

Victims of Crime Compensation



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Victim Support Service... providing services statewide.

Victim Support Service (VSS) is not qualified to offer legal advice. This brochure only describes our interpretation of procedures which apply. Please note that VSS is not involved in the decision-making processes related to Victims of Crime Compensation and does not administer the Fund.

If after reading this booklet you have further questions, contact VSS in your local area (see back cover of booklet).

Further enquiries can also be directed to:

- Attorney-General's Department
Victims Compensation Section
Phone: (08) 8207 1687
- Courts Administration Authority
Victims Compensation Applications
Phone: (08) 8204 0287

What is Victims of Crime Compensation?

Victims of Crime Compensation (VOCC), previously known as Criminal Injuries Compensation, is state-paid compensation to provide immediate victims of a criminal offence some recompense for injury sustained as the result of that crime.

Compensation can be awarded for:

- pain and suffering – which can include physical injury, emotional and psychological illness, shock and pregnancy.
- financial losses – including loss of earnings or reduced ability to earn that flows from the injury.
- past and/or future treatment costs.

Money in the VOCC Fund comes from a number of sources including confiscated proceeds of crime, a levy on convictions, traffic fines and funds provided by the Government.

Any money awarded through VOCC is drawn from the Victims of Crime Fund which is administered by the Attorney-General's Department. The amount that you can claim depends, primarily, on how badly you were injured.

Who can apply?

A person is eligible to claim VOCC if they are the immediate victim of a crime which took place in South Australia, and at least one of the following applies:

- the crime involved either violence or a threat of violence to the victim or an immediate family member.
- the crime created an imminent risk of harm to the victim or an immediate family member.
- the crime was a sexual crime.
- the crime resulted in death or physical injury.

Immediate family members include: a spouse/domestic partner, parent, grandparent, child/grandchild (including an adult child/grandchild) and brother or sister.

A parent or guardian can apply for VOCC on a child's behalf.

Can I claim compensation for property loss or damage?

No, VOCC is not available in instances of property loss or damage (including damage to a motor vehicle; the replacement of items stolen from a motor vehicle or items burgled from a home; clothing or personal items damaged in an assault). Compensation may, however, be available to you from the following sources:

1. If the offender is known, you can sue them in the civil courts. If the claim is for an amount less than \$6,000, it is classified as a Minor Civil matter and is a fairly inexpensive process. Lawyers are generally not allowed in the court and you would have to present your own case. This would involve coming into contact with the offender.

Before deciding to sue the offender you should:

- seek legal advice.
- consider the strength of your case.
- consider whether the offender has the financial capacity to pay.

Legal Aid is not available for these cases, but free advice is available from the Legal Services Commission on 1300 366 424 (Monday to Friday, 9am – 4:30pm) or the Legal Advice Clinic at the Adelaide Magistrates Court on 13 13 84.

2. When an offender is found guilty of a crime, the court can order him/her to pay compensation to the victim. This can include the cost of repairing or replacing damaged property. To proceed with this you will need to:
 - inform the prosecution acting in your case of your request.
 - provide evidence such as a quote or invoice.

Unfortunately, neither of these options will work if the offender does not have any financial capacity. If the amount of property damage is minimal, the Attorney-General may award a Discretionary Payment to you - see page 11 and 12 for details.

What do I need to do to make a claim?

You should report the crime to the police as soon as possible and provide as much information as you can to help the investigation. Your application for VOCC may be refused if, without some good reason, you fail to co-operate with the police. However, if you think you had a good reason for not reporting the crime, seek legal advice about whether you can still make a claim.

You should see your doctor as soon as possible. You may be emotionally and psychologically and/or physically injured as a result of the crime and may require medical attention. Consulting with your doctor at an early stage may also assist in your claim for VOCC. Your doctor's report of your emotional and psychological and/or physical injuries at the time of the crime, and thereafter, will be considered by the Crown in awarding a VOCC payment.

Each case is individually assessed based on medical reports and other available evidence. It is important for you to keep all of the police reports and any receipts for expenses that result from the crime.

You should consult with a lawyer if you wish to claim VOCC. Victim Support Service can provide the names and contact details of lawyers who deal with VOCC matters.

How much will it cost me?

Many lawyers will provide you with an initial assessment, relating to a possible VOCC claim, without any charge. We do however suggest that you check these details when ringing to make an appointment. The lawyer can advise you about whether or not you have a good chance of being awarded VOCC. The lawyer will gather the required evidence (i.e. medical reports, police reports, etc). You may be charged for these reports, but you can be reimbursed if your claim is successful.

The lawyer will then charge for his or her work, but is not allowed to charge more than a figure fixed by law. If you win the case, the whole of this fee is paid by the VOCC Fund, in addition to any compensation awarded to you.

How much can I claim?

Whether or not you are awarded VOCC will depend on several factors:

- when the crime happened.
- how severe the injury was (or is).
- whether you are found to have contributed to the crime or to the injury.
- whether you cooperated with the police investigation and the prosecution.
- whether you have taken reasonable steps to keep your loss to a minimum.

Where the injury is very minor, you may not be entitled to compensation for pain and suffering, and the payment may be limited to your financial losses.

The rules about the amount that you may claim from the VOCC Fund depend on the date of the crime, as follows:

22/1/1970 to 10/4/1974	\$1,000
11/4/1974 to 30/6/1978	\$2,000
1/7/1978 to 30/7/1987	\$10,000
1/8/1987 to 31/8/1990	\$20,000
1/9/1990 onwards	\$50,000

Seek legal advice for further information on this issue.

In the case of homicide, a claim of up to \$10,000 can be made for grief. This payment is available in the following situations:

- the deceased victim is the spouse/domestic partner of the claimant.
- the deceased is a child (under 18 years) of the claimant.

Claims for grief and funeral costs are made over and above any amount claimed for financial loss (which can include a claim by the dependents of a homicide victim for loss of the victim's support) and/or pain and suffering.

In addition, a maximum of \$7,000 is payable to the person responsible for the payment of funeral costs. In cases where the offender is unknown, claims for funeral costs and/or grief payments can be made directly to the Attorney-General's Department. The claim form is available at www.voc.sa.gov.au

Seek legal advice for further information on this issue.

How long do I have to make a claim?

Adults have three years from the date of the crime to make a VOCC claim.

Victims who were children at the time of the crime, have three years from the time they turn 18 to make a claim (i.e. until their 21st birthday). However, in either instance, it is important not to leave your claim until the last minute. Seek legal advice at an early stage.

In claims arising from a homicide, you have 12 months from the death of the victim in which to make a VOCC claim.

NOTE: You may still be able to make a VOCC claim even if the time limit has expired. You should seek legal advice.

Does the offender have to know?

If an offender is convicted of the crime he or she will be notified if a VOCC claim is made. This is because the Fund will seek to recover any compensation paid to you from the offender. Of course, if the offender is unknown, the claim may still be able to go ahead. Seek legal advice.

What if the offender has not been found or is not convicted?

If the offender has not been identified or is unknown, you may still be able to make a VOCC claim. You will need to produce evidence that a crime occurred and that the injuries and/or losses are as a result of that crime.

There are some situations in which an offender may not be convicted of a crime. Again, you may still be able to claim VOCC if you can demonstrate that there has been pain and suffering and/or financial losses as a result of that crime.

If either of these situations applies to you, seek legal advice.

Do I have to go to court?

In most situations, there will be no need to go to Court. If the Fund thinks you have a strong case, it will usually offer a payment without the need to go to court. However, the claim may result in a trial if the Fund does not think your VOCC claim will be successful, if the offender disputes the amount of compensation awarded or if you and the Fund cannot agree on a fair payment. You may be required to give evidence in these situations.

How long will it take?

The length of time a claim takes to process can vary enormously. If the offender is known and is being prosecuted, you will usually have to wait for the result of the case before your VOCC claim can be resolved. It may not be possible to settle your claim until the course of your treatment is known (e.g. how many counselling/therapy sessions are recommended or what surgery may be required).

If the VOCC Fund wants to arrange for you to be examined by a specialist, this can add a few months, as there is often a long waiting list for medico-legal appointments.

As a guide, simple claims can be resolved in around three to six months from the time your lawyer notifies the VOCC Fund of the claim. However, more complex cases can take one to two years. Claims which result in a trial will obviously take longer than those agreed upon.

In urgent situations, the Fund may approve an Interim Payment until a VOCC claim is finalised. You should consult a lawyer in relation to these payments.

What else can affect my payment?

- Each state has different laws governing VOCC. For further information you should consult with a support service for victims of crime in the state in which the crime occurred. Victim Support Service in Adelaide can provide you with these contact details.
- VOCC is a fund of “last resort”. You will not be awarded VOCC if there is means of compensation from another source. Examples of this include:
 - medical/hospital expenses claimable from a health fund.
 - workers’ compensation.
 - insurance.
- Any injuries or death that arise out of the use of a motor vehicle are not able to be claimed in cases where you are eligible a claim on the Compulsory Third Party Insurance Fund. Seek legal advice on this issue.

There may sometimes be a financial shortfall in these claims that may be covered through VOCC. Seek legal advice on this issue.

Other Payments

An **Interim Payment** is an emergency payment that may be granted by the Attorney-General if you need money urgently. A payment will only be made on a claim that is likely to result in being awarded VOCC and any money paid to you as an Interim Payment will be deducted from any other compensation paid to you from the VOCC Fund. If your claim for VOCC is unsuccessful, the Fund will seek to recover any compensation paid to you as an Interim Payment.

Ex Gratia or **Discretionary Payments** may be awarded by the Attorney-General as an alternative to claiming VOCC.

You may be eligible to claim a **Discretionary Payment** if the level of emotional and psychological and/or physical trauma sustained does not meet the minimum threshold for a VOCC payment. A payment may also be awarded to victims who have incurred a small out of pocket expense as the result of a crime that is not recoverable from any other source (e.g. insurance).

If you wish to apply for a Discretionary Payment, you can write to the Attorney-General (GPO Box 464 Adelaide SA 5001) and explain your situation. You do not need to consult a lawyer in order to apply for a Discretionary payment.

- Include some background details of the crime (e.g. a copy of the police report).
- You do not need medical evidence unless your claim relies on it.
- If you are seeking payment for a specific item, include details of the cost and how it will help you to recover from the effects of the crime on your daily life.

There are no set rules to awarding these payments and the Attorney-General will look at each case individually.

For further information relating to Discretionary Payments, contact the Commissioner for Victims' Rights on (08) 8204 9635 or via email on voc@agd.sa.gov.au

Even if you do not have a legal basis of claim, you may be able to apply for an **Ex Gratia Payment**. This type of payment may be made where a prosecution cannot go ahead (e.g. lack of evidence, or the age or mental capacity of the offender), or where a prosecution goes ahead, but fails for reasons that are no fault of the victim, and the victim can prove injury / financial loss as a direct result of a crime occurring.

An Ex Gratia Payment may also be made when the timeframe for making a VOCC claim has expired, but where there is significant emotional and psychological, physical and/or financial injury sustained by the victim.

It is up to the Attorney-General whether he or she chooses to make an Ex Gratia Payment. It is not a legal entitlement and you should always seek legal advice.

Services available through Victim Support Service:

- Information about a broad range of areas such as:
 - victims' rights.
 - Victims of Crime Compensation.
 - support services.
 - the impact of crime.
 - being a witness in court.
 - 'fact sheets' to assist with reactions to trauma and coping strategies.
- Enquiry line.
- Professional counselling to address the impact of crime.
- Advocacy on behalf of crime victims.
- Assistance with preparation of Victim Impact Statements.
- Court Companion and court preparation service which provides support and information for victims and witnesses for the prosecution.
- Services for those affected by homicide.
- Therapeutic and support groups for crime victims.
- Information about the risks of crime and methods to improve safety.
- Consultancy services for employers and service providers.
- A broad range of training programs.
- Seminars on the criminal justice system.
- Victim Awareness Programs with offenders.
- Presentations to community groups.
- Advocacy for reforms to the criminal justice system.
- Resource Centre and free Borrowers' Club.
- Representation and participation on a broad range of South Australian and national networks.

Services are confidential and free of charge.

Victim Support Service Inc.



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