MUSEUM OF AUSTRALIAN DEMOCRACY
AT OLD PARLIAMENT HOUSE

Work Health and Safety Procedures

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Director
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Work Health and Safety Procedures

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1. Implementation

To facilitate the implementation of the WHS Policy, a supporting set of guidelines have been developed and are published for all workers at the Agency in this document titled Work Health and Safety Procedures.

2. Consultation

To ensure that the Agency meets its objectives under the WHS Policy, it commits to:

- sharing relevant information
- giving workers a reasonable opportunity to express their views, raise issues and contribute to decision making
- taking workers' views into account
- advising workers of the outcome of the consultation in a timely manner.

If the workers are represented by a Work Health and Safety Representative (WHSR) the consultation will be facilitated through that representative.

The Agency will, so far as is reasonably practicable, consult with workers who are, or are likely to be, directly affected by a matter relating to work health and safety. The manner of consultation will depend on the nature of the matter and in what way, and to what extent, it will or may affect workers. In most cases, WHSRs will be notified and given a reasonable opportunity to consult with the workers in order to represent these views back to the Work Health and Safety Committee (WHSC) through the Facilities & Security Team (F&S Team) and/or Human Resources Team (HR Team). Matters of strategic or wider significance will be brought to the attention of the WHSC for consideration.

3. Areas of Responsibility

All workers, irrespective of level or employer, have a mutual responsibility to ensure the health and safety of persons in the workplace.

3.1 Senior Executives

As an officer under the WHS Act, Senior Executives (including the Agency Security Advisor [ASA] and on-call manager) have a duty to be proactive and continuously ensure that the Agency complies with its legislative obligations. There is a personal duty for Senior Executives to exercise proactive due diligence when approaching health and safety issues.

Senior Executives must contribute to a positive health and safety culture of the Agency and share information about health and safety with all staff. The more influential a Senior Executive's role is within the Agency the greater his or her duty is under the Act.

To exercise due diligence, Senior Executives must:

- take reasonable steps to acquire and maintain their knowledge of work health and safety matters
- gain an understanding of the hazards and risks associated with the nature of operations
- ensure that appropriate resources are available to enable hazards to be identified and risks eliminated or minimised
- ensure that processes for notification of any incidents, hazards and risks are complied with in a timely manner
- ensure that policies and procedures which allow the Agency to meet its legislative obligations are complied with by all workers, including contractors (and, where applicable, their employers)
- seek professional assistance from the F&S Team and/or HR Team when unsure.

A high standard of compliance with the Act requires persistent examination and care ensuring the resources and systems of the Agency are adequate to comply with the duty of care. This also requires Senior Executives to ensure that they exercise their delegations effectively and in line with policy.

3.2 Supervisors

The Agency workers supervising other workers, irrespective of the number supervised, are responsible for ensuring that those workers:

- understand, promote and comply with all health and safety policies and procedures
- engage with other workers in an open, honest, and meaningful way to ensure they understand what safety standards are expected of them
- encourage feedback and communication between work areas and the Facilities and Security Team
- ensure work health and safety responsibilities are addressed in the performance appraisal process
- ensure that the F&S Team and/or HR Team is made aware of issues or concerns for safety, especially where hazards or flaws in operational procedures have been identified
- demonstrate commitment to health and safety and model safe work practices to the worker(s) they supervise
- seek professional assistance from the F&S Team and/or HR Team when unsure.

3.3 Workers

Workers have a duty to comply, so far as they are reasonably able, with any reasonable and lawful instruction given by the Agency that allows it to comply with the WHS laws. This includes ensuring that they exercise reasonable care in how they undertake their work and cooperating with any health and safety policy or procedure.

Failure to comply with internal policies and procedures may result in enforcement action or prosecution by the Commonwealth regulator (Comcare) where that failure has the potential to adversely affect their own, or another person's, health and safety. Equally, a failure to comply with a reasonable and lawful instruction from the Agency can result in criminal proceedings or Code of Conduct action as this may hinder the Agency's ability to comply with its duties under the WHS Act.

Provided workers follow the above requirements and exercise reasonable care in how they undertake their work and adhere to known policies and procedures, they will have met their responsibilities.

3.4 Contractors

Contractors, when they are working at MoAD must ensure that they meet the following responsibilities and requirements:

- Contractors and their staff must have completed and be current in terms of the MOAD site induction in relation to WHS and Heritage requirements;
- Contractors must follow all MOAD rules in relation to permits to work and authorities to enter specific and/or restricted areas;
- Contractors must have current and adequate arrangements in place for insurance (workers compensation and public liability) to meet the requirements of MOAD;
- Contractors must report any incident or accident involving their own staff or a member of the public to the Facilities and Securities Team at MOAD;
- Where any incident or accident is notifiable under the provisions of the WHS Act, the Contractor is responsible for immediately notifying WorkSafe ACT and MoAD, so as to allow both the Contractor and MoAD to discharge its duty under the WHS Act;
- Contractors must not bring any volatile chemical or substance on site without prior approval from the Facilities and Securities Team at MOAD and must ensure that a current Safety Data Sheet is available at all times;
- Contractors must follow any instructions given by an authorised staff member of MOAD in relation to conduct of work;
- Contractors must seek prior approval from Facilities and Security Team before commencing any cutting or drilling into any concrete walls and must follow current Silica Management requirements when doing so;
- Contractors are not permitted to play loud music in the MOAD precinct and must be mindful of language when working in areas that are still active areas where members of the public may be.

Contractors which are granted site possession, whereby they take on responsibility for part of the OPH building to undertake works, are required to meet the WHS provisions of their contractual agreement with MoAD. Under the agreement's Statement of Requirements, the Contractor shall have a WHS Plan, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's activities and the works from a work health and safety perspective to ensure compliance with all Statutory Requirements, including Workers Compensation Insurance and WHS Legislation.

3.5 Facilities & Security and/or HR Team

The F&S Team and/or HR Team, together, advises the Agency on health and safety issues to ensure that processes for complying with its duties and obligations are developed and implemented.

The Facilities & Security Team and/or HR Team:

- operates the day-to-day work health and safety needs of the Agency
- provides advice to line areas to ensure safe work practices are maintained
- ensures that the Agency has appropriate resources and processes to enable hazards to be identified and eliminated or minimised, and for receiving and considering information about incidents, hazards, and risks.

3.6 Work Health and Safety Committee

The Work Health and Safety Committee (WHSC) monitors the effectiveness of the Policy and provides advice to Senior Executives to enable the Agency to meet health and safety requirements. The WHSC takes a strategic role when reviewing work health and safety matters and procedures in order to keep a consistent approach across the Agency.

3.7 Work Health and Safety Representatives

Work Health and Safety Representatives (WHSRs) and Deputy Health and Safety Representatives (DHSRs) liaise with the F&S Team and/or HR Team on behalf of the workers on health and safety issues. WHSRs (or DHSRs in the WHSR's absence) participate in WHSC meetings and raise relevant health and safety issues for consideration.

WHSRs and DHSRs have powers under the WHS Act to promote health and safety (including to workers who are not employees of the Agency). Broadly, the powers include:

- inspecting the workplace if there has been a recent incident or dangerous occurrence, where there is an immediate and or potential threat of an incident or dangerous occurrence, or after giving the Agency reasonable notice of the inspection

- requesting Comcare to conduct an investigation in the workplace and/or accompanying an inspector during the investigation
- initiating emergency stop-work procedures once they have completed accredited training
- issuing provisional improvement notices (PINs) once they have completed accredited training.

WHSRs and DHSRs must be committed to attending and actively participating in WHSC meetings. If a WHSR is unable to attend a meeting, they will ensure his or her DHSR is aware and can attend. WHSRs and DHSRs are responsible for completing workplace inspections in a timely manner to ensure hazards are being identified and eliminated before injuries occur. To ensure that workers are aware of their representatives, WHSRs/DHSRs must keep their intranet profile up to date to include the corporate role. In the case of contractors, it is the role of Facilities to advise these employees of WHSR and DHSR.

WHSRs and DHSRs must attend training accredited by the Safety, Rehabilitation and Compensation Commission within one month of taking up the position. In the event that a WHSR or DHSR is unable to commit to training within this time period, nominations will be called to seek a more appropriate candidate for the role of WHSR/DHSR.

WHSRs and DHSRs undertake their responsibilities, including attending training, without loss of remuneration or other entitlements. Any matters raised with a WHSR/DHSR requiring immediate attention needs to be referred to the F&S Team and/or HR Team and the WHSC will be notified as appropriate.

3.8 First Aid Officers

FAOs undertake initial care of people suffering injury and/or illness in the museum or at work within the Agency. Initial care provided should be consistent with the skills and knowledge acquired from training. FAOs are not responsible for ongoing medical care and, when in doubt, will recommend employees or visitors seek medical advice or will arrange assistance from emergency services.

3.9 Mental Health First Aid Officers

A Mental Health First Aid Officer is a designated, trained staff member who assists in managing psychosocial risks as required under Australian WHS laws. They provide early, supportive assistance to workers experiencing mental health distress, listen and respond appropriately, promote help seeking, and guide workers to professional or organisational support. The role is a critical early intervention tool which assists in managing psychological safety risks and supports compliance with WHS duties relating to psychological health and safety.

3.10 Harassment Contact Officer (HCO)

An HCO is a designated, trained staff member who provides confidential, impartial peer support services to staff who believe they may have experienced or witnessed unreasonable behaviours in the workplace. The role of HCOs is to assist staff understand their options and policies, assist with concerns about specific forms of unacceptable workplace behaviours, including workplace bullying and sexual harassment, and direct staff to further support services if required. HCOs are distinct from HR, do not investigate matters or advocate for staff.

4. Consultation

Consultation is an essential part of good WHS management, and we are committed to ensuring that as part of the process of providing an environment which protects the health, safety and wellbeing of our workers, we will undertake consultation on a regular, systematic and ongoing basis.

Consultation with workers and/or their appointed representatives will take place when we are:

- Identifying hazards and assessing risks to the health and safety arising from the work carried out or to be carried out by MoAD;
- Making decisions about ways to eliminate or minimise those risks;
- Making decisions about the adequacy of facilities for the welfare of workers;
- Proposing changes that may affect the health or safety of workers;
- Making decisions about these and other procedures for:
    - Consulting with workers
    - Resolving WHS issues at the workplace
    - Monitoring the health of workers
    - Monitoring the conditions of the workplace under our control
    - Providing information and training for workers

Consultation may take place on a direct basis with workers or their appointed representatives or may take place through other consultative mechanisms, such as the WHS Committee.

Consultation will take place on the basis of open and unrestricted conversation and sharing of ideas and any feedback or contributions made by workers as part of the consultation will be fully considered as part of the decision-making process.

5. Risk Management

The WHS Act and Regulations require all workers to ensure health and safety risks are monitored and eliminated. WHS and risk management is everyone’s responsibility.

In addition to reporting Incidents, all workers are encouraged to report any hazards they identify in undertaking their duties. This can be done in the same manner as reporting an Incident. A Hazard means a situation or thing that has the potential to harm a person. Hazards at work may include noisy machinery, a trip or slip hazard, chemicals, electricity, working at heights, a repetitive job, bullying and violence in the workplace.

By identifying and reporting hazards, it allows the Agency to consider the possibility that harm (death, injury or illness) might occur when exposed to the hazard. The Agency can then put in place appropriate risk controls to eliminate the health and safety risks so far as is reasonably practicable.

5.1 Managing Contractors

In addition to monitoring and reporting hazards, all workers responsible for managing contractors are required to ensure their contractors are compliant with the WHS legislation and any project risks are assessed, controlled and monitored.

Contractors are required to complete an online WHS Induction prior to commencing works in Old Parliament House. In addition, contractors undertaking construction activities are provided with a Contractor Site Book.

5.2 Feedback to Workers

Where risk assessments are created for specific risks and as outlined consultation with workers is part of the process of developing the risk assessment, workers will be provided with feedback in terms of the development and implementation of the risk assessment.

All new risk assessments will be subject to a full review no later than six months after implementation and where risks are ongoing, they will be subject to review as part of the annual external audit.

6. Incident Reporting

An Incident Notification Form must be completed for all incidents or hazards and forwarded to the Facilities & Security Team either in hard copy or a scanned version by email.

It is a statutory requirement that Comcare be provided with immediate notification of ‘notifiable incidents. A notifiable incident is an incident involving the death of a person, serious injury or illness of a person or a dangerous incident. The ASA (during ordinary working hours), or the on-call manager (outside ordinary working hours or on a weekend) is the responsible officer for notifying Comcare.

Where the ASA or the on-call manager is not available, the Deputy Director or Head Facilities and Heritage & Collections or Manager Facilities & Security must be contacted.

Comcare will then be notified immediately by one of the officers. This means there must be no delay between the officer becoming aware of the incident and the submission of a notification to Comcare. The notification must be given by the fastest possible means either by telephone or in writing (or online if applicable).

All deaths must be notified by phone (within 2 hours) and followed up in writing. If any other notification is made by telephone, Comcare also requires that notification in writing be made within 48 hours.

See the Notification Decision Flowchart for details whether an incident is notifiable and how to notify Comcare (Appendix D).

The ASA or on-call manager 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 Comcare 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.

Note that if the incident is one that involves a Contractor, the ASA or on-call manager is to take responsibility for the site (unless the Contractor has direct possession of the site, in which case the Contractor will assume responsibility) and ensure that as far as practicable, it is not disturbed until both WorkSafe ACT and Comcare give clearance for it to be disturbed. In this instance the ASA or on-call manager is to liaise with the Contractor to make sure that MoAD discharge its duties under the WHS Act.

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 minimize the risk of a further notifiable incident
- to facilitate a police investigation
- a Comcare Inspector has given permission, (a direction that a scene may be disturbed) and may be given in person or by a telephone call.

The ASA or the on-call manager should contact Comcare on 1300 366 979 if the incident occurs outside of Comcare’s normal operating hours and they wish to disturb the incident site.

7. Incident Investigations

Regulation 38 of the *Work Health and Safety Regulations 2011* provide that a duty holder must review, and as necessary revise control measures implemented to maintain a work environment that is without risks to health or safety. A duty holder must review and as necessary revise a control measures where the control measure does not control the risk and/or a notifiable incident occurs because of the risk.

The Agency is committed to undertaking an investigation of all notifiable incidents. The investigation will be conducted by trained incident investigator and/or a qualified external investigator.

The investigation will be outcome focused to identify remedial actions that will prevent recurrence, reduce/eliminate risk and improve safety performance and will incorporate a detailed review of any related policies, procedures and/or work instructions that are relevant to the matter under investigation.

Where an incident involves a Contractor, MOAD as the owner/occupier and PCBU of the building will take the lead in any investigation to be conducted in conjunction with the Contractor and their staff. This is to ensure that MOAD discharges its duty under the WHS Act in relation to the provision of premises where the incident occurred.

If the incident or accident involves a Contractor who has been granted direct possession of a site, the Contractor will take the lead in any investigation and must consult with and keep MOAD, as the primary PCBU of the building, informed at all times of any aspect of the investigations including any findings resulting from an investigation, whether formal or not. This is to ensure that MOAD discharges its duty under the WHS Act in relation to the provision of premises where the incident occurred.

7.1 Plan the Investigation

The scope and complexity of the investigation will mirror the actual or potential seriousness of the incident. When a notifiable incident occurs, an investigation will commence immediately following the incident being reported to Comcare.

The investigation will start with the investigator preparing a simple investigation plan outlining steps to be taken to successfully conduct the investigation. These steps should be documented and include:

- timeframe for the investigation
- who is involved in the incident or maybe able to provide information on the cause of the incident
- does information need to be gathered external to the Agency
- does anything need to be photographed
- does a sketch plan of the incident scene need to be drawn

- what other documents need to be collected or sighted (for example, risk assessments, hazard register, and procedures).

7.2 Collect Information

The investigator should attend the incident scene shortly after the incident has occurred, or if the incident scene has been preserved, spend a few moments observing the scene. This can provide the investigator with valuable information. The investigator should consider the following issues:

- the date, time and location of the incident
- the people involved
- any known events leading up to the incident
- what was happening at the time of the incident.

The investigator might also consider taking photographs of the incident scene to assist in the investigation.

7.3 Conducting Interviews

The investigator should conduct interviews as soon as possible after the incident. This will include talking to witnesses, the injured person/s, others involved in the incident, supervisors and persons in control of the workplace.

The investigator should make it clear that the purpose for investigating the incident is to find out why it happened in order to prevent similar incidents from happening in the future. If possible, speak to witnesses at the scene or as soon after as possible, as research shows that a person's recall diminishes as time goes on.

The investigator should use open questions to encourage the person to say what's on their mind. This will help the investigator to obtain their personal opinion of what happened, without any unintended influence from the question. Open questions generally start with **who, what, when, where, why,** and **how**. The investigator should ask open questions to get initial information and then use closed questions to clarify ambiguity. Avoid asking leading and multiple questions. The oral information people provide needs to be recorded in a written document (e.g., file note).

7.4 Recommend Solutions

Once the investigator has identified the possible causes, they will need to identify which are within the control of the workplace. Only the possible causes that are within the control of the workplace can have solutions. You cannot apply a solution to a possible cause if it is outside the control of the workplace.

Hierarchy of Controls

Once the investigator has considered possible solutions, they will need to rank them according to the 'Hierarchy of Controls'. Elimination, substitution and isolation are the preferred controls because they remove the risk, which means that the other controls are not required.

The Hierarchy of controls include:

- Elimination – Complete elimination of the risk.
- Substitution – Replace the risk with a less dangerous one.
- Isolation – Isolate the risk by enclosure, guarding or barriers.
- Engineering – Redesign the work process or equipment.
- Administration – Provide training and/or procedures.
- Personal protective equipment – Use personal protective equipment.

Not all causes can be completely eliminated, and some may only be eliminated at a prohibitive cost or excessive time.

7.5 Report Outcomes

At the end of an investigation the investigator should submit an objective report to the Agency's head, who will then use the findings and recommendations of the investigation to make a decision. The Investigation Report template is at Appendix F.

A number of actions may be required following the decision of the Agency head. Actions should be taken consistent with relevant policies and procedures. The actions may be different in each situation and depend on the severity of the incident. Some examples of possible actions include:

- providing additional information to workers to raise the awareness of health and safety matters
- providing training or coaching
- providing counselling support
- reviewing relevant policies
- addressing organisational issues that may have contributed to the incident
- provide verbal or written warnings to a worker if their behaviour contributed to the incident.

8. Health and Wellbeing

Improved health and wellbeing of workers have a positive influence on staff morale, work/life balance and job satisfaction. These factors in turn reduce the number of unplanned absences from the workplace, increase job performance, productivity, attraction of new staff and retention of existing staff. Health and wellbeing initiatives aim to assist the prevention of chronic disease and injuries that may affect the workforce in the future.

The Agency's initiatives are beneficial to the health and wellbeing of workers either directly or indirectly. This includes the psychological or emotional wellbeing of a worker (e.g., work/life balance) and building resilience. Wherever feasible, initiatives are adaptable to the different circumstances and personal lifestyle factors of workers, having particular focus on the diverse range of backgrounds and cultural influences.

The Agency organises and/or funds a number of initiatives each year including:

- **Influenza Vaccinations** to reduce unscheduled absences and lost time through workers contracting the influenza virus
- **Employee Assistance Program** to provide support to employees and their families requiring counselling regarding personal or workplace issues
- **Flexible Working Arrangements** such as access to part-time work and flex leave to support and encourage a balanced lifestyle and allow employees with a diverse range of responsibilities to be productive members of the Agency.

9. Injury Prevention and Management

As part of the Agency's commitment to minimising injury, illness and death various strategies are provided to workers.

9.1 Staff Training

All workers must be trained at induction programs in safe work practices and their responsibilities under the WHS Act. Where specific work practices require additional training, the HR Team will consult with the work area to ensure appropriate safety measures are taken.

The Agency staff will be required to undertake regular WHS training. The training will be organised by the F&S Team and/or HR Team and will consist of either an online training module or face to face training session.

9.2 Workstation Assessments

The Agency arranges assessments to decrease the risk of workers being injured by incorrect setup of their workstation. A preventative workstation assessment is used to provide workers with information, training and instruction in relation to the correct ergonomic placement and setup of equipment and safe work practices while in an office environment. Soft tissue injuries, musculoskeletal conditions and occupational overuse syndrome are serious, reasonably foreseeable injuries and can be prevented with an assessment.

Workers with a pre-existing injury, disability or other complication with their workstation may be eligible for a specialist workstation assessment. These assessments are designed to prevent causing or exacerbating an injury and are conducted by external providers with an occupational therapist qualification. The HR Team, in consultation with the worker and their supervisor, will determine whether a specialist workstation assessment is appropriate in the circumstances.

A specialist workstation assessment report includes information on the proper setup of a workstation with special consideration for the unique requirements of the worker. A worker will be individually trained by the specialist to ensure that the worker understands his or her circumstances and attains the capacity to set up any similar workstation.

9.3 Workplace Inspections

The Agency workplaces must be inspected every 12 months to identify any hazards or potential hazards. An inspection report must be completed and provided to the WHSC and HR Team for analysis including for the purposes of identifying patterns and emerging trends. Hazards or potential hazards identified as a result of workplace inspections must be reported by WHSRs/DHSRs to the F&S Team and the WHSC for action.

Inspections also take place at various times throughout the year, usually when a hazard is identified by an employee. In these instances, the matter is reviewed in consultation with a WHSR/DWSR, and the relevant remedial action is undertaken.

9.4 First Aid

First Aid Officers (FAOs) are responsible for providing initial care of workers or other persons suffering injury or illness. FAO contact details are available on the intranet.

9.5 Extended Personal Leave Absences

If an employee takes a period of personal leave equal to or exceeding 10 consecutive working days, the HR Team will make contact to ensure that the employee is being appropriately supported to return to the workplace. This early-stage contact allows the Agency to identify potential fitness for duty or compensable injury/illness claims while there are still early intervention strategies that can be applied.

This contact is designed as a two-way communication method where the employee informs the Agency of any difficulty returning to work or of any significant injury/illness and the Agency provides support and relevant advice to promote recovery.

9.6 Rehabilitation Providers

The HR Team may engage a rehabilitation provider for an employee in circumstances where this could assist in the employee's recovery and return to work sooner than otherwise possible. A rehabilitation provider works with the employee and their supervisor, in consultation with the HR Team, to identify suitable assistance or modifications to the work environment to facilitate a safe return to work.

A rehabilitation provider must hold a degree in applied health sciences, behavioural science, medicine, social work, nursing, rehabilitation counselling, or another relevant qualification, and at least six month's experience in occupational rehabilitation. The role of a rehabilitation provider is to provide objective, expert advice to achieve timely and durable return to work outcomes.

10. Further Resources

- Flexible Working Arrangements Scheme
- First Aid Policies and Procedures
- Health and Safety Representatives
- Work Health Safety Committee
- Work Health and Safety Act 2011
- Work Health and Safety Regulations 2011
- Workplace harassment and bullying guidelines
- Psychosocial Safety Policy

Appendix A – Glossary

Best Practice	Policies or procedures that meet or exceed requirements set out in relevant Codes of Practice and/or recognised industry standard.
Codes of Practice	Legislative instruments that include a set of guidelines and regulations on a specific function or element of a workplace. Codes of Practice are admissible as evidence of information someone should have known about a particular hazard.
Dangerous Incident	As defined in section 37 of the Work Health and Safety (WHS) Act 2011.
Due Diligence	The standard required of *officers* in meeting their duty under the WHS Act.
Manager	Person with control of a workplace or who has supervision of another person relevant to the circumstances. This is likely to be Executive Level 1 or 2.
Notifiable Incident	An incident involving the death, serious injury or illness of a person or a dangerous incident.
Officers	Senior Executives (Director/Deputy Directory) who make, or participate in making, decisions that affect the whole, or a substantial part, of the Agency.
PCBU	Person conducting a business or undertaking, (the Agency). A phrase used in the Act to refer to the overall organisation. (note: a private contractor working on site will also be considered to be a PCBU)
Serious Illness	As defined in section 36 of the WHS Act.
Serious Injury	As defined in section 36 of the WHS Act.
WHS Act	*Work Health and Safety Act 2011*
WHS Regulations	*Work Health and Safety Regulations 2011*
Worker	Employees, contractors and volunteers working for the Agency.

Appendix B – Offences, Penalties and Notices

There are numerous offences under the WHS Act and WHS Regulations. These offences are enforced in the criminal jurisdiction.

A *Category 1* offence involves 'reckless conduct' that exposes someone to a risk of death or serious injury or illness. It is the most serious offence.

Example 1: A supervisor observed a hazard of missing handrails on erected scaffolding and decided to do nothing to fix it, in circumstances where they knew or ought to have known that a person would be exposed to death or serious injury whilst working on it.

Example 2: A boat was observed by a manager to be unseaworthy, and the manager directed an employee or contractor to travel in the boat.

Maximum penalty: $300,000 or 5 years imprisonment (or both) for an individual or $3,000,000 for an organisation.

A *Category 2* offence is committed where a person has a health and safety duty under the WHS Act, failed to comply with that duty and that failure exposed a person to a risk of death or serious injury or illness.

Example: The Agency engaged workers of a carpet laying company to renovate a workplace at which the Agency employees continue to work. The workers of the carpet laying company are applying glue to affix carpet tiles in accordance with their training and safety procedures, however, there are no barriers in place to separate the carpet laying from the place where the Agency's employees continued to work. An agency employee trips and is seriously injured.

Maximum penalty: $150,000 for an individual or $1,500,000 for an organisation.

A *Category 3* offence is committed where the person has a health and safety duty under the WHS Act, and the person fails to comply with that duty. For a Category 3 offence there is no requirement that the failure to comply with the duty exposed someone to a risk of death or serious injury or illness.

Example: A manager who fails in their duty of care to a bullied employee by failing to take any action that would have been reasonable and practicable to prevent what, in the circumstances, was a foreseeable risk of an ongoing psychiatric condition.

Maximum penalty: $50,000 for an individual or $500,000 for an organisation.

An Industrial Manslaughter offence occurs when a PCBU or officer fails to comply with a duty, and that failure, driven by gross negligence or recklessness, causes a fatality. Penalties include:

- **Individuals:** Up to 20–25 years' imprisonment.

- **Corporations:** Potential fines exceeding $10 - $20 million.

Notices issued under the WHS Act, can be in a number of different forms.

Provisional Improvement Notices (PIN) can be issued by an appointed Health and Safety Representative (HSR) within the workplace in relation to matters that the HSR considers that action under the WHS Act needs to be taken. They are issued for a specific purpose and are subject to possible appeal from the entity to Comcare for an inspector to withdraw the PIN.

Improvement Notices (IN) are issued by a Comcare Inspector and issued in relation to a specific breach of the provisions of the WHS Act or WHS Regs and compel the entity to take specific action within a specified period of time. At the end of that period of time (or sooner if the matter is addressed by the entity) the IN can be reviewed and withdrawn by the Comcare Inspector.

Prohibition Notices (PN) are issued by a Comcare Inspector and issued in relation to a specific breach of the provisions of the WHS Act or WHS Regs where the Comcare Inspector is of the view that the matter that the PN is issued in relation to presents a clear continued risk of injury or danger to workers in the entity. A PN will specify that certain activities, including access to specified parts of the entity's premises, must not take place until corrective action is taken and that the Comcare Inspector is satisfied that the danger no longer exists and that the PN can be lifted.

Penalty Notices are issued by a Comcare Inspector is of the view that a clear breach of the WHS Act or WHS Regs has taken place and that the entity is clearly guilty of such a breach. It is issued in the form of an on-the-spot fine imposed on the entity.

Prosecutions are raised by a Comcare Inspector when they of the view that a breach of the WHS Act or WHS Regs is of sufficient standing as to constitute a Breach of the legislation to the extent that a prosecution is warranted. The prosecution brief is sent from Comcare to the Commonwealth Director of Prosecutions, who will determine, based on the evidence provided it the charge against the entity will proceed. If the prosecution proceeds, then the matter comes before the court in the state or territory where the incident occurred.

Appendix C – Mechanisms for Dispute Resolution

Dispute resolution procedures apply to disputes about issues:

- arising in the course of consultations on work health and safety; and
- arising from matters covered by the relevant legislation.

Note: any party to the issue may raise that there is a formal issue that is in dispute and that requires resolution.

All attempts should be made to resolve any dispute between the involved parties and, if necessary, with the assistance of an HSR/DHSR and/or senior management. The P&S Team may be requested to provide mediation.

The issue resolution will take into account the following aspects:

- The degree and immediacy of the risk to those affected by the issue;
- The number and location of those affected by the issue;
- The measures (temporary and permanent) that need to be implemented to solve the issue;
- Who is allocated responsibility for implementing the resolutions to the issue.

Where the resolution of an issue results in some form of written agreement, all parties to the issue will confirm that the agreement reflects the resolution of the issue and a copy of the agreement will be given to all parties to the issue and to the WHS Committee, although in most cases the issue resolution would involve the WHS Committee as part of the process of issue resolution.

Failing a resolution of the dispute in mediation or other alternative dispute resolution process, the matter should be referred to the WHSC for consideration and determination. The WHSC may meet out of session in order to deal with a dispute.

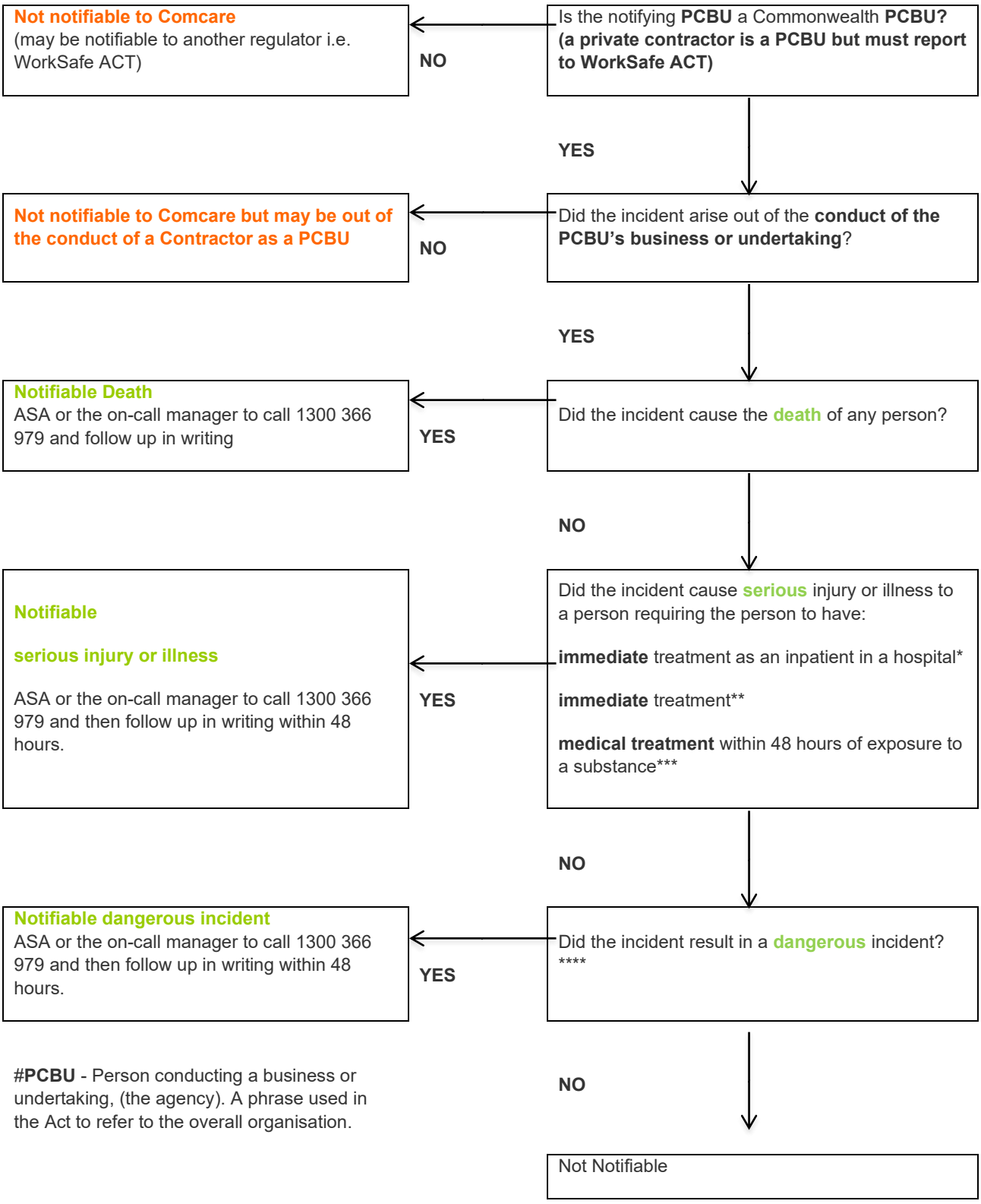
If the WHSC is unable to resolve a dispute, the WHSC Chair will refer the matter to a member of the Executive, who is not a member of the WHSC, for determination.

Where there is no resolution, Comcare may be contacted to see if they have the jurisdiction to resolve the matter.

Where a dispute relates to any issue specifically provided for by the relevant legislation, the above mechanism does not apply. The above mechanism in no way affects any person’s statutory rights.

Appendix D – Notification Decision Flowchart

All **notifiable** incidents should be reported to Comcare immediately



#**PCBU** - Person conducting a business or undertaking, (the agency). A phrase used in the Act to refer to the overall organisation.

* An **inpatient** is taken to mean the person is ‘admitted’ into a hospital for any duration, even if the stay is not overnight. Admission is defined in the National Health Data Dictionary as the process whereby the hospital accepts responsibility for the patient's care and/or treatment. Requires the patient to sign themselves out of hospital, to be released.

** **Immediate treatment** serious injury or illness of a person means an injury or illness requiring the person to have:

(a) immediate treatment as an inpatient in a hospital

(b) immediate treatment for;

I. the amputation of any part of his or her body

II. a serious head injury

III. a serious eye injury

IV. a serious burn

V. the separation of his or her skin from an underlying tissue (such as degloving scalping)

VI. a spinal injury

VII. the loss of a bodily function

VIII. serious lacerations

(c) 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.

*** The WHS Act does not prescribe what constitutes ‘**medical treatment’** for the purposes of section 36(c). Comcare takes the view that this would include treatment administered within 48 hours of being exposed to a substance by a:

- doctor who is registered or licensed to practice under a state or territory law
- certain allied health professionals such as ambulance officers and nurses.

It would not include first aid treatment administered by first aid officers.

Under the WHS framework the term ‘medical treatment’ is taken to mean ‘treatment by a medical practitioner registered under the *Health Practitioner Regulation National Law Act 2009* (the National Law).

**** A **dangerous incident** means 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) an uncontrolled escape, spillage or leakage of a substance

(b) an uncontrolled implosion, explosion or fire

(c) an uncontrolled escape of gas or steam

(d) an uncontrolled escape of a pressurised substance

(e) electric shock

(f) the fall or release from a height of any plant, substance or thing

(g) 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

(h) the collapse or partial collapse of a structure

(i) the collapse or failure of an excavation or of any shoring supporting an excavation

(j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel

(k) the interruption of the main system of ventilation in an underground excavation or tunnel

(l) any other event prescribed by the regulations

(m) but does not include an incident of a prescribed kind.

Appendix E – Work Health and Safety Investigation Report

This Work Health and Safety (WHS) Investigation Report is to be completed following the notification of an incident to Comcare. The investigation will be conducted by the People and Strategy Team, Facilities Team and/or a qualified external investigator.

The information in this report may be of a personal nature and should only be used to review WHS measures in place to ensure the safety of the Agency's workers. The information will also be used to ensure the Agency continues to meet its obligations under the Work Health and Safety legislation.

Section 1 – Investigator to complete

1. Investigator's details:

Given Name	Surname
Work Phone No	Section/Company

2. Summary of Investigation Findings

The summary should outline the event, who was involved, what happened, the scope of the investigation, the analysis and outcomes and any recommendations to prevent or minimise the recurrence of the incident.

3. Investigation Analysis

What were the events that contributed to the incident? *(You may find it helpful to construct a timeline of the events leading up to the incident)*

What were the identified or possible cause/s of the incident? *(You may find it helpful to ask why an event occurred on the event timeline to establish possible causes)*

What corrective action (solution/s) could be implemented to eliminate or reduce the risk of the identified cause/s? *(Provide explanations why the implemented control would eliminate or reduce the risk)*

4. Investigation Outcomes

Outline any controls that were put into place immediately after the incident to eliminate or reduce the risk of recurrence of the incident. *(Outline the controls and who was responsible for implementing them)*

5. Recommendations

Outline recommended corrective action/s (i.e. solution/s) to prevent the recurrence of the incident. *(Number the recommendations from most effective to least effective, i.e. Hierarchy of Controls)*

HIERARCHY of CONTROLS

ELIMINATION Complete elimination of the risk
SUBSTITUTION Replace the item/process with a less dangerous one
ISOLATION Isolate the hazard by enclosure, guarding or barriers
ENGINEERING Redesign the work process or equipment
ADMINISTRATION Provide training and/or procedures
PPE Use personal protective equipment

6. List of Attachments

Please attach relevant information sources used to undertake the investigation (Incident Report form, Investigation plan/notes, photographs, interview notes/summaries, relevant emails, details of follow up with suppliers etc.).

1. Incident report form
2.

Section 2 – Agency Head Sign off

Recommendations Approved / Not Approved
Comments:
Sign: **Date: / /** **Director**