



Women's
Legal Service WA

CRIMINAL INJURIES COMPENSATION APPLICATION INFORMATION

A Guide for Potential Applicants*

PURPOSE

This information guide is designed to assist you with preparing an application for Criminal Injuries Compensation pursuant to the *Criminal Injuries Compensation Act 2003 (WA)*.

It is not intended to be legal advice and is provided as general information only.

We strongly recommend you seek legal advice if you have any questions about whether or not you may have a claim. Further information on how to do this is at the end of this guide.

In preparing this guide, Women's Legal Service WA referred to the Criminal Injuries Compensation Manual prepared and published by Legal Aid WA and Fremantle Community Legal Centre and WLCWA wishes to acknowledge the assistance provided by that valuable resource.

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Information in this guide is current as at 20 March 2020.

WHAT THIS GUIDE WILL COVER

This information guide will help you to better understand:

- * who can (and cannot) apply for Criminal Injuries Compensation;
- * when and how to make an application;
- * how to gather your supporting documents (your evidence);
- * where to go for further assistance (including links to useful websites);
and
- * details for support services.

APPLYING FOR CRIMINAL INJURIES COMPENSATION

1. WHO CAN APPLY?

A victim of crime can make a Criminal Injuries Compensation claim.

This usually includes the primary victim of an offence. A primary victim is a person who is “injured” (physically and/or mentally) as a direct result of an act of violence committed against them.

In some circumstances “indirect” victims can claim. This applies to ‘close relatives’ of a primary victim.

‘Close relatives’ are limited to:

- * the parents, grandparents or step parents of a victim;
- * the spouse or de facto partner of a victim; or
- * a child, grandchild or step child of a victim.

Indirect victims may claim for loss of financial support, funeral expenses, or psychological harm caused by what happened to a primary victim.

If you think you would qualify as an indirect victim, you should **seek legal advice**.

2. TIME LIMIT & EXTENSIONS

You have **three (3) years** from the date of the last offence in which to claim. The 3 year time limit applies no matter how old you were when the offence(s) was committed.

An extension of time can be requested in writing and may be awarded by the Assessor in the following situations:

- * the offences occurred when you were a child;
- * you live (or lived) remotely and have limited access to services and information;
- * your mental health has not been stable enough to work on an application;

- * family and/or cultural reasons/obstacles; or
- * any other significant circumstances.

If you are claiming for incidents which occurred more than three years ago, you will need to **seek legal advice**.

Alternatively, if the time limit is soon approaching, you should also **seek legal advice** on how to preserve the time limit. It might be possible for a “stop-gap” application to be put in to keep the door open for you to make a proper claim later.

3. EXCLUSIONS TO APPLYING

There are certain circumstances which may exclude (prevent) you from applying or being awarded any compensation (the payment of compensation is called the award).

These include:

- * where the award may benefit the offender (e.g. if you are still in a relationship with the Offender);
- * if you did not assist investigators (e.g. if you refuse to give evidence at a trial);
- * where you contributed to their injury (e.g. if you started a fight and you are then injured);
- * if you were engaged in criminal conduct at the time you were injured (e.g. you are attacked during a drug deal); or
- * where compensation has already been made (by the Assessor or another compensation scheme) or been refused; or
- * where you might have another compensation claim (which the Assessor may require you to apply for first before determining if any ‘top-up’ should be awarded to you).

If any of the exclusions apply to you, you should **seek legal advice** as there may be grounds to address why the exclusion should not apply.

4. WHEN THERE IS NO CONVICTION OR CHARGE

Usually an Award will not be made unless you have done everything in your power to assist the Police in identifying, catching and prosecuting the offender. It does not matter whether the offender was actually caught, charged or convicted, only that you did all you could to help.

However, if there are specific reasons as to why you were unable to assist the Police and you can provide evidence to support why you did not, then an award may still be made.

It is best to **seek legal advice** before commencing an application if you are worried about this.

5. WHAT CAN YOU APPLY FOR?

If you have been injured or suffered loss as a result of a criminal offence or alleged criminal offence committed against you, you can claim for the following:

- * *Injury* – defined as “bodily harm, mental and nervous shock, or pregnancy”;
- * *Mental and Nervous Shock* (Mental Harm) – must be a recognised psychiatric problem. If you are claiming for mental harm, it is best to **seek legal advice**;
- * *Loss of Financial Support and Funeral Expenses* (for indirect victims);
- * *Loss of Income* (both past and future) – past loss may include paid leave or loss of wages. It can be claimed if you are self-employed. You must also note any other income you receive due to your injury (e.g. insurance pay outs);
- * *Medical or Other Expenses* (including future expenses) – costs of treatment, costs of organising medical reports (e.g. doctors, dentists, psychiatrists);
- * *Travelling Costs* – to and from medical appointments;
- * *Damage to Personal Items* (during the incident) – e.g. clothing, footwear; and

- * *Loss of Enjoyment of Life* – this can include multiple things, for example loss of confidence and an inability to participate in the activities or pleasures of life that were formerly enjoyed. (If you do not think that you can describe this, **seek legal advice**)

Note: You cannot claim compensation for legal fees you have paid.

6. NOTIFICATION OF THE OFFENDER

In most cases the Assessor will notify the offender about an application for Criminal Injuries Compensation. This is to provide the offender with the opportunity to respond to a claim.

When notifying the offender, the Assessor will not release any of your personal details (e.g. your address). The Assessor only provides information about who is making the application about which particular offence(s). Generally, the Assessor will only notify of offences where the offender was convicted.

Nevertheless, there are certain circumstances where a request can be submitted to the Assessor that the offender not be notified.

If you do not want the offender notified of your application, we recommend you **seek legal advice**.

7. HOW MUCH COULD YOU GET?

The maximum award of compensation for offences committed in Western Australia will depend on the extent of the injuries and losses suffered and the date on which the offence(s) occurred as per the table below:

| Date of Offence | Maximum Award |
|-------------------------------------|---------------|
| 22 January 1971 to 17 October 1976 | \$2,000 |
| 18 October 1976 to 31 December 1982 | \$7,500 |
| 1 January 1983 to 31 December 1985 | \$15,000 |
| 1 January 1986 to 30 June 1991 | \$20,000 |
| 1 July 1991 to 31 December 2003 | \$50,000 |
| 1 January 2004 to present | \$75,000 |

The maximum amount available is per offence if they are unrelated.

If two or more offences are related (meaning they occurred at about the same time) then they will be treated as only one offence.

If you are unsure about this point, **seek legal advice**.

8. BEFORE THE APPLICATION – TRACKING EXPENSES

In order to apply for compensation for the expenses you have incurred as a result of the incidents, you must keep a detailed record of any expenses incurred. These may include medical expenses, travel expenses (kilometres travelled in a private vehicle or return fare on public transport), lost income and the cost of reports from medical practitioners.

To keep track of your expenses efficiently it is advised you use a type of logbook or notebook to record any expenses you have incurred as you go. It is also necessary to keep all your receipts. These records are essential to your claim and will largely affect the amount you are ultimately awarded. Any easier way to do this is to take photos of your receipts and any injuries and email them to yourself at a private email address where they are stored and can be accessed when you need them.

When doing your application, you will need to provide a copy of all your receipts to the Assessor and add the details to the tables contained in the Criminal Injuries Compensation Application Form.

9. STARTING THE APPLICATION

One application can contain multiple offences if they were committed by the same offender. If you were injured by two different people, you will need to make two separate applications. You must complete a separate application for separate offenders.

The application consists of an:

- * Application Form;
- * Personal Statement; and
- * any relevant evidence in support.

These are usually lodged together with the Office of Criminal Injuries Compensation for assessment.

There is no application fee for lodging an application.

But you may need to pay a fee to obtain your evidence in support as some services charge an administration fee for processing Freedom of Information requests.

10. WHAT YOU NEED

Evidence in Support

Statements, records and reports are needed as evidence of the incident occurring and of the injuries and/or loss you have suffered. These include, but are not limited to, witness statements, Police reports, medical records and reports from hospitals, doctors and psychologists, photographs of injuries or damage, support letters, etc.

You have a right to request access to information and records that relevant bodies hold about you under Freedom of Information (**FOI**) (as set out in the *Freedom of Information Act 1992*).

To do so you must submit a written application.

Most organisations have their own application forms that can be filled out or submitted online. Otherwise you can write a letter to the service detailing what records you are requesting and why.

Obtaining Medical Records

Hospital and doctors' records are evidence of you attending and having received medical treatment following any offences committed against you.

Generally, you will be required to write a letter to the relevant health service requesting a copy of your medical records under Freedom of Information and detailing which records you are after over what period.

You will also need to provide proof of identification with your request. A copy of your driver's licence will meet this requirement.

Obtaining Medical or Psychological Reports

Medical reports provide valuable evidence in support of claims for future treatment or mental shock. To obtain a medical report in support of your application, you should first ask your treating practitioner, as they will have the best knowledge about your situation, then consider approaching other practitioners if they are unable to provide a report.

It is best to put your request in writing and you should ask the relevant provider to include in their report the following information:

- * relevant dates;
- * your relevant history;
- * description of your symptoms and diagnosis;
- * details of any tests performed;
- * the extent the offence(s) contributed to your psychological state;
- * details of treatment (directly after the offence and ongoing);
- * medications (currently prescribed and/or needed in the future);
- * effects of the injury (e.g. on your enjoyment of life and your ability to work, etc.); and
- * your prognosis (the likely outcome for your health).

Costs Associated with Obtaining Medical Reports

It is important to note that Medicare does not cover the cost of reports, or the cost of an appointment for the purpose of obtaining a report.

The approximate costs for obtaining reports are \$50-\$300 for general practitioners, and \$300-\$1,500 for a specialist doctor.

If you are claiming mental injury, it is important to get a report from either a clinical psychologist or a psychiatrist. These can range from approximately \$500-\$3,000.

If you are a low income earner, fees can sometimes be waived, reduced or paid by instalments. It is best to discuss this with the practitioner upon booking an appointment.

Interim payments from the Office of Criminal Injuries Compensation are sometimes available. This is a payment awarded before the final award is assessed to cover costs such as funeral, medical or treatment costs. However, if your action fails, any interim payment amount must be repaid to the State.

Obtaining Police Reports (WA Police)

Police Reports and Statements can now be applied for online through the WA Police website (www.police.wa.gov.au/Police-Direct/Apply-for-Information) or by lodging a hard copy of the application.

There is a \$30 application fee, which can increase depending on the documents needed. Proof of identity must also be provided when making an FOI request.

Please note that it can take 4-6 weeks for the WA Police to get back to you. When they do, you will receive what is called an “Information Report for Criminal Injuries Compensation”.

Other Reports

This can include reports such as worker’s compensation or insurance reports. You may request access to these from the relevant bodies to assist your claim.

Your Statement and Witness Statement(s)

This is very important as it explains exactly what has occurred and how this has impacted your life.

Some things to include in your Statement are:

- * your personal details (name, occupation, date of birth, etc.);
- * a description of your life before the event such as work/home life and activities and interests;

- * the details of the offence(s), including the details of what happened, any pain suffered and how you were feeling. If the offender has not been charged, be sure to include as much detail as possible;
- * the details of your injuries both physical and mental;
- * the effect those injuries have had on you;
- * how it has affected your earnings and future income (e.g. where you have been unable to work for a period of time).

When drafting your Statement, you might find that it has a triggering effect on you and bring up memories which may upset you or cause you distress.

If you find this step of the process is painful or too difficult, we recommend you seek support from friends and family, a counsellor and/or a victim support service.

11. APPLICATION ASSESSMENT

The process of assessing a claim can take many months or even a couple of years from the date you lodge the claim to when the final decision is made.

The Assessor can make their decision based on the documents that have been provided by you and/or further documents provided by the offender and other outside sources.

The Assessor has the power to obtain information themselves from external organisations. The Assessor issue “Notices” which requires the person who receives it (e.g. the Police) to provide further information or documents.

The Assessor can also request a person to give evidence, if in the circumstances the Assessor determines a hearing needs to be held. These hearings are private. If this happened, you would also have to provide evidence at the hearing.

If you have any fears for your safety in relation to others that may be attending, you can notify the Assessor of your concerns and suitable arrangements can be discussed.

12. AWARDS OF COMPENSATION

If you receive an award of compensation it can impact on any future Centrelink benefits you receive. You should obtain advice about this from Centrelink.

It is also important to note that where you have State debts owing (e.g. outstanding traffic or court fines) and an award of compensation is made, the Assessor will allocate the necessary portion of your award to pay those State debts first and then the remaining amount of compensation will be paid to you.

13. APPEALING THE DECISION

If you are unhappy with the result of your application, you can appeal the decision.

However, you only have **21 days** from the date of the award to lodge an appeal with the District Court of Western Australia.

You should **seek legal advice** if you are thinking about lodging an appeal.

The offender also has the right to appeal.

If the offender lodges an appeal, the Office of Criminal Injuries Compensation will postpone the payment of your award until the appeal is resolved.

APPLICATION FORM

You can download the Criminal Injuries Compensation Application Form and a Guide to Completing the Application Form from the Department of Justice website (www.courts.dotag.wa.gov.au) under Victim Services - Compensation.

Alternatively, you can contact the Office of Criminal Injuries Compensation and request a hard copy of the Application Form and Guide be sent out.

The Office of Criminal Injuries Compensation's contact number is (08) 9425 3250.

ADDITIONAL INFORMATION & USEFUL RESOURCES

Some places where you can find additional information and useful resources are:

- * victimsofcrime.wa.gov.au
- * courts.dotag.wa.gov.au/compensation
- * legalaids.wa.gov.au/resources/information-sheets
- * health.wa.gov.au/medical_records
- * police.wa.gov.au/Police-Direct/Apply-for-Information

COUNSELLING/SUPPORT SERVICES

The Victim Support Service offers confidential counselling and referral for victims of crime. They can be contacted on 1800 818 988.

You can also contact one of the following organisations for some counselling support if you are not already linked in with a service:

- * Relationships Australia WA: 1300 364 277
- * Sexual Assault Resource Centre (SARC): (08) 9340 1828 or 1800 199 888
- * Women's Health & Family Services: (08) 6330 5400
- * Yorgum Aboriginal Corporation: (08) 9218 9477 or 1800 469 371

LEGAL SERVICES

A number of Community Legal Centres provide assistance with Criminal Injuries Compensation matters for little or no charge.

Each centre has discretion as to the level of assistance they can provide and it may be in the form of legal advice (about whether you have a claim and the process for making a claim), help to gather evidence in support and/or assisting to put an application together.

You can contact any of the following legal services to ask about making an appointment or to obtain further information on Criminal Injuries Compensation:

Women's Legal Service WA (08) 9272 8800
info@wlswa.org.au
Level 1, 445 Hay Street, Perth
PO Box 3182, East Perth WA 6892

Djinda Services (WLSWA) (08) 9200 2202
djinda@wlswa.org.au

Aboriginal Legal Service of WA 1800 019 900
www.als.org.au

Aboriginal Family Law Services 1800 469 246
www.afls.org.au

Legal Aid WA 1300 650 579
www.legalaid.wa.gov.au

**Community Legal Centres WA* www.communitylaw.net/clc-directory

You may also engage a private solicitor to assist you with an application, however they will usually charge you a set fee, which will be taken out of any award of compensation you may receive.

**There are a number of Community Legal Centres that service different locations across WA. Community Legal Centre's WA have a directory online of all of the services and the regions they cover.*

