



Compensation for Workplace Fatality **Guidelines for Insurers/Self-Insurers**

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Part 1 – Introduction

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).

The key steps in the claim process are:

STEP 1

Employer notifies next of kin of potential claim

STEP 2

Claimant lodges claim with employer

STEP 3

Employer sends claim to insurer within 7 days after the claim is made

STEP 4

Insurer must give a copy of the claim to WorkCover WA on receiving the claim

STEP 5

Insurer assesses claim and sends notice of liability to claimant and WorkCover WA

STEP 6

Claimant or insurer lodges application with WorkCover WA's Arbitration Service via WorkCover WA Online.

STEP 7

Arbitrator makes a compensation order

Part 2 – Pre claim and making of a claim

Insurers and self-insurers should ensure that claims related to a workplace fatality will be managed as a priority, with empathy and respect (*refer to Insurer and Self-insurer Principles and Standards of Practice*). Further, potential dependants of deceased workers should receive prompt advice about workers compensation entitlements that may be available to them and the claim process.

Although a dependency claim should be made within 12 months, coronial and other investigations may take significant time and insurers and self-insurers should consider all the circumstances when a claim is lodged.

The procedure for identifying potential claimants and the making of a claim involves the following:

1. The relevant insurer, (through the deceased worker's employer) or self-insurer, notifies the worker's next of kin about the workers compensation entitlements that may be available to them and information on the claim process. A template letter is set out at Appendix 1.
2. The template letter at Appendix 1, a copy of the *Workplace Fatality Compensation Claim Form* and WorkCover WA's *Compensation for Workplace Fatality - Guide for Claimants* are to be provided to the next of kin with this letter.
3. The employer should also be informed by insurers that they have **seven** days to forward any subsequent claim(s) to the insurer.
4. On receiving the claim, the insurer/ self-insurer must give a copy of the claim to WorkCover WA, at:

records@workcover.wa.gov.au

Insurer/ self-insurer checklist – pre claim procedure

- Notify worker's next of kin, through the employer, regarding entitlements of dependants
- Send the template letter and a copy of the *Workplace Fatality Compensation Claim Form* and *Guide for Claimants* to the next of kin
- Notify WorkCover WA about the claim once received.

Part 3 – Insurer/self-insurer assessment of liability

Assessing liability – general

The *Workplace Fatality Compensation Claim Form* captures information and documents for use by insurers and self-insurers to assess liability for the claim which involves checking:

- the person who died is a ‘worker’ and suffered an ‘injury’ as defined by the Act
- the cause of death and whether or not it resulted from an injury under the Act
- the person(s) named as ‘dependant(s)’ are the worker’s partner, children or extended family member where there is no partner or child
- all dependants have been identified
- the compensation claimed and proportionate share of the lump sum corresponds with the Act.

The WorkCover WA Advice and Assistance line 1300 794 744 may also assist claimants through the claims process and provide support if required. Ensure this contact information is included on all communications with the claimant.

Claimants

A claimant might be the dependent partner, legal guardian of any dependent children or other dependent extended 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 claim form. Alternatively, separate claims can be made e.g. by a former and current partner of the worker.

The claimant will be required to make a statutory declaration to the effect they have not omitted any relevant information including the names of any persons who may be dependent on the earnings of the deceased worker.

Cause of death and work relatedness

In most cases a death certificate should be sufficient to confirm death. Copies of medical, hospital or coroner’s reports may be requested, and factual inquiries may be undertaken if there are doubts the death resulted from a work related injury.

The consent authority in the claim form 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.

Types of dependants

Partner - Is a current or previous spouse or de facto partner of the worker.

A marriage certificate is sufficient evidence of a spousal relationship.

A ‘de facto’ relationship has the meaning given in the *Interpretation Act 1984*. Claimants should be asked to provide a statement and supporting particulars with respect to:

- 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).

Child – Is a person of any age whom the worker is a parent or step-parent (whether or not the person was legally adopted). For each dependent child, the claimant should be asked to provide:

- 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.

Extended family member – Can only access the lump sum if there is no dependent partner or child of the worker. An extended family member is any of the following:

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

An extended family member should be asked to provide evidence stating that they fit into one of the above categories and make a statutory declaration to the effect the worker died leaving no dependent partner (spouse or de facto) or child.

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

- was wholly or partly dependent on the earnings of the worker at the time of the worker's death, or
- 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.
- 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 dependent on the earnings of the worker at the time of the child's birth had the worker's death not occurred.

Only dependants can access the lump sum and child's allowance. To show the claimant was wholly or partly dependent on the earnings of the worker at the time of death, claimants must be asked to provide with the claim form the following:

- 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: 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
- details of any distribution or profit paid to the worker or claimant(s) from any family trust.

Dependant lump sum entitlement

If the death resulted from the workplace injury a dependant lump sum entitlement (DSLE) amount is payable to any partner, child or extended family member (where there is no dependent 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 apportioned between them in accordance with the formula described in Table 1 below.

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.

The full proportionate share of the lump sum will be payable regardless of whether the person is wholly or partly dependent on the worker's earnings. It removes the need (in most cases) of dependants having to prove their precise level of dependency and having their entitlement reduced where they receive a modest income themselves. Levels of dependency will only be considered where there is more than one partner.

Table 1: Apportionment of Dependant 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 suffered by each partner.

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 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. 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 allowance is additional to the child's proportionate share of any lump sum entitlement and is payable irrespective of the level of dependency (wholly or partly).

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 claim form needs to identify the children who were dependent on the worker's earnings at the time of death. The claimant should also be asked to provide:

- 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.

N.B - the amount is payable if a child stops and then recommences full time study between the ages of 16 and 21.

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 costs of the worker's funeral.

The claimant should be asked to provide an invoice, quotation or receipt (where already paid) with the claim form.

N.B - funeral expenses can be paid without an order of an arbitrator.

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.

The claimant should be asked to provide an invoice, quotation or receipt (where already claimed) with the claim form.

N.B - medical and health expenses can be paid without an order of an arbitrator.

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:

- a) the worker has received, or was entitled to receive, income compensation for total or partial incapacity for work resulting from the injury for a continuous period of at least 6 months immediately preceding the worker's death

- b) the worker's claim for compensation has not been settled under Division 12 of the Act and
- c) no memorandum of the terms of a common law settlement has been filed with the Director, Conciliation.

The amount payable is the sum of one year of income compensation payments based on the worker's total incapacity for work. No child's allowance is payable.

Claimants should be asked to provide with the claim form:

- a) documents to show the worker had been in receipt of income compensation for a continuous period of at least 6 months immediately prior to the worker's death
- b) documents to prove relationship with worker and dependency (same as documents listed above).

Insurer/ self-insurer checklist – assessment of liability

Insurer/ self-insurer has assessed the claim as soon as practicable and has sufficient information on the following:

- The person who died is a 'worker' and suffered an 'injury' as defined by the Act
- The cause of death and whether or not it resulted from a workplace injury
- All dependants have been identified and dependency on earnings of the worker verified
- The compensation claimed and proportionate share of any lump sum corresponds

Part 4 – Insurer/self-insurer notification of liability

As a matter of priority after receiving the *Workplace Fatality Compensation Claim Form*, the insurer/ self-insurer must give the claimant and the employer the following notice, as relevant:

- a) notice in the approved form that liability is accepted in respect of the workplace fatality compensation claimed (Approved form DN8 – *Workplace Fatality Liability Decision Notice – Accepted*)
- b) notice in the approved form that liability is disputed in respect of some or all of the workplace fatality compensation claimed (Approved form DN9 – *Workplace Fatality Liability Decision Notice – Disputed*), or
- c) notice in the approved form that additional information or documents specified in the notice be provided to enable a decision to accept or dispute liability for compensation be made. (Approved form DN10 – *Workplace Fatality – Additional Information Notice*).

The insurer or self-insurer must also give a copy of the notice to WorkCover WA at: records@workcover.wa.gov.au

Workplace fatality liability decision notice - accepted

Where liability is accepted, notice in the approved form requires the compensation payable to each dependant to be detailed in a schedule.

It is important to identify each dependant and their respective entitlement in the notice as this will inform the arbitrator about the insurer or self-insurer's position regarding paying compensation. The notice informs the claimant that with their written consent (e.g. via email), the insurer/ self-insurer may lodge an application for an order for payment with the Arbitration Service on their behalf.

This liability decision notice must be sent to the claimant, employer and WorkCover WA.

Workplace fatality liability decision notice - disputed

Where liability is disputed, notice in the approved form must be sent to the claimant, employer and WorkCover WA.

The notice must cite the compensation entitlements for which the insurer or self-insurer does not accept liability and the reasons for not accepting liability. This notice informs the claimant that if they do not agree with the decision, they can apply to have the matter determined by a

WorkCover WA arbitrator and includes relevant contact details for further information.

Workplace fatality - additional information notice

Where additional information or documents are required notice in the approved form must be sent to the claimant, employer and WorkCover WA.

This notice may apply, for example, where an insurer seeks a copy of a yet to be completed Coroner's report if the cause of death needs to be investigated further. In most cases, the information required in the claim form and contained in WorkCover WA's *Compensation for Workplace Fatality - Guide for Claimants* (Part 4: Documents to attach) will minimise some of the delays that occur due to insufficient information and documentation being provided by the claimant.

The notice must identify the information or documents required and why they are relevant. If an insurer/ self-insurer has requested information from a third party, a timeframe and priority for receipt of that information should be specified.

A decision on liability for the claim must be made as soon as practicable after receiving the information or document(s) listed in the notice. Wherever possible, the claim should be determined within 30 days of receipt by the insurer/ self-insurer. Contact details for the case manager and WorkCover WA's Advice and Assistance line are on the approved notice.

Insurer/ self-insurer checklist – liability notice

- Insurer/ self-insurer has assessed the claim as a matter of priority
- Liability decision notice is given to the claimant, employer and WorkCover WA in the approved form
- If additional information or documents are required these are to be detailed in the notice. If seeking information from a third party, a timeframe is to be specified in the notice.

Part 5 – Determination of claim by arbitrator

The legislation provides for a single and expedited pathway into WorkCover WA's Arbitration Service so that an arbitrator can determine the claim and make orders about the compensation payable to dependants. The conciliation process does not apply.

Compensation is only payable following an order of an arbitrator (other than claims for funeral and medical and health expenses only). This applies regardless of whether the claim is accepted or disputed by an insurer or self-insurer.

Where a claim is accepted the arbitrator will often make orders for payments of compensation with the consent of the parties. Where the claim is disputed, the arbitrator will seek to resolve each issue in dispute as quickly as possible and will then make orders.

A claimant can make an application for the claim to be determined by an arbitrator at any time. Usually, an application would be made after the claimant receives the liability notice from the insurer or self-insurer. However, if the employer fails to forward the claim and/or a liability decision is not made within 30 days and the claimant believes a decision should reasonably have been made in that time, the claimant can lodge an application with the Arbitration Service without a liability notice.

Claims for funeral expenses and/or medical and health expenses can be paid without an order of an arbitrator. Specific orders are not required for these expenses.

Insurer/self-insurer provision of documents to support determination of claim

Liability accepted

Where an insurer/ self-insurer accepts liability for the claim, the claimant is required to make an application to the Arbitration Service for an order to pay compensation.

An *Application for Arbitration – Workplace Fatality Compensation* form will need to be completed by the claimant and lodged together with, the Workplace Fatality Compensation Claim Form, the insurer's liability accepted notice and related documents as listed in *WorkCover WA's Compensation for Workplace Fatality - Guide for Claimants (Part 4: Documents to attach)*.

Insurers/ self-insurers may, with the written agreement of the claimant, lodge the application on behalf of the claimant.

Arbitration Service registry staff will contact the lodging party for any outstanding documents/ information required to facilitate acceptance of the application. It is expected the requested documentation/information will be provided within 3 days.

The Arbitration rules for lodging a reply do not apply to accepted claims.

Liability disputed

Where an insurer or self-insurer disputes liability the claimant can make an application to the Arbitration Service for the issues in dispute to be resolved. An *Application for Arbitration – Workplace Fatality Compensation* will need to be completed by the claimant and lodged together with the Workplace Fatality Compensation Claim Form, insurer's liability disputed notice and related documents as listed in *WorkCover WA's Compensation for Workplace Fatality - Guide for Claimants (Part 4: Documents to attach)*.

The Arbitration rules apply to disputed claims.

Arbitrator orders about lump sum compensation

The Arbitrator's orders will specify who gets what portion of the lump sum compensation with reference to the table in section 133 of the Act and shown in Part 2 above.

The powers of an Arbitrator provide flexibility for the entitlement to be paid to dependant(s) 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 dependant is the partner of the worker the payment may be made directly to the dependent 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 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 or self-insurer weekly or at such intervals as are specified in the order. The child's allowance will always be paid into WorkCover WA's Trust Account.

It is common practice for WorkCover WA to invoice insurers quarterly for the employer's liability to pay the child's allowance, and orders may specify payments to be made at different intervals to suit the claimant.

The legislation clarifies that no payment is to be made in advance of a periodic payment or by way of commutation. This is to prevent the periodic child's allowance from being advanced and exhausted before the child attains the age of 16 or 21 (if in full time study).

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.

Insurer/ self-insurer checklist – lodgment of Application for Arbitration – Workplace Fatality Compensation on behalf of claimant

- Approval from claimant has been received for the insurer/ self-insurer to lodge the arbitration application on behalf of the claimant

The following documents have been included with the lodgment of the arbitration application:

- Workplace Fatality Compensation Claim Form
- Insurer's liability decision notice
- Documents referred to in Part 4 of the Compensation for Workplace Fatality: Guide for Claimants.

Part 6 – Discharging child allowance liability

The Act provides a mechanism for insurers/ self-insurers to discharge the full liability of the child's allowance by making a single payment to WorkCover WA, rather than making quarterly payments to WorkCover WA for up to 21 years.

This may be a convenient option in order to finalise the claim. The methodology for calculating the discharge amount is set out in the *Workers Compensation and Injury Management Regulations 2024* and will always be based on the assumption the child attains the age of 21. In the event the liability is discharged and the dependent child does not pursue full time study to 21 years, the proportion of funds not paid to the dependant will be transferred to the WorkCover WA General Account.

An application to pay the full child's allowance to WorkCover WA and discharge the liability can be made when, or at any time after, the compensation order to pay the child's allowance is made by the arbitrator.

An application to discharge the child's allowance can be made in the approved form CN10 *Application to discharge child allowance* and sent to: FinanceTrust@workcover.wa.gov.au

Insurer/self-insurer checklist – Discharging Child Allowance Liability

- If the insurer or self-insurer intends to discharge the child's allowance a request to do so is made in the approved form when, or at any time after, the compensation order is made to pay the child's allowance.

Part 7 – Common law fatality claims

The Act (Part 7 Division 3) prevents recovery of both damages and workers compensation entitlements (double recovery).

It is possible a claimant receiving compensation as a dependant has a common law action on foot under the *Fatal Accidents Act 1959* or *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker.

The Act requires that in paying or otherwise applying or dealing with trust moneys of a dependant, WorkCover WA must have regard to, and take into account, any judgement or settlement under which damages are payable to the dependant. The judgement or settlement may give directions to WorkCover WA as to how trust moneys of a dependant are to be dealt with.

Where insurers are a party to the common law claim the above requirements should be considered prior to any settlement negotiations.

Insurers/self-insurers should also remind claimants (or their representatives) of the requirement to notify WorkCover WA in the approved form CL4 *Notice to WorkCover WA – Common Law Action by Dependants* if an action for damages is commenced or judgement is given or settlement takes place in an action under the *Fatal Accidents Act 1959* or *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker.

Insurer/self-insurer checklist – common law fatality claims

- Where insurers are a party to any common law action under the *Fatal Accidents Act 1959* or *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of a worker, the insurer or self-insurer engages with WorkCover WA to discuss how trust moneys are to be dealt with prior to any settlement or judgment.
- Insurers/ self-insurers remind dependants (or their representatives) receiving compensation of the requirement to notify WorkCover WA in the approved form if an action for damages is commenced or judgement is given or settlement takes place in an action under the *Fatal Accidents Act 1959* or *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker.

Appendix 1 – Pre claim letter from insurer/self-insurer

Enquiries: [insert]
Direct Line: [insert]

[Name]
[Postal Address]

Dear [Title surname]

WORKERS COMPENSATION AND SUPPORT FOR DEPENDANTS

We express our sincere condolences for the loss of [name of deceased worker] and understand it is a difficult time for all family members and friends.

This letter is to let you know that workers compensation entitlements are payable to dependants of workers who die in work related accidents.

If you would like to know more about the entitlements, eligibility and claim process, please find enclosed guidance notes and a claim form.

We also encourage you to contact WorkCover WA's *Advice and Assistance line* on 1300 794 744 if you have any queries or would like assistance in completing the form.

Alternatively, you may wish to contact the claims officer of our insurer on [insert contact details of claims officer, modify if insurer sending direct to next of kin].

WorkCover WA's website workcover.wa.gov.au also provides further information to support family members.

Yours sincerely,

[Name]

[Job Title]

[Date]

cc WorkCover WA (records@workcover.wa.gov.au).