Compensation for work-related cancers

If your work has caused or partly-caused your cancer, you may be able to claim compensation. Whether or not workers compensation is payable is dependent upon the strength of the association between the workplace exposure and the cancer type.

Is work-related cancer common?
In 2011 about 3.6 million Australians were exposed to at least one cancer-causing agent (carcinogen) in their workplace. These exposures are responsible for about 5000 people being diagnosed with a work-related cancer each year. That means that 1 in 10 cancers diagnosed in men and 1 in 50 cancers diagnosed in women are work-related. Plus about 200 melanomas and 34,000 other skin cancers per year, in Australia, are caused by occupational exposures to UV radiation.

What workplace exposures could cause cancer?*
- Ultraviolet (UV) radiation
- Asbestos
- Diesel engine exhaust
- Lead and other heavy metals
- Silica
- Wood dust
- Welding fume
- Heavy metals
- Solvents
- Rubber
- Pesticides
- Environmental tobacco smoke
- Ionising radiation
- Benzene and other similar chemicals

*This list is not exhaustive.

What cancers could workplace exposures cause?
Exposure to these agents can cause different types of cancers. The most common types of cancer include mesothelioma, bronchus and lung, nose and nasal sinus, liver, bladder, cervix, pancreas, brain, stomach cancers and leukaemia. For a list of other common exposures and their related cancers please view Table 2.1 on page 21 of SafeWork Australia’s Deemed Disease in Australia (August 2015) report.

What compensation is available?
If your cancer is work-related, you may be entitled to receive:
- reimbursement of your medical expenses
- weekly payments in place of your wages while you cannot work.

If a person dies from a work-related cancer, their family may be entitled to:
- a lump sum death benefit
- a weekly payment for dependant children (16 and under, or 17–21 if still studying)
- reimbursement of funeral expenses.

If you think you have a work-related cancer and are seeking compensation, it’s important to get legal advice from a workers compensation lawyer*. You should do this as soon as possible, as time limits apply.

*The need for a lawyer depends on your state or territory; contact your health and safety state or territory regulator.

Making a claim
In Australia, there are two types of claims you can make related to your workplace cancer; statutory (no fault) claims and common law claims.

The statutory scheme allows workers to apply for statutory benefits, no matter whom or what was at fault for the cause of the workplace cancer i.e. the worker does not need to prove their employer was at fault. If the cancer occurred in the course of employment, then that is enough to substantiate the claim. However the nature of employment must have caused a significantly greater risk of developing a related type of cancer than if exposure did not occur.
Unlike a statutory claim, a common law claim will require the worker to prove in court that the cancer was caused by the negligence of their employer. Common law damages are not open to all workers with a workers compensation claim. There are legislative provisions, time frames and conditions that need to be met in order to claim for damages at common law; please contact your state or territories work health and safety regulator. Workers with a permanent impairment may also be eligible to make a common law claim (except the Northern Territory). The degree of impairment and eligibility criteria varies in each jurisdiction.

It’s important to speak to a lawyer specialising in workers compensation claims about which would be best for you.

Generally the first step in making a claim is to see a doctor to get your state or territory’s nominated medical certificate. You then submit the certificate to your employer, who notifies their insurer (except Queensland). Your employer would be the last workplace where you were exposed to cancer-causing agents. The employer’s insurer will then contact you to get more information. Employers are required by law to have workers compensation insurance to cover their employees for work-related disease and illness. Please see Table 1 for contact details, time frames, forms and processes in your state or territory.

**Presumptive Cancer Legislation**

The compensation process for specific work exposures and cancers can vary between jurisdictions. In some jurisdictions there are schemes that simplify the compensation process for specific workplace exposures and related cancers. These schemes allow the presumption that the workplace exposure was the cause of the cancer and the onus then lies on the employer to disprove the connection.

**The Deemed Disease List**

Most states and territories in Australia have a version of the Deemed Disease List as part of their workers’ compensation system. This is a list of diseases that are deemed to be work-related. The purpose of this list is to reverse the onus of proof. That is, instead of having to prove that the exposure on the list caused the specific cancer, it is assumed that the cancer was caused by the exposure, unless there is proof otherwise. The Deemed Disease List simplifies the process to make certain claims on the assumption that there is a high likelihood that the cancer is a result of workplace exposures. You can still apply for workers compensation for cancers that are not included on the list using the normal approach. However, there will need to be sufficient evidence that the workplace exposure significantly contributed to the cancer.

**Asbestos-related cancers**

Generally, a person diagnosed with an asbestos-related cancer as a result of exposure in the workplace has the same two main avenues for legal compensation as any other workplace cancer. However there may be special procedures for claims for dust-related cancers depending on your jurisdiction (please see Table 1). Your legal entitlements will depend on the state or territory in which you were exposed to asbestos.

The majority of common law claims for mesothelioma are settled out of court. If your prognosis is poor, or you suddenly become very unwell, the process can be sped up.

Diseases caused by exposure to asbestos*:

- Mesothelioma
- Asbestos related pleural cancer
- Lung cancer
- Pneumoconiosis
- Asbestosis
- Diffuse pleural fibrosis

*Please note that these diseases aren’t exclusively caused by asbestos exposure e.g. pneumoconiosis can be caused by exposure to coal dust.

Note: In some cases, if you pursue a common law claim then your workers compensation entitlements under state or territory based schemes may be affected. Consult a lawyer about which option is the right one for you.

For a list of mesothelioma support organisations please visit Cancer Council Victoria’s ‘making a claim’ page.

**Firefighters’ compensation**

Research suggests that firefighters have an increased risk of developing certain types of cancers related to their work exposure to carcinogens. However, proving causation is difficult as exposure is difficult to measure due to multiple firefighting events and uncertainty about the level and the intensity of carcinogens present. As a result most jurisdictions now have firefighters’ compensation laws however variations exist in the cancers addressed and the time frames you must work to receive compensation (see Table 1).
<table>
<thead>
<tr>
<th>Commonwealth</th>
<th>Time frames</th>
<th>Special arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comcare</td>
<td>Under subsection 7(1) of the Safety, Rehabilitation and Compensation Act 1988 the Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017 is listed. This instrument lists and explains the covered deemed diseases.</td>
<td>The Safety, Rehabilitation and Compensation Amendment (Far Protection for Firefighters) Act 2011 simplifies compensation for firefighters who develop a listed cancer (on or after 4 July 2011) as a result of their employment. See ‘Information for Firefighters on the Firefighters Act’ for more information.</td>
</tr>
<tr>
<td>WorkSafe ACT</td>
<td>The list of ‘diseases related to employment’ can be found on page 53 of the Workers’ Compensation Regulation.</td>
<td>ACT Government firefighters are covered by the same Act as the Commonwealth (see above).</td>
</tr>
<tr>
<td>State Insurance Regulatory Authority (SIRA)</td>
<td>The list of ‘diseases related to employment’ can be found on page 53 of the Workers’ Compensation Regulation.</td>
<td>All dust diseases such as mesothelioma are handled by Dust Disease Care within icare (see row below).</td>
</tr>
<tr>
<td>icare Dust Disease Care (DDC)</td>
<td>The list of ‘diseases related to employment’ can be found on page 53 of the Workers’ Compensation Regulation.</td>
<td>The NSW government is currently drafting presumptive legislation bill (August 2018), similar to the Acts that have been adopted in other states and territories.</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>The list of cancers and qualifying periods can be found on page 4 under regulation SB and SC in the Northern Territory of Australia – Return to Work Regulations.</td>
<td></td>
</tr>
</tbody>
</table>

**Table 1: Specific jurisdictional workplace cancer compensation information**

<table>
<thead>
<tr>
<th>Who to contact</th>
<th>Time to start a claim</th>
<th>Forms to submit</th>
<th>Time frames</th>
<th>Deemed diseases</th>
<th>Asbestos</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comcare</td>
<td>There are no time frames for lodging a claim.</td>
<td>Workers’ Compensation Claim Form.</td>
<td>An employee should notify their employer as soon as practicable after they become aware of the cancer – whether you intend to make a claim for workers compensation or not.</td>
<td>Under subsection 7(1) of the Safety, Rehabilitation and Compensation Act 1988 the Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017 is listed. This instrument lists and explains the covered deemed diseases.</td>
<td>Comcare has two schemes: 1.Commonwealth Workers’ Compensation Scheme (Safety, Rehabilitation and Compensation Act 1988). 2.common law claims (Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005). All are claimed using the same process. However timeframes may vary.</td>
</tr>
<tr>
<td>WorkSafe ACT</td>
<td>Within 3 years of the cancer occurring or becoming known to the worker and before the worker voluntarily leaves their employment (unless the court allows special circumstance).</td>
<td>A workers’ compensation claim form (provided by the employer) from the insurer.</td>
<td>The worker must give notice to their employer as soon as possible.</td>
<td>The list of ‘diseases related to employment’ can be found on page 53 of the Workers’ Compensation Regulation.</td>
<td>All employment related cancers are claimed via the same process.</td>
</tr>
<tr>
<td>SIRA</td>
<td>Within 6 months of the disease occurring.</td>
<td>A workers’ compensation certificate of capacity.</td>
<td>The worker must give notice to their employer as soon as possible.</td>
<td>Workers’ compensation is governed by the Workers’ Compensation Act 1987 (NSW) and the Workplace Injury Management and Workers’ Compensation Act 1998 (NSW). Schedule 1 of the Workers’ Compensation Regulation 2016 outlines diseases taken to be work related. This list contains limited cancers.</td>
<td></td>
</tr>
<tr>
<td>icare</td>
<td>There are no time limitations on when a worker or dependant of a deceased worker can make an application for compensation.</td>
<td>If you have been diagnosed with a dust disease: complete DDC’s request for a medical examination form.</td>
<td>The worker must give notice to their employer as soon as possible after the cancer is diagnosed.</td>
<td>All dust diseases such as mesothelioma are handled by Dust Disease Care within icare (see row below).</td>
<td></td>
</tr>
<tr>
<td>Northern Territory</td>
<td>A worker has 6 months to lodge a claim from the date of becoming handicapped from a cancer.</td>
<td>The NT Workers’ Compensation Claim Form.</td>
<td>When employers become aware of a work related cancer, they must notify their insurer within 48 hours.</td>
<td>Workers’ compensation is governed by the Workers’ Compensation Act 1998 (NSW) and the Workplace Injury Management and Workers’ Compensation Act 1998 (NSW). Schedule 1 of the Workers’ Compensation Regulation 2016 outlines diseases taken to be work related. This list contains limited cancers.</td>
<td></td>
</tr>
</tbody>
</table>

**Further information**

- Comcare provides workers’ compensation coverage for Australian Government employees and certain licensed corporations. [Visit Comcare](https://www.comcare.gov.au) or call 1300 366 979 for further information.
- WorkSafe ACT provides workers’ compensation guidelines. [Visit WorkSafe ACT](https://www.worksafeact.gov.au) or call 13 22 81 for further information.
- The Northern Territory government provides workers’ compensation guidelines. [Visit NT WorkSafe](https://www.worksafe.nt.gov.au) or call 1800 250 713 for further information.
- The State Insurance Regulatory Authority (SIRA) of New South Wales provides workers’ compensation guidelines. [Visit SIRA](https://www.sira.nsw.gov.au) or call 13 10 50 for further information.
### Queensland

**Who to contact**

- WorkSafe Queensland
  - Website: [worksafe.qld.gov.au](http://worksafe.qld.gov.au)
  - Email: [info@worksafe.qld.gov.au](mailto:info@worksafe.qld.gov.au)
  - Phone: 1300 362 128

**Further information**

- Asbestos information

- Asbestos claim information

**Time to start a claim**

- A worker has six months from the date of diagnosis to lodge a claim.
- Anything past six months may be reviewed if failure to lodge was due to a mistake, the claimant’s absence from the state or a reasonable cause.

**Forms to submit**

- Worker Capacity Certificate from a specialist or general practitioner.
- After receiving this certificate call WorkCover directly or complete a WorkCover Claim form and submit it online.
- If you have a histology report this will assist your claim but it is not essential.
- You do not need a lawyer to assist you.

**Time frames**

- A decision on a claim can take up to 20 business days.
- If the claim isn’t determined in the timeframe, WorkCover QLD will contact the worker verbally and in writing, to let them know why a decision hasn’t been made.

**Deemed Diseases**

- The compensation scheme for Queensland is outlined by the Workers’ Compensation and Rehabilitation Act 2003.
- Queensland currently does not have a list of ‘deemed diseases’.

**Asbestos**

- You will need to supply evidence of exposure to asbestos in the course of your employment, which may include:
  - Histology report
  - Employment history
  - Job tasks
  - The extent of exposure to asbestos

**Firefighters**

- Queensland firefighters are covered by the Workers’ Compensation and Rehabilitation and Other Legislation Amendment Act 2015. More information and a list of specific cancers can be found on the WorkCover Queensland website.

**South Australia**

**Return To Work SA**

- Website: [worksa.com](http://worksa.com)
- Email: [info@rtwsa.com](mailto:info@rtwsa.com)
- Phone: 131855

**Claims process**

- Generally a claim should be lodged within 24 hours of the cancer occurring or as soon as reasonably practicable after the worker becomes aware of the cancer.
- In terms of cancer this is when the worker first becomes partially or totally incapacitated for work by the cancer.
- An asbestos claim must be commenced within three years of you becoming aware of your asbestos related condition.

**Forms to submit**

- A Work Capacity Certificate issued by your doctor.
- Contact ReturnToWork SA or speak to your assigned claims agent.
- A claim form is not necessary.

**Time frames**

- Once the forms are received by the employer they have five business days to report it to the insurer.
- Generally the insurer will take ten business days to determine the claim. However it may be longer depending on the circumstances of the claim.

**Deemed Diseases**

- Under the Return to Work Act 2014, Schedule 2 (page 158) lists the injuries presumed to arise from general employment.

**Asbestos**

- The South Australian Employment Tribunal deals with dust disease claims.
- You should contact a lawyer.
- If you were exposed prior to 30.09.1987 your claim is covered by the Workers’ Compensation Act 1971. This involves making an application against an employer.
- Otherwise your claim is covered by the Return to Work Act 2014. This involves filing a common law claim.

**Victoria**

**WorkSafe Victoria**

- Website: [worksafe.vic.gov.au](http://worksafe.vic.gov.au)
- Email: [info@worksafe.vic.gov.au](mailto:info@worksafe.vic.gov.au)
- Phone: 1800 136 089

**Claims process**

- Six months from the day that the worker first becomes incapacitated by the cancer.
- The worker must give notice to their employer as soon as possible, verbally, by email or in writing.
- If the worker is aware of their incapacity and decides to leave their employment, this must be done before they leave.
- If the cancer causes death, the person claiming on their behalf has six months after becoming aware of the worker’s death.

**Forms to submit**

- A worker’s claim for compensation form (obtained from the employer).
- A workers’ compensation medical certificate signed by a medical practitioner.
- Both completed forms are given to the employer. If the worker is aware of their cancer, the employer must contact the worker verbally and in writing, to let them know why a decision hasn’t been made.

**Time frames**

- The employer must give the worker a Notice of Right to Make a Workers’ Compensation Claim form within 14 days. This can be written or verbal.
- The employer must forward the claim within five working days to the insurer. The insurer will contact the worker within 28 days. If a decision has not been made they will supply reasons and what steps the employer/insurer is taking.
- A decision must be made within 84 days of lodging the claim.

**Deemed Diseases**

- A list of presumptive occupations and diseases can be found in Schedule 1 of the Workers Rehabilitation and Compensation (Deemed Diseases) Notice 2017.
- More information can be found on WorkCover Tasmania’s website under Deemed diseases.

**Time limits**

- Time limits - where your life expectancy is:
  - 15 years to two years: 12 months from when a relevant medical certificate is given to you.
  - more than two years: no time limit.
- *Use form, Asbestos-Related Diseases Claim for Compensation (worker)*.
- Seek a referral to a medical specialist, within the field of asbestos-related diseases, and have them use form 9a (initial medical certificate for asbestos-related diseases compensation).

**Tasmania**

**WorkSafe Tasmania**

- Website: [worksafe.tas.gov.au](http://worksafe.tas.gov.au)
- Email: [info@worksafe.tas.gov.au](mailto:info@worksafe.tas.gov.au)
- Phone: 1300 366 322

**Asbestos information guidelines**

- Asbestos workers compensation information

**Claims process**

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- Seek a referral to a medical specialist, within the field of asbestos-related diseases, and have them use form 9a (initial medical certificate for asbestos-related diseases compensation).

**Workers’ Compensation and Injury Management Act 1981**

- Under the Workers’ Compensation and Injury Management Act 1981, a worker who has an asbestos-related disease, and has them use form 9a (initial medical certificate for asbestos-related diseases compensation).

**Victoria’s list of ‘proclaimed cancers’**

- All employment related cancers are claimed via the cancer.org.au/workcancer website.
- Currently there is no presumptive legalisation that specifically covers firefighters (August 2018).

**Australia**

**WorkCover WA**

- Website: [workcover.wa.gov.au](http://workcover.wa.gov.au)
- Phone: 1300 794 744

**Workers compensation guidelines**

- Within 12 months of diagnosis (there are some exceptions decided on a case-by-case basis).
- A First Certificate of Capacity – you can get this from your doctor.
- Worker’s Compensation Claim Form.
- The employer has five working days to lodge the Certificate of Capacity and Claim Form with their insurer.
- The insurer will notify you within 14 days after receiving your claim form.

**Time frames**

- The employer must give the worker a Notice of Right to Make a Workers’ Compensation Claim form within 14 days. This can be written or verbal.
- The employer must forward the claim within five working days to the insurer. The insurer will contact the worker within 28 days. If a decision has not been made they will supply reasons and what steps the employer/insurer is taking.
- A decision must be made within 84 days of lodging the claim.

**Deemed Diseases**

- A list of compensable industrial diseases is outlined in the Workers Compensation and Injury Management Act 1981, Part III, Division 3. The description of the disease and related process is explained in Schedule 3.

**Asbestos**

- It is recommended workers obtain legal representation or seek information from an asbestos cancer organisation.

**Firefighters**

- The Workers’ Compensation and Injury Management Amendment Act 2013 implements presumptive workers’ compensation laws for career firefighters.
- Schedule 4A contains information about the specific cancers covered.