

Workers Compensation Handbook: The Basics

For injuries occurring on or after 1 July 2010
(Incorporating amendments to the Workers Rehabilitation &
Compensation 1988 commencing 1 January 2018)



Please note

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Workers Rehabilitation and Compensation Act 1988*, the *Workers Rehabilitation and Compensation Regulations 2011* and any other relevant legislation. You can find these at www.worksafe.tas.gov.au

This guide was produced by staff from WorkSafe Tasmania.

We welcome your feedback on this guide. Send to: wstinfo@justice.tas.gov.au

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Introduction

What is workers compensation?

Workers compensation is compensation payable under the Workers Rehabilitation and Compensation Act 1988 to a worker who suffers an injury or disease arising out of or in the course of their employment. For a disease, the worker's employment must have contributed to it to a substantial degree.

A worker may be entitled to compensation for:

- weekly payments while incapacitated for work
- medical and other expenses
- rehabilitation expenses
- permanent impairment.

In some circumstances, a worker may also be able to make a common law damages claim.

The legislation

The main law for workers compensation in Tasmania is the *Workers Rehabilitation and Compensation Act 1988*. This Act has two main purposes:

- to return an injured or sick worker to work as quickly and safely as possible
- to ensure an injured or sick worker is compensated for lost wages, medical and other expenses while they are unable to work, and that the dependants of a deceased worker are compensated.

The Act is supported by the Workers Rehabilitation and Compensation Regulations 2011.

You can find the Act and the Regulations at www.worksafe.tas.gov.au

Workers compensation insurance

An employer must either:

- take out a workers compensation insurance policy with a licensed insurer to cover it for workers compensation claims made by its workers, or
- apply to the WorkCover Tasmania Board and be granted a permit to self-insure against workers compensation claims made by its workers.

Who is entitled to claim workers compensation?

Definition of 'worker'

To be entitled to compensation, a person must be a worker. A worker is someone who works under a contract of service or a training agreement. This includes casual employment. A contract does not necessarily have to be a formal, written document — it could be implied and/or a verbal agreement.

Deemed workers

Some people are 'deemed' to be workers under the Act. They are:

- volunteer police, fire-fighters, ambulance workers and other prescribed volunteers while they are engaged in their volunteer duties
- taxi drivers and luxury hire care drivers while they are driving or performing any associated activity, such as loading, unloading or cleaning the vehicle (except where the driver is the responsible operator of the taxi or licensee of the luxury hire car)
- jockeys and apprentice jockeys while they are:
- engaged to ride a horse for reward at a race meeting or official trial held in Tasmania under the Rules of Racing, or
- engaged to ride a thoroughbred horse in a training session in Tasmania conducted by a licensed trainer or delegate
- salespeople, canvassers and collectors paid by commission.

Although not specifically deemed to be workers under the Act, working directors have generally been determined by the courts to be workers. A working director is a director of the company whose earnings as a director are for personal labour or services.

People who are not workers

Some people are specifically excluded from the Act. They are not entitled to workers compensation if injured while working. These excluded people are:

- people employed on a casual basis for a purpose other than the employer's trade or business
- outworkers
- people employed as domestic servants with a private family, who have done less than 48 hours employment with their employer when they are injured (people in casual domestic employment, such as cleaners, would usually be covered by an extension of a household insurance policy)
- crew members of a fishing boat who are paid wholly or mainly on the basis of a share of the profits or gross earnings of the boat
- people taking part in approved programs of work for unemployment payment (work-for-the-dole schemes)
- people employed on ships covered by the Commonwealth Seafarers Rehabilitation and Compensation Act 1992.

Sportspeople

In general, the Act does not apply to people engaged in sporting activities who receive payment simply for playing, training or travelling with a sporting body.

However, if someone is engaged under a contract of service with a sporting body (for example, as a paid coach, umpire or referee), they are a worker.

The Act also covers sportspeople who are paid under a contract of service to perform tasks not related to competition.

When is a worker entitled to compensation?

A worker is entitled to workers compensation if they suffer an injury or disease that arises out of or in the course of their employment or to which their employment has contributed to a substantial degree.

However, injuries suffered in the following situations are specifically excluded:

- any injury that occurs while a worker is travelling between their home and work (unless the injury occurs during a deviation from their normal route that their employer tells, asks or authorises them to make)
- any injury that occurs during an absence from the workplace that was not authorised, directed or requested by their employer
- any injury that is caused by a worker's serious or wilful misconduct (unless the injury results in their death, or serious and permanent incapacity)
- any injury that was intentionally self-inflicted.

Disease

A worker is entitled to compensation for a disease that their employment contributed to by a substantial degree. That is, their work must be the major or most significant factor in their disease.

Some injuries and diseases are contracted by a gradual process, or may not become apparent until some time after initial exposure or contraction.

Industrial deafness

Industrial deafness is the permanent loss of hearing caused by a worker being exposed to industrial noise in their employment.

A worker is entitled to workers compensation for industrial deafness which occurred after 16 August 1995. They must have suffered more than 5% binaural hearing impairment due to industrial deafness since 16 August 1995.

Making a claim for compensation

Notice of injury

The worker must tell their employer as soon as possible after suffering a workplace injury or disease, and before voluntarily leaving the employment that the injury occurred in. They can do this verbally or in writing. In the case of industrial deafness, the worker must tell their employer within 6 months of ending their employment.

Within 14 days of receiving this notification, the employer must inform the worker of their right to make a claim for compensation by giving them a notice in the form prescribed in the Regulations.

Go to www.worksafe.tas.gov.au and search for 'GF172'.

If a worker wishes to make a workers compensation claim and asks for a worker's claim for compensation form, an employer must supply it and must not obstruct the worker.

What is required to claim compensation?

A workers compensation claim consists of:

- a worker's claim for compensation form: obtained from the employer (or in certain circumstances, from the insurer or WorkCover Tasmania)
- a workers compensation medical certificate obtained from and signed by a medical practitioner.

The worker must give these to their employer by:

- taking them to their employer (or a person designated by the employer) in person, or
- posting them to their employer's usual or last known place of business.

The employer must then tell their insurer within 3 working days that they have received the claim, and complete the employers report section of the claim form and forward it to their insurer within 5 working days.

Time limits for making a claim

In most cases, the worker must make their claim within 6 months of the date of their injury.

However, it is recognised that it may be difficult to determine a date for industrial deafness and some gradual onset diseases. In these cases, the timeframes for making a claim are:

- for industrial deafness: the worker must make their claim while still in the employment of the responsible employer or within 6 months of leaving
- for a disease: the worker must make their claim within 6 months of the day that the worker first becomes incapacitated by the disease. If that date can't be determined, then the worker must lodge their claim within 6 months of the day a medical practitioner certifies that the worker was first incapacitated.

Failing to make a claim within these timeframes will not make a worker's claim invalid if the failure was due to mistake, the worker's absence from Tasmania, or other reasonable cause.

A reasonable cause could include:

- the employer making a payment to the worker that they believe is a payment of compensation
- the employer telling the worker that compensation will (or will not) be payable
- the employer failing to provide the Notice of Right to Make a Workers Compensation Claim (see Notice of injury above).

Starting weekly payments and paying medical expenses

Once they receive the worker's claim for compensation, the employer must:

- start making weekly payments of compensation if the worker has been certified as totally or partially incapacitated for work
- start paying for medical and associated expenses up to \$5,000, unless they think the claimed expenses are unreasonable or unnecessary (see Accepting or disputing liability for claim below).

These payments are to start regardless of whether the employer disputes liability for the worker's claim. They are sometimes called 'without prejudice payments', because the fact the employer makes these payments cannot be used against them as an admission of liability.

Notice of status of claim

The employer or their insurer must give the worker written notice of the status of their claim within 28 days of receiving it. If a decision has not been made whether to accept or dispute a claim at this stage, the worker must be advised of the reasons why the decision has not been made and what steps are being taken to progress making a decision.

Accepting or disputing liability for claim

The employer has 84 days to dispute liability to pay compensation.

If the employer does not dispute liability within 84 days, it is taken that they have accepted liability for the claim, and the Tribunal can order the employer to pay compensation.

If the employer does dispute liability, then they must (within 84 days):

- serve a notice on the worker stating that the employer disputes liability to pay weekly payments or medical and other expenses (or both)
- inform the worker of the reasons for disputing liability
- refer the matter to the Workers Rehabilitation and Compensation Tribunal (Tribunal).

Claims by dependants of deceased workers

If a worker has died from a work-related injury or disease, their dependants may be entitled to compensation. A claim by a dependant must be:

- made within 6 months of the date of the deceased worker's death
- made using the 'Claim form for Dependants of Deceased Workers'. Go to www.worksafe.tas.gov.au and search for 'dependants'
- delivered to the employer (or a person designated by the employer).

Injury management

What is injury management?

Injury management is the process of managing an injured worker, to provide them with a timely, safe and durable return to work.

Injury management should start as soon as possible following an injury, because this improves the worker's chances of recovering from the injury and safely returning to work.

The Act reinforces this by having injury management provisions apply even where there is a dispute about the employer's liability for the claim.

Employers and insurers must have an approved injury management program in place (insurers must make sure each of their clients has one, too). This fosters employer and insurer commitment to injury management before any injuries occur.

An injury management program is a program approved by the Board which outlines the method an insurer will apply to manage claims.

For more information about injury management, go to www.worksafe.tas.gov.au

Key roles

Aside from the worker, the employer and the insurer, there are some other important people:

- the worker's primary treating medical practitioner
- the injury management co-ordinator, who co-ordinates and oversees the entire injury management process for serious workplace injuries, and provides a single contact for everyone
- the return to work co-ordinator (for workplaces with over 100 employees), who provides support and assistance to injured workers at their workplace
- the workplace rehabilitation provider, who provides specific services known as 'workplace rehabilitation services'. These can include assessing the functional capacity of a worker, rehabilitation counselling, and advice about job modification.

For more information about these roles, go to www.worksafe.tas.gov.au

The medical certificate

To ensure the worker's injury is regularly reviewed and return to work measures can be put into place, a medical practitioner is not to certify total incapacity for more than 28 days, unless they provide reasons for a longer period and a review date on the certificate.

In some circumstances, the medical practitioner may think the worker is unlikely to be able to return to their pre-injury hours or duties for a specified period, or ever. In this case, the medical practitioner must specify this opinion and the reasons for it on the medical certificate.

Full disclosure of information

The worker must tell their doctor (and any other treating medical practitioner) any information that is relevant to the diagnosis or treatment of the worker's injury. This will help the doctor make accurate diagnoses and appropriate decisions about treatment and injury management.

Return to work plans and injury management plans

Where a worker suffers a significant injury (more than 5 working days of either partial or total incapacity for work), the insurer/employer must appoint an injury management co-ordinator who is responsible for ensuring there is a plan for co-ordinating and managing the worker's treatment, rehabilitation and return to work.

There are two types of plans for managing a significant workplace injury: return to work plans and injury

management plans. The type of plan used depends on the time a worker is (or is likely to be) incapacitated for work.

A return to work plan is a simple plan for managing a worker's injury or condition. It details the agreed actions, goals and assistance required to support the worker to remain at work or return to their pre-injury employment.

An injury management plan is a more comprehensive plan than a return to work plan. It provides details on treatment and rehabilitation as well as strategies to help the injured worker return to work.

The worker and the worker's employer should both agree to the content of return to work and injury management plans. It is also important to ensure that the worker's primary treating medical practitioner has seen and given consent to the plans. Plans need to be consistent with the medical condition and complement treatment.

Plans must be developed and implemented in accordance with the time frames and requirements of the insurer's or employer's injury management program approved by the WorkCover Tasmania Board.

Keeping the worker's job open

The employer must keep the injured worker's job available for them to return to for 12 months, unless:

- there is medical evidence that it is highly unlikely the worker will be able to do their pre-injury job, or
- their pre-injury job is no longer required.

If the employer decides to terminate a worker's employment for either of these reasons, they must tell the worker and their insurer in writing of the reasons.

Terminating a worker's employment does not necessarily mean the employer's obligations to the worker for injury management and compensation cease.

The employer must also bear in mind any relevant industrial relations law relating to termination of employment.

Suitable alternative duties

Where a worker cannot return to their pre-injury job, the employer must provide suitable alternative duties.

These are duties that an injured worker is suited to, taking into account the nature of the worker's incapacity and their pre-injury employment and skills. They must not be demeaning or token duties.

The employer must consult with the worker and the treating medical practitioner to decide what alternative duties to give the worker.

The employer must ensure these alternative duties take into account medical advice or restrictions on what the worker can do, and fit in with the worker's return to work plan or injury management plan.

If it is unreasonable or impracticable for the employer to provide suitable alternative duties, they must provide the worker with reasons for this in writing.

Disputes about injury management

If there is a dispute over injury management, the employer must inform the worker's injury management coordinator, who must try to resolve the dispute through informal mediation.

If the dispute is not resolved this way, then any of the parties can refer it to the Workers Rehabilitation and Compensation Tribunal.

Compensation payments

What are compensation payments?

Compensation payments are paid to an injured worker on a 'no fault basis': that is, it is not necessary to prove anyone was at fault for causing the worker's injury or disease.

As long as the requirements of the Act are met, the worker is entitled to benefits. This is different from common law damages, where the worker must prove that negligence on the part of another person (usually the employer) resulted in or contributed to their injury.

Weekly payments

A worker who is incapacitated (either totally or partially) for work as a result of a work-related injury or disease is entitled to weekly payments.

Starting weekly payments

Once the employer receives the worker's claim for compensation (involving incapacity for work), they must start making weekly payments. There are two options for this:

- where the worker's first pay day is within 14 days of lodging their claim, weekly payments must start on this pay day (if it is not reasonably practicable to do this, payment must be made no later than 14 days after the employer received the claim), or
- where the worker's first pay day is more than 14 days after lodging their claim, weekly payments must start on this pay day (this usually happens where workers are paid monthly).

If the worker lodged their claim:

- within 14 days of their injury, weekly payments must be paid from the date of injury
- more than 14 days after their injury, they are only entitled to be back paid weekly payments to 14 days before the date they lodged their claim.

Weekly payments should be paid on the worker's usual pay day, unless the worker and employer have agreed (in writing) to alternative arrangements.

Calculating weekly payments

The worker is entitled to weekly payments at the highest amount of these two options:

- the worker's ordinary time rate of pay for the employment (as set by an Award or other industrial instrument such as an Enterprise Agreement) that the worker was engaged in immediately before the incapacity began, or
- the normal weekly earnings of the worker averaged over the relevant period of employment.

The 'relevant period' depends on how long the worker has been employed by the employer:

- if continuously employed by the same employer for 12 months or more, the relevant period is the 12 month period immediately before they were injured, or
- if continuously employed by the same employer for less than 12 months, the relevant period is the period the worker was employed by the employer immediately before they were injured.

If the worker was employed by the employer for 14 days or less before the incapacity, the worker's normal weekly earnings are taken to be the normal weekly earnings of another worker performing comparable work (if there is no other worker, it would be the worker's expected weekly earnings).

Normal weekly earnings include any regular allowances, but not travel or accommodation allowances. Overtime is excluded other than in specified circumstances.

Calculating weekly payments where a worker has more than one job

If the worker had more than one job before being injured, the normal weekly earnings are calculated by adding

together their average weekly earnings from each job they were working in immediately before their injury. However, if one of the worker's jobs was a full-time job, the normal weekly earnings are calculated by referring to this full-time job only.

Step-downs in weekly payments

For the first 26 weeks of incapacity, the worker receives weekly payments at 100% of their normal weekly earnings.

After these 26 weeks, there are two reductions (or 'step-downs') in weekly payments:

- if the worker is incapacitated for more than 26 weeks, weekly payments are paid at 90% of their normal weekly earnings. However, if the worker is able to return to some form of work, but their employer is unwilling or unable to provide suitable alternative duties, then the worker will receive 95% of normal weekly earnings
- if the worker's incapacity exceeds 78 weeks, weekly payments are reduced to 80%. However, if the worker is able to return to some form of work, but their employer is unwilling or unable to provide suitable alternative duties, then the worker will receive 85% of normal weekly earnings.

The step-downs do not apply (that is, the worker will continue to be paid 100% of normal weekly earnings) if the worker is back at work for 50% or more of their normal weekly hours.

If the worker is back at work for less than 50% of their normal weekly hours, then the step-down only applies to the difference between what they are earning for the duties they are performing and their normal weekly earnings.

Low income workers

There is a 'safety net' to ensure low-earning workers do not experience an unsustainable loss of income as a result of the step-downs.

These workers are not to receive less than 70% of the basic salary or 100% of their normal weekly earnings, whichever is lower.

For example, apprentices whose normal weekly earnings/ordinary time rate of pay are less than 70% of the basic salary will continue to receive weekly payments at 100% of normal weekly earnings/ordinary time rate of pay.

To find out the current basic salary rate, go to www.worksafe.tas.gov.au and search for 'basic salary rate'.

Maximum period of entitlement

The maximum period that weekly payments can be paid depends on the worker's level of whole person impairment (WPI):

- a worker with a WPI of less than 15% is entitled to weekly payments for up to nine years
- a worker with a WPI of at least 15% but less than 20% is entitled to weekly payments for up to 12 years
- a worker with a WPI of at least 20% but less than 30% is entitled to weekly payments for up to 20 years
- a worker with a WPI of 30% is entitled to weekly payments until the worker reaches the pension age.

The end of weekly payments

A worker is no longer entitled to weekly payments once they attain the pension age. The pension age means the age defined by the Social Security Act 1991 of the Commonwealth.

This age restriction overrides the maximum periods of entitlement referred to above. For example, a worker who is 60 years of age at the time of incapacity with a WPI of 15% will receive weekly payments until they attain the pension age.

There are two exceptions:

- if a worker is injured in the 12 months before the date on which they reach the pension age their entitlements cease when they reach the pension age. If the worker's injury occurs less than 12 months before the date on which the worker attains the pension age payments will cease one year after the injury occurs.
- if a worker's terms and conditions of employment allow them to work beyond the pension age, the worker can apply to the Tribunal to have their weekly payments extended beyond the pension age.

Ending weekly payments under section 86

Section 86(1) of the Act enables an employer to reduce or end weekly payments where:

- 1/ the weekly payments the worker receives relate to total incapacity and the worker has returned to work
- 2/ the worker is receiving weekly payments for partial incapacity and is earning more than their normal weekly earnings or ordinary time rate of pay
- 3/ a medical practitioner has examined the worker and certified in writing that in their opinion the worker has wholly or substantially recovered from the effects of the injury, or that the incapacity is no longer wholly or substantially due to the work-related injury
- 4/ the worker's entitlement to weekly payments has expired.

If the reason for reducing or ending weekly payments is either 3 or 4, the employer must tell the worker (in writing):

- that they intend to reduce or end the weekly payments
- that the worker has the right to refer the matter to the Tribunal, within 60 days of the date their weekly payments were stopped or reduced.

Weekly payments will end or be reduced 10 days after this written notice.

The Tribunal has specific forms for referral of disputes. Call the Tribunal on (03) 6166 4750.

Medical and other expenses

The employer is liable for the cost of all reasonable expenses the worker necessarily incurs for:

- medical services
- hospital services
- household services, for the proper running and maintenance of the worker's home (such as cleaning, laundry and gardening)
- nursing services
- constant attendant services, including the constant or regular personal attendance on the worker provided by someone who is not a member of the worker's family (for example, to shower, dress or feed the worker)
- rehabilitation services
- ambulance services.

The employer is also liable to pay reasonable expenses for the worker to travel to any medical, hospital or rehabilitation service or to attend any medical examination organised by the employer.

The amount payable for using a private vehicle is calculated with the 'occasional user' rates set out in the Tasmanian State Service Award (available at www.tic.tas.gov.au under 'Awards Public Sector').

Reasonable and necessary

The worker is only entitled to have expenses for medical or other services paid if the expense was reasonable and necessarily incurred. This will largely depend on the individual circumstances of each case.

If there is any dispute over this, the worker, employer or insurer can refer the matter to the Tribunal to resolve.

The Tribunal can also determine if a medical or other service is necessary before it is used and a cost incurred. A service provider must not charge a fee that is more than they would normally charge if the service was not for a workers compensation matter.

Forwarding accounts for medical and other expenses

When the worker receives an account for a medical or other expense, they should forward the account to their employer within 7 days.

Once they receive the account, the employer (if not a self-insurer) must forward it to their insurer within 7 days.

Without prejudice payment of medical and other expenses

The injured worker has immediate access to medical treatment and rehabilitation once they lodge their claim for compensation.

As with weekly payments, the Act provides for 'without prejudice' payments of medical and other expenses. That is, the fact that an employer pays these medical and other expenses is not an admission of liability for the claim.

Once the worker lodges their claim, the employer must pay for medical and other expenses up to \$5,000, even if the claim has not yet been accepted or liability has been disputed.

Within 28 days of receiving a claim for a without prejudice expense payment, the employer must either:

- pay the expense, or
- dispute payment on the grounds it is unreasonable or unnecessary.

If the employer decides to dispute payment, they must serve a written notice on the worker and the service provider, stating:

- that they are disputing payment
- the reasons they believe the expense is unreasonable or unnecessary.

They must also refer the dispute to the Tribunal.

Paying medical and other expenses once liability has been accepted or determined

Once the employer has accepted or been found liable for the worker's claim, the process changes for disputing payment of expenses.

When the employer receives an account for a medical or other expense, they have 28 days to either pay the expense or dispute payment (as well as disputing liability for an individual account, the employer can dispute liability for payment of any medical or other expenses or for expenses for a particular type of treatment or service).

If the employer disputes payment, they must tell the worker (in writing):

- that they are disputing payment, and stating whether it is:
 - just for that particular account, or
 - for a particular type of expense, or
 - for all medical and other expenses
- the reasons why payment is disputed
- that the worker has the right to refer the matter to the Tribunal, within 60 days of receiving this notice.

The employer must also attach or identify any medical or other evidence that they are relying on.

The employer must also tell the service provider (in writing) that issued the account that they are disputing liability for the account, and their reasons why. If the employer does not do this, they are deemed to have accepted liability to pay the expense.

Lump sum compensation for permanent impairment

In addition to any other compensation, a worker who suffers permanent impairment from a work-related injury or disease may be entitled to receive a lump sum payment.

Thresholds for lump sum compensation

To be entitled to lump sum permanent impairment compensation, the worker must meet the appropriate 'whole person impairment' (WPI) threshold. These are:

- for the loss of part, or all, of a finger or toe: no threshold applies
- for any other permanent physical impairment: a threshold of 5% WPI applies
- for permanent psychological impairment: a threshold of 10% WPI applies
- for industrial deafness: a threshold of 5% binaural hearing loss, suffered since 16 August 1995, applies.

A worker who suffers a WPI of 20% for an injury that occurred on or after 1 July 2010 may be entitled to pursue common law damages.

Assessment of impairment

The worker's degree of WPI is assessed by a medical assessor who has been accredited by the WorkCover Tasmania Board to do so.

If there is a dispute over the degree of the worker's WPI, the matter can be referred to the Tribunal. The Tribunal may then refer the issue to a medical panel to resolve.

Amount of lump sum compensation

Once the worker's level of WPI has been determined, the amount of lump sum compensation they are entitled to will be calculated according to formulas set out in the Act.

Agreement to settle

In certain circumstances, the worker and the employer can enter into an agreement to settle the worker's claim.

This means the worker will receive one lump sum payment (a once and for all payment) to cover their remaining entitlements to compensation (for example, weekly payments, medical and other expenses, permanent impairment).

Once this occurs, the worker will not be able to make any further claims for workers compensation for that particular injury.

There are limitations on agreements to settle, as the key focus of the Act and the workers compensation scheme is on recovery and return to work.

Settlements within 2 years

If the worker and the employer wish to enter into an agreement to settle within 2 years from the date the claim for compensation was made, the agreement must be approved by the Tribunal.

If the agreement has not been approved by the Tribunal, it will have no effect.

In general, the Tribunal may only approve such an agreement if it is satisfied that:

- all reasonable steps have been taken to enable the worker to be rehabilitated, retrained or to return to work, or
- the worker has returned to work.
- the worker has received legal or financial advice, or both, about the implications of settling their claim. This advice must be paid by the employer or the employer's insurer.

Agreements to settle made after 2 years

Agreements to settle made more than 2 years after the date the claim was made do not have to be approved by the Tribunal.

Compensation to dependants of deceased workers ('death benefits')

Where a worker dies from their work-related injury or disease, their dependants may be entitled to compensation. This may include:

- weekly payments
- lump sum payment
- compensation for the worker's medical expenses
- compensation for counselling costs
- compensation for burial or cremation costs.

Dependants

Dependants are members of the deceased worker's family who:

- were wholly or partially dependant upon the earnings of the worker at the time of the worker's death, or
- would have been wholly or partially dependant on the earnings of the worker, had the worker not been incapacitated by a work-related injury or disease.

This includes the worker's spouse or caring partner.

A caring partner is a person who was in a caring relationship with the worker which was the subject of a deed of relationship registered under the Relationships Act 2003.

A dependant child is a person who is:

- under the age of 16 years, or
- 16 years of age or more, but less than 21 years of age and is a full time student and who is partially or totally dependant on the worker.

Weekly payments: dependant spouse or caring partner

A dependant spouse or caring partner is entitled to weekly payments, paid as:

- 100% of the deceased worker's normal weekly earnings/ordinary time rate of pay for the first 26 weeks following the date of death; then
- 90% of the deceased worker's normal weekly earnings/ordinary time rate of pay for the period over 26 weeks and up to 78 weeks from the date of death; then
- 80% of the deceased worker's normal weekly earnings/ordinary time rate of pay for the period over 78 weeks and up to 2 years from the date of death.

If the worker dies more than 78 weeks after sustaining the work-related injuries that caused their death, their dependant spouse or caring partner will be entitled to 80% of the deceased worker's normal weekly earnings or ordinary time rate of pay, from the date of death, and up to 2 years from the date of death.

As with weekly payments to a worker, the employer must start making weekly payments to a dependant spouse or caring partner upon receiving a claim, regardless of whether the employer disputes the claim.

These payments are not considered an admission of liability.

A dependant spouse or caring partner has no further entitlement to weekly payments after 2 years from the date of death.

Weekly payments: dependant children

Dependant children are entitled to weekly payments paid on a different basis. Instead of being paid a proportion

of the deceased worker's normal weekly earnings or ordinary time rate of pay, they are entitled to weekly payments of 15% of the basic salary.

These weekly payments start 13 weeks from the date of the worker's death and continue until the child reaches 16 years of age (or 21 years of age if a full-time student). They are paid to the child's parent or guardian where the child is under 18.

Disputing liability to pay weekly compensation to dependants

An employer or insurer has 28 days from the date of receiving a claim for compensation to dispute liability to pay weekly compensation to dependants.

If the employer or insurer disputes liability, they must, within the 28 days:

- tell the dependants in writing that they dispute liability, and their reasons why
- refer the matter to the Tribunal.

Lump sum compensation to dependants

Dependants may also be entitled to lump sum compensation, in accordance with the Act.

Compensation for medical expenses

The worker's dependants are entitled to compensation to cover expenses incurred for any of the following services that the worker received as a result of the work-related injury:

- medical services
- hospital services
- nursing services
- constant attendant services
- rehabilitation services
- household services
- road accident rescue services
- ambulance services.

These expenses must be both reasonable and necessary. Where the employer disputes liability for these expenses, the same process must be followed as set out under Paying medical and other expenses once liability has been accepted or determined on page 15.

Compensation for burial or cremation costs

If a worker dies as a result of a work injury the deceased workers family are entitled to the reasonable expenses incurred as a result of the worker's burial or cremation up to a maximum of \$9,500.

Compensation for counselling costs

If members of a deceased worker's family require counselling services following the worker's death, the Act allows for the payment of reasonable costs up to \$4,000.

Counselling services are services provided to a person to help them cope with the psychological impact of the death of a worker.

Members of the deceased family can include the spouse, caring partner, father, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, granddaughter, step-son, step-daughter, brother, sister, half-brother and half-sister of the worker, or a person the worker acted as a parent towards.

Common law damages

What are common law damages?

Common law damages differ from statutory workers compensation benefits (see Compensation Payments on page 10) in that:

- common law damages are fault-based: the worker must be able to prove that the injury resulted from negligence, breach of contract or breach of statutory duty by the employer (or by a person the employer is vicariously liable for)
- common law damages can compensate for losses not covered by statutory benefits: for example, pain and suffering, loss of amenities, past and future loss of earning capacity.

The worker can only claim common law damages where the injury or disease suffered has resulted in a WPI of 20% or more.

Where a female worker loses a foetus as a result of a workplace injury, the loss of the foetus is deemed to be a 20% WPI.

A worker who is considering claiming common law damages should seek legal advice as early as possible. Common law claims are complex and, in addition to the threshold requirement mentioned above, there are other legal requirements that apply.

There are very strict time limits on starting common law proceedings.

Relationship between common law damages and statutory benefits

The worker does not have to make a choice (sometimes called an 'election') between claiming common law damages and claiming weekly payments and compensation for medical and other expenses — these will continue to be paid while the worker's common law damages claim is being determined.

However, the payments that the worker has received will be taken into account when determining the amount of common law damages awarded by the Court.

If the worker enters into an agreement to settle their entitlements to compensation under the Act, they are not entitled to common law damages.

Dispute resolution

The Workers Rehabilitation and Compensation Tribunal

The Tribunal is an independent body established under the Act. It has the primary responsibility for determining disputes about workers rehabilitation and compensation. The types of disputes that the Tribunal deals with include:

- liability for a claim: for example, whether an injury was work-related
- issues concerning weekly payments: such as the start, amount, reduction or end of payments
- payment for medical and other services
- reimbursement of travelling expenses
- issues relating to injury management.

For more information about the Tribunal go to www.tascat.tas.gov.au

Referral to the Tribunal

The Tribunal has specific forms for referral of disputes. Call the Tribunal on (03) 6166 4750.

The Tribunal deals with most referrals through a conciliation process. If the dispute cannot be resolved this way, the Tribunal holds an arbitrated hearing to resolve the matter.

Medical panels

The Tribunal can refer any medical question to a medical panel, but only where:

- there is conflicting medical opinion on the issue
- one of the parties wishes to continue with the proceedings.

A medical panel has the power to:

- examine the worker
- require the worker to answer questions
- require the worker to produce, or consent to the production of, relevant documents (such as medical reports or records).

If the worker does not appear before a medical panel or refuses to do any of the above things, the Tribunal can suspend their right to compensation.

Further information

WorkSafe Tasmania

For information and assistance with the claims process or compliance matters, contact WorkSafe Tasmania:

- phone: 1300 366 322 (inside Tasmania) or 03 6166 4600 (outside Tasmania)
- email: wstinfo@justice.tas.gov.au
- post: PO Box 56, Rosny Park, TAS 7018
- internet: www.worksafe.tas.gov.au

WorkSafe Tasmania is responsible for enforcing the Workers Rehabilitation and Compensation Act 1988. Any possible breaches of the Act should be referred to WorkSafe Tasmania for investigation.

WorkSafe Tasmania does not provide legal advice

WorkCover Tasmania

For information about medical practitioners, insurers, rehabilitation providers or injury management, contact WorkCover Tasmania:

- phone: 1300 366 322 (inside Tasmania) or 03 6166 4600 (outside Tasmania)
- email: workcover@justice.tas.gov.au
- post: PO Box 56, Rosny Park, TAS 7018
- internet: www.worksafe.tas.gov.au

The Board is also responsible for administrative functions connected with the legislation, such as approving the accreditation of medical practitioners, licensing insurers and granting permits to self-insurers, and approving the format of workers compensation forms.

WorkCover Tasmania is funded through a levy on workers compensation premiums. It is an independent body with responsibilities under the Workers Rehabilitation and Compensation Act 1988 and the Work Health and Safety Act 2012.

1300 366 322
www.workcover.tas.gov.au

For more information contact

Phone: 1300 366 322 (within Tasmania)
(03) 6166 4600 (outside Tasmania)

Email: wstinfo@justice.tas.gov.au

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