



Victims of Crime Assistance Tribunal

Chief Magistrate's Chambers
Melbourne Magistrates' Court

Practice Direction

No. 5 of 2008

CLAIMS FOR LOSS OF EARNINGS

PRACTICE DIRECTION ISSUED PURSUANT TO SECTION 58
OF THE VICTIMS OF CRIME ASSISTANCE ACT 1996

Purpose

The purpose of this Practice Direction is to specify the procedure to be followed in relation to claims for financial assistance for loss of earnings.

Background

Section 17 of the *Victims of Crime Assistance Act 1996* provides as follows:

17 *Loss of earnings*

Assistance for loss of earnings awarded by the Tribunal is for earnings lost by the primary or secondary victim as a direct result of total or partial incapacity for work during a period of up to 2 years after the occurrence of the act of violence.

The Tribunal may award a primary victim up to \$20,000.00 for loss of earnings suffered, or likely to be suffered, during a period of up to two years after, and as a direct result of, the act of violence.

In exceptional circumstances, the Tribunal may award a secondary victim up to \$20,000.00 for loss of earnings suffered, or reasonably likely to be suffered, as a direct result of witnessing, or becoming aware of, the act of violence and which loss occurred during a period of up to two years after the occurrence of the act of violence.

Note: A primary or secondary victim is only entitled to an award for loss of earnings after exhausting all other entitlements available, including those available pursuant to Social Security, WorkCover and Transport Accident Commission legislation.

Note: Calculations for loss of earnings claims should be made by reference to gross income figures.

Procedure for making a claim for loss of earnings

An application for an award for loss of earnings shall be made in writing by filing the attached loss of earnings claim form. Claims for loss of earnings must be supported by documentation that verifies the figures used to calculate the amount claimed. This may include:

- (a) Advice in writing from the applicant's employer or, if self-employed, a statement detailing:
 - Number of days/weeks absent from work;
 - Reason for period of absence; and
 - Gross loss and how amount is calculated including particulars of the basis upon which notional pre-injury earnings have been determined.
- (b) Medical report/certificate specifying the nature of illness or injury causing partial or total work incapacity and the duration of such incapacity.
- (c) Documentation verifying:
 - WorkCover payments
 - Transport Accident Commission payments
 - Social Security payments
 - All other paymentsreceived by the applicant or to which the applicant is or may be entitled during the period for which the loss of earnings claim is made.
- (d) If self-employed, tax returns for:
 - the three financial years before the act of violence; and
 - the financial years between the date of the act of violence and the end date of the period for which the loss of earnings claim is made.
- (e) Any other documentation relevant to the loss of earnings claim.

Revocation of previous Practice Direction

This Practice Direction revokes Practice Direction 6/2003 (Loss of Earnings Claims).

Commencement

This Practice Direction has effect from 1 January 2009.

IAN L GRAY
Chief Magistrate
11 December 2008



Victims of Crime Assistance Tribunal

LOSS OF EARNINGS CLAIM FORM

The Tribunal may award you assistance for loss of earnings as a direct result of total or partial incapacity to work during a period of up to two years after the occurrence of the act of violence.

IF YOU ARE CLAIMING FOR LOSS OF EARNINGS AND YOU ARE:

1. **A PRIMARY VICTIM:** The Tribunal may pay you up to \$20,000 for loss of earnings suffered, or likely to be suffered, as a direct result of the act of violence.
2. **A SECONDARY VICTIM:** The Tribunal may pay up to \$20,000 for loss of earnings, suffered or reasonably likely to be suffered, as a direct result of witnessing or becoming aware of the act of violence.

NOTE: A Secondary Victim is ONLY entitled to loss of earnings in “exceptional circumstances”.

N.B. The Tribunal will pay you your “actual loss” of earnings for the relevant period less any amounts applicable in Section (3) listed below. **To be entitled to a payment, you must have exhausted all other entitlements.**

SUPPORTING MATERIAL REQUIRED TO BE FILED:

(The following list is a guide only. All claims should be supported by documentation which verifies the figures used to calculate the amount claimed.)

1. EMPLOYMENT DETAILS

If salaried employee

Written confirmation from employer detailing:-

- a) Gross Pre-injury earnings per week.
- b) Number of days/weeks absent from work.
- c) Reason for period of absence.
- d) Sick/Long Service/Recreation Leave payments;
- e) Gross loss of income and how amount is calculated.
- f) Any other supporting material.

If self employed

- a) Taxation returns for the last three Financial years before the act of violence.
- b) Any other supporting material.

2. INCAPACITY FOR WORK DETAILS

Doctors Report/Certificate verifying details of illness/injury for the period for which you were unable to earn an income as a result of the act of violence.

3. OTHER PAYMENT DETAILS

Details of:-

- a) Workcover payments.
- b) Transport Accident Commission payments.
- c) Social Security payments.
- d) Insurance payments.
- e) Any other payments.



Victims of Crime Assistance Tribunal

LOSS OF EARNINGS CLAIM FORM

APPLICATION FOR ASSISTANCE BY:

REFERENCE NUMBER:

NOTE: If insufficient space, attach additional pages.

A. STATE YOUR WEEKLY GROSS PRE-INJURY EARNINGS \$ [A]

(i) How did you calculate this amount? (example: Your taxation return shows a gross income of \$36,000 for a full year. Therefore, \$36,000 divided by 52 weeks equals weekly gross earnings of \$692).

(ii) What documents did you use to calculate this amount? (e.g. tax return/s for financial year/s prior to the injury, letter from your employer showing gross earnings per week).

B. YOUR POST-INJURY LOSS OF EARNINGS

Specify the period that you have been off work because of injury/illness suffered as a result of the act of violence

Table with 5 columns: Date From, Date To, Total time off work, Enter amount specified, Multiply column 3 by column 4 to calculate total loss of earnings. Includes a TOTAL row at the bottom right with box B.

C. LESS what you have received for

Table with 4 columns: Entitlement, Date From, Date To, Amount (\$). Rows include Sick Pay, Social Security Payments, Workcover Payments, T.A.C. Payments, Insurance Payments, Other Payments. Includes a TOTAL row at the bottom right with box C.

TOTAL [B] \$

Less TOTAL [C] \$

= TOTAL AMOUNT CLAIMED \$

Dated: / /

Signature of applicant: _____