



Richmond and Bennison

WORKPLACE ACCIDENT CLAIMS – A GUIDE TO YOUR ENTITLEMENTS

This guide includes the following:

- Who is a worker?
- What is the Victorian WorkCover Authority?
- Who can make a WorkCover claim.
- When is employment a significant contributing factor to your injury or disease?
- Benefits that can be claimed from WorkCover.
- Medical and associated expenses.
- Weekly payments of compensation.
- Payments for the first 13 weeks you are off work.
- Payments after the first 13 weeks and up to 104 weeks.
- Payments after 104 weeks.
- Accident make up pay.
- Continuation of superannuation contributions whilst on WorkCover.
- Payment of no fault lump sum compensation.
- How to make a WorkCover claim.
- What do you do if your claim is rejected, or you receive a termination notice ceasing payment of weekly payments or medical expenses.
- What is Conciliation?
- Going to Court to enforce your entitlements.
- Claiming damages (Common Law rights for injured workers).
- What is Negligence?
- What is a serious injury?
- What damages can you claim?
- How do I prove if serious injury?
- Time limits for injuries after 20 October 1999.
- Loss of rights for injuries between 11 November 1997 and 20 October 1999.
- Time limits for injuries between 11 November 1997 and 20 October 1999 (where an exception applies).
- Claiming damages for injuries between 1 September 1985 and 11 November 1997.
- Time limits for injuries between 1 September 1985 and 11 November 1997.
- Claiming damages for injuries before 1 September 1985.
- Time limits for injuries before 1 September 1985.
- Claims for damages if a worker dies.
- Entitlements of commonwealth government employees or employees whose employer has joined the commonwealth system of compensation.
- ComCare claims.

Approximately 32,000 Victorians are injured as a result of work every year. Of these, approximately 15,000 lose more than 10 days from work due to their injury. Some of these workers will never be able to return to their pre-injury work.

Work related injury can have a devastating effect on worker's lives and the lives of their families.

Richmond & Bennison can help workers navigate the complex laws that govern worker's entitlements to compensation including worker's rights to weekly payments of compensation, and lump sum payments for pain and suffering, loss of enjoyment of life and lost income.

Most workers in Victoria have entitlements governed by the Accident Compensation Act 1985 which is administered by the Victorian WorkCover Authority (WorkCover). Irrespective of how an accident is caused*, if an injury or disease is caused by, or because of work, Victorian workers can claim benefits from WorkCover.

Who is a worker?

A worker includes the following:

- A person (including a domestic servant or outworker) who works under a contract of service or apprenticeship or with an employer in work including manual labour, clerical work or any other form of work.
- A student performing work experience arranged or authorised by their school or tertiary college.
- A person who fells trees or cuts firewood or clears land for another person even if they have been contracted to provide the result rather than their labour and even if they are in partnership with another person.
- Some taxi drivers who do not own or are not buying their own vehicle.
- Some types of contractors or sub-contractors.
- Some share farmers.
- Some volunteers who are deemed to be a worker for the purpose of the *Accident Compensation Act 1985* (for example: CFA volunteers, SES volunteers and school volunteers).
- Secretaries of co-operative societies.

What is the Victorian WorkCover Authority?

The Victorian WorkCover Authority (VWA) is a Victorian government owned authority. It is the manager of Victoria's workplace safety system. Broadly, the responsibilities of the organisation are to:

- help avoid workplace injuries occurring.
- enforce Victoria's occupational health and safety laws.
- provide reasonably priced insurance for employers.

* There are some exceptions, for example, deliberate infliction of injury.

- help injured workers back into the workforce.
- manage the workers' compensation scheme by ensuring the prompt delivery of appropriate services and adopting prudent financial practices.

The VWA manage the worker's compensation scheme through supervision and management of self insured employer's and otherwise the scheme is administered on behalf of the VWA by a number of WorkCover Agents. Agents are currently responsible for a range of tasks including premium collection, claim lodgment, and the delivery of benefits and rehabilitation.

Who can make a WorkCover claim:

1. If you are a worker you are usually entitled to benefits under the *Accident Compensation Act 1985* if you suffer a physical or mental injury or disease including a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease which has arisen out of, or in the course of employment. Your employment must be a significant contributing factor to your injury or disease.
2. Dependants may also make a WorkCover claim. If your partner or parent dies as a result of employment you may also be entitled to make a WorkCover claim.

When is employment a significant contributing factor to your injury or disease?

Your employment is a significant contributing factor to your injury when:

- (a) You are injured at work or during work activities (including lunch breaks and whilst travelling for work); or
- (b) You are injured while having medical treatment for a different work injury; or
- (c) If you are injured at school whilst attending for training required to complete your apprenticeship or otherwise expected by your employer.

Your employment is a significant contributing factor to your disease if your work has caused the disease or has made a significant contribution to the deterioration of your disease. Your employment does not have to be the only cause of your disease or the only cause of the deterioration of your disease.

Diseases to which work can contribute include some cancers, heart attack, strokes, and some infectious diseases (for example: Hepatitis and asthma and psychological conditions such as depression and anxiety).

You cannot claim for psychological injury or disease if the stress that caused the injury or condition was created by your employer taking reasonable action to transfer, demote, discipline, change your place of employment, retrench or dismiss you. You also cannot claim if the stress is caused by a reasonable decision of your employer not to promote you, to reclassify your job, to transfer you or if your employer refuses to grant you a benefit on reasonable grounds. Remember that the action taken by your employer must be considered to be reasonable and that the action must have been made in a reasonable manner.

WorkCover Benefits

No fault benefits paid by WorkCover include the following:

- **Medical and Associated Expenses:**

You can claim the reasonable medical and associated expenses that you incur while you are being treated for your injury or disease. Expenses covered include hospital expenses, nursing assistance, rehabilitation and retraining, modification of a home or car, gardening, home help, transportation to medical treatment and counselling.

Remember that you are able to choose your own doctor. You do not have to receive treatment from the company doctor and you do not have to receive out-patient treatment from a public hospital. You can be treated by your specialist as a private patient.

You can continue to receive medical treatment (if the treatment is reasonable) after you have returned to work or after weekly payments of compensation are stopped and after you retire. Your entitlement to payment of medical treatment can cease 12 months after you stop receiving weekly payments unless you need the treatment to remain at work, you require replacement of a prosthesis (e.g. artificial leg), you require further surgery as a result of the injury or disease or the treatment is necessary to ensure that your health or your ability to undertake the necessary activities of daily living does not significantly deteriorate. The WorkCover authority must give you reasonable notice if it intends to stop paying for your medical treatment or any part of your treatment.

- **Weekly Payments:**

You can claim weekly payments if you have no current capacity for work, or cannot work all the hours you previously worked, or you can only perform alternative work at a lesser rate of pay.

The amount you are paid is based on a figure known as pre injury average weekly earnings. This is normally the average ordinary time rate of pay you were paid in the 12 months before you were injured. However for the first 26 weeks in which you receive weekly payments, pre-injury average weekly earnings is calculated as follows:

If you were paid overtime or shift allowances in the 12 months prior to your injury[†] and it was likely that you would have continued to work overtime or earn shift allowances then your overtime and shift allowances are included in the calculation of pre injury average weekly earnings.

Weekly payments of compensation paid for claims lodged after 1 September 2000:

The amount of compensation paid to replace your wages varies depending upon how many weeks you have been in receipt of payments. One week of compensation is any week in which you have been paid any amount for loss of wages. For example, a week of compensation includes a week in which one hour of compensation is paid.

[†] Or if you were employed by your employer for less than 12 months prior to your injury, for the period of continuous employment with your employment.

The first 13 weeks:

WorkCover pays 95% of your pre-injury average weekly earnings[‡] if you have no current capacity for work. If you have some capacity for work you are paid 95% of the difference between what you are earning now and what you were able to earn before the injury.

After the first 13 weeks, and until 104 weeks:

You are paid 75% of your pre-injury average weekly earnings if you have no current capacity for work.

You are paid 60% of your pre-injury average weekly earning if you have some capacity for work but are not working. If you are back at work part time or have found alternative work at a lower rate of pay, then the payment from WorkCover is the difference between 60% of pre-injury average weekly earnings and 60% of your current earnings.

If you have a current work capacity for suitable work[§] and your employer fails to offer you suitable employment then you will be paid 75% of your pre injury average weekly earnings.

After 104 weeks:

You will only remain entitled to weekly payments if:

- (a) you have no current capacity for suitable work and you are likely to continue indefinitely without a capacity for suitable work or
- (b) You are working to maximum capacity, are working at least 15 hours per week, earning at least \$132.00 per week and this situation is likely to stay the same indefinitely.

Accident make up pay:

Make up pay is an additional amount paid by your employer to “top up” your weekly payments of compensation. Generally this will increase the amount you receive each week to the total of your pre-injury average weekly earnings. It is only paid for a limited period, usually for the first 6 months of weekly payments or first 12 months of weekly payments. Not all workers will be entitled to make up pay. It will depend upon the basis of your employment and whether you are paid pursuant to an award or workplace agreement or individual agreement.

Continuation of superannuation contributions whilst on WorkCover:

Sometimes an award or workplace agreement will specify if your employer should continue paying superannuation contributions on your behalf. It is rare for contributions to be paid for more than a limited period of time.

[‡] Unless you earn more than the maximum amount payable.

[§] Suitable work is work for which you are currently suited (even if you cannot find work) having taken into account your age, education, skills and work experience, the nature of your incapacity and your pre-injury employment, where you live, your return to work plan (if any), the information provided by your doctor in your medical certificate (such as restrictions placed upon you) and the rehabilitation services being provided to you.

No fault lump sum compensation:

Your entitlement to no fault lump sum compensation will depend upon the date you were injured, whether you have sustained a permanent injury and the level of permanent injury sustained.

No fault lump sum compensation paid for injuries between 1 September 1985 and 12 November 1997:

If you were injured prior to this date you may be entitled to lump sum compensation for permanent damage to one or more body parts listed in s.98 of the *Accident Compensation Act* 1985. Compensation payable is based on the percentage loss of the body part that is assessed. In addition, a small amount for pain and suffering caused by the loss may be paid in some circumstances.

No fault lump sum compensation paid for injuries after 12 November 1997:

For all injuries suffered between 12 November 1997 and 3 December 2003 no fault compensation can only be paid if you have suffered 10% whole person impairment for a physical injury or 30% whole person impairment for a primary (directly caused) psychiatric injury. If you were injured after 3 December 2003 and your injury is to your spine, arms or legs, compensation is payable if you have a 5% whole person impairment or more.

If you have suffered a total loss of a body part, compensation may be payable even if the worker has not suffered a 5% or 10% whole person impairment.

The following table will give you an idea of the amounts that can be paid for no fault lump sum compensation for your injury or disease:

Date of injury	Amount paid for 5% whole person impairment where injury is to the spine, arms or legs	Amount paid for every 1% to 10%	Amount paid for 10% whole person impairment for physical injury or disease	Amount paid for every 1% over 10% to 30%	Amount paid for 30% whole person impairment for psychiatric injury	Amount paid for every 1% over 30% to 50%
12.11.97 to 30.6.98	Nil	Nil	\$5,000.00	\$2,000.00	\$10,000.00	\$3,250.00
1.7.99 to 30.6.00	Nil	Nil	\$5,040.00	\$2,020.00	\$10,070.00	\$3,280.00
1.7.00 to 30.6.01	Nil	Nil	\$10,300.00	\$2,060.00	\$10,300.00	\$3,350.00
1.7.01 to 30.6.02	Nil	Nil	\$10,910.00	\$2,180.00	\$10,910.00	\$3,550.00
1.7.02 to 30.6.03	Nil	Nil	\$11,240.00	\$2,250.00	\$11,240.00	\$3,660.00
1.7.03 to 2.12.03	Nil	Nil	\$11,590.00	\$2,320.00	\$11,590.00	\$3,770.00
3.12.03 to 1.7.04	\$8,990.00	\$1,530.00	\$14,490.00	\$2,170.00	\$11,590.00	\$3,770.00
1.7.04 to 30.6.05	\$9,190.00	\$1,564.00	\$14,810.00	\$2,220.00	\$11,850.00	\$3,850.00
From 1.7.05 to 30.6.06	\$9,400.00	TBA *	\$15,140.00	\$2,270.00	\$12,120.00	\$3,940.00

* TBA - to be advised.

No fault benefits paid to the dependants of a worker if the worker has died due to work injury:

If you or your children were partially or totally dependent upon the income of a worker who has died in the course of employment or because of injuries which were caused by work, then you or your children will be entitled to benefits.

Where a worker dies on or after 12 November 1997 a worker's dependants who are entitled to claim are:

- Children under the age of 16 years, or under the age of 21 years and still a full time student and who were wholly, mainly or partly dependent upon the deceased worker's earnings
- A dependant partner who was wholly or mainly dependant on the deceased worker's income
- A partially dependent partner. **

When deciding if a partner was wholly or mainly dependent on the worker's earnings at the time of the worker's death no notice is taken of any money which the partner had earned or was earning from his or her own work or to savings from their own wages.

There are two benefits that can be paid. One is a lump sum of compensation which is determined by the *Accident Compensation Act 1985*. Formulae are set out in the Act which determines how the benefit is divided between dependants. The second type of benefit is compensation in the form of weekly payments of a pension. Again, formulae are set out in the Act determining the amount of the pension which is to be paid.

You are also entitled to claim for the reasonable costs of the deceased worker's burial or cremation. When deciding what is a reasonable cost WorkCover must consider the service or provision actually rendered; and the necessity of the service or provision in the circumstances; and any guidelines issued by WorkCover.

WorkCover will also pay the reasonable costs incurred in Australia of family counselling services provided to family members by a medical practitioner or registered psychologist.†† A family member is said to be a partner, parent, sibling or child of the worker or of the worker's partner. A parent of a worker includes a person who has day to day care and control of the worker.

How to make a WorkCover claim:

1. You should first report your injury or disease to your employer. Your employer is required to keep a book for this purpose. Even if you do not at the time of injury, or at the time you find out that you are suffering a disease, intend to submit a claim you should still make a report so that if your condition deteriorates you will still be able to establish an entitlement to compensation.
2. To make a claim you must complete a claim form. Your employer should have a claim form or alternatively you can contact Richmond & Bennison and ask us to provide you with a claim form or obtain a claim form from the VWA. If you are claiming weekly payments of compensation your doctor needs to complete a Certificate of Capacity and this should be lodged with your claim form.

** Someone who to any extent was dependent upon the worker's earnings.

†† There is a cap on the amount payable.

3. You should then give the claim form and certificate to your employer, either by hand or by registered post. Your employer has 10 days from when it receives a claim to either accept it or reject it and then must forward the claim to the claims agent. The claims agent then has 28 days to make a decision either to accept or reject your claim.
4. Unfortunately not all employers forward claims on to their claims agent. As a result the law was changed on 1 July 2005 and you can also notify the VWA of your claim. If you notify the VWA of your claim, your claim is said to be accepted if either:
 - (a) you have not received a response 28 days after the claims agent received your claim form from your employer; or
 - (b) if your employer failed to forward your claim form, you had notified the VWA of your claim and no decision was received by you within 38 days of the notification. If you did not notify the VWA and your employer failed to pass your claim on to the claims agent within 38 days and therefore you have not received a decision, then again, your claim will also be said to be accepted.

Most people are anxious to have their claim accepted as quickly as possible and therefore we recommend that you do notify the VWA of your claim on the same day that you give the claim form to your employer.

5. Normally, during the 38 day period, the claims agent will write to you and request that you attend a medical examination and they may engage an investigator to investigate the circumstance of your injury. You do not have to provide a statement to the investigator if you do not wish to.

What to do if your claim is rejected, or you receive a termination notice ceasing payment of weekly payments or medical expenses

We believe that you should seek legal advice to determine the best way to try and have the decision reviewed. You can request that WorkCover review their decision however without further material in support of your claim being provided it is unlikely that review would succeed. Generally, if you wish to try to change a decision made by WorkCover you should submit a request for conciliation.

What is Conciliation?

If your claim is rejected, or WorkCover refuse to pay for your medical treatment or provide you with a notice that your weekly payments will cease you are entitled to have your dispute referred to the Accident Compensation Conciliation Service (ACCS).

We recommend that you contact us at this stage so that you can be provided with the best chance of success in the review of the claims agent's decision. We can provide you with advice, the request for conciliation form and if necessary, help you obtain medical reports to support your claim.

The aim of conciliation is to resolve your problem without the need to resort to court proceedings. It is necessary to attend conciliation before court proceedings are commenced. A request for conciliation should be submitted within 60 days of you receiving a decision which you wish to challenge.

After your request for conciliation is received by the ACCS, a meeting will be arranged between the parties to the dispute and a conciliator will try and assist in resolving the dispute. Sometimes the conciliator will suggest that an opinion be sought from a medical panel if your problem is considered to be a medical issue. A medical panel decision is binding. When your problem is a medical issue it is usually helpful to obtain reports from your treating doctors who are often in the best position to comment on your need for treatment, your capacity for work or the relatedness of your injury to work.

Lawyers are normally not allowed to attend at conciliation. There are two services available that can assist you at conciliation; Union Assist and WorkCover Assist. Some unions have their own WorkCover officer who can assist you at conciliation. Richmond & Bennison can help you arrange this assistance. Otherwise Union Assist can be contacted on (03) 9639 6144 and WorkCover Assist can be contacted on (03) 9941 0537.

Going to Court to enforce your entitlements:

Sometimes the conciliation process cannot resolve your claim and a genuine dispute is found to have occurred. When this occurs your only option if you wish to pursue your entitlement is to consider court proceedings. We can provide you with advice about the merits of your claim and whether it is commercially worthwhile proceeding to court. If you choose to proceed to court we have the expertise to prosecute your claim.

Claiming damages (Common Law rights for injured workers):

Often people ask us if they can make a claim for negligence, or a claim for their pain and suffering. This sort of claim is called a common law claim. If you are a worker you can make a common law claim if your injury/s has been caused by someone else's negligence and if you have suffered a serious injury. If negligence and serious injury can be proved then you can claim damages.

What is Negligence?

People owe other people a duty of care to take reasonable steps to ensure safety. Employer's, in particular, are required to provide a safe system of work and perform risk assessments of the workplace to try and reduce the risk of injury. A risk that must be addressed is one that is not far fetched or fanciful and the steps that must be taken to reduce the risk are those that would be considered reasonable.

You cannot sue just because your employer has been negligent. You must have suffered serious injury and damage as a result of the negligence. A "near miss", unless psychiatric injury is then suffered, is not enough.

It is difficult for workers to determine what the law would consider to be negligent conduct by an employer or other party. We therefore recommend that you seek legal advice from us to determine if your injury/s have been caused by negligence.

What is a serious injury?

Before you can commence a common law claim suing for negligence you must establish that you have suffered a serious injury.

For injuries after 20 October 1999 serious injury has the following alternate definitions:

- 30% whole person impairment
- Serious permanent impairment or loss of a body function
- Permanent serious disfigurement
- Permanent severe mental or permanent severe behavioral disturbance or disorder or
- Loss of a foetus.

Permanent means that the probability is that the impairment or other condition will last and not mend or repair to any significant extent: the injury is likely to last for the foreseeable future.

For an injury to be assessed as serious it must be found, with respect to pain and suffering or loss of earning capacity (and when compared with other impairments of a similar type) to be more than significant or marked and at least as being very considerable. For an injury to be severe it must fairly be described as being more than serious to the extent of being severe.

If you wish to claim damages for loss of earnings, or loss of earning capacity, an additional test must be met: you must show that you have suffered a 40% loss of your capacity to earn income, comparing the amount that previously represented your earning capacity with the amount you are capable of earning into the future.

The amount you are capable of earning into the future is assessed by examining what you should be capable of earning in suitable employment following rehabilitation and re-training. If the Court cannot determine what you should be capable of earning then you will fail to satisfy this test.

What damages^{} can you claim?**

Only if serious injury has been established in reference to your pain and suffering, can you claim damages to compensate you for your pain and suffering and loss of enjoyment of life.

Only if serious injury has been established in reference to your capacity to earn income, can you claim damages to compensate you for your loss of wages or loss of the ability to earn wages into the future.

If you recover damages for your loss of earnings and earning capacity you are required to repay any amount you have received from WorkCover for weekly payment of compensation.

If you have received benefits from Centrelink following your accident, these must also be repaid. You may also be unable to receive benefits from Centrelink for a period of time following your accident.

No claim can be made for medical expenses incurred by you in the past, or for medical expenses you may incur into the future. As a result you are not required to repay WorkCover

^{**} money

for medical and like expenses paid and your right to claim future medical treatment from WorkCover is unaffected.

How do I prove serious injury?

If a worker believes he or she has a whole person impairment of 30% or more, this can be established by submitting a no fault lump sum claim for compensation. §§ If the worker is found to have a 30% or more whole person impairment he or she is “deemed” to have suffered a serious injury.

If a worker believes he or she fits one of the definitions of serious injury, then a “serious injury application” is submitted to WorkCover and if rejected, an application can be made to a Court for a judge to decide if the worker has suffered a serious injury.***

Time limits for injuries after 20 October 1999:

A worker has 6 years within which to commence a common law claim, however the periods during which their serious injury application, or no fault lump sum claim are being considered are not included when calculating the 6 year period.

Alternatively, sometimes an extension of the limitation period may be granted in exceptional circumstances.

Loss of rights for injuries between 11 November 1997 and 20 October 1999:

On 11 November 1997 the Kennett government took away worker’s right to sue for damages. In October 1999 the Bracks government restored a worker’s right to sue for damages. However the government did not restore the right of people injured between 11 November 1997 and 20 October 1999 to sue for damages but only restored the rights of those injured after the date upon which the Bracks government was elected. This means that if you were injured between 11 November 1997 and 20 October 1999 you are unable to sue for damages and only have access to your no fault entitlements.

The only exception to this rule is when you are paid WorkCover benefits because of the operation of another act of parliament such as volunteers who are deemed to be workers by acts such as the *Education Act 1958* or the *Country Fire Authority Act 1958*.

Time limits for injuries between 11 November 1997 and 20 October 1999 (where an exception applies):

If you were injured between 11 November 1997 and 20 October 1999 and fit within one of the exceptions to the removal of worker’s rights to sue, then you have three years within which to commence proceedings.

Alternatively, sometimes an extension of the limitation period may be granted in exceptional circumstances.

If you are under the age of 18 years at the time you are injured or you are a person under a mental disability you have 6 years from the time that you turn 18 years of age or from the date at which you recover from your mental disability respectively.

§§ If a worker accepts an offer of no fault lump sum compensation, the worker is then barred from commencing a claim, at common law, for damages to compensate for pain and suffering, loss of enjoyment of life.

*** Even if a worker is “deemed” to have suffered a serious injury, he or she is still required to submit a serious injury application.

Claiming damages for injuries between 1 September 1985 and 11 November 1997:

If you were injured between 1 September 1985 and 11 November 1997 but the incapacity caused by your injury was not known by you to be serious until the last three years then you are still entitled to sue for damages. You must still prove negligence and you must still prove serious injury. The definition of serious injury is different to that which applies after 20 October 1999.

For injuries which occurred between 1 September 1985 and 11 November 1997 you must show that you have:

- serious long-term impairment or loss of a body function, or
- permanent serious disfigurement, or
- severe long-term mental or severe long-term behavioural disturbance or disorder, or
- loss of a foetus.

Time limits for injuries between 1 September 1985 and 11 November 1997:

If you were injured between 1 September 1985 and 11 November 1997 and you did not previously know that the incapacity arising from your injury was serious, you have three years from the date that you reasonably became aware of the serious nature of your incapacity.

For example, if you were injured, but your injury or disease was not diagnosed until a much later time, or your injury later deteriorated, causing serious consequences you could not have known that your injury was serious. It is from that date that your three year limitation period begins to run.

Claiming damages for injuries before 1 September 1985:

Sometimes something can happen a long time ago but only cause injury or damage at a much later stage. An example of this is asbestos exposure. You may have been exposed to asbestos a very long time ago, however there were no signs that that you had been injured by the exposure. If you are diagnosed at a later time, the law that applies to you is not the law that applies at the time you find out about your injury, but the law that was in place at the time your injury occurred.

For injuries or diseases caused by work or because of work before 1 September 1985 there is no restriction on your right to sue for damages. You are entitled to claim damages for your pain and suffering, loss of enjoyment of life, your economic loss and your past and future medical expenses. You do not have to prove serious injury, but you must still prove negligence.

Time limits for injuries between 1 September 1985 and 11 November 1997:

If you have contracted a disease or disorder proceedings may be brought not more than 6 years from the date on which you first knew (a) that you had suffered those personal injuries; and (b) that those personal injuries were caused by the act or omission of some person.

Alternatively, sometimes an extension of the limitation period may be granted in exceptional circumstances.

If you are under the age of 18 years at the time you are injured or you are a person under a mental disability you have 6 years from the time that you turn 18 years of age or from the date at which you recover from your mental disability respectively.

Claims for damages if a worker dies:

If a worker dies due to work related injury or disease the worker's dependants have the right to sue for damages. Generally this is restricted to the right to claim damages for economic loss and the cost of the loss of the services the worker used to provide. For example, the deceased worker may have provided care for children and performed work around the house such as repairs and maintenance.

Generally, dependants of a deceased worker cannot claim for the pain and suffering and loss of enjoyment of life they have suffered as a result of the death of the worker. This is considered by the courts to be normal grief that everyone will inevitably face.

If however you have suffered a psychiatric injury as a result of the death of the worker, in certain circumstances you will be able to claim for the injury caused to you by that death. This can include your pain and suffering, loss of enjoyment of life, as well as any loss of income suffered as a result of your psychiatric injury.

If a person has died after commencing proceedings, the executor of the person's will can continue the claim but only claim for the past pain and suffering, loss of enjoyment of life and loss of earnings caused by the injury.

If a worker dies as a result of an dust related disease or disorder, the law states that if proceedings were commenced before the person died the executor of the persons will can continue the claim and claim all the damages that the person could have claimed but for their death and also claim damages for the curtailment of the deceased's expectation of life.

Entitlements of commonwealth government employees or employees whose employer has joined the commonwealth system of compensation:

If you are employed by the commonwealth government or your employer has joined the commonwealth system of compensation your rights are slightly different to people who receive WorkCover benefits. Your rights are not governed by the *Accident Compensation Act 1985* but instead by the *Safety, Rehabilitation and Compensation Act 1988*. You may be covered by this Act if, for example, you work for Telstra or Australia Post.

Similarly to WorkCover, if you have suffered an injury or disease that occurs in the course of employment or is materially contributed to by work you may be able to claim compensation for your injury/s or disease.

ComCare (or your employer) may pay your medical and like expenses and may pay you weekly payments of compensation. If you are totally incapacitated for work, for the first 45 weeks of incapacity you are entitled to weekly payments of compensation equal to 100% of your pre-injury usual weekly earnings. If you are partially incapacitated you are paid ComCare benefits for the difference between your actual earnings and your usual weekly earnings.

After the first 45 weeks of payments, if you are still incapacitated, you are entitled to on-going weekly payments of compensation of 75% of your pre-injury usual earnings. If you are partially incapacitated you are paid between 80% and 100% of the difference between

your actual earnings and your usual earnings. The amount paid depends upon the number of hours you are actually working. You can continue to be paid to 65 years of age.

Similar to WorkCover, you may be entitled to no fault lump sum compensation if you have a permanent injury. If you can prove that you have suffered a 10% whole person permanent impairment you are entitled to a lump sum. The test used to determine your percentage level of impairment is similar, but different, to that used by WorkCover.

If you are found to have suffered a 10% or more whole person permanent impairment you have the choice about whether you wish to accept this amount (and continue to receive weekly payments of compensation, if appropriate) or elect to commence a common law claim for damages. That is, sue the commonwealth for damages to compensate you for the injuries caused by your employer.

You should always seek legal advice before deciding to accept the no fault lump sum compensation or elect to sue for damages.

If you choose to sue for damages, you are restricted to claiming damages for your pain and suffering and loss of enjoyment of life and cannot claim for your lost earnings. You also lose your right to remain in receipt of weekly payments of compensation.

Generally, you have 6 years to sue for damages, however in some circumstances this time limit may be extended.

If a worker is employed by the commonwealth government or an employer who has joined the commonwealth system of compensation dies, the worker's dependents are able to claim compensation. There is a lump sum payable and if the claimant is a dependent child of the deceased, then a weekly payment can also be claimed. Reasonable funeral expenses will also be paid for.

Making a ComCare claim:

As soon as possible after becoming aware that you have suffered a work related injury or disease you should submit a claim for compensation form to your employer. Claim forms can be obtained from your employer, ComCare, or Richmond & Bennison. If you are seeking payment for time off work your doctor must complete a medical certificate which you must forward with your claim. You must then give the original claim form and medical certificate to your employer.

ComCare will then consider your claim and will make a decision to accept or reject your claim.

If your claim is rejected, or if a request for payment of a medical expense or payment for time off work is rejected, or you believe that the assessment of your level of impairment is incorrect, then you must act swiftly.

You have 30 days from the date you receive the decision to seek re-consideration of the decision. You must provide reasons why the decision is wrong. If re-consideration is unsuccessful you have 60 days within which you can seek review of the decision in the Commonwealth Administrative Appeals Tribunal.

You should always seek legal advice before making a decision to seek review of a decision. Richmond & Bennison can provide you with expert advice when you are making a decision.

Should you require further information or any assistance in relation to a workplace accident or disease please ring Michael Moran, of Level 2, 116 Hardware, Street, Melbourne on (03) 9670 0488 or Toll Free on 1800 620 979.

Disclaimer: This information is of a general nature and should not be used to ascertain the entitlements of any particular individual. There can be exceptions to the above circumstances and individuals should obtain specific advice to address their circumstances. Further the law changes and information contained herein may no longer be accurate.