

SAPS Injury Management Practice Note

Managing Dependency Claims

Objectives, Targets & Performance Indicators

Objective	Target	Performance Indicator
SAPS agencies have an implemented procedure regarding the management of dependency claims	All SAPS agencies	Implemented policy/procedure

Purpose

To ensure a consistent approach is applied within the public sector to the management of dependency claims following the death of an employee.

Context

The Return to Work Act 2014 (RTW Act) relevantly provides as follows:

<p>59—Weekly payments</p> <p>(1) Subject to this Act, if a worker dies as a result of a work injury, compensation in the form of weekly payments is payable as follows:</p> <p>(a) a dependent spouse or domestic partner is entitled to weekly payments equal to—</p> <p>(i) in the case of total dependency—50%;</p> <p>(ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency, of the amount of the notional weekly earnings of the deceased worker;</p> <p>(b) a dependent child (being an orphaned child) is entitled to weekly payments equal to—</p> <p>(i) in the case of total dependency—25%;</p> <p>(ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency, of the amount of the notional weekly earnings of the deceased worker;</p> <p>(c) a dependent child (not being an orphaned child) is entitled to weekly payments equal to—</p> <p>(i) in the case of total dependency—12.5%;</p> <p>(ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency, of the amount of the notional weekly earnings of the deceased worker;</p> <p>(d) a dependent relative (not being a spouse, domestic partner or child) is entitled to such compensation by way of weekly payments as may be determined by the Corporation having regard to—</p> <p>(i) the extent of the relative's dependency on the deceased worker;</p> <p>(ii) the earning capacity of the relative;</p> <p>(iii) the relative's means;</p> <p>(iv) the extent of any other benefits provided under this Act in respect of the</p>	<p><i>Section 59</i></p>
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worker's death.

(2) For the purposes of subsection (1), if a worker and the worker's spouse or domestic partner jointly contributed to the support of a dependent child immediately before the occurrence of the work injury that resulted in the worker's death, any contribution to the support of the child from the worker's spouse or domestic partner will be disregarded in determining whether the child is a dependant and, if so, the extent of the child's dependency.

(3) If—

(a) a worker dies leaving a spouse or domestic partner and a dependent child; and

(b) the spouse or domestic partner subsequently dies, the child (if still eligible to receive weekly payments under this section) will then be entitled to receive weekly payments under subsection (1)(b) as an orphaned child.

(4) Compensation is payable, if the Corporation so decides, to a spouse or domestic partner or child of a deceased worker who, although not dependent on the worker at the time of the worker's death, suffers a change of circumstances that may, if the worker had survived, have resulted in the spouse or domestic partner or child becoming dependent on the worker.

(5) Weekly payments will not be made to a dependent child under this section unless—

(a) the child is under the age of 18 years; or

(b) the child is a full-time student at an educational institution approved by the Corporation for the purposes of this paragraph and is under the age of 26 years; or

(c) the child is, by reason of disability, incapable of earning a living.

(6) Weekly payments will not be paid under this section beyond the date at which such payments would, assuming that the worker had survived but had been a seriously injured worker, have ceased to be payable to the worker.

(7) If weekly payments payable under this section would, but for this subsection, exceed in aggregate the amount of the weekly payments to which the worker would have been entitled in the event of being a seriously injured worker with no current work capacity, the weekly payments must be proportionately reduced so as not to exceed that amount.

(8) If a person who is entitled to a payment under this section is under the age of 18 years, the payment may, if the Corporation so determines, be made wholly or in part to a guardian or trustee for the benefit of that person.

(9) Subject to subsection (10), if the child of a deceased worker who is entitled to weekly payments under this section is under the age of 18 years and is in the care of a person other than a dependent spouse or domestic partner of the worker, that person will, if the Corporation so determines, be entitled to a supplementary allowance to assist in the care of the child until—

(a) the child attains the age of 18 years; or

(b) the person ceases to have the care of the child, whichever first occurs.

(10) If a child is by reason of a disability incapable of earning a living, the Corporation may pay a supplementary allowance under subsection (9) during the period of that incapacity even though the child has attained the age of 18 years.

(11) A liability to make weekly payments under this section may, on application by the person entitled to the weekly payments, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(12) However, the liability may only be commuted if the actuarial equivalent of

<p>the weekly payments does not exceed the prescribed sum applying under Division 7.</p> <p>(13) The Corporation has (subject to this section) an absolute discretion to make or not to make a commutation under this section, and the Corporation's decision to make or not to make a commutation is not reviewable (but a decision on the amount of a commutation is reviewable).</p> <p>(14) If the Corporation decides to make a commutation and makes an offer under this section, the Corporation cannot, without the agreement of the applicant, subsequently revoke its decision to make the commutation.</p> <p>(15) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.</p> <p>(16) A commutation discharges the Corporation's liability to make weekly payments to which the commutation relates.</p> <p>(17) In this section— disability means any physical, mental or intellectual disability.</p>	
<p>60—Review of weekly payments</p> <p>(1) The Corporation may on its own initiative and must if requested by an employer or the person to whom weekly payments are payable, review the amount of weekly payments payable to any person under this Division.</p> <p>(2) A request for a review of the amount of weekly payments payable under this Division may not be made within 6 months from the completion of an earlier review.</p> <p>(3) The amount of the weekly payments payable under this Division must be reviewed at least once in each year.</p> <p>(4) On a review under this section the Corporation must make any adjustments to the amount of weekly payments—</p> <p>(a) to reflect changes in the income from employment or earning capacity of the person to whom the weekly payments are payable and any other relevant changes in the circumstances of that person but in any event not so as to take into account income derived from the investment of a lump sum paid to the person under this Division; and</p> <p>(b) if the review is an annual review conducted under subsection (3)—to reflect changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's injury arose.</p> <p>(5) For the purposes of a review under this section, the Corporation may, by notice in writing to a person who is receiving weekly payments under this Division, require that person to produce evidence to the satisfaction of the Corporation of—</p> <p>(a) income from employment;</p> <p>(b) earning capacity;</p> <p>(c) any other circumstances that are relevant to the payment, or the amount, of weekly benefits.</p> <p>(6) If a person fails to comply with a requirement under subsection (5) within the time allowed in the notice, the Corporation may suspend weekly payments to that person.</p> <p>(7) If the Corporation proposes the reduction of weekly payments to a person on a review under this section the Corporation must, at least 21 days before the proposal is to take effect, give notice in writing to the person—</p> <p>(a) containing such information as the regulations may require as to the grounds on which weekly payments are to be reduced; and</p> <p>(b) informing the person of the person's rights to have the Corporation's decision</p>	<p><i>Section 60</i></p>

<p>reviewed.</p>	
<p>61—Lump sums</p> <p>(1) In this section—</p> <p>child means a person who—</p> <p>(a) is under the age of 18 years; or</p> <p>(b) is a full-time student at an educational institution approved by the Corporation for the purposes of this paragraph and is under the age of 26 years; or</p> <p>(c) is, by reason of disability, incapable of earning a living;</p> <p>disability means any physical, mental or intellectual disability;</p> <p>partner means a spouse or domestic partner;</p> <p>prescribed sum means the prescribed sum applying under Division 7 (as at the time of the occurrence of the work injury that resulted in the death of the relevant worker) but less any amount paid to the relevant worker under Division 7, or a corresponding previous enactment.</p> <p>(2) Subject to this Act, if a worker dies as a result of a work injury, compensation in the form of a lump sum is payable in accordance with this section.</p> <p>(3) If the worker leaves a partner or partners, and no child, the amount of compensation is an amount equal to the prescribed sum payable to the partner or, if there is more than 1 partner, an amount payable to each partner determined by dividing the prescribed sum into equal shares.</p> <p>(4) If the worker leaves no partner and a child or children, the amount of compensation is an amount equal to the prescribed sum payable to the child or, if there is more than 1 child, an amount payable to each child determined by dividing the prescribed sum into equal shares.</p> <p>(5) If the worker leaves a partner, or partners, and 1 (and only 1) child, the amount of compensation is—</p> <p>(a) an amount equal to 90% of the prescribed sum payable to the partner or, if more than 1, an amount payable to each partner determined by dividing 90% of the prescribed sum into equal shares; and</p> <p>(b) an amount equal to 10% of the prescribed sum payable to the child.</p> <p>(6) If the worker leaves a partner, or partners, and more than 1 and not more than 5 children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:</p> <p>(a) an amount equal to 5% of the prescribed sum payable to each child; 1.7.2015—Return to Work Act 2014 Financial benefits—Part 4 Payments on death—Division 8 [1.7.2015] This version is not published under the Legislation Revision and Publication Act 2002 75</p> <p>(b) the balance to the partner or, if more than 1, an amount payable to each partner determined by dividing the balance into equal shares.</p> <p>(7) If the worker leaves a partner, or partners, and more than 5 children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:</p> <p>(a) an amount equal to 75% of the prescribed sum payable to the partner or, if more than 1, an amount payable to each partner determined by dividing 75% of the prescribed sum into equal shares;</p> <p>(b) an amount equal to 25% of the prescribed sum payable to the children in equal shares.</p> <p>(8) If the worker does not leave any partner or child but leaves a person who is to any extent dependent on the worker's earnings, the Corporation may, if it considers that it is justified in the circumstances, pay compensation not exceeding the prescribed sum that the Corporation considers is reasonable and</p>	<p><i>Section 61</i></p>

<p>appropriate to the loss to that person (and if the Corporation decides to make a payment of compensation to more than 1 person under this subsection then the sums paid must not in total exceed the prescribed sum).</p> <p>(9) If the worker, being under the age of 21 years at the time of the work injury, leaves no partner and no child but, immediately before the injury, was contributing to the maintenance of the home of the members of his or her family, the members of his or her family are taken to be dependent on the worker's earnings for the purposes of subsection (8).</p> <p>(10) If a person who is entitled to a payment under this section is under the age of 18 years, the payment may, if the Corporation so determines, be made wholly or in part to a guardian or trustee for the benefit of that person.</p> <p>(11) A claimant is entitled to interest at the prescribed rate on an amount of compensation payable under this section in respect of the period beginning on the date the claim for compensation was lodged in accordance with this Act and ending on the date of the payment.</p>	
<p>62—Funeral benefits</p> <p>(1) If a worker dies as a result of a work injury, a funeral benefit is payable equal to—</p> <p>(a) the actual cost of the worker's funeral; or</p> <p>(b) the prescribed amount,</p> <p>whichever is the lesser.</p> <p>(2) A funeral benefit payable under subsection (1) will be paid—</p> <p>(a) to the person who conducted the funeral; or</p> <p>(b) to a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.</p> <p>(3) An amount prescribed by regulation under subsection (1) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the CPI.</p>	<p><i>Section 62</i></p>
<p>63—Counselling services</p> <p>(1) If a worker dies as a result of a work injury, a family member is entitled to be compensated for the cost of approved counselling services to assist the family member to deal with issues associated with the death.</p> <p>(2) Compensation in respect of costs under this section may be paid—</p> <p>(a) to the family member; or</p> <p>(b) directly to the person to whom the family member is liable for those costs.</p> <p>(3) Compensation under this section will be payable in accordance with scales determined or approved by the Minister and published in the Gazette.</p> <p>(4) A reference in this section to approved counselling services is a reference to counselling services of a kind, or provided by a person, approved by the Corporation for the purposes of this section.</p> <p>(5) In this section—</p> <p>family member means a spouse, domestic partner, parent, sibling or child of the worker or of the worker's spouse or domestic partner.</p>	<p><i>Section 63</i></p>

Relevant definitions – section 4:

dependant, in relation to a deceased worker, means a relative of the worker who, at the time of the worker's death—

- (a) was wholly or partially dependent for the ordinary necessities of life on earnings of the worker; or

(b) would, but for the worker's injury, have been so dependent, and includes a posthumous child of the worker; and **dependent** has a corresponding meaning;

domestic partner—a person is the domestic partner of a worker if the person lives with the worker in a close personal relationship and—

- (a) the person—
 - (i) has been so living with the worker continuously for the preceding period of 3 years; or
 - (ii) has during the preceding period of 4 years so lived with the worker for periods aggregating not less than 3 years; or
 - (iii) has been living with the worker for a substantial part of a period referred to in subparagraph (i) or (ii) and the Corporation considers that it is fair and reasonable that the person be regarded as the domestic partner of the worker for the purposes of this Act; or
- (b) a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living);

educational institution means—

- (a) a secondary school; or
- (b) a trade or technical school; or
- (c) a college of advanced education, university or other institution at which tertiary education is provided; or
- (d) any other educational or training institution approved by the Corporation for the purposes of this definition;

orphan child means a child whose natural or adoptive parents are dead and includes a child, 1 of whose natural or adoptive parents is dead and who has no reasonable prospect of being supported by the surviving natural or adoptive parent;

parent, in relation to a deceased worker, includes a person who stood *in loco parentis* to the worker at the time of the worker's death;

relative, in relation to a deceased worker, means a spouse, domestic partner, parent, grandparent, step-parent, child, grandchild, stepchild, brother, sister, stepbrother, stepsister, half-brother or half-sister of the worker;

spouse—a person is the spouse of another if they are legally married;

For the purposes of this Act, a person is the legal personal representative of a deceased worker if the person is—

- (a) a person who is entitled at law to administer the estate of the deceased worker; or
- (b) a person who is authorised by the Tribunal (on application made under this subsection) to act under this Act as a legal personal representative of the deceased worker.

The Act provides payment of benefits to dependent partner(s) or a dependent child or children when the death of an employee is caused by work. The types of benefits payable are:

- counselling services
- funeral expenses
- a lump sum death benefit
- weekly dependency payments
- commutation of weekly dependency payments

SAPS Practice

On receipt of a dependency claim following the death of an employee an immediate referral to the Crown Solicitors Office for advice and representation is to occur.

In addition to a completed ReturnToWorkSA Claim form the following is usually required to determine a dependency claim:

- death certificate
- proof of relationship with worker (eg marriage certificate, birth certificate)
- proof of financial dependency
- factual investigation into the worker's death
- treating doctor or specialist report or treatment notes
- specialist medical opinion
- forensic accountant examination and certificate(s) of financial dependency

Benefits payable on an accepted dependency claim are:

Counselling services

Section 63 of the Act provides for family members of a deceased employee to be compensated for the cost of approved counselling services.

Funeral benefits

Section 62 of the Act provides for payment of the actual cost of a worker's funeral to a prescribed maximum (increased annually).

Lump sum benefit

Section 61 of the Act provides for payment of a lump sum to the dependent partner(s) and dependent child or children. If there is more than one dependent, the prescribed sum is shared. The prescribed sum is increased annually.

Weekly dependency payments

Section 59 of the Act provides for payment of weekly dependency payments to the dependent partner(s) and dependent child or children.

A dependent partner is entitled to weekly payments to a maximum of 50% if totally dependent or some lesser amount if not totally dependent until the retirement age of the deceased worker.

An orphaned dependent child is entitled to weekly payments to a maximum 25% if totally dependent or some lesser amount if not totally dependent until 18 years of age or until 26 years of age if engaged in full time study.

A dependent child is entitled to weekly payments to a maximum 12.5% if totally dependent or some lesser amount if not totally dependent until 18 years of age or until 26 years of age if engaged in full time study or for life if due to a disability is incapable of earning income.

A dependent relative is entitled to weekly payments subject to assessment of dependency, earning capacity, means and other benefits already paid/payable.

Weekly Dependency Payments

Section 59 (11) of the Act provides for a commutation of weekly dependency through a capital payment that is the actuarial equivalent of weekly dependency payments payable and does not exceed the prescribed sum.

A dependent, or their representative, can initiate the commutation of weekly dependency payments.

Confirmation of dependent earnings and financial dependence must be current.

A commutation of weekly dependency payments is to be approved in writing by the Executive Officer responsible for injury management, or authorised delegate.

Funding approvals will remain valid for a maximum period of 3 months or until a date specified on the approval document.

Under no circumstances is a commutation to be negotiated without the prior written approval of the Executive Office, or authorised delegate.