



Victims of Crime Assistance Tribunal

BEST PRACTICE MANUAL

April 2011

Whittlesea Community Connections

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About Whittlesea Community Legal Service

Whittlesea Community Legal Service is a program of Whittlesea Community Connections (WCC). Our organisation offers services and programs to address disadvantage in the community and promote community participation and involvement.

The Whittlesea Community Legal Service is a free, confidential and professional service for people who live, work or study in the City of Whittlesea.

The Whittlesea Community Legal Service is a generalist Community Legal Service providing advice on many areas of law. We also assist clients at various outreach services within the City of Whittlesea.

Our aim is to make people more aware of the law so they can make more informed decisions. We provide education sessions, which outline clients' rights and responsibilities in various areas of the law.

Foreword

The Purpose of this Guide

This guide is intended primarily to assist victims of violent crime and their legal representatives intending to lodge an application with the Victorian Victims' of Crime Assistance Tribunal ("VOCAT").

This guide provides general information regarding other avenues for assistance available to victims of violent crime in Victoria but is not intended to provide either detailed or comprehensive information about these avenues for assistance.

Disclaimer

The legal information in this guide is general. Whittlesea Community Legal Service believes that at the time of printing, the legal information in this guide is accurate. Laws change frequently and vary from State to State.

This guide is not intended as a substitute for getting legal advice. Whittlesea Community Legal Service accepts no responsibility for those who rely on this guide as a substitute for seeking legal advice.

While this guide is intended to act as a 'Best Practice Manual' for applications under the *Victims of Crime Assistance Act 1996* (Vic), in this jurisdiction in particular a great deal of discretion is invested in the decision-maker and it is therefore difficult to draw generalizations:

"An award must be fair and reasonable and proportionate to the circumstances, and must take into account the situation of the applicant in the particular case. Each case must turn on its own circumstances. Other cases cannot be used as a guide or a norm which is determinative of an award in a particular case". Krasauskas v VOCAT (No 2) (General) [2008] VCAT 1284 – per C. McKenzie, Deputy President

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The Victims of Crime Assistance Tribunal Process



Victims' Options: Avenues for Compensation

State Funded and Offender Funded Compensation

In Victoria, a victim of crime¹ may be eligible to seek financial assistance through a number of different avenues including:

- through a State funded award from the Victims of Crime Assistance Tribunal Scheme (*Victims of Crime Assistance Act 1996* (Vic))
- through a compensation and restitution order made by the courts after the offender has been found guilty or convicted (*Sentencing Act 1991* (Vic))
- through a civil action against the alleged offender, regardless of a finding of guilt.

Victims should be advised that they are not precluded from pursuing a compensation or restitution order from the offender if they have already been awarded financial assistance from the Victims of Crime Assistance Tribunal (VOCAT), or vice versa, but *they cannot be compensated more than once for the same offence*.

Any payment made by VOCAT is likely to be deducted from the amount awarded by a court under the *Sentencing Act 1991* (Vic) and vice versa.²

The Tribunal will take into account any damages the victim has recovered at common law and reduce any payment to the victim by that amount;

The Tribunal will also take into account *any other compensation, assistance or payments of any kind* the victim has received in relation to the act of violence.

Note

Recovery of damages at common law does not affect the amount that a victim may recover under the *Sentencing Act 1991* (Vic).

¹ For the purposes of the *Victims of Crime Assistance Act 1996* (Vic), a "victim" is defined as a primary, secondary or related victim of an *act of violence* (a criminal act or series of related criminal acts).

² S.85I, *Sentencing Act 1991* (Vic) and s.16 *Victims of Crime Assistance Act 1996* (Vic)

Other Compensation Schemes

In addition, a victim may be eligible to claim financial assistance under another compensation scheme including:

- the Transport Accident Commission
- the Victorian WorkCover Authority
- the scheme established under the *Police Assistance Compensation Act 1968* (Vic)
- payments under an insurance policy
- payments under a superannuation scheme
- payments made under an alternative scheme

An amount the victim is entitled to receive, or would be entitled to receive should they apply under one of these schemes, *may* be taken into account by the Tribunal and any award made reduced by that amount.³

CASELAW

'It is not the intention of the Act to reflect the level of compensation to which a victim of crime may be entitled at common law or otherwise...the scheme which the Act sets out is intended to complement other Government Schemes for victims of crime.'

'...s.16 can only be used to reduce a possible award by a payment or benefit from another source 'for the loss, expense or matter' for which application is made to VOCAT. 'Loss, expense or other matter' is not referring to some general or global set of non-specific matters...One must ask: which of these matters are the subject of application for assistance?.....the purpose clause in s.1 of the Act is worded in a different and perhaps broader way than s.16, but, to my mind the wording of s.16 is clear and ought not to be read down in the light of the purpose clause.'

It was found that there was a difference between a claim for benefits under the *Transport Accident Act 1986* to provide economic support for the dependents of those killed in an accident and benefits for distress experienced by those dependents claimed under the *Victims of Crime Assistance Act 1996* (Vic). [*per C. McKenzie, Deputy President Krasuskas v VOCAT (General) [2007] VCAT 1407*]

In *Eades v Victims of Crime Assistance Tribunal*⁴ the decision in *Krasuskas* was distinguished. In that case an award made by VOCAT to the wife of the deceased was reduced by the amount that had already been paid out under the *Accident Compensation Act 1985*. The fact that the payment made under the accident compensation scheme was not linked to any matters such as the salary earned by the deceased and was not assessed by considering the value of the loss of the dependency meant that, implicitly, the sum paid out under that scheme was intended to act as a form of compensation for distress suffered by a related victim.

³ *Victims of Crime Assistance Act 1996* (Vic), s.16.

⁴ *Eades v Victims of Crime Assistance Tribunal (General) [2008] VCAT 448.*

The Victims of Crime Assistance Tribunal

In 1996 the Victorian government made changes to the compensation scheme for victims' of crime in Victoria which included amendments to both *the Sentencing Act 1991* (Vic) and the *Victims of Crime Assistance Act 1996* (Vic).

The amendments were made with the intention of enabling the scheme to provide:

- a sympathetic and compassionate forum for applicants to relate their experiences as victims of violent crime;
- an opportunity for the State to make a payment to victims on behalf of the community in recognition of the victim having suffered a significant harm as a result of a crime of violence;
- a range and choice of services and support mechanisms; and
- avenues to make offenders accountable, wherever practicable, for the harm they cause.⁵

The three stated objectives of the compensation scheme established by the *Victims of Crime Assistance Act 1996* (Vic) are to:

- assist victims of crime in their recovery by paying for expenses incurred, or reasonably likely to be incurred, as a direct result of the crime; and
- pay certain victims of crime financial assistance as a symbolic expression by the State of the community's sympathy, condolence for, and recognition of, significant adverse effects experienced or suffered by victims of crime; and
- allow victims of crime to have recourse to compensation under the Act where compensation for the injury cannot be obtained from the offender or other sources.⁶

Potential Advantages to Pursuing a Claim through VOCAT

- As the amount that a victim of crime can recover from the Victims of Crime Assistance Tribunal is capped, potentially a victim who applies for compensation through another avenue for compensation may recover a higher amount.
- There are however, a number of advantages to pursuing an application for financial assistance through the Victims of Crime Assistance Tribunal in comparison to other avenues for recovering financial assistance, these include:

⁵ Victoria, *Parliamentary Debates*, Legislative Assembly 2nd reading speech, 26 May 2000, 1911 (Mr Halls Attorney-General).

⁶ *Victims of Crime Assistance Act 1996* (Vic), s.1

- an award of financial assistance is not dependent upon an offender being convicted, found guilty or even identified⁷;
- compensation is awarded and funded by the State and is therefore not contingent on the offender having financial means;
- legal costs of the application are paid directly to the victims' legal representative by the Tribunal so the victim is not liable for legal costs;
- the victim may elect to have the application resolved 'on the papers,' eliminating the need for the victim to attend a Court hearing;
- the standard of proof for establishing both an 'act of violence' and an 'injury' is lower than for the criminal jurisdiction ('on the balance of probabilities' as opposed to 'beyond reasonable doubt');
- an application for compensation from VOCAT is often the quickest⁸ and most straightforward means for the victim to access financial assistance.



Note

It is recommended that the victims' legal representative consider, weigh up and advise their client in relation to all potential avenues for assistance that may be available to them.

- For many victims it is a reality that due to a number of factors including the fact that the offender is impecunious or has not been convicted; or the prohibitive cost of pursuing a claim for damages at common law from the offender; or the fact that the victim is reluctant to appear in Court or to engage in an overly 'legalistic' process, the only option available is to pursue a claim for financial assistance through VOCAT.

⁷ It should be noted that although a conviction is not a necessary pre-condition to an award being made, it is often far easier to secure an award of financial assistance where the offender has been convicted.

⁸ It should be noted that a VOCAT application, although intended to provide a more streamlined process for victims of crime to access financial assistance, may not necessarily be resolved quickly.

Is the Victim Eligible to Claim Compensation from VOCAT?

For the purposes of the *Victims of Crime Assistance Act 1996* (Vic) ("the Act"), a 'victim' is a person who suffers an injury or dies as a direct result of an 'act of violence' being committed against him or her.

Eligibility to claim assistance requires the victim to prove, on the balance of probabilities, the existence of the following elements:

- that the victim has suffered an **injury** (or **death** for a related victim application);
- that the injury was suffered as a direct result of an **act of violence**;
- that the act or series of acts that constitute the act of violence occurred in **Victoria**;
- that the application is made within the relevant **time limitation**.

'Act of Violence'

- defined as a 'criminal act' or a 'series of related criminal acts.'⁹

'Criminal act'

- an act or omission constituting a 'relevant offence' or that would constitute a relevant offence if the person had not been incapable of being criminally responsible for it on account of age, mental impairment or other legal incapacity preventing them from having a required fault element or the existence of any other lawful defence.

'Relevant offence'

- an offence, punishable on conviction by imprisonment, that involves an *assault on*, or *injury* or a *threat of injury* to, a person; or
- 'sexual offences' under s.8A – s.8E *Crimes Act 1958* (Vic) or a corresponding previous enactment or an offence at common law of rape or assault with intent to rape; or
- 'stalking' (21A), 'Child Stealing' (63), 'Kidnapping' (63A) under the *Crimes Act 1958* (Vic) or any corresponding previous enactment; or
- conspiracy to commit, incitement to commit or attempting to commit any of the above offences.

⁹ *Victims of Crime Assistance Act 1996* (Vic), s.3 'Definitions'.

Act or series of acts of violence occurred in Victoria

- the act or series of acts of violence must have occurred in Victoria, even if the injury or death resulting from the acts of violence occurs elsewhere.

Note

The connecting factor in this jurisdiction is the location of the act of violence. There is no requirement that the victim be resident in Victoria or Australia at the time of the act of violence or at the time of lodgment of the Application.

Injury or death of victim

- actual physical bodily harm; or
- mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or
- pregnancy; or
- a combination of the above injuries arising from the act of violence but not including injury arising from loss of or damage to property.

In addition, if the Tribunal is satisfied on medical or psychological evidence that treatment or counseling is required as a result of trauma associated with an act of violence, a primary or secondary victim is *deemed* to for the purposes of the Act to be suffering an injury.¹⁰

Application made within the relevant time limitation

The application for assistance must be lodged within **2 years** of the date of the act of violence (see 'Time limitations' and 'Out of time applications' pages 15 to 20).

Act of Violence

For a primary victim to be eligible to claim an award under the *Victims of Crime Assistance Act 1996* (Vic) they must have suffered an injury as a direct result of an 'act of violence' committed against him or her.

The Act defines 'act of violence' as a 'criminal act' which constitutes a 'relevant offence',¹¹ or would constitute a relevant offence if the person had not been incapable of being criminally responsible for it due to age, mental impairment or other legal incapacity preventing them from possessing the necessary fault element.

Note

It was recorded in the latest VOCAT Annual Report (2009-10) that awards were most commonly made to victims of assault, followed by victims of sex (non-rape) (although these were overwhelmingly female) and then homicide.¹²

¹⁰ *Victims of Crime Assistance Act 1996* (Vic), s.3(2).

¹¹ *Victims of Crime Assistance Act 1996* (Vic), s.3(1).

¹² Victims of Crime Assistance Tribunal, *Annual Report 2009-10*, [Table 2: 'Number of Applications For Financial Assistance Lodged by Category of Offence and Gender of Applicant, 2009/10], p.37

CASELAW

- **Age:** The Tribunal accepted that a child under the age of 10 who was assaulted and had 'threats to kill' made against her by her fellow children was the victim of 'criminal acts.' The fact that the offenders were aged under 10 and therefore it was doubtful whether they could form the relevant criminal intention much less possess the means to follow through on the threats was considered irrelevant.

*'...at least insofar as it relates to age, the very point of that part of the definition of "criminal act" in s.3 of the Act that is expressed in hypothetical terms is to require the Court or Tribunal to disregard any legal principles or protections specially appurtenant to age that would or might apply outside the confines of this Act'*¹³

- **Legal Incapacity:** The primary victim was struck by a car driven by someone who was experiencing an epileptic fit and his family member made a related victim application. The primary victim was found to be the victim of a 'relevant offence' (driving in a manner dangerous to the public contrary to s.64 of the *Road Safety Act 1986*).¹⁴
- **Offense against property:** Arson was not a relevant offence for the purposes of the Act. The words 'assault on, or injury or a threat of injury to, a person' was taken to mean that the offence must be against a person, not an offence against property that results in injury to a person.¹⁵

Related Criminal Acts

For the purposes of the *Victims of Crime Assistance Act 1996* (Vic), criminal acts are related if:

- they are committed against the same person and they;
 - occurred at approximately the same time; or
 - occurred over a period of time and were committed by the same person or group of people; or
 - share some other common factor
- they contribute to the injury or death on which the application to the Tribunal is based;

Unless the Tribunal, having regard to the particular circumstances of the acts considers that they should not be regarded as related.¹⁶

- the Tribunal considers that they ought to be treated as related.¹⁷

¹³ *BVB v Victims of Crime Assistance Tribunal [2010] VSC 57* – per Cavanough J

¹⁴ *Gulcan v Victims of Crime Assistance Tribunal (General) [2007] VCAT 642* and followed in *Jafaro v Victims of Crime Assistance Tribunal (General) [2009] VCAT 2372*.

¹⁵ *Lowe v Victims of Crime Assistance Tribunal [2004] VCAT 1092* per Robert Davis, Senior Member.

¹⁶ *Victims of Crime Assistance Act 1996* (Vic), s.4(1)(a)(i);(ii) and (iii) and (b).

¹⁷ *Victims of Crime Assistance Act 1996* (Vic), s.4(1)(c).

Time Limitations

Adult Victims

- An application to the Victims of Crime Assistance Tribunal must be made within **two years** of the occurrence of the act of violence¹⁸
- A related victim who has incurred funeral expenses must lodge an application within **two years** of the date of the death of the primary victim¹⁹
- The victim has **four months** from the date of lodgment of the application to file all documentation in support of the application
- The victim has **six years** from the date of the making of the final award to apply to vary the award.²⁰
- The victim (or any person whose “interests are affected”) has **28 days** from the date of VOCAT’s decision or the date on which a statement of reasons was given to them or they were informed that a statement of reasons would not be given, whichever is later, to appeal the decision to the Victorian Civil and Administrative Tribunal.²¹

Child Victims (Under 18 Years of Age)

- If the victim is a child at the time of the occurrence of the act of violence and an application is *not* made within two years of the act of violence, an out of time application should be lodged with the Tribunal (see below);²²
- An award granted to a child victim is generally held on trust until the child reaches the age of 18;²³
- If the victim was a child at the time the award was made the time limit for variation of the award is any time up until the child reaches the age of 24.²⁴

Tip

If an award held on trust for a child victim is needed prior to the child reaching the age of 18, for example to meet essential expenses *for the benefit of the child* such as housing or education expenses, an application in writing can be made to the trustee for early release of an award.

¹⁸ *Victims of Crime Assistance Act 1996* (Vic), s.29(1)

¹⁹ *Victims of Crime Assistance Act 1996* (Vic), s.29(1)

²⁰ *Victims of Crime Assistance Act 1996* (Vic), s.60

²¹ *Victims of Crime Assistance Act 1996* (Vic), s.59(2)

²² An application can be made on behalf of a child victim by a parent, guardian or another person the whom the Tribunal considers to be appropriate, *Victims of Crime Assistance Act 1996* (Vic), s.25(3).

²³ *Victims of Crime Assistance Act 1996* (Vic), s.50(2) & (3).

²⁴ *Victims of Crime Assistance Act 1996* (Vic), s.60(2)

Out of Time Applications

The *Victims of Crime Assistance Act 1996* (Vic) requires that an application that is not made within the two year time limit be struck out unless it considers, in the particular circumstances, that it ought not to be struck out.²⁵

The *Victims of Crime Assistance Act 1996* (Vic) lists factors it must have regard to when deciding whether to further hear and determine an application made out of time including:

- the age of the applicant at the time of the occurrence of the act of violence
- whether the applicant is intellectually disabled within the meaning of the *Disability Act 2006* (Vic) or mentally ill within the meaning of the *Mental Health Act 1986* (Vic)
- whether the person who committed, or is alleged to have committed, the act of violence was in a position of power, influence or trust in relation to the applicant
- the physical or psychological effect of the act of violence on the applicant
- whether the delay in making the application threatens the capacity of the Tribunal to make a fair decision
- whether the applicant was a child at the time of the occurrence of the act of violence and the application was made within a reasonable time after he or she reached the age of 18.
- *all other circumstances that it considers relevant.*²⁶

Note

Ignorance of the existence of the *Victims of Crime Assistance Act 1996* (Vic) or its predecessors or of the relevant time limits that apply under the Act is not, in and of itself, a valid reason for the Tribunal to hear and determine an application out of time.²⁷

Request for Extension of Time to Lodge Application

Where a client is intending to lodge an application outside of the two year time limit, leave must be requested from the Tribunal for the matter to be heard and determined out of time.

The application for an extension of time to lodge an application is made via Statutory Declaration in the prescribed form. **(refer to Form 3 and Practice Direction No.6 of 2008. The Form is also available for download from the VOCAT website, www.vocat.vic.gov.au)**

²⁵ *Victims of Crime Assistance Act 1996* (Vic), s.29(2)

²⁶ *Victims of Crime Assistance Act 1996* (Vic), s.29(3)

²⁷ *Victims of Crime Assistance Act 1996* (Vic), s.29(4)

The Application for an Extension of Time Form can either be lodged with the Tribunal at the same time as the Application Form or at a later date.

Tip

It is recommended that the Application for Extension of Time be lodged at the beginning of the process along with the Application form.

The Application for Extension of Time Form must:

- provide reasons why the Application was not lodged within the requisite time period; and
- list and attach any documentation in support of the application; and
- indicate whether the applicant wishes for the matter to be decided with or without a hearing.

Note

The Tribunal has discretion to consider all other circumstances that it considers relevant, even if they don't fit within one of the factors listed in the Act so it is recommended that as much relevant information as possible should be included to assist the Tribunal to make their decision.

Example

Reasons for not filing an Application within the two year time limit:

'The perpetrator of the act of violence is the applicant's husband and the applicant was still in a relationship with the perpetrator of the act of violence until 10 April 2010. (see Statutory Declaration)

The applicant was too frightened to take any action in relation to the violence she suffered during the relationship (see Statutory Declaration).

In addition, as a result of the violence against her the applicant has been suffering from severe depression. Due to the depression, the applicant suffered lack of motivation, difficulty organising thoughts and actions etc. The applicant's depression contributed to her inability to obtain legal advice and commence an application for compensation. (see Report of Dr Smith, dated 15 June 2010).

We believe that the delay in making the application does not threaten the capacity of the Tribunal to make a fair decision.'

The Tribunal will usually determine the Application for Extension of Time at the same time as the Application for assistance.

However the Tribunal may determine the Application for Extension of Time at an *earlier date* if a tribunal member decides to list the matter for a hearing or is satisfied, on the basis of the material that has been filed, that the application should be granted.²⁸

Note

Though it should not be relied upon, the Tribunal is generally open to granting extensions of time where there is a valid reason for the application not being made within the requisite timeframe (e.g. the applicant has suffered childhood sexual abuse)

Request for Extension of Time to File Documentation

Once the initial application has been lodged a letter will be sent to the applicant or the applicant's legal representative advising that they have four months to file all supporting documentation and enclosing:

- 'Directions for Preparation of your Application';
- Statement of Claim; and
- Extension of Time Form.

It is often difficult for applicants and/or their legal representatives to compile and lodge all supporting documentation with the Tribunal within the four month deadline. (For example, it may be difficult for an applicant to get appointments with medical practitioners or Psychologists/Psychiatrists who can provide appropriate supporting documentation to the Tribunal).

If all documentation cannot be filed within the requisite timeframe a request should be put to the Tribunal in writing for an extension of time to file documentation and the request should provide *reasons* why the documentation has not been filed.

(Refer to Sample Letter A, p.64)

Where no request for an extension of time has been received and supporting documentation has *not* been filed within the requisite time period the Tribunal will usually attempt to contact the applicant or their legal representative. Where the applicant or applicant's legal representative does not respond to requests from the Tribunal to file documentation the application may be struck out.

Note

If any supporting documentation cannot be filed with the Application Form the applicant/applicant's legal representative should advise the Tribunal that supporting documentation will be filed at a later date.

²⁸ Practice Direction No. 6 of 2008

Example

'Our client will be obtaining supporting materials to substantiate his loss of earnings and significant medical costs which will be filed with the Victims of Crime Assistance Tribunal at a later date.'

Once all documentation has been filed with the Tribunal the applicant or the applicant's legal representative should write to the Tribunal advising that all documentation has been filed (**Refer to Sample Letter B, p64**)

Time Taken to Resolve a VOCAT Application

The amount of time that it is likely to take for a VOCAT application to be resolved is often extremely variable and difficult to predict (it is not unusual for an Application to take 6-12 months or even longer from lodgment of the application to a final determination is made).

A number of factors that may influence the length of the application process:

- the complexity of the case;
- the time taken to gather supporting documentation;
- the victim's individual characteristics and circumstances;
- the nature of the offence and whether or not a conviction has been recorded against the offender;
- whether or not the offender has been charged and whether there is a criminal matter pending.

Note

It is common for the Victims of Crime Assistance Tribunal to delay an Application for Assistance from a victim where there is a criminal matter pending in relation to the offender until *after* the criminal matter has been concluded.

The VOCAT Annual Report for 2009-10 reported that 40.6% of applications had been pending for 9 months or more and 30.2% for 12 months or more.²⁹

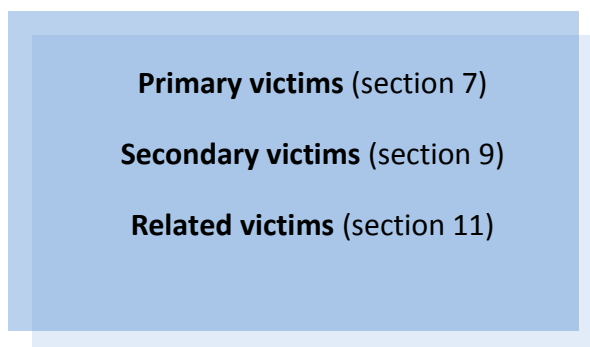
²⁹ Victims of Crime Assistance Tribunal, *Annual Report 2009-10*, [Table 1: Summary – Applications for Assistance Lodged, Finalised and Pending 2007/08 – 2009/10], p.36

In What Capacity Will the Victim Be Applying?

The *Victims of Crime Assistance Act 1996* (Vic) provides assistance, not only to the **primary victim(s)** of an act of violence but also to people injured as a result of witnessing an act of violence or subsequently hearing about the act of violence (**secondary victim(s)**) or the relatives of a primary victim who has died as a result of the act of violence (**related victim(s)**).

The victim can only make an application in *one capacity* for the same act of violence. The applicant is required to elect in what capacity they will be applying on the Application Form.

Different sections of the Act deal with awards for primary, secondary and related victims:



The category which the victim falls into will affect the maximum amount recoverable and the expenses that will be covered by the award (as of the time of writing):

- **Primary victims** – maximum amount recoverable is **\$60,000** plus special financial assistance of up to **\$10,000**;
- **Secondary victims** – maximum amount recoverable is **\$50,000**;
- **Related victims** – maximum amount recoverable is **\$50,000** for any one related victim and **\$100,000** cumulatively spread amongst all related victims (less any amount awarded for the funeral expenses of the primary victim).

Primary Victim

For the purposes of the *Victims of Crime Assistance Act 1996* (Vic) A person who is **injured** or **dies** as a direct result of an act of violence committed against him or her; or

A person who is **injured** or **dies** as a direct result of:

- trying to arrest someone whom they believe on reasonable grounds has committed an offence; or
- trying to prevent the commission of an act of violence; or
- trying to aid or rescue someone whom they believe on reasonable grounds to be the victim of an act of violence.

Whether or not an act of violence is actually committed.

Secondary Victim

A person who is present at the scene of an act of violence and who is injured as a result of witnessing the act.

A person who is the parent or guardian of a primary victim (under 18 years of age at the time of the commission of the act of violence) and is injured as a direct result of subsequently becoming aware of the act of violence.

Note

The definition of secondary victim under the Act specifically excludes a person who committed or is criminally responsible for the act of violence.

Refer to the decision in *Hall v VOCAT*³⁰ for discussion of distinction between primary and secondary victims

Related Victim

A person who, at the time of the commission of the act of violence, was either:

- a close family member of; or
- a dependent of; or
- had an intimate personal relationship with

a primary victim who **died** as a direct result of the act of violence

The act defines 'close family member', 'dependent' and 'domestic partner' but does not define 'intimate personal relationship'.

³⁰ *Hall v Victims of Crime Assistance Tribunal* [2004] VCAT 1359

CASELAW

In a 2002 VCAT decision the existence of two or more of the following factors, where there was mutuality and not merely a one way flow, though not exhaustive, was taken to indicate the existence of an 'intimate personal relationship':

ongoing sexual relationship; ongoing emotional commitment and comfort and support of a personal nature; ongoing sharing of confidences, intimacies and personal information; ongoing advice of a personal nature; ongoing sharing of financial information and plans; ongoing sharing of social contacts and attendances at social functions. (The existence of a sexual element was not necessary to indicate an "intimate personal relationship")

Financial or other material support; a sharing of residential property; occasional contact personally or by correspondence or telephone for a period surrounding and at the relevant time (even if interspersed with bouts of frequent contact); meeting or sharing at times of family events including religious, ethnic or other holiday periods surrounding and at the relevant time were not taken to indicate an 'intimate personal relationship'. [**Reid v Victims of Crime Assistance Tribunal [2002] VCAT 373**]

Initial Interview: Taking Instructions From the Client

This checklist may be used as a *guide* to assist you when taking instructions from the client.

Tip

The experience of recalling and narrating the events surrounding the offence may be extremely difficult or traumatic for the victim. As far as possible, in order to minimise the need for the victim to repeat their story the applicant's legal representative should attempt to rely on other sources of information (e.g. the police statement).

Tip

Depending on the victim and their circumstances the applicant's legal representative may want to have a counselor or psychologist present at the initial interview to assist the victim.

If the victim becomes distressed during the interview it may be necessary to consider referring or suggesting to the victim that they seek counseling before proceeding with the application.

At the initial interview have you?

1. Advised the client in relation to all of their potential options for compensation?

- if the alleged offender is identified and has been/may be convicted of a criminal offence have you advised the client:
 - that they may be able to recover an amount from the offender under the *Sentencing Act 1991 (Vic)*;
 - the time limit for making such an application is **12 months** from the sentencing date;
 - the amount they recover from the offender may be considerably more than they may recover under the Victims of Crime Assistance Tribunal scheme;
 - the court will consider a number of factors when making the order and if offender has no financial means, the victim may get nothing.
- if the alleged offender is identified but has not been convicted of a criminal offence the client has the right to sue the alleged offender directly in a civil action, for example, trespass to the person. Have you advised the client:

- that the time limit for physical or psychological injury is **3 years** from the date the cause of action is discoverable or **12 years** from the time of the act or omission causing the injury;
- for minors the limitation period is not suspended until the child reaches 18 years of age if the minor has a capable parent or guardian;
- for torts (excluding damages for personal injury) the limitation period is **6 years** from the date when the cause of action accrues;
- risk of adverse costs order;
- the amount the victim may recover from the offender in a civil action may be considerably more than they may recover under the Victims of Crime Assistance Tribunal scheme;
- if the offender has no financial means the victim may get nothing.
- advised the client that they should seek legal advice from a private lawyer if they wish to pursue one of these alternative avenues for compensation.
- advised the client in relation to benefits recoverable under alternative compensation schemes? (ie, WorkCover, TAC).

2. Advised the client about the Victims of Crime Assistance Tribunal generally?

- the Victims of Crime Assistance Tribunal Scheme is funded by the Victorian Government to provide compensation to victims of violent crime who have suffered a relevant injury.
- a person is eligible to claim compensation if they suffer an injury (either mental or physical) caused by an act of violence. The client must be able to prove:
 - act of violence; and
 - relevant injury
- advised the client regarding the maximum amount of compensation payable and advised the client that the amount awarded is within the discretion of the Tribunal and *may not be anywhere near the prescribed maximum*:
 - \$60,000 + special financial assistance (up to \$10,000) for primary victims;
 - \$50,000 for secondary victims;
 - \$100,000 for all related victims (up to \$50,000) for an individual related victim.

(These amounts are correct at the time of writing)
- advised the client that they can only apply to the Tribunal in **one capacity** in relation to the act of violence.
- advised the client regarding the categories of expense the Tribunal may award compensation for.
- advised the client that payment is not made in a lump sum form, save for special financial assistance.

- advised the client that an award of special financial assistance is determined according to the seriousness of the offence and advised the client of the maximum amounts available for each category (ie, Category A, B, C or D – refer to Table 1 and Table 2 at p.34 and 35).
- advised the client that they have the option of electing whether to appear at a Hearing or to have the matter decided “on the papers.” Advise the client that even where they have elected to have the matter decided “on the papers,” the Tribunal may require attendance at a hearing, particularly where there are relevant **s.52/s.54** factors.
- advised the client of the possibility that the offender will be notified of and may attend the Hearing. Advise the client that they will first be advised if the Tribunal intends to notify the offender and they will be advised if the offender wishes to attend the Hearing and will have a chance to withdraw their application.
- advised the client of timelines and limitation periods:
 - an application for compensation must be lodged within **2 years** of the act of violence;
 - supporting documentation must be filed with the Tribunal within **4 months** of lodging the application.
- advised the client that where the application is out of time they will need to get leave from the court to apply and must provide reasons why the application is out of time. While the court is extremely flexible in relation to granting leave, there is no guarantee that an out of time application will be accepted.
- advised the client that the application process may be *lengthy* and they should be aware that it may take some time before the final determination is made, between approximately **6 months** and **2 years**.
- advised the client that where there is a criminal matter pending VOCAT may delay resolution of the Application for financial assistance until *after* the criminal matter has been concluded.
- advised the client that any amount they have already recovered from another compensation scheme (e.g. WorkCover, TAC) will be taken into account and may be deducted from the VOCAT award.
- explained the process to the client:
 - prepare application form;
 - obtain evidence of an act of violence (e.g. police and witness statements)
 - obtain evidence of an injury (e.g. medical reports)
 - prepare statutory declaration.
- advised the client that the legal costs involved in the application will be paid directly to their lawyer by the Tribunal although they may need to cover some disbursements.

3. Taken initial instructions?

- Obtained instructions on any expenses that have been incurred (or are likely to be incurred in the future) by the client including:
 - medical expenses: doctors appointments, dentists appointments, specialists, x-rays and diagnostic tests, operations, medications, hospital visits, injections;
 - loss of earnings
 - loss or damage to clothing worn at the time of the offence (primary victims only)
 - expenses to assist in recovery
- If the application is out of time, obtained instructions on why the application has been delayed.
- Obtained an explanation regarding relevant **s.52/s.54** factors:
 - failure to report the incident to police within a reasonable time;
 - failure to provide reasonable assistance to the police (e.g. failure to make a statement or appear as a witness);
 - client's conduct provoked the act of violence;
 - client's conduct contributed to their injury;
 - past criminal activity of the client;
 - alleged offender may benefit from an award of compensation.
- Obtained details of the act of violence for the client's statutory declaration including:
 - any relationship between the client and the alleged offender (e.g. where did they meet? When? How?)
 - the name of the alleged offender;
 - when did the act(s) of violence occur?
 - where did the act(s) of violence occur?
 - what act(s) of violence occurred?
 - what injuries did the client suffer?
 - were there any witnesses? Who were they?
 - was the act(s) of violence reported to police? When? How soon after the offence? Who reported it? Which police station? Name of police officer(s)?
 - has the perpetrator been charged? What were they charged with?
 - what is the status of any criminal proceedings against the perpetrator? Have they appeared in court? Which court? What was the outcome?

- has there been an IVO taken out? By whom? Which court?
- did the client seek medical attention for the injuries? Ambulance, hospital, GP, etc? Client to provide details of which health professionals gave medical treatment;
- has the client received counselling or seen a psychologist/psychiatrist? From whom? Client to provide details;
- what were the client's injuries?
- what has been the effect on the client? Emotionally, day to day life, time off work, etc?
- what was the date of the **last** act of violence?

What Expenses Can Be Claimed from VOCAT?

Awards made by the Tribunal to primary victims are for past expenses (expenses already incurred) or future expenses (expenses reasonably likely to be incurred) by the victim as a result of the crime.

With the exception of awards for 'special financial assistance,' awards are not made in lump sum form.

Awards claimed for future expenses are contingent upon the applicant putting some evidence before the Tribunal, in the form of quotes, receipts, invoices, reports etc in support of the assistance claimed and to enable the Tribunal to determine whether the expense is 'reasonable'. **(See Practice Direction No. 1 of 2010)**

Where an **invoice** is filed with the Tribunal, payment will be made directly to the supplier (contingent upon the invoice received being a 'valid invoice' within the definition provided by the Australian Taxation Office).

Where a **receipt** is filed with the Tribunal, payment will be made directly to whoever covered the expense, be that the applicant, the applicant's legal representative or someone else.

Primary Victims

Awards of assistance available to primary victims may be made up of the following amounts (up to **\$60,000**)³¹:

- expenses actually incurred or reasonably likely to be incurred for reasonable counselling expenses³²
- medical expenses actually and reasonably incurred or reasonably likely to be incurred as a direct result of the act of violence³³
- loss of earnings of up to **\$20,000** (for a period of two years after the date of the act of violence) suffered, or reasonably likely to be suffered, as a direct result of the act of violence.³⁴
- expenses incurred through loss or damage to clothing worn at the time of the commission of the act of violence.³⁵

³¹ *Victims of Crime Assistance Act 1996* (Vic), s.8(1)

³² *Victims of Crime Assistance Act 1996* (Vic), s.8(2)(a)

³³ *Victims of Crime Assistance Act 1996* (Vic), s.8(2)(b)

³⁴ *Victims of Crime Assistance Act 1996* (Vic), s.8(2)(c), s.17 and Practice Direction No. 5 of 2008

³⁵ *Victims of Crime Assistance Act 1996* (Vic), s.8(2)(d)

In addition, three further amounts are available to primary victims:

- in *exceptional circumstances*, there may also be included, an amount for expenses actually and reasonably incurred or reasonably likely to be incurred to assist the primary victim in his or her recovery from the act of violence;³⁶ (included within the max. \$60,000 award)
- 'Safety-related' expenses actually and reasonably incurred or reasonably likely to be incurred, whether or not exceptional circumstances can be established;
- Special financial assistance for "significant adverse effects" suffered by the victim³⁷ (**in addition to** the max \$60,000 award but capped at \$10,000)
- Except in the case of lost or damaged clothing, an award may not be made for expenses incurred through loss of or damage to property.³⁸

Note

An award for property (for example, a laptop computer) may sometimes be made if it can be justified under the 'expenses to assist recovery' head of compensation (see below).

1. 'Reasonable' Counselling Expenses

'Reasonable' counselling expenses can be claimed by **primary, secondary and related** victims.

All counselling awards are made subject to the preparation and authorisation by the Tribunal of a proposed **treatment plan** for the victim. (**See Practice Direction No. 1 and Practice Direction No. 2, 2008**) The treatment plan should be prepared by a suitably qualified individual and will be used by the Tribunal as the basis for measuring the effectiveness of the proposed treatment.

Initial counselling/Report (up to five hours)

Where the applicant is an adult, has never accessed counselling before and wishes to claim up to five hours of initial counselling *only* (for "information, comfort, emotional and instrumental support" (psychological first aid)) the Counsellor must complete and file:

- **Form 1 (Initial Report – Recommendation for up to five hours of Counselling);**

and where a fee is claimed for preparation of the Report:

- **Form 5 (Counselling and Report Fee Invoice)**

and the applicant must complete:

- **Form 4 (Application for Counselling).**

³⁶ *Victims of Crime Assistance Act 1996* (Vic), s.8(3)

³⁷ *Victims of Crime Assistance Act 1996* (Vic), s.8A

³⁸ *Victims of Crime Assistance Act 1996* (Vic), s.8(4)

Note

It is usual practice for the Tribunal to award the initial five hours of counselling with or without prior approval (although the award of any expenses to the applicant remains within the discretion of the Tribunal).

Initial counselling/report (more than five hours)

Where the applicant has already accessed an initial five hours of counselling through another scheme such as:

- Work Cover;
- Transport Accident Commission;
- Victims Assistance and Counselling Programs;
- Medicare

and they wish to access further counselling, the applicant's counselor must complete and file:

- **Form 2 (Initial Report – Recommendation for More than Five Hours of Counselling);**
- **Form 5** (where a fee is claimed); and
- **Form 4**

It is the stated policy of the Tribunal that counselling expenses are unlikely to be awarded without prior approval. Where the applicant wishes to access counselling additional to the initial five hours the Tribunal is likely to fund the cost of additional counselling where:

- there is proper clinical justification;
- the counselling is likely to be effective in achieving and maintaining the applicant's recovery;
- the proposed treatment method is considered by the professional associations/bodies to which the counsellor belongs to be an appropriate method; and
- a treatment plan has been considered and approved by the Tribunal.

Additional Counselling

- **Form 3 (Subsequent Report – Recommendation for Additional Hours of Counselling);**
- **Form 4;** and
- **Form 5** (where a fee is claimed).

Note

Refer to **Guideline No. 2 of 2007** for an indication of fees the Tribunal is likely to award for Preparation of Reports and the provision of counselling sessions.

2. Expenses to Assist Recovery

One of the most difficult aspects of representing a client in a VOCAT application is determining which expenses a victim should claim in relation to the offence. Applicants and their legal representatives should be guided both by the instructions of the client in relation to the effect that the act of violence has had on them as well as the advice of any health professionals the client has consulted, particularly the advice contained in the Psychological Report.

Below is a list of examples of items that have been awarded by VOCAT to assist victims in their recovery:

- Purchase of a dog and associated expenses (ie, kennel, lead) to assist the recovery of a boy in his late teens who had become fearful after a terrifying and prolonged assault and kidnapping;
- The cost of destroying and renovating a bedroom where a woman was the victim of a stabbing;
- The cost of driving lessons for a teenage boy assaulted by a gang of youths at a train station who was too fearful to travel on public transport;
- The cost of a year's one on one care for a child with an intellectual disability who had been the victim of sexual abuse at the hands of a parent;
- Assistance to pay for a car, computer and guitar lessons for a victim living in a remote area who wanted to use the computer to look for part-time work, to use the car to drive into town to access the library and other services and who wanted to further pursue the guitar lessons he had started as a child and which had brought him immense satisfaction.
- The cost of a plane ticket to fly a victim's mother into Australia from overseas to assist the victim to care for her young child while she was recovering from her injuries.
- Other items that may assist the victim in their recovery include: gym memberships, self defence-lessons, TAFE, University and practical training courses, security measures including costs associated with relocation and replacement or purchase of household furniture and other items.

Note

The key for legal representatives is to *link* the item claimed with the victim's recovery from the particular act of violence.

Linking 'items to assist recovery' is often a difficult task. As has been noted the Tribunal decision-maker retains a great deal of discretion in relation to the making of awards and it can be difficult to predict whether an item claimed is likely to be awarded by the Tribunal.

To manage the client's expectations they should be advised that 'items to assist recovery' does not represent a 'wishlist' or a 'windfall' whilst also remaining open to listening to the client regarding their recovery.

Note

Psychologists' Reports will often recommend that a victim will benefit from a holiday. Whilst this may be true the Tribunal is unlikely to award the cost of a holiday unless it can be shown that there is some additional benefit that goes 'to the heart' of the victim's recovery, providing more than 'relaxation' or 'happy moments.'

Example

The Tribunal refused to award the victim the cost of a holiday to Africa to visit her ill mother. No evidence was adduced, save for the opinion of a GP that the victim was socially isolated and suffering from depression and anxiety, that the trip would assist the victim in her recovery. The purpose of the trip was for the victim to visit her mother and it was assumed by the Tribunal that she would therefore have taken the trip regardless of whether she had experienced the act of violence.

CASELAW

*"It would be inappropriate to conclude that any expenditure which might be calculated to raise someone's spirits should be regarded as covered by s.8(3) in the absence of some more specific evidence... the expenditure should have the effect or be reasonably thought to have the effect of promoting recovery; but it must also be incurred for that purpose. Here, the purpose of the expenditure seems to have been an unrelated family one" [per Deputy President M.F. MacNamara, **Jafaro v VOCAT (General) [2009] VCAT 2372**]*

Example

The victim, a child, suffered sexual abuse at the hands of a family member within the extended family but outside of the immediate family. Revelation of the abuse had a deep effect, not just on the victim but on the entire family unit, including the parents and the victim's two siblings. The Tribunal awarded the cost of an overseas holiday for the child's entire immediate family.

The key here was that it was successfully argued that the holiday would assist in the victim's recovery by providing, not just a brief interlude for the victim but a chance to heal relationships within the family unit and rebuild trust with an anticipated permanent change to the family dynamic that would benefit the victim.

'Exceptional circumstances'

In addition, to claim an amount to assist recovery the applicant must show 'exceptional circumstances.'

"Exceptional circumstances" is not defined in the Act.

CASELAW

'...I accept that in principle "exceptional circumstances" means that the circumstances should be unusual, special, out of the ordinary course and that each case needs to be considered on its merits in light of all the circumstances.' Per Anne Coghlan, Deputy President **[RN v Victims of Crime Assistance Tribunal (General) [2005] VCAT 2651]**

3. Special Financial Assistance

An award of special financial assistance is *only* available to primary victims. The amount that a primary victim may receive in special financial assistance is pegged to the Category that the act of violence they have experienced falls into and is *additional* to the \$60,000 maximum award (either Category A, B, C or D).

To be eligible to claim special financial assistance the victim must demonstrate that:

- an act of violence was committed against them;
- as a direct result of the act of violence they have suffered a 'significant adverse effect'; and
- the act of violence is falls within Category A,B, C, or D.³⁹

'Significant adverse effect'

Defined in **s.3** of the Act as including grief, distress, trauma or injury experienced or suffered by the victim as a direct result of the act of violence but not including loss of or damage to property.

Category of act of violence

For the purposes of **s8A** of the Act, Schedule 1 of the *Victims of Crime Assistance (Special Financial Assistance) Regulations 2000* (Vic) specifies the acts of violence and classes of acts of violence that are categorised as category A, B, C or D:

³⁹ *Victims of Crime Assistance Act 1996* (Vic), s.8A

Table 1: Categories of acts of violence

Category A	An offence that involves: the sexual penetration of a person or attempted murder
Category B	An offence that involves: attempted sexual penetration of a person; or an indecent act with, or indecent assault against a person; or armed robbery or aggravated burglary; or the deprivation of liberty of a person for the purpose of: sexual penetration or demanding any ransom for their release.
Category C	An offence that involves: an attempt to commit a Category B act of violence; or a threat of death; or conduct endangering life; or inflicting serious injury; or robbery
Category D	An offence that involves: an attempt to commit a Category C act of violence; or a threat of injury; or an assault against a person or an attempted assault; or the deprivation of liberty of a person, excluding a Category B act of violence; or an act of violence not otherwise specified in Category A, B, C or D.


Note

The Tribunal may decide that an act of violence falls within a particular category even though no person has been charged with, convicted or found guilty of that category of offence or the alleged offender has been charged with, convicted or found guilty of a different category of offence.⁴⁰

⁴⁰ *Victims of Crime Assistance Act 1996* (Vic), s.8A(7)

The Act (at the time of writing) prescribes the following minimum and maximum amounts a victim may receive for each category of act of violence:

Table 2: minimum and maximum amounts recoverable by a victim (s.8A)(5)

Category A	■ \$4667 - \$10,000
Category B	■ \$1300 - \$3250
Category C	■ \$650 - \$1300
Category D	■ \$130 - \$650 ⁴¹

The applicant is entitled to the *minimum* amount specified in the Category if the Tribunal is satisfied that the applicant has suffered any significant adverse affect and an increased amount up to the maximum if the Tribunal is satisfied that the applicant has suffered any injury (the definition of 'injury' is found in **s.3(1)** of the Act).⁴²

Where the 'prescribed circumstances' listed in **sections 6 – 8** of the *Victims of Crime Assistance (Special Financial Assistance) Regulations 2000* (Vic) apply the maximum amount a victim is eligible to receive may be 'bumped up' to another category.

Category B, C or D offences can be increased to the Category A maximum where the victim has:

- suffered a very serious physical injury;
- been infected with a very serious physical disease; or
- been the victim of a series of related criminal acts of indecent assault or sexual penetration.
- Category C or D offences can be increased to the Category B maximum where the victim has:
 - suffered a serious injury; or
 - been the victim of related criminal acts of violence; or
 - suffered a deprivation of their liberty.

Category D offences can be increased to the Category C maximum where the victim:

- has been the victim of related criminal acts of violence; or
- was under 18, elderly or impaired at the time of the act of violence or any one of the related acts of violence.

⁴¹ *Victims of Crime Assistance Act 1996* (Vic), s.8A(5)

⁴² *Victims of Crime Assistance Act 1996* (Vic), s.8A(4)(a) & (b)

What is a 'very serious' or 'serious' physical injury?

A very serious physical injury means actual physical bodily harm to the body of a permanent or long term duration that involves loss of a bodily function, or disfigurement of a part of the body, or total or partial loss of a part of the body, or loss of a foetus or loss of fertility.⁴³

'serious injury' is not defined in the Act or Regulations.

'injury' is defined in **s.3(1)** of the Act and is not limited to physical injury.

CASELAW

'Serious' should be given its ordinary dictionary meaning of 'not slight or negligible' as appropriate in the context but "ultimately the issue of seriousness is a matter of impression." [Tucker v Victims of Crime Assistance Tribunal (General) [2009] VCAT 2453 per Deputy President M.F.Macnamara]

A small bite wound requiring stitches and two courses of antibiotics as well as follow up medical treatment was not characterised as 'serious' because it required no inpatient medical treatment; was well on its way to healing within a month and while there were residual marks there were no further complications in relation to the wound.

In the decision of *Moisidis v Victims of Crime Assistance Tribunal (General) [2006] VCAT 1919*, the applicant suffered continuing neck pain and was required to take ongoing increased doses of Panadeine Forte, had restricted neck movements despite physiotherapy, had severe headaches 3-4 times a week and a buzzing noise in his ears after being kicked in the head by three men. Deputy President Anne Coghlan found that the ongoing nature of his injuries combined with his post-traumatic stress symptoms and the possibility that they would develop into post-traumatic stress disorder meant that his injury was more than "...slight, superficial or trifling..." and was therefore a serious injury.

⁴³ Victims of Crime Assistance (Special Financial Assistance) Regulations, s.4

Example

A woman whose eye had been splattered with gypsum causing a scratch on her cornea requiring medication and antibiotic ointment (with no blindness but blurred vision) was deemed to have suffered a Category C offence, recklessly causing injury under s.18 of the Crimes Act 1958. Counsel representing the woman argued and was successful in convincing the Tribunal that what the woman had in fact suffered was a 'very serious physical injury' involving loss of a bodily function of long term duration and she should therefore be dealt with under Category A and not Category C.

What is a 'very serious physical disease'?

A disease that is life threatening in nature, including HIV within the meaning of the *Health Act 1958* (Vic).⁴⁴

4. Safety-Related Expenses

An award of financial assistance for 'safety-related expenses' can only be made to a **primary victim**.

'Safety-related expenses' is not defined in the Act but is likely to include expenses such as:

- lock changes;
- security doors and alarm systems;
- relocation expenses;

The incursion of safety-related expenses is particularly relevant for victims of family violence and can be applied for under an interim award (**see 'Interim Awards', p.41**). In July 2010 changes were made to the Act to enable a primary victim to recover reasonable safety-related expenses without having to establish "exceptional circumstances."⁴⁵

⁴⁴ *Victims of Crime Assistance (Special Financial Assistance) Regulations*, s.4

⁴⁵ For more information regarding safety-related expenses refer to the Tribunal's 'safety-related expenses factsheet' at www.vocat.vic.gov.au.

5. Loss of Earnings

Refer to **Practice Direction No. 5 of 2008** for the procedure to be followed when making a claim for loss of earnings (completion and filing of the '**Loss of Earnings Claim Form**')

Note

A primary or secondary victim is only entitled to an award for loss of earnings after exhausting all other available entitlements.

CASELAW

See *Vaughan v VOCAT*⁴⁶ in relation to the Tribunal's calculation of the amount that can be claimed by a victim where they have received benefits from other sources (in this case, WorkCover).

Secondary Victims

Awards of assistance available to secondary victims may be made up of the following amounts (up to \$50,000)⁴⁷:

- expenses actually incurred or reasonably likely to be incurred for reasonable counselling expenses
- medical expenses actually and reasonably incurred or reasonably likely to be incurred as a direct result of witnessing or becoming aware of the act of violence⁴⁸
- loss of earnings of up to \$20,000 (for a period of two years after the date of the act of violence) suffered, or reasonably likely to be suffered, as a direct result of witnessing or becoming aware of the act of violence (must show "exceptional circumstances")⁴⁹
- In addition in "exceptional circumstances" and within the \$50,000 limit, amounts for expenses actually and reasonably or reasonably likely to be incurred to assist the victim in their recovery are available for:
 - secondary victims who were under the age of 18 at the time of the commission of the act of violence, who witnessed the act of violence and whose family member was the primary victim; and
 - secondary victims who were the parent/ guardian of a primary victim under the age of 18 at the time of the commission of the act of violence and who were injured as a direct result of subsequently becoming aware of the act of violence.⁵⁰

⁴⁶ *Vaughan v Victims of Crime Assistance Tribunal (General)* [2005] VCAT 1758

⁴⁷ *Victims of Crime Assistance Act 1996* (Vic), s.10

⁴⁸ *Victims of Crime Assistance Act 1996* (Vic), s.10(2)(a) & (b)

⁴⁹ *Victims of Crime Assistance Act 1996* (Vic), s.10(3)

⁵⁰ *Victims of Crime Assistance Act 1996* (Vic), s.10A(1) and (2)

Related Victims

Awards of assistance available to related victims may be made up of the following amounts (up to \$50,000 for any one related victim and up to a total maximum cumulative amount of \$100,000 for all related victims of one primary victim, less any amount awarded for the funeral expenses of the primary victim)⁵¹:

- expenses actually incurred or reasonably likely to be incurred for reasonable counselling services;
- for medical or funeral expenses actually and reasonably incurred or reasonably likely to be incurred, as a direct result of the death of the primary victim;
- for distress experienced or reasonably likely to be experienced by the related victim as a direct result of the death of the primary victim;
- for loss of money that, *but for* the death of the primary victim, the related victim would have been reasonably likely to receive from the primary victim during a period of up to 2 years after their death;
- for other expenses actually and reasonably incurred or reasonably likely to be incurred as a direct result of the death of the primary victim.⁵²

Note

In 'exceptional circumstances' the Tribunal has the discretion to award an individual related victim an amount exceeding \$50,000.⁵³

- In addition in "exceptional circumstances" and within the \$50,000 limit the Tribunal may award an amount for other expenses actually and reasonably or reasonably likely to be incurred to assist the victim in their recovery from the death of the primary victim.⁵⁴

'Distress'

'Distress' is not defined in the Act.

CASELAW

In *Vita v VOCAT* it was noted that the Tribunal has little guidance as to how a claim for 'distress' should be approached.

It was concluded in that case that 'distress' should be given its ordinary dictionary meaning, that is, "great pain, anxiety, or sorrow; acute suffering; affliction; trouble".⁵⁵

⁵¹ *Victims of Crime Assistance Act 1996* (Vic), s.12(1) & s.13

⁵² *Victims of Crime Assistance Act 1996* (Vic), s.13(2)

⁵³ *Victims of Crime Assistance Act 1996* (Vic), s.12(2)

⁵⁴ *Victims of Crime Assistance Act 1996* (Vic), s.13(4)

⁵⁵ Per Anne Coghlan, Deputy President, *Vita v VOCAT* [2000] VCAT 2317

The same approach to distress was followed in *Krasuskas No. 2* and it was noted that 'distress' can be shown where there is no injury in the medical sense of the word and awards for distress are not limited to promoting the objective of recovery of the related victim.⁵⁶

Funeral expenses

The Tribunal may award assistance to a person who has incurred funeral expenses in relation to the death of a primary victim but does not fall within the definition of a related victim.⁵⁷

VOCAT Guideline No. 1 of 2010 provides a guide for applicants and their legal representatives as to how the Tribunal may determine what constitutes reasonable funeral expenses for burials and cremations. According to the Guideline it is unlikely that the Tribunal will exceed the prescribed amounts in relation to an interim award.

The Guideline also includes expenses that will not normally be included in an award for funeral expenses but provides that the Tribunal may depart from the Guideline where it considers these expenses to be reasonable.

Dependency claims

Practice Direction No. 8 of 2008 sets out the procedure to be followed when making a related victim wishes to make a claim for financial assistance for dependency.

'Dependent' is defined in **s.3(1)** of the Act as:

- an individual who was wholly or substantially dependent on the victim's income at the time of the victim's death or who would have been but for the incapacity of the victim due to the injury from which he or she died;⁵⁸ or
- a child of the victim born after the victim's death who would have been a dependent of the victim under the previous paragraph if he or she had been born before the victim's death.⁵⁹

A victim is not entitled to an award for dependency until they have exhausted *all* other available avenues for compensation.

A Dependency Claim is made by completing and filing a 'Dependency Claim Form' along with supporting documentation that verifies the figures used to calculate the amount claimed (**Practice Direction No. 8 of 2008** lists examples including: tax returns, details of assets and liabilities, details of gross pre-death earnings and how these have been calculation etc).

⁵⁶ Per C McKenzie, Deputy President, *Krasauskas v Victims of Crime Assistance Tribunal (No.2)(General) [2008] VCAT 1284*

⁵⁷ *Victims of Crime Assistance Act 1996* (Vic), s.15

⁵⁸ *Victims of Crime Assistance Act 1996* (Vic), s.3(1)(a)

⁵⁹ *Victims of Crime Assistance Act 1996* (Vic), s.3(1)(b)

Interim Awards

The *Victims of Crime Assistance Act 1996* (Vic) enables the Tribunal to make an “interim award” pending the final determination of an application for assistance “in any circumstances that it considers appropriate.”⁶⁰

Interim awards are generally requested for reasonable counselling and safety-related expenses that are incurred by the applicant (or the applicant’s legal representative or someone else on the applicant’s behalf) prior to the final hearing.

A 2002 amendment to the *Victims of Crime Assistance Act 1996* (Vic) enabled the Chief Magistrate on behalf of the Tribunal to delegate the power to make an interim award of assistance to the Principal Registrar, a Registrar or Deputy Registrar up to the *prescribed amount*. (The prescribed amount at the time of writing is **\$5,000**⁶¹)

If the matter is relatively simple the Registrar will be able to deal with it “over the counter” without the need for a formal hearing.

Note

A Registrar is only able to authorise expenses but cannot actually hand out a cheque to cover those expenses. The applicant will have to obtain a quote for the expense and then send an invoice to the Tribunal directly.

Applicants’ and their legal representatives should ensure that any quotes, invoices or receipts relevant to the amount claimed (ie, from a locksmith) are brought to the Tribunal to support the application for an interim award.

In some cases an application for an interim award will be referred to the Magistrate and whether an application is referred will depend on a number of factors. Some common scenarios in which a matter may be referred to a Magistrate include:

- if the application is for an amount greater than \$5,000;
- where there is a lack of evidence to support a claim, especially where the applicant has not made a police report;
- the claim has not been substantiated;
- if the applicant seeks counseling because there are numerous forms that must be filled out and practice directions that must be considered;
- if there is doubt as to whether the expense has arisen as a direct result of the act of violence.

⁶⁰ *Victims of Crime Assistance Act 1996* (Vic), s.56

⁶¹ *Victims of Crime Assistance (Delegation) Regulations 2003*, s.4

Note

Even where an application is for an interim award the applicant/applicant's legal representative will have to establish the elements necessary to prove the victim is eligible to claim compensation (ie, a relevant act of violence, an injury, etc)

Family violence

The incursion of 'safety-related' expenses prior the final hearing is particularly relevant for victims of family violence who may have to relocate or make changes to living arrangements at short notice.

Tip

Where the applicant is eligible to lodge an Application in one of the family violence jurisdictions (currently Heidelberg, Ballarat, Sunshine and Melbourne Magistrates' Courts) an interim award can be dealt with at the same time as an application for an Intervention Order.

Counselling

If an Application proceeds to a final determination and an award is granted, any amount made in an interim award is **deducted from** the final award.⁶²

Often it will be beneficial for the applicant to access counselling prior to the Final Hearing. For example, there may be a significant amount of time between the application being lodged and the Final Hearing (particularly in circumstances where there is a criminal matter pending).

If an applicant is eligible for counseling it is recommended that the applicant's legal representative consider making an interim application rather than waiting for the application to proceed to a final hearing.

Tip

Expenses/disbursements applied for under an interim award are awarded at an earlier stage in the process enabling the applicant/applicant's legal representative to cover disbursements in the event that the Application fails at the final determination.

⁶² *Victims of Crime Assistance Act 1996* (Vic), s.56(4)

The Application Form

The Application for Assistance Form (**Form 1, Rule 6**) can be downloaded from the VOCAT website under "Forms" (www.vocat.vic.gov.au).

The Form is divided into **eleven sections**:

1. Details of Person Wanting Assistance

- The applicant must nominate:
 - whether they identify as Aboriginal or Torres Strait Islander origin;

If the applicant does identify as Aboriginal or Torres Strait Islander origin the matter may be referred to the Koori VOCAT List (**Refer to p___, 'Koori VOCAT List'**)
 - whether they have previously made an application for assistance/criminal compensation or an application in relation to this particular act of violence; and
 - in which capacity, primary, secondary they are applying.

2. Section to be Completed if making Claim on behalf of a Child

Where the applicant is a child the application can be made on the child's behalf by a parent/guardian or another person whom the Tribunal considers to be appropriate.⁶³

3. Circumstances of the Act of Violence

This includes the name of the person who committed the act of violence (if known)

4. Police Reporting Details

The applicant must state:

- whether the act of violence has been reported to police and if it has, details of reporting (station, police officer, rank, date etc);
- if the act of violence has not been reported to police the applicant must attach a Statutory Declaration detailing why; and
- whether criminal proceedings have commenced against the alleged offender;

5. What effects have Resulted from the Act of Violence

- The applicant must indicate what effects have resulted from the act of violence (Physical, Psychological, Grief Stress or Trauma) and provide details.
- The applicant must also indicate whether they have attended a public hospital.

⁶³ *Victims of Crime Assistance Act 1996* (Vic), s.25(3)

6. Determination of your Application

- The applicant must indicate whether they wish to have the matter resolved “on the papers” under s.33 of the Act or whether they wish to attend a Tribunal Hearing.
- The applicant may also request that a Hearing be conducted in a closed Court and that restrictions be placed on the publication of the Application.

7. Have you Applied for Assistance under any other Schemes?

The applicant must include details (and attach documentation) in relation to any benefits the applicant may be eligible to claim under any other compensation schemes as well as benefits the applicant has received or is entitled to receive under a superannuation or insurance scheme.

The applicant must also indicate whether they have received assistance under the Victims Assistance and Counselling Program.

8. Type of Assistance Sought

- The applicant must nominate which types of assistance they wish to claim from the Tribunal.

9. If Death was Caused by the Act of Violence

- The applicant must give details of the deceased including the date and place of death and
- must also complete the ‘related victim applicants’ section.

10. Section to be Completed if Claim made by Related Victim Applicants

- The applicant must list details of any person whom they believe may be a related victim or who may allege that they are a related victim or any person who may have incurred funeral expenses for the deceased.
- The Registrar is required to notify anyone who may be eligible to make a claim for assistance as a related victim. (**Practice Direction 1 of 2007**)

11. Authorisation of the Applicant

12. Statutory Declaration

Things to Consider/Advise the Applicant When Completing the Application Form

Statutory declaration and supporting documentation

Although it is a requirement that the Application Form be completed and filed *with* a Statutory Declaration *and* supporting documentation it may not always be possible to attach both the Statutory Declaration and all supporting documentation and lodge the Application within the requisite time limit.

If the Application is filed soon after the occurrence of the act of violence it also may not be immediately evident what expenses will assist the victim to recover from the act of violence.

Note

If it is not possible to file a Statutory Declaration and all supporting Documentation immediately, an Application Form may still be lodged with the Tribunal. It should be noted on both the Application Form and in the covering letter that supporting documentation and a Statutory Declaration will be filed at a later date.

A Statutory Declaration/Victim Impact Statement provided by the applicant that tells the victim's story in their own words provides the Tribunal with insight into the impact of the crime on the victim. **(See Sample Statutory Declaration at p.66)**

S.33 Decision “on the papers” vs. tribunal hearing

The victim is required to nominate whether or not they wish to attend a Tribunal Hearing.

For some victims an application determined “on the papers” will be preferable to attendance at a Hearing. Some victims may be traumatised by the possibility of having to relate their story in a formal, “public” forum.

On the other hand, some victims may find the opportunity to attend a Hearing is an empowering and positive experience that enables them to receive validation and condolence from an institution that represents “the State.”

The victim should be put on notice, regardless of which option they choose, that the Tribunal will make a s.33 Offer and the Tribunal may require the victim to attend a Hearing in certain circumstances, whether or not they have selected this option.

Note

Hearings conducted in the VOCAT jurisdiction are typically conducted in a less formal manner. **(See ‘Final Hearing’, p.55)**

Lodgment of the Application Form

An Application for Financial Assistance must be lodged with or posted to the Registrar at the venue closest to **the applicant's** place of residence (not the legal representative's place of business).⁶⁴

If there is more than one applicant in relation to the same act of violence (and they are not close family members), the Application must be lodged with or posted to the Registrar at the venue closest to the **act of violence**.

An Application must be lodged with or posted to the Registrar at the Melbourne Magistrates' Court where:

- the applicant resides outside the State; or
- the applicant is a related victim; or
- the applicant is a primary or secondary victim and is aware of the existence of a related victim;⁶⁵
- It is within the discretion of the Registrar to accept an application lodged at a venue that does not fall within the above criteria.

Lodgment via Fax

An Application Form may be lodged with the Tribunal by fax but should include a cover page stating the following:

- name, address and telephone number of the sender;
- date and time of transmission;
- total number of pages sent, including the cover sheet;
- telephone number from which the application is sent;
- name and telephone number of a person to contact in the event that there is a problem in faxing the application;
- a statement that the fax is by way of lodgment under rule 6(1)⁶⁶

Where an Application Form is lodged by fax, a copy must be lodge with the Registrar within fourteen days of the date the fax was sent or the Application can be struck out.⁶⁷

An Application is deemed to be made when it is received by the Registrar in compliance with rule 5 and 6.⁶⁸

⁶⁴ *Victims of Crime Assistance (Procedure) Rules 2007* (Vic), r.5(1).

⁶⁵ *Victims of Crime Assistance (Procedure) Rules 2007*, r.5(2)

⁶⁶ *Victims of Crime Assistance (Procedure) Rules 2007* (Vic), r.6(1) and (2)

⁶⁷ *Victims of Crime Assistance (Procedure) Rules 2007* (Vic), r.6(3) and (4).

⁶⁸ *Victims of Crime Assistance (Procedure) Rules 2007* (Vic), r7

Refusal of an Application

The *Victims of Crime Assistance Act 1996* (Vic) stipulates that the Tribunal must refuse to make an award of assistance if satisfied that:

- the act of violence was not reported to the police within a *reasonable* period of time; or
- the applicant failed to provide *reasonable* assistance to anyone engaged in the investigation of the act of violence or the arrest and prosecution of the alleged offender

Unless the Tribunal considers that 'special circumstances' brought about that result);⁶⁹

- the application is made in collusion with the offender or alleged offender;⁷⁰
- an earlier application arising from the same act of violence has been made, whether or not it has been determined;⁷¹

What is a 'reasonable' period of time for reporting an act of violence to police?

The Act lists a number of factors the Tribunal may have regard to when determining the question of 'reasonable time' including:

- age of the victim at the time of the act of violence;
- whether the victim is intellectually disabled or mentally ill;
- whether the person who committed the act of violence was in a position of power, influence or trust in relation to the victim;
- whether the victim was threatened or intimidated by the person who committed the act of violence or any other person;
- the nature of the injury suffered by the victim.⁷²

CASELAW

In *S v VOCAT*⁷³ the Tribunal refused to make an award to a woman who had been raped at the age of 17 but did not report the rape to police until 22 years later. The Tribunal found no evidence that the victim felt threatened or intimidated for the entire intervening 22 years or that the perpetrators were in a position of power over her. Although it was not suggested that she should have reported the rape at the age of 17 it was suggested that she could have made a report at a later stage at age 24 (when still living at home) or even later.

⁶⁹ *Victims of Crime Assistance Act 1996* (Vic), s.52(a)(i) and (ii).

⁷⁰ *Victims of Crime Assistance Act 1996* (Vic), s.52(b).

⁷¹ *Victims of Crime Assistance Act 1996* (Vic), s.52(b).

⁷² *Victims of Crime Assistance Act 1996* (Vic), s.53.

⁷³ *S v VOCAT* [2002] VCAT 1257.

In *Hay v VOCAT* an award was made to a man who was sexually assaulted by three men at the age of 12-14 in the early 1980s and did not make a full report until 2000. The Tribunal accepted that a combination of factors including: assaults occurring when applicant a child and perpetrated by adults; the applicant was neglected and abused by his family and when he reported the assaults to them he was beaten and accused of lying; he abused drugs and alcohol as a child and as an adult; he had less than normal intelligence and a psychological condition, all of which amounted to a reasonable excuse for not reporting the incident to police.

'Special Circumstances'

'Special circumstances' are not defined in the Act but have been held to mean 'out of the common run' or 'out of the ordinary'.

In *TUN v VOCAT*⁷⁴ the Tribunal accepted that the victim had not reported the crime (committed by her husband) to police despite taking out an IVO against him. The victim's husband was a member of a motorbike gang, had been consistently violent towards her and had previous convictions for manslaughter. The victim was extremely fearful of reprisals from the offender and was on medication for depression and PTSD that it was accepted would have been exacerbated by making the report.

Other Factors to the Tribunal must consider

The Tribunal must have regard to a number of factors when determining whether or not to make an award including:

- the character, behavior or attitude of the applicant at any time during, before or after the act of violence (including past criminal behavior);
- whether the applicant provoked the act of violence and if so, the extent to which the act of violence was in proportion to that provocation;
- any condition or disposition of the applicant which directly or indirectly contributed to injury or death;
- whether the person who committed the act of violence will benefit directly or indirectly from an award.
- any other circumstances that it considers relevant.⁷⁵

in addition, for related victim applicants:

- the character or behavior of the deceased primary victim;
- any obligations owed to the applicant and any other related victim applicants;

⁷⁴ *TUN v Victims of Crime Assistance Tribunal (General)* [2009] VCAT 1599

⁷⁵ *Victims of Crime Assistance Act 1996* (Vic), s.55

- the financial resources and financial needs of the applicant and other related victim applicants;
- the nature of the relationship between the related victim applicant and the deceased primary victim.⁷⁶

Character and Behaviour of the applicant

Victims with past criminal records will find it difficult to secure an award for compensation (as part of the application process, the Tribunal will write to Victoria Police to request details of the applicant's criminal history).

CASELAW

In *White v VOCAT*⁷⁷ the victim's extensive criminal history was weighed against his actions in stepping in to prevent a man from being seriously assaulted by two men (this was considered to relate to his 'attitude' at the time of the offence). The victim was awarded the cost of his medical expenses resulting from the assault.

In *Mitchell v VOCAT*⁷⁸ an applicant with an extensive criminal history and anti-social behavior was nonetheless granted an award due to the fact that at the time of the sexual assault offence (when the victim was aged 9 or 10) he had no criminal history and his subsequent criminal history could be related back to the original criminal act.

Contribution to the Act of Violence

CASELAW

In *Fallon v VOCAT* there were conflicting versions of a scuffle between the victim and another woman. Although the victim was found to be the victim of an act of violence her behavior in swearing at and behaving aggressively towards the other woman in the Tribunal's view invited retaliation, was provocative and totally out of proportion to the situation.

'In my view this incident does not give rise to circumstances where there should be any expression, symbolic or otherwise, "by the State of the community's sympathy and condolence" [per Noreen Megay, Senior Member, Fallon v Victims of Crime Assistance Tribunal (General) [2009] VCAT 414

Offender may benefit from the Act of Violence

This can be particularly problematic for victims of family violence who are still in a relationship with the offender.

⁷⁶ *Victims of Crime Assistance Act 1996* (Vic), s.55(b).

⁷⁷ *White v Victims of Crime Assistance Tribunal (General)*[2010]VCAT 455.

⁷⁸ *Mitchell v VOCAT* [2003] VCAT 1731

Documentation: Evidence of an Injury

Physical

Where a victim has sustained a physical injury as a direct result of the act of violence the victim must file documentation with the Tribunal to support the Statement of Claim (e.g. reports from treating medical practitioners, specialists, dentists or other health professionals).

Unlike reports relating to psychological injury, VOCAT has not issued a Practice Direction stipulating that the medical report be in a particular form. The applicant's legal representative should write to the victim's treating health professional requesting a report and indicating the information the report should address. The *Lawyers Practice Manual of Victoria* suggests that a legal representative acting on behalf of a victim should request a report that includes:

- the date of the victim's first consultation;
- the history received from the victim;
- the medical practitioner's clinical findings on examination;
- the victim's diagnosis;
- the medical practitioner's opinion regarding the causal link between the act of violence and the injury;
- the medical practitioner's opinion regarding the effect the injury has had on the life of the victim including domestic, personal, work and social life;
- the victim's prognosis.

The applicant's legal representative should also request that the victim's medical practitioner provide any clinical notes; correspondence with referring doctors, specialists or other health professionals and the results of any tests that have been requested by the medical practitioner including CT scans, x-rays, MRIs, ultrasounds, blood tests, etc. **(Refer to Sample Letter C, at p68-69. and Sample Authority Form, p.70)**

Mental/Psychological

A claim for a mental/psychological illness or disorder should be supported by an assessment report from a Psychologist/Psychiatrist or other medical practitioner in relation to the injury. **(See Sample Letter D, p.71-72)**

Where the victim already has a treating psychologist/psychiatrist it is generally preferable to have them prepare this Report because they will usually have a greater insight into the victim's diagnosis, treatment and future needs.

The procedure for preparation and filing of reports by non-treating practitioners is contained in **Practice Direction No. 2 of 2008**. The format of the report is: **Form 1: Psychological/Psychiatric Assessment Report** and if a fee is claimed for preparation of the report an invoice (**Form 5**) from the psychologist/psychiatrist should be prepared and filed as well.

Reports prepared by practitioners who intend to provide ongoing treatment to the applicant are dealt with in **Practice Direction No.1 of 2008 (See 'Reasonable Counselling Expenses' p.29-31)**

Tip

Higher awards are claimed successfully where all players (e.g. medical practitioners, mental health professionals, legal practitioners) work together in preparation of the Application.

Assessment Reports requested by the Tribunal

If the Tribunal requests that an assessment report be prepared then it must bear the costs of, and incidental to, the preparation of the report.⁷⁹ The Tribunal has a panel of Psychologists/Psychiatrists who it may refer applicants to if necessary.

If the applicant is intending to claim something from the Tribunal, it is recommended that the applicant's legal representative request that reference is made to this in the Report itself:

Example

"We intend to claim the cost of driving lessons from the Tribunal, do you agree that this would be advantageous for our client?"

Is there anything else that you feel would assist our client in his recovery?

...please refer to this in your Report."

⁷⁹ *Victims of Crime Assistance Act 1996* (Vic), s.39(1)(b); s.39(5) and Practice Direction No. 2 of 2008.

Documentation: Evidence of an Act of Violence

Victim has reported the act of violence to police

Where the victim has reported the act of violence to the police the Tribunal will rely primarily upon information provided by Victoria Police in determining whether the alleged act of violence has occurred and whether the applicant is a victim of the act of violence.

The Tribunal itself will request information from Victoria Police regarding the act of violence (this is usually provided to the Tribunal within four to eight weeks of the request being made).

Where the investigation into the act of violence is ongoing, Victoria Police will advise the Tribunal of the status of the investigation at the time the request is made and will provide updates of information to the Tribunal as the investigation progresses.

Note

The Tribunal will usually obtain a summary of the offence, statements contained in the hand up brief and any relevant criminal priors of both the alleged offender and the victim.

Victim has not reported the act of violence to police

Where the victim has *not* reported the act of violence to police the Tribunal relies primarily upon the Statutory Declaration of the victim to determine whether the alleged act of violence has occurred (this should address both the circumstances of the act of violence and the reasons for the victim's failure to make a police report) and whether the applicant is a victim of the act of violence.

Note

Where the victim has not reported the act of violence to police it is difficult to obtain a successful outcome from the Tribunal. It is also a requirement that the report to police be made within a reasonable time.

Obtaining Documentation from the Tribunal

The procedure for requesting access to documents, including the Tribunal's ability to restrict access to some documents,⁸⁰ is set out in **Practice Direction No. 9 of 2008**.



Note

Where access to documents contained on the Tribunal's file is granted, photocopies are not permitted to be made but notes are permitted to be taken.

⁸⁰ *Victims of Crime Assistance Act 1996* (Vic), s.42A and s.43

Determination of the Application

S.33 “On the Papers”

The Tribunal will initially make a s.33 offer to an applicant (**refer to Sample s.33 advice, p.73**)

If the applicant has nominated a preference for having the matter determined at a hearing, once the s.33 offer is made, the applicant has the opportunity to amend the Application Form to accept the s.33 offer in preference to the matter proceeding to a hearing.

Alternatively, if the applicant is not happy with the s.33 offer made by the Tribunal they can opt have the matter heard and determined at a hearing.

Directions Hearings

After listing a matter and prior to the Final Hearing, the Tribunal may list a matter for a Directions Hearing. Alternatively, a Directions Hearing may be listed at the request of a legal practitioner.

Victims of Crime applications will not always be listed for a Directions Hearing. **Practice Direction No. 7 of 2008** outlines a number of common scenarios where the Tribunal may decide to list a matter for a Directions Hearing:

- where the Tribunal has determined that a person with an interest in a matter (including the alleged offender) will or may be a party to the proceedings;
- counsel assisting the Tribunal has been appointed;
- access is sought to classified documents in a Tribunal file or access to a file is sought by a third party;
- an application has been made for an extension of time;
- there has been a delay or other deficiency in reporting the act of violence to police;
- pecuniary loss or a dependency award is claimed;
- the Tribunal has been provided with adverse police material;
- the application does not appear to disclose a relevant offence;
- the application is incomplete or deficient.

Note

Where the applicant is legally represented the applicant does not need to be present at the Directions Hearing.

Practice Direction No. 7 of 2008 indicates the type of information that may be provided by the applicant/person with an interest at the Directions Hearing including: the number of witnesses to be called; estimated length of the hearing; the need, if any, for making use of alternative arrangements for giving evidence; details of documents to be exchanged or viewed; details of the facts in dispute; the need for interpreters and any other information that may affect the conduct of the Final Hearing.

Hearings in the VOCAT jurisdiction tend to be conducted in a fairly informal manner.

Tip

If a matter is listed for a Directions Hearing it is recommended that the applicant's legal representative take advantage of the opportunity to inspect the Tribunal's file.

Final Hearing

Conduct of the Hearing

Hearings in the VOCAT jurisdiction tend to be conducted in a fairly informal manner.⁸¹

The Tribunal is not bound by the formal rules of evidence and may conduct the hearing in any manner it thinks fit but must give a party to the matter a reasonable opportunity to lead evidence, examine, cross-examine or re-examine witnesses and make submissions.⁸²

As is the case with a Directions Hearing, the victim's legal practitioner may request that the hearing be conducted in a closed court.

Note

There is often a time lag between a Final Order being made and money being released by the Tribunal. It is recommended that the victim be advised that payment following a final order is not *immediate*.

⁸¹ *Victims of Crime Assistance Act 1996* (Vic), s.38(1)(a)

⁸² *Victims of Crime Assistance Act 1996* (Vic), s.38(1).

Notification of the Alleged Offender

In certain circumstances the Tribunal may choose to notify the alleged offender or “any other person whom the Tribunal considers to have a legitimate interest in the matter”⁸³ of a scheduled hearing.

However the Act stipulates that the Tribunal must not notify the alleged offender without first giving the applicant the opportunity to be heard.⁸⁴

Practice Direction No. 4 of 2008 specifies the procedures to be followed by the Tribunal where the alleged offender (and anyone else with a legitimate or substantial interest in the matter) is to be notified:

- The applicant/legal representative is advised in writing and given **21 days** to respond;
- The applicant/legal representative has the opportunity to make submissions/objections to the notification and at the conclusion of **21 days** these are referred to a Tribunal member for consideration; (**See Sample Letter D – Submissions Regarding Notification of the alleged offender**)
- If notification goes ahead, the applicant/legal representative are notified in writing and are given **21 days** to decide whether to withdraw or to pursue the application;
- If the applicant chooses to proceed or doesn't respond the Tribunal sends notification to the alleged offender who then has **14 days** to advise the Tribunal of their participation in the hearing;
- If no response is received, the matter is listed for hearing and the applicant/legal representative is advised that the alleged offender will not be attending;
- If the alleged offender elects to be notified of the hearing the matter is listed for a Directions Hearing and the applicant/legal representative is notified of the time, date and place. The final application will proceed subject to any directions given at the Directions Hearing and both the applicant/legal representative and the offender will be notified.

The process prescribed by the Act allows the applicant or the applicant's legal representative to make submissions to the Tribunal indicating that they are opposed to the offender being notified and the reasons for their opposition.

The Tribunal only notifies the alleged offender in a very small proportion of applications that are made to the Tribunal. The alleged offender is more likely to be notified where there is doubt in relation to the occurrence of the act of violence.

Note

Even where an offender is notified of a hearing, in the experience of both the Tribunal and legal practitioners, offenders rarely choose to attend.

⁸³ *Victims of Crime Assistance Act 1996* (Vic), s.34(2)

⁸⁴ *Victims of Crime Assistance Act 1996* (Vic), s.34(3)

However, even where an offender does not choose to attend a hearing, the mere possibility that the offender may be present can have an extremely negative impact on the victim and may discourage the victim from proceeding with the Application.

Note

When taking instructions from the applicant it is recommended that the legal representative flag the possibility that the offender may be notified if the matter proceeds to a hearing. It should be emphasised to the applicant that they will have the opportunity to withdraw should the Tribunal choose to notify the offender.

If the applicant chooses to proceed with an Application and the offender intends to be present at the final hearing, the Tribunal can direct that a number of measures be taken to minimise victim distress including⁸⁵:

- evidence given by closed circuit television;
- use of screens to shield the victim from the offender;
- permitting the victim to have someone beside them for emotional support when giving evidence;
- requiring Counsel to be seated.

Costs

The Act stipulates that a legal practitioner who acts for an applicant is not entitled to recover the costs of the preparation of the Application or the appearance at the Tribunal hearing directly from the applicant.

If the Application is successful the legal practitioner's "reasonable" costs are paid to them directly by the Tribunal.

The Tribunal retains *full discretion* to determine the costs of and incidental to the proceedings and has "full power to determine by whom, to whom and to what extent the costs are to be paid".⁸⁶ In the exercise of its discretion the Tribunal is guided by Practice Directions or Guidelines issued from time to time by the Tribunal.⁸⁷ (If the application is unsuccessful the Tribunal may still make an order for payment of the legal practitioner's costs but this is *strictly* within the discretion of the Tribunal).

The most recent Guideline was issued in August 2007. The Guideline sets the fee for the preparation of an application of "modest complexity" at between \$680 and

⁸⁵ *Victims of Crime Assistance Act 1996* (Vic), s.37(3) and *Magistrates' Court Act 1989* (Vic), s.4K.

⁸⁶ *Victims of Crime Assistance Act 1996* (Vic), s.48.

⁸⁷ *Victims of Crime Assistance Act 1996* (Vic) s.58 and s.45(1A).

\$780, and for an application of “greater complexity” between \$780 and \$990. Multiple Claims and Related Victim Applications attract a fee between \$680 and \$990 for the Main application with a 30% to 50% recoverable for subsequent applications.⁸⁸

The Tribunal does not provide further guidance as to how it determines whether a matter is of “modest” or “greater” complexity or what factors it might take into account in determining whether the costs recovered by the legal practitioner should be at the higher or lower end of the range.

The costs claimed by a legal practitioner should be included in the statement of claim **(for an example refer to ‘Sample Statement of Claim’, p74-75)**

In the period 2009-10 the average amount of legal costs paid out by VOCAT was \$1,043.⁸⁹

Disbursements

There are also a number of common disbursements that may be incurred by a legal practitioner when acting for an applicant in the VOCAT jurisdiction (including costs charged for the preparation of Reports and the release of records, Freedom of Information requests, etc).

If the application is unsuccessful or if it never proceeds to a final hearing the legal practitioner may be left out of pocket for up-front expenses.

A number of ways in which it is suggested the incursion of up-front costs can be avoided include:

- making use of interim awards to cover urgent expenses where possible;
- requesting that payment be delayed until after the Tribunal has determined the Application; **(refer to Sample Letter E, p77)**
- requesting that photocopying/administration fees be waived.

⁸⁸ Victims of Crime Assistance Tribunal, *Guideline No. 1 of 2007*.

⁸⁹ Victims of Crime Assistance Tribunal, *Annual Report 2009-10*, [“Table 16: Amount of Legal Costs ordered to be paid on the final determination of applications for financial assistance, and average legal costs ordered, 2007/08 – 2009/10’], p.45

Review of Decision

Variation of Award

An adult victim has **six years** from the date of the making of the final award to apply to apply for a variation of the award (even where a previous variation has already been made).⁹⁰

If the victim was a child at the time the award was made the time limit for variation of the award is anytime up until the child reaches the age of 24.⁹¹

When considering an application for variation the Tribunal will have regard to:

- any fresh evidence that has become available;
- any change of circumstances;
- any payments received by or payable to the applicant since the award was made or last varied;
- anything else that the Tribunal thinks is relevant.

CASELAW

Davis v VOCAT: a request was made in 2008 for variation of an award made in 2004. The variation was requested to cover the cost of a training course that would have enabled the victim to gain his full license as a coach driver and it was hoped, lead to employment opportunities. The request was refused on the basis that the request was not a variation but a fresh application. The fact that the victim was having difficulty finding work was found to be part of a lifelong pattern rather than something that could be considered a change in circumstances or fresh evidence.⁹²

Appeal

Appeals from decisions by the Victims of Crime Assistance Tribunal can be made to the Victorian Civil and Administrative Tribunal on the following grounds:⁹³

- refusal to make an award of assistance;
- the amount of assistance awarded;
- refusing to vary an award;
- the amount of assistance awarded on variation;
- a determination that an applicant should refund money paid or the amount of the refund.

⁹⁰ *Victims of Crime Assistance Act 1996* (Vic), s.60

⁹¹ *Victims of Crime Assistance Act 1996* (Vic), s.60(2)

⁹² *Davis v Victims of Crime Assistance Tribunal (General)* [2008] VCAT 2535

⁹³ *Victims of Crime Assistance Act 1996* (Vic), s.59

The applicant has **28 days** from the date of VOCAT's decision or the date on which a statement of reasons was given to the applicant or they were informed that a statement of reasons would not be given, whichever is later, to lodge an appeal.⁹⁴

In relation to the appeal VCAT "stands in the shoes" of the Tribunal and assumes all of the functions of the original decision-maker.⁹⁵ In *TUN v VOCAT* it was concluded that this means that VCAT also assumes VOCAT's power to make an order for costs of the application.⁹⁶

To assist the applicant a request for reasons for the decision may be made under the *Victorian Civil and Administrative Tribunal Act 1998*.

Tip

A request may be made to the Tribunal for an audio tape of the Final Hearing.

Note

Unlike the VOCAT jurisdiction, where the costs of an application are not paid by the applicant, the applicant may have to bear their own costs of appealing a decision, regardless of the outcome.

Before appealing the decision it is recommended that the question of costs be weighed carefully by reference to the VCAT jurisdiction and the applicant advised accordingly.

Koori Applicants

The Koori VOCAT List was established in 2006 as a pilot program to ensure that the purposes and objectives of the Act were achieved in relation to Koori applicants. In 2009 the Koori VOCAT List was made a permanent feature of the VOCAT jurisdiction. **(Refer to Practice Direction No. 2 of 2009).**

Whittlesea Community Legal Service has not had the opportunity to conduct an application in the Koori VOCAT List to date. For more detailed information regarding the operation of the Koori VOCAT List refer to the Report 'Koori VOCAT List Pilot: Review and Recommendations' available for download from the VOCAT website (www.vocat.vic.gov.au)

⁹⁴ *Victims of Crime Assistance Act 1996* (Vic), s.59(2)

⁹⁵ *Victims of Crime Assistance Act 1996* (Vic), s.51

⁹⁶ *TUN v Victims of Crime Assistance Tribunal (General)* [2009] VCAT 2479

VOCAT Practice Directions & Guidelines

VOCAT Practice Direction 1 of 1998

s.16A Magistrates' Court Act 1989 (Vic): Engagement of Counsel by Magistrates' to assist in the VOCAT jurisdiction

VOCAT Practice Direction 4 of 2003

s.58 Victims of Crime Assistance Act 1996 (Vic): Directions Hearings

VOCAT Guideline No. 1 of 2007

s.45(1A) and s.48 Victims of Crime Assistance Act 1996 (Vic): Recommended preparation and appearance fees for legal practitioners and counsel.

Guideline No. 2 of 2007

s.45(1A) Victims of Crime Assistance Act 1996 (Vic): Recommended fees for preparation of Psychological Assessment Reports and Counselling sessions.

VOCAT Practice Direction No. 1 of 2007

r.10 Victims of Crime Assistance (Procedure) Rules 1997: Notification of related victims.

VOCAT Practice Direction No. 1 of 2008

s.8, 10 & 13 Victims of Crime Assistance Act 1996 (Vic): Procedures to assist Tribunal to make awards for counseling expenses.

VOCAT Practice Direction No. 2 of 2008

s.39(1)(b) & s.39(5) Victims of Crime Assistance Act 1996 (Vic): Procedure for non-treating Psychologists' preparing an Assessment Report.

VOCAT Practice Direction No. 4 of 2008

s.34(2) & s.34(3) Victims of Crime Assistance Act 1996 (Vic): Procedure to be followed when offender to be notified.

VOCAT Practice Direction No. 5 of 2008

s.17 Victims of Crime Assistance Act 1996 (Vic): Procedure for claims in relation to loss of earnings.

VOCAT Practice Direction No. 6 of 2008

s.29 *Victims of Crime Assistance Act 1996* (Vic): Procedure to be followed when making an application for an extension of time.

VOCAT Practice Direction No.8 of 2008

s.13(1) *Victims of Crime Assistance Act 1996* (Vic): Awards for dependency made by a related victim.

VOCAT Practice Direction No. 9 of 2008

s.42A *Victims of Crime Assistance Act 1996* (Vic): Procedures to be followed in relation to accessing documents held by VOCAT.

VOCAT Practice Direction No. 1 of 2009

s.59, 46 & 49 *Victims of Crime Assistance Act 1996* (Vic): Review of a VOCAT decision by VCAT

VOCAT Practice Direction No. 1 of 2010

s.55(2) *Victims of Crime Assistance Act 1996* (Vic): Procedure for claiming financial assistance for expenses yet to be incurred.

VOCAT Guideline No. 1 of 2010

s.12, 13(2),15 & s.45A *Victims of Crime Assistance Act 1996* (Vic): Awards for funeral expenses.

Forms

Application for Assistance

Application for Counselling – Form 4, PD 4 of 2008

Application for Extension of Time – PD 6 of 2008

Application to Access Information – Form 1, PD 9 of 2008

Assessment Report by non-treating practitioner – Form 1, PD 2 of 2008

Counselling and Report Fee Invoice – Form 5, PD 1 of 2008

Dependency Claim Form – PD 8 of 2008

Initial Report – more than 5 hours of Counselling – Form 2, PD 1 of 2008

Initial Report – up to 5 hours of Counselling – Form 1, PD 1 of 2008

Loss of Earnings Claim Form – PD 5 of 2008

Primary Victim Statement of Claim Form

Secondary Victim Statement of Claim Form

Related Victim Statement of Claim Form

Statutory Declaration

Subsequent Report – additional hours of Counselling – Form 3, PD 1 of 2008

Travel Expenses Declaration Form – PD 1 of 2011

Undertaking (Access Information) – Form 2, PD 9 of 2008

Undertaking by media representative (Access Information) – Form 3, PD 9 of 2008

(All of these forms can be downloaded from the Victims of Crime Assistance Tribunal website – www.vocat.vic.gov.au)

Contacts & Resources

Victims' of Crime Assistance Tribunal (www.vocat.vic.gov.au)

1st Floor, 233 William Street,

Melbourne, VIC, 3000

Toll Free: 1800 882 752

Ph: 9628 7855

Fax: 9628 7853

Victims' of Crime Helpline: 1800 819 817

Federation of Community Legal Centres (www.fclc.org.au)

Level 3, 225 Bourke Street

Melbourne VIC 3000

P:(03) 9652 1500

E: administration@fclc.org.au

Law Institute of Victoria (www.liv.asn.au)

470 Bourke Street

Melbourne VIC 3000

P:(03) 9607 9311

E: lawinst@liv.asn.au

Whittlesea Community Legal Service (www.wcc.org.au)

Shop 111, Epping Plaza, Corner Cooper & High Streets

Epping VIC 3076

Ph: 9401 6655

Fax: 9401 6688

Sample Letter A

Letter to the Tribunal Requesting Extension of Time to Lodge Documentation

29 July 2008

The Registrar
Victims of Crime Assistance Tribunal
Sunshine Magistrates' Court
P.O. Box 435
Sunshine VIC 3020

Dear Sir/Madam,

**Re: Application for Assistance
Joe Bloggs (Claim No: 2008/86540)**

We refer to the above matter and confirm that we assist Mr Bloggs in his Victims of Crime Assistance Tribunal ("VOCAT") application.

We note that the due date for Mr Bloggs to file all relevant materials in support of his claim is August 8 2008. [*provide reasons for the delay in filing documentation*]:


- *We are still awaiting a report from our client's counselor Ms. Clarence (from North Western Counselling Service).*
- *We intend to file a Statutory Declaration detailing the impact of the sexual abuse on our client and we are still in the process of finalising the Statutory Declaration.*
- *We have requested a report from our client's General Practitioner, Dr. Scott (from Eastern Medical Centre) and we have yet to receive it.*

In the circumstances, we request that an extension of four weeks be granted in this matter to enable our client to submit a comprehensive claim and all requisite supporting documentation.

We thank you in anticipation of your assistance. Should you have any queries please contact the writer on (03) 9401 6655.

Yours faithfully,

Sample Letter B


VICTIMS OF CRIME ASSISTANCE TRIBUNAL

JICA ST
HEIDELBERG, VIC 3084
P.O. BOX 105 HEIDELBERG 3084
PHONE: (03) 84582000
FAX: (03) 84582001
AUSDOC DX: 211906 HEIDELBERG

Our Ref: _____
Your Ref: _____

2009

WHITTLESEA COMMUNITY LEGAL SERVICE
SHOP 111, EPPING PLAZA
CORNER HIGH & COOPER ST
EPPING VIC 3076

Dear Sir/Madam,
RE: APPLICATION FOR ASSISTANCE
BY: _____

This is the final request for all reports and documentation to be sent to the Tribunal.

WHAT YOU MUST DO

1. Refer to the attached 'Final direction for preparation' to make sure you are aware of what documentation you are required to forward to the Tribunal.
2. Write to the Tribunal and advise:

'I am satisfied I have forwarded all reports and documentation to support my claim.'

Once you have done this, we will advise you as to whether it is necessary for you to attend the hearing.

If a reply to this letter is not received within 28 days your claim will be struck out.

REGISTRAR
Victims of Crime Assistance Tribunal

Sample Statutory Declaration

STATUTORY DECLARATION IN SUPPORT OF APPLICATION FOR ASSISTANCE

I Joe Bloggs, of 2 The Avenue, Parkville in the State of Victoria do solemnly and sincerely declare that:

Circumstances of the Act of Violence:

1. I am the applicant in this matter.
2. I was assaulted on 12 March 2009 when I was travelling home from school.
3. As a result of the assault, I sustained multiple injuries to my head, arms, shoulder and ankle.
4. The assault was unprovoked.
5. Immediately after the assault I made a full statement to the Police.
6. I understand that the two offenders, A Smith and B Bragg, were charged with affray and recklessly causing serious injury. I was informed that they were both found guilty and placed on a supervision order without conviction.

Immediate Impact of the Incident:

7. I was taken by ambulance to A Big Public Hospital in Melbourne after a commuter dialed '000'.
8. I could feel that my right arm was stiff and sore. My right shoulder had been dislocated and I needed painkillers when the hospital staff put my shoulder back into place. I was required to wear a sling for two weeks.
9. There was a lot of swelling and bruising to my face and ankle and my left eye was swollen shut. The outer part of my right hand was also swollen but the doctors confirmed that it was not broken.
10. After returning home, I had trouble sleeping when I rolled onto my side because of shoulder pain.
11. I also experienced dizziness, which I did not have prior to the incident.
12. Two days after the assault I was told by my friend that the assault had been recorded on a mobile phone and uploaded onto the 'YouTube' website. I contacted YouTube to request that the film be removed, which they did.

Long Term Impact of the Incident:

13. I continue to have pain in my right shoulder, which has hindered my participation in sporting activities.

14. I have altered my travelling patterns. I am reluctant to travel by public transport, which has inconvenienced me, as I have to rely on family and friends to drive me around. I do not have a drivers' license.
15. My self-confidence has been adversely affected. I experience anger and frustration which has deprived me of a feeling of peace.
16. I left school in November 2009 before completing my VCE. My teachers were disappointed, they felt that I had potential, but I left because I lacked motivation and wanted to avoid further stress. As a result of the incident, I experienced short-term memory loss and found it difficult to concentrate during class.

Recovery Efforts

17. I have consulted a Psychologist, Mr Chris Carlisle, who runs the Victims Assistance Counselling Program at Kew. I have found the five sessions to be beneficial and I would be grateful to receive funding to attend further counselling if my VOCAT application is approved.
18. I believe that ongoing counselling would help my self-confidence and help me to deal with my mood swings.
19. I wish to join a fitness club to improve my fitness, strength and confidence.
20. I experience ongoing problems with my shoulder and ankle. As recently as 31 March 2009, I dislocated my shoulder, which took several minutes to recover from.
21. I have been seeing a specialist, Dr. Don, for ongoing treatment, with my most recent appointment being on 25 March 2009.
22. Despite the injury to my shoulder and ankle, I want to maintain my sporting pursuits for fitness and keeping in touch with friends. I would like to play baseball on a regular basis, for which I need to register, a uniform, shoes and a baseball bat.
23. I want to get on with my life and I am keen to undertake swimming lessons, painting and language classes. I feel that these activities would assist me in rebuilding my self-esteem and help me with my recovery.
24. As I am reluctant to travel on public transport because of the incident, my father is teaching me how to drive. I would like to undertake several lessons with a professional instructor before I apply for my driving test.
25. I humbly request that the Tribunal grant my application.

Sample Letter C

Letter to a Medical Practitioner Requesting Report and Documentation

30 June 2008

Dr. Smith
A Medical Centre
22 Rose Avenue
Greenmeadows VIC 3000

Dear Dr. Smith,

**Re: Application for Assistance
Jill Bloggs (Claim No: 2008/86540)**

We act on behalf of Ms Bloggs (DOB 5/12/1958) in her application for assistance from the Victims of Crime Assistance Tribunal ("VOCAT").

We have lodged an application for assistance on behalf of Ms Bloggs in relation to incidences of domestic violence/assault that occurred between 2004 and 2007. We understand that you have provided treatment to Ms Bloggs in relation to injuries she suffered as a result of these incidences.

We advise that in order for Ms Bloggs' claim to be successful we must establish that she has been the victim of a crime and that she has suffered injuries as a direct result of the crime.

In order to assist Ms Bloggs in her claim we request that you provide us with copies of any medical records that you hold in relation to our client for the period of January 2004 to September 2007 including:

1. clinical notes regarding the date of our client's first consultation, our client's medical history, the findings of any medical examination, diagnosis and prognosis, the treatment prescribed, the effect the injury is likely to have on our client's personal, work, domestic and social life and the causal link between the injury suffered and the assault;
2. any correspondence with referring doctors or treating specialists and other health professionals including referrals and reports;
3. the results of any tests that have been conducted including x-rays, CT scans, MRI scans and ultrasounds.

We **enclose** an authority to release the above information signed by Ms Bloggs.

If you do not hold any relevant medical records regarding the above instances of domestic violence, please advise our office.

We would be grateful if you could please waive any photocopying or administration fees on the basis that our client is a Disability Support Pension recipient/we undertake to pay your reasonable photocopying expenses.

It would assist our client if you could respond to this request by 30 July 2008.

If you have any queries, please contact the writer on (03) 9401 6655.

Yours faithfully,

Encl.

Sample Authority

AUTHORITY TO RELEASE DOCUMENTS

I, [name of applicant] (DOB [date]), authorise and direct [name of hospital] to provide to my legal representatives, all information they require for use in my victims of crime application including:

- a) inpatient, accident and emergency department and outpatient records;
- b) clinical notes and progress notes;
- c) referrals and specialists' reports;
- d) results and reports of all imaging including x-rays, CT scans, MRI scans and ultrasounds;
- e) results and reports of all pathology.

Signed.....

Date.....

Sample Letter D

Letter to a Psychologist/Psychiatrist requesting an Assessment Report

Our Ref:

4 April 2010

Ms F.
Psychologist
Practice House
3 3rd Street Bundoora Vic

Dear Ms F,

**Mr P. Perry (D.O.B. 25/5/1968) – Request for Assessment Report
Application for Victims' of Crime Compensation**

We act for Mr Perry in his Application for Assistance under the *Victims of Crime Assistance Act 1996* (Vic).

We have lodged a Victims of Crime Application on behalf of Mr Perry in relation to an assault that we have been instructed occurred on 5 January 2010 and we advise that the key issues we must establish are that Mr Perry was the victim of an 'act of violence' and that he has suffered an injury.

Request for Report

In order to assist our client in his Application for Assistance we would be grateful if you could please prepare an Assessment Report: **'Psychological/Psychiatric Assessment Report – Form 1'** which can be downloaded from the Victims of Crime Assistance Tribunal ("VOCAT") website (www.vocat.vic.gov.au). It is a requirement of the VOCAT that the Assessment Report be made in the prescribed form.

The report should include the following details:

Information about our client;

Your qualifications and a summary of your experience;

Information about the act of violence;

The period of time spent in consultation with our client in preparation of the

Report;

Your opinion regarding our client's Psychological/Psychiatric issues including:

Symptoms and diagnosis;

Psychological/Psychiatric history;

The link between the Psychological/Psychiatric issues and the assault.

Our client's prognosis and recommendations for treatment.

You may wish to complete sections 1 to 2 of Form 1 and then attach a report to answer the remaining questions along with any additional information that you consider relevant.

In addition we intend to claim the cost of a self defence course and life drawing classes for our client. Do you recommend that this would assist our client in his recovery? Please refer to this in your Report.

Are there any other items that in your opinion may assist our client to overcome the impact of the act of violence? Please refer to these in your Report.

Cost of Report

We confirm that our client is on a disability support pension and is therefore unable to meet the cost of the report himself.

We advise that in the event that our client's claim is successful, the Tribunal will order payment to cover your costs in preparing the report. In order to obtain reimbursement, please complete Form 5 'Counselling and Report Fee Invoice' which will be filed with the Tribunal along with Form 1.

We wish to highlight that in the unfortunate event that our client's Application for Assistance is unsuccessful, our legal service cannot be held liable for the costs of preparation of the report. If this occurs you may wish to waive your fee, reduce it or discuss payment with our client.

We would be grateful if you could please complete and return both forms (either via email or by post) to our legal service at your earliest convenience and we thank-you in anticipation of your assistance.


We enclose an Authority to Act signed by our client.

If you have any queries regarding this letter please contact the writer on 9401 6655.

Yours faithfully,

Sample S.33 Offer

CCTA48



VICTIMS OF CRIME ASSISTANCE TRIBUNAL

JKA ST
HEIDELBERG, VIC 3084
P.O. BOX 105 HEIDELBERG 3084

PHONE: (03) 84582000
FAX: (03) 84582001
AUSDOC DX: 211906 HEIDELBERG

Our Ref:

Your Ref:

SECTION 33 ADVICE

RE: APPLICATION OF ASSISTANCE BY:

You have advised that all material relevant to your application has now been filed with the Tribunal.

In your application you indicated that you would prefer to attend a Tribunal hearing.

In preparation for the hearing a Tribunal member has read all of the material filed by you. The Tribunal member has indicated that, if you choose, your application can be finalised without your attendance or the appearance of a legal representative on your behalf.

The Tribunal member has indicated that, on the basis of the material filed, the following award would be made:

**SFA (CATEGORY A) - \$10,000
TO ASSIST RECOVERY:-**

\$2358 AS PER QUOTE FOR TOSHIBA LAPTOP

\$596 AS PER QUOTE FOR TARGET BEDDING

\$995 CERT II & CROWD CONTROL TRAINING COURSE

\$550 ENROLMENT IN AVIATION SECURITY

\$320.44 CERT III AGED CARE COURSE

\$118.96 BRAS N THINGS CLOTHING

LEGAL COSTS - \$850

REPORT - \$495

You have the right to attend the Tribunal for a determination of your award if you wish to do so. If you decide that you do not wish to attend the Tribunal, your application will be dealt with in your absence and an award made in the terms detailed above.

Please sign and return the enclosed form by _____ if you choose to have your application dealt with in your absence in the manner detailed above. If you wish to attend the tribunal you need to do nothing and your application will be listed in due course.

Registrar
Victims of Crime Assistance Tribunal

** You must notify the Tribunal in writing of any change of address.*

Sample Statement of Claim

Victims of Crime Assistance Tribunal STATEMENT OF CLAIM FOR PRIMARY VICTIM

APPLICATION FOR ASSISTANCE BY:

REFERENCE NUMBER:

1. EXPENSES

a. AMOUNTS CLAIMED PAYABLE TO APPLICANT

Expense category	Expense details	Date	Description of Supporting Documents	Amount claimed (\$)
Counselling	Psychologist's report and assessment from	24/3/09	Invoice attached	\$500.00 (including GST)
	Further counselling sessions	Not yet taken	Not yet taken	To be determined by the future treating counsellor
Medical	Payment for medication - the Hospital	24/10/08	Invoice attached	\$46.75
	Payment for medication - Amcal Pharmacy	13/12/08	Invoice attached	\$23.00
	Payment for medication - Amcal Pharmacy	13/12/08	Invoice attached	\$12.20
	Payment for medication - Amcal Pharmacy	3/11/08	Invoice attached	\$38.25
	Payment for medication - Amcal Pharmacy	1/12/08	Invoice attached	\$13.25
	Payment for medication - Amcal Pharmacy	18/11/08	Invoice attached	\$12.15
	Payment for medication - Amcal Pharmacy	27/11/08	Invoice attached	\$13.25
	Payment for medication - Amcal Pharmacy	5/12/08	Invoice attached	\$12.20
	Payment for medication - Amcal Pharmacy			

Submissions to the Tribunal Objecting to Notification of the Alleged Offender

25 April 2010

The Registrar
Victims of Crime Assistance Tribunal
Heidelberg Magistrates Court

Dear Sir/Madam,

Re: Application for Financial Assistance – Ms A. Smith

We refer to our previous correspondence, in particular your letter dated 15 April 2010.

We have received our client's instructions to object to the notification of Mr C. in this matter on the following basis:

1. Our client is frightened of Mr C and does not want to personally see him. Our client considers that her youth was destroyed by him and she was almost pushed to the point of taking her own life. She remains in fear of Mr C. Prior to obtaining an Intervention Order, Mr C regularly engaged in aggressive 'stand over tactics' over Ms C, her mother and sister. Our client believes Mr C will take advantage of her impaired emotional state and inability to function in his presence;
2. We submit that it would not be fair to have Mr C present at the hearing given our client's impaired ability;
3. We understand that our client has an Intervention Order against Mr C. It is noted that our client has therefore satisfied a Court that she is in fear of Mr C to the extent of justifying the placing of an Intervention Order. Given that VOCAT operates 'on the balance of probabilities' and is intended to be a rehabilitative process, it is respectfully submitted that it would be inconsistent to then request that the offender attend the hearing;
4. Our client instructions that if Mr C is called to the hearing, or is in anyway advised of same, she is unlikely to proceed with the application as she is in such fear of Mr C.

It is therefore respectfully submitted that the Tribunal exercise its discretion and not notify the offender of the hearing of this matter.

We look forward to your response.

Sample Letter E

Request to delay payment of ambulance expenses

29 January 2009

Dear Mr T,

Re: Tax Invoice No.0000 - \$871
Application for Assistance: Joe Bloggs
VOCAT Reference: 000000

We refer to the above matter involving Mr Bloggs, who we are representing. We also refer to your earlier correspondence dated 10 October 2008 and acknowledge that your organisation has generously granted our client a four-month extension for the outstanding payment due.

We seek a further two-month extension of the due date for payment that is currently due on 31 January 2009.

As you would be aware, we are currently in the process of finalising Mr Bloggs' VOCAT application. Mr Bloggs lacks the resources to meet the payment himself and we understand that ambulance payments are unlikely to be met by way of an interim order by VOCAT. Hence, our client will not be in a position to meet this cost prior to final determination of the VOCAT application. We believe that the two month extension will enable this matter to be resolved amicably and expediently.

We apologise for any inconvenience caused and thank you in anticipation of your assistance. Should you have any queries please contact us on 9401 6655.

Yours faithfully,

Per: