



AFTER A WORKPLACE DEATH:

A support guide for families, friends and work colleagues

WorkSafe Tasmania
Department of Justice



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 *Work Health and Safety Act 2012*, the *Work Health and Safety Regulations 2012* and any other relevant legislation (such as the *Coroners Act 1995*). To view, go to the WorkSafe Tasmania website www.worksafe.tas.gov.au.

WorkSafe Tasmania acknowledges the assistance of the agencies and organisations referred to in this guide, plus:

- Australian Funeral Directors Association www.afda.org.au
- Queensland Government www.worksafe.qld.gov.au
- SafeWork SA www.safework.sa.gov.au

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

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About this guide

This guide is for the family, friends and work colleagues of someone who has died in a workplace incident.

It can be difficult if someone you know has died in a workplace incident.

This guide explains:

- the different government agencies and legal processes involved in investigating how and why a worker has died
- some of the practical decisions you'll need to make
- where you can find help with these matters.

The process and agencies involved

Tasmania Police

Tasmania Police will be one of the first agencies called to a workplace fatality. The role of police is to conduct initial inquiries into the circumstances surrounding the death, and assist the coroner in accordance with the *Coroners Act 1995*. Police officers can (among other things):

- evacuate a scene for public safety and to ensure emergency services have access
- notify the next of kin and arrange for the deceased to be formally identified
- talk to witnesses and take coronial affidavits from them
- gather samples, items and documents from the scene.

Any possessions of the deceased used as evidence remains in the legal possession of the coroner, until after the coroner's inquest.

The police can also:

- conduct an investigation and forensic procedures
- prepare an investigation report for the coroner.

The police will notify the coroner of workplace deaths and in some instances, they'll also notify WorkSafe Tasmania.

The deceased's body will be taken to the mortuary (at the Royal Hobart Hospital or the Launceston General Hospital) for the state forensic pathologist's investigation.

Tasmania Police

131 444

www.police.tas.gov.au

State Forensic Pathologist

The state forensic pathologist will conduct the post-mortem examination of the deceased person at the mortuary. This may involve an autopsy: an external and internal examination of the body to work out the cause of death. It's usually done within 48 hours of the death happening, then the body is released to the family.

You can object to having an autopsy done, if you're the most senior next of kin. You should do so as soon as possible after the death. Call the Coroner's Court and staff will advise you of your rights and obligations. You'll need to put your objection in writing for the coroner to consider (see page 7 for contact details).

The senior next of kin is someone with particular legal rights. Other family members and friends are recognised as 'interested persons'.

The senior next of kin has exclusive rights to:

- object to an autopsy
- object to exhumation
- be notified of a coroner's decision not to hold an inquest
- request a coroner not to hold an inquest into a workplace death.

The senior next of kin is the first available person on this list:

1. the current spouse (which includes the other party to a 'significant relationship' according to the definition in the *Relationships Act 2003*)
2. a child who is at least 18 years of age
3. a person in a caring relationship (according to section 5 of the *Relationships Act 2003*)
4. a parent
5. a sibling who is at least 18 years of age
6. an executor of the will
7. a personal representative.

If the deceased person is of Aboriginal descent, the senior next of kin can also be an 'appropriate person' according to the customs and tradition of the community or group the deceased person belonged to.

WorkSafe Tasmania

WorkSafe Tasmania must be notified of a work-related death by the quickest available means and usually by the workplace's owner or manager. WorkSafe inspectors can:

- investigate to find out what happened and who was involved
- act to prevent further deaths or injuries
- work out if there's been a breach of the *Work Health and Safety Act 2012*
- interview eyewitnesses, other workers or the manager/employer
- ask for information from the deceased's family and friends
- apply for a warrant to search the premises or take evidence.

WorkSafe inspectors carry identification. If you're contacted by an inspector you can ask to see this identification.

WorkSafe inspectors work with the police, and sometimes they'll conduct a joint investigation. If they conduct separate investigations, they'll be looking for different information. These investigations can take a long time.

WorkSafe may recommend a prosecution or act upon an enforceable undertaking (an alternative to a court-imposed penalty that requires the workplace to improve workplace safety to prevent a similar incident occurring again). WorkSafe will tell you which option it chooses. For more information go to www.worksafe.tas.gov.au and search for 'prosecution guidelines'.

WorkSafe Tasmania

1300 366 322

www.worksafe.tas.gov.au

Director of Public Prosecutions

WorkSafe may recommend a prosecution, and the Office of the Director of Public Prosecutions decides whether or not to prosecute. A prosecution requires a hearing (like a trial, but without a jury) to be conducted, and there needs to be evidence to satisfy the Court beyond a reasonable doubt that a defendant is guilty of an offence. Alternatively, if someone is charged with a breach, they may plead guilty. If that happens, then a sentencing hearing would take place.

Sometimes, the Director of Public Prosecutions' office may determine there's not enough evidence of a specific breach to prosecute.

If a prosecution proceeds, it will be held in the Magistrates Court of Tasmania. You'll be told about the court processes by either a legal officer (who would be a lawyer, also known as a crown prosecutor) from the Director of Public Prosecutions or an officer from WorkSafe.

Director of Public Prosecutions

www.crownlaw.tas.gov.au/dpp/home

Witness Assistance Service

If the person being prosecuted pleads guilty or is convicted, at the sentencing stage you may be asked if you wish to provide a victim impact statement.

This is an opportunity for you to tell the court how the loss of your family member or friend has affected you and others. Some people find this is helpful, but others do not.

Officers from the Witness Assistance Service can help you with these statements, provide support attending court, and help you understand the legal processes in general. This service is part of the Director of Public Prosecutions' office.

Witness Assistance Service

Burnie: 6477 7194

Hobart: 6165 3600

Launceston: 6777 2923

www.crownlaw.tas.gov.au/dpp/witness_assistance_service

The Coroner's Court

A workplace death is subject to a coroner's inquest, to find out how the death occurred and what caused it. Coroners may make recommendations about public health or safety to help prevent similar deaths and incidents from happening again.

The inquest is held after investigations and any prosecution have concluded. The coroner uses the material and evidence gathered by WorkSafe and the Director of Public Prosecutions.

The coroner may decide (for example, after extensive investigations, or a successful prosecution) that there's no need for an inquest.

The Coroner's Court has plenty of easy to understand information on its website about this process. Its 'Guide for Families and Friends' is available on its website.

Coroner's Court

Southern Tas: 616 57134 or 616 57127

Northern Tas: 677 72920

www.magistratescourt.tas.gov.au/about_us/coroners

For after hours, call the Police: 131 444

Births, Deaths and Marriages

The coroner will notify Births, Deaths and Marriages when a workplace death occurs.

Your funeral director will also complete a death registration statement with your input to confirm personal details about the deceased. The funeral director will lodge this information with Births, Deaths and Marriages within 7 days after the disposal of the body.

You can apply for a copy of the death certificate from Service Tasmania (for a fee), or the funeral director can order a copy for you (again, for a fee).

You will get an interim death certificate while the coroner's investigation is happening. However once it's finished, Birth, Deaths and Marriages will swap this for a standard death certificate.

Tasmania Police, WorkSafe Tasmania and any other government agency may be granted access to the death certificate during their investigations.

Births, Deaths and Marriages

1300 135 513

www.justice.tas.gov.au/bdm

The Employer

The deceased person's employer should contact you about:

- any outstanding salary
- any long service leave benefits that may be payable
- superannuation benefits paid by the employer (or provide you with the super fund's contact details)
- other payments due
- returning the deceased's personal property to you, or getting any workplace property returned to them.

If you're not contacted by the employer about these issues in a reasonable timeframe, you'll need to contact them.

The Funeral Director

Usually the deceased person's body is released to a funeral director, who has been chosen by the family. So choosing a funeral home is one of the first decisions you'll need to make.

Let the funeral director know that the Coroner's Court is involved; they will liaise with the Coroner's Court as necessary.

See also the information on funerals in the next section.

Financial and other admin matters

Who to advise

You may need to advise these organisations:

- bank and/or mortgage providers, insurers, superannuation fund
- government services and departments like the Australian Tax Office, Australian Electoral Commission, Centrelink, Medicare
- the Department of State Growth's Transport Services Group (driver's licence)
- phone, electricity and water providers; local council.

You can find a detailed checklist and further information on the federal Department of Human Services' website. Go to www.humanservices.gov.au and search for 'what to do following a death'.

Workers compensation

You may apply for workers compensation if you're a dependant of the deceased. To do so, you'll need to lodge a claim:

- using the worker compensation claim form, available from the employer
- within 6 months of the deceased person's death
- attaching a certificate signed by a doctor certifying the date of death.

You must then give this to the employer to process.

You may receive benefits such as:

- payments for the cost of counselling
- a funeral benefit
- a lump sum to the dependent spouse and dependent children
- weekly payments to the dependent spouse and dependent children.

WorkSafe Tasmania

1300 366 322

www.worksafe.tas.gov.au

You may be entitled to common law damages if the deceased was injured as a result of their employer's negligence. Consult a lawyer if you think this is the case. There are time limits to apply for this.

For independent and confidential advice on workers compensation:

Worker Assist Tasmania: 1300 027 747

Legal Aid Commission of Tasmania: 1300 366 611

Law Society of Tasmania's Pro Bono Clearing House: 6234 4133

The funeral

The deceased may have covered funeral costs in their insurance policies or superannuation fund, so check these or call the insurance or superannuation company for help.

If you're lodging a workers compensation claim, you may receive reimbursement for all or some of these costs (limits apply).

If you want the funeral account to be sent to a solicitor (for others to contribute to the cost) or if you're not sure if you can cover the full cost, get legal advice before signing an agreement.

The will

Find out if the deceased had a will.

The executor of the will (named in the will) is responsible for distributing the deceased's estate to those named in the will.

If there is no will, the deceased's next of kin may apply to the Supreme Court for an order for the next of kin to administer the estate.

If there is no next of kin, the Public Trustee may be contacted to determine whether the Public Trustee can apply to the Supreme Court to administer the estate. Call 1800 068 784 or go to www.publictrustee.tas.gov.au.

Mortgages and bills

You may be able to postpone regular payments like home loans or direct debits. Contact the relevant organisation to find out if this is possible. If you have a mortgage, ask the lending institution if payments are covered by insurance or if you can renegotiate the loan.

Superannuation

There may be superannuation funds from previous jobs. For help with this:

- call the union that the deceased was a member of
- call the Australian Taxation Office Lost Members Register on 13 28 65 or go to www.ato.gov.au and search for 'searching for lost super'.

Centrelink

Depending on your circumstances and your relationship to the deceased, you may be eligible for certain benefits. Call 13 28 50 or go to www.humanservices.gov.au and search for 'centrelink'.

The media

When someone dies in a workplace incident, the media may report on it. Journalists may contact you, your family or friends for a comment.

You don't have to speak to the media if you don't want to: you can say that you have no comment. Or you might ask another family member or a friend to speak on your behalf.

Getting other help

Grief counselling may help you to cope immediately after the event, prepare for the future, and get the support you need.

Unions may provide support to families of their members, including counselling and financial guidance.

Your workplace may have an employee assistance program or service that provides counselling.

Your doctor can help you, or refer you to other health professionals to help you with your emotional and mental health.

Sudden Loss Support Kit

The Sudden Loss Support Kit from the Department of Health and Human Services has useful information about:

- where to go for support and help
- what to expect when you are grieving
- helping children and teenagers with grief.

Some services you may find helpful include:

Grief and Loss Counselling Services/ Social Workers

South (Royal Hobart Hospital): 61 66 8344

North (Launceston General Hospital): 6777 6245

Lifeline

13 11 14

www.lifeline.org.au

Kids Helpline

1800 551 800

kidshelpline.com.au

MensLine Australia

1300 789 978

mensline.org.au

Beyondblue

1300 224 636

www.beyondblue.org.au

Women's Legal Service Tasmania

1800 682 468

womenslegaltas.org.au

Legal Aid Tasmania

1300 366 611

www.legalaid.tas.gov.au

The Sudden Loss Support Kit has a full list of organisations that can help you. Go to www.dhhs.tas.gov.au and search for 'loss kit'.

If you're lodging a workers compensation claim, you may receive reimbursement for all or some of these costs (limits apply).

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

For more information contact

Phone: 1300 366 322 (within Tasmania)
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ISBN: 978-1-876712-26-6

