

# Response to a death in the workplace

## Workplace Health and Safety Queensland



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For further information, please telephone 1300 369 915 or visit our website [www.dir.qld.gov.au](http://www.dir.qld.gov.au)

## About this guide

This guide is for families and friends of those killed in a workplace incident. It explains the roles of Workplace Health and Safety Queensland, WorkCover Queensland, the police and the Coroner after a death in the workplace and shows the steps taken after the incident.

The guide also lists contact resources that family and friends may find helpful after a fatality.

Because the information provided in this guide is general, you should contact the organisations listed at the end for more specific information.

## Interpreter assistance

If you need an interpreter (for spoken Language) there are a number of translating and interpreting service providers including the Translating and Interpreting Service, Department of Immigration and Multicultural Affairs on 131 450. Ask for the interpreter to call Workplace Health Safety Queensland, Department Industrial Relations.

## The role of Workplace Health and Safety Queensland

Workplace health and safety laws exist to promote the health and safety of people in the workplace. Part of the role of Workplace Health and Safety Queensland (WHSQ) is to administer the law by investigating workplace incidents and illnesses.

WHSQ will begin an investigation as soon as possible after being notified of a death in the workplace. The purpose of this investigation is to find out what happened and take any appropriate action. Investigations can be complex and may take several months to complete.

WHSQ works in cooperation with the police and other government departments where necessary as part of its investigation. Individuals or companies can be prosecuted for breaches of the *Workplace Health and Safety Act 1995* (the Act) and associated legislation.

A fatal incident does not always lead to a prosecution. WHSQ will make a decision about whether a prosecution should commence and considers a number of factors in making this decision. For example, there must be sufficient evidence to provide a reasonable prospect of a conviction. If a decision is made to prosecute, a court hearing will take place and this is usually heard in the Magistrates Court.

A person or company who is charged under workplace health and safety laws by WHSQ may enter a plea of guilty or defend the matter. If the plea is guilty, you may hear only a brief summary of what happened. If the plea is not guilty, the Magistrate will set a trial date which could be several months away. This hearing will often take longer than a day, but you will hear all the evidence in great detail.

The amount of information that WHSQ can give you or your solicitor before the trial is restricted. Penalties for offences against the Act include fines and imprisonment.

The amount of the fine will be determined by the court.

The WHSQ Enforcement Framework includes investigations and prosecution policies and can be found at [www.dir.qld.gov.au](http://www.dir.qld.gov.au) or a copy can be provided to you by calling 1300 369 915.

## The role of the Queensland Police Service

The police are routinely called to a workplace death and they are responsible for informing family members. They will inform the Coroner's office and prepare a report for the Coroner.

The Coroner's office requires that a deceased person must be formally identified in the presence of a police officer before the deceased can be released. This task is usually performed by immediate family members. However, if you are unable to conduct the identification police will need to seek alternative methods of identifying the deceased person, which may include personal identification by other family members, friends or work colleagues. If this is not possible, then police will use other options such as fingerprint, dental or DNA identification.

Due to the complexity of the investigations into workplace deaths, finalising the police and WHSQ reports for the Coroner may take some time. As part of the police investigation, they will consider the findings of the WHSQ investigation and, where appropriate, make recommendations to the Coroner. The police investigation will also consider whether there is evidence to commence criminal proceedings against any person.

Personal property found on the person who has died will be returned to the next of kin or immediate family members as soon as possible after the police have spoken with you. In some instances, it may be necessary to retain certain items until the investigation is complete. Clothing is usually disposed of when the person who has died is admitted to the mortuary.

To assist the Coroner (who is also a Magistrate) a police officer will take statements and prepare a report. Police officers will ask questions about the person who has died and the circumstances of the death. Most of the information they will require will usually be obtained when they first speak with you. However there may be additional questions and statements to be signed so that the file can be sent to the Coroner.

The police and Workplace Health and Safety Queensland inspectors may carry out independent investigations. WHSQ will conduct its own investigation to determine whether any workplace health and safety laws have been broken and the police will consider criminal law matters.

## The Coroner's role

Coroners are situated throughout Queensland in Magistrates Courts. They are responsible for holding inquiries into the circumstances surrounding deaths that are reported to them. This inquiry may result in a Coronial Inquest.

The Coroner will order a post mortem, if required, to help him/her ascertain the cause and manner of death.

An inquest need not be held if the Coroner decides that the death was due to natural circumstances or that no good purpose would be served by holding the inquest.

An inquest can be requested by a relative or person that the Coroner determines has sufficient interest in the death. This will be considered by the Coroner when deciding whether or not to hold an inquest. The next of kin will be notified of the reasons why an inquest will not be held.

The purpose of the Coronial Inquest is to establish as far as possible:

- (a) the fact that a person has died;
- (b) the identity of the deceased person; and
- (c) when, where and how the death occurred.

A Coronial Inquest is a court hearing where the Coroner considers information to help establish these matters. At a Coronial Inquest, the Coroner may call a number of witnesses to give evidence, including a workplace health and safety inspector.

While inquests are generally open to the public, in certain circumstances the Coroner can determine who will attend. It may be necessary for you or another member of your family to make a statement to the police about your knowledge of the circumstances of the death. If the inquest is set down for hearing, the Coroner will read your statement and determine whether it is necessary for you to attend to give further evidence at the hearing.

You will be notified by the Coroner if you are required to give evidence. If an inquest is to be held, the Coroner's office will keep you informed of the date and place of the hearing, which may take more than one day.

Any person who, in the opinion of the Coroner, has a sufficient interest in any aspect of the inquest may apply to the Coroner for permission to appear in person, or to be legally represented at the inquest. This person, or his or her legal representative, may examine and cross examine any witness on matters relevant to the inquest.

## Funeral arrangements

You may contact your chosen funeral director at any time after the police have spoken with you. The Coroner, in most circumstances, will release the body of the person who has died to the funeral director after the post-mortem examination and identification is confirmed.

Police are required to use the services of a specific funeral director who holds a contract with the Government to take the person who has died to a mortuary. However there is no obligation on the family to use the services of that funeral director. A list of funeral directors can be located in the Yellow Pages telephone directory.

A viewing of the person who has died can be arranged through the funeral director at the funeral director's chapel.

## Occupational superannuation

There are certain guidelines set out in legislation that restrict who will be paid superannuation benefits, but in general, payment will be made to a dependant(s) which can be one or more of the following:

- a spouse (including de facto spouse), or
- a child or children, or
- person(s) who were dependent at the time of death, or
- where none of the above exist, to the deceased's estate.

Where the benefit is paid to the deceased's estate it will be distributed in accordance with the provisions of the deceased's Will.

In the event of there being no Will, the deceased's estate will be administered in line with *The Succession Act 1981*. For more information on Wills please go to the Public Trustee website [www.pt.qld.gov.au/services/willsde.htm](http://www.pt.qld.gov.au/services/willsde.htm)

## Fatal claims for workers' compensation

Workers' compensation insurance in Queensland is handled on behalf of all employers by WorkCover Queensland except where the employer has been granted a license to self-insure. Only a small number of large employers who meet specific requirements, are able to self-insure. In order to determine if the employer concerned is self-insured, an inquiry can be made either directly to the employer, or to Q-COMP, which regulates the licensing of self-insurers.

Q-COMP can be contacted by telephoning 1300 361 235 or details of self-insurers can be found on Q-COMP'S website: [www.qcomp.com.au](http://www.qcomp.com.au).

## Applications for workers' compensation

Claims for fatalities can arise in the following ways:

- the worker dies immediately or soon after the injury;
- the worker sustains a non-fatal injury, but dies of the injury some time later;
- the worker sustains a non-fatal injury and later dies of complications from this injury; or
- the worker sustains a non-fatal injury and dies from a subsequent injury arising from this existing compensable injury.

## Compensation for the death of a worker

Certain people can apply and be paid compensation after the death of a worker including:

- the worker's legal representative may apply for compensation on behalf of the worker's dependants or other entitled persons, if expenses have been incurred;
- the person who incurred the expenses (this means an employer, family member or friend who paid the expenses e.g. funeral expenses) may apply for reimbursement; or
- if the worker had dependants, the dependants may apply for compensation in their own right (e.g. a spouse who is totally dependant) or have an application made on their own behalf (e.g. a non-dependant grandparent may make an application on the worker's children's behalf).

## How claims are assessed

Each application is assessed by the insurer against criteria set out in the *Workers' Compensation and Rehabilitation Act 2003*. WorkCover Queensland, or the deceased worker's employer if they are self-insured will consider:

- whether the person who suffered the fatal injury was a 'worker' as defined in the Act at the time of their injury;
- whether the person suffered an 'injury' as defined in the Act; and
- whether their employment was a significant contributing factor to the fatal injury.

If the applicant is claiming for loss of dependency, the insurer will also consider whether the person making the application for compensation was dependent on the worker at the time of fatal injury and the extent of such dependency.

If the applicant is claiming for expenses the insurer will also consider whether they incurred expenses arising from the worker's fatal injury.

If the employer does not have a workers' compensation policy, anyone who falls under the definition of a 'worker' is still entitled to lodge a claim for workers' compensation and such claims are managed by WorkCover Queensland.

People who are not eligible for coverage under the Queensland Workers' Compensation scheme may take out personal injury insurance with a private insurance company. If this is the case, you will need to contact the individual insurance company to find out eligibility and entitlements relating to the specific policy taken out.

## Entitlements

If a worker dies as a result of an injury, the insurer may pay:

- reasonable medical treatment and associated costs of the worker;
- reasonable funeral expenses;
- where a worker leaves dependants who were wholly or partly dependant on their earnings, the compensation available to an applicant is proportionate to their dependence on the deceased's earnings. Compensation may include the payment of a lump sum and/or periodic payments for dependant children; and
- where a worker leaves no dependants and is under the age of 21 years of age, the workers' parents may seek compensation for the death of their child.

## Making a claim

If you need to make a claim involving a fatality you can contact WorkCover Queensland or the self-insured employer directly to obtain the appropriate forms. Family members, friends or your legal representative can make the contact on your behalf. Forms can be obtained from WorkCover Queensland's website at [www.workcoverqld.com.au](http://www.workcoverqld.com.au).

You will need to provide the insurer with the following completed documents:

- Application for Compensation - Fatal Injury (signed and completed); and
- the original copy of the Workers' Compensation Medical Certificate - Fatal Injury provided by the attending doctor.

## Getting help with the application

If you would like help in filling out the application or if you would like to make sure you have understood the questions asked, please contact the insurer for assistance. WorkCover Queensland can be contacted on 1300 362 128 (toll free). Customer service officers will be able to put you through to someone who can help you. You may also prefer to have someone help you complete this form such as a family member, union or legal representative or the employer.

## Further information on claims

For further information, contact WorkCover Queensland via its website [www.workcoverqld.com.au](http://www.workcoverqld.com.au) or by telephone on 1300 362 128 (toll free).

## Getting further help

Speak to funeral directors, family doctors or religious ministers for further help and advice. Other useful organisations are listed. Some of these organisations may charge a fee.

## Contacts for further enquiries

### **Counselling inquiries**

- Community Health Centres  
(see Yellow Pages)
- The Compassionate Friends Queensland Inc.  
(Support organisation for bereaved parents)  
505 Bowen Tce  
New Farm Qld 4005  
PO Box 218  
Springwood Qld 4127  
*Ph 3254 2657*  
Fax 3358 2533  
Email: [tcfqld@powerup.com.au](mailto:tcfqld@powerup.com.au)  
[www.uq.net.au/tcfbrisbane](http://www.uq.net.au/tcfbrisbane)
- John Tonge Centre (four counsellors are generally available at the centre)  
39 Kessels Road  
Coopers Plains  
*Ph 3274 9200*
- Lifeline  
24 hour telephone counselling or face to face counselling is available in a number of locations  
*Statewide toll free number: 131 114*

### **Coroners' office inquiries**

- Brisbane Coroner's Office  
Brisbane Magistrates' Court  
1/363 George Street  
Brisbane Qld 4000  
*Ph 3247 4606*
- Statewide  
Office of the State Coroner  
Brisbane Magistrates' Court  
1/363 George Street  
Brisbane Qld 4000  
*Ph 3239 6193*  
Calls made to the state office will be directed to individual offices
- Local Magistrates' Court  
[www.justice.qld.gov.au](http://www.justice.qld.gov.au)

The Uniting Church's Workplace Death – Partnerships in Grieving website offers good advice on a range of topics related to workplace fatalities [www.workplacedeath.wmb.org.au](http://www.workplacedeath.wmb.org.au)

### **Death Certificate inquiries**

- Registrar-General - Registry of Birth, Deaths and Marriages  
501 Ann Street  
Brisbane Q 4002  
*Ph 3247 9203*  
PO Box 188  
Brisbane Albert Street 4002  
Anyone outside of Brisbane should address any inquiries to their local Queensland Government Agent Program (QGAP) office or Magistrates Court Office.

### **Police inquiries**

- Queensland Police Service Coronial Support Unit  
John Tonge Centre  
39 Kessels Road  
Coopers Plains  
QLD 4108  
*Ph 3274 9197*  
Fax 3274 9108
- Or contact your local police station

### **Legal inquiries**

- Legal Aid Queensland  
Legal Aid Queensland can cover legal costs and provide access to legal representation and other legal services to a dependant when a claim for workers compensation is disputed and taken to court.  
*Ph 1300 65 11 88*
- Queensland Law Society  
The society provides advice, (means tested) as well as a fixed fee scheme.  
*Ph 3842 5842*
- Private Solicitors  
The Queensland Law Society can recommend suitable solicitors.