

NSW Victims Compensation Act 1996

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The *Victims Compensation Act 1996 (NSW)* ("the Act") was proclaimed on 1 April 1997.

The Act will apply to claims arising from acts of violence which occur after 2 December 1996 and to claims lodged with the Victims Compensation Tribunal ("the Tribunal") after 2 April 1997, regardless of when the act of violence occurred.

The major changes include the following:–

- Provision of and entitlement to approved counselling services;
- Inclusion of a schedule of injuries which stipulates amounts of compensation for specific injuries;
- Increased speed of processing 'simple' applications;
- Act of violence must include 'violent conduct';
- Future loss of earnings and future medical expenses are no longer recoverable and past loss of earnings will be calculated in accordance with the *Workers Compensation Act 1987*;
- Compensation is not payable unless the total amount of compensation is at least \$2,400;
- Increased emphasis on restitution from offenders;
- Appeals; and
- Costs.

Apart from the Act itself, a Victims of Crime Bureau has been established to coordinate victims' services.

Approved Counselling

Victims are entitled to an initial 2 hours of approved counselling and thereafter to such further periods of compensation which an assessor thinks are appropriate. Approved counselling may continue indefinitely, however applications for counselling must be made for each 20 hours of counselling.

Compensation for the cost of counselling will be paid directly from the Victims Compensation Tribunal to the approved counsellor

without the involvement of legal representatives or the victim.

Schedule of Injuries/ Compensation

Under the *Victims Compensation Act 1987*, compensation for pain and suffering was calculated on a common law basis.

Schedule 1 of the Act comprises a table of injuries and corresponding amounts of compensation for these injuries.

Some examples are:–

- Ankle fracture with full recovery: \$7,200
- Moderate burns: \$9,600
- Moderate brain damage: \$36,000
- Serious brain damage: \$50,000

The compensation amounts range between \$2,400 and \$50,000.

Where a victim has suffered two or more injuries the full amount for the most serious injury (for which the largest amount of compensation is payable), 10% of the amount for the second most serious injury and 5% of the amount for the third most serious injury can be claimed. A victim cannot claim compensation for more than 3 injuries.

In cases where the amount of compensation payable is expressed as a range, the most serious injury should be carefully selected. For example, a victim who suffers Category 2 sexual assault is entitled to \$10,000 – \$25,000. A victim who suffers shock lasting over 28 weeks, but which is not permanent, is entitled to \$18,000. A victim who suffers both injuries should only select Category 2 sexual assault as the most serious injury if the amount of compensation for Category 2 sexual assault is likely to exceed that for shock.

Sexual Assault

Under the *Victims Compensation Act 1987*, sexual assault was not treated as an injury. This necessitated proof of injury, usually, post traumatic stress disorder.

The Act however provides compensation for three categories of

sexual assault.

Category 1 consists of indecent assault or assault with violence in the course of attempted sexual intercourse. A victim is entitled to \$2,400 – \$10,000.

Category 2 consists of unlawful sexual intercourse or the infliction of serious bodily injury in the course of attempted unlawful sexual intercourse. A victim is entitled to \$10,000 – \$25,000.

Category 3 sexual assault consists of a pattern of abuse or unlawful sexual intercourse in which serious bodily injury is inflicted. A victim is entitled to \$25,000 – \$50,000.

Shock

The Act provides compensation for 'shock' in the following way:–

- a) Compensation is payable only if the symptoms and disability persist for more than 6 weeks.
- b) The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions.
- c) The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and preoccupation with thoughts of self harm or guilt.
- d) The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.
- e) Relevant disabilities include impaired work or school or other educational performance, significant adverse effects on social relationships and sexual dysfunction.

The Tribunal has indicated that provided a victim satisfies (a) and (b) above, it will be sufficient that she or he suffers from any of the disabilities described in (c), (d) or (e) to obtain compensation for shock.

The compensation payments for shock are divided into four categories as follows:–

- Shock lasting 6–13 weeks: \$2,400
- Shock lasting 14–28 weeks: \$9,600

- Shock lasting over 28 weeks but not permanent: \$18,000
- Permanent symptoms and disability: \$48,000

Who can apply?

Compensation may be payable to a primary victim, a secondary victim or a family victim.

A secondary victim is someone who witnesses an act of violence or who subsequently becomes aware of an act of violence but only if that person is the parent or guardian of a minor victim.

A family victim is a member of the immediate family of a primary victim who has died.

Financial loss

In addition to the compensation amounts referred to above, compensation may be made for financial loss such as actual expenses, past loss of

earnings and loss of personal effects to a maximum of \$10,000.

Compensation is no longer payable for future loss of earnings or for future medical expenses. (Applications for the cost of counselling are independent of applications for compensation and can be made for an indefinite period).

Past loss of earnings are now to be calculated in accordance with the *Workers Compensation Act 1987*, which will result in lower amounts of compensation for loss of earnings.

Appeals

Determinations are made at first instance by assessors at the Tribunal.

An appeal can be made from a determination of an assessor to the Tribunal, however there is no longer a right of appeal to the District Court, except on questions of law.

Costs

Although costs are still to be calculated according to the scale of costs prescribed by the compensation rules, the Tribunal can now award an amount of costs which exceeds the scale if special circumstances warrant such action.

Further, an assessor or the Tribunal can decline to make an order for costs or may reduce the amount of costs.

Time limit

As before, an application should be lodged within two years of an act of violence although late applications may be accepted in some cases, particularly in cases involving sexual assault, child abuse or domestic violence.

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Workers' compensation win for vaccine consumer

J M v Hunter Area Health Service

Trevor Carter, Carters Law Firm, Sydney

Background

This firm reports on the first successful workers' compensation claim as a result of the administration of a vaccine, namely hepatitis 'B', to an employee employed in a health facility.

The Applicant was employed by the Mater Misericordiae Hospital at Newcastle as a registered nurse and also separately worked for the Community Aged and Mental Health Service (CANS) doing nursing and assisting patients at home supervising medications, showering and dressing.

In 1983, she had a hepatitis vaccine (old vaccine) when she was doing intensive care and neonatal nursing and recalls a flu-like illness after this. She had her first recombinant DNA vaccine, hepatitis 'B' in 1991 and had 2 injections but did not complete her course. She did feel aches and pains after this injection which lasted for several months. It eventually settled. On 18 August 1994, she began a totally new course of hepatitis 'B' vaccine with the recombinant DNA once again. Four days after this injection she developed her first episode of arthritis.

There had been no extra-articular manifestations of rheumatic disease nor any preceding infection. There was no family history of arthritis.

Medical reports concluded –

'On balance I think it is reasonable to conclude that the hepatitis 'B' vaccine given to Mrs. M. four days prior to the onset of her arthritis is responsible for her arthritis. The time relationship between the vaccination and the

onset of her arthritis cannot be questioned. Interference with the immune system in a non-specific way, such as by vaccination, may precipitate ongoing immunologically mediated inflammation in the form of arthritis. The case reports of arthritis following hepatitis 'B' vaccination serve to highlight this association.'

At a hearing in the Newcastle Workers' Compensation Court a medical panel was requested by the GIO. This panel assessed the percentage loss of the efficient use of the applicant's right arm at or above the elbow at 35%, \$36,512.00; left arm at or above the elbow 35%, \$34,230.00; right leg at or above the knee at 35%, \$34,230.00; left leg at or above the knee at 35%, \$34,230.00 and 10% permanent impairment of the neck, \$5,216.00.

Damages

In a subsequent hearing at Parramatta Workers' Compensation Court, lump sum compensation under Section 67 was apportioned as to \$21,750.00 in respect of past pain and suffering and as to \$21,750.00 in respect of future pain and suffering. The applicant remains on continuing weekly payments of workers' compensation.

This firm is indebted to the Australian Council for Immunisation Inc. who provided additional medical evidence from medical journals on cases of reactive arthritis after hepatitis 'B' vaccination.

Trevor Carter is the principal solicitor of Carters Law Firm, Kensington, NSW, and an APLA member.