



## WorkCover and other compensation options after adverse reaction to a mandated COVID-19 vaccine

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Many workers across Australia have been required to receive the Covid-19 vaccine to attend work. That is, a Covid-19 vaccination has been mandated by some employers or the government before an employee can attend the workplace. Unfortunately, some workers have sustained an adverse reaction to the vaccine. Workers who suffer illness or injury due to the vaccine may have entitlements to:

- [worker's compensation benefits](#);
- [income protection](#) or [total and permanent disability \(TPD\) benefits](#) from their Super fund;
- as well as entitlements from the federal [Covid-19 Vaccine Claims Scheme](#).

Before pursuing all of your potential entitlements, it is important that you obtain legal advice to understand what these entitlements are and how they impact each other in order to maximise your claims. You can learn more detail about the importance of legal advice in our previous article, "[Covid-19 Vaccine Scheme – why legal advice is crucial](#)".

### Worker's compensation claims after a Covid-19 vaccine adverse reaction

If you were "mandated" by your state government or required by your employer to receive the Covid-19 vaccine in order to attend work, and you have sustained an adverse reaction to that vaccine, you may be able to claim benefits from your state's workers compensation insurer.

Each state in Australia has specific worker's compensation legislation. However, in most states where a vaccine has been mandated or required by the employer, you have the right to lodge a claim for compensation. The below information is specific to Victoria but may also be relevant (with minor differences) in other states.

## Criteria for a WorkCover claim

To have a claim accepted, you will be required to prove that:

- the vaccine injury arose out of, or in the course of, your employment; and
- your employment was a significant contributing factor to the vaccine injury or was the main contributing factor for the disease injury; or
- in the case of a heart attack or stroke injury, the nature of the employment was a relevant factor in increasing the risk of injury.

Although each claim will be assessed on its own evidence, several factors may increase the likelihood of the worker's compensation insurer accepting your vaccine injury claim, including if:

- you were required to receive the vaccine in order to attend work due to a government mandate;
- your employer took steps to arrange for its employees to be administered a Covid-19 vaccine;
- your employer encouraged or induced its employees to get vaccinated in order to obtain benefits for its business;
- your employer permitted or directed employees to have a Covid-19 vaccination during ordinary working hours; or
- your employer-provided instructions to employees relating to the administration of the vaccine.

It is easier to establish the link between the vaccine injury and your employment, where you have been influenced by your employer to receive the vaccine or you were subject to your state's Public Health Order.

To lodge a claim, you should speak with your treating doctor as soon as possible. If your doctor is supportive, you should obtain the required medical certificate and lodge a claim with your employer. You can learn more detail about lodging your claim in in previous article, [“How to lodge a WorkCover claim”](#).

## WorkCover entitlements

In most state's if your claim is accepted, you will be able to access:

- 1. Reasonable medical and like expenses.** These can include doctor's visits, medication, hospital admissions, specialist appointments, rehabilitation such as physiotherapy, psychological therapy and home help.

- 2. Income payments.** This is a percentage of your usual weekly earnings and will be dependent upon which State your injury occurred in.
- 3. Lump-sum payment.** Most states in Australia have a lump sum benefit available to injured workers who have a permanent injury, and their injury meets a required threshold.

If you have sustained an adverse reaction to a Covid-19 vaccine, pursuing a worker's compensation claim can provide [significant medical and financial benefits](#) in a timely manner.

## Superannuation benefits after a Covid-19 vaccine adverse reaction

Most Australian workers will have TPD insurance in the event they suffer a total and permanent disability and have to stop working. Some workers may also have income protection insurance which provides weekly income for a set period of time, in the event of injury or illness.

### Criteria for TPD or income protection benefits

TPD entitlements are available to you if you are unable to work due to injury or illness, including a Covid-19 vaccine injury. TPD benefits are separate and can be in addition to other benefits like worker's compensation. Whilst each policy is different, they generally require you to:

- have been in active employment as at the date of the injury or illness;
- have had the required insurance as at the date of the injury or illness or date last worked;
- be unable to work in any job in the open labour market for which you have the necessary skills training or experience.

Income protection benefits provide weekly income for a set period of time if you become temporarily sick or injured and cannot work. There is usually a 60-day waiting period (and sometimes longer, dependent on your individual policy). Some policies provide benefits/payments for up to 2 years, while other policies will provide benefits until retirement age.

It is important that you contact your super fund to determine what TPD or IP benefits were available to you as at the date you were injured or the date you last worked. Guardian Injury Law is able to assist you with your super claim to ensure that it has every chance of success.

[Call us today to start your claim: 1300 700 761](#)

### TPD and income protection entitlements

TPD benefits provide a lump-sum payment. The amount of benefit differs dependent on a number of factors, including:

- your specific fund's trust deed;
- your individual policy;
- your age (the benefit payment typically decreases as you age);
- and other factors.

Income protection benefits are generally paid at the rate of 75% of your income plus super.

## Covid-19 Vaccine Claims Scheme

The federal Covid-19 Vaccine Claims Scheme was introduced in December 2021 and provides compensation to people who have sustained an adverse reaction to the vaccine.

### Criteria

To be eligible to receive compensation from the scheme, you need to:

- have received a vaccine approved by the Therapeutic Goods Association;
- have sustained a “harm” from the vaccine; and
- have support from your treating doctor that your injury or illness was caused by the approved vaccine.

The scheme provides that the following injuries are compensable if they have arisen as a result of the Covid-19 vaccine;

- Anaphylactic reaction as a result of the AstraZeneca, Pfizer or Moderna;
- Thrombosis with Thrombocytopenia Syndrome as a result of AstraZeneca;
- Myocarditis as a result of Pfizer or Moderna;
- Pericarditis as a result of Pfizer and Moderna;
- Capillary leak syndrome as a result of AstraZeneca;
- Demyelinating disorders including Guillain Barre Syndrome (GBS);
- Thrombocytopenia, including immune Thrombocytopenia, identified as a final diagnosis as a result of AstraZeneca.

### Compensation entitlements under the Covid-19 Vaccine Claims Scheme

The scheme provides compensation for past and future loss as well as pain and suffering damages.

**Past and future loss.** This includes medication, doctor's bills, care that you have required, care that you can no longer provide to a dependant as well as lost wages. It is important that you are aware that these expenses are not only until the date you lodge your claim but also for the future.

**Pain and suffering.** Dependent on the amount of past and future loss that you are claiming, you will also be entitled to pain and suffering as a Tier 1 claimant or as a Tier 2 claimant. If your past and future loss is less than \$16,000 then you are considered a Tier 1 claimant and entitled to pain and suffering in the amount of 25% of the past and future loss claimed.

If, however, your past and future loss is \$16,000 or more, then you are entitled to a percentage of the maximum pain and suffering which is called at \$693,500.

You need to be aware that where worker's compensation entitlements or income protection benefits have been received, these will be offset against any compensation paid.

As you only get **one chance** to bring a Covid-19 Claims Scheme application, you need to ensure that it comprehensively articulates:

- your past and future loss, taking into account any other forms of compensation you have received;
- as well as outlining the pain and suffering that you have experienced in order to maximise your entitlements.

The Scheme is new and the process to ensure you get all the compensation you are entitled to, can be complicated. If you lodge a claim under, for example, Tier 1 and realise later that you've made an error, you cannot lodge another claim.

We have written a series of articles about the Covid-19 Vaccine Claims Scheme which may be helpful to you in determining your next steps:

- [Covid-19 vaccine: no-fault compensation scheme for adverse reactions](#)
- [How much compensation is payable after an adverse reaction to the COVID vaccine?](#)
- [Covid-19 Vaccine Claim Scheme – Why legal advice is crucial](#)

## Why seeking advice from a Guardian WorkCover lawyer is crucial

If you are considering claiming compensation for a Covid-19 vaccine injury, whether that be through worker's compensation, your super fund or the Covid-19 Vaccine Claims Scheme, is important that you are aware that the Covid-19 Vaccine Claims Scheme policy states that any "compensation" received due to the vaccine will be deducted or offset from any amount awarded through any other means.

This means that any compensation received from worker's compensation and arguably super benefits (although this needs to be tested), will be reduced.

At Guardian Injury Law, we are experienced in listening to our clients, understanding your individual circumstances, and providing clear advice as to how to best maximise your compensation. Work is undertaken on a no win, no fee basis.

[Call us today to start your claim: 1300 700 761](tel:1300700761)

Contacting Guardian Injury Law

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*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*