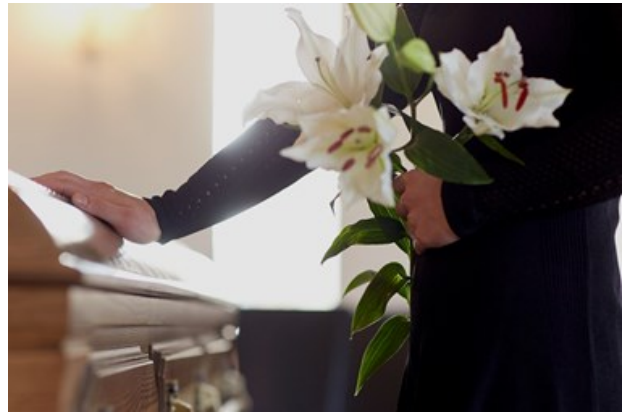




WorkCover death benefit claims

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Losing a loved one to a work-related injury or accident is a tragedy. The time that follows can understandably be emotionally and financially stressful for families. It is important to know that eligible dependants of the deceased worker are entitled to financial supports and WorkCover death benefits compensation.

Eligibility requirements for worker's compensation death benefits

Before WorkCover can pay any entitlements to the dependants of a deceased worker, it must be established that the death was work-related. Very broadly, this means that the death was because of work.

Sometimes it is easy to establish that the death is work-related, but sometimes it can be more complex. For example, the death may have occurred outside of work but was contributed to by employment, such as suicide or a heart attack.

WorkSafe generally looks at three criteria for a WorkCover death benefits claim:

1. That the deceased [worker](#) was a 'worker' in accordance with the relevant legislation;
2. That the worker's [injury](#) arose out of or in the course of employment which resulted in or materially contributed to the worker's death; or
3. In the case of a [disease](#) or aggravation of a pre-existing condition or [heart attack](#), or [stroke](#) injury, the worker's employment was a [significant contributing factor](#) to the injury or disease.

Who will WorkCover pay death benefits compensation to?

Worker's compensation following the death of a worker is payable to "dependants". This includes the deceased worker's dependant partner or children.

It can, however, in some circumstances, extend to other persons, such as the parents or siblings of the deceased. When determining if someone is a "dependant", it is important to consider whether the deceased supported them both financially and physically with, for example, tasks around the home.

Definition of dependant for WorkCover death benefits

The term "dependent" is defined in the *Workplace Injury Rehabilitation and Compensation Act 2013* ('the Act') as someone who:

1. *at the time of the death of a worker was wholly, mainly or partly dependent on the earnings of the worker; or*
2. *would, but for the incapacity of a worker due to an injury, have been wholly, mainly or partly dependent on the earnings of the worker;*

What WorkCover death benefits are available for dependants of a deceased worker?

A WorkCover death benefits claim can provide several different types of benefits to dependants of the deceased person.

Medical and like expenses

In the first instance, WorkCover will cover the reasonable medical and like expenses of the deceased so that the dependants are not left out of pocket. This generally includes the cost of an ambulance, hospital or medical treatment.

They will also pay for counselling for immediate family members, including a spouse or partner, child, parent, grandparent or sibling. An amount of \$6,990* is to be shared between all family members, and counselling must be provided by a registered medical practitioner, psychologist or social worker.

Funeral expenses

WorkCover will also contribute towards the funeral expenses of the deceased worker.

Along with burial or cremation costs, they will also pay up to \$15,000* to repatriate the deceased worker to their home state or country for burial or cremation. Further, they will pay \$5,520* towards travel and accommodation expenses for immediate family members to attend the burial or cremation service if it is held more than 100km from their residence.

Weekly pension for up to 3 years

If, at the time of death, the worker had a dependant partner, this person may be entitled to a weekly pension following their death. The usual calculation for this payment is:

1. For the first 13 weeks after death, either 95% of the worker's pre-injury average weekly earnings or twice the State average weekly earnings - whichever is lesser.
2. From the end of the first 13 weeks after the death until the end of 3 years after the death, either 50% of the worker's pre-injury average weekly earnings, or, twice the State average weekly earnings - whichever is lesser.

Dependant children of the deceased worker, including adult children with a disability, may also be eligible for a weekly pension. The calculation of this usually depends on how many dependant children the deceased had at the time of death and this entitlement is not usually available to dependant children until 14 weeks after the worker's death.

There are also age limits on dependant children receiving a weekly pension.

We recommend seeking advice from an experienced WorkCover Lawyer to assist you in navigating this type of claim.

Lump sum compensation

WorkCover can also pay a lump sum benefit to "dependants" of the deceased worker. A dependant can include partners, children, siblings and parents. The total amount payable to all dependants is currently \$660,970* and is to be shared between all eligible dependants. The amount of compensation and who it is paid to depends on the family's circumstances. We suggest you seek the advice of an experienced WorkCover lawyer to assist you in obtaining this compensation.

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Where a deceased worker leaves no dependants, an amount not exceeding \$39,420 may be shared amongst family members who are not dependant but have experienced financial hardship due to incurring expenses related to the death of the worker.

How to claim WorkCover death benefits

Death benefit claims must be lodged with WorkSafe Victoria.

Before making a claim, it is crucial the dependants gather a number of key documents. These include:

- the death certificate;
- joint financial records such as bank statements, rates notices or copies of bills paid for by the deceased;
- documents to establish the relationship with the deceased such as a marriage or birth certificate. Titles of property may also be of benefit; and
- a statutory declaration may also be required outlining the claimant's relationship with the deceased and why they should be considered a dependant.

A separate claim form is then completed by each claimant. Where a dependant is claiming on behalf of themselves and their children, only one claim form is required. If there are children to a previous relationship, their guardian should complete a separate claim form.

Claims must be lodged on the deceased's employer. The employer will then forward the claim to WorkSafe, who will allocate it to one of their panel defendant firms for assessment.

The defendant panel firm has 90 days in which to accept or reject the claim. Their decision will be communicated in writing.

Time limits for bringing a worker's compensation death benefit claim

Claims must be lodged within two years of the worker's death. To ensure your claim can be prepared appropriately and compensation maximised, obtaining legal advice early on is essential.

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What if the worker dies months, or even years, after the initial injury?

In some circumstances, worker's compensation death benefit claims can be brought where a worker who sustained an injury many years before dies as a result of the injury or complications arising from the injury.

An example of this is when a worker sustained a spinal injury in the 2000s. Their claim was accepted, and they received [weekly payments and medical and like expenses](#).

They were also successful in receiving [WorkCover lump sum compensation](#) and a [common law payout](#) for pain and suffering and economic loss.

Unfortunately, they required multiple surgeries for their back injury and died due to complications arising from the surgery years after the initial workplace accident.

In these circumstances, their partner was able to claim funeral expenses, counselling expenses, a pension as well as a lump sum payment.

Appealing a rejected WorkCover death benefits claim

If you are a dependant of a deceased worker and your claim has been rejected, you can appeal the rejection to the Magistrates' Court of Victoria.

It is crucial that you seek legal advice from an experienced personal injury lawyer as soon as possible after the claim is rejected to understand your options.

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Other compensation entitlements after the death of a worker

Claim for damages under the *Wrongs Act* 1958

Where a worker's death occurred in negligent circumstances, dependants of the deceased worker may also be eligible to recover damages under the *Wrongs Act* 1958. These are known as wrongful death claims.

To be successful in a wrongful death claim, you must show that you have sustained a psychological injury in your own right that is permanent and meets the required threshold.

You also need to show that the deceased worker's death occurred in negligent circumstances.

It is important that you are aware that any entitlements related to the death that have already been paid to you are deducted from any damages obtained under the *Wrongs Act*. These claims are often very complex, require issuing court proceedings and can be difficult to navigate. Seeking advice early on from an experienced personal injury lawyer is essential.

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Superannuation death benefits claim

It is important that dependants check to see if the deceased worker held [death insurance with their superannuation fund](#).

In most cases, the deceased will have nominated beneficiaries. This nomination may be non-binding or binding.

If the deceased did not make a nomination, then the trustee of the super fund may use their discretion to determine who the funds should be distributed to.

It is important to seek legal advice if you believe you have an entitlement to the deceased's superannuation.

Get help from a WorkCover lawyer

At Guardian Injury Law, we know how difficult it is for families following a fatal workplace accident. We will listen to you carefully, with sensitivity and care. We will provide you and your family with all the advice you need to ensure you are maximising your compensation entitlements.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

** All benefit amounts referenced in this article are correct at the time of publication but may change from time to time.*

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.