

# Criminal injuries compensation schemes: a national overview

By Andrew Freer

Each jurisdiction in Australia has a criminal injuries compensation scheme designed to assist victims of crime. These schemes provide an alternative to direct civil action against the offender.

**F**or a victim who sustains personal injury as a result of criminal conduct, an application to the relevant criminal injuries scheme is often a less stressful option and a more secure means of obtaining compensation, or at least financial assistance. Various forms of criminal injuries compensation schemes currently operate in each Australian jurisdiction. This article outlines the schemes in each jurisdiction.

## AUSTRALIAN CAPITAL TERRITORY

### *Victims of Crime (Financial Assistance) Act 1983*

The Act provides for the recovery of reasonable expenses and lost wages. Lump-sum assistance is limited to those who qualify for a 'special assistance' payment of \$30,000 by establishing an extremely serious and permanent injury. The definition creates a significant threshold and few such payments have been made. A pain and suffering component remains available to emergency service workers and victims of sexual assault. However, the availability of lump-sum assistance by way of recognition of pain and suffering under these exceptions is currently under review.

The scheme is one of last resort. A maximum limit of \$50,000 applies. The injury must be the result of a violent crime. The Act contains a schedule of offences that are defined as violent crimes. There is a requirement that a report is made to the police. There is no requirement that an offender must be charged or convicted.

Applications are made in the magistrates court. There is a 12-month time-limit for making the application,

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with provision for seeking an extension if it is just to do so. Legal costs, which are capped at \$650, are not recoverable. Disbursements are recoverable.

Information is available via the ACT Government website:  
<http://www.act.gov.au/index.jsp>  
 (and search for 'victims services').

## QUEENSLAND

### ***Criminal Offence Victims Act 1995 ('COVA')***

Where there is a convicted offender, a victim must initially apply for an order for compensation against that offender. In magistrates court matters, the application must be made at the time that the offender is sentenced. If, for some reason, the court cannot order the offender to pay compensation, or if the offender can't pay, there is a process for making an application for an ex gratia payment directly from the state government.

In considering an ex gratia payment, the government assesses:

- the injuries suffered;
- the impact of the injuries;
- any contribution made by the claimant in any way to their injuries; and
- the general conduct of the victim at the time of the incident.

This system covers physical injury, mental or nervous shock. There is generally a three-year time limitation period within which to make claims.

Since 18 December 1995, the maximum available for injury is \$75,000. There is a schedule of injuries, which includes the maximum amount payable for mental or nervous shock of \$25,500. COVA does not allow claims for loss of wages, economic loss, or the cost of medication, doctors or hospitals, or any legal costs.

Information is available from the following website: [www.justice.qld.gov.au/courts/about/compo/htm](http://www.justice.qld.gov.au/courts/about/compo/htm)

## SOUTH AUSTRALIA

### ***Victims of Crime Act 2001***

The Act came into force on 1 January 2003. The legislation covers:

- the use of violence or a threat of violence;
- a reasonable apprehension of imminent harm;
- a sexual offence; and
- an offence causing death or physical injury.

It is a scheme of last resort. Generally a three-year time limitation period applies to make claims.

The South Australian system incorporates a scale from 0 to 50. The maximum award is \$50,000. Legal costs are recoverable under s25 of the Act in accordance with the prescribed scale. The current regulations permit \$1,000 plus GST plus reasonable disbursements.

Information is available from the following website: <http://www.voc.sa.gov.au>

## NORTHERN TERRITORY

### ***Crimes (Victims Assistance) Act***

In the Northern Territory, victim assistance is governed by the Act which came into force as at 7 July 2003.

An application should be made within 12 months. The Act provides for the provision of an assistance certificate to the victim. The assistance ordered may include expenses actually incurred, pecuniary loss, pain and suffering, loss of amenities and expectation of life. It does not include grief. There is a limit of \$25,000.

The provisions relating to legal costs are unique. Legal costs as between the legal practitioner and the applicant are allowed by the court on the application of the legal practitioner.

Legal costs for an application resulting in an assistance certificate that specifies an amount not exceeding \$5,000 are as follows:

1. A fee of \$750 for work up to and including the first pre-hearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application,

attending the mention and the first pre-hearing conference;

2. \$1,050 if there is also an application to extend time;
3. An additional fee of \$350 for further work up to the hearing of the application, or \$700 if the work involved requires obtaining police records or evidence from witnesses;
4. An additional fee of \$400 if the hearing is less than half a day and \$800 if it doesn't exceed one day;
5. \$400 for each subsequent day of hearing; and
6. All reasonable disbursements, excluding counsel's fees.

If the assistance certificate specifies over \$5,000, the following applies:

1. A fee of \$1,000 for the first phase or \$1,300 if there is also an extension of time;
2. \$400 for further work or \$800 if it requires obtaining police records or evidence from witnesses;
3. An additional fee of \$500 if the hearing is less than half a day, and \$850 if it doesn't exceed one day;
4. \$500 for each subsequent day of hearing; and
5. All reasonable disbursements, excluding Counsel's fees.

As an alternative, it appears that the legal practitioner can claim at 40% of the Supreme Court Scale.

Information is available from the following website: <http://www.nt.gov.au/justice/textpages/legservs/dpp/vicsup.shtml>

## WESTERN AUSTRALIA

### ***Criminal Injuries Compensation Act 2003***

Compensation can be sought for an incident reported to the police regardless of whether or not a person has been identified, charged, or convicted of the offence. The Act is designed to provide compensation for suffering bodily harm, mental or nervous shock, or pregnancy, resulting from an offence. Compensation is available for:

- pain and suffering;
- loss of enjoyment of life;
- loss of income;
- medical expenses; and

• other incidental expenses. An application must be lodged within three years from the date of the offence, but there is provision for an extension of time. Legal costs cannot be reimbursed.

Assessments are made in accordance with the Act. For offences committed after 1 January 2004, the maximum amount available has increased to \$75,000.

Information is available from the following website: [www.justice.wa.gov.au](http://www.justice.wa.gov.au)

**NEW SOUTH WALES**

***Victims Support & Rehabilitation Act 1996***

In NSW the criminal conduct must constitute an act of violence and the injury sustained must be one that is specified in the schedule of injuries. Lump-sum entitlement is established using a schedule of injuries. Generally a two-year time limitation applies.

\$50,000 is the maximum amount available. Subject to the maximum threshold, an amount of \$10,000 is available for loss of earnings and medical expenses. Compensation for an injury that is being claimed must exceed \$7,500 (excluding expenses), otherwise the claim will be dismissed.

Legal fees are paid in accordance with the prescribed rate, generally \$750 plus GST, together with reasonable disbursements.

Information is available from the following website: [www.lawlink.nsw.gov.au/v.msf/pages/vx\\_index](http://www.lawlink.nsw.gov.au/v.msf/pages/vx_index)

**VICTORIA**

***Victims of Crime Assistance Act 1996***

The Victorian Act came into operation on 1 July 1997. For compensation to be paid, the act of violence/crime must have been punishable on conviction by imprisonment and must have resulted in injury or death. It is a scheme of last resort.

The primary victim may be awarded up to \$60,000 to cover expenses for

counselling, medical expenses, loss of earnings of up to \$20,000 and other miscellaneous expenses plus any special financial assistance. Special financial assistance is an award of up to \$7,500 for certain types of offences.

In addition, legal practitioners must complete an 'Amounts Payable to Solicitor' section of the statement of claim form. This section must set out the claimed costs of the legal preparation of the application, and also gives details including receipts and accounts for any disbursements to be reimbursed by the tribunal.

Information is available from the following website: [www.justice.vic.gov.au/victimsofcrime](http://www.justice.vic.gov.au/victimsofcrime)

**TASMANIA**

***Criminal Injuries Compensation Act 1976***

The Act provides for compensation where a person is killed or suffers injury. Compensation may be awarded for expenses incurred, pecuniary loss as a result of incapacity for work, pain and suffering.

A maximum award shall not exceed a prescribed maximum or, if no such maximum is prescribed in respect of that conduct, \$10,000. The scheme will pay reasonable costs for work undertaken by a solicitor.

Information is available at the following website: <http://www.justice.tas.gov.au/vau/cic-info.htm>

**CONCLUSION**

As is apparent, significant differences apply between jurisdictions. Identifying strengths in particular schemes and lobbying for them to become the lowest common denominator across all jurisdictions can only bring about better outcomes for victims of crime, whatever their location. ■

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- Radiology
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