

GUIDE TO LEAD RISK WORK NOTIFICATIONS

How to decide if you need to notify Comcare of lead risk work under the *Work Health and Safety Regulations 2011* (Cth)



Australian Government

Comcare

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CONTENTS

INTRODUCTION	4
DEFINITIONS	4
WHO IS A PERSON CONDUCTING A BUSINESS OR UNDERTAKING (PCBU) IN COMCARE'S JURISDICTION?	5
LEAD RISK WORK NOTIFICATIONS	5
DETERMINING WHETHER LEAD RISK WORK IS BEING CARRIED OUT	5
WHEN TO NOTIFY COMCARE	6
HOW TO NOTIFY COMCARE	7
WHAT FEES ARE INVOLVED IN NOTIFYING?	8
DO I KEEP A RECORD OF THE NOTIFICATION?	9
OBLIGATIONS OF A PCBU	9
CONTROL OF RISK	9
HEALTH MONITORING	9
REMOVAL OF WORKER FROM LEAD RISK WORK	11
OFFENCES	12
APPLICATION FOR REVIEW OF DECISION	12
INTERNAL REVIEW	12
EXTERNAL REVIEW	13
ADDITIONAL INFORMATION	13
LEGISLATION	13
CONTACT DETAILS	14
LIST OF STATE AND TERRITORY WHS REGULATORS	14

INTRODUCTION

Under the *Work Health and Safety Act 2011* (Cth) (WHS Act), a person conducting a business or undertaking (PCBU) at a workplace is required to ensure, so far as is reasonably practicable, the health and safety of workers and others (section 19). For the definition of what is 'reasonably practicable', refer to section 18 of the WHS Act.

Part 7.2 of the *Work Health and Safety Regulations 2011* (Cth) (WHS Regulations) sets out specific requirements to protect the health and safety of people at workplaces where lead risk work is undertaken. These include requirements to notify Comcare of:

- > lead risk work
- > the removal of a worker from lead risk work.

This guide aims to help you decide who has an obligation to notify Comcare of lead risk work, what the requirements of notification are, and other associated obligations.

DEFINITIONS

Emergency service organisation

Regulation 5 provides that an emergency service organisation is:

- > a police, fire, ambulance, coast guard, rescue or emergency service
- > the Defence Force when engaged in a civil emergency or disaster relief
- > an emergency service organisation in accordance with regulations made under state or territory laws relating to work health and safety.

Lead

Regulation 5 of the WHS Regulations defines 'lead' to mean lead metal, lead alloys, inorganic lead compounds, and lead salts of organic acids.

Lead process

Regulation 392 provides that a 'lead process' consists of any of 18 processes listed in paragraphs (a) to (r) as well as a process which Comcare decides is a lead process under regulation 393. Generally stated, these lead processes include handling dry lead compounds, grinding, sanding or cutting lead, lead alloys or lead containing products and exposing lead or alloys to heat.

The danger posed by these processes is that they produce lead dust, fumes or mist which can be swallowed or inhaled. People are at risk if they work in a lead process, are near a lead process or come into contact with contaminated surfaces.

Lead risk work

Regulation 394 defines 'lead risk work' as work carried out in a lead process that is likely to cause the blood level of a worker carrying out the work to exceed:

- > for a female of reproductive capacity – 10 µg/dL (0.48 µmol/L)
- > in any other case – 30 µg/dL (1.45 µmol/L).

Personal protective equipment (PPE)

Regulation 5 defines PPE as meaning 'anything used or worn by a person to minimise risks to the person's health and safety, including air supplied respiratory equipment'.

Person conducting a business or undertaking (PCBU)

Section 5 of the WHS Act provides that a person conducts a business or undertaking whether alone or with others and whether or not the business or undertaking is conducted for profit or gain.

A PCBU may be an individual, body corporate, government agency, a partnership or an unincorporated association.

To find out when a PCBU falls within Comcare's jurisdiction, see below.

WHO IS A PERSON CONDUCTING A BUSINESS OR UNDERTAKING (PCBU) IN COMCARE'S JURISDICTION?

For practical purposes, a PCBU in Comcare's jurisdiction is a body corporate licensed to self insure with the Comcare scheme (referred to in the WHS Act as a 'non Commonwealth licensee'), the Commonwealth (for example, a department or agency) or a Commonwealth public authority or Commonwealth company.

For more information about PCBUs that fall within Comcare's jurisdiction, refer to the [PCBU page](#) on the Comcare website.

LEAD RISK WORK NOTIFICATIONS

Regulation 403 of the WHS Regulations provides that Comcare must be notified in writing:

- > by the PCBU of a workplace if lead risk work is carried out at that workplace
- > by an emergency service organisation if its emergency service worker, when rescuing or providing first aid to a person, carried out lead risk work.

The following information sets out who is responsible for determining whether lead risk work is carried out, how the determination is made and what is involved in making a notification.

DETERMINING WHETHER LEAD RISK WORK IS BEING CARRIED OUT

Under regulation 402 of the WHS Regulations, it is the responsibility of a PCBU at a workplace where a lead process is being carried out to determine whether lead risk work is carried out in that process.

To make this determination, the PCBU must first determine whether a lead process is being carried out at the workplace by reference to regulation 392.

Comcare may also decide that a process is a lead process (regulation 393(1)) if it is satisfied on reasonable grounds that the process creates a health risk to a worker in the workplace having regard to workers' blood levels or airborne lead levels at that workplace (regulation 393(2)).

If Comcare decides that a process is a lead process, Comcare must notify the relevant PCBU in writing of its decision within 14 days of making the decision (regulation 393(3)). Comcare's decision is reviewable. Information about the review process is set out on page 12 of this guide.

Having determined that a lead process is being carried out at a workplace, regulation 402(2) provides that the PCBU must have regard to the following matters when determining whether the lead process involves lead risk work:

- a) past biological monitoring results of workers
- b) airborne lead levels
- c) the form of lead used
- d) the tasks and processes required to be undertaken with lead
- e) the likely duration and frequency of exposure to lead
- f) possible routes of exposure to lead
- g) any information about incidents, illnesses or diseases in relation to the use of lead at the workplace.

These matters are directed towards gauging whether there will be exposures to lead that would be likely to result in the lead blood levels referred to in regulation 394.

Note that regulation 402(3) makes it clear that, when assessing a lead process, the PCBU must not take into account the effect of PPE including air supplied respiratory equipment. PPE is not considered an adequate risk control measure for lead if it is the only measure used.

Regulation 402(4) provides that if a PCBU cannot determine if a lead process involves lead risk work, the process will be taken to include lead risk work until the PCBU can determine that lead risk work is not carried out in the process.

WHEN TO NOTIFY COMCARE

Notifications must be made when lead risk work is carried out at a workplace or taken to be carried out, when there is a change to a notification and when a worker is removed from carrying out lead risk work.

A PCBU must notify Comcare within seven (7) days of determining that work carried out at the PCBU's workplace is lead risk work (regulation 403(1)).

This notification must also be given when the PCBU cannot determine whether lead risk work is carried out at the workplace. This is because, under regulation 402(4), the work is taken to include lead risk work until the PCBU determines otherwise.

An emergency service organisation must notify Comcare as soon as practicable after determining that work carried out by the emergency service organisation's emergency service worker is lead risk work (regulations 403(4) and (5)).

If there is a change in a notification already given to Comcare, the PCBU must notify Comcare before the change or as soon as practicable after the PCBU becomes aware of the change (regulation 404(1)).

Regulation 415(2) requires a PCBU to notify Comcare as soon as practicable if a worker is removed from carrying out lead risk work under regulation 415(1). Information about the circumstances in which a PCBU must remove a worker from carrying out lead risk work is set out in this guide in the section entitled, 'Obligations of a PCBU'.

All notices must indicate the kind of lead process being carried out that includes the lead risk work (regulation 403(2)).

HOW TO NOTIFY COMCARE

All lead risk work notifications to Comcare must be in writing.

PCBUs and emergency service organisations are encouraged to make their notifications using Comcare’s form, ‘Notification of lead risk work’ available on the Comcare website www.comcare.gov.au.

Section of the form	Instructions
Section 1	Type of application—indicate whether the notification is a new notification, a notification of change that was previously submitted or a notification indicating the removal of a worker from lead risk work.
Section 2	Details of the PCBU—Legal name, registered business name (if applicable), ABN, ACN, street address, town, suburb, postcode (and address for correspondence if different), OR Details of the Emergency Service Organisation (ESO)—Legal name, registered business name (if applicable), ABN, ACN, street address, town, suburb, postcode (and address for correspondence if different).
Section 3	Details of the individual authorised to complete the notification and relevant contact details if further information is required. (The person completing the notification must have the appropriate delegation to notify on behalf of the PCBU or ESO).
Section 4	Details of the workplace at which the lead risk work is being carried out including its location, the lead process work involved, the workers and other persons involved in the work or in the vicinity of the work. These details should also be completed where an ESO has rescued a person or provided first aid to a person as a result of lead risk work.
Section 5	Description of the lead process to be carried out or carried out that includes the lead risk work (regulation 403(2)). Refer to paragraphs (a) to (s) of regulation 392 of the WHS Regulations which lists the relevant lead processes.
Section 6	Date of commencement of the lead risk work and proposed completion date (if the work is short term such as abrasive blasting of lead paint from a structure) or indication that the work is ongoing.
Section 7 ¹	PCBUs may consider providing the following documents to accompany the notification form: <ul style="list-style-type: none"> > a description of the risk control measures which should discuss issues such as risk assessments, safe work method statements, any monitoring results; specific risk control requirements for lead set out in the WHS Regulations (for example, containment of lead contamination; cleaning methods; prohibition on eating, drinking, and smoking in lead process areas; provision of changing and washing facilities; laundering, disposal and removal of PPE) > a description of how the control measures identified in the risk assessment have been monitored. PCBUs may also consider outlining the effectiveness of any relevant control measures implemented > a list of dates for the testing of blood levels may also be provided to Comcare. It may include the results of any testing and how the test results have been communicated to workers.

¹ While the WHS Regulations do not mandate that PCBUs provide copies of their risk management procedures, this requirement has been endorsed by the Heads of Workplace Safety Authorities and adopted by other state and territory WHS Regulators.

Section 8	<p>Details of why the worker was removed should be given.</p> <p>If removal was the result of increased blood lead levels, the worker's blood lead results and contact details should be provided.</p> <p>If removal was at the recommendation of a registered medical practitioner (RMP), a brief description of the reason for the recommendation should be given with a copy of the RMP's lead health monitoring report.</p> <p>If removal was due to the failure of a risk control measure, a description of the failure and the new risk control measure/s adopted. When completing section 8, PCBUs should also indicate whether a notification advising of the lead risk work was previously submitted to Comcare and the date the notification was submitted.</p>
Section 9	<p>Name of the RMP who conducted and/or supervised any medical examinations and biological monitoring of the workers carrying out lead risk work. Health monitoring must be carried out by or under the supervision of a RMP with relevant experience in health monitoring.</p>
Section 10	<p>Declaration</p> <p>The person authorised to make the notification must sign and date a declaration made in the following terms:</p> <p>I declare that:</p> <ul style="list-style-type: none"> > I am empowered by valid and express power, delegation in writing or authorisation in writing, to act as, for or on behalf of the PCBU that is the applicant for the authorisation sought. > The information in this application is true and correct to the best of my knowledge. > I consent to Comcare making enquiries and exchanging information with other Commonwealth entities and other work health and safety regulators in the states and territories regarding any matter relevant to this application. <p>The person's position or title and contact details must be provided with the declaration.</p> <p>Note that in relation to section 268 of the <i>Work Health and Safety Act 2011</i>, Part 7.4 of the <i>Criminal Code Act 1995</i> makes it an offence for a person to give Comcare false or misleading information in respect of a notification. Should a notification contain false or misleading information, the person making the notification will be liable for prosecution under the <i>Criminal Code Act 1995</i>, and if convicted, face a penalty of up to 12 months imprisonment.</p>

The completed form may be sent to either:

- > lead.notify@comcare.gov.au
- > facsimile number 1300 305 916.

WHAT FEES ARE INVOLVED IN NOTIFYING?

There is no fee for a notification of lead risk work, a notification of change to a previously submitted form or the notification of the removal of a worker from lead risk work.

DO I KEEP A RECORD OF THE NOTIFICATION?

When a PCBU notifies Comcare of lead risk work, the PCBU must:

- > keep a copy of the notification for the period that the lead risk work is carried out at the workplace
- > ensure a copy of the notification is readily accessible to:
 - a worker who is likely to be exposed to lead
 - the worker's health and safety representative.

(Regulations 403(3)).

The PCBU must give Comcare written notice of any change in a notification given under regulation 403 before the change or as soon as practicable after the PCBU becomes aware of the change (regulation 404(1)).

The PCBU must keep a copy of this notice while the lead risk work is carried out and ensure a copy is readily accessible to a worker who is likely to be exposed to lead and the worker's health and safety representative (regulation 404(2)).

OBLIGATIONS OF A PCBU

CONTROL OF RISK

Regulations 396 to 401 specify a range of measures with which a PCBU must comply to ensure risks of lead contamination are controlled. These measures include ensuring:

- > the containment of any lead contamination in the lead process area (regulation 396)
- > that a lead process area is kept clean and that the cleaning methods do not create or spread risks of contamination (regulation 397)
- > that lead contamination does not occur through ingestion through eating, drinking, smoking, or otherwise (regulation 398)
- > that changing, showering and toilet facilities are in good working order and that the proper processes are in place to minimise ingestion and spreading of lead contamination (regulation 399)
- > the appropriate disposal of PPE (regulation 400)
- > the review of the PCBU's health and safety measures applied to control risks from lead exposure and revising these measures in the specific circumstances listed in the regulation. If these circumstances do not occur, the PCBU must undertake a review of control measures every five years (regulation 401).

HEALTH MONITORING

A PCBU at a workplace that carries out lead risk work must ensure that health monitoring is provided to a worker before the worker first commences lead risk work for the person and one (1) month after the worker first commences lead risk work for the person (regulation 405(1)).

Where lead risk work is identified after a worker commences the work, the PCBU must ensure that health monitoring commences as soon as practicable after the lead risk work is identified and one (1) month after the first monitoring (regulation 405(2)).

The PCBU has a responsibility to ensure that any health monitoring of the worker includes the health monitoring of a type referred to in Schedule 14 of the WHS Regulations, unless:

- a) an equal or better type of health monitoring is available; and
- b) the use of that other type of monitoring is recommended by a RMP with experience in health monitoring.

(Regulation 406).

The relevant PCBU at a workplace must also arrange for biological monitoring of each worker who carries out lead risk work. Biological monitoring is required to be carried out at the following times:

- a) For females not of reproductive capacity and males:
 - (i) if the last monitoring shows a blood lead level of less than 30µg/dL (1.45µmol/L) — six months after the last biological monitoring of the worker
 - (ii) if the last monitoring shows a blood lead level of 30µg/dL (1.45µmol/L) or more but less than 40µg/dL (1.93µmol/L) — three months after the last biological monitoring of the worker
 - (iii) if the last monitoring shows a blood lead level of 40µg/dL (1.93µmol/L) or more — six weeks after the last biological monitoring of the worker
- b) For females of reproductive capacity:
 - (i) if the last monitoring shows a blood lead level of less than 10µg/dL (0.48µmol/L) — three months after the last biological monitoring of the worker
 - (ii) if the last monitoring shows a blood lead level of 10µg/dL (0.48µmol/L) or more — six weeks after the last biological monitoring of the worker.

(Regulation 407(1)).

The frequency of biological monitoring must be increased if the worker carries out an activity that is likely to significantly change the nature or increase the duration or frequency of the worker's lead exposure (regulation 407(2)).

Comcare may determine the frequency with which biological monitoring is undertaken and give the relevant PCBU written notice of its determination within 14 days after making the determination. The PCBU must comply with the determination (regulations 407(3), (4) and (5)).

The PCBU may apply for a review of Comcare's determination as it is a reviewable decision.

All health monitoring must be carried out by or under the supervision of a RMP with experience in health monitoring (regulation 408).

It is the responsibility of the PCBU to pay any expenses associated with and relating to the health monitoring of a worker (regulation 409).

The PCBU must provide the following information to the RMP in relation to the health monitoring:

- a) the name and address of the PCBU
- b) the name and date of birth of the worker
- c) the lead risk work that the worker is, or will be, carrying out that has triggered the requirement for health monitoring
- d) if the worker has started that work, how long the worker has been carrying out that work.

(Regulation 410).

The PCBU must take all reasonable steps to obtain a health monitoring report from the RMP as soon as practicable after the monitoring has been carried out (regulation 411(1)).

The PCBU must give a copy of the report to the relevant worker and to all other PCBUs who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report (regulations 412 and 414).

The health monitoring report must at a minimum include the following:

- a) the name and date of birth of the worker
- b) the name and registration number of the RMP
- c) the name and address of the PCBU who commissioned the health monitoring
- d) the date of health monitoring
- e) if a blood sample is taken—the date the blood sample is taken
- f) the results of biological monitoring that indicate blood lead levels in the worker's body
- g) the name of the testing pathology service
- h) any test results that indicate that the worker has reached or exceeded the relevant blood lead level for that worker under regulation 415
- i) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the lead risk work that triggered the requirement for health monitoring
- j) any recommendation that the PCBU take remedial measures, including whether the worker can continue to carry out the type of work that triggered the requirement for health monitoring (note that regulation 415 requires the removal of a worker from lead risk work even if there is no recommendation of a RMP to do so)
- k) whether medical counselling is required for the worker in relation to the work that triggered the requirement for health monitoring.

(Regulation 411(2)).

Under regulation 413, the PCBU has a duty to provide a copy of the health monitoring report to Comcare as soon as practicable after obtaining the report, if the report contains the following:

- a) test results indicating that the worker has a blood lead level as provided in regulation 415
- b) any advice that test results indicate the worker may have contracted a disease, injury or illness as a result of carrying out the work that triggered the requirement for health monitoring
- c) any recommendation that the PCBU take remedial measures, including whether the worker can continue to carry out the work that triggered the requirement for health monitoring.

Regulation 418 provides that a PCBU must ensure that health monitoring reports about a worker are kept as confidential records, identified as a record in relation to the worker and kept for at least 30 years after the record is made.

REMOVAL OF WORKER FROM LEAD RISK WORK

A PCBU must remove a worker from carrying out lead risk work immediately in any of the following circumstances:

- > biological monitoring indicates the worker's blood lead level is, or is more than:
 - 50 µg/dL (2.42 µmol/L) for females not of reproductive capacity and males
 - 20 µg/dL (0.97 µmol/L) for females of reproductive capacity
 - 15 µg/dL (0.72 µmol/L) for females who are pregnant or breastfeeding
- > the RMP recommends that the worker be removed from carrying out lead risk work
- > there is an indication that a risk control measure has failed and as a result, the worker's blood lead level is likely to reach the relevant level set out above (regulation 415(1)).

The PCBU must notify Comcare as soon as practicable of a worker's removal (regulation 415(2)).

OFFENCES

Note that it is an offence not to comply with each of the duties in Part 7.2 of the WHS Regulations.

APPLICATION FOR REVIEW OF DECISION

Regulation 676 sets out decisions that are reviewable and who is eligible to apply for the review of a decision (the eligible person) as follows:

Decision made by Comcare	Who is an eligible person and can apply for a review of the decision
Item 33: Regulation 393—deciding a process to be a lead process	The PCBU that carries out the lead process A worker whose interests are affected by the decision
Item 34: Regulation 407—determining a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work	The PCBU that carries out the lead process A worker whose interests are affected by the decision

INTERNAL REVIEW

The person seeking the review of a decision must first seek an internal review by Comcare (regulation 678).

An application for internal review allows Comcare’s decision to be reviewed and possibly changed by a person who was not involved in the original decision. A written application for the internal review of a reviewable decision is to be made using the “[Application for internal review](#)” form provided by Comcare, available on the Comcare website.

The eligible person (as per the above table) seeking an internal review of a decision must lodge an application for review within:

- > twenty-eight (28) days after the day on which the decision first came to the eligible person’s notice
- > any extended time that Comcare allows.

(Regulation 678).

An internal review cannot be conducted by the same person who made the reviewable decision (regulation 679).

The internal reviewer may either:

- > confirm or vary the reviewable decision
- > set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

(Regulation 680(2)).

The internal reviewer may ask the person seeking a review for additional information and specify a timeframe of not less than seven days in which this information must be provided (regulations 680(3) and (4)).

The internal reviewer must make a decision within 14 days after receipt of the application for internal review or receipt of the additional information (regulation 680(1)).

The internal reviewer must give the applicant written notice of their decision and reasons for the decision within 14 days of making the decision (regulation 681).

If the internal reviewer fails to make a decision within the 14 day period or the person seeking a review fails to provide the additional information within the specified timeframe, then the reviewable decision is taken to have been confirmed (a deemed confirmation) (regulations 680(5) and (6)).

An application for an internal review does not affect the operation of the original decision or prevent the taking of any lawful action to implement or enforce that decision. However, once the decision on internal review is made and a new decision is substituted, then that new decision takes effect (regulation 682).

EXTERNAL REVIEW

The person eligible to seek an internal review may apply to the Administrative Appeals Tribunal (AAT) for the external review of a decision or a deemed confirmation made on an internal review (see above for the reference to 'deemed confirmation').

The application may be made within 28 days after the day on which the decision first came to the applicant's notice or any extended time that the AAT allows (regulation 683).

ADDITIONAL INFORMATION

LEGISLATION

Work Health and Safety Act 2011 (WHS Act)

Work Health and Safety Regulations 2011 (WHS Regulations)

A copy of the WHS Act and WHS Regulations can be obtained via <http://www.comlaw.gov.au/>.

The table below may assist PCBUs in finding provisions in the WHS Act and Regulations that relate to lead risk work notifications. The table also contains information about relevant Codes of Practice.

Definitions, relevant provisions	Relevant legislation
Person conducting a business or undertaking (PCBU)	WHS Act – Section 5 Information sheet ' PCBU in the Commonwealth Jurisdiction ' available on the Comcare website
PCBU's primary duty of care	WHS Act – Section 19
Reasonably practicable	WHS Act – Section 18
Meaning of worker	WHS Act – Section 7
Meaning of workplace	WHS Act – Section 8
Provisions about lead risk work	Part 7.2 of the WHS Regulations
Related Codes of Practice	Work Health and Safety Codes of Practice <ul style="list-style-type: none"> > Code of Practice on Labelling of Workplace Hazardous Chemicals > Code of Practice on Preparation of Safety Data Sheets for Hazardous Chemicals > Work Health and Safety Code of Practice on Managing Risks of Hazardous Chemicals in the Workplace

CONTACT DETAILS

For any further enquiries on lodging or completing the notification form, please contact the WHS Helpdesk on 1300 366 979 or alternatively email WHS.help@comcare.gov.au.

LIST OF STATE AND TERRITORY WHS REGULATORS

Jurisdiction	Name of regulator	Telephone	Website
Commonwealth	Comcare	1300 366 979	www.comcare.gov.au
New South Wales	WorkCover NSW	13 10 50	www.workcover.nsw.gov.au
Victoria	WorkSafe Victoria	1800 136 089	www.worksafe.vic.gov.au
Queensland	Workplace Health and Safety Qld	1300 369 915	www.justice.qld.gov.au
Western Australia	WorkSafe WA	1300 307 877	www.worksafe.wa.gov.au
South Australia	SafeWork SA	1300 365 255	www.safework.sa.gov.au
Tasmania	Workplace Standards TAS	1300 366 322 (Inside Tasmania) (03) 62337657 (Outside Tasmania)	www.wst.tas.gov.au
Australian Capital Territory	WorkSafe ACT	(02) 6207 3000	www.worksafety.act.gov.au
Northern Territory	NT WorkSafe	1800 019 115	http://www.nt.gov.au/justice/worksafe



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