

Victims of Crime Compensation

If you have experienced a crime, you may be eligible for financial compensation for physical injuries, psychological injuries, financial loss, funeral costs, grief and/or property loss.

This fact sheet outlines the options that may be available to you to claim compensation. The availability of different types of compensation depends on issues such as where and when the crime occurred, the type of crime and the injuries you have suffered.

Further information can be obtained by contacting the VSS Helpdesk on 1800 VICTIM (1800 842846).

1. Victims of Crime Compensation

Victims of Crime Compensation, previously known as Criminal Injuries Compensation, aims to provide immediate victims of a criminal offence some compensation for personal injury and associated loss 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.

Any money awarded through Victims of Crime Compensation 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 seriously you were injured.

2. Frequently asked questions (FAQs) about Victims of Crime Compensation

Who can apply?

A person is eligible to claim Victims of Crime Compensation 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 Victims of Crime Compensation on a child's behalf.

Can I claim compensation for property loss or damage?

Claims for up to \$12,000 are considered minor civil matters. Please refer to the end of this Fact Sheet for more information (*'What other compensation is available?'*).

You can also refer to Factsheet 3.2: Property Compensation.

More information can also be found in the Legal Services Commission Law Handbook: lawhandbook.sa.gov.au.

How much can I claim for personal injury?

The *Victims of Crime Act 2001* (SA) changed on 17 March 2016. As a result, the maximum amount of compensation payable to victims of crime has been doubled to \$100,000.

Most victims of crime under the previous legislation received awards of about \$5,000. They will now get awards of about \$6,000 or \$7,000, providing they meet the minimum threshold.

The changes are not retrospective, which means the increased payouts only apply to crimes

committed from 1 July 2015.

If the crime occurred prior to 1 July 2015, old compensation schemes apply as per the table below:

Time that the crime occurred	Maximum payout
1970 - 1974	\$1000
1974 - 1978	\$2000
1978 - 1987	\$10,000
1987 - 1990	\$20,000
1990 – 30 June 2015	\$50,000
1 July 2015+	\$100,000

Whether or not you are awarded Victims of Crime Compensation 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 treat your injury and to keep your loss to a minimum.

VSS recommends you consult a lawyer.

Further information and the names and details of lawyers who deal with Victims of Crime Compensation matters can be obtained by contacting the VSS Helpdesk on 1800 VICTIM (1800 842846) or info@victimsa.org.

What do I need to do to make a claim?

You should report the crime to South Australia Police as soon as possible and provide as much information as you can to help the investigation. Your application for Victims of Crime Compensation may be refused if, without some good reason, you fail to report the incident, disclose information known to you about the offence and/or co-operate with the police or prosecution. However, if you think you had a good reason for not reporting, disclosing or cooperating, seek legal advice about whether you are still able to make a claim.

The *Victims of Crime Act 2001(SA)* requires the offending to be proven beyond a reasonable doubt. There are two ways this can be achieved:

- guilt established by a court of law, or
- in the absence of a known offender, some independent means of corroborating the victim's version of events (such as CCTV or a witness to the offending).

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 Victims of Crime Compensation. 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 Victims of Crime Compensation 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.

VSS recommends you consult a lawyer.

Further information and the names and details of lawyers who deal with Victims of Crime Compensation matters can be obtained by contacting the VSS Helpdesk on 1800 VICTIM (1800 842846) or info@victimsa.org.

How much will it cost me?

Many lawyers will provide you with initial advice relating to a possible Victims of Crime Compensation claim, without any charge. We do however suggest that you confirm this when contacting a lawyer to make an appointment. The lawyer can advise you about whether or not you have a good chance of being awarded Victims of Crime Compensation. The lawyer will advise you of 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 Victims of Crime Compensation Fund, in addition to any compensation awarded to you.

How long do I have to make a claim?

Adults have three years from the date of the crime to make a Victims of Crime Compensation 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.

VSS recommends you consult a lawyer as soon as possible.

Further information and the names and details of lawyers who deal with Victims of Crime Compensation matters can be obtained by contacting the VSS Helpdesk on 1800 VICTIM (1800 842846) or info@victimsa.org.

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

In some circumstances, you may still be able to make a Victims of Crime Compensation claim even if the time limit has expired. VSS recommends you 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 Victims of Crime Compensation claim is made. This is because the South Australian Government will seek to recover any compensation paid to you from the offender. If you have concerns about the offender being notified, you should discuss this with your lawyer.

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 Victims of Crime Compensation 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 Victims of Crime Compensation 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, VSS recommends that you seek legal advice.

Further information and the names and details of lawyers who deal with Victims of Crime Compensation matters can be obtained by contacting the VSS Helpdesk on 1800 VICTIM (1800 842846) or info@victimsa.org.

Do I have to go to court?

In most situations, there will be no need to go to Court. If the Crown thinks you have a strong case, it will usually offer a payment without going to court. However, the claim may result in a trial if any of the following situations arise:

- the Crown does not think your Victims of Crime Compensation claim will be successful
- the offender disputes the amount of compensation awarded

- you and the Crown cannot agree on a fair payment.

You may be required to give evidence in these situations. You should speak to your lawyer about any court costs.

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 Victims of Crime Compensation 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 Crown 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.

In urgent situations, the Crown may approve an Interim Payment while waiting to finalise your claim. You will have to produce evidence that you are in need of this type of payment.

What is an interim payment?

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 Victims of Crime Compensation and any money paid to you as an Interim Payment will be deducted from the final compensation payout.

If your claim for Victims of Crime Compensation is unsuccessful, the Crown will seek to recover any compensation paid to you as an Interim Payment.

Am I eligible for grief payments?

You may be eligible for a grief payment (of up to \$20,000) if you are:

- a spouse or domestic partner of a victim of homicide
- a child of a victim of homicide (if you were under the age of 18 at the time of the offence)
- a parent of a victim of homicide (if the deceased victim was under 18 years).

You must make an application for compensation to the Crown Solicitor. Application forms can be accessed here: www.voc.sa.gov.au.

Further information can be obtained by contacting the VSS Helpdesk on 1800 VICTIM (1800 842846) or info@victimsa.org.

Can I claim for funeral costs?

Yes. The amount available for funeral expenses has doubled from \$7,000 to \$14,000.

What other compensation is available?

Under the *Victims of Crime Act 2001(SA)*, the Attorney-General can make other payments.

Ex gratia payments

One type of payment – known as an *Ex Gratia* 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 Victims of Crime Compensation 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.

The office of the Commissioner for Victims' Rights (victimssofcrime@sa.gov.au; 08 8204 9635) can provide more information about how to approach the Attorney-General.

Discretionary payments

The Attorney-General has discretion under the *Victims of Crime Act 2001(SA)*, to make other payments if, for example, you do not meet the threshold or requirements for a compensation claim.

A Discretionary Payment can be made to help victims to recover from the effects of the crime on their daily lives. For example, a victim who is traumatised by a death threat could ask to be assisted with home or personal security.

A victim who does not suffer an injury, or whose injury is of only a minor or temporary nature, may not be entitled to compensation, but may still be able to apply for some assistance.

If you wish to apply for a Discretionary Payment, contact the Commissioner for Victims' Rights (on (08) 8204 9635 or via email on victimssofcrime@sa.gov.au) and explain your situation.

You do not need to consult a lawyer in order to apply for a Discretionary payment.

3. What else can affect my Victims of Crime Compensation application?

Sometimes the loss or injury you have suffered is not covered by Victims of Crime Compensation.

You will not be awarded Victims of Crime Compensation if there is a more appropriate form of compensation available to you from another source. This may depend on issues such as where and when the crime occurred, the type of crime and the injuries you have suffered. 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 for a claim on the Compulsory Third Party Insurance Fund.

VSS recommends that you seek legal advice on this issue.

Compensation directly from the offender (for property loss)

At the time the offender is sentenced, the court (i.e. judge or magistrate) can order the offender to pay you compensation. This compensation can be for injury to your physical or psychological wellbeing, or for damage to your property.

The court needs to know all the details of the injuries, and of any loss or damage caused by the offender. You may be asked by police to fill out a Victim Impact Statement. A section of the statement allows you to explain any financial losses relating to the crime.

If the court does order compensation, they will also decide how the offender will pay (e.g. in instalments). If the offender can't or won't pay, the court may take action. If the offender has no money, there may be substantial delays in receiving any money or alternatively the offender may elect to perform community work or serve time in prison rather than actually pay the compensation.

Compensation paid by the offender is only available if s/he has been convicted of an offence and s/he has enough income or assets to pay you in accordance with the order. It is recommended that compensation of this nature be limited to small property loss such as damage to clothing or other personal property.



**VICTIM
SUPPORT
SERVICE**

**1800 VICTIM
(1800 842846)
victimsa.org**

Civil proceedings against the offender (for personal injury and property loss)

You have the right to seek compensation from the offender for personal injuries and property loss. If the offender is known and is a person of substantial financial assets, this is the most effective and appropriate way to proceed.

In many cases, the offender is not known and therefore no proceedings can be commenced. In other cases, although the offender is known, they are often without assets. In such cases, the legal costs of proceedings would often exceed any financial gain.

Further information regarding an appropriate lawyer can be obtained by contacting the Law Society of South Australia on (08) 8229 0200.

ReturnToWorkSA (for injuries resulting from work-related crime)

If the crime occurred at work and as a result you have experienced a work injury, you may be entitled to claim from *ReturnToWorkSA*. *ReturnToWorkSA* provides income support to cover loss of wages and reasonable medical treatment.

No lump sum compensation is available under *ReturnToWorkSA* for emotional stress or mental injury.

Further information can be obtained by contacting ReturnToWorkSA on 13 18 55 or rtwsa.com.

Compulsory Third Party (CTP) Compensation (for injuries resulting from vehicle-related crime)

Third Party compensation may be available if you have been injured as a result of the negligent or reckless use of a motor vehicle. Compensation may be paid for treatment expenses, non-economic loss (e.g. pain, suffering, disfigurement), loss of earning capacity and funeral costs.

The maximum level of compensation is higher than Victims of Crime Compensation.

Further information can be obtained by contacting the CTP Insurance Regulator on 1300 303 558 or you can go to <http://www.ctp.sa.gov.au/claims.html>

Information regarding an appropriate lawyer can be obtained by contacting the Law Society on (08) 8229 0200.

Civil proceedings against occupier (for injuries resulting from crime that has occurred at someone else's premises)

If you have been assaulted you may be able to sue the occupier of the premises to compensate you for your injuries. In order to succeed, you will need to show that the occupier of the premises contributed to the assault by failing to take some sort of appropriate action such as failing to maintain adequate security on the premises, or encouraging drunken patrons to consume further alcohol.

Information regarding an appropriate lawyer can be obtained by contacting the Law Society on (08) 8229 0200.

FURTHER INFORMATION

If you would like more information, please contact the VSS Helpdesk on

1800 VICTIM (1800 842846)
or view our website at victimsa.org

Commissioner for Victims' Rights voc.sa.gov.au

Legal Services Commission Law Handbook
lawhandbook.sa.gov.au

Crown Solicitor's Office Civil Litigation Section
(Victims Compensation) **(08) 8207 1687**



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