

Workplace Health and Safety Queensland

A death in the workplace

– a guide for families and friends

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For further information, please telephone 1300 369 915 or visit our website www.worksafe.qld.gov.au.

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About this guide

This guide is for the family and friends of a person killed in a workplace incident. It explains the roles of Workplace Health and Safety Queensland, WorkCover Queensland, the Queensland Police Service and the coroner after a death in the workplace and shows the steps taken by these agencies after the incident.

The guide also lists contact resources that family and friends may find helpful. The information provided in this guide is general, so 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 National, Department of Immigration and Citizenship on 13 14 50. Ask for the interpreter to call Workplace Health and Safety Queensland, Department of Justice and Attorney-General.

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 work-caused illnesses.

WHSQ will begin an investigation as soon as possible after being notified of a fatality in a 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. The deceased person's next of kin will be advised of the WHSQ officer who can be contacted if there are any enquiries about the investigation.

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 a case to answer and sufficient evidence to provide a reasonable prospect of a conviction. The *Queensland Workplace Health and Safety, Electrical Safety and Dangerous Goods Compliance and Enforcement Policy 2009* highlights factors considered in investigations and prosecution decision-making, and can be downloaded from www.worksafe.qld.gov.au or a copy can be obtained by calling 1300 369 915. 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 WHSQ can give you or your solicitor before the trial is restricted. You may be able to access information about WHSQ's investigation by way of an application under the *Right to Information Act 2009*, or, if you are seeking access to your personal information, the *Information Privacy Act 2009*. For more information on your rights visit www.rti.qld.gov.au or contact the department's Right to Information and Privacy Unit on 07 3239 0331.

Penalties for offences against the Act include fines and imprisonment. The amount of the fine will be determined by the court.

The role of the Queensland Police Service

Police are always called to workplace fatalities. Police will inform family members of the death and report the death to the coroner.

The coroner requires the deceased person to be formally identified before being released to the family for burial or cremation. Police will usually organise for family members or friends to perform this task. Police will usually rely on someone who knows the deceased well to visually identify him or her. If this is not possible police may use other options such as fingerprint, dental or DNA identification.

Personal property found on the deceased will be returned to the family. In some instances it may be necessary to retain some items until the investigation is complete. Clothing is usually destroyed when the deceased is admitted to the mortuary.

Police are responsible for assisting the coroner to investigate the circumstances of a fatality. Police prepare an initial report for the coroner. After considering the initial report the coroner may request police to conduct further investigations which may include taking further statements from work colleagues and other witnesses.

Police and WHSQ inspectors carry out independent investigations. As well as assisting the coroner, police will consider whether any criminal charges should be laid.

The role of the coroner

Queensland has five full time coroners situated in Brisbane, Southport and Cairns. All Queensland magistrates are also appointed as coroners and can act in that role when required.

Under the *Coroners Act 2003*, coroners are responsible for investigating 'reportable deaths'. These include deaths which are unexpected, violent or unnatural such as deaths caused by accidents or falls. Workplace deaths are usually reportable.

Reportable deaths are reported to a coroner by the police who will have attended the scene of a fatality and obtained some initial information about the incident. The coroner must then investigate the circumstances of the death and make findings about the identity of the deceased, when and where they died, how the death occurred and what caused the fatality. The coroner has broad powers of investigation.

The coroner will usually order an autopsy to help ascertain the cause of death. The coroner will consider the initial report from the police and may require the police to conduct further investigations. The coroner will also consider the report prepared by WHSQ.

Due to the complexity of the investigations into workplace deaths it may take some time for the police and WHSQ reports to be completed and provided to the coroner for consideration.

Sometimes police will decide that there is sufficient evidence to commence criminal proceedings against a person. If this occurs, the coronial investigation is postponed until the outcome of those criminal proceedings is known.

Once the coroner has completed their investigation, the coroner will consider whether to hold an inquest. An inquest is a hearing conducted by the coroner to gather more information about the cause and circumstances of the fatality. Coroners can also make recommendations aimed at preventing similar deaths in the future.

An inquest is not a trial and proceedings are less formal than conventional court hearings. The coroner will hear evidence from people who have information about the death. These witnesses may be police officers, family members, doctors, workplace health and safety inspectors, other experts and eye witnesses.

A coroner may decide to hold an inquest if it is in the public interest to do so. This might be the case where there is doubt about the cause and circumstances of death or where holding an inquest may help to prevent future deaths or uncover systemic issues which affect public health and safety.

Family members can request that an inquest be held by writing to the coroner outlining why it is in the public interest for an inquest to be held. The coroner must make the decision within six months of receiving the request and give reasons for their decision. If the coroner refuses the request an application can be made to the state coroner or the District Court for an inquest to be held.

The inquest is usually held in the closest Magistrates Court to where the fatality occurred. The length of an inquest will vary from hours to weeks depending on the complexity of the case, the number of witnesses and the number of parties involved.

Further information about inquests can be obtained by visiting the Office of the State Coroner website at www.courts.qld.gov.au/129.htm.

Funeral arrangements

Once the autopsy is complete and the coroner is satisfied that it is not necessary to retain the body for further examination, the deceased may be released to the family for burial or cremation. The deceased is normally released to the funeral director chosen by the family to conduct the funeral. The funeral director will complete the necessary forms requesting the coroner to release the body for the funeral.

The family decides which funeral director to use. Police must use the services of the government contracted funeral director to transport the person who has died to a mortuary for autopsy. However, there is no obligation on the family to use the government contracted funeral director. A list of funeral directors can be located in the Yellow Pages telephone directory.

The role of employee associations (unions)

Certain unions may provide a range of support services to affected families in the event of serious incidents at workplaces. This may consist of counselling, financial guidance or assistance with accessing other agencies such as Workcover Queensland. The Queensland Council of Unions (QCU) for example, has set up the Workers' Compensation Information Service – an independent service established to provide information to injured workers and/or their families about the workers' compensation system in Queensland. They can be contacted by telephoning 07 3844 1931 or you can find out more on the QCU's website at www.qcu.asn.au/15177.html

You can also contact the relevant union to determine what other services are available.

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)
- a child or children
- person(s) who were dependent at the time of death, or
- where none of the above exists, 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 of Queensland website at www.pt.qld.gov.au/services/willsde.htm

Workers' compensation

All employers in Queensland are required to have a workers' compensation policy that covers their employees.

Workers' compensation insurance in Queensland is handled on behalf of all employers by WorkCover Queensland, except where the employer has been granted a licence to self-insure. WorkCover can be contacted by telephoning 1300 362 128, and information can be found on their website at www.workcoverqld.com.au

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 at www.qcomp.com.au

Compensation after the death of a worker

Certain people may be eligible to apply for and be paid compensation after the death of a worker including:

- the worker's dependants
- an employer, family member or friend who has incurred expenses (such as funeral expenses)
- the worker's legal representative (on behalf of the worker's dependants or, if expenses have been incurred, on behalf of the person who incurred them).

The circumstances in which compensation may be payable include where the worker:

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

An 'injury' includes a work-related disease such as asbestosis.

Compensation is only payable where:

- the person who suffered the fatal injury was a 'worker' at the time of the injury, as defined in the *Workers' Compensation and Rehabilitation Act 2003* (the WCR Act), (generally, every employee is a 'worker')
- their employment was a significant contributing factor to the fatal injury
- the event causing the injury was work related
- the person suffered an 'injury' as defined in the Act.

In Queensland, the workers' compensation scheme may also cover workers who are travelling between their home and their workplace (the journey starts/ends from the boundary of the worker's home).

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
- weekly benefits if totally incapacitated prior to death resulting from injury.

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.

Where a worker leaves no dependants and is under the age of 21, 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 also be obtained from WorkCover Queensland's website at www.workcoverqld.com.au.

You will need to provide WorkCover or the self-insured employer with the following completed documents:

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

How claims are assessed

Once you have lodged a claim, the application will be assessed by the insurer against criteria set out in the WCR Act. WorkCover Queensland, or the deceased worker's employer if the employer is self-insured, will consider whether:

- the person who suffered the fatal injury was a 'worker' as defined in the WCR Act at the time of their injury
- their employment was a significant contributing factor to the fatal injury
- the event causing the injury was work related
- the person suffered an 'injury' as defined in the WCR Act.

If you are claiming for loss of dependency, the insurer will also consider whether you were dependent on the worker at the time of fatal injury and the extent of your dependency. If you are claiming for expenses, the insurer will consider whether the expenses arose out of the worker's fatal injury.

What if the employer does not have a workers' compensation policy?

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 (for example, some self-employed persons) 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.

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.

Common law damages

You may also be entitled to damages if the worker was injured as a result of the employer's negligence. You should consult a lawyer if you think the employer's negligence caused the injury, as there are time limits that apply to these actions.

Further information on claims

For further information, contact WorkCover Queensland via www.workcoverqld.com.au or on 1300 362 128 (toll free). You can also contact the Workers' Compensation Information Service on 07 3844 1931 or find out more at www.qcu.asn.au/15177.html

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 enquiries

Community health centres (see Yellow Pages)

The Compassionate Friends Queensland Inc.

Support organisation for bereaved parents.

505 Bowen Terrace

New Farm Qld 4005

PO Box 1930

New Farm Qld 4005

Ph: 07 3254 2657

Fax: 07 3358 2533

Email: tcfql@powerup.com.au

www.uq.net.au/tcfbrisbane

Coronial Counselling Unit

Queensland Health Forensic Aid
and Scientific Services

39 Kessels Road

Coopers Plains Qld 4108

Ph: 07 3000 9342

Lifeline

24 hour telephone counselling or
face-to-face counselling is available
in a number of locations.

State wide toll free number 13 11 14

The Uniting Church

The Workplace Death – Partnerships in Grieving

website offers good advice about a range of
topics related to workplace fatalities.

www.workplacedeath.wmb.org.au.

Coroner's office enquiries

Office of the State Coroner

Brisbane Magistrates Court

Level 1, 363 George Street

Brisbane Qld 4000

GPO Box 1649

Brisbane Qld 4001

Ph: 1300 304 605 or 07 3239 6193

Death certificate enquiries

Registrar-General

Registry of Birth, Deaths and Marriages

110 George Street

Brisbane Qld 4000

PO Box 15188

City East Qld 4002

Ph: 1300 366 430

Anyone outside Brisbane should address
enquiries to their local Queensland Government
Agent Program (QGAP) office or Magistrates
Court Office.

Legal enquiries

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: 07 3842 5842

Private solicitors

The Queensland Law Society can recommend
suitable solicitors.



Queensland
Government

Workplace Health and Safety Queensland
Workplace Health and Safety Infoline: **1300 369 915**
www.worksafe.qld.gov.au