



# Victims of Crime Compensation

Lucy Guthrie

Human Rights and Civil Law

Justice, Access & Equity

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

# VICTIMS CRIME COMPENSATION

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## OVERVIEW OF PRESENTATION:

1. Available schemes for victims
2. Brief overview – compensation and restitution orders  
VOCAT:
3. Initial instructions
4. Eligibility
5. Making an application
6. Details of claim
7. Procedure and Evidence
8. Determination

# RELEVANT LEGISLATION

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- Victims of Crime Assistance Act 1996
- Victims of Crime Assistance (Special Financial Assistance) Regulations 2000
- Victorian Civil and Administrative Tribunal Act 1998
- Sentencing Act 1991

# VICTIMS OF CRIME COMPENSATION SCHEMES

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- Victims of Crime Assistance Tribunal – awards are paid by the state to victims of “acts of violence”.
- Compensation and restitution orders made by the court after a finding of guilt in criminal proceedings – offender liable for payment.
- Civil action taken by the victim against the offender.

# COMPENSATION AND RESTITUION ORDERS

- **Brief Overview:**

- Defendant found guilty of an offence, then under the Sentencing Act - victim may apply to the court for a compensation award for injury (including pain and suffering) – section 85B.
- Victim may also apply to the court for restitution for property damage – section 86.
- Under the Confiscation Act 1997 (Vic) restraining orders can be made in relation to an offender's property to satisfy a compensation order under the Sentencing Act .

# COMPENSATION AND RESTITUION ORDERS

- **Issues:**
- Department Justice has recently identified issues in relation to compensation/restitution orders including:
  - An offender has insufficient assets to pay order
  - Offender may have financial responsibilities to dependents who have nothing to do with offending
  - Enforcing compensation orders often unsuccessful due to low level income of most offenders

# VICTIMS OF CRIME ASSISTANCE TRIBUNAL ("VOCAT")

- The Victims of Crime Assistance Act 1996 ("the Act") establishes the VOCAT, which operates out of the Magistrates Court.
- VOCAT can award assistance, where an application is made by or on behalf of a victim, if satisfied on the balance probabilities that an act of violence occurred.
- Victim may be eligible for assistance even if offender not identified, or is acquitted under criminal standard of proof.

# VOCAT - INITIAL INSTRUCTIONS

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## **CHECKLIST:**

- ✓ DATE OF ACT OF VIOLENCE
- ✓ DETAILS OF THE ACT OF VIOLENCE
- ✓ INJURY OR SIGNIFICANT ADVERSE EFFECT
- ✓ PRIMARY, SECONDARY OR RELATED OR OTHER VICTIM
- ✓ REPORTED TO POLICE WITHIN REASONABLE OF TIME
- ✓ OUTCOME OF POLICE INVESTIGATION / CRIMINAL PROCEEDINGS
- ✓ EVIDENCE OF THE ACT OF VIOLENCE
- ✓ COMPENSATION SOUGHT
- ✓ WHETHER THERE IS AN IMMEDIATE NEED FOR COMPENSATION OR ASSISTANCE
- ✓ OTHER REMEDIES



# VOCAT - INITIAL INSTRUCTIONS

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- **Initial difficulties to keep in mind when taking instructions:**
  - Manage client's expectations - compensation amounts are limited to particular heads of damage, apart from relatively small awards for "special financial assistance".
  - Use plain language regarding eligibility, evidence and the likely award of compensation.

# VOCAT – ELIGIBILITY

- **Claimable “Act of Violence”:**
  - The current legislation covers all acts of violence committed on or after 1 July 2000
  - The current legislation may cover acts of violence committed before 1 July 2000 in certain circumstances – see Transitional provisions in ss. 77-79 of Victims Of Crime Assistance Act 1996 (“the Act”)
  - Primary victims who have suffered significant adverse effects from an act of violence and who wish to make an application for “special financial assistance” may only do so if the act of violence occurred on or after 1 July 2007

# VOCAT – ELIGIBILITY

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## **Section 3. Definitions (1) of the Act of violence:**

In this Act-

act of violence means a criminal act or a series of related criminal acts, whether committed by one or more persons, that has- (a) occurred in Victoria; and

(b) directly resulted in injury or death to one or more persons, irrespective of where the injury or death occurs;

# VOCAT - ELIGIBILITY

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- An applicant can be the primary victim, secondary victim, related victim or person who has incurred funeral expenses – of the “act of violence”
- If the person is a child, their parent or guardian or another person the Tribunal considers appropriate can make an application on their behalf.
- If any other person needs assistance in making an application, any person who the Tribunal considers appropriate may make the application on their behalf

# VOCAT – ELIGIBILITY

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- **Primary Victim:**

- Person who is injured or dies as a direct result of an act of violence against him/her – section 7(1).
- Person who is injured or dies as a direct result of trying to arrest someone whom he/she believes on reasonable grounds has committed an act of violence, whether or not actually committed – section 7(2)(a).

# VOCAT – ELIGIBILITY

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- **Primary Victim (cont):**

- Person who is injured or dies as a direct result of trying to prevent the commission of an act of violence – section 7(2)(b).
- Person who is injured or dies as a direct result of trying to aid or rescue someone whom he/she believes on reasonable grounds is a victim of an act of violence, whether or not an act of violence is actually committed – section 7(2)(c).

# VOCAT – ELIGIBILITY

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- **Secondary Victim:**

- Person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act – section 9(1).
- Person who is injured as a direct result of **subsequently becoming aware** of an act of violence **and** he/she is the parent/guardian of the primary victim **and** the primary victim was under 18 at the time of the commission of that act – section 9(2).

# VOCAT – ELIGIBILITY

- **Related Victim:**

- Person who at the time of the occurrence of the act of violence was:
  - a close family member,
  - a dependent, or
  - had an intimate relationship, with the primary victim,
- And the primary victim died as a direct result of that act – sections 11(1)(a), (b) and (c).



# VOCAT – ELIGIBILITY

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- **Other Victims:**
  - Person who has incurred funeral expenses as a direct result of the death of a primary victim, and is not related to the victim – section 15.
- “Other Victims” under section 15 entitled to claim funeral expenses only.

# VOCAT – MAKING AN APPLICATION

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- There is a prescribed form for the “Application for Assistance” - can be downloaded from the web site.
- When completing the application, applicant is only required to specify details of:
  1. Act of violence –
    - nature of the act (ie – “assault”),
    - when occurred,
    - who was the perpetrator,
    - whether a report made to police and to which police station.

# VOCAT – MAKING AN APPLICATION

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2. Nature of injury – Physical? Psychological?  
Or both? (tick a box)
3. Type of assistance sought – whether  
claiming as a “primary, secondary or related  
victim”. (tick a box).

# VOCAT – MAKING AN APPLICATION

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- **Where to send:**
  - Each venue of the Magistrates Court is also considered a venue for VOCAT.
  - The application should be lodged (posted or faxed) to the venue closest to the applicant's place of residence.

# VOCAT – MAKING AN APPLICATION

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- **Time limit on application:**
  - An application must be made within 2 years of the act of violence
  - in the case of a related victim or person claiming funeral expenses, within 2 years after the death of the primary victim - section 29(1).
  - Some applications will automatically **not** be considered out of time, even though they are lodged more than 2 years after the act of violence - section 77.

# VOCAT – MAKING AN APPLICATION

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- **Time limit on application (cont):**
  - For all other applications made more than 2 years after the act of violence was committed the application will be struck out, unless the Tribunal considers that, in particular circumstances, the application should not be struck out – section 29(2).

# VOCAT – MAKING AN APPLICATION

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- **Applications for extensions of time:**
  - Considerations Tribunal will consider when deciding whether to strike out an application under section 29(3), including:
    - The age of the applicant at the time of the act of violence.
    - Whether the applicant is intellectually disabled within the meaning of the Disability Act 2006 or mentally ill within the meaning of the Mental Health Act 1986.
    - Whether the alleged perpetrator of 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 applications threatens capacity of VOCAT to make a fair decision.

# VOCAT – MAKING AN APPLICATION

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- **Application for an interim award:**
  - The Tribunal may make an interim award of assistance in any circumstances that they consider appropriate - section 56(1).
  - Such applications can be determined without a hearing, but the Tribunal may order hearing if it believes it is necessary or desirable to do so - section 33(1)(c).



# VOCAT – DETAILS OF CLAIM

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- Once application is received and accepted by VOCAT, a request for a Statement of Claim is sent to the applicant.
- In the Statement of Claim, applicant must **only** specify amounts claimed.
- (There is a prescribed form for the “Statement of Claim” as well - can be downloaded from the VOCAT web site.)

# VOCAT – DETAILS OF CLAIM

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- **Primary Victims - types of assistance available to ALL – section 8:**
  - Reasonable counselling expenses
  - Reasonable medical expenses
  - Loss of earnings up to \$20,000
  - Expenses for loss or damage to clothing
  - **“In exceptional circumstances”** an amount to help recover from the act of violence – section 8(3)
  - **Note:** There is a cap of \$60,000 on all awards made under section 8.

# VOCAT – DETAILS OF CLAIM

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- **Primary Victims - “Special Financial Assistance” for SOME Primary Victims – section 8A:**
  - There is additional “special financial assistance” available to Primary Victims (amount is awarded **in addition** to award under section 8).
  - In order for Primary Victim to be eligible for “special financial assistance” applicant needs to show:
    - He/she suffered significant adverse effect as a direct result of the act of violence, and
    - That the act of violence falls into categories A – D for the purposes of section 8A. Regulations to the Act specify an act of violence as a category A – D act of violence.

# VOCAT – DETAILS OF CLAIM

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- **Primary Victims -“Special Financial Assistance” for SOME Primary Victims (cont):**
  - Categories A – D acts of violence are specified in the Victims of Crime assistance (Special Financial Assistance) Regulations 2000.
  - Scale of amounts for each category is included in section 8A.
  - The highest awards are for actual physical or psychological injury, as well as for “significant adverse affects”.
  - The highest award is for injury as a result of a Category A act of violence - \$10,000.

# VOCAT – DETAILS OF CLAIM

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- **Secondary Victims - types of assistance available – section 10:**
  - Reasonable counselling expenses
  - Reasonable medical expenses
  - In exceptional circumstances, loss of earnings up to \$20,000
  - **“In exceptional circumstances”** an amount to help recover from witnessing or subsequently becoming aware of the act of violence IF the primary victim is a family member AND secondary victim was under 18 at time of act of violence – section 10A
  - **Note:** There is a cap of \$50,000 on all awards made under section 10 and 10A.

# VOCAT – DETAILS OF CLAIM

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- **Related Victims - types of assistance available – section 13:**
  - Reasonable counselling expenses
  - Reasonable medical expenses
  - Funeral expenses
  - Amount for distress experienced as a direct result of death of primary victim
  - Loss of money that the related victim may have received from the primary victim during 2 years after his/her death.
  - “In exceptional circumstances” an amount to assist with recovery from the death of primary victim – section 13(4)
  - **Note:** There is a cap of \$50,000 on all awards made under section 13.

# VOCAT – PROCEDURE & EVIDENCE

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- **Procedure:**

- Any question of fact to be decided on the balance of probabilities (section 31)
- The Tribunal can make a determination without a hearing if the applicant consents (section 33(1))
- If the matter is to be determined via a hearing, the applicant may summons any witnesses
- Hearing is not formal
- Hearing is not bound by the rules of evidence or procedure
- Each party must be given a reasonable opportunity to call or give evidence, examine, cross-examine and re-examine witnesses, and make submissions

# VOCAT – PROCEDURE & EVIDENCE

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- **Evidence of the “act of violence”:**
  - Claim can still proceed if there has been no conviction in relation to the act of violence.
  - Registrar will make enquiries with police as to history of the act of violence.
  - If there is no conviction then charges, a police report, or even a statement to police (if given soon after occurrence of alleged act of violence) may be sufficient evidence – when in conjunction with applicant’s evidence.



# VOCAT – PROCEDURE & EVIDENCE

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- **Evidence – Injuries:**

- Physical injuries - Medical reports and hospital files or records
- Psychological injuries - Psychological/psychiatric reports, either by applicant's treating psychologist/psychiatrist or subsequent to a fresh assessment, must be in accordance with Practice Directions 1 and 2 of 2008. (ALL Practice Directions are included in VOCAT web site).

# VOCAT – PROCEDURE & EVIDENCE

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- **Evidence of expenses claimed:**
  - For medical or counseling expenses - invoices / receipts/ quotes
  - For “Exceptional Circumstances” expenses (for items to help in recovery from the act of violence) - invoices / receipts/ quotes
  - For loss of earnings claims – pay slips and other evidence of loss of earnings.

# VOCAT – PROCEDURE & EVIDENCE

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- **Evidence for Dependency Claims:**
  - Details of gross pre-death earnings of the deceased primary victim
  - Details of potential eligibility entitlements and payments from Workcover, TAC, Centrelink or any other payments received by the applicant or deceased primary victim
  - Details of financial contribution made by deceased primary victim to the applicant for the 3 financial years immediately before the death of the primary victim
  - Verification of the relationship between the applicant and primary deceased victim

# VOCAT – PROCEDURE & EVIDENCE

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- **VOCAT – Investigative Powers:**

- The Tribunal may authorise a person to make any enquiry or carry out any investigation necessary to obtain further information that the Tribunal requires - section 39(1)(a)
- The Tribunal may request the preparation of a medical or counselling report regardless of whether the applicant has already provided the Tribunal with such a report (section 39(1)(b))
- The Tribunal may order that the Applicant lodge additional documents and/or an additional statement containing further particulars - section 39(1)(c)

# VOCAT - DETERMINATION

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- **Considerations in determining whether to award assistance:**
  - the character (including past criminal activity) of the applicant at any time
  - whether the applicant provoked the commission of the act of violence
  - If provoked, the extent to which the act of violence was in proportion to that provocation
  - any condition of the applicant which contributed to his or her injury or death
  - whether the person by whom the act of violence was committed or alleged to have been committed will benefit directly or indirectly from the award

# VOCAT - DETERMINATION

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- **Refusal of Assistance:**

- Application for an extension of time is not granted
- The act of violence was not reported to the police with a reasonable time
- The applicant failed to provide reasonable assistance to the investigation or prosecution of the act of violence
- The application is made in collusion with the person who committed or is alleged to have committed the act of violence
- The applicant has made an earlier application for assistance arising from the same act of violence

# VOCAT - DETERMINATION

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## **Application for Variation:**

- The Tribunal may, on the application of the person to whom an award of assistance was made, vary the award in any manner that the Tribunal thinks fit.
- The variation can include variation of the terms of the award the amount of assistance - section 60(1).
- An application for variation should be made within 6 years after the making of the original award - section 60(2).
- For victims who were under the age of 18 years at the time of the original award of assistance, an application for variation may be made at any time up until he or she turns 24 - section 60(2).

# VOCAT - DETERMINATION

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- **Appeals:**
  - A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a final decision of the Tribunal.
  - An appeal to VCAT must be lodged within 28 days of the decision or within 28 days of receiving the written reasons for decision.



# VOCAT – RECENT AMENDMENTS

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- *Justice Legislation Amendment (Victims of Crime Assistance and other matters) Bill 2010 (Vic)* was introduced in March 2010.
- It is currently before the Legislative Council.
- Relevant amendments:
  - Section 8(2)(e) provides specifically for “safety related expenses” for primary victims, rather than leaving it to the applicant to attempt to make a claim for “safety related expenses” as part of an “**exceptional circs**” claim under section 8(3).
  - Section 24(3) allows Chief Magistrate to delegate to a judicial registrar any power conferred on VOCAT, other than the power to review a final decision by the Tribunal.