



## **Guidelines for claims for Compensation for Death of a Worker**

### **Preamble**

In the interests of claimant(s) and the WorkCover scheme, the Victorian WorkCover Authority ("the Authority") and APLA Ltd – Lawyers for the People have agreed to adopt these guidelines to promote an efficient procedure for the determination of entitlement and payment of compensation to claimant(s) for compensation for the death of a worker pursuant to the Accident Compensation Act 1985 (as amended).

### **Introduction**

These guidelines are intended to facilitate the efficient determination of entitlement and delivery of compensation through early, cost effective and comprehensive exchange of all relevant information and documents in respect of such claims, whether death was caused by traumatic event, suicide or illness or disease.

These guidelines contemplate an early conference between the claimant's representative and the Authority's representative which facilitates the early exchange of relevant information and documents.

### **Claimants not legally represented**

If, at the time of lodgement of a claim to which these guidelines apply, the claimant is not legally represented, the Authority's agent will provide written advice to the claimant when allocating the claim to its legal representatives (see Attachment accompanying this email).

### **Early conference**

The representatives of the claimant and the Authority will convene a conference to take place **no less than 30 days** after service of the claim on the Authority or after the Authority or its legal representative receives advice of legal representation of the claimant, which ever occurs later. To this end, at or before the conference, the parties shall use their best endeavours to:

- (a) conduct a genuine, comprehensive and meaningful discussion of all aspects of the claim
- (b) identify information and documents required by the parties from each other
- (c) determine an appropriate and efficient method of acquiring the information and documents required by each other
- (d) determine a time frame for exchange of all information and documents agreed to be exchanged by the parties
- (e) commence, at the earliest possible date, meaningful discussions which are intended to identify and or resolve all issues in dispute and the entitlement of the claimant to compensation
- (f) If it is deemed there is entitlement of the claimant(s) to compensation, ensure the prompt payment of the compensation.



The representatives of the claimant and the Authority may agree to convene further conferences as may be required for the purposes of these guidelines.

### **Information and documents generally required by the Authority**

Where practicable and relevant, the Authority generally requires the following types of information and documents to make a determination of entitlement of the claimant for compensation for death of a worker.

#### **Death caused by traumatic event**

1. In relation to the deceased's employment:
  - a. A complete employment history for 3 years preceding the death including the name, address, period and job classification with each employer of the deceased, details of any concurrent employment together with an authority which enables the Authority to obtain information and documents from those employers;
  - b. Particulars of every fact, matter or circumstance of the deceased's employment which are alleged to have been responsible for the occurrence of the death or of the alleged injury or which are alleged to have been a significant contributing factor in the occurrence of death of the alleged injury;
  - c. Where the deceased was a proprietor, director or share-holder of the employer named on the claim form, copies of all relevant employment records including contracts of engagement and wage and accounting records.
2. Death certificate
3. Ambulance Records
4. Information about the evidential basis of the claim, and, where appropriate statements from all lay witnesses upon whose evidence the claimant intends to rely. Where there has or is likely to be a coronial investigation, a copy of the coronial brief and documents relating to any inquest will generally be required.
5. Police report (if applicable)
6. Medical opinion in support of entitlement to compensation upon which a claimant intends to rely. Where there has been a post mortem, a copy of the post mortem report may be required.

#### **Death by suicide**

In addition to the information and documents listed above in respect of traumatic death, in the event of alleged death by suicide, where possible, practicable and relevant, the claimant should also provide copies of all records or notes made or left by the deceased or any other relevant person.

#### **Death resulting from illness or disease**

In addition to the information and documents listed above in respect of death resulting from traumatic event, the following additional information and documents may be required by the Authority:

1. For the five years preceding death or commencement of the treatment for the fatal illness or episode, whichever occurs first, copies of:
  - a. All relevant radiological and pathological investigations
  - b. Clinical notes from providers of medical or hospital services
  - c. HIC printout of past benefits in respect of all relevant medical treatment provided to the deceased, subject to the right of the claimant's representative to withhold sensitive, non-relevant information.
2. Details of any previous relevant illnesses/injuries including, but not limited to:
  - a. The nature of the previous illness/injury
  - b. The circumstances of occurrence or onset of the previous illness/injury
  - c. The date(s), period(s) of occurrence of the previous illness/injury
  - d. Details of any claims made in respect of the previous illness/injury
  - e. All relevant radiological and pathological investigations
  - f. Clinical notes from providers of medical or hospital services in respect of previous relevant illness/injury
  - g. HIC printout of past benefits in respect of all relevant medical treatment provided to the deceased, subject to the right of the claimant's representative to advise the Authority of the intention to withhold sensitive non-relevant information.

### **Dependency – All claims for compensation for death of a worker**

To enable the Authority to make a determination of dependency of the claimant(s), the following information and documents will generally be required:

1. Complete tax returns for the three years prior to and including the year of death for:
  - a. The claimant(s);
  - b. The deceased;
  - c. Any business in respect of which the deceased or the claimant(s) had a financial interest or, if the tax returns cannot be obtained, details of any distribution or profit paid to the deceased or claimant(s) from any business in respect of which the deceased or the claimant(s) had a financial interest.
  - d. Any family trust relevant to the deceased or the claimant(s), or, if the tax returns cannot be obtained, details of any distribution or profit paid to the deceased or claimant(s) from the family trust.
2. Details and records of the income of all claimant(s) from all sources during the 12 months prior to the death of the deceased including income from all investments, employment or business.
3. In the event of partial dependence, details of the nature and extent of alleged dependence together with copies of relevant domestic accounts and receipts if



applicable. Where relevant and appropriate, the Authority may request a statutory declaration of these details.

4. Access to bank records and statements relating to the claimant(s) and the deceased where required.
5. A list of the entitlements in money and property of the partially dependent claimant(s) as a result of the deceased's death.
6. Where the deceased was a proprietor, director or shareholder of the employer named on the claim form, and the claimant has access to employer information to which s.239 would apply, that information, which may include copies of all business and employment records for 3 years preceding death including but not limited to wage and accounting records relating to the deceased.
7. A copy of the certificate of marriage may be required.
8. Where the claim is made by a child, a copy of the child's birth certificate.
9. Where the child is aged between 16-21, documentation to establish the child is a full time student.

#### **Information and documentation generally to be provided by the Authority to the claimant's representative**

Where practicable and relevant, the Authority's representatives will provide all information and documents requested by the claimant's representatives. In particular, the Authority will provide the following information and documents to the claimant's representative:

1. The deceased's employment records for three years preceding the death including, but not limited to:
  - a. Wage records
  - b. Attendance records
  - c. Medical centre records
2. All statements provided by witnesses other than those to which legal professional privilege applies.
3. All medical reports obtained by the Authority from any provider of medical or hospital services pursuant to Section 99 or from a previous examination of the worker conducted in accordance with the Act.
4. All medico-legal reports obtained by the Authority upon which it intends to rely (within 30 days of obtaining the report).

#### **Decision to Accept or Reject the claim**

Where all of the necessary and available information and documents have not been provided by the parties in accordance with these guidelines, the parties will inform each other as soon as possible:

- What further information is required;



- That the information is required within 21 days.

A decision to accept or reject the claim will be made by the Authority within 90 days after receipt of the claim. However, the representatives of the parties may agree to extend the period beyond 90 days if considered appropriate to do so in all of the circumstances.

Where the claim is to be rejected, the reasons for rejection will be provided to the claimant's representatives upon rejection.

## **OTHER**

### **Appointment of Trustee**

The claimant's representative(s) will use their best endeavours to ensure complete compliance with Section 92A(11) of the Act (when applicable) by identifying, within 30 days of an admission of liability or an agreement to pay compensation, a suitable trustee for appointment by the court.

### **Claims Made More Than 2 Years After The Date of Death of the Worker (Section 103(7)(b))**

In the event of service of any claim for compensation for death of a worker more than 2 years after the date of death of the relevant worker, within 60 days after service of the claim on the Authority, the claimant's representatives will comply with Section 103(8) by providing details in writing of the special excuse of the claimant for not making the claim within the period of 2 years after the date of death of the worker together with any relevant additional information or documents which substantiates the special excuse. If necessary and upon reasonable request by the Authority's representative, the special excuse shall be evidenced by an affidavit sworn by the claimant or the claimant's legal personal representative.

### **Other potential Claimants**

Where relevant and practicable at the time of lodging the claim for compensation for death of a worker, the claimant should provide details of the name and current residential address, of any other person whom the claimant has reason to believe was or may have been a dependant of the deceased worker and/or may intend to make a claim for compensation in respect of the death of the deceased worker.

### **Proceedings**

Where the issues in dispute have been substantially or totally resolved before the issue of proceedings, the proceeding for approval by the court will be commenced by originating motion pursuant to Rule 4.06 of the County Court Rules of procedure in Civil Proceedings.

### **Costs**

If there is an Order of the Court in favour of the claimant, the Authority acknowledges that work necessarily and properly performed before the issue of proceedings in pursuit of these Guidelines will be treated as work performed for the purpose of the proceedings.

It is agreed that nothing in these Guidelines derogates from the Authority's entitlement to contend that any work performed may have been unnecessary or improper in all the circumstances of the claim or the proceedings, notwithstanding the work may have been performed pursuant to these Guidelines.



Further, these Guidelines do not require the Authority to make payment for work done before proceedings are issued if that same work is duplicated after proceedings are issued and payment is claimed on a party/ party basis. For example, a charge for perusing documents before proceedings are issued in pursuit of these Guidelines will be allowed only once as a cost in the proceeding, whether or not it is subsequently necessary to peruse the same documents again in the course of a proceeding subsequently issued.

### **Material required to enable payment**

To ensure efficient payment of any statutory entitlement, Claimants should provide the following information/documentation;

- (i) Tax File Number for each claimant entitled to receive a pension payment pursuant to s92B
- (ii) An Employment Declaration Form for each pensioner recipient or where the pensioner is a minor, the parent or guardian who has custody of the minor must complete the Employment Declaration Form on their behalf.
- (iii) For direct payment of benefits; the Name and Address of the Banking Institution, Account Name and Number.