

Compensation and Occupational Lung Disease

Occupational Lung Diseases (OLDs) are caused by breathing in dust, fumes, gases, or other hazardous agents in the work environment. If your work environment has caused or contributed to the development of your OLD, you may be eligible to make a compensation claim. This factsheet answers some common questions you may have about making a compensation claim, as well as information on seeking legal advice.

I have been diagnosed with an OLD

Am I eligible to make a claim?

If you have been diagnosed with a lung disease that your current or former workplace contributed to, or increased the risk of developing, you may be eligible to make a compensation claim. There are time limits for making compensation claims once you have been diagnosed with an OLD in most Australian states and territories. If you do intend to make a claim, you should do this as soon as possible.

In many instances, you may still be eligible to make a compensation claim despite how long it has been since your diagnosis. This is also the case if you were exposed to the hazard a long time ago, or if the exposure occurred at a business that is no longer operating.

Should I contact a lawyer to help me make a claim?

A lawyer who specialises in OLD claims can assist by providing advice to ensure you are fully informed of your legal rights and entitlements. Contacting a lawyer can be done via telephone or email inquiry and most lawyers in the field will offer an initial appointment free of charge. In many instances, the claim can be pursued on a “no win, no fee” basis, which means you do not have to pay for the service up-front. It is recommended you discuss the fee structure upfront to ensure you are fully aware of any costs associated with consulting a lawyer.

The legal test to be eligible for compensation and the types of entitlements available differs in each state and territory, but a specialist lawyer will be able to give you more information about the entitlements that may apply to you.

Am I eligible to make a claim if there may be more than one cause of the disease?

The law takes into account that diseases can have more than one contributing factor. Even if there is more than one cause of the disease, you may be able to receive compensation. For example, if a person has been a previous smoker, they may be able to receive

compensation if it can be proven their work was also a factor in the development of their disease.

If I do make a claim, what am I entitled to?

Compensation entitlements and systems are different in each state and territory. You may also be able to access, through the claim, funding for a professional carer or for help with tasks such as cleaning or gardening.

The compensation you may be able to receive will depend on several factors, including:

- How you were exposed to the hazard (whether at home or at work)
- The state or territory where your exposure to the hazard took place
- The type of disease and level of disability you have as a result of your exposure to the hazard
- Whether you were a Commonwealth employee at the time of exposure (such as military or navy personnel).

Though it varies, the compensation entitlements usually include or cover the following types of compensation:

- Pain and suffering or a statutory lump sum for permanent impairment (in some instances, you may be eligible for both)
- Loss of wages or profits
- Care for nursing and home help services, including costs for childcare
- Medical expenses and treatment costs.

What is the process for making a claim?

Each state and territory has a different process for making a compensation claim. Lung Foundation Australia’s online **National Directory** can be used to identify the compensation agency in your state or territory.

Speaking to a lawyer who specialises in OLD will be of benefit to assist you with gathering information to make a compensation claim.

The first appointment, which is usually one to two hours, is an opportunity to ask questions and understand how a claim will apply to your personal circumstances. It should be without any obligation to proceed forward and there should not be a cost if you decide not to proceed.

Lawyers who specialise in OLD claims are familiar with the toll lung diseases can have on a person, their family and work. They will try to minimise any inconvenience and stress involved with making a claim by offering a simple and thorough approach.



Your lawyer will be able to advise you on the documentation you will need to prepare your claim and will help you to gather the information. Some of the information required will include your employment and medical records.

How long will it take to receive my entitlements after I have made a claim?

Time frames will depend on your personal circumstances. In certain circumstances, some form of compensation support may be accessed quickly, for example, basic entitlements to wage replacement income support and medical expenses.

In circumstances where a person is very unwell, there are mechanisms to 'fast-track' the claim.



What will happen if I am in the process of making a claim and I pass away?

In many states and territories, some steps must be taken within a person's lifetime to protect certain entitlements to compensation.

There are often different rules for 'dust diseases' (diseases caused only by dust) compared to other types of OLDs (diseases caused by hazardous agents other than dust).

If you have a dust disease, in some states or territories there are certain entitlements that can be continued for the benefit of your estate if you pass away during the compensation claim process. This means that the claim can continue for your family, even if you pass away while it is ongoing.

For conditions that are not caused by dust, different rules typically apply.



Will my workplace know I made a claim? If so, will this affect me?

Your workplace is likely to be informed if you make a compensation claim. If they are your current employer, usually the initial claim must be provided to your employer so that they can inform their insurer.

In all states and territories, there are protections in place to safeguard employees from discrimination and unfair dismissal following the lodgement of a compensation claim.

If you are a family member or caregiver of a person diagnosed with an OLD



Can I make a claim as a dependent of a family member who has passed away due to OLD?

A claim may be made for your family member if:

- They were still working at the time
- They were diagnosed with OLD
- You were financially dependent on their earnings and/or domestic care and support they provided you.

The compensation available may include:

- A lump sum payment
- Pension for dependant partner and/or children
- Counselling services
- Reasonable funeral expenses.

Time frames exist for dependency claims, so it is best to do this as soon as possible. A lawyer specialising in OLD can assist with this process.



Can I receive entitlements as a carer of a person with OLD?

Compensation systems are designed to provide support to the person living with an OLD. This means that their carers cannot usually access compensation directly.



For more information on occupational lung disease, visit our website to find information tailored to you.

Lungfoundation.com.au | Freecall 1800 654 301 | enquiries@lungfoundation.com.au

Note to reader: This information is intended as a general guide only and is not intended or implied to be a substitute for professional advice. While all care is taken to ensure accuracy at the time of publication, Lung Foundation Australia and its members exclude all liability for any injury, loss or damage incurred by use of or reliance on the information provided.

Published: September 2023

In partnership with

