

# Work health and safety incident response standard

QH-IMP-401-7:2020

## 1. Statement

Queensland Health is committed to ensuring and improving the health, safety and wellbeing of its **workers**.

This Standard establishes requirements for responding to **incidents** and **enforcement action**.

## 2. Application

This Standard applies to all **accountability areas** including employees of the department working in **Hospital and Health Services** (HHSs) as per the provisions of the *Hospital and Health Boards Act 2011*.

In the event that more than one accountability area is involved in a matter, each accountability area is required to apply this Standard independently, unless there is a sufficient common interest identified by the accountability area **Legal Counsel** or the Legal Branch, Department of Health.

## 3. Immediate response

The accountability area must develop, implement and maintain a process for the immediate response to incidents and enforcement action that ensures compliance with **safety legislation**.

All work health and safety (WHS) incidents must be recorded in RiskMan™.

## 4. All incidents

The accountability area must develop, implement and maintain a procedure for responding to and managing all incidents and any enforcement action. This procedure must address how:

- the WHS incident is to be investigated, including who is responsible for leading or managing non-notifiable and notifiable incident investigations
- any corrective actions arising out of WHS incident investigations will be implemented and reviewed
- the incident data is captured in the accountability area's WHS reporting, as outlined in the QH-IMP-401-4 2020 Health safety and wellbeing monitoring evaluation and performance review standard
- for all **notifiable incidents**, the accountability area follows the steps outlined in section 5 Notifiable incidents
- for all enforcement action, the accountability area follows the steps outlined in section 6 enforcement action
- WHS records will be managed and stored in line with legislative requirements.



## 5. Notifiable incidents

Notifiable incidents are incidents requiring immediate reporting to external regulatory bodies.

Notifiable incident is fully defined in safety legislation and means —

- the death of a person; or
- a serious injury or illness of a person; or
- a dangerous incident; or
- a serious electrical incident; or
- a dangerous electrical event.

After attending to the immediate medical needs of injured persons, the scene needs to be 'made safe' to minimise the risk of further injury/incidents, if safe to do so.

The accountability area must also not disturb the site, by preserving and securing the incident site so far as is reasonably practicable, until a WHS/ES Regulator inspector and/or other external bodies such as the police arrive and release the site or provide authorisation to release by way of a direction, (whichever is earlier), noting authorisation to release can be provided remotely.

- This is to preserve evidence that may help determine the cause of the incident.
- The incident site can be disturbed for a prescribed reason, as mentioned in safety legislation.

Thereafter, the following requirements must be met.

### Step 1 – Immediate internal notification

Following a notifiable incident, the **WHS Manager** (or delegate) must be notified immediately by those involved. For notifiable incidents which occur outside of hours, the Executive Director on call must be notified immediately. The accountability area must develop a process for how this is to occur.

The WHS Manager or Executive Director on call must then follow local process and instigate the required internal notification within their accountability area for example, to:

- Legal Counsel
- HHS Chief Executive and relevant **Executive Leaders**,
- HHS Board members
- Deputy Directors-General.

The accountability area should also identify any other relevant accountability areas and/or **shared duty holders** requiring notification.

### Step 2 – Immediate external notification

#### Workplace Health and Safety/ Electrical Safety Regulator (WHS/ES Regulator)

The WHS Manager (or delegate) is the preferred single point of contact for all WHS/ES Regulator engagement on behalf of the relevant Executive.

Immediately upon becoming informed of a notifiable incident, the WHS Manager is required to manage the notification to the WHS/ES Regulator.

In the case of an incident involving a fatality or a possible criminal offence, the Queensland Police Service must also be notified.

A copy of all external notification information submitted to the Regulator must also be provided to the Department of Health via email to [whs@health.qld.gov.au](mailto:whs@health.qld.gov.au), with additional information provided upon request.

### **Insurance**

In the event a worker sustains an injury for which compensation may be payable, the accountability area must report the incident to WorkCover Queensland in the approved form and within 8 business days of becoming aware of the injury, in accordance with the *Workers' Compensation and Rehabilitation Act 2003*.

### **Media**

The WHS Manager is required to follow the accountability area's own processes to ensure communication with the accountability area Crisis Manager and Media and Communications team to enable, where necessary, the management of media statements and enquiries.

## **Step 3 – Legal Professional Privilege**

Each accountability area must develop, implement and maintain a process for legal professional privilege in relation to investigations.

Local processes for determining and managing legal professional privilege are to be followed. This may involve the WHS Manager or Executive Director on call seeking advice from the accountability area's Legal Counsel, where applicable, regarding whether the notifiable incident should be investigated for the dominant purpose of obtaining legal advice or in relation to current or anticipated litigation, under legal professional privilege. If the accountability area Legal Counsel is unavailable, the WHS Manager may seek assistance from an external legal adviser.

If legal professional privilege is applied to the investigation:

- the investigation report must be marked to show "this document is confidential and subject to legal professional privilege"
- the investigation report and any other associated photographs or documentation must not be distributed or communicated to persons outside the accountability area
- the investigation report cannot be used for disciplinary purposes
- the report is to be addressed and provided to, and held by, the accountability area Legal Counsel
- Legal Counsel will advise on how corrective actions are communicated internally or any other communications in relation to the report.
- the relevant accountability area Legal Counsel must consider if the Queensland Health Common Interest Privilege Protocol with the Department of Health (if the accountability area is not the Department of Health) will operate to enable the sharing of privileged information. If there is a common interest, this must be documented for each incident. If there are issues in relation to common interest privilege information should not be shared.

## Step 4 – Internal communications

The WHS Manager must prepare and issue a brief for their accountability area executive, attaching (or containing the content of) the associated *WHS incident response form*, within 24 hours after becoming aware of the notifiable incident, or as soon as possible thereafter.

If the incident is being investigated under legal professional privilege, this must occur in consultation with the accountability area Legal Counsel, who will also determine whether the Department of Health's Legal Branch needs to be notified.

The internal notifiable incident briefing must also be sent by the accountability area to the Director-General of Queensland Health at [DG\\_Correspondence@health.qld.gov.au](mailto:DG_Correspondence@health.qld.gov.au) (also providing a copy to Department of Health at [whs@health.qld.gov.au](mailto:whs@health.qld.gov.au)) in any of the following circumstances:

- A notifiable incident that has resulted in fatality.
- A notifiable incident that has resulted in an Inspector advising to preserve and secure the incident scene and/or an Inspector attending the scene to investigate.
- A notifiable incident where enforcement action has occurred.
- An incident that has resulted in the accountability area's Legal Counsel determining that it should be investigated under legal professional privilege.

## Step 5 – WHS/ES Regulator investigation

Inspectors may enter a workplace at any time, without notice and without requiring permission.

Each accountability area is to establish a process for responding to WHS/ES Regulator visits, including:

- ensuring that inspectors will always be escorted whilst on site
- ensuring that the accountability area Legal Counsel or appropriate delegate authorises the disclosure of information and the provision of documents to the WHS/ES Regulator
- ensuring duty holders, including workers, are aware of their rights and obligations with respect to engaging with the WHS/ES Regulator.

If investigative action is initiated by the WHS/ES Regulator, the nature of the investigation (including any associated requests for information/documentation) is to be communicated to the Department of Health as per mechanisms for enforcement action outlined at section 6 of this Standard.

## Step 6 – Internal Investigation

The investigation into a notifiable incident must establish the facts and determine the causal and contributing factors to the incident.

In situations where the dominant purpose of the investigation is to enable legal advice to be obtained or to aid in anticipated litigation (i.e. subject to legal professional privilege) the investigation should not commence until the accountability area Legal Counsel has issued a request for an investigation to occur in order to enact legal professional privilege. If the accountability area Legal Counsel is unavailable to assist, an external legal adviser may be contacted to establish the investigation.

### Convening the investigation

Each notifiable incident is to be investigated using an appropriate formal investigation methodology.

The WHS Manager or their delegate is to convene the investigation and appoint a lead investigator within 2 calendar days of the notifiable incident.

#### **Lead investigator**

The lead investigator must not be associated with the notifiable incident and must be appropriately trained/competent and understand legal professional privilege, when applicable. The lead investigator must update the WHS Manager during the investigation.

#### **Terms of reference/ scope of investigation**

A scope or terms of reference must be prepared by the lead investigator within 2 calendar days of the appointment of the lead investigator. If legal professional privilege applies to the investigation, no experts or other third parties external to the accountability area may be engaged by anyone other than the accountability area Legal Counsel.

#### **Investigation timeframe**

All notifiable incidents must be investigated in a timely manner.

A draft investigation report must be completed within 21 calendar days of the notifiable incident, unless there has been an agreed extension approved by the WHS Manager (and for incidents under privilege, also by the accountability area Legal Counsel).

#### **Patient safety investigations**

For notifiable incidents involving the health and safety of a patient, the WHS Manager is required to coordinate the investigation and consult with Patient Safety / Clinical Governance. It is expected that Patient Safety will lead any clinical aspects relevant to investigation with respect to an incident arising out of clinical care for a patient.

#### **Investigation report**

At the conclusion of an investigation a report must be produced. This report must be kept confidential and stored securely.

When preparing the report, the lead investigator is required to:

- include (the content of) Queensland Health's *WHS incident investigation report* template
- ensure content is factual without speculation or opinion
- include only causal and contributing factors which can be substantiated based on the available evidence
- include recommendations that address the recorded causal and contributing factors. The report should not be used as a means of addressing concerns that do not pertain to the notifiable incident under investigation
- not reach any legal conclusions regarding any breach of safety legislation
- ensure that where the notifiable incident pertains to an alleged breach of safety legislation, recommendations address the causal and contributing factors that gave rise to the alleged breach and not to correct the alleged breach

If legal professional privilege applies, the following additional requirements must be followed:

- the report must be addressed to the accountability area Legal Counsel for advice, with a copy to the WHS Manager
- the report must be marked “Draft: Privileged and confidential, subject to legal professional privilege”

Where legal professional privilege is established, the accountability area Legal Counsel will endeavour to provide legal advice on the draft report and notifiable incident within 14 calendar days of receipt of the draft or such longer period as advised by the accountability area Legal Counsel.

If the Queensland Health Common Interest Protocol operates to enable the sharing of privileged information in relation to the notifiable incident and this has been separately recorded in writing, the report will also be provided to the Legal Branch, Department of Health.

### Executive Leader endorsement

The WHS Manager is required to have the report endorsed by the accountability area personnel with the relevant delegation (e.g. Chief Executive, senior management of accountability area) prior to finalising the report.

If the investigation was conducted under legal professional privilege, the final, endorsed version of the report is to be held by accountability area Legal Counsel.

### Communication of findings and outcomes

The report is not to be distributed by the WHS Manager, members of the investigation team or *others*. Permission must be sought from the relevant delegate (e.g. endorsing executive, Legal Counsel) before sharing the report with other stakeholders.

The WHS Manager is to communicate with those responsible for implementing corrective actions and verifying their completion. Where legal professional privilege has been established, advice from the accountability area Legal Counsel should be sought as to how this can be achieved while preserving legal professional privilege.

Following the completion of the investigation, it may be appropriate for findings to be communicated to Queensland Health staff, unions and other stakeholders. If the investigation has been conducted under legal professional privilege, the communication must be approved by the accountability area Legal Counsel and the WHS Manager.

If requested, the notifiable incident investigation outcome, including confirmation of finalisation and the completed (or planned) implementation of corrective actions, may also need to be communicated to the Department of Health, via email at [whs@health.qld.gov.au](mailto:whs@health.qld.gov.au), with additional information provided upon request.

## 6. Enforcement action

In the event that the WHS/ES Regulator instigates enforcement action the accountability area must ensure that the following requirements are met.

## Step 1 – Immediate internal notification

Following enforcement action, the WHS Manager (or delegate) must be notified immediately by the accountability area. For enforcement action which occurs outside of hours, the Executive Director on call must be notified immediately. The accountability area must develop a process for how this is to occur.

The accountability area is responsible for the following:

- Immediate notification of enforcement action to the WHS Manager/delegate (during work hours) or Executive Director on call (outside of work hours).
- The WHS Manager/delegate or Executive Director must advise the below personnel of the enforcement action:
  - Accountability area Legal Counsel by telephone or, if outside of hours, via email.
  - Accountability area executive leaders, through a pre-agreed mechanism.
  - Where a notice has been issued to an individual, to the individual in question.
  - Department of Health via email to [whs@health.qld.gov.au](mailto:whs@health.qld.gov.au), ensuring the documentation submitted to the Department of Health includes any notice issued by a Regulatory body, or a person with powers under a relevant Act/Regulation, which mandates compliance.
  - Any other accountability area and/or shared duty holder.

## Step 2 – Internal communications

The WHS Manager must prepare and issue an internal brief for their accountability area executive, attaching (or containing the content of) the associated *WHS incident response form*, within 24 hours after becoming aware of the enforcement action.

- The enforcement action briefing must also be sent by the accountability area to the Director-General of Queensland Health at [DG\\_Correspondence@health.qld.gov.au](mailto:DG_Correspondence@health.qld.gov.au).
- Copies of all enforcement action briefing documentation, including notices issued, are also to be sent to the accountability area's Legal Counsel and the Department of Health at [whs@health.qld.gov.au](mailto:whs@health.qld.gov.au).
- The accountability area's Legal Counsel will determine whether the Department of Health's Legal Branch also needs to be notified.

Subject to any legislative process, the WHS Manager is required to take appropriate action in response to enforcement action in consultation with relevant stakeholders (including Legal Counsel where legal professional privilege applies in relation to enforcement action).

The WHS Manager is to provide updates to the Department of Health on the progress of a response to enforcement action, including when requested.

Once enforcement action has ceased/closed (e.g. notice satisfied) the WHS Manager is required to notify the Department of Health and provide additional information if requested.

## 7. Record retention

Records generated through the application of this Standard and associated documentation are to be retained in accordance with the General Retention and Disposal Schedule (GRDS), Queensland Government and Queensland Health Information Management policies.

## 8. Legislation

- Building Fire Safety Regulation 2008
- *Electrical Safety Act 2002*
- Electrical Safety Regulation 2013
- *Work Health and Safety Act 2011*
- Work Health and Safety Regulation 2011
- WHS Codes of practice including the electrical safety codes of practice
- *Workers' Compensation and Rehabilitation Act 2003* and *Workers' Compensation and Rehabilitation Regulation 2014*

## 9. Supporting documents

- General Retention and Disposal Schedule (Administrative Records)
- QH-IMP-401-4 2020 Health safety and wellbeing monitoring evaluation and performance review standard
- QH-IMP-401-6: 2020 Health safety and wellbeing governance standard
- QH-IMP-401-7-Att1 Workplace and Electrical Safety Best Practice Guide
- QH-IMP-401-7-Att3 Queensland Health Common Interest Privilege Protocol
- QH-POL-401-Att2 Health, safety and wellbeing management system framework
- QH-POL-467 Department of Health Corporate Records Management Policy
- QH-POL-468 eHealth Queensland Information security Policy
- Queensland Government Information security policy
- Queensland Government Records governance policy
- Queensland Health Best Practice Guide for WHS and Associated Matters
- Queensland Health Safety Alert Broadcast System
- WHS incident investigation report template
- WHS incident response form

## 10. Definitions

Term	Definition
Accountability area	Department of Health divisions and agencies and each HHS are accountability areas within Queensland Health.
Enforcement action	Enforcement action, for the purposes of this document, includes the issuing of a notice by a Regulatory body, or a person with powers under a relevant Act/Regulation, which mandates compliance. Examples include:



Term	Definition
	<ul style="list-style-type: none"> <li>• Improvement notice</li> <li>• Prohibition notice</li> <li>• Non-disturbance notice</li> <li>• Enforceable undertaking</li> <li>• Revocation, suspension or cancellation of an authorisation or licence</li> <li>• Infringement notice</li> <li>• Prosecution</li> <li>• Requirement to produce information/documentation (e.g. s155 or s171 of the Act)</li> <li>• Provisional Improvement Notice (PIN)</li> </ul>
Executive Leader	Is the most senior person of each accountability area and can include persons reporting to that position.
Hospital and health service (HHS)	Hospital and health service established under the Hospital and Health Boards Act 2011.
Incident	An unplanned event or work-related incident that has either resulted in or had the potential to result in adverse outcomes such as harm, loss, damage, disruption or delay.
Legal Counsel	A member of the legal team at the relevant accountability area, in the Legal Branch of the Department of Health or an external legal adviser.
Notifiable incident	A notifiable incident under electrical safety and work health safety legislation.
Others	Other persons as referenced in the Work Health and Safety Act, 2011. Others are people who are not workers but whose health and safety may be impacted by one or more accountability areas. Patients and visitors are examples of others.
Person Conducting a Business or Undertaking (PCBU)	Means a person conducting a business or undertaking. The Department of Health (including Health Support Queensland and eHealth) and each of the HHSs are considered to be PCBUs.
Safety legislation	The Work Health and Safety Act 2011, and the Electrical Safety Act 2002 and any associated regulations or WHS codes of practice, as amended from time to time.
Shared duty holders	Persons who have a duty under safety legislation in relation to the same matter as another person.
WHS Manager	The Workplace Health and Safety Manager or equivalent functional lead at the relevant accountability area, or their delegate.
WHS/ES Regulator	Workplace Health and Safety Queensland, or the Electrical Safety Office, as applicable.
Worker	Definition as per section 7 of the WHS Act, that is: A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking,

Term	Definition
	<p>including work as—</p> <ul style="list-style-type: none"> <li>(a) an employee; or</li> <li>(b) a contractor or subcontractor; or</li> <li>(c) an employee of a contractor or subcontractor; or</li> <li>(d) an employee of a labour hire company who has been assigned to work in the person’s business or undertaking; or</li> <li>(e) an outworker; or</li> <li>(f) an apprentice or trainee; or</li> <li>(g) a student gaining work experience; or</li> <li>(h) a volunteer; or</li> <li>(i) a person of a prescribed class</li> </ul> <p>The person conducting the business or undertaking is also a worker if the person is an individual who carries out work in that business or undertaking.</p> <p>As per the Workers’ Compensation and Rehabilitation Act, 2003 s 11(1) (as amended 2013): A person who works under a contract with Queensland Health, and in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the Taxation Administration Act 1953; who has sustained a work-related personal injury or illness. (The above definition is utilised by WorkCover Queensland when determining liability/eligibility for workers’ compensation entitlements).</p>

## 11. Version control

Version	Date	Comments
1.0	15 June 2020	<i>New standard</i>
1.1	21 July 2021	<p><i>Standard updated to reflect operational requirements for internal notifications of notifiable incidents and enforcement action</i></p> <p><i>Enforcement action definition scope broadened</i></p>