WorkCover NSW about what has happened. This guide provides practical assistance and aims to help you understand your notification obligations under the *Work Health and Safety Act 2011* (WHS Act) and how you can comply with them.

Legislative framework

The WHS Act provides the legal framework for regulating the health and safety of workers and workplaces. The definition of 'worker' has been broadened to include persons that carry out work in any capacity for a person conducting a business or undertaking (PCBU). This means that the WHS Act coverage extends beyond the traditional employer/employee relationship to include new and evolving work arrangements and risks. Refer to section 7 of the WHS Act for the definition of worker.

The WHS legislation has introduced some changes to the duties previously held by employers and businesses. Duties are no longer defined by the nature of the employment relationship. In regards to incident notifications, the focus of the WHS legislation has changed so that PCBUs are only required to notify WorkCover of incidents that are serious and dangerous in nature rather than less serious incidents that result from minor incidents. Refer to sections 36 and 37 of the WHS Act for more information.

The relevant legislation can be found at legislation.nsw.gov.au

Where to find key concepts in the legislation

Key concepts	WHS Act
Dangerous incident	Section 37
Due diligence	Section 27
Notifiable incident	Section 35
Officer	Section 4
Person conducting a business or undertaking (PCBU)	Section 5
Persons with management or control of a workplace	Section 20
Plant	Section 4
Reasonably practicable	Section 18
Serious injury or illness	Section 36
Worker	Section 7
Workplace	Section 8

Where to find explanations of concepts that are relevant to incidents

Relevant legislation	WHS Act
Notification of deaths, serious injuries or illnesses and dangerous incidents	Section 35, 36 ,37
Notification timeframes	Section 38 (1)
Preserving incident sites	Section 39
Records to be kept	Section 38 (7)

Incident notification process

What types of incidents do I need to tell workcover about?

The WHS Act details the types of incidents notifiable to WorkCover. Under section 35 an incident is notifiable if it arises out of the conduct of a business or undertaking and results in the death, serious injury or serious illness of a person or involves a dangerous incident. Highlighted items are defined later in this guidance.

The WHS Act aims to provide encouragement and assistance to PCBUs, workers and other persons to ensure that duty of care obligations imposed under the legislation are met. Although specific incident types requiring notification are outlined in the WHS Act (under sections 36 and 37) there may be instances where the PCBU is unsure whether or not the incident meets the notification criteria. As such, it is important that each incident is considered separately based on the information available at the time and that decisions by PCBUs are not made based on the outcomes of previous notifications or through the application of general 'rules of thumb'.

Irrespective of whether an incident is notifiable to WorkCover, all incidents should be captured and recorded by the organisation.

Incident notification and inspections

Notification of an incident is a statutory obligation outlined in section 35 of the WHS Act. Timely incident notification informs WorkCover about current and potential health and safety issues and whether or not to conduct an inspection. PCBUs should note, however, that WorkCover's decision to conduct any inspection is governed by the WHS Act, and is not necessarily connected to incident notifications received as a statutory obligation under the WHS Act.

Who is responsible for notifying?

Section 38 of the WHS Act requires a PCBU to ensure notification is made to WorkCover immediately after becoming aware that a notifiable incident has occurred which arises out of its business or undertaking.

It is a statutory requirement that WorkCover be provided with immediate notification of 'notifiable incidents'. This ensures WorkCover can address risks to health and safety promptly. It also enables WorkCover to investigate deaths, serious injuries, illnesses or dangerous incidents in a timely manner.

The sooner WorkCover is notified, the sooner the site can be released (refer to section 39 on preserving the site).

The duty to notify is not transferable¹, but more than one PCBU may concurrently have a duty to submit an incident notification to WorkCover regarding the same safety incident². If the notifiable incident arises out of a particular PCBU's business or undertaking, that PCBU must notify WorkCover, irrespective of whether the notifiable incident also arises out of the business or undertaking of another PCBU.

Although the duty to notify WorkCover 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.

Any failure by that person or entity to submit a notification on behalf of the PCBU may result in liability for a breach of section 38 of the WHS Act accruing to the PCBU which holds the duty to notify.

1 See s14 WHS Act.

2 See s16 WHS Act.

When is an injury or illness serious?

Section 36 of the WHS Act states that a serious injury or illness of a person is an injury or illness requiring the person to have:

- immediate treatment as an inpatient in a hospital³
- immediate treatment⁴ for:
 - the amputation of any part of their body
 - a serious head injury
 - a serious eye injury
 - a serious burn
 - the separation of their skin from an underlying tissue (such as de-gloving or scalping)
 - a spinal injury
 - the loss of a bodily function
 - serious lacerations.
- medical treatment within 48 hours of exposure to a substance
- the following prescribed illnesses⁵
 - any infection to which the carrying out of work is a significant contributing factor, and the infection can be reliably attributable to carrying out work:
 - with micro-organisms
 - 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.
 - the following occupational zoonoses⁶ contracted in the course of work involving the handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
 - Q fever
 - anthrax
 - leptospirosis
 - brucellosis
 - hendra virus
 - avian influenza
 - psittacosis.

3 For any serious injury not just those listed in 36(b).

4 'Immediate treatment' refers specifically to those items listed in section 36(b) of the WHS Act and can be administered anywhere (ie not as an inpatient in hospital).

5 WHS Regulation clause 699 (Part 11.3).

6 The World Health Organisation (WHO) defines 'zoonoses' as disease and infections that are naturally transmitted between vertebrate animals and humans.

What is a dangerous incident?

Section 37 of the WHS Act sets out that 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
- 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.

How do I notify?

A PCBU must notify WorkCover of a notifiable incident immediately after becoming aware that:

- this incident has occurred
- that it arises out of the conduct of the PCBU's business or undertaking.

Notification must be by the fastest possible means, which in NSW is determined to be phoning 13 10 50.

What information do I need to provide to workcover when I notify?

A clear description of the incident with as much detail as possible will help WorkCover assess whether or not the incident is notifiable and may negate the need for WorkCover to contact you for further information.

Where insufficient details are provided in a notification, an inspector may contact you if WorkCover needs further information.

All WHS regulators have agreed that the following information should be collected as a minimum at the point of incident notification:

- nomination of the type of notifiable incident – ie death, or serious injury or illness, or dangerous incident
- incident address, date and time
- details that describe the specific location of the incident – eg section of the warehouse or the particular piece of equipment that the incident involved – to assist instructions about site disturbance
- description of the incident
- injured person's name, salutation, date of birth, address and contact number

-
- injured person's occupation
 - relationship of the injured person to the entity notifying
 - description of injury/illness – ie nature of injury
 - initial treatment of injury/illness – noting provisions of the WHS Act that identify that a serious injury or illness requires 'immediate treatment as an in-patient in a hospital' or 'immediate treatment for serious injury/illness' or 'medical treatment within 48 hours of exposure to a substance'
 - where the patient has been taken for treatment (if applicable)
 - PCBU's legal and trading name
 - business address (if different from incident address), ABN/ACN and contact details (including phoning number and email address)
 - action taken/intended, if any, to prevent recurrence of incident
 - notifier's name, salutation, contact phone number and position at workplace
 - name, phone number and position of person to contact for further information (if different from above).

Please note: All of this information may not be available at the time of notification. If this is the case, **do not delay** notifying WorkCover of an incident. Notify and provide the information available at the time of the notification. The remainder of the 'core' information listed above may be provided to WorkCover at a later time.

Preserving the site – can work continue where the incident occurred?

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 (unless that disturbance is for a 'prescribed reason'), until a WorkCover inspector arrives at the site, or directs otherwise (whichever is earlier). The site includes any plant, substance, structure or thing associated with the notifiable incident. This duty is designed to preserve any evidence that may assist an inspector to determine the cause of the incident.

A 'prescribed reason' can include one of the following circumstances to take action for an incident site to be disturbed:

- to assist an injured person
- to remove a deceased person
- to make the site safe or to minimise the risk of a further notifiable incident
- to facilitate a police investigation
- a WorkCover inspector has given permission – a direction that a site may be disturbed may be given in person or by a telephone call⁷.

The sooner WorkCover is notified, the sooner the site can be released.

Penalties apply if an individual (\$10,000), or body corporate (\$50,000) fails to preserve a site.

Upgrading notifications

Where WorkCover has been notified of an incident and the PCBU receives information that changes the incident type, the PCBU must ensure WorkCover is notified of those changes. For example, if a notified serious injury or illness later results in death, WorkCover must be advised about the changed situation immediately after the PCBU becomes aware of the changes.

⁷ See s39(3) of the WHS Act.

Do I need to keep a record of the incident?

Yes. Section 38 (7) of the WHS Act requires the PCBU to keep a record of each notifiable incident for at least five years from the date WorkCover was notified. There are penalties of up to \$25,000 for failing to do so.

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

Contact details

To notify an incident call **13 10 50**

Note: For after-hours notifications the 13 10 50 number will provide options for you to be diverted to WorkCover's After Hours Emergency Service.

For general enquiries you can contact WCA using any of the following methods:

General enquiries:

Monday to Friday: 8.30 am to 5.00 pm AEST

Phone: **13 10 50**

Email: contact@workcover.nsw.gov.au

Website: workcover.nsw.gov.au

Interpretation of terms used in the legislation

Interpretation of words used in section 36 'what is a serious injury or illness'

What does 'immediate treatment' mean?

The word 'immediate' in subsections 36 (a) and (b) denotes that an injured or ill person must receive treatment 'without delay' as the particular circumstances permit.

What does 'serious' mean?

Under the WHS Act the term 'serious' is not defined. As such WorkCover adopts the common-sense or plain English meaning of that word being 'of great consequence due to threatening harm'.

What does medical treatment mean?

The WHS Act defines 'medical treatment' as treatment by a medical practitioner registered under the 'Health Practitioner Regulation National Law (NSW)⁸.

Examples of a serious injury or illness

The following types of injury will be a 'serious injury or illness' as defined by section 36 of the WHS Act if they objectively require immediate treatment:

- i. The amputation of any part of the body – includes such things as amputation of a limb (such as arm or leg), or body part (such as hand, foot or the finger or toe below the first knuckle).
- ii. A serious head injury such as a 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. It does not relate to a bruise or minor abrasion or laceration to the skin. It does include head injuries resulting in temporary or permanent amnesia.
- iii. A serious eye injury that results in, or is likely to result in, the loss of the eye or total or partial loss of vision; an injury that involves an object penetrating the eye (eg metal fragment, wood chip); exposure of the eye to a substance which poses a risk of serious eye damage (ie notification would not be required for eye exposure to substances which merely cause irritation).
- iv. A serious burn – this is a burn that requires intensive care and/or compression garment and/or a skin graft. A burn which merely requires washing the wound, applying an ice pack and a dressing would not be sufficient to constitute a serious burn.
- v. The separation of skin from an underlying tissue such that tendon, bone or muscles are exposed (de-gloving or scalping).
- vi. A spinal injury – this is an injury to the cervical, thoracic, lumbar or sacral vertebrae. It includes the associated soft tissues such as muscles, ligaments, discs and nerves (including the spinal cord).
- vii. The loss of a bodily function – this includes such things as 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.
- viii. Serious lacerations that cause muscle, tendon, nerve or blood vessel damage, deep and/or extensive cuts, 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.
- ix. Any infection to which carrying out work is a significant contributing factor, and the infection can be reliably attributed to carrying out work:
 - with micro-organisms
 - that involves providing treatment or care of a person
 - that involves contact with human blood or body substances
 - that involves handling or coming into contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products.
- x. The following occupational zoonoses⁹ contracted in the course of work involving the handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
 - Q fever
 - anthrax
 - leptospirosis
 - brucellosis
 - hendra virus
 - avian influenza
 - psittacosis¹⁰.

9 The World Health Organisation (WHO) defines 'zoonoses' as disease and infections that are naturally transmitted between vertebrate animals and humans.

10 See clause 699 of the WHS Regulation.

Interpretation of words used in section 37 'what is a dangerous incident'

What does 'workplace' mean?

'Workplace' is broadly defined in section 8(2) of the WHS Act. A workplace is taken to mean 'a place where work is carried out for a PCBU and includes any place a worker goes, or is likely to be, while at work'.

What does 'immediate' mean?

Under the WHS Act the term 'immediate' is not defined. As such WorkCover adopts the common-sense or plain English meaning of that word being 'happening or done without delay' as the particular circumstances permit.

What does 'imminent' mean?

Under the WHS Act the term 'imminent' is not defined. As such WorkCover adopts the common-sense or plain English meaning of that word being 'likely to occur at any moment'.

What does 'uncontrolled' mean?

Under the WHS Act the term 'uncontrolled' is not defined. As such WorkCover adopts the common-sense or plain English meaning of that word being 'unrestrained'.

What does 'escape' mean?

Under the WHS Act the term 'escape' is not defined. As such WorkCover adopts the common-sense or plain English meaning of that word being 'leakage'.

What does 'substance' mean?

Under the WHS Act the term 'substance' is defined as 'any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour'.

What does 'exposure' mean in relation to a substance?

Under the WHS Act the term 'exposure' is not defined. As such WorkCover adopts the common-sense or plain English meaning of that word being 'the state of being laid open or bare; openness to danger that may have a detrimental effect'.

What does 'required to be authorised for use in accordance with the regulations' mean?

This means any plant which is required to be either 'design' and/or 'item' registered under part 5.3 of the WHS Regulations.

Interpretation of words used in section 38 'duty to notify of notifiable incidents'

What does 'arising out of the conduct of the business or undertaking' mean?

A PCBU is only required to notify WorkCover of a notifiable incident if there is some causal connection between that incident and the 'conduct of the PCBU's business or undertaking'. That is, whether the business activities of the PCBU contributed in some way to the incident occurring has to be considered. If so, the duty in section 38 is applicable.

It is also important to be aware that although there must be a causal 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.

What does 'immediately' mean in terms of notification timeframes (section 38)?

Section 38 of the WHS Act requires a PCBU to ensure WorkCover 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 WorkCover. The legislation states the PCBU must provide notice to WorkCover by the fastest possible means. In NSW this is determined to be by phoning **13 10 50**.

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

Frequently asked questions

Does incident notification relate to workers compensation?

No. Notification of an incident under the WHS Act is separate to, and distinct from, making a claim for workers compensation. In some situations an incident giving rise to a notification may also result in a workers compensation claim, however the lodgment of a claim is separate to WHS notification. PCBUs must ensure WorkCover is notified of any incidents that meet the notification criteria, whether or not a claim for compensation may be made. To lodge a claim for workers compensation you must contact your insurer directly.

Is suicide notifiable under work health and safety laws (WHS laws)?

Suicide may be notifiable under WHS laws where it falls within section 35 (a) of the WHS Act and there is evidence to suggest a causal connection between the conduct of the PCBU's business or undertaking, and the suicide of the person.

Is attempted suicide notifiable under WHS laws?

Attempted suicide may be notifiable under WHS laws where it falls within section 36 (a) of the WHS Act and if there is evidence to suggest a causal connection between the conduct of the PCBU's business or undertaking, and the attempted suicide of the person.

Is bullying notifiable under WHS laws?

Workplace bullying¹¹ is a WHS issue that can cause physical or psychological injury – or both – to the victim. Workplace bullying is not prescribed in the WHS Regulation as a notifiable incident. However, on rare occasions workplace bullying may satisfy the criteria in section 36(a) of the WHS Act if it results in the victim requiring immediate treatment as an inpatient in a hospital (irrespective of whether they receive the treatment or not).

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 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.

WorkCover encourages and supports PCBUs to develop and implement an internal bullying policy and related procedures, in consultation with workers, to proactively address this issue. The contents of the policy should be known by all workers, applied consistently and regularly reviewed to ensure that all reports of bullying incidents are investigated and managed in a timely manner.

¹¹ For a more detailed description of bullying see the draft code of practice *Preventing and responding to workplace bullying* available on Safe Work Australia's website <http://safeworkaustralia.gov.au/Legislation/PublicComment/Pages/Model-WHS-CoP-Public-Comment.aspx>

Do I need to notify incidents that relate to contractors?

Yes. Part 3 of the WHS Act makes it very clear that notifiable incidents relate to any person – workers or otherwise. An incident resulting in a death, serious injury or illness, or a dangerous incident involving any person, must be notified if it has arisen out of the conduct of the PCBU's business or undertaking.

What does a 'person with management or control of a workplace' mean?

Section 20 of the WHS Act states that a person with management or control of a workplace is a person conducting a business or undertaking – to the extent that the business or undertaking involves the management or control of a workplace, either in whole or part. Determining the person with management or control of a workplace will be a question of fact to be assessed on the unique circumstances of each case.

I am a person conducting a business or undertaking – can I wait until I have conducted a full investigation into the incident before notifying?

No. Notifications must be made immediately. WorkCover 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 WorkCover 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.

What does 'reasonably practicable' mean in relation to ensuring health and safety?

The term 'reasonably practicable' is generally accepted as an appropriate WHS standard for duty holders to meet in most Australian jurisdictions.

Duty holders must meet their duties so far as reasonably practicable. The term 'reasonably practicable' is defined in the WHS Act (section 18) to mean that which is – or was reasonably able to be done – taking into account and weighing up all relevant matters including:

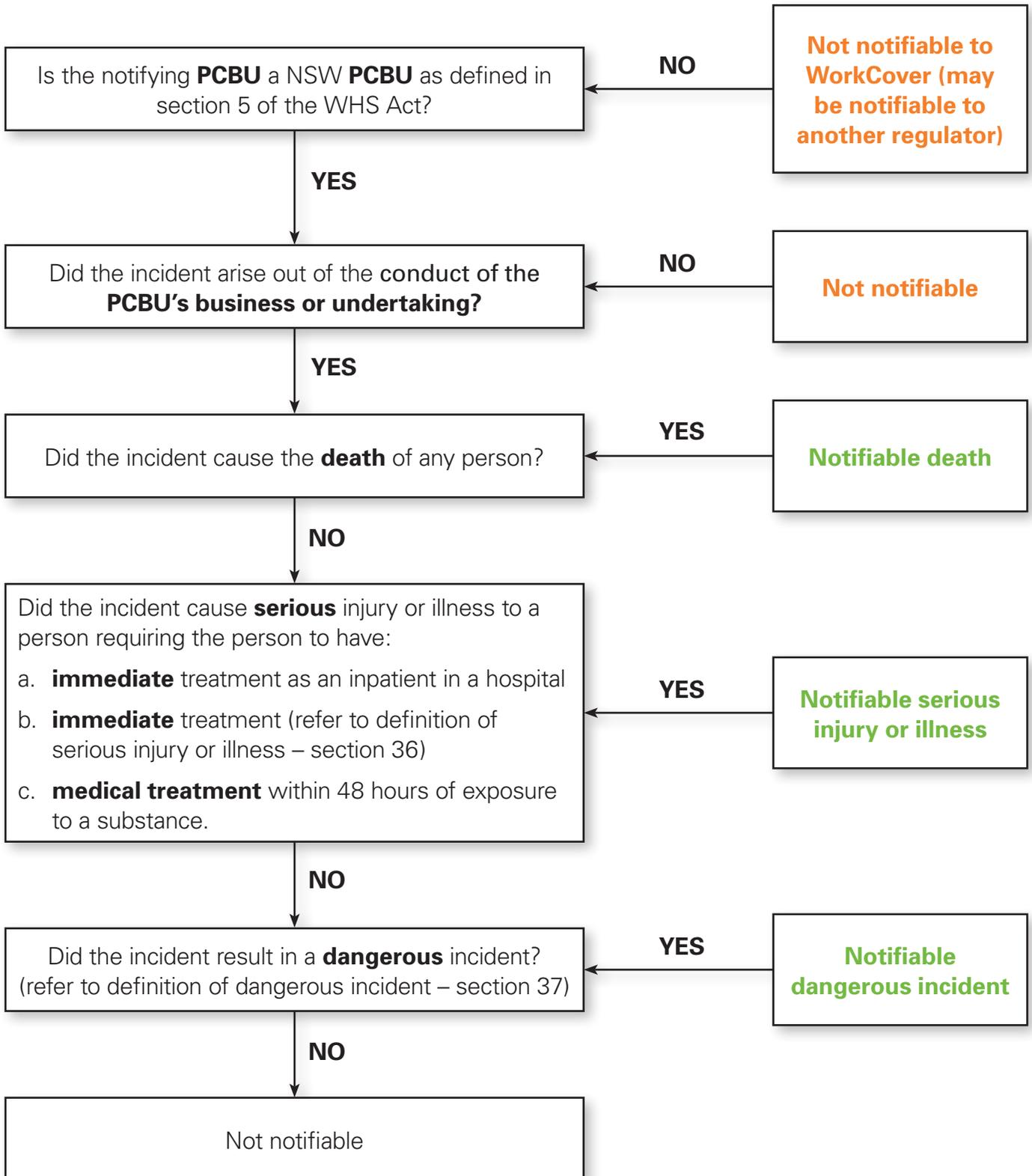
- the likelihood of the relevant hazards or risk occurring
- the degree of harm that might result from the hazard or risk
- what the person knows about the hazard or risk and the ways of eliminating or minimising the risk
- the availability and suitability of ways to eliminate or minimise the risk.

After assessing the extent of the risk and the ways to eliminate or minimise the risk, duty holders may then also consider whether the cost is grossly disproportionate to the risk.

Where can I view the relevant legislation?

legislation.nsw.gov.au

Notification decision flowchart



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