

***Reviewing Victims of Crime Compensation:  
Sentencing Orders and State-funded Awards***

**December 2009**

**SUGGESTED SUBMISSION TEMPLATE**

This template is provided to assist you in responding to the Discussion Paper.

Feedback on this paper is sought by **22 February 2010**.

Your submission may comment on any number of issues within the scope of this review. Where possible, please provide relevant examples to support your views.

Please note that some sections of the paper are more technical or relevant to particular stakeholders than others. It is not expected that submissions respond to every question. We are interested in any other issues on victim compensation reforms you would like to raise that are not covered by the questions in the discussion paper.

You can read the discussion paper or a summary version of the paper, at the Department of Justice website:

<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Victims/>

**Confidentiality**

Please note, unless marked ‘private and confidential’, all correspondence and submissions will be regarded as public documents, and may be made available on the Department of Justice website, or be viewed by members of the public on request.

Anyone making a submission should be aware that the Department of Justice’s documents are subject to the *Freedom of Information Act 1983 (Vic)* (FOI Act). While the Department will respect the wishes of those making submissions in confidence, the application of that Act in any particular case is ultimately outside the control of the Department. The FOI Act requires the Department, if practicable, to notify you if a request is made for access to a document containing information relating to your personal affairs and, if a decision is made to release that document, to notify you of rights of appeal under that Act. The FOI Act defines “information relating to the personal affairs” of a person to include information that identifies any person or discloses their address or location, or from which a person’s identity, address or location can reasonably be determined.

Any confidential sections should be clearly marked ‘CONFIDENTIAL’ with the reasons why. A separate submission should also be provided with the confidential material removed.

Please forward responses via email, fax or postal mail:

*Email:* legalpolicysubmissions@justice.vic.gov.au

*Fax:* 03 8684 1044

*Postal mail:* Victim of Crime Compensation Review

Criminal Law Policy  
Department of Justice  
GPO Box 4356  
Melbourne VIC 3001

## SUBMISSION OF [NAME OF YOUR ORGANISATION]

**Name:** Carolyn Worth  
**Position:** Convenor CASA Forum  
**Postal Address:** PO Box 72 East Bentleigh 3165.  
**Phone number:** 9928 8741 0414 538 275  
**Fax number:** 9928 8749  
**Email address:** carolyn.worth@southernhealth.org.au

<i>Question</i>	<i>main paper</i>	<i>short paper</i>
<b>Part 2. Introduction and guiding principles</b>		
<p><i>In your view, what is the key purpose of providing compensation to victims?</i></p> <ul style="list-style-type: none"> <li>• <i>Recognition and acknowledgement by the State of their suffering;</i></li> <li>• <i>To assist the victim's recovery;</i></li> <li>• <i>Recouping expenses incurred by a victim as a result of injury e.g. lost income following an assault.</i></li> </ul>	p 10	p 2
<p><i>What do you think is the appropriate balance between the state or an offender providing compensation in a victim compensation scheme?</i></p> <p>1. <i>The State has an obligation to provide compensation to victims of crime as without State assistance, very few victims have recourse to compensation as offenders rarely have any means.</i></p> <p>2. <i>If the State wishes to recoup costs from an offender an efficient system should be established to enable this to happen. It should never be the responsibility of the victim.</i></p>	p 10	—
<p><i>Do you think these principles are appropriate? Are there any other principles that should be considered when reviewing Victoria's victim compensation scheme?</i></p> <p>Yes. An additional principle is that the State acknowledges a victim's right to, and the State's responsibility to, provide compensation.</p>	p 12	p 5
<b>Part 3. State funded victim assistance</b>		
<p><i>Apart from hearings, are there other ways of acknowledging a victim's experience of crime?</i></p> <p>No. For some victims a hearing is an essential part of their healing. It is about giving time to listen to their situation in what they often see as the only legal jurisdiction to hear them. However, for others a Section 33 determination is a good solution. The present system is ideal as it provides the victim with a choice.</p>	p 21	—
<p><i>If an offender is notified of a hearing and wishes to attend, how can their right to a fair hearing be respected while avoiding trauma to the victim?</i></p> <p>The offender's right to a fair hearing is already addressed. However, victims are often subject to cross examination by an unrepresented alleged offender or their representative. In order to adhere to the principle in the Victorian Charter of Human Rights and Responsibility <b>Recognition and equality before the law</b> the unrepresented victim or their representative should have the right to cross examine the offender.</p>	p 21	—

Question	main paper	short paper
<p>Given VOCAT's focus on the needs of victims, do magistrates sitting as VOCAT tribunal members require particular training when conducting hearings?</p> <p>Yes. Training should be given around</p> <ul style="list-style-type: none"> <li>• The consequences and effects of trauma</li> <li>• Child development and brain development theory</li> <li>• CALD and recently arrived communities.</li> </ul>	p 21	—
<b>Part 4. Offender funded compensation orders</b>		
<p>Do the eligibility and exclusion requirements require review?</p> <p>No.</p>	p 27	—
<p>Is it appropriate to deduct a sum equal to the VOCAT award from a court ordered compensation order under section 85B or 86 of the Sentencing Act?</p> <p>In principle we would not support 'double dipping'. For example, if a victim received loss of earnings compensation from VOCAT it would not be appropriate to ask for loss of earnings compensation at sentencing. Whether it is appropriate to deduct a sum of money depends on the nature or category of the compensation awarded. Only in the case where there has been true 'double dipping' should there be a deduction or a refund. If loss of earnings were only claimed at VOCAT and only pain and suffering claimed under Section 85 (b) there is no 'double dipping' and different expenses have been claimed.</p>	p 31	—
<p>Should the court consider ordering the offender to pay the VOCAT amount to the state?</p> <p>Yes.</p>	p 31	—
<p>What is the appropriate role of the OPP in compensation order applications?</p> <ul style="list-style-type: none"> <li>• It is the role of the OPP to ascertain whether there are assets</li> <li>• To confiscate or restrain any assets available</li> <li>• As an administrative exercise to bring Sentencing Act applications as a matter of course.</li> </ul>	p 32	—
<p>How could the enforcement of compensation orders be improved?</p> <p>Primarily compensation should be paid by VOCAT. The State should recoup where it can. It should be the State's responsibility to do the bulk of recouping of costs from offenders as a collaborative effort between Victoria Police and DoJ.</p>	p 34	—
<p>Should the asset confiscation scheme continue to support the victim compensation scheme? If so, how could the effectiveness of the scheme in relation to victim compensation be enhanced?</p> <p>Yes. The mechanism is already in place for assets to be confiscated from offenders. However, there is a reluctance on the part of the OPP to use it. These powers if used as a matter of course would make the scheme more effective.</p>	p 36	—

Question	main paper	short paper
<p><i>Should a distinction be made between victims who are natural persons and corporate victims for the purposes of asset confiscation for compensation purposes? Should there be a distinction between different types of corporate victims?</i></p> <p>No. The mechanism is still there.</p>	p 37	—
<b>Part 6. For discussion: Some ideas for reform</b>		
<p><i>In your opinion, what are the main advantages of the VOCAT system? What are the main disadvantages?</i></p> <p>Advantages:</p> <ul style="list-style-type: none"> <li>• Do not have to have a criminal conviction to obtain a hearing</li> <li>• Interim awards can be made before the final decision</li> <li>• Hearings in appropriate cases</li> <li>• Awards not reliant on offender paying compensation</li> <li>• Category of Other Expenses to aid in recovery</li> </ul> <p>Disadvantages:</p> <ul style="list-style-type: none"> <li>• Occasionally Magistrates behave inappropriately and insensitively towards victims</li> <li>• Modest amounts available for SFA and pain and suffering particularly in relation to family violence</li> <li>• Registrars reluctant to exercise their powers to make interim awards</li> </ul> <p>Myths:</p> <ul style="list-style-type: none"> <li>• Victim is always distressed by the hearing. This is not our experience.</li> <li>• Long delays. Not our general experience.</li> <li>• Offenders at the hearing is universally damaging for the victim. Not our experience.</li> </ul>	p 42	p 14
<p><i>What improvements might be made to Victoria's model for state-funded victim compensation?</i></p> <ul style="list-style-type: none"> <li>• Dispense injury requirements for all categories of victims</li> <li>• Make confiscation a matter of course</li> <li>• More generous awards for SFA amounts</li> <li>• Make Family Violence and Sexual Assault amounts the same</li> </ul> <p>On balance it is not a bad system.</p>	p 44	p 15
<p><i>Should Victoria consider payments to victims based on the offence done rather than requiring proof of injury or other adverse effects?</i></p> <p>No. Should consider dispensing with the category of injury.</p>	p 44	p 15
<p><i>What are your comments on the current category caps and global caps in relation to the different categories of victims?</i></p> <ul style="list-style-type: none"> <li>• It is unclear why sexual assault and family violence are treated differently</li> <li>• Increase in global cap for primary victims has not practical application because very few victims receive awards near the maximum.</li> <li>• SFA should be increased to \$15 000 maximum</li> </ul>	p 45	p 16
<p><i>Would changes to the organisational structure of VOCAT, such as centralised administration of applications, enhance its operation and service to victims?</i></p> <p>Not a centralised registry however, some smaller registries (where hearings do not take place) could be closed to cut costs e.g. Dromana registry could be closed as all hearings take place in Frankston, which is relatively close.</p>	p 46	—

<b>Question</b>	<b>main paper</b>	<b>short paper</b>
<p><i>How could this system be improved or expanded?</i></p> <p>As above.</p>	p 46	—
<p><i>Could a database of compensation order cases assist judges with these applications and promote consistency?</i></p> <p>Yes.</p>	p 46	—
<p><i>Is it appropriate to reduce compensation awards because of the offender's means?</i></p> <p>No. The reality is that few offenders have substantial means.</p>	p 46	—
<p><i>Would it be reasonable for a person who pleads guilty or is found guilty or convicted to be required to lodge with the court a sworn statement of financial circumstances including assets and financial obligations?</i></p> <p>Yes. However, it needs to be acknowledged that offenders with substantial means have the capacity to hide their assets.</p>	p 47	—
<p><i>Would the lodgement of a state of financial circumstances have any implications for court listings and the scheduling of sentencing hearings?</i></p> <p>It may. Lodgement would have to be enforced to make it take place in a timely manner.</p>	p 47	—
<p><i>What would be the practical implications if a judge had questions about the contents of the sworn statement?</i></p> <p>Although it potentially flies in the face of a defendant's right to not incriminate themselves, if it takes place after sentencing it would not be a problem. However, a challenge to a statement could delay finalising a case.</p>	p 47	—
<p><i>Do you think that VOCAT material should be used by the court to assist in the consideration of a compensation order at the time of conviction?</i></p> <p>No.</p>	p 47	—
<p><i>What comments do you have on possible improvements to information exchange in the victim compensation system?</i></p> <p>As above.</p>	p 48	—

Question	main paper	short paper
<p><i>What limits should be placed on asset confiscation for the purposes of paying compensation orders? How should the interests of third parties, such as family members, be protected?</i></p> <p>Hard question. Other jurisdictions deal with this issue. Some research needs to be conducted into how they deal with this matter.</p>	p 48	—
<p><i>Should therapeutic and restorative justice processes play a greater role within the victim compensation system?</i></p> <p>This is not the issue here. This review appears to be about levels of compensation, administrative issues and offender contributions. Worth consideration at another time.</p>	p 49	—
<p><i>Should the state seek to recover VOCAT award amounts, or compensation order amounts, from offenders? If so, how and on what basis?</i></p> <p>Yes. Consideration could be given to taking money from offenders property and also future earnings.</p>	p 49	p 16
<p><i>Should a victim compensation levy be imposed on offenders to assist with funding victim compensation? If so, for what categories or types of offences?</i></p> <p>Yes. As a matter of course for acts of violence.</p>	p 50	p 17
<p><i>Questions that arise from making compensation an integral part of the sentencing process include: - what is the role of the prosecutor in relation to the victim and the state?</i></p> <p>The Prosecutor is central in the process proposed before. The Victorian Charter of Human Rights and Responsibilities <b>Recognition and equality before the law</b> needs to be considered.</p> <p><i>- what criteria should apply to stop wealth offenders buying a more lenient sentence by agreeing to pay more compensation.</i> Can just legislate that it cannot be taken into account.</p>	p 52	—
<p><i>If compensation is considered in all cases or as part of the sentencing process, could this discourage early pleas of guilt?</i></p> <p>Not for most people. Average offender has limited means. Everyone is equal before the law. Cannot buy your way out of trouble.</p>	p 52	—
<p><i>Can compensation form an integral part of the sentencing process without appearing to be double punishment?</i></p> <p>Yes as they are different considerations.</p>	p 52	—

<b>Question</b>	<b>main paper</b>	<b>short paper</b>
<p data-bbox="108 206 1326 271"><i>Should the special-condition power presently available only for adjourned undertakings be extended to apply to all sentencing options?</i></p> <p data-bbox="108 300 161 327">Yes.</p>	p 52	—