

# NOTIFIABLE INCIDENT RESPONSE GUIDE





**FOREST INDUSTRY  
CONTRACTORS  
ASSOCIATION**



Developed with the assistance of WorkSafe

# Information for Contractors to Prepare for and Manage Notifiable Events

This guide aims to help forestry contractors improve the way they prepare for and respond to notifiable events.

Responding to a notifiable event can be a daunting experience and much more challenging than you first imagine it will be. These guidelines share learnings and practical advice given from forestry contractors, injured workers, members of whānau pani (bereaved family), WorkSafe, ACC and Victim Support.

This information is intended to provide initial guidance and support the development of your preparation and responsiveness to a notifiable event and to ensure all people involved are your highest priority. Please note the advice in these guidelines is not exhaustive and in the case of a notifiable event, it is important to consult health and safety and legal professionals to ensure your company is taking the best course of action and meeting appropriate legal requirements.

## First Response

Ensure the site, people & equipment are not disturbed until authorised by a WorkSafe Inspector.

The exceptions are if the disturbance is:

1. to help an injured person
2. to remove a deceased person
3. essential to make the site safe or to minimise the risks of a further notifiable event
4. by or under direction of a police officer
5. permitted by the regulator or an Inspector.

To ensure that the site is not disturbed:

- the work set-up should not be changed;
- any plant, substances or other things involved in the event should stay where they are;
- work that could interfere with the scene of the event should cease; and
- no alterations should be made to the plant, vehicles, or structures involved.

## Notification to WorkSafe

Notification to WorkSafe needs to be reported at the first opportunity.

- If someone has been killed as a result of work, notify immediately by phone: **0800 030 040** (24/7).
- In the case of emergency, phone **111**.
- For all other notifications use the Notify WorkSafe tool

All notifications to WorkSafe are referred to their Response team and each notification is reviewed before WorkSafe decides a course of action. WorkSafe has a range of options available, including investigating or inviting you to participate in an assisted review of your health and safety system. If no action is required, WorkSafe will confirm this.

Prior to commencing work in other parts of your workplace, consider how you can carry out your role in a way that is respectful to the culture of your workers, the whānau (family) of the injured worker and the protocols of mana whenua (customary right of hapu and iwi who use or inhabit the area to exercise authority and responsibility over the land). The Regulator can provide you with support in this area.

Allow as much time as possible for cultural practices and processes that are being carried out e.g. rāhui (a form of tapu restricting access to, or use of, an area or resource by unauthorised persons), karakia (process of prayer) and speeches to conclude. It is very important to allow time for these processes to take place.

## WorkSafe Investigations

WorkSafe is tasked with carrying out fair and independent investigations into workplace accidents. WorkSafe Inspectors and the New Zealand Police may both be involved in the early stages of the investigation. The Police investigate whether an offence has been

committed under the laws the Police are responsible for, while WorkSafe investigates whether any of New Zealand's health and safety laws have been broken. During the investigation WorkSafe will try to find out:

- what led to the accident;
- what, if anything, could have been done to prevent it;
- what, if anything, should be done to prevent an accident like this happening again; and
- whether anyone involved in this accident broke the law, and whether any action should be taken against them.

Cultural sensitivity is a priority for Government agencies. If you, the crew or the whānau feel at any stage that cultural values are not being understood or respected, please notify the Agency directly, through your lawyer or through FICA (Forest Industry Contractors Association).

Although giving a statement can be daunting for a lot of people, having a solid internal investigation process and effective health and safety systems in place can make the process easier. Be aware that the Regulator will ask for information from individuals at a time that they may be experiencing tremendous shock and not thinking clearly. To make the investigation process more effective, it is recommended you get legal support in place immediately. It also may be a good idea to have separate legal representation than that offered by the Forest Manager.

Workers will require strong leadership and direction at these times. Many workers will be reluctant to speak in an interview if they are alone. Be proactive by putting in place the support that workers may need e.g. whānau members/ spokesperson, counselling and legal representation.

Discounted professional counselling and trauma response services are available for forestry employees or any people involved at a discounted rate through Vitae <https://safetree.nz/resources/vitae/> (phone **0508 664 981**).

Ensure that workers have access to ongoing support such **Need To Talk? (1737 – free call or text)**.

The WorkSafe Inspector will, in the first instance, seek a voluntary interview, before requiring an interview. A voluntary interview can take place somewhere comfortable for the interviewee, such as their home. This interview should be focused on gathering general information, however be aware the voluntary interview can escalate beyond its initial scope. For this reason it is very important that the worker has legal support present, particularly for workers who may be vulnerable e.g. young workers. During the process of a voluntary interview, if the inspector obtains incriminating statements, they are responsible to issue caution.

Make everyone aware that they can say no if they are not comfortable and they have the right to ask questions during the interview, such as 'why are you asking me this', 'what's going to happen next'.

After the investigation is complete, WorkSafe will make a decision about whether to prosecute. WorkSafe's purpose in prosecuting is to discourage others from breaking the laws it is responsible for enforcing and to make the people who break those laws accountable.

Also be aware that the New Zealand Police may follow a line of enquiry to investigate the individual worker. This could be an incredibly stressful situation which may occur over a long period of time before a conclusion is reached.

## **Supporting the Injured Person and their Whānau**

Keep track of items the Regulator takes as evidence. Items such as personal belongings and equipment may be of sacred value to the whānau. Ask where these items are being kept and when they are going to be returned.

With extended families and blended families, it can be difficult to communicate with everyone, so if possible, get agreement from the family for a single contact person. If a whānau member has been appointed as a spokesperson, you should communicate with and through this person.

Be aware that the person injured, and their whānau, will also be experiencing shock,

personal pain and grief. On top of this they will be challenged with having to work their way through a raft of agencies relating to ongoing care, as well as having to meet the needs of everyday life. Ensure they have established contact with Victim Support as they can provide practical advice, emotional support and advocacy. Also let them know that they have the right to meet the investigation team in person if they don't understand or need more information.

Until an assured means of regular income is in place, the injured worker and/or their whānau will likely have a short-term need for financial security, particularly in the first three months following the accident. Consider how you can provide support over this period e.g. kōhā (a gift brought by a visitor) to keep kai (food) on the table and a roof over their heads e.g. food vouchers, helping with utility bills. Where there is a bereavement, providing kōhā toward the tangihanga (process of dealing with death, grieving and burial) is also appropriate.

Once ACC support begins, the injured worker may be experiencing feelings of being cut off from the workplace, de-conditioning and inability to provide for their whānau. This can progress into feeling a lack of self-worth. Think about ways you can support them on a personal and social level, such as helping to lodge the ACC claim, putting counselling in place and helping them to maintain their link with the sector.

Ensure there is support for the injured worker to stay in contact with workmates

and help to set up community support for the worker and whānau so it's not just the business and the whānau providing ongoing support, to make it more sustainable, especially for injuries with long term impacts and for fatalities.

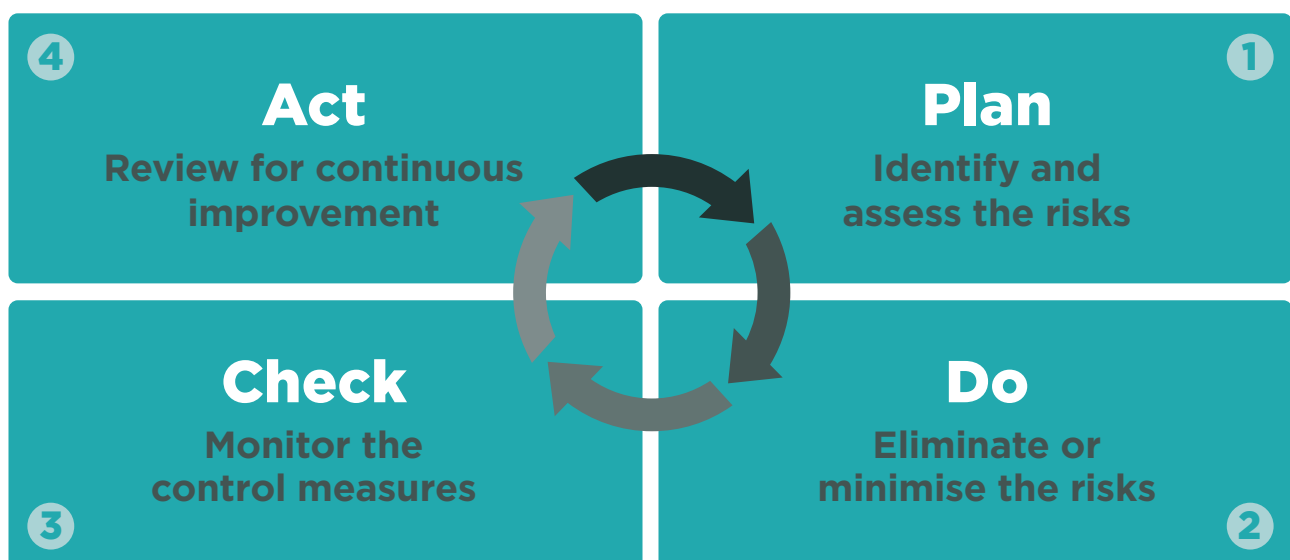
As time moves on from the event, remember that the injured worker and/or their whānau will still be affected by the event and that whānau pani will still be grieving. Consider actively extending your compassion over the longer term, providing ongoing support within your means e.g. dropping off firewood and taking an interest in their dependants.

### After Notifiable Events

Investigations provide valuable information that contribute to improving health and safety practices - See the Safetree Guide on doing a Learning Review ([www.safetree.nz](http://www.safetree.nz)).

The information obtained from investigations is crucial to understanding causation, acting to prevent recurrence and sharing lessons learnt. Consider sharing learnings with the wider forestry sector (e.g. Safety Alert) as this may prevent people and certified contractors being injured in a similar way.

If whānau or the community would like information about what happened, they can request this from the Regulators or New Zealand Police and there is also the possibility of holding a hui (social gathering or assembly) at a later stage to talk it through. This can be a valuable process to bring closure on the event.



## Key Considerations and Actions to Take:

1. Ensure workers have employment agreements and ACC cover in place.
2. Consider the provision of insurance cover that will provide additional support for an injured worker and/or their whānau post-accident.
3. Have protocols in place to handle what happens in the first hour following a notifiable event, for example, who calls emergency services, forest owners, WorkSafe, and when. There will be several investigations by key parties – internal(you); principal (forest owner); WorkSafe, New Zealand Police (possibly) and Insurer/loss adjuster. Establish a dedicated investigation team with designated roles and responsibilities outlining who does what.
4. Take and retain control of the things that you can after the accident has happened e.g. notifying the event (including WorkSafe, the main PBCU, whānau and mana whenua), managing communications and putting in place support for the injured worker, their whānau and other workers involved in the event.
5. Plan who will control any external communications and what will you say. It is important to consider the following:
  - Take care with the communication of decisions so the same message is generated for various channels.
  - Be careful what you commit to (e.g. - Don't say "I will respond to all queries personally" when that is not going to be possible).
  - Be aware that stakeholder enquiries come from various angles and each with their own agenda.
  - Take account of what you know and also of what you don't know.
  - Avoid the temptation to speculate as it may be translated as the real story later on or in court (hence the importance to record what happened immediately after the event).
  - Choose the best way to communicate (e.g. face-to-face vs something written for release to all parties in media etc) and anticipate leaks via texting and social media - including leaks of internal communications.
6. Make your own record of the questions (use hand-written as well as Dictaphone transcript.
7. WorkSafe have to give you a list of questions and who they want to direct them to. Note: the injured worker can choose to speak to WorkSafe without you.
8. Ensure all of your communications are stored securely and are retrievable. WorkSafe has the right to request documentation relating to health and safety and the work concerned. Communications for the purposes of obtaining legal advice will however be protected by legal professional privilege and can be withheld.
9. If interviewed by the Police be aware of your right to silence.
10. Do not underestimate the value of your lawyer. The litigation process is often complex, and it may take months to reach a conclusion. A lawyer's key role is to inform you how to put in place your own plans and strategy and clearly explain legal insights and solutions from their experience.
11. Work on establishing a dialogue between WorkSafe and one key point of contact from your company. WorkSafe has wide powers of interview but you may be able to discuss this with them and agree when and how WorkSafe talks to your staff and who is present when they do, such as your legal adviser.

12. Ensure all workers know who your company representative is so they can refer any contact from WorkSafe to that person.
13. Consider the effect an incident may have on all affected people (including yourself). Offer support to anyone who wants it and consider offering professional counselling (Vitae - phone **0508 664 981** or <https://safetree.nz/resources/vitae/>) as well as ensuring that workers have access to post-event support such as '**Need To Talk - Text 1737**'.
14. Offer diffusion sessions for all involved by an EAP Provider
15. Ensure you think about the ways you could meet the needs of the injured worker's whānau (beyond short-term monetary needs).
16. Always wait for cultural protocols to be observed without rushing them. Be courteous, humble and respectful.
17. Be proactive with lodging the ACC claim and keep good records of earnings details so that the whānau can access entitlements as soon as possible. ACC may be able to assist with weekly compensation, medical treatment, workplace rehabilitation, childcare payments, funeral grants and survivor's grants.
18. It is appropriate to contribute a kōhā if you visit a marae (a kōhā is given to help cover the costs of an event like a tangi and the use of marae facilities).
19. Be aware of your legal rights to cooperate:
- You and your employees have a legal obligation to speak to WorkSafe if that is requested.
  - Make sure you are comfortable with the process.
  - Persons who are interviewed may choose to have others present, including legal representation. There may also be discussion regarding a company lawyer representing the worker and the WorkSafe Inspector may want to establish who the legal representative is actually representing.
  - Although WorkSafe is not obliged to provide the questions beforehand, they may do so if you request it. Seeing questions in advance will help you prepare.
  - In a voluntary interview, the interviewee always has the right to refuse to answer questions and they can cease the interview and leave at any time.
  - Give workers clear parameters and seek legal advice.
20. If a coroner's report contains untrue content, you may be able to take legal action to have the report withdrawn.
21. When it comes to charges being laid, there may well be opportunities for shared negotiation with WorkSafe. You can explain why you don't think you breached a particular provision in the Act or regulations or if you think they will not be able to get over the threshold of proof. You must be careful at all times not to make any statement that could be taken as an admission of liability as this could jeopardise insurance cover

## Legal Advisors

Contact your insurance broker/agent before contacting any of the legal practitioners listed below. Below is a list of legal advisers known to FICA or with experience serving FICA members in the past.

**Company: Minter Ellison Rudd Watts, Wellington, 04 498 5118**

Staff: Stacey Shortall – 021 246 3116

Aaron Lloyd – 021 532 000

Chris Baldock – 021 474 321

Molly Powers – 021 754181

Website: [www.minterellison.co.nz/](http://www.minterellison.co.nz/)

Focus: All Areas of Law

**Company: Phoenix Chambers, Rotorua, 07 349 0460**

Staff: Jonathan Temm – 027 486 2341

Website: [www.phoenixchambers.co.nz](http://www.phoenixchambers.co.nz)

Focus: Litigation

**Company: Shortland Chambers, Auckland, 09 309 1769**

Staff: Graham Kohler – 027 459 2888

Email: [kohler@shortlandchambers.co.nz](mailto:kohler@shortlandchambers.co.nz)

Focus: Commercial Law

**Company: le Pine & Co, Taupo, 07 378 5030**

Staff: Louise Foley

Email: [lfoley@lepine.co.nz](mailto:lfoley@lepine.co.nz)

Focus: Employment Law

**Company: KJP Law, Tauranga, 07 577 0805**

Staff: Ken Patterson

Email: [ken@kjplaw.org.nz](mailto:ken@kjplaw.org.nz)

Focus: Employment Law

**Company: Chancery Street Chambers, Auckland**

Staff: Samuel Moore – 021 0224 6925

Email: [samuelsemoore@45chancery.co.n](mailto:samuelsemoore@45chancery.co.n)

Focus: Litigation

## Useful Resources:

**Safetree** <https://safetree.nz/>

- Guide to doing a Learning Review
- Introducing Vitae workplace wellbeing services for workers
- Counselling services for workers

**WorkSafe** <https://worksafe.govt.nz/>

- Information for people injured in a workplace accident and their families
- Information for bereaved families
- WorkSafe Investigation Policy
- WorkSafe Prosecution Process

## Helplines:

- Need To Talk? (1737 – free call or text)
- The Depression Helpline (0800 111 757)
- Healthline (0800 611 116)
- Lifeline (0800 543 354)
- Samaritans (0800 726 666)
- Youthline (0800 376 633)
- Alcohol Drug Helpline (0800 787 797)