

HOW COULD THIS HAPPEN?

A KIT PROVIDED TO ASSIST YOU IN COPING
WITH LOSING A LOVED ONE DUE TO A FATALITY AT
WORK IN NSW

Developed by the Workplace Tragedy Family Support Group – a
group of family members who have lost a loved one through a
workplace tragedy in New South Wales

How could this happen?

This is the question always asked by families following a workplace tragedy. At the time this happens, there is a terrible sense of injustice, bewilderment, disbelief, sometimes anger - all combined with feelings of horror, loss and pain when 'coming to terms with' the fact the tragedy occurred.

But – while going through all of these emotions, and having to sort out the practical side of your life, there is also an enormous process to go through following a work-related tragedy, which may involve:

- The Police
- WorkCover NSW (or COMCARE)
- The Coroner
- The Industrial Court
- Trade Unions
- Lawyers

These are the authorities responsible for establishing the facts surrounding your loved one's death, and where applicable, ensuring that some sort of lesson is learned by the tragedy.

We have written this kit to try to assist families as they go through 'the system' that follows a workplace tragedy.

We had to learn most of this the hard way – from our own experiences. Some of those experiences in fact may have prolonged our suffering – but we believe once all of the questions are answered, then families can start their journey of healing.

If you require any further information, please do not hesitate to contact us.

ACKNOWLEDGEMENTS

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DISCLAIMER

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Letter from the Convenor of the Workplace Tragedy Family Support Group

My sincere condolences to the families of those lost through a workplace accident.

At this time there is nothing anyone can say or do to ease the pain. The trauma involved following such an event is beyond the grieving process.

Grief is the most intense and enduring emotion we can experience. Unfortunately, there is no quick fix. No short-cut.

But we want you to know, **you are not alone**. We are a non-religious based group of people who have found themselves in exactly the same situation as you. Each of us has gone through such a roller-coaster of emotions following our loss and dealing with the 'system' after that loss – feeling numb, feeling angry, feeling hysterical – all of these could happen in a matter of a few seconds – we of all people understand this.

We know the devastation that takes place - be it mind, material, family, body and/or soul. But can we say - your loved ones are not and will not be forgotten - they are in the hearts and minds of many, and hopefully, will remain as a strong and eventually positive influence on you and your family's future life.

We mourn each and every one of these tragedies each year, and are reminded of our own loss each time we hear of a workplace death. These fallen workers should be foremost in our hearts. This KIT is all about what we have learnt from our own such painful experiences.

Families of workplace tragedies need and deserve hope, answers, direction, support, and acknowledgment.

We are here to give you something we did not have - compassion, understanding, support, and the ability to verbalise in your time of need.

We have also developed a 'voice' to use so that we can make positive changes to Employers, Unions, Workers, Government – anyone who will listen – for the safety of future workers – we do this as a tribute to our own lost loved ones.



About this kit – why we wrote it

Much of the information contained in this kit has been learned from our own experiences.

There is also just SO MUCH to think about when you lose a loved one – and usually you are in no state to do it.

We've probably put too much information in parts of this kit – but not enough in some areas.

But one thing is for sure – each and every one of us had different experiences with various departments, companies, solicitors, Coroners and others you will meet on the journey. None of us knew what to expect from all the processes we had to undergo. There was no comprehensive map or chart of exactly what we would have to face. Each Government Department involved in a Workplace Tragedy seemed to operate independently.

So we all decided that 'someone' ought to put it all down on paper, so that people don't have to go through it all blindly, without knowing their social and legal rights, responsibilities and in some cases, obligations.

None of this information is absolutely comprehensive – as we said, it's only from our experiences.

When should you read this kit?

Every person is different. Some people may need to read it straight away – it can be a good distraction (knowing what has to be done).

Others may never be able to read this – it could be just too difficult.

If this is the case, we strongly suggest you have a good family friend or relative read through it for you, and perhaps summarise it for you.

We believe knowledge is power – we did it all ‘in the dark’.

With a heavy yet hopeful heart that you will contact us for support,

Cheryl Romer
Convenor
The Workplace Tragedy Family Support Group

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No. 2 The Workplace Tragedy Family Support Group

2.1 About us

In conjunction with the Construction Forestry Mining and Energy Union NSW Branch (CFMEU) and WorkCover NSW (who assisted with the Legal section of this kit), the Workplace Tragedy Family Support Group has compiled this kit to assist you in dealing with a workplace death.

As well as dealing with the emotional and psychological effects of losing a loved one to a workplace fatality, there are also a number of practical issues that need to be faced. This kit aims at helping you to navigate the different processes and answer many of the questions you will have.

The Workplace Tragedy Family Support Group is both a support group and a campaign organisation in New South Wales. Most of us have lost loved ones through workplace accidents. We know, first hand, the deep grief and suffering caused by workplace accidents - in particular, grief caused by workplace fatalities.

We also know how difficult it is for you to go through all of the processes following the death of your loved one – facing the Police, The Coroner, WorkCover NSW, possibly the Industrial Court (the death was a result of a prosecutable offence) – these are all organisations that the majority of citizens never usually come in contact with in their lives, and can be daunting.

The members of the Workplace Tragedy Family Support Group believe that our losses place us in a unique position to provide comfort and support to others who find themselves in this tragic situation.

The group formed in about 2007, when the CFMEU opened their Wall of Remembrance honouring those who died in the construction industry in NSW.

Many of us attended that day – and it was such a relief to know we were not the only ones going through this rollercoaster of emotions, dreadful feelings of pain and loss, sometimes guilt, sometimes anger, sometimes resolution – all following a workplace death of our loved ones.

So we decided to get together to give each other support and hopefully make some changes regarding health and safety in the workplace, which may assist others in the future, and hopefully make the road smoother for those who follow in our footsteps.

We have already had great successes in many of our campaigns – in 2008 the NSW Government increased the Death Benefit payable following a workplace tragedy to almost double that which existed previously.

Another great improvement was that death benefits now may be payable to non-dependent family members (where no dependents exist). This can include partners who work (and were not totally dependent on their loved one).

We have also been to many building sites and passed our message across – in the hope that the same accident won't repeat itself. We believe all of this activity goes some way towards our loved ones' deaths not being in vain.

Our Convenor is Cheryl Romer, a schoolteacher and widow of Bob Romer, who was killed at work at the age of 43 years.

2.2 The group aims include:

- Providing support to families who find themselves in this dreadful situation - support provided by people who have been through the process themselves (note we are NOT trained counsellors);
- Assisting families of those who have also been badly injured at work;
- Developing a kit for families of workplace tragedy victims (this kit), to advise them on how to proceed through the legal and industrial minefields whilst suffering such intense grief;
- Developing a kit for employers to advise on the highest standards and practices that should be taken at work following a critical injury or death;
- Increasing workplace and public awareness about the extent and consequences of workplace accidents, and the impact of workplace deaths on families;
- Campaigning with other community groups, including employers, government and trade unions, for improved workplace OH&S and workplace laws.

2.3 We are here for you

The Workplace Tragedy Family Support Group has formed a working party (Committee) to facilitate our activities. Members of the Committee are listed below. We strongly encourage you to contact us – we have been in the same situation as you, and hopefully can provide some guidance from our own experiences to reduce the dreadful impact of not only the workplace fatality, but the effect it has on you and your family.

We are here even if you just need a shoulder to cry on. Many of us realise that as time goes by, friends and even family often don't want to talk about your lost loved one – we know that we still want to talk about them – and we are here for you for expressly that purpose.

2.4 How to contact us

Cheryl Romer	Convenor	cherylromer@workplacetragedy.com	0420 865 450
Wendy Lark	Facilitator	wendylark@workplacetragedy.com	0418 698 553
Elizabeth Raymond	Committee Member	elizabethraymond@workplacetragedy.com	
Kate Murray	Committee Member	katemurray@woirkplacetragedy.com	
Natalie Asekona	Committee Member	natalieasekona@workplacetragedy.com	
Andreia Viegas	Committee Member	andreiviegas@workplacetragedy.com	0433 249 085
Mark Dring	Committee Member	markdring@workplacetragedy.com	0401 701 258
Ivan Simic	Committee Member	ivansimic@workplacetragedy.com	
Dick Whitehead	Committee Member / former WorkCover NSW Inspector	dickwhitehead@workplacetragedy.com	

No. 3 Procedures at the workplace immediately following a fatality

Apart from the employer, workmates and other contractors present at the time of an accident, the following organisations and authorities all become involved when a workplace fatality occurred. Each body has a particular role to play.

The attached Chart shows possible actions that may be taken in the case of a workplace death. Note – not all workplace deaths are as a result of a breach of the OHS Act – in some cases, the death is not prosecuted.

3.1 Role of the NSW Police

When a fatality occurs on site the Police have a duty to investigate. WorkCover NSW Inspectors may also attend the site.

It is important that the Police attend to determine the reasons for the fatality and if there were any criminal offences committed.

A NSW Police Investigating Officer will:

- Attend the place of death;
- Secure the site;
- Preserve and take control of the area;
- Supervise and record all activity;
- Contact WorkCover NSW, if they have not already been notified;
- Notify the next of kin of the deceased (see *Who Is The Next Of Kin*);
- Accompany the next of kin or close friend to formally identify the deceased;
- Collect statements from workmates and persons present at the time of the incident.

The Police investigation continues until all factual issues have been identified, witnesses interviewed and statement taken.

It is then that the Police will decide whether any charges will be laid under the Crimes Act, or whether a brief is to be given to the Office of the Director of Public Prosecutions. The Police do this and continually liaise with WorkCover NSW in regard to workplace deaths.

Whilst the Police are involved, the Local Area Command will determine the steps to be taken to keep family, witnesses and other interested parties informed of any developments.

If there is any evidence of criminal conduct, the Police will take the lead role in the investigation of any crime. WorkCover NSW will only investigate the Occupational Health and Safety issues surrounding the fatality.

Finally, the Police will provide a report for the Coroner.

The Coroner will decide if an Inquest will be held, and (in the case of criminal matters) the papers will be sent by the Police to the Office of the Director of Public Prosecutions. (see LEAFLET 3 – THE CORONIAL PROCESS -). In the case of industrial matters, the Police's role ends here, other than they may be required to make a statement, if a party to the legal proceedings subpoenas them, to the Industrial Court if an industrial matter (breach of OHS laws) is to be held.

3.2 Who is the next of kin?

The only way the Police are generally able to determine who is the next of kin is from the information each worker has provided to his or her employer, or, where known, by information provided by other persons on site.

3.3 Role of WorkCover NSW

WorkCover NSW is the NSW State Government agency administering Occupational Health and Safety and workers compensation in New South Wales.

Immediately upon notification of a work-related fatality a WorkCover NSW Inspector will attend the site of a fatality and commence an investigation.

There is a protocol between WorkCover NSW and NSW Police that allows them to cooperate with each other and exchange information as the investigations take place. Police look at possible criminal intent matters, and WorkCover NSW look at whether health and safety laws have been broken.

The WorkCover NSW Inspector investigating the work related death will:

- attend the site of the fatality,
- prepare an initial report on his/her findings at the site
- liaise with attending Police
- commence the full investigation under Occupational Health and Safety laws,
- interviewing witnesses and workmates
- interview the employer
- liaise with WorkCover NSW's legal branch
- maintain contact with Police and continue to exchange of information
- Complete the investigation

Once the WorkCover NSW Investigation is complete, all records are provided to their Legal Department, which will review the material to determine whether or not there is evidence that a breach of the OHS legislation has occurred.

WorkCover NSW also provides a full report to the Coroner. This report may be obtained from the Coroner when his or her process commences (see Coroner's Process).

WorkCover NSW has powers to take statements and collect evidence in relation to a workplace fatality. Where there is not evidence of criminal conduct under the Crimes Act or associated legislation, WorkCover NSW will take the lead investigative role.

3.4 Information for the family about the investigation

Up until the time the report is provided by WorkCover NSW to the Coroner, families are not provided details of the incident, as the handing out of such information may compromise Work Cover's case against the Defendant should the incident be prosecuted.

Many times we have found that families receive hearsay and innuendo – all we can recommend is that you wait until you get all of the facts from the reports provided to the Coroner by the Police and by WorkCover NSW, before believing anything about the incident.

3.4 Role of the trade union

Authorised representatives of trade unions also have powers to investigate breaches of Occupational Health and Safety laws. Such representatives may also attend the site of a workplace death, and are entitled to do so under the NSW Occupational Health and Safety Act.

Following a workplace fatality, trade unions will often provide information, support and assistance to the family of deceased workers.

Trade Unions generally will, on behalf of the deceased worker's family, facilitate the following:

- Payment of any death or funeral benefits (if these are provided under the worker's industrial agreement or contract);
- Payment of any long service leave where a worker is employed by a company;
- Payment of any other entitlements (such as funeral benefits from redundancy fund if the employer was a participating employer in such a fund);
- Payment of any superannuation entitlements where a worker is a member of an industry superannuation fund;
- Payment of any monies due from any other industry schemes.

Many of these payments are fully dependent on whether the employer was a participating employer in industry schemes.

Finally, if the worker was a construction worker, the Construction Forestry Mining and Energy Union will also arrange for a tribute to the deceased worker to be engraved on their Wall of Remembrance (situated at Lidcombe NSW) which serves as a safety tool for newcomers into the industry, and pays appropriate respect with dignity to a worker who has lost his or her life at work. Generally arrangements are made with the family to conduct such a ceremony for the deceased's family at the Wall of Remembrance – for information please contact Wendy Lark on 9749-0400.

If a family has any concerns about the whole process, trade unions are generally there to help them through the whole legal and industrial processes following a workplace death.

3.5 Role of lawyers

We strongly recommend that you contact the industrial union responsible for the industry in which your loved one worked, to get advice on which lawyers they would recommend. It is our view that it is important to engage a lawyer who has experience in a specific industry, as well as in occupational health and safety, workers compensation matters, and this should be done early in the process. Lawyers will often assist you and guide you through the various legal and industrial processes surrounding the death of your loved one.

The lawyers generally can represent you at the Coronial Inquest and at the Industrial Hearings required following a workplace death.

Also see our document entitled "Prosecution under the NSW Occupational Health and Safety Laws".

3.6 Obligations and responsibilities of the employer/principal contractor & others

NSW Occupational Health and Safety laws require the occupier of premises, which may be the employer or, for example, a principal contractor, to immediately contact WorkCover NSW upon becoming aware of a fatality.

The occupier must also ensure that:

- plant at that place is not used, moved or interfered with after it has been involved in a serious incident, and
- The area at that place that is within 4 metres (or, if the regulations prescribe some other distance, that other distance) of the location of a serious incident is not disturbed.

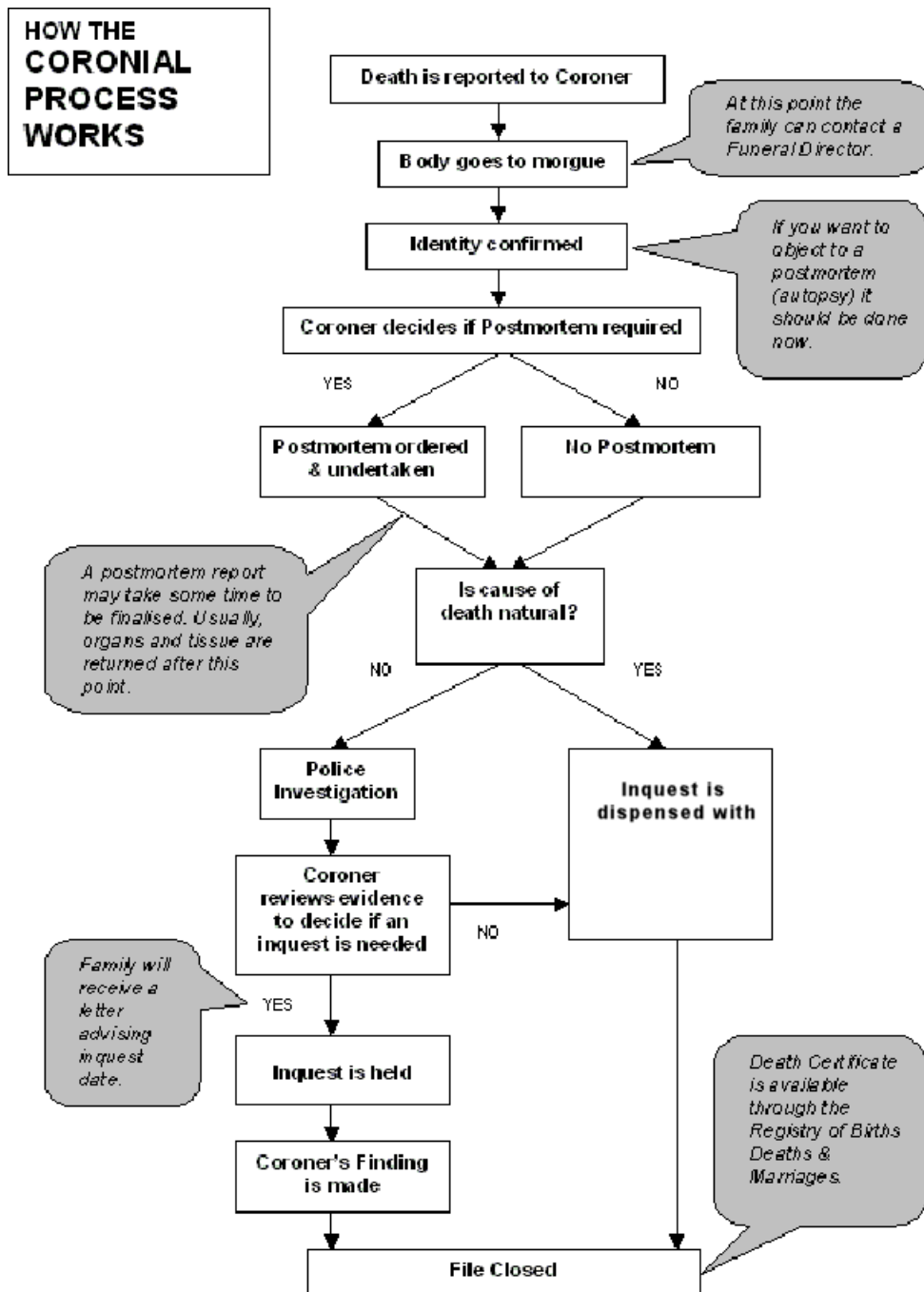
In many instances, the employer may allow the family to visit the site where their loved one was killed.

No. 4 The coronial process

4.1 About the coronial process

This document explains to you how the Coronial Process works. At the outset you should understand that unfortunately this process can take time to carry out a proper investigation on the circumstances of your loved one's death. However throughout the Coronial Process, you may be provided with counselling organised through the Department of Forensic Medicine.

The following chart (supplied by the Coroner's Office) is a general guideline only:



4.2 Why was the death reported to the NSW Coroner?

Section 12B of the NSW Coroner's Act 1980 states that a medical practitioner must not certify cause of death if that death is reportable to a Coroner.

A medical practitioner must not give a *Certificate as to Cause of Death* of a person for the purposes of notification of the cause of death under the Births, Deaths and Marriages Registration Act 1995 if the medical practitioner is of the opinion that the person died in ANY of the following circumstances:

- the person died a violent or unnatural death,
- the person died a sudden death the cause of which is unknown,
- the person died under suspicious or unusual circumstances,
- the person died having not been attended by a medical practitioner within the period of 6 months immediately preceding his or her death,
- the person died while under, or as a result of, or within 24 hours after the administration of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure or an operation or procedure of a like nature, other than a local anaesthetic administered solely for the purpose of facilitating a procedure of resuscitation from apparent or impending death,
- the person died while in or temporarily absent from a hospital within the meaning of the Mental Health Act 1990 and while the person was a resident at the hospital for the purpose of receiving care, treatment or assistance,
- the person died in circumstances that are examinable as referred to in section 13A (Deaths in custody etc examinable only by the State Coroner or Deputy State Coroner) or 13AB (Disability deaths or DOCs),
- anaesthetic deaths now changed so that matters only need to be reported if the death is not the reasonably expected outcome of a health-related procedure. The term "health related procedure" has been defined to mean a medical, surgical dental or other health-related procedure including the administration of an anaesthetic, sedative or other drug. The definition expressly excludes certain health procedures that are undertaken in response to impending death, e.g., cardiac resuscitation and palliative care measures. The holding of a mandatory Inquest following an anaesthetic death and request by NOK within 28 days of the death is removed,
- death certificate can be issued if treating doctor has seen the deceased within 6 months prior to the death, and
- when a person aged over 72 years dies as a result of an accidental fall which is an incident attributable to the age of the person and not due to an act or omission by another person, then that death is not reportable UNLESS the fall occurred in a nursing home or hospital. Such deaths need not be reported to the Coroner unless a relative objects to a medical practitioner issuing a death certificate. If an objection is raised, the medical practitioner must report the death to the Coroner.

Where there is a workplace death, the Police are required to provide a report, known as a brief of evidence, which includes all the witness statements and other evidentiary material.

WorkCover NSW will also prepare a report for the Coroner in the event of a work related death, where they have determined the incident falls within WorkCover NSW's jurisdiction.

The Coroner then decides whether an Inquest should be held. In certain circumstances an Inquest must be held.

4.3 Identification of the deceased

A family member may be required to attend the morgue to identify deceased.

Some family members find viewing the deceased helpful. Should you wish, you can discuss the possibility of viewing with a counsellor or with the funeral director. In most cases, viewings of the deceased can be arranged through your funeral director.

If you would like to see the deceased while the body is at the Department of Forensic Medicine mortuary, you must [contact the Department of Forensic Medicine](#) Counsellors. Viewings are arranged by appointment.

4.4 Funeral arrangements

You can start making funeral arrangements as soon as the death has occurred. If a post mortem or Inquest is required, these may delay release of the body for the funeral.

When an appointment is made with the funeral director, inform them that the death has been reported to the Coroner and at which mortuary the deceased is located.

You can liaise with your funeral director and set tentative dates for the funeral. However, it is advisable to refrain from organising a definite date for the funeral until you know that clearance from the Coroner for the deceased to be released has been confirmed.

Your funeral director will know the procedures involved and should make all enquiries about the deceased's release on your behalf.

Don't forget, the trade union responsible for the industry in which your loved one worked may be able to get some assistance for funeral costs. If you don't know which union covered the industry, contact Unions NSW - (02) 9881-5999.

4.5 The post mortem

A post mortem examination (or autopsy) is a detailed examination of the body, by a specially-trained doctor. It ensures the Coroner is able to deliver a balanced and accurate finding as to the cause of death. A post mortem is usually called when a doctor cannot provide a death certificate, or is unwilling to attest to the exact cause of death.

During a post mortem, all parts of the body are inspected to determine the presence and extent of any disease or damage. This requires all organs to be removed from the body and examined.

To obtain a copy of the Post Mortem Report, write to the Registrar at the Office of the Coroner (or to the Registrar at the Local Court if the Coroner's Hearing is a local regional matter).

4.5.1 Length of time for a post mortem

The Post Mortem Report takes a minimum of nine months to be completed at Glebe Department of Forensic Medicine.

Saying this, delays are currently being experienced and reports can take up to twelve months to be completed. In some country areas, reports may take less time to be completed.

4.5.2 Contact details for the NSW Coroner

To contact the State Coroner or Deputy State Coroners, please write to them at the Office of the NSW State Coroner at the address listed below. For general enquiries please call or email.

Office of the NSW State Coroner

Office Hours: 9.30am to 4.00pm
Street Address: 44 - 46 Parramatta Rd, GLEBE NSW 2037
Postal Address: PO Box 309, CAMPERDOWN BC 1450
Phone: (02) 8584 7777
Fax: (02) 9660 7594
Email: local_court_glebe@agd.nsw.gov.au

Coronial Information and Support Program (CISP)

Phone: (02) 8584 7777
Postal Address: 50 Arundel Street, Glebe
Phone: (02) 8584 7800

Newcastle Department of Forensic Medicine

Located at New Lambton, in the grounds of John Hunter Hospital, their phone number is (02) 4922 3700.

Counselling Services

- Glebe (02) 8584 7800
- Newcastle (02) 4922 3700
- Community Health Centres are listed in the Yellow Pages, telephone book under “C”.
- Contact the Coroner at your nearest Local Court to find out about counselling services in your area.

The information provided in this section is available publicly from the Coroner’s website – go to http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_Coroners.nsf/pages/Coroners_aboutus

4.5.3 How do I get a copy of the post mortem report

A copy of the post mortem report **will not automatically be sent to you.**

Requests for a copy of the report must be in writing and addressed to “The Registrar” of the relevant court. The request has to be signed and dated, the deceased’s name clearly indicated and your relationship to the deceased stated. The request can be faxed or sent via post.

The post mortem report is a lengthy document that contains complicated medical terms and information that you may find distressing. For this reason, we suggest that you go through the report with the deceased’s doctor or your General Practitioner so that the report can be interpreted for you and unnecessary, distressing information can be excluded.

4.6 What is organ retention?

In some cases, the Coroner decides that organs should be kept for a more thorough examination, in order to detect finer details of disease or damage. This is common with parts of the nervous system, such as the brain.

In some cases, organs and partial organs may need to be kept for several months.

For more advice on post mortems or organs, contact a Counsellor at the Department of Forensic Medicine, or a Coronial Information and Support Officer on (02) 8584 7777.

4.7 What is an inquest?

Prior to holding an Inquest, the Coroner's office reviews the reports from WorkCover NSW, the Police and from the Post Mortem (if one was held).

An Inquest is a court hearing where a Coroner considers information to help determine the manner and cause of death. At this hearing, the Coroner may call witnesses to give evidence about their knowledge of the death.

Inquests are generally open to the public except for certain situations when the Coroner can exclude individuals or the public from attending.

Any person, who, in the opinion of the Coroner has a sufficient interest in the Inquest, may apply in writing for permission to appear in person, or to be legally represented at the Inquest. This person, or his or her legal representative, may examine and cross-examine any witnesses on matters relevant to the Inquest.

A relative of the deceased is presumed to have sufficient interest in the Inquest. **You may make an application to the Coroner for a copy of the *Police Brief of Evidence*, and the *WorkCover NSW Report to the Coroner*.**

4.8 Is an inquest automatically held?

No. This is because the Coroner can decide a formal Inquest is not necessary if they are satisfied there are no outstanding issues from the available evidence or the cause of death is clear following an investigation. However, where the cause of death is unknown the Coroner must hold an Inquest.

When a Coroner refuses to grant a formal Inquest, an interested party may make application to the State Coroner for the Inquest to be held, or they can make an application seeking a Declaration from the Supreme Court.

Whether an Inquest is held or not, the next of kin will always be notified.

4.9 Can I ask questions at the inquest?

As advised, you may make an application to the Coroner for a copy of the Police brief of evidence and the WorkCover NSW Report to the Coroner. We recommend that you do this, because these reports usually provide steps towards the beginning of your healing journey.

If you wish, you can prepare questions you would like answered at the Coroner's Hearing, and provide these to the Sergeant or solicitor or Counsel assisting the Coroner at the Coronial Hearing. Not every question will automatically be asked, but the Coroner will try to accommodate the family's wishes to the extent the law allows.

4.10 Will I be required as a witness at the inquest?

It may be necessary for you or another family member to make a statement to Police about your knowledge of the circumstances of the death. A Police officer will usually make an appointment with you to take your statement.

The Coroner will read your statement and decide if it is necessary for you to attend to give further evidence at the Inquest.

You will be notified by the Coroner if you are required to give evidence at an Inquest.

4.11 If I have been advised no inquest will be held - can I ask for an inquest?

A relative or person, whom the Coroner determines has a sufficient interest, can request an Inquest. We suggest that you contact your legal representative to get assistance in writing your *request for an Inquest*. The written request must clearly state the reasons for the request, and ask for a response from the Coroner to the request.

The Coroner will consider those reasons when deciding whether or not to hold an Inquest. If the Coroner decides not to hold an Inquest, the next of kin will be notified and advised of the reasons for the Coroner's decision.

Interested people, including family and friends, may seek leave to appear at an Inquest and/or be legally represented at the Inquest. Legal Aid may be available for Coroner's Inquests.

4.12 How long does an inquest take?

Inquests can vary from an hour to many weeks depending on the complexity of the case and the number of witnesses called to give evidence. Generally, you will be notified of the amount of time the Inquest is 'set down' for.

However, depending on the complexity of evidence, the Coroner may either finish the Inquest early or extend the Inquest to accommodate further witnesses or evidence.

If the Coroner decides that there is a case against anyone for serious offences, the Inquest can be suspended and the matter referred to the Director of Public Prosecutions. This can take up to 9 months.

4.13 The Coroner's finding

At the end of the Inquest the Coroner will make a 'finding'. This can vary in length, from a single page to many pages for a case involving an Inquest.

The finding can be sent to the contact family member, and other people as directed by the Coroner. The *Coroner's Finding* is a different document from the *Post Mortem Report*.

4.14 CISP Support

Staff in the Coronial and Information Support Program (CISP) unit are either social workers or psychologists by training, but are not "counsellors" per se. Counselling is not part of their role.

The CISP staff can provide, for example, information about post mortem examinations, objections to the process, information about organ retention, meetings with Senior Next of Kin to go through briefs of evidence prior to Inquest, meetings to go through photographs if requested and approved by the Coroner, familiarisation to the court with what's what and who's who, information about what to expect from the coronial process and to be present as able and as required whilst the Inquest is taking place.

If counselling is deemed to be appropriate then referral can be made to the Department of Forensic Medicine counsellors.

You can contact a WorkCover NSW counsellor, by telephoning the *WorkCover NSW Co-ordinator, Counselling and Liaison* on 1800 806 626

4.14.1 Contacts

State Coroner's Court Glebe

44-46 Parramatta Rd, Glebe NSW 2037 (02)

(02) 8584 7777

WorkCover NSW Co-ordinator, Counselling and Liaison

(02) 8258 7166/1800 806626

No. 5 LEGAL RIGHTS FOR FAMILY MEMBERS

This chapter discusses the various issues you need to consider, including workers compensation benefits, deaths caused by negligence or fault, and Common Law Actions.

It also provides you with “general” information about Wills and Estates, challenges to the Will, if your loved one has died without a will, and information about superannuation and insurance payments.

It is very important to note – this information is of a general nature only. We are not solicitors, and therefore it is best that you speak to someone with legal knowledge to fully understand each of these issues.

We reiterate, this Information Kit contains general information only about issues arising from a workplace death.

While it has been designed with all due care, the Workplace Tragedy Family Support Group does not warrant, guarantee or represent that the information is free from errors or omissions, or that it is exhaustive. Further, the Workplace Tragedy Family Support Group does not accept any liability or responsibility for the acts or omissions of service and information providers that may be expressly or impliedly referred to in this publication. External services and information sources are not within the control of the Workplace Tragedy Family Support Group, and users of this kit should make their own decisions about any information or advice obtained from these sources. While the information in this kit is considered to be correct at the time of publication, it may subsequently change, particularly contact details (including references to internet sites).

Additionally we advise that you should always obtain a statement of fees and charges before engaging a solicitor, and make an assessment whether you can afford these before engaging the services of a solicitor.

5.1 Workers Compensation Benefits

If a person suffers a workplace injury and those injuries result in their death, the workers compensation insurer is often (but not always) required to pay compensation to the family and/or estate under either state or federal workers compensation legislation. This legislation is a “no fault” scheme. This means that families of workers are entitled to receive the benefits set out in the legislation irrespective of who may or may not have been at “fault” or “negligent” so long as the family or estate can show the death was work related.

Most workers in NSW are covered by state legislation known as the *Workers Compensation Act 1987* and the information below relates to the NSW legislation. If the deceased worker was covered by federal workers compensation legislation please ask WorkCover NSW for further information.

5.1.1 What is a “section 25” lump sum death benefit?

Under the NSW workers compensation legislation a “*lump sum death benefit*” is paid to the persons who were either wholly or partly dependent on the deceased worker at the time of their death. If there is more than one person dependant on the deceased at the time of death (as often happens), the lump sum death benefit is apportioned between each dependant having regard to their extent of dependency on the deceased. The definition of “dependency” is very broad.

If, however, at the time of death there are no persons dependant on the deceased the lump sum benefit is paid in full to the estate of the deceased. The lump sum death benefit increases two times each year to take into account inflation and is indexed on the 1st April and the 1st October.

The lump sum death benefit paid to families and/or the estate of a deceased worker as at 1 April, 2009 was \$433,650. This applies for workplace deaths that happen on or after 24 October 2007. For workplace deaths before 24 October 2007 a much less generous benefit is applicable and this is discussed below.

The lump sum death benefit payable **is the amount that is applicable at the date of the worker's death.**

In 2007 and 2008 the WTFSG successfully campaigned for major changes to the Workers Compensation Act to assist families of workers killed at work. The campaign was only made possible with the help of families who had the courage to tell politicians their story and make them understand how such a death affects a family.

Firstly the WTFSG convinced the NSW state government to substantially increase the lump sum death benefit. In 2008 this benefit was substantially increased by almost a \$100,000. Secondly the WTFSG helped remove the cruel injustice often suffered by families of deceased workers were strictly speaking under law there are no 'dependants'.

For example, before the amendments to the legislation made in 2008 parents who lost an adult child at work were often left with little or no rights under the workers compensation legislation. Under Section 32 of the amended Act such parents can now receive a lump sum death benefit through the estate of their deceased child.

Death benefits that may be payable when a worker dies as a result of a workplace injury include:

- A lump sum;
- Weekly payments for dependants;
- Reasonable funeral expenses (see Clause 5.1.3).

The lump sum benefit payable is the amount that is applicable at the date of the worker's death.

5.1.2 Who can claim "section 25" weekly compensation?

In addition to the lump sum benefit, a payment of weekly compensation is also paid to each dependant "children". The definition of a child under Workers Compensation legislation is broad and includes a child or step child of the deceased worker under the age of 16 years or a child under the age of 16 years to whom the deceased "stood in the place of a parent".

If, at the time of death, the worker's dependant child was over the age of 16 years but under the age of 21 years, that child is still entitled to receive weekly benefits of compensation provided the child is a student at a school, college or university. The weekly benefit will cease if the dependant child, before the age of 21 years ceases to be a student or dies.

The amount of weekly compensation paid for each child as at 1 April, 2009 was \$110.20 per week per child. This amount is also subject to indexation, increasing on 1st April and 1st October each year. This amount is not subject to apportionment and is paid in full whether the child was wholly or partly dependant on the deceased.

5.1.3 Are funeral expenses covered by workers compensation?

Reasonable funeral expenses up to the amount of \$9,000.00 can be recovered and reimbursed to the family. These expenses include:

- Funeral director's professional fees
- Cost of the funeral service (including cremation or burial)
- Coffin

- Mourning car
- Cemetery site
- Flowers
- Newspaper notice, and
- Death Certificate.

In addition to the above funeral expenses, the workers compensation insurer is also required to pay the reasonable cost of transporting the deceased person to an appropriate place for the preparation of burial or cremation or the usual place of residence, if at the time of the person's death their usual place of residence was within Australia.

5.1.4 Benefits for workplace deaths occurring before 24 October 2007

The above mentioned benefits apply to workplace deaths occurring on or after 24 October, 2007. Before this date a much less generous scheme of workers compensation benefits applied.

In relation to deaths occurring before 24 October, 2007 (and after 30 June 1987), the maximum amount paid out to dependants by way of lump sum compensation was \$331,250.00 as at 23 October, 2007.

This figure was also subject to indexation and therefore the amount paid was dependant on the exact date of death. There is no provision for this lump sum to be paid to the estate of the deceased if he or she had no dependants at the time of death.

In addition weekly payments of compensation are only payable to children described above if they were "wholly" dependant on the deceased at the time of death.

5.1.5 What is considered to be a death "arising out of work" by the workers compensation legislation?

Most times this is a simple matter to determine, for example where a worker is killed in an incident at work. In other circumstances it may be quite a controversial issue and require specialist legal and/or medical advice. For example where a worker dies of a work related disease or a say medical condition that work has aggravated, for example a worker suffers a fatal heart attack or stroke whilst doing heavy lifting at work.

In order to have an entitlement to claim a death benefit under the Workers Compensation Act, 1987, it is not sufficient that the fatality simply occurred at work. Section 9A of the Act provides that no compensation is paid to the family unless the worker's employment was "a substantial contributing factor" to the injury which resulted in the death. There must be a causal connection between the employment and the injury or injuries resulting in the death of the person.

Compensation is also paid by the workers compensation insurer if a person is injured whilst travelling on a "journey" between their home and place of employment or between places of employment and the injury or injuries result in that person's death. These are commonly referred to as journey claims. Similarly, there must be some causal connection between the journey and the injury or injuries resulting in the death.

In relation to "journey claims" there are some exceptions where compensation will not be paid such as in the situation where the injury resulting in the death is attributable to the serious or wilful misconduct of the deceased worker but the exceptions do go as far as to exclude situation where the unfortunate worker may have simply made a mistake that led to his or her death. For example, the family of a worker that accidentally falls asleep at the wheel and dies in a road accident may still be entitled to compensation though strictly speaking nobody may have been "negligent" or "at fault".

5.1.6 How is a claim made?

A workers compensation claim form should be requested from either the employer of the deceased or from the employer's workers compensation insurer. It must be completed and lodged within six months of the date of death. However, a claim can be made up to three (3) years following a death, provided that the failure to claim within 6 months was due to ignorance, mistake, absence from the State or other reasonable cause.

A failure to lodge a claim form within this time frame is not a bar from recovering compensation if such failure was occasioned by ignorance, mistake, absence from New South Wales or other reasonable cause, so long as the claim is made within 3 years of the date of death. In some instances, this can be extended.

Generally, a workers compensation insurer has 21 days after a claim has been made to determine the claim by either accepting or disputing liability for the claim.

5.1.7 What if the claim is disputed?

If the workers compensation insurer disputes any aspect of the claim they must serve a dispute notice in the form of a *Section 74 Notice*.

This *Notice* must set out the reason or reasons why the claim is disputed, and must list and attach all documents considered by the insurer when making their decision, whether or not those documents are supportive of their decision to dispute the claim.

The person making the claim has a right to challenge the insurer's decision in the Workers Compensation Commission.

5.2 Deaths caused by negligence or fault and Common Law Actions

5.2.1 Legal actions for loss of financial support

Where the death of a worker was caused by the negligence of an employer and/or some other party (for example another contractor in the workplace), family members who were financially dependant on the deceased at the time of death may have an action in negligence to recover damages for the financial loss suffered as a result of the death. If such a claim is brought monies paid under workers compensation legislation are normally deducted from any settlement or court verdict.

Your legal adviser needs to carefully examine the "value" of a negligence claim as often the "value" of the workers compensation death benefits to the family are greater and no legal costs are paid by the family in relation to a workers compensation death benefits claim. In a common law or negligence claim the legal costs are paid by the family and are often not fully recoverable from the party at fault or responsible for the accident.

5.2.2 Legal actions for "nervous shock"

If the death of a worker was caused by the negligence of the employer and/or some other third party certain persons may be able to claim damages for their own personal mental distress as a result of the death. These are often referred to as "nervous shock" claims by lawyers and the Courts. Historically the origin of these legal actions was in cases started by persons who had been a witness to an accident and suffered mental harm as a result of the "nervous shock" from hearing of or seeing the death of a worker.

In modern times our Courts have recognised that a family member who suffers a psychological or psychiatric condition as a result of a death of a loved one, which is above and beyond what is

considered to be a normal grief process, may also be entitled to recover damages in respect of the personal injury he or she has suffered as a result of the death.

In addition any person who is a witness to a workplace fatality or injury and suffers a psychological or psychiatric condition as a result may also be entitled to recover damages as a result.

5.2.3 Deaths caused by or involving motor vehicles

Often the death of a worker in the workplace or during work related travel or journeys will involve cars or other motor vehicles. In many heavy industries such as construction or manufacturing fatalities are caused by the operation and use of machinery that the law may classify as a motor vehicle even if the machinery is not designed for use on public roads or capable of being registered.

If a fatality is caused by the operation or use of a motor vehicle, for example a person dies in a car accident whilst travelling between their place of work and home and those injuries were caused by the negligence of another person, then any persons that were financially dependant on the deceased at the time of death may have a claim under the Motor Accidents Compensation Act legislation in addition to their rights under the workers compensation legislation.

Under the Motor Accidents Compensation Act there is requirement to report such an accident to the Police within 28 days (reporting it to WorkCover NSW alone for example is not enough) and lodge a claim form with the “green slip” or CTP insurer of the owner or driver of the vehicle at fault within six months of the date of death.

There may be certain legal and financial advantages if a claim can be made under the Motor Accidents Compensation Act. In order for these legal rights to be preserved it is essential the procedural requirements of this legislation (such as reporting the accident to Police and filling in claim form for the CTP insurer) are complied with in accordance with the time limits set otherwise family members risk of loosing their entitlements under this legislation.

5.3 Wills & Estates

5.3.1 Why a person should have a will

- Without a Will - a person’s estate may be administered by someone the deceased didn’t want to handle their affairs and assets may be distributed to persons not intended.
- Having a Will - makes the process easier for loved ones who are grieving. Also a will lets the Court know what a persons intentions are with regards to their estate.
- A Will is also relevant if one has children, because issues can arise if the children are minors and there is not a Guardian appointed, or the deceased was the surviving spouse.
- A Will gives a person freedom of appointing the Executor one wishes and allows one to choose how they wish for their estate to be distributed. If a person has children one needs to ensure that the children are protected under the terms of the Will.

5.3.2 What is probate?

Probate is an order declaring a deceased will is valid and that the person named in the Will as the Executor can finalise your loved one’s affairs.

5.3.3 How probate works

Under a will, an Executor is appointed. Upon death, the Executor takes up a provisional role.

5.3.4 What an Executor needs to do for probate

The following are responsibilities usually undertaken by the Executor of the Estate, where your loved one has a Will. Where there is no will – see Clause 5.3.5.

1. Seek legal advice to start the process of Probate and review the Will (please note – you should always ask your solicitors to provide you with an assessment of their fees and charges to process the Will). Quite often a Will may need ‘interpreting’ – a legal professional should be able to provide you with the interpretation.
2. Find the last Will of your loved one and ensure that this is the last Will;
3. Apply for the Death Certificate;
4. Itemise and work out what assets your loved one has;

5.3.5 Practical issues that need to be attended to by the Executor

Additionally, the Executor should advise the following Government Departments and organisations of your loved one’s passing:

- Medicare;
- Banks, so that bank accounts are frozen;
- The Roads and Traffic Authority;
- The Australian Taxation Office;
- The Department of Veterans Affairs (if your loved one had military service);
- Lenders;
- Credit card providers;
- Cancel deliveries;
- Superannuation;
- Insurances.

5.3.6 The Solicitor’s role in processing probate

1. Ensure that sufficient support for the immediate family for everyday living expenses is provided;
2. The solicitor (usually the Solicitor who drew up the Will if one was engaged) is to advise the Executor of his or her responsibilities and liabilities;
3. The solicitor will compile list of assets and debts of the deceased and will send letters to all to confirm assets value for probate paperwork;
4. The Solicitor will lodge relevant notices in paper;
5. The Solicitor will prepare various Affidavits and Application for Probate. Sometimes the application may be delayed due to obtaining information from various companies in relation to assets;
6. The Solicitor will apply for the Grant of Probate. At this stage, the Registrar will review the circumstances, and either grant probate or request further information. Grant of Probate could take from 4 to 6 weeks - depending on the Court’s backlog. Once Probate is granted, a further notice is placed in the paper giving 30 days for creditors to make ANY claims; and

7. Following the completion of all of these required 'probate' tasks, your Solicitor arranges for distribution.

5.4 Challenges to the Will

You should be aware that the Will can be challenged at any time throughout the Probate process or within 12 months of Probate.

Someone may wish to contest a Will if they have been left out of the will - for example an estranged child for instance.

5.5 If your loved has died without leaving a Will - Letters Of Administration

When someone dies without a will this, is known as dying *Intestate*.

Applications have to be made to the Supreme Court to appoint someone to administer the deceased's estate. This is usually done by a solicitor.

The Supreme Court the grants *The Letter of Administration*, enabling the Administrator to legally undertake administration of the estate.

5.5.1 Steps for Letters of Administration

The following steps are generally carried out by a solicitor. Remember, a solicitor charges for extra services – you should always obtain a statement of fees and charges before engaging a solicitor.

1. A solicitor will need to ascertain who will be making the Application to the Court. Issues may arise where the deceased is seeing someone, and has not finalised divorce proceedings from a previous partner - then a dispute arises as to who should be the Administrator.

Note: It is our understanding that a new Bill is being introduced later this year which in our opinion, may complicate matters. Under the proposed new Bill, claims can be made by past partners and some children may not be entitled to claim, as they were previously able to do.

2. The Solicitor then does an extensive search to confirm that no Will in fact exists. If a Will is found, it may be contested, based on if the Will is very old and did not take into effect changes to marriage and children, and/or, a contest may arise if there is a partial failure of that Will.
3. The Solicitor then needs to identify the deceased's assets and liabilities. To achieve this, he or she will write to all and confirm your loved one's assets and liabilities worth/value.
4. The Solicitor then needs to establish a Family Tree. The Court will look at the next of kin in this, establishing who is entitled to what assets under the estate. The Solicitor needs to find out all known blood relatives, identify the next of kin and confirm that they were not living in a De-facto relationship.
5. The Solicitor then does a parentage search of Birth Deaths and Marriages to identify the birth of any children.
6. The Solicitor then publishes relevant notices in the paper to notify any concerned parties.
7. The Solicitor then prepares any relevant Affidavits and Applications for Letters of Administration.
8. The Solicitor also advises if a Court Bond is payable.

It is our experience that disputes will usually arise in estates where there is no Will, and particularly if your loved one had not formalised his or her Divorce paperwork with a former spouse, and/or he or she was living in a De-facto relationship. Issues arise as to who should Administer the Estate and who is entitled to what.

5.6 Superannuation/Insurance

With most superannuation funds, one can nominate who they would like to receive their superannuation benefits when they die. It should be noted that under superannuation law, a death benefit can only be paid to a dependant or to a person's estate, or in the absence of either, to any other person.

'Dependant' means a spouse (including a de facto spouse), children (of any age), someone who is financially dependent on the deceased at the time of death, or any person who had an interdependency relationship with the deceased.

Some funds enable members to choose either :

- A Non-Binding Beneficiary Nomination; or
- Binding beneficiary nomination.

To nominate beneficiaries, certain documentation is required to be completed, and this will vary from superannuation fund to superannuation fund.

In the absence of Nominated Beneficiaries or Binding Beneficiaries, many Superannuation Funds will determine to which of the dependants or estate to pay your death benefit, and in what proportions. In the absence of a dependant or legal personal representative, some funds may be paid out to any other person the fund selects.

5.6.1 If your loved one completed a Non-binding Beneficiary Nomination

With most funds one is able to advise the fund of which dependants they would like to receive their superannuation benefits should they die. Alternatively, one can nominate their estate receive the benefits but one needs to stipulate this properly on the forms.

Some funds even though one has completed a binding nomination may still consider making payments to any dependants, including those that the deceased did not nominate. When making this determination the fund will take into account any beneficiary nominated.

5.6.2 If your loved completed a Binding Beneficiary Nomination

A nomination under this option is binding on the fund. In other words, if the nomination is valid, then the fund must pay the benefit in accordance with the deceased's instructions.

In order to be valid, a Binding Nomination must be signed by two witnesses who are at least 18 years old and who have not been named as a Beneficiary, and the Nomination must have been received by fund prior to the death.

Only the deceased's dependants or estate are eligible to receive the death benefit. Eligibility of a nominated person for some funds is determined at the date of a person's death.

A valid nomination is only effective for three years after the day it was first signed, or last confirmed, or amended by the deceased.

If a dependant nominated to receive a benefit predeceases the deceased, or if a person nominated is not a dependant, that person's benefit will be distributed equally amongst the surviving nominated dependants or, in the absence of a nominated dependant, to the estate.

If there are no surviving nominated dependants or legal personal representative, it will be paid to a beneficiary selected at the fund's discretion.

Note: if a nomination is not given to the Trustee, or if it does not comply with the requirements under the law or trust deed, the Trustee will pay any death benefit payable to the legal personal representative.

If there is no legal personal representative, the Trustee may pay the benefit to any other person as superannuation law permits.

No. 6 What are NSW employer's obligations in relation to the workplace?

6.1 What is required of NSW employers regarding safety?

Under section 8(1) of the OHS Act 2000 an employer must '*ensure the health, safety and welfare at work of all employees of the employer*'.

This requires that the employer ensure that:

- Any safety risks that may arise in the tasks or work their workers perform are eliminated or controlled,
- Workers are provided with any safety gear that may be needed to perform their tasks safely,
- Information, training (including induction) and supervision that is required to ensure workers work safely are provided,
- Safety procedures are developed for any equipment or substance that is used in the workplace that may pose safety risks,
- The workplace itself, or the workplace layout, does not put workers at risk – areas that should be considered are noise, dust, lighting, ventilation, uneven or slippery surface, electrical installation and leads, traffic movement (e.g. forklifts) and general housekeeping,
- Facilities for workers – such as kitchen, toilet, washing and changing facilities (if appropriate) – are adequate.

Division 2 of the OHS Act requires employers to consult with their workers when decisions that may affect their health and safety are being considered. To enable consultation to take place, employers need to consult with their workers on the *consultation mechanism* that will operate in the workplace.

There are three options for consultation:

- Having an OHS committee
- Having OHS representatives
- Other arrangements, which must be agreed between the employer and workers.

For further information on consultation arrangements, see the *Code of practice for OHS consultation*.

Employers are required to consult their workers when:

- risks in the workplace are being assessed and measures to control these risks are being considered
- changes to the workplace are being considered
- work systems or work tasks are being introduced, reviewed or changed
- purchasing new equipment or substances for the workplace
- the adequacy of workplace amenities is being considered.

6.2 Impact on persons other than workers

Section 8(2) of the OHS Act requires employers to ensure that persons other than their workers are not exposed to risks while in the employer's workplace. These persons include contractors, customers and visitors.

If there are significant risks in the workplace, there may be a need for site induction training and procedures for managing people while on the premises.

No. 7 Prosecution under the NSW Occupational Health and Safety laws

7.1 Important information

Some of the legal services relating to the death of you loved one, in particular representation at the Coronial Inquest or liaising with WorkCover NSW throughout an OHS prosecution, may involve a financial cost to you and your family. You should discuss the matter of legal costs with your legal representative before engaging legal representation.

7.2 WorkCover NSW's power to prosecute

WorkCover NSW has the power to prosecute corporations and/or persons for breaches of NSW occupational health and safety laws. A workplace fatality will usually result in WorkCover NSW bringing a prosecution against the responsible parties.

However, where there has been no breach of NSW Occupational Health and Safety laws, prosecution cannot be commenced.

When WorkCover NSW makes the decision to prosecute, and there is sufficient evidence to warrant a prosecution under the NSW Occupational Health & Safety Act, they do so mostly through the Industrial Court (and on occasions through the Chief Industrial Magistrate's Court). The Industrial Court is at Level 1, 47 Bridge Street, Sydney.

7.3 How long does the WorkCover NSW's prosecution take?

WorkCover NSW is required to lodge their prosecution with the Industrial Court within two (2) years of the workplace tragedy, or within two (2) years of the finalisation of the Inquest in certain circumstances. They may also apply for an extension of time if this is unachievable.

Once they have lodged the prosecution, it generally takes quite a long time for the matter to be heard.

Families should request that they be informed when hearing dates are set.

7.4 What are the steps taken?

Following a workplace death, WorkCover NSW will investigate the circumstances to determine if there has been a breach of Occupational Health and Safety law. This will normally involve WorkCover NSW investigating whether a company or person has failed in their obligation to provide a safe work place.

Under NSW legislation, employers, self employed persons, those in control of premises and machinery and designers and manufacturers of plant and machinery, and even workers, have duties to ensure that workplaces are safe. There may be a number of parties prosecuted over the one incident.

It is also an offence where reckless conduct has caused a death at the workplace.

An investigation will involve attending the site, collecting evidence and taking witness statements. It may also involve obtaining expert evidence. WorkCover NSW puts all of this information into a report which is given to the NSW Coroner.

If a Coronial Inquest takes place, WorkCover NSW will normally await the outcome of that Inquest before starting its prosecutions. The Coronial Inquest process and findings about the cause of death may have some relevance for the OHS prosecution.

There must be evidence of reckless conduct to the criminal standard of proof, beyond a reasonable doubt, to establish an offence under s32A of the Occupational Health & Safety Act 2000. This is a difficult standard to meet.

7.5 Prosecutions through the Industrial Court

Once an investigation has been conducted and coronial inquiry has handed down its findings, WorkCover NSW will start proceedings in the Industrial Court of NSW.

Like all court cases it takes time for a prosecution to be finalised and there may be various procedural steps that take place. Sometimes cases are complex, involving some legal argument - this might mean a prosecution will take longer to finalise.

Once a case has started, the company or person(s) being prosecuted, called the **Defendant**, will have an opportunity to plead either guilty or not guilty to an offence.

7.5.1 If the Defendant pleads guilty

Families should advise *WorkCover NSW Co-ordinator, Counselling and Liaison* (1800 806 626) that they wish to be informed (if a company had plead guilty to the breach of the OH&S Act) when the Sentencing Hearing is to be held.

If the Defendant pleads Guilty then there will be a Sentencing Hearing held by the Industrial Court to determine the appropriate penalty.

Families at this stage (prior to the Sentence Hearing) should provide their Victims Impact Statements to WorkCover NSW's Prosecution team, to enable them to tender the statements to the Industrial Court. See S7.7.

7.5.2 If the Defendant pleads not guilty

If a Defendant pleads not guilty, then the case will involve a hearing of the factual evidence and legal argument, then the Industrial Court will decide whether there has been a breach of the law. If the Defendant is found not guilty, the matter finishes here.

However, if the Defendant is found guilty, a separate Hearing will take place to decide what Penalty will be imposed. Again, families at this stage (prior to the Sentence Hearing) should provide their Victims Impact Statement to the Prosecution (via the *WorkCover NSW Co-ordinator, Counselling and Liaison* on 1800 806 626) to tender to the Industrial Court (see 7.7).

Families should advise *WorkCover NSW Co-ordinator, Counselling and Liaison* on 1800 806 626 that they wish to be informed when the Sentencing Hearing matter is to be held.

There are some limited rights for appeal by a party that is found guilty.

7.6 What are the maximum penalties?

The maximum penalty that can be imposed **does not automatically apply**. In fact we have found that it rarely applies in NSW.

The Industrial Court must consider all the facts to decide what the level of the penalty will be. Penalties will always differ from case to case. As advised, do not expect the maximum penalty to be handed down. In our experience this very rarely happens.

7.6.1 Penalty for breach of the general duties to provide safe work place

If a corporation is found guilty for the first time, the maximum penalty is \$550,000.

If a company has been found guilty before, the maximum penalty is \$825,000.

If a person has been found guilty for the first time, the maximum penalty is \$55 000.

If a person has been found guilty of a breach of the OHS law before, the maximum is \$82 500 or 2 years imprisonment, or both.

7.6.2 Penalty for reckless conduct

If a person or corporation is found by reckless conduct to have caused a death at the workplace, the guilty party can face:

For a corporation - a maximum fine of \$1,650 000

For an individual -a maximum of 5 years imprisonment or \$165 000.

7.7 Making a victim impact statement

Making a statement is voluntary.

A Victim Impact Statement can be accepted by the Court after the Defendant has been convicted (found guilty) - but before sentencing. The Court will only take into account the effect of the death in relation to the offence for which a Defendant has been convicted.

A victim impact statement should address:

- detail about personal harm suffered, physical and psychological/emotional;
- you can include any medical reports

It cannot contain photographs, drawings, anything that is offensive, threatening, intimidating or harassing. The Victim Impact Statement must be either submitted to the court in writing well before the Sentencing Hearing. After it has been submitted, it can be read out by a family representative at the Sentencing Hearing.

In the event of a workplace death, a victim impact statement can be given by a victim's representative who is a member of the victim's immediate family, a counsellor/social worker or medical specialist. A parent can provide a Victim Impact Statement on behalf of a child.

The Defendant has the right to cross examine a person about their Victim's Impact Statement, if the Defendant does not agree with its contents.

7.7.1 Our Advice

- Keep in touch with WorkCover NSW in relation to any advice about the statement.
- Keep a personal copy of the Victim Impact Statement.

- Ensure that date and location of the sentencing hearing is known, because a Victim Impact Statement cannot be given to the court after the court has determined the sentence for the offence.

If it is possible for you to make a Victim's Impact Statement, we would encourage you to do so, as this can be an essential part of your healing process. It enables you to express the impact the loss of a loved one has had on you and your family's lives. It also acts as a voice for your loved one, by being officially placed on the public record.

WorkCover NSW has a more detailed brochure about Victim Impact Statements, a copy of which is contained in this kit. See the enclosed document – Victim Impact Statements – issued by WorkCover NSW.

7.8 When is the victim impact statement made?

The Crimes (Sentencing Procedure) Act 1999 allows a victim impact statement to be received and considered in the Industrial Relations Commission in relation to an offence against Division 1 of Part 2 of the Occupational Health and Safety Act 2000 (OHS Act) where the offence results in the death of, or actual physical bodily harm to, any person.

Division 1 contains the duties relating to health, safety and welfare at workplaces on employers, self-employed persons, controllers of work premises, plant or substances and on designers, manufacturers and suppliers of plant and substances for use at work.

Note: In this document, the term 'court' is used to refer to the Industrial Relations Court.

7.9 Who makes the victims impact statement?

A family victim is a member of the immediate family of a primary victim who has died as a direct result of the offence. A family victim may be:

- the victim's spouse, or
- the victim's de facto spouse or same-sex partner, being a person who has cohabited with the victim for at least 2 years, or
- a person to whom the victim is engaged to be married, or
- a parent, grandparent, guardian or step-parent of the victim, or
- a child, grandchild or step-child of the victim or some other child for whom the victim is the guardian, or
- a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim

A representative of the victim

Where a victim (as described above) is incapable of providing information for a victim impact statement, a family member or other representative may act on behalf of the victim. A parent can provide a Victim Impact Statement on behalf of their child.

7.10 Attending court and addressing a magistrate

This is a very tough time in our experience. During the hearing, we have even found employers and their barristers who have tried to blame the victim.

If you find the task of attending Court too daunting and distressing, ask a family friend, or representative to go to the Court Hearings on your behalf. You should address the Magistrate as

"Your Honour" in the Local / Industrial Court. Contact us at the Workplace Tragedy Family Support Group and we will try to attend with you.

At any time you may leave the Court and take a break.

When going into the Industrial Court, it is generally courteous to bow to the judge on entering and leaving the court room. You may not eat or drink within the court room.

Ask *WorkCover NSW Co-ordinator, Community and Liaison* on (1800 806 626) to keep you fully informed of the proposed Court dates, and subsequent sentencing dates where the Defendant has been found/plead guilty.

7.11 Obtaining an interpreter

To ensure that people appearing in Courts are not disadvantaged as a result of language difficulties, translators and interpreters can be arranged.

People attending Court may require interpreters because they:

- are hearing impaired and use sign language
- do not have English as their first language and as a result may experience difficulty in comprehending or fully participating in all or part of the proceedings.
- If you have engaged one, advise your solicitor that you require an interpreter.

If you do not have a solicitor, ask the *WorkCover NSW Coordinator, Counselling and Liaison* to arrange for an interpreter for you at the Coroner's Court (and at the Industrial Court if required). If you do not have a solicitor, ask the CISP Co-ordinator to organise an interpreter at the Coronial Inquest. Similarly, ask the *WorkCover NSW Co-ordinator, Counselling and Liaison* to arrange an interpreter for you at the Industrial Court.

7.12 Has the fine been paid?

If a corporation does not pay a fine that has been imposed for a breach of the NSW OHS laws, the Office of State Revenue (which has the responsibility of collecting fines) may publish the names of the corporation, on its website and in local newspapers until the outstanding fine is paid. This list can be accessed on http://www.sdro.nsw.gov.au/general/ohs_fines.html.

7.13 Staying informed throughout the legal process

Throughout the legal process you should be fully informed by your legal representative. If they are not keeping you up to date, call them.

However DO TAKE INTO ACCOUNT that the prosecution process can take up to two years or sometimes longer.

You can simply inform your legal representative that you would like to see each and every report or piece of correspondence about the case.

It is important that you contact the *WorkCover NSW Co-ordinator, Counselling and Liaison* – on (02) 8258 7166 – to ensure that you stay informed of the progress of your loved one's prosecution.

8.1 Our advice?

Be careful about making any public statements at all. If you must make a statement, use a spokesperson to make the public statement on your behalf, and ensure that he or she does not make any defamatory statements.

In regard to public statements that are made, you can certainly talk about your loved one and what your loved one meant to you and to your family. You can talk about the support that you have received from the community and others and your appreciation for that support. These types of comments should have little to no adverse impact later on.

Often times after a tragic event occurs, the media approaches family members wanting them to make a statement. In addition, there may be public or private investigations where family members are asked to make a statement and/or testify. The following is offered as a general guideline to assist families in making statements.

However, it must be remembered that every situation is fact dependent and every state has its own laws. Therefore, while this is a general guide, individuals should seek appropriate advice in regard to their specific situation.

As a general rule, victims and family members are allowed to make public statements about the event, and all individuals and/or entities involved.

8.2 Beware – defamation, libel and slander

However, there are potential restrictions on these statements. The first thing that you should remember is that any public statements that you make should not be defamatory – that is, libellous or slanderous against any person or any business. You are not allowed, for example, to say XYZ Co. Pty Ltd did not provide a safe workplace (unless, in the case of your loved one, the Courts have ruled that way, in which case you should refer the media to the Court decision).

Defamatory statements could lead to a claim being made against the one making those statements. This is the last thing you need at this time.

The best rule to follow in this regard is to make sure that any public statements that you make are true, and do not contain any opinion. Our view is that you should not mention the employer name at all, and this would cover you from libel or slander laws.

8.3 Confidentiality agreements

In addition, there may be Confidentiality Agreements that limit a person's ability to make public statements. A Confidentiality Agreement is usually associated with a settlement of litigation.

Confidentiality Agreements can prohibit a person from making any public statements about the event or any of the parties involved. Confidentiality Agreements may only limit the disclosure of the amount paid to resolve the litigation. If you have entered into a Confidentiality Agreement, you need to get specific and direct advice from your solicitor as to what you are allowed or not allowed to say.

8.4 Your public statement could be used against you

In addition to the above possible limits of your right to make public statements, you need to also remember that any statements that you make can be used by the other side in any litigation that may ensue as a result of the tragic event.

8.5 Appoint a spokesperson for the family

The ability to use the statements against the family in litigation can be lessened by the utilization of spokesperson to speak for the family. As a general rule, the immediate family (i.e. spouse/or children) are the ones involved in the litigation.

For this reason, if a spokesperson is used it is best to have someone who is not a part of the immediate family. This also takes some emotional pressure off you and your family.

Your spokesperson can be another member of the family, a close friend, or even your solicitor. In addition, using a spokesperson can help direct media attention to the spokesperson and away from the immediate family members. This can be beneficial to the immediate family members, especially in the period immediately following the tragedy.

Families of workplace tragedies need and deserve hope, answers, direction, support, and acknowledgment.

The Workplace Tragedy Family Support Group is here to help you obtain these outcomes through such difficult times.

9.1 Role of WorkCover NSW

WorkCover NSW is the NSW Agency that administers occupational health and safety and workers compensation laws in NSW.

WorkCover NSW has a number of important roles following a fatality in the workplace, from investigation into the incident to enforcement of safety laws following the incident. Unfortunately, they will not be able to provide you with many details of their investigation until it completed, and until the matter goes to Court.

WorkCover NSW also provides advice and assistance to the families of workers who have died due to workplace death, injury or disease.

You should be able to access information about the WorkCover NSW Report, after WorkCover NSW sends it to the NSW Coroner.

Families should be informed -

We recommend that you specifically ask the Coroner's Court to provide the family with a copy of this report, together with the Police Report and the Autopsy Report (where performed).

9.2 WorkCover NSW Co-ordinator, Counselling and Liaison

The *WorkCover NSW Co-ordinator, Counselling and Liaison* will provide you with information and assistance following the death of a loved one including:

- counselling services provided at no charge;
- information about access to other services such as trade union, financial services and support services;
- compensation, investigation and prosecution processes

To contact the *WorkCover NSW Co-ordinator, Counselling and Liaison*, ring 1800 806 626.

9.3 Other useful contacts

- Workplace Tragedy Family Support Group 0420 865450
- State Coroner's Court Glebe (02) 8584 7777
- Victims Support Line (for help when making a Victims Impact Statement) on 1800 633 063 (Free call) or (02) 8688 5400.
- Unions NSW (02) 9881-5999
- [The NSW Law Society](#) provides a list of accredited legal specialists. If you would like to be referred to a lawyer you can call them on (02) 9926 0333. [LawAccess NSW](#) is a free service that

will help you find information and services best able to assist with legal problems and questions. Telephone 1300 888529 (TTY: 1300 888529) between Monday and Friday 9am - 5pm (excluding public holidays).

9.4 Counselling

We strongly recommend that you and your family obtain counselling following the death of your loved one. It is our view that all people who are faced with a sudden death experience traumatic distress to some degree. Some people show signs of this distress – others ‘keep it in’ or ‘try to put on a brave face’ – but we know what it’s like when you are home and on your own.

Some people don’t think they need counselling – some people feel uneasy about talking to strangers. All we ask is that you keep it in the back of your mind, and if you are feeling you are not coping (or if someone in your family is ‘acting out’) try to make the step to go and see a counsellor. The current system allows for up to 10 hours of counselling paid for by WorkCover NSW.

Additionally if you are not covered by this, but do require counselling, the Victims of Crime website lists many “Approved Counsellors in NSW” – see

http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_counsellingapproved

9.5 Freedom of Information (FOI)

Under the Freedom of Information Act 1989 (FOI Act), you can make application to NSW government agencies for access to their records and documentation that relate to you, your loved one, or in which you have an interest.

There are some exemptions to the release of information. There may also be restrictions due to NSW Privacy laws. Most Government agency web sites will have the form that you will need to complete to make an FOI request.

For FOI requests to WorkCover NSW contact the FOI Applications officer – (02) 4321 5000

The fee payable is \$30.00. However, this fee may be waived if you are a member of the Workplace Tragedy Family Support Group or a family member of a workplace fatality victim. The FOI Act required a Government Agency to respond to the request within 21 days of receiving the application.

No. 10 Grieving – we all do it differently

10.1 The roller-coaster of grief

Immediately following your loss you will probably experience some or all of the following grief emotions and stages of grief. These emotions are all very normal when you experience such a loss

DENIAL - this may also include feelings of shock, disbelief, numbness, great confusion, and withdrawal. Initially you may feel nothing.

ANGER, GUILT AND FRUSTRATION - you may become angry at yourself, at your loved one who died, at your family, at the hospital, at the employer, at anyone in fact. And why shouldn't you feel angry!

You may also feel guilty – If only I'd said or done this or that! We have found that this sort of thinking only prolonged the pain and suffering we have gone through.

The frustration comes with the fact that Death is so final. You want your loved one back and you can do nothing.

If you feel any of these, don't worry – you are normal. This is how our minds and bodies cope with grief.

SADNESS AND DESPAIR - this is the most common emotion and one we are all familiar with to some degree. Most people experience some form of reactive depression. All we can say at this stage is – **be careful that you don't turn to drugs or alcohol for relief from your despair**. We've found from bitter experience that these just make the situation worse.

You may also have loss of appetite, insomnia - you may retreat socially, crying at unexpected times, you may have bad dreams or nightmares. Some people also become obsessed by either treasuring or avoiding mementos of the deceased.

In addition, some people get physically ill. Something that may have been a minor ailment before the loss of a loved one can seem to be much worse. Some people feel a general sense of fatigue or weakness, shortness of breath or tightness in your chest and often these are accompanied by a dry mouth

ACCEPTANCE - This is the hardest stage of all to reach. Acceptance doesn't mean letting go of your loved one – you will want to keep and treasure them for the rest of your life – but it means letting go of the pain, and understanding that your loved one would have wanted you to have a life and to use it well.

10.2 And while all of this is going on....

You also have to deal with a legal and industrial minefield following a workplace death.

You may have to deal with the following authorities following a workplace death:

- NSW Police
- NSW Coroner
- WorkCover NSW
- NSW Industrial Court
- Trades Unions
- Legal practitioners

To the average person this is really daunting. You end up being deluged with information, and quite often dealing through these processes and authorities in fact prolongs your grief. This is where we may be able to help – even if it’s just a shoulder to cry on – at least know that we are here and hope to help you.

Our kit is designed at least to give you some guidance from our experience in facing these matters. We hope to help you to deal with all the ‘authorities’ such as the Police, the Coroner, WorkCover NSW, Lawyers, Trade Union Officials and others- to empower you to get through the required processes following a workplace tragedy as easily as possible.

We believe knowing what will happen will help – knowledge is power. Some of the information in this kit may apply to you and your circumstances – and some of it may not. Every death is different. Every family circumstance is different. We fully understand this.

We hope this collection of information is of some help to you. Should you require any help or support, or just a shoulder to cry on, please don’t hesitate to phone or email us.

Initial contact with us should be made with our Convenor, Cheryl Romer, on 0420 865 450, or email cherylromer@workplacetragedy.com.

10.3 Articles about grieving

These articles are provided to give you some further understanding of the grieving and grief processes. They are directly quoted from the authors listed, and copyright to these articles remains with the authors.

10.3.1 The club no one wants to join

A dozen lessons I've learned from grieving children and adolescents

By Donna L. Schuurman, Ed.D., Executive Director, The Dougy Center.

The following paper was published in [*Grief Matters: The Australian Journal of Grief and Bereavement*](#) in August 2002. **It is but one person’s view on children and grieving.**

“I’m frequently introduced as an “expert” in the field of children and death, referencing my involvement over the last sixteen years at [The Dougy Center, The National Center for Grieving Children & Families](#).

Over these years, more than 12,000 children and teens, and their parents or adult care givers have shared their journeys through grief with each other, our staff, and volunteer facilitators. All shared membership in a club no one wants to join with the common denominator of the death of a family member or close friend.

Through them I have, I suppose, earned a dictionary definition of expert, “one who has a high degree of skill or knowledge of a certain subject.”

This expert status is perhaps enhanced by my doctorate in counselling, despite the fact that my entire studies included just one hour on the topic of death and dying, and only a brief acknowledgment that children too were affected. Expert indeed!

The real experts, I believe, are the children and families who’ve thrashed around in the mysterious and chaotic experience we call grief, mourning, and bereavement. I prefer to think of myself as an emissary, “an agent sent on a mission to represent or advance the interests of another.”

Toward that end, given the topic of “the grief of children and adolescents,” I have chosen not to review the literature, discuss developmental challenges, theories or texts (though those routes all

provide helpful information), but to reflect on what I have learned from the experts: the three-year-olds through 18-year-olds whose stories I've been privileged to share over these last sixteen years.

1. Children know and understand much more than we give them credit for

I can't guess how many times over the years parents have conspiratorially confided that their child or adolescent doesn't know the full details of dad's (or mum's or whomever's) death, that perhaps it's best that way, and that they aren't certain how much the child is affected by the loss.

In a blaring example, 9-year-old Joshua was told that his father, who'd suicided, died in a car accident. In his first group with other parentally bereaved six to 12-year-olds, he quietly shared that his father had died by suicide. "But don't tell my mum," he instructed the group, "she thinks he died in a car accident!"

Children know, hear, listen, observe, and incorporate much more than adults realise. Their antennae are finely tuned to picking up cues from those around them.

They want to protect adults from further pain, just as we have that natural inclination to protect them.

Just because they're not verbalising what's going on inside doesn't mean they're not grieving.

2. One of the biggest impediments to children's healing after a death is...adults!

Years ago in the U.S., Art Linkletter had a television show, "Kids Say the Darndest Things," highlighting the funny, outrageous and ingenious statements of children. Grieving kids could produce their own version of "Adults Say the Stupidest Things!"

While the topics of missing the deceased, regrets from the past, unfilled dreams and wishes certainly emerge in their group and individual conversations, the unhelpful, non-supportive and downright hurtful responses of (presumably) well-meaning adults in their lives adds unnecessary fuel to the fire of grieving, further complicating an already complex and confusing experience.

I don't think adults intend to make matters worse. I think three barriers interfere. One is our own fear of death and the resulting avoidance of uncomfortable realities. A second is a lack of understanding of what words to use, how to act, and what children need. The third, and perhaps most insidious, is the troubling truth that it is demanding and difficult to "be with" a child whose pain we can't fix or take away.

3. Grieving children don't need to be "fixed"

Grief is not an illness that needs to be cured. It's not a task with definable, sequential steps. It's not a bridge to cross, a burden to bear, or an experience to "recover" from. It is a normal, healthy and predictable response to loss.

Its symptoms are normal reactions and may include changes in appetite, sleep, motivation, and energy. Their duration and intensity will vary from individual to individual based on the interface of multiple issues including personality, support systems, the child's relationship to the deceased, and the meaning he or she derives from the loss.

Not all grieving children or adolescents need therapy, support groups, counselling or professional help.

Some do.

But in either case, our roles as parents, therapists, counsellors and friends are to support and assist, not to "fix," help them "get over it," or "move beyond."

4. Grieving children don't need to be "taught" how to grieve as much as be "allowed" to grieve, and to make their own meaning.

I believe working with grieving children with the attitude they need to be taught how to grieve is a misplaced effort based on an erroneous attitude about the nature of children and grieving. It presumes we (no matter who "we" are) can or should teach a child how to grieve.

I believe they'll do it naturally, and in healthy ways, if we let them, while we provide safety, honesty, permission, and example. We can get caught up in fixing and instructing, when the skills of evoking and listening better suit the need.

Additionally, even the youngest children share with adults the insatiable desire to understand, and to make meaning from experience. Why me? and Why did this happen? are questions even three-year-olds ask as they try to make sense of their world. How we assist them in finding their own answers to these critical questions will shape their lives for years.

5. Children are resilient, but not in a vacuum.

Resiliency is not an accident. The word, from the Latin "*resilire*," means to leap back, to bounce back to one's original shape, to recover.

It's something that has received increasing and well-earned attention from researchers and practitioners, and about which we know more and more. We know, for example, that among the personality traits resilient children display are positive self-esteem, and an internal locus of control (Werner & Smith, 1992).

We also have strong evidence that parentally bereaved children show (citing just two of seven susceptibilities) (Schuurman, 2003) significantly lower self-esteem compared to their non-bereaved counterparts, as well as a higher external locus of control (Lutzke, Ayers, Sandler, & Barr, 1997).

What we know about resilient children has tremendous applicability to how we can help children following death and other traumatic losses. Time spent studying resiliency research is time well spent.

6. Theories are great, but as Carl Jung said, "Learn your theories well, but lay them aside when you touch the reality of the living soul."

Sometimes I think we try too hard to pound and bend and push what we see into a theory, rather than having our theories evolve from what we see. Theories are helpful efforts to make sense of and categorize processes, events and phenomena, but the theory should never be mistaken for the thing itself.

The word derives from the Greek word *theoros*, meaning "spectator," and we should never confuse the spectator's role and 20/20 hindsight with the action of the players on the field. Our theories can cloud the ability to truly be available to a grieving child if we're clicking through them and missing "the reality of the living soul" before us.

Each child is a teacher, and best approached by adults willing to be taught.

7. Labels work for cans and bottles and boxes, but aren't so good for children.

The diagnosis du jour seems to be "attention deficit disorder," with all the attending medications and labels associated with it. Not to deny such a disorder exists, but I believe it's often over-diagnosed and misdiagnosed (and therefore, mistreated), especially with grieving children.

Some of our labels pathologise and pigeonhole kids, patronizing them with band-aids of superficial self-esteem building, rather than focusing on strengths and competency building. I shudder when I hear adults dismiss children or adults who are "acting out," as if their attention-getting behaviour is best ignored.

Of course they're acting out; they're acting out their pain, fear, confusion, uncertainty, questioning, and anger.

If we choose to disregard their behaviour or are too quick to label, they may need to "act out" in more attention-getting ways. I remember a child whose diagnosis was discussed by a team of psychologists and their consulting psychiatrist: was it "defiant personality disorder" or "borderline behaviour" with the possibility of "psychic splitting"?

The wise professional who'd been working with this child wisely chimed in with her hypothesis: "scared kid." I don't mean to suggest that DSM-IV categories and serious mental health issues exist, only that we ought not to forget that behind every label is a scared kid.

8. Expressions of grief assist in the healing process, but the form that expression takes varies greatly. What matters most is feeling understood.

The role of emotional health and expression has received increasing attention from researchers over the last decade. Psychologist James Pennebaker (1990), one of the foremost authorities in this area, has conducted and cited dozens of research studies illustrating the interplay between emotional expression and physical and mental health.

Two aspects of this are frequently misunderstood, however. One is the subtle difference between feeling and expressing emotion, and rumination. The word rumination derives from the Latin root, "*ruminare*," meaning throat. A "ruminant" is a classification of hooved mammals including sheep, goats and deer, who "chew cud" (ruminate). Cud is literally regurgitated, partially digested food. Healthy expression is not just endless emotional cud chewing, regurgitating partially digested feelings. This is where it gets tricky: who distinguishes between healthy and unhealthy digestion? When does healthy feeling become rumination?

A second misunderstanding revolves around the nature of helpful expression. It appears that it's not just expressing that helps, but in believing we're understood. Pennebaker (1990) asserts that "early childhood traumas that are not disclosed may be bad for your health as an adult." (p.19, 20). But we shouldn't automatically assume that the person who chooses not to disclose in ways we deem acceptable is unhealthy, isn't grieving, or isn't doing it right.

9. We'd be better off reframing emotions as messages from our souls to be embraced rather than enemies to escape from.

"Depression is inspiration without form," a wise therapist once told me, and it was the first time I'd conceptualized uncomfortable emotions as positive signals rather than enemies. But we live in cultures where we've institutionalized escape routes at the onset of discomfort: pharmaceuticals and other legal drugs (alcohol, nicotine), compulsive shopping, eating, TV watching, (name your poison). After loss of any kind, it's normal, natural and healthy to have feelings that, well, don't feel so good! When we try to push them out of our consciousness, they don't go away...they simply simmer on back burners.

I don't mean to suggest that medication is never warranted, or that we should sink into despair from emotional storms. But I've noticed that we encourage our children and adolescents to run from, bury, or ignore their emotions much more than we model healthy expression.

Often it's because we don't like the form the emotion displays itself in. Anger is a great example. Rather than finding healthy modes of expressing justified anger, we tend to stifle it because we don't like how it looks. Instead of saying, you're angry because your father died, and I would be too, and finding healthy ways to vent that anger, we say I don't like what you're doing with that anger, so stop it. Then they have even more to be angry about!

10. Shakespeare got it partially right when he advocated to "give sorrow words..."

...but he was, after all, a writer. A fellow writer, the poet William Wordsworth, was said to suffer such shock after his brother's death by drowning that he didn't speak for two months. When he regained his voice, he wrote: "A deep distress hath humanized my soul."

Picasso may have advocated to "give sorrow paint..." and Beethoven to "give sorrow song..." -- and none of them are wrong.

Sorrow needs expression, but it's not always with words. The more tools and permission we provide for children and adolescents, the more likely they will find their own forms of expression rather than the narrow options we might offer.

Give sorrow words, yes, but also paint and glue and hammers and nails and long walks and quiet and music and play and all other possible forms of expression, including silence.

11. Children need, want, and deserve honesty, truth, and choices.

I've watched many adults struggle with what to tell children after a death. I usually ask them to tell me what happened, and when they're finished I say "that's what you tell them." We build trust by giving honest answers to the questions children ask, even when that answer is "I don't know."

Allowing children informed choice and multiple options rather than making decisions for them helps them regain a sense of stability after their worlds have been rocked by loss and by the realization they can't control everything that happens.

None of us can, of course: all we can control is how we respond. But we shouldn't assume we always know what's best for them. The mother of an 8-year-old girl whose three brothers and father were killed in a crash was advised to let her daughter decide whether she wanted to see the bodies of her brothers and father. She carefully explained how they would look, what the setting would be, and her concern that the images of the dead would be her daughter's lasting memory.

The daughter vehemently replied, "If I died and they didn't come see me, I'd be SO angry! I know they'd want me to see them and say goodbye." She did view the bodies, and proudly describes how she made the choice and what it meant to her.

When we allow for informed choices, we bypass the common complaint that children were either forced or not permitted to attend or participate in decisions around the deceased. We also empower them to regain some lost control, and to take responsibility for the decisions they make.

12. The best thing adults – parents, counsellors, therapists, teachers, youth workers, aunts, uncles, neighbours – can do for grieving children is to listen.

- To listen - that is - not just with our ears, but with our eyes, our hearts, and our souls.
- To not presume we have (or have to have) answers.
- To allow for individual differences.
- To not rush into judgment or pat answers.

Grieving the death of a loved one (or a hated one) is a process that unfolds in different ways, time frames, styles and intensities. I believe our foremost job is to listen.

One of the reasons I'm still in this field after 16 years is that I continue to learn from the children, adolescents and adult care givers who share their stories with us at *The Dougy Center*. While I was interviewing children who had a parent suicide, a teenaged boy named Philip described an interaction he had with his deceased mother in a dream. He asked her why she'd killed herself and she told him that she knew she'd never be well, that she wanted him to have a life free of her antics and unpredictable behaviours.

Philip looked at me and said, "so I told her I understood, and I forgave her." With my therapist hat, I thought how healthy that sounded. He quickly added, "please don't tell me father about this."

I suspected he didn't want his father to know because he might think Philip was batty, talking to his mother in dreams.

I thought I knew what he'd say, but for some reason I asked him why he didn't want his father to know. When he replied, "oh, because he'll want me to ask her all kinds of other questions..." I was reminded anew that young people like Philip are my teachers: I am the student. When we remember this, magical healing happens.

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What is "normal" in grieving?

10.3.2 Commonly asked questions about grief

How long will this go on?

The journey through grief is a highly individual experience. Rather than focus on a timeline it is perhaps more helpful to focus on its intensity and duration. Initially grief is overwhelming and people can feel out of control.

With time people find they have more ability to choose when they access memories and emotions. The intensity of grief is related to the degree of attachment to the person, relationship to the deceased, level of understanding and social support from others, personality and the nature of the bereavement.

Am I going mad?

It may certainly feel like it at times! Particularly if the individuals need to grieve is out of step with social and cultural expectations. Grief affects people physically, emotionally, psychologically and spiritually.

People may be required to make adjustments to their lives and learn new skills, at a time when they feel least able to do so. Receiving validation and permission to grieve is important in the recovery and healing process.

Do I have the right to inflict this on others? What can I expect of them and they of me?

Others may feel intensely uncomfortable with the emotion and the pain of the bereaved to the point of feeling helpless. The anxiety this causes may mean that the bereaved person might feel they are being avoided - increasing feelings of isolation.

It is important that the grieving person is assertive about their needs and wishes, and it is helpful if they communicate with family, friends, and colleagues rather than leave them guessing about what would be useful and comforting.

Never underestimate the power of listening and being a warm presence. There are no magic words or actions. Trust your ability to care taking into account your relationship with the person you are trying to help.

Is there a right way and a wrong way of coping with grief?

People are individuals with personalities and life experiences, which influence the way in which they deal with grief. People's style of grieving must be respected and in this sense there is no right or wrong way of coping. However it is generally believed that the amount of support people receive can ameliorate some of the impact of grief and facilitate recovery.

People often have an awareness about what they need to do to feel better but feel inhibited or judged and don't act on their inclinations. Talking about what is happening, what they are going through, expressing emotion and being in a supportive and accepting climate is generally helpful. Both religious and cultural factors may impact upon a person's feelings of "right" or "wrong ways" to deal with their grief.

How do I know when I need help?

Reassurance from others who have also experienced grief and an understanding of what people have commonly undergone when grieving can be a helpful yardstick. Any continued fears or anxieties about your well being or thoughts of self-harm should be addressed by seeking help. Prolonged intense emotion or obsessional thought or behaviour that make functioning difficult may also require help.

Stages of grief

Grief does not follow a linear pattern. It is more like a roller coaster, two steps forward and one step back. Ultimately people manage to integrate the experience to the point of having a new life arising

from the old. The loss remains and is always remembered, but the intensity is no longer disabling or disorganising.

Much of grieving is about expressing emotion- some may be unfamiliar, and unacceptable to self or others, e.g. anger, guilt, remorse. Finding a safe place and an accepting person for support to work through all the effects of bereavement is important.

The amount of support available from family and friends may be limited if they too are grieving. Misunderstandings can arise when people experience different responses to a shared loss.

External supports may then become a vital factor in understanding and expressing your grief. It is important to know that you can survive the experience and that the new life that eventually comes about may have very positive effects despite the difficulty of arriving at this point.

Does counselling help?

It is important to say that grief is a normal response to loss and that people work through the loss with the loving support of family and friends. However, for a variety of reasons it may be necessary to seek professional help in the form of counselling.

Counselling may initially intensify painful feelings as the external distractions are removed, and the client is able to focus on their experiences and explore them fully.

People who are grieving may need to talk about their story over and over again and are often concerned about the 'wear out' factor on family and friends, especially if details are very distressing.

Equally they may find that others have unrealistic expectations of their recovery or experiences. Where people have to continue on in roles as parents or carers counselling may provide valuable time-out for their own need to grieve and receive support.

A supportive, safe and accepting environment and time set aside regularly can make a great difference. It may provide comfort and hope at a time of great confusion and crisis.

Ten Ways to Help the Bereaved

- Be present and attentive to the bereaved person.
- Allow for moments of silence and reflection.
- Listen in a non-judgemental and accepting way.
- Avoid the use of clichés such as 'Think of all the good times',
- Mention the deceased person's name and encourage the bereaved person to talk about them.
- Offer practical and emotional support e.g. by minding children or cooking a meal.
- Understand that tears are a normal and healthy part of the grieving process.
- Don't try to fill in conversations with a lot of outside news.
- Remember that grief may take years to work through.
- Acknowledge anniversaries and dates of significance for the bereaved person.