



Compensation for Workplace Fatality

Guide for Claimants

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Contents

Part 1 – Overview of workplace fatality claims	3
Part 2 – Types of compensation.....	5
Part 3 – Completing the claim form	8
Part 4 – Documents to attach.....	10
Part 5 – Determination of claim by arbitrator.....	12
Appendix: Terms used.....	14

We understand it is a difficult time after losing a family member in a workplace accident. If you are a family member who is wholly or partly dependent on the earnings of the worker at the time of the worker's death, you may claim workers compensation entitlements.

If you have any questions relating to the information in this guide you may wish to contact WorkCover WA's *Advice and Assistance line* on **1300 794 744**.

This guide is issued by WorkCover WA to provide:

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

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 2023* (the Act).

The following compensation may be claimed by dependant(s) (e.g. a partner, child or where there is no dependent partner or child, an extended family member) who was wholly or partly dependent upon the earnings of the worker at the time of the worker's death:

- a lump sum entitlement
- a regular allowance for dependent children
- funeral expenses up to a statutory maximum amount (also available to non-dependants)
- the worker's reasonable medical and health 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 other related terms are defined in the Appendix of this guide.

Determination of the claim

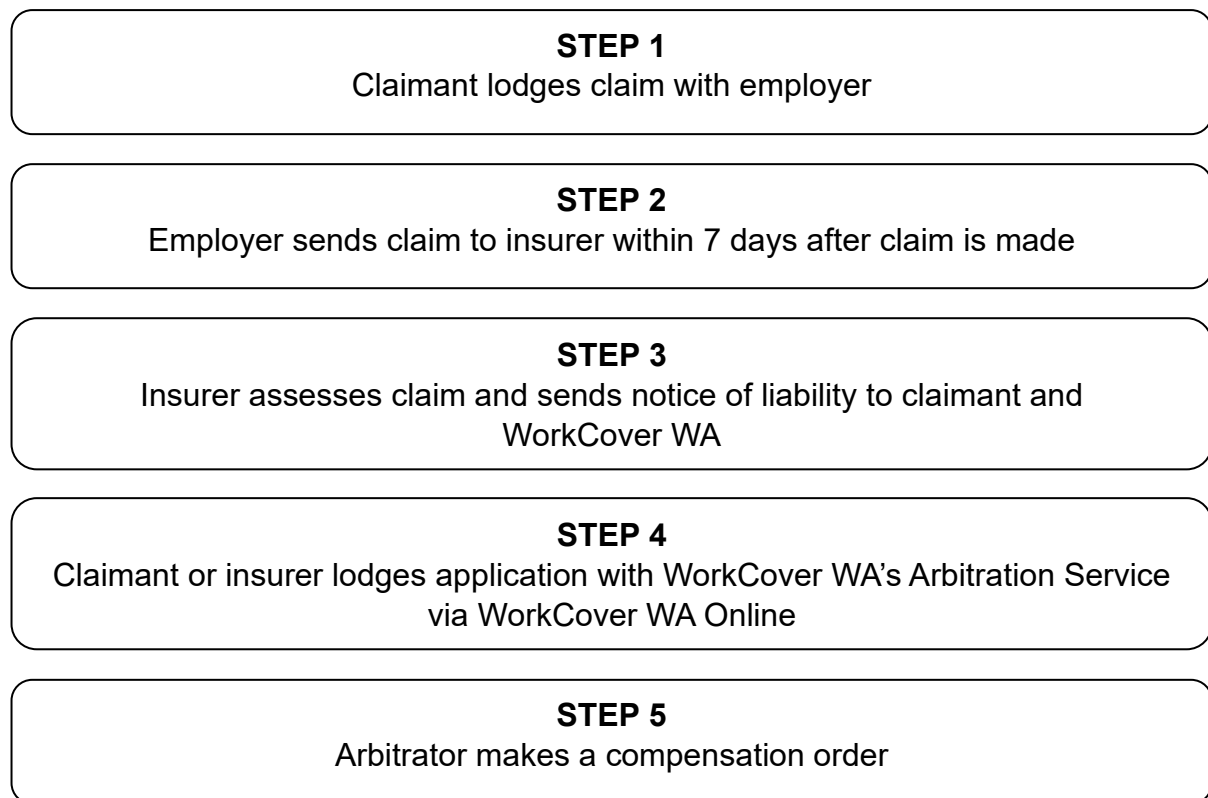
Workers compensation insurers and self-insurers are required to assess claims from dependants and notify claimants as soon as practicable about whether their claim is accepted, disputed or if additional information or documents are required.

There are several documents insurers and self-insurers need to enable them to assess the claim. The required documents are described at Part 4 of this Guide and assist to determine:

- whether the cause of death was related to work
- the dependant's relationship to the deceased worker
- the dependence on the deceased worker's earnings.

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

Figure 1: Claims process



Part 2 – Types of compensation

Dependant lump sum entitlement amount

If the death resulted from the workplace injury a dependant lump sum entitlement amount (DLSE) 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 DLSE is shared between them in accordance with the formula described in Table 1.

Where there is no dependent partner or child the DLSE is payable to an extended family member who was dependent on the earnings of the worker at the time of death.

Table 1: Apportionment of Dependent Lump Sum Entitlement

Item	Dependant(s)	Compensation
1	Partner: 1 Children: None	100% of the DLSE to the partner
2	Partner: 1 Children: 1	90% of the DLSE to the partner 10% of the DLSE to the child
3	Partner: 1 Children: 2 to 5	5% of the DLSE to each child balance of the DLSE to the partner
4	Partner: 1 Children: 6 more	75% of the DLSE to the partner 25% of the DLSE divided equally between the children
5	Partner: 2 or more Children: None	100% of the DLSE 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 DLSE 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 DLSE to the child
7	Partner: 2 or more Children: 2 to 5	5% of the DLSE to each child balance of the DLSE 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 DLSE 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 DLSE divided equally between the children
9	Partner: None Children: 1	100% of the DLSE to the child
10	Partner: None Children: 2 or more	100% of the DLSE 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 DLSE and the child 10% of the DLSE.

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 DLSE 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 extended family member

An extended family member (as defined in the Appendix of this guide) who was dependent on the worker's earnings at the time of the worker's death is only eligible to claim the DLSE if the worker dies leaving no dependent partner or child.

Child's allowance

A regular 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 DLSE. 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 needs to 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 person who has incurred the costs of the worker's funeral.

Medical and health expenses

The cost of the worker's medical and health 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 has received, or was entitled to receive, income compensation payments for total or partial incapacity for work resulting from the injury for a continuous period of at least six months immediately preceding their death;
- the worker's claim for compensation has not been settled; and
- no memorandum of the terms of a common law settlement has been filed with the WorkCover WA Director, Conciliation.

The amount payable is the sum of one year of income compensation 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 extended 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. spouse or de facto partner, child, parent, step-parent).

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.

An extended 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 and can be found at www.legislation.wa.gov.au.

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 an extended family member
 - evidence the person is an extended family member as defined in the Appendix of this guide
 - 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 partly 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 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: monies 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 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.

Documents about funeral expenses

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

Documents about medical and health expenses

Only attach if claiming medical and health 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 income compensation for a continuous period of at least six months; and
- documents to prove the claimant's relationship to the worker and dependency (same as documents listed above).

Part 5 – Determination of claim by arbitrator

Compensation for dependants is only payable following a compensation order having been made by an arbitrator regardless of whether the claim is accepted or disputed by an insurer or self-insurer. Only claims for funeral and/or medical and health expenses can be paid without a compensation order having been made by an arbitrator.

An *Application for Arbitration – Workplace Fatality Compensation* (Application) will need to be lodged with WorkCover WA's Arbitration Service for an order for payment of compensation. Applications can be lodged via online.workcover.wa.gov.au 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 this Guide.

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, the Law Society of Western Australia can recommend law firms that regularly work in this area and can be contacted on 9342 8600 or can be reached here lawsocietywa.asn.au.

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 line* on 1300 794 744 or visit 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 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 compensation 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 regular payment intended to assist with the maintenance and care of the child until the age of 16 or the age of 21 if in full time study.

The compensation 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: Terms used

Child of a worker,

- (a) means a person of any age of whom:
 - i. the worker is a parent: or
 - ii. the worker is a step-parent (whether or not the person was legally adopted by the worker);and
- (b) includes a person, of whom the worker is a parent, conceived before, but born after, the worker's death.

Compensation order means an order of an arbitrator under section 140(4) of the Act determining a claim for compensation.

Dependant of a worker, means a partner, child or extended family member of the worker who:

- (a) was wholly or partly dependent on the earnings of the worker at the time of the worker's death; or
- (b) would have been wholly or partly dependent on the earnings of the worker at the time of the worker's death if the injury as a result of which the worker died had not occurred; or
- (c) in the case of a child, of whom the worker is a parent, conceived before, but born after, the worker's death – would have been wholly or partly dependant on the earnings of the worker at the time of the child's birth had the worker's death not occurred.

Extended Family Member of a worker, means:

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

Partner of a worker, means a person who:

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