

## COMPENSATION FOR WORKPLACE FATALITY - GUIDELINES FOR CLAIMANTS

Issued under section 72E(3) of the Workers' Compensation and Injury Management Act 1981

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We understand it is a difficult time after losing a family member in a workplace accident. If you have any questions relating to the information in these guidelines you may wish to contact WorkCover WA's *Advice and Assistance Service* on **1300 794 744**.

#### These Guidelines are issued by WorkCover WA to provide:

- information about compensation for workplace fatalities;
- guidance about how to make a claim; and
- information about the documents that must accompany a claim and an application for payment orders.

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## Part 1: Overview of workplace fatality claims

When a worker has died as a result of a work related injury a claim for compensation can be made by the worker's dependant(s) under the *Workers' Compensation and Injury Management Act 1981* (the Act).

The following compensation may be claimed by dependant(s) (e.g., the worker's partner and/or children or where there is no dependent partner or child, a prescribed family member) who are wholly or in part dependent upon the earnings of the worker at the time of the worker's death:

- a lump sum entitlement
- a periodic child's allowance for dependent children
- funeral expenses up to a statutory maximum amount (also available to non-dependants)
- the worker's reasonable medical expenses resulting from the workplace injury prior to the worker's death (also available to non-dependants).

If a worker was receiving compensation at the time of death but the death did not result from a workplace injury, compensation may also be payable to dependants in specific circumstances. The meaning of 'dependant' and related terms are defined in the Appendix.

### Determination of the claim

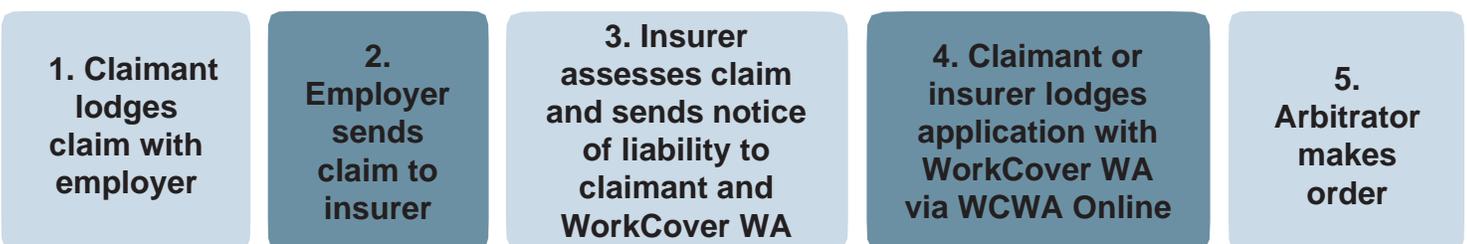
Workers' compensation insurers/ self insurers are required to assess claims from dependants and notify claimants about whether their claim is accepted or disputed (or whether additional documentation or information is required) as soon as practicable.

There are a number of documents insurers/ self insurers need to enable them to assess the claim. The required documents are described at Part 4 of these Guidelines and assist to determine:

- the cause of death;
- the dependant's relationship to the deceased worker; and
- the dependence on the deceased worker's earnings.

Following assessment of the claim by the insurer/ self insurer and regardless of whether the claim is accepted or disputed, in order for compensation to be paid, an application must also be made with WorkCover WA's Arbitration Service (Arbitration Service) for final determination by an Arbitrator.

### Figure 1 - Claim process



## Part 2: Types of compensation

### Lump sum entitlement

If the death resulted from the workplace injury a lump sum entitlement (LSE) is payable to any partner or child who was dependent on the earnings of the worker at the time of death. If there is more than one dependent partner and/or child the LSE is shared between them in accordance with the formula described in Table 1.

Where there is no dependent partner or child the LSE is payable to a prescribed family member who was dependent on the earnings of the worker at the time of death.

**Table 1: Apportionment of Lump Sum Entitlement**

Item	Dependant(s)	Compensation
1	Partner: 1 Children: None	100% of the LSE to the partner
2	Partner: 1 Children: 1	90% of the LSE to the partner 10% of the LSE to the child
3	Partner: 1 Children: 2 to 5	5% of the LSE to each child Balance of the LSE to the partner
4	Partner: 1 Children: 6 more	75% of the LSE to the partner 25% of the LSE divided equally between the children
5	Partner: 2 or more Children: None	100% of the LSE divided so that each partner receives an amount proportionate to the loss of financial support suffered by that partner
6	Partner: 2 or more Children: 1	90% of the LSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner 10% of the LSE to the child
7	Partner: 2 or more Children: 2 to 5	5% of the LSE to each child Balance of the LSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner
8	Partner: 2 or more Children: 6 or more	75% of the LSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner 25% of the LSE divided equally between the children
9	Partner: None Children: 1	100% of the LSE to the child
10	Partner: None Children: 2 or more	100% of the LSE divided equally between the children

## **Example 1 – Partner and one child**

If there is one dependent partner and one dependent child, the partner will receive 90% of the LSE and the child will receive 10% of the LSE.

## **Example 2 – Partner and former partner, no child**

If there is a current and former dependent partner (e.g., former partner receiving spousal maintenance) the LSE will be divided so that each partner receives an amount proportionate to the loss of financial support they have suffered.

Where there is a former and current dependent partner each should specify the proportionate loss of financial support and ideally agree the respective proportion of the lump sum each will receive.

## **Example 3 – No partner or child, but a dependent family member**

A prescribed family member (see Appendix for definition) who was dependent on the worker's earnings at the time of the worker's death is only eligible to claim the LSE if the worker dies leaving no dependent partner or child.

## **Child's allowance**

A periodic child's allowance is payable for the care and maintenance of each child who was dependent on the worker's earnings at the time of the worker's death. This amount is additional to the child's proportionate share of the LSE. This allowance is paid into a trust account managed by WorkCover WA and paid to each dependent child weekly, or at intervals determined by an arbitrator.

The allowance is payable to each dependent child:

- until the child attains the age of 16; or
- until the child attains the age of 21 and is in full time study.

The claim form should identify the children who were dependent on the worker's earnings at the time of death.

## **Funeral expenses**

There is a maximum amount payable for funeral expenses which is indexed each financial year. The amount is payable to the worker's dependent partner or the person who has incurred the cost of the worker's funeral.

## Medical expenses

The cost of the worker's medical expenses incurred in relation to the injury prior to their death can be claimed by the person incurring the expenses.

This may include emergency transportation (e.g. ambulance), hospital accommodation expenses, surgery and medical treatment.

## Injured worker's death not a result of workplace injury

Where an injured worker's death did not result from a workplace injury, compensation may be payable in specific circumstances.

An entitlement is payable to the dependent partner and/or children (apportioned between them if more than one) in the following circumstances:

- the worker had been in receipt of weekly compensation payments for at least six months prior to their death;
- no order for redemption had been made or settlement recorded for the worker's claim; and
- the worker's death did not result from the injury.

The amount payable is the sum of one year of weekly payments based on the worker's total incapacity for work.

## Part 3: Completing the claim form

### Section 1 – Claimant’s details

#### Fill in the claimant’s details

This might be the dependent partner, legal guardian of any dependent children or other dependent family member.

Compensation for two or more claimants can be the subject of one claim. This enables all potential claimants to be identified on one form (for example, a partner and all children). Alternatively separate claims can be made if dependants are not known to each other (for example a current and former partner).

Make sure you include details of all claimants including dependent partner, former dependent partner(s) and dependent children.

### Section 2 and 3 – Worker and Employer details

#### Complete details of the deceased worker and employer

### Section 4 - Details of Fatality

#### Complete the details about the fatality

#### Tick **YES** if the fatality was a result of a workplace accident/injury, or **NO** if it was not

#### Briefly describe the cause of death and the worker’s tasks or duties when the accident occurred

#### Fill out the date of injury

The date of injury in most cases will be the date of the accident that caused the death of the worker.

In relation to certain diseases the date of injury might be when the person was first diagnosed and certified with an incapacity for work by a medical practitioner.

### Section 5 - Compensation claimed

#### Identify the compensation being claimed

Please refer to Part 2 above ‘Types of compensation’ before ticking the relevant boxes.

## Section 6 – Details of Dependants

- Complete section 6 for each partner, child or prescribed family member (where no dependent partner or child) who was dependent on the worker's earnings at the time of death.**

It is important the claim form identifies each dependant and their relationship to the deceased worker (e.g. husband, wife, de facto partner).

At the time of making the claim the claimant must indicate whether there is any other person dependent on the earnings of the worker (not mentioned in section 6) who may be entitled to make a separate claim. For example, a former partner.

A prescribed family member may only make a claim where the person was dependent on the worker's earnings at the time of the worker's death and the worker died leaving no dependent partner or child.

## Section 7 – Consent authority

- Sign the consent authority**

The consent authority authorises medical practitioners, medical practices and hospitals to disclose to an insurer / self insurer relevant information about the worker's medical history. This will only be relevant where the cause of death may be unclear. The consent given does not authorise the release or testing of human tissue samples or human tissue material of any kind or for any purpose.

- Provide name of worker's GP**

This enables contact with the relevant treating medical practitioner familiar with the worker's medical history.

## Section 8 – Statutory declaration

- Complete the declaration**

The Statutory Declaration must be signed and dated attesting that the information in the claim form and attachments provided to support the claim are true and correct. It is an offence to make a false claim or statement or for any person to fraudulently obtain or attempt to obtain any benefit under the Act.

The Statutory Declaration must be made and witnessed before one of the persons listed in Schedule 2 of the [Oaths, Affidavits and Statutory Declarations Act 2005](#).

## Part 4: Documents to attach

It is important to send the following documents to the insurer/ self insurer to enable the claim to be determined as quickly as possible.

### Documents about cause of death

- Death Certificate
- in some circumstances an insurer/ self insurer may request copies of any autopsy report, a Coroner's report or ambulance, hospital, or other medical records.

### Documents about relationship to worker

- **For a marriage** – the marriage certificate
- **For a de facto relationship** – a statement and supporting particulars (indicated below) about:
  - how, when and where the person and worker first met
  - the duration of the relationship and level of commitment to a shared life
  - the extent to which the person and worker supported each other financially, physically and emotionally and when this level of commitment began
  - the living arrangements including whether the person and worker resided together and the nature and extent of common residence (attach details of living arrangements)
  - financial aspects of the relationship including joint ownership of a house or joint names on a lease, correspondence addressed to the couple at the same address, details of financial commitments such as bank statements, and any joint liabilities (attach copies)
  - any joint responsibility for the care and support of children
  - the extent to which the relationship was recognised publicly or socially (include name and contact details of 2 people who can verify the existence of a de facto relationship).
- **For each dependent child**
  - a copy of the child's birth certificate or passport
  - evidence of enrolment in full time education if the child is between 16 and 21
  - evidence of guardianship or adoption, if the worker or the person claiming on behalf of any child is not the parent.
- **For a prescribed family member**
  - evidence the person is a prescribed family member as described in the Appendix
  - a Statutory Declaration to the effect the worker died leaving no dependent partner or children.

## Documents about financial dependency

To show the claimant was wholly or in part dependent on the earnings of the worker at the time of death attach:

- records of income received from employment, investments or business over a two year period prior to the death of the worker, for the deceased worker and claimant(s);
- tax returns for the two year period prior to and including the worker's death, for the worker and the claimant(s) (if available);
- bank/ financial statements that show the worker provided monetary support to the claimant(s). This may include: moneys transferred from the worker to the claimant or between accounts; payments for shared property or living expenses such as utilities, food, lodging, clothing, education, medical and dental care, recreation, transportation and other necessities;
- copies of any relevant legal order or voluntary arrangement setting out the amount to be paid for child support or spousal/de facto maintenance; and
- details of any distribution or profit paid to the worker or claimant(s) from any family trust.

## Documents about funeral expenses

- receipts, invoice and/or quotations for funeral expenses incurred or likely to be incurred.

## Documents about medical expenses

Only attach if claiming medical expenses.

- invoices that relate to the worker's medical attendance, transportation and treatment incurred for the workplace injury prior to their death.

## Documents if the death did not result from the injury

Only attach if the worker's death did not result from the workplace injury/accident.

- documents to show the worker had been in receipt of weekly compensation for at least six months; and
- documents to prove the claimant's relationship to the worker and dependency (same as documents listed above).

## Documents about other potential claimants

- If applicable, attach contact details of any other person dependent on the earnings of the worker (not mentioned in section 6 of the claim form) who may be entitled to make a separate claim.

## Part 5 - Determination of claim by arbitrator

Compensation for dependents is only payable following an order of an arbitrator regardless of whether the claim is accepted or disputed by an insurer or self insurer. Claims for funeral and/or medical expenses only, can be paid without an order of an Arbitrator as specific orders are not required for these expenses.

An *Application for Arbitration – Workplace Fatality* (Application) will need to be lodged with the Arbitration Service for an order for payment of compensation. Applications can be lodged via [WorkCover WA Online](#) and will need to be lodged together with the claim form, insurer/ self insurer's liability notice and related documents as listed in Part 4 of these Guidelines.

Applications are usually made after you receive the liability notice from the insurer/ self insurer. However, if a liability decision is not made within 30 days of you making the claim, and you believe a decision should reasonably have been made in that time, you can lodge an Application with the Arbitration Service without a liability notice.

Arbitration Service registry staff will contact the lodging party for any outstanding documents required to facilitate acceptance of the Application. It is expected this documentation will be provided within 3 days of a request.

If the claim has been accepted talk to the insurer/ self insurer about the application process as they may lodge it for you if you provide written consent for them to do so.

If the insurer/ self insurer does not accept the claim, you will be advised of the reason. If you disagree, you can apply to the Arbitration Service to have the issue(s) in dispute resolved.

Arbitration can be a complex and difficult process, so you may wish to seek independent advice prior to making an Application. Please note that you may incur costs for engaging a lawyer. If you would like to engage a lawyer, you should contact the Law Society of WA on 9324 8600. They can recommend law firms that regularly work in this area.

If you are legally represented your lawyer can lodge your Application on your behalf.

If you require assistance with the Application process or have any questions, please contact WorkCover WA's *Advice and Assistance Service* on 1300 794 744 or visit [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au).

### Arbitrator orders about the lump sum

The Arbitrator's orders will specify who gets what portion of the lump sum with reference to the table in Schedule 1A of the Act and shown in Part 2 above.

The powers of an Arbitrator provide flexibility for the entitlement to be paid to dependants as the Arbitrator sees fit. Generally, the Arbitrator's orders will specify whether the lump sum is to be paid directly to the dependant or not. This usually depends on whether the dependent is an adult or a child.

For example, where a dependent is the partner of the worker the payment may be made directly to the dependant partner. Where dependent children are involved, the Arbitrator may order that the entitlement be held in trust for the dependent child, until the child reaches the age of 18. WorkCover WA commonly acts as trustee in such situations.

### **Arbitrator orders about the child's allowance**

The child's allowance is a periodic payment intended to assist with the maintenance and care of children until the age of 16 or the age of 21 if in full time study.

The orders provide for amounts in respect of the child's allowance to be paid to WorkCover WA by the insurer/ self insurer weekly or at such intervals as are specified in the order. The child's allowance will always be held in trust by WorkCover WA.

Arbitrators have discretion to order payment of the child's allowance to a child between the ages of 16 and 21 even if the child is not in full time study if circumstances justify it.

## Appendix: Defined terms

### Dependant

A person who is a partner, child or prescribed family member is a dependant if the person:

- (a) was wholly or in part dependent upon the earnings of the worker at the time of the worker's death; or
- (b) would have been wholly or in part dependent upon the earnings of the worker at the time of the worker's death if the injury had not occurred.

### Partners, children and prescribed family members

#### (1) A person is a partner if:

- (a) the worker is the spouse or de facto partner of the person; or
- (b) the worker has previously been a spouse or de facto partner of the person.

#### (2) A person, of any age, is a child if:

- (a) the worker is a parent of the person; or
- (b) the worker is a step-parent of the person (whether the person was legally adopted by the worker or not), and children has a corresponding meaning.

#### (3) A person is a prescribed family member if:

- (a) the person is a parent of the worker; or
- (b) the person is a step-parent of the worker (whether the worker was legally adopted or not); or
- (c) the worker stands in the place of a parent to the person; or
- (d) the person stands in the place of a parent to the worker; or
- (e) the person is a sibling or half-sibling of the worker; or
- (f) the worker is a grandparent of the person; or
- (g) the person is a grandparent of the worker.