

Application for Criminal Injuries Compensation Kit

Under the *Criminal Injuries Compensation Act 2003* (WA)



It may be useful to read this kit before completing an application for Criminal Injuries Compensation.

This Kit contains:

- How to Claim (page 2)
- Records to Keep (page 8)
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- Statement Guide (page 12)
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- Useful Resources (page 15)

Peel Community Legal Services:

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This kit is adapted from the Legal Aid WA and Fremantle Community Legal Centre's Criminal Injuries Compensation Manual.

How to Claim for Criminal Injuries Compensation

1) WHO CAN CLAIM?

A victim of crime can make a Criminal Injuries Compensation claim. This 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. For example, a close relative or someone present at the scene of the incident when it occurred.

2) TIME LIMIT AND AMOUNT

You have **three years** from the date of the **last** offence in which to claim. It is recommended to wait until you have reached the maximum stage of recovery before doing an application. Extensions can be requested and **may** be awarded by the Assessor, if the circumstances permit.

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.

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

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

3) WHAT YOU CAN CLAIM

- 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 this, it is best to **seek legal advice**.
- Loss of Financial Support and Funeral Expenses – you must be a dependant and/or a close relative to claim this (a close relative does not include a sibling).
- 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. Any other income received as a result of the injury must be noted (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, spectacles, hearing aids.
- 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 for legal fees.

Centrelink Benefits

If you receive Centrelink payments, you must inform the Assessor and provide a statement of income from Centrelink. If you receive an award, you should be aware that this might impact on any future benefits you receive from Centrelink. You should obtain advice about this from Centrelink.

4) BEFORE FILING THE APPLICATION:

In order to claim compensation for the expenses you have incurred as a result of the incidents, **you must keep a detailed record of any expenses incurred**.

To keep track of your expenses efficiently it is advised that you use a log book to record any expenses that you have incurred as you go. These records are essential to your claim and will largely effect the amount you are ultimately awarded.

You will need to include all receipts and complete the tables contained in the Criminal Injuries Compensation Application Form. For further information about what is needed, see page 8.

Tips:

- ❖ Keep any receipts in an envelope such as for doctor appointments and travel expenses. Keep a copy of Medicare or private health insurance claims if applicable. These will be important when it comes to filling out the application.
- ❖ Keep a diary of dates relevant to your injuries/claim such as appointments. Include the name of the doctor, location, and reason for attending the appointment, travel time and distance.
- ❖ Keep a list of any other items you have lost or were damaged as a result of the incidents, such as clothing.

5) WHEN THERE IS NO CONVICTION OR NO ONE IS CHARGED

In certain circumstances you can still receive compensation. It is best to **seek legal advice** if this is relevant to you.

6) STARTING THE APPLICATION

You must complete a separate application for each person, including where children are involved.

The application consists of an application form, a statement and any relevant evidence in support, all of which is lodged with the Office of Criminal Injuries Compensation.

There is **no application fee** for lodging an application.

If your application is late (i.e. being made more than 3 years after the date of the last incident), you may apply in writing to the Assessor for an extension of time. This must include the reasons as to why the application is late and you should attach reports and any other relevant information that may explain the lateness.

In accordance with the legislation, the offender will be notified of your application. However, you are able to write to the Assessor to request that the offender not be able to access a copy of your claim and medical reports. This will only occur in special circumstances.

After a final decision about your claim has been made, you only have 21 days in which to lodge an **appeal** with the District Court of Western Australia where you disagree with the Assessor's decision.

7) WHAT YOU NEED

7.1 Supporting Evidence

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, police reports, medical records and reports from hospitals, doctors and psychologists.

You have a right to request access to these types of documents and records that relevant bodies hold about you under **Freedom of Information**. To do so you must submit an application. Most places have their own application forms that you can fill out. Otherwise you can write a letter to them detailing what records you are requesting and why.

Freedom of Information (FOI)

The *Freedom of Information Act 1992* was enacted to enable the public to participate more effectively with the State and to ensure accountability for governments.

Section 10 of the FOI Act states:

“A person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with this Act.”

As such you have the right to apply for access to documents within government bodies for both personal and non-personal information. This includes paper files, records, maps, plans, photographs, reports, films and recordings.

For more information go to the FOI website: <http://www.foi.wa.gov.au/>

7.2 Obtaining Medical Records

Hospital and doctors records are evidence of you attending and having received 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.

You will also need to provide proof of identification with your request. A copy of your driver's licence is generally sufficient.

A sample letter that you can amend and use for requesting a copy of your medical records is located at page 9.

7.3 Obtaining Medical Reports

To obtain a medical report in support of your application, it is a good idea to ask your treating practitioner first to write a report as they will have the best knowledge about your situation. If they are unable to then you might consider approaching another practitioner that will as the reports are great evidence in support of claims for mental shock.

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

- Relevant dates;
- The history of the offence that you gave them;
- Any results of tests;

- A diagnosis;
- The effect of the offence on the injury;
- Treatment (directly after the offence and continuing treatment);
- Medications (prescribed and/or future);
- Effects of the injury (on your enjoyment of life and your ability to work);
- Prognosis (the likely outcome for your health).

A sample letter that you can amend and use to request a medical report in support of your application is located at page 10.

7.4 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 relevant practitioner upon booking the 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. Note: If your action fails, this amount must be repaid to the state.

7.5 Obtaining Police Reports

Forms to apply for police reports can be found on the WA Police website or a hard copy can be requested from the FOI Coordinator with the Department of Public Trusteees.

There is a \$30 application fee which can increase depending on the documents needed and 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.

7.6 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 compliment your claim.

7.7 Your Statement and Witness Statement(s)

This is very important as it explains exactly what has occurred. Some things to include in your statement are:

- Your personal details (name, address, 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 physical 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;
- Details of any damage including: a full description of each item; the age of the item; the cost of having the item repaired/replaced;
- Loss of earnings and future income.

A sample statement that you can use as a guide to help you draft your statement is at page 12.

Whilst drafting your statement you might find that it has a triggering effect on you. It is recommended that you seek support if you are having trouble with this step. Such support may be from friends and family or it could be from a counsellor or victim support service, whichever works for you in your circumstances.

8) APPLICATION ASSESSMENT

The process of assessing a claim can take months or even years from the date you start 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 give “Notices” which is a requirement for the person or people notified to give the Assessor more information and documents.

The Assessor can also request them to appear in person to give evidence, if in the circumstances the Assessor determines a hearing needs to be held. These hearings are private. You, as well as medical professionals, will have to provide evidence.

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.

Keeping Detailed Records of Expenses

You must keep a detailed record of any expenses incurred as you go if you want to claim compensation for them. Below is a list of some of the things you might consider claiming.

- ❖ Medical expenses (see 6.3 for more information):
 - Keep all receipts for any medical appointments, including Medicare or private health insurance rebates.
 - If requiring future medical treatment, you must prove this by obtaining a report from your doctor. Ask them for an estimation of future costs and the likely Medicare/private health insurance rebates.

- ❖ Travelling Expenses:
 - You must include the date, where you travelled to and from, and the cost of the distance travelled. If using a private vehicle this will be determined by the total number of kilometers. If using public transport this will be determined by the price of the return fare.
 - It is important to keep all receipts/tickets you obtain.

- ❖ Past Income (Employed/Self-Employed):

This is relevant if you were unable to work for a period of time or indefinitely as a result of the incident. You should ask your employer to provide you with a letter which should include:

 - The start date of your position and the day you left (if applicable). If you left as a result of the offence, get them to include this.
 - Dates of any absences as a result of the offence and the date that you commenced work again.
 - Your income: both before and after tax, as well as any overtime you missed out on.
 - Dates/Amounts of any sick leave you took (if applicable).
 - If Self-Employed you should include any documents regarding income. This would include tax returns, wage books and profit and loss statements etc.

- ❖ Future Income:
 - You may claim loss of future income if your capability to work has changed as a result of the offence.
 - Your doctor should provide in the report that you will be unable to work and outline why this is so. It is best that as much detail as possible is included.

- ❖ Reports:
 - You can claim the cost of reports obtained. Include the date, the provider and the cost with receipts.

Sample Letter: FOI Request for Medical Records

[Your Name]
[Street Address]
[Suburb WA Postcode]

[Date]

Freedom of Information Officer
[Name of Hospital]
[Address]
[Suburb WA Postcode]

Dear Sir/Madam

FREEDOM OF INFORMATION REQUEST: [YOUR FULL NAME (DOB)]

I am currently preparing a Criminal Injuries Compensation Claim regarding an assault against me by *[offender's name]* on *[date]*. As a result of the assault I received medical treatment at *[Name of Hospital]*.

I would appreciate you providing me with a copy of my medical records relating to the above incident(s), including but not limited to information regarding my admission, consultations, treatment and surgery and any further treatment to date.

I have included a copy of my Driver's Licence as proof of identity.

Yours faithfully

[Sign your name here]

[Write your name here]
[Contact Telephone Number]

Sample Letter: Request for Medical Report

[Your Name]
[Street Address]
[Suburb WA Postcode]

[Date]

Attn: [doctor's name]
[Doctor's place of work]
[Address]
[Suburb WA Postcode]

Dear Dr.....

**CRIMINAL INJURIES COMPENSATION CLAIM:
[YOUR FULL NAME (DOB)]**

I am in the process of compiling an application for Criminal Injuries Compensation.

My claim arises out of an offence on [put the date of the offence. If there was more than one, put the dates between which they occurred]. The offender was convicted of [put in what the offender was found guilty of and include the date the court made its decision].

OR

My claim arises out of an alleged criminal offence against me on [put in the date of the alleged criminal act. If there was more than one act, put the dates between which they occurred]. I say alleged offence(s) because there is no conviction against anyone yet.

When I was attacked, the following occurred [put in the brief details of what happened so that the doctor can see that your injuries/disabilities are as a result of the offence, e.g. – He twisted my left arm up behind my back so that I was in severe pain. He then punched me very hard in the nose. After that, he kicked me on the left shin very hard].

I seek a written report from you to provide the Assessor with medical evidence relating to the injuries that I sustained as a result of the attack. [Alternatively you may ask for a quote instead of the written report itself if you wish to know the cost beforehand or need to know the cost for an interim payment application from the Assessor].

Please provide me with a report about my injuries arising out of the offence or alleged offence that includes but is not limited to, the following information:

1. dates of consultations;

2. my relevant history;
3. details of any tests performed;
4. details of injuries suffered by me and your diagnosis;
5. whether the offence(s) were more likely than not to have caused physical injury and/or psychological trauma;
6. my treatment immediately after the offence;
7. whether I will need ongoing treatment, and if so, how many sessions of treatment;
8. any medications prescribed;
9. details about any future medication required;
10. how the injuries have affected my enjoyment of life, both immediately after the offence(s), and on an ongoing basis;
11. the effects of the injuries on my capacity to work, from immediately after the offence(s) to the present time;
12. if I was not working at the time of the offence, whether you think I may have difficulty in obtaining or maintaining work as a result of the offence; and
13. my prognosis.

As your report will assist the Assessor of Criminal Injuries Compensation in assessing the amount of damage I have suffered, please give as much detail as possible.

[If you receive a pension or benefit or you are a student etc., you may wish to ask the doctor to waive or reduce the fees, or to allow you to pay them off now or later – but remember that the Assessor can pay for them if the Assessor agrees (called an interim payment) so your doctor may not be prepared to do so and you probably will not even need to ask for a waiver or reduction in the fees for the report. If you wish to do this, you could add the following paragraph]:

I am a *[put in here a description such as “pensioner”, or “single parent”, or “full time student” etc.]* and on *[put in here where you get your income, e.g. “Centrelink benefits” or “AusStudy” etc.]*. I would like to discuss payment with you before you provide the report. Please consider *[put in here whatever is appropriate like “waiving the fee”, “reducing the fee”, allowing me to pay by small instalments over time”, or allowing me to pay when I receive my Award”]*.

If you wish to discuss this matter further, please do not hesitate to contact me.

Yours faithfully

[Sign your name here]

[Write your name here]

[Contact Telephone Number]

Sample Statement: Guide

STATEMENT OF *[put your full name in here]*

I *[put your full name in here]* of *[put your address in here]* in the state of Western Australia provide this statement in support of my application for Criminal Injuries Compensation.

I am *[put your age in here]* years old. My date of birth is *[put your date of birth here]*.

[If applicable to you] I am/was *[delete whichever is not applicable]* a *[put your occupation here]*.

I make this statement in order to tell the Assessor about what happened and about my injuries and disabilities and say what effects the offence has had on my life.

[Only use this if you live with someone else]. I currently live with *[put in the full name of the person or people you live with]*.

MY LIFE BEFORE THE *[STATE THE INCIDENT e.g. Assault]*

[Include your own circumstances on each topic below – this list is non-exhaustive]

- Home life
- Physical activities
- Pastimes
- Work life

THE ASSAULT

[Details of what happened – e.g. I was hit from behind with a brick and was knocked unconscious].

AFTER THE ASSAULT

[Details – e.g. the police interviewed me and my attacker was caught].

PHYSICAL INJURIES – FROM ASSAULT TO DATE

[Details – e.g. my medical report states I had a brain haemorrhage. I was in intensive care for two weeks and could not walk for 3 weeks after this. I received 60 physiotherapy sessions but still have a constant limp].

MENTAL INJURIES – FROM ASSAULT TO DATE

Distress and fear suffered during the actual assault

[Details – e.g. I have never been so scared and cannot forget the disturbing look on his face].

Distress, trauma and fear suffered in the first 2 months after the actual assault

[Details – e.g. I could not sleep or eat as I was terrified].

Distress, trauma and fear suffered since then

[Details – e.g. I do not go out alone due to my fear and I often do not see the point in getting out of bed].

Psychiatric injury

[Details – e.g. Dr Smith’s report dated on 1 January 2000 states that I have suffered severe post-traumatic stress disorder with secondary depression which is likely to continue into the foreseeable future. I have been prescribed antidepressants which Dr Smith says are necessary].

OTHER WAYS MY LIFE HAS BEEN AFFECTED**Home life**

[Details – e.g. my relationship has suffered a massive strain and I physically cannot do the things I used to be able to such as playing sports with my children or take the children to school].

My pastimes

[Details – e.g. I am not as fit as I used to be and can no longer enjoy long bushwalks].

My work

[Details – e.g. I now cannot concentrate on work like I used to and it is no longer enjoyable].

ACTUAL LOSS OF INCOME

[Details e.g. I could not work for 6 months. I have attached all of the documents from my employer that set out how much I was paid originally compared to my earnings now, including sick leave].

FUTURE LOSS OF INCOME

[Details – e.g. I will continue to work 2 days/week, I will not be working full time again].

Dated [dd/mm/yyyy]

[Sign name here]

[Write full name here]

Checklist

Before you lodge your application you might want to ensure that you have included and addressed the following:

- 1. Detailed explanation of what happened?
- 2. How many offences you are claiming for and when they occurred?

Have you reported the offence to the Police? This is highly recommended. Unless extenuating circumstances exist, the Assessor cannot make an Award if you have not done everything to assist the Police in **identifying, catching and prosecuting** the alleged offender.

- 3. Have you included medical reports (GP, specialist, hospital etc.)?
- 4. If claiming mental harm caused from the incident(s) have you included reports from a psychiatrist or psychologist?
- 5. Have you included any criminal proceedings and Police reports and documents?
- 6. Have you prepared your signed Statement about the incident?
- 7. Do you have any other legal remedies, and have you claimed under them? E.g. Workers' compensation and/or other insurance.
- 8a.) Did a criminal court order that a fine by the offender be paid to you? If you have received the money you must tell the Assessor.
- 8b.) Are you a member of a private health insurance fund? Have you claimed your medical expenses?
- 9. Have you looked at what you can claim for? For example have you claimed travelling expenses, damage to goods relating to the incident, loss of income?
- 10. Are you satisfied that what you have included will help the Assessor approve your claim? If not, is there other evidence or reports you would think you should include from the resulting incident?

Useful Resources

Where to find more information and useful resources:

- victimsofcrime.wa.gov.au
- legalaid.wa.gov.au or 1300 650 579
- courts.dotag.wa.gov.au/compensation
- health.wa.gov.au/medical_records
- police.wa.gov.au/Aboutus/FreedomofInformation

Application Form

The Criminal Injuries Compensation Application Form can be downloaded from the Department of Attorney General website: www.courts.dotag.wa.gov.au

A guide to completing the Application Form is also available for download from the above website.

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