

The Shopfront

YOUTH LEGAL CENTRE

Victims compensation

1 Introduction

The New South Wales victims compensation scheme allows victims of violent crime to receive:

- counselling
- financial compensation injuries suffered
- payment of medical and related expenses

Although a victim is entitled to claim compensation directly from the offender, this is usually very difficult or even impossible. Victims of violence can instead be compensated through a government fund, which is governed by the *Victims Support & Rehabilitation Act 1996* (Act) and administered by the Victims Compensation Tribunal (VCT).

2 Eligibility

For a person to be eligible for financial compensation, counselling or expenses:

2.1 Act of violence

The applicant must be a victim of an **act of violence** (for example, assault, sexual abuse, stalking, or robbery where violent threats are made).

It is not necessary for the offender to have been convicted. It is sufficient if the VCT is satisfied on the balance of probabilities that the act of violence occurred. it doesn't matter if the offender can't be held criminally responsible because of their young age or mental impairment.

A victim can be either:

- (a) A **primary victim**: the person injured by the act of violence or in trying to prevent the offender committing the act, or
- (b) A **secondary victim**: a person who has witnessed, or become aware of, an act of violence committed against a close relative, or
- (c) A **family victim**: a close relative of a murder victim.

2.2 Injury

The applicant must have suffered an **injury** (physical or psychological) as a result of the violence. Types of injury are discussed below under 'claims for compensation'.

2.3 Time limit

The application must be made **within two years** of the act of violence. Applications may be accepted **outside the two year limit** in some circumstances, usually where the matter involves sexual assault, domestic violence, or a victim who was a child at the time of the offence.

3 Exclusions and reductions

3.1 Exclusions

The Act prevents a victim from claiming if:

- (a) The act of violence was committed when the victim was **servicing a prison sentence** (this does not include being on remand, serving time for fine defaults, or doing a control order in a juvenile detention centre). Sentenced prisoners may be able to claim compensation in special circumstances (eg a serious and permanent injury);
- (b) The act of violence was committed while the victim was engaged in behaviour constituting any criminal **offence**
- (c) The injury arose in the course of a **motor accident**
- (d) The injury is work-related and is covered by **workers' compensation**, or
- (e) The victim has already received, or is claiming, **compensation through the court which convicted the offender** (Part 4 of the Act allows the court to order the offender to pay compensation directly).

Even if the victim is eligible, he or she will not receive any financial compensation if the total amount of compensation claimed doesn't reach the **threshold of \$7,500**. The Act sets out a table with the amounts that can be claimed for each injury relating to the particular act of violence (see 'claims for compensation' below for an explanation of how compensation is calculated).

3.2 Discretion to refuse or reduce compensation

The VCT may refuse a claim, or reduce the amount of financial compensation, if:

- (a) the crime was **not reported to the police** within a reasonable time, or the victim did **not co-operate with the police** in the prosecution process. Compensation will not be affected if there is a good reason why the victim didn't report the crime or co-operate with the police (for example, the victim is a young child, has a real fear of retribution) or if the crime was reported to a relevant agency (eg DOCS) or health care professional.
- (b) the victim was involved in **contributory behaviour** (for example, provoking an assault)
- (c) the victim fails to take reasonable steps **to mitigate or reduce the extent of the injury** (for example, seeking appropriate medical advice, treatment or counselling)
- (d) there is a likelihood that the **offender would benefit** from the award of compensation.

4 Claims for financial compensation

4.1 Compensation for injuries

A victim can be compensated for physical or psychological injuries.

- (a) **Physical** injuries are fairly straightforward: there are many types of injury listed in the table at the end of the Act.
- (b) **Psychological or psychiatric injury** requires the diagnosis of a psychological or psychiatric disorder which results in significant impairment of that person's day-to-day ability to function. A claim of this type must be accompanied by an assessment written by an Authorised Report Writer (a psychologist or psychiatrist approved by the VCT). It is not possible to claim under this category unless you are a victim of armed robbery or kidnapping, or your injury is severely disabling.
- (c) **Sexual assault** is a category of injury on its own. It does require proof of some form of injury, be it physical or psychological, but it does not require a psychological or psychiatric disorder. A claim for sexual assault will usually be accompanied by a report from a psychologist, psychiatrist or counsellor, but this does not have to be an Authorised Report Writer.
- (d) **Domestic violence**, like sexual assault, is a category of injury on its own, and is dealt with in a similar way.

The amount that can be claimed is determined according to a table which sets out **rates of compensation** for different types of injuries. For example, the amount of compensation for a broken jaw is \$7,200; for loss of a front tooth \$3,600; for domestic violence \$7,500–\$10,000; for a serious sexual assault or a pattern of sexual abuse, a victim can expect to receive \$25,000–\$50,000.

If a victim suffers **multiple injuries**, he or she can claim the full amount for the most serious injury, plus a percentage of the specified amounts for the second and third most serious injuries.

4.2 Maximum and minimum amounts of compensation

The compensation received by victims under the scheme is generally a lot less than the amount they would receive in a successful civil action against the offender. However, the difficulty (and cost!) of bringing a civil action and actually recovering the money directly from the offender is enormous.

- (a) The **maximum** amount of compensation payable to a single victim is **\$50,000** for any one act of violence. Where there are multiple victims of one act of violence (eg several family members of a murder victim), the maximum total is still \$50,000, which will be split amongst the victims.
- (b) The **minimum** amount is **\$7,500**. This is to keep out claims which are supposedly trivial, but unfortunately it means that many people with legitimate claims may not be entitled to anything.
- (c) Victims who are awarded compensation of **\$20,000** or less will have **\$750** deducted from their award (the reason for this is not clear, but it seems to be similar to an insurance excess).

4.3 Legal and other costs

The victim's legal fees will be paid for by the VCT after the claim is finalised. Legal fees will usually be paid even if the claim is not successful. **A lawyer is not allowed to charge the victim any up-front fee.**

However, a victim may still have to pay up-front for costs such as medical records and psychiatric reports. These will eventually be reimbursed by the tribunal if the claim is successful (or even if the claim is unsuccessful, in many cases).

5 Expenses, loss of earnings and loss of property

5.1 With an award of financial compensation

In addition to the amounts set out in the table (which are basically meant to compensate for pain and suffering), a victim can be compensated up to \$10,000 for:

- (a) **expenses** (such as costs of medical treatment and medical reports)
- (b) **actual loss of earnings**, and
- (c) **loss of personal effects**, only if it is incidental to the main injury (for example, if a victim had their glasses smashed or their wallet taken in the course of an assault or robbery).

5.2 Without an award of financial compensation

Victims who cannot get financial compensation because their claims do not meet the \$7,500 threshold can still have some of their expenses reimbursed.

A victim can claim for:

- ambulance
- dental
- physiotherapy
- replacement or repair of prescription glasses or contact lenses
- domestic assistance (eg personal care or home help) during the victim's recovery
- cleaning of property (other than clothing or other wearable items), and
- security measures.

The total amount of expenses claimed must be between \$200 and \$1,500, and cannot be more than \$500 for any one item.

6 Counselling

Victims can also have **counselling** paid for by the VCT. This is separate to the award of compensation and is not deducted from the amount awarded.

Some victims who may be ineligible for compensation (eg may not meet the \$7,500 threshold) may still be entitled to counselling.

The victim can initially apply for **two hours of counselling**, and then in **blocks of twenty hours**. A list of approved counsellors is on the Victims Services website.

7 How to apply

7.1 Application forms

The victim must submit an application form, copies of which are available from the Tribunal or on the Victims Services website (www.lawlink.nsw.gov.au/vs).

The form must be accompanied by documents which may include:

- (a) **medical reports** to show the extent of the injury and how it is likely to affect the victim in the future. Where the injuries are **psychological** rather than physical, the victim will need a **psychiatric or psychological report**. If the victim is claiming under the category of psychiatric/psychological injury the report must be done by an Authorised Report Writer (there is a list of these on the Victims Services website).
- (b) **receipts** for expenses such as reports, treatment or prescriptions
- (c) copies of any **statements** made to the police (only if the victim has them—the VCT will obtain a copy of the police report anyway)
- (d) in some cases, a **statutory declaration** from the victim explaining in more detail the circumstances of the offence and addressing any allegations of contributory behaviour.

7.2 Legal representation

Given that legal fees are paid by the VCT, it is usually best to get a solicitor to prepare the application, particularly if it is a complex claim involving multiple acts of violence and/or psychological injury.

Many Community Legal Centres prepare victims compensation applications or can refer clients to private lawyers who can assist. Further information can be obtained from the Combined Community Legal Centres Group on (02) 9318 2355 or at www.nswclc.org.au.

8 How the claim is determined

8.1 Who makes the decision?

Applications are dealt with by assessors at the VCT. The assessor reads the application and supporting documents, and determines the claim according to the Act and any guidelines issued by the VCT.

Nearly all claims are decided on the papers, without a hearing. The offender is not contacted and has no involvement in the process at this stage.

A Tribunal Member (a magistrate) will only become involved when the assessor considers that the matter requires a hearing, or the chairperson of the VCT considers that a decision of an assessor should be reviewed. Usually this will be in complex matters where there are issues of law to be decided.

8.2 How long does it take?

The VCT tries to process ‘simple’ applications within a few months. However, most applications will take a lot longer—up to two years in some cases.

Once the award has been made, the victim must then fill in an ‘application for payment’ and wait a further month or so before getting paid. If the victim is under 18, the money will usually be paid to a trust fund.

9 Appeals

A victim who is not satisfied with the amount of compensation awarded by the assessor may appeal to the VCT. The appeal must be lodged within three months of receipt of the assessor's determination; extra time may be allowed in exceptional circumstances.

The appeal will be heard by a Tribunal Member, who is a magistrate. Generally, new material or evidence will not be accepted at the appeal, unless there is a good reason.

A victim who is unhappy with the magistrate's decision may appeal from the tribunal to the District Court, but only on an issue of law. Again, an appeal to the District Court must be lodged within three months.

10 Recovery of compensation from the offender

Where possible, the tribunal will attempt to recover any amount paid out in compensation from the offender. This is called **restitution**. Whether restitution is successful or not will not affect the victim's claim for compensation. For more information, please see the separate document on 'Recovery of Compensation From Offenders.'

11 Victims Compensation Tribunal contact details

Victims Compensation Tribunal
Locked Bag A5010, SYDNEY SOUTH NSW 1235 *or*
Level 5, 299 Elizabeth Street (corner Liverpool Street), Sydney 2000
Tel: (02) 9374 3111 or 1800 069 054.
Fax: (02) 9375 6455
www.lawlink.nsw.gov.au/vs

The Shopfront Youth Legal Centre Updated April 2007

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The Shopfront Youth Legal Centre is a service provided by Freehills, in association with Mission Australia's Sydney City Mission and the Salvation Army.

This document was last updated in April 2007 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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