

# Victims of Crime Compensation

## *Information about compensation entitlements for those affected by homicide.*

*Victim Support Service is not qualified to offer legal advice or interpret legislation. This brochure only describes our interpretation of procedures which apply. Further, Victim Support Service is not involved in the decision making process and does not administer the compensation.*

### **What is Victims of Crime Compensation?**

Victims of Crime Compensation is a state-paid compensation available to victims for any injury suffered as a result of a crime.

The Criminal Injuries Compensation Act covers claims related to crimes committed between 1 July 1978 and 31 December 2002 while the Victims of Crime Act covers those that occurred from 1 January 2003.

Compensation can be awarded for physical and/or emotional injury and for the financial loss that results from an injury.

Any money awarded is drawn from the Victims of Crime Fund which is operated by the State Government. Money in the fund comes from confiscated proceeds of crime, a levy on convictions and on-the-spot fines, fines paid by the offenders and funds provided by the Parliament.

If your family member is a victim of homicide and you suffered harm (injury, damage or loss) because of that crime you will be regarded as a co-victim of that crime and therefore could be eligible to claim compensation.

### **Who can claim compensation?**

For homicides committed before 1 January 2003 any person who can prove they suffered a physical or psychological injury as a result of that crime could claim compensation.

For homicides committed on or after 1 January 2003 only immediate family members of a homicide victim can claim compensation. This includes:

- a husband or wife.
- a domestic partner (if the couple lived together at the time of the offence and have been living together for the previous five years or five out of six years, or had a child together).
- a parent or grandparent.
- a child or grandchild (including an adult).
- a brother or sister can also claim compensation.

PLEASE NOTE: if you witnessed a homicide and were in imminent danger or were directly involved in the circumstances of the offence you might be eligible to claim compensation even though you are not an immediate family member of the victim. Please seek legal advice.

## What compensation may be available for co-victims of homicide?

- Reimbursement of the funeral cost
- Grief payment for a spouse, or a parent of a child victim
- Medical treatment costs (for instance, the cost of seeing a psychologist, psychiatrist or a counsellor and associated travel costs)
- Compensation for physical and/or emotional injury
- Reimbursement for financial losses
- Loss of the victim's financial support (if you were dependant on the victim at the time of the crime)

## Can I claim for property loss or damage?

No. Victims of crime compensation does not cover property damage.

## How can I make a claim for funeral cost and grief?

Co-victims of homicide are encouraged to make a direct application for the reimbursement of funeral cost and grief to the Crown Solicitor's Office at the Attorney-General's Department. The claim form can be downloaded from the Victim of Crime Coordinator's web site [www.voc.sa.gov.au](http://www.voc.sa.gov.au). If you do not have access to a computer and internet, please ask your support person to request a copy of the claim form for you. You can also contact Victim Support Service if you need assistance.

The funeral cost can be covered in full up to a maximum of \$7,000. It can be claimed by a person who pays or is responsible to pay for the funeral.

The compensation for grief is capped at \$10,000. That amount is divided equally between the eligible applicants: surviving spouse/domestic partner or parents (if the victim was a child).

## How do I make a compensation claim?

You should consult a lawyer if you wish to make a claim for a physical/emotional injury, cost of treatment, loss of the victim's financial support or other financial losses. Victim Support Service or the Law Society can provide names of lawyers who deal with these cases. The Law Society has an internet based referral service at [www.legalreferral.com.au](http://www.legalreferral.com.au).

Discuss your case with the lawyer you choose to represent you. You can also inform him or her who is in the immediate family and likely to claim.

A parent or a guardian can apply for compensation on a child's behalf. Compensation for children is usually held in trust by the Public Trustee until the child turns 18. If the child needs financial support or education expenses have to be covered before then, the Public Trustee may be able to advance some of the money.

Also see your doctor as soon as possible. You may be emotionally and/or physically injured because of the crime and need medical attention. Consulting with your doctor at an early stage may also assist in your claim for compensation.

Your doctors' report of your emotional and/or physical injuries at the time of the crime, and thereafter, will be considered by the Crown in awarding compensation.

Your lawyer will notify the Crown of your intent to claim compensation and gather the required evidence such as medical reports. You may be charged for these but can be reimbursed if your claim is successful.

PLEASE NOTE: In case of financial hardship you can ask for an interim payment (an advance). It is only paid if the final claim is likely to be successful. You will have to pay the advance back if your claim fails.

### **When should I make the claim?**

For claims arising from a homicide, including for loss of financial support, grief and funeral expenses, you must claim within twelve months from the death of the victim.

PLEASE NOTE: You may still be able to claim even if the time limit has expired. You should get legal advice if this happens.

### **How much will it cost me?**

Many lawyers will provide you with an initial assessment interview without any charge. Always check if that is the case when ringing to make an appointment. The lawyer can advise you about whether you have a good chance of being awarded compensation.

Apart from that, the lawyer will charge for his or her work, but is not allowed to charge more than a figure fixed by law. If you are awarded compensation, his or her fee is paid by the fund.

### **How are the claims for compensation assessed?**

Each claim is individually assessed based on medical reports and other evidence. There will be a component for pain and suffering associated with the injury, and a component for the financial losses it causes. Your lawyer will advise you about the compensation you are likely to be awarded. The maximum that can be awarded is \$50,000.

### **How long will it take?**

This varies. If the offender is known and being prosecuted, you will usually have to wait for the result of the case before your compensation claim can be finalised. Also it may not be possible to settle your claim until the course of your treatment is known (for instance how many sessions of counselling or therapy are recommended). If the 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.

Once the Crown had considered all the information provided and accepted the claim then it will negotiate the payment with you or your lawyer.

## **Does the offender have to know about my compensation claim?**

Yes. Where an offender is known and has been convicted of the offence he or she will be notified of the application for compensation. This is because if the fund pays money to you it will seek repayment from the offender.

## **Do I have to go to court?**

Cases rarely go to trial. More often, the victim and the fund agree on the amount paid. If this doesn't happen, however, a court case will be needed and you can be required to give evidence.

## **What if the offender has not been found?**

If the offender has not been identified you may still be able to claim compensation. What is needed is evidence that shows, beyond a reasonable doubt, that a crime occurred and the injury suffered (either a physical or a mental injury or both) is as a result of the crime. You should seek legal advice.

## **What if the offender is not convicted?**

There could be several reasons an offender may not be convicted of a criminal offence (for example, mental incapacity). You may still be able to claim compensation if you can demonstrate there has been injury as a result of a criminal offence. You should seek legal advice.

## **What else can affect my payment?**

- If you fail to claim within 12 months of the homicide your claim can be refused. It is best to see a lawyer well before 12 months have passed. Even if you are late, however, seek legal advice because you may be entitled to an extension.
- If the crime occurred in a state other than South Australia. Each state has different compensation laws. You should contact a Victim Support Service (or like service) or legal aid, or a private lawyer in the state where the crime occurred for further information. Victim Support Service in Adelaide has the numbers of equivalent interstate services.
- If the death of the victim was as a result of the use of a motor vehicle, compensation might not be claimed successfully. Seek legal advice about whether you have a claim on the compulsory third party insurance fund or from the Victims of Crime Fund.
- If, without a good reason, the person claiming compensation hindered the police investigation of the crime by not cooperating, compensation may be refused.
- If you are advised to have treatment for your injury but you decide not to, your compensation may be refused.
- The Fund will not pay if there is another source of compensation available. Examples of other sources include: medical/hospital expenses claimable from a health fund, worker's compensation and public liability insurance. Also, if the victim was killed in a car crash that is covered by third party bodily insurance, the victims of crime fund will not pay. However there may sometimes be a financial shortfall in these claims that could be covered by the fund. You should seek legal advice.

## Grace Payment

Sometimes a person who has been injured because of a criminal act is not able to claim compensation under the existing law. In situations such as this it may be possible to seek a grace or “ex gratia” payment.

This payment may be made for instance where a prosecution cannot go ahead, or it goes ahead but fails, for reasons that are no fault of the co-victim. It may be awarded where the co-victim was a resident of South Australia, but the offence was committed in a country where compensation is not available or a person was unsuccessful in getting it.

It is up to the Attorney-General whether he or she chooses to pay compensation in such cases. It is not a legal right and you should always seek legal advice.

## What about other payments?

Discretionary payments may be awarded by the Attorney-General as an alternative for co-victims to claiming compensation. This may be relevant for co-victims where the emotional and/or physical injury suffered does not meet the minimum threshold for a claim of compensation.

*If you have some more questions about Victims of Crime Compensation or need services of an interpreter to understand the content of this brochure, please contact your nearest Victim Support Service.*

## Services for those affected by homicide available at VSS:

- Professional counselling, advocacy and support.
- Referral to other community services and organisations.
- Liaison with other services and workers involved with those affected by homicide.
- Information about victims' rights and criminal injuries compensation claims.
- Support Group program (Adelaide).
- Court preparation for adults and children who want to attend court hearings or need to appear in court as witnesses.
- A Court Companion service which provides support and information for victims and witnesses for the prosecution when they are required to attend court.
- Assistance in preparation of Victim Impact Statements.
- Resource Centre and free Borrowers' Club.