

ANSWERS TO QUESTIONS.

Updated 13/12/2006

AIM: To assist the development of practice wisdom in Victims of Crime/Criminal Injuries Compensation matters the answer to questions that arise during the course of applications and which are not already covered in the Guidelines will be posted in this section.

30/8/04

Q. Has my client been assessed for Criminal Injuries Compensation?

A. When the Criminal Injuries Compensation Team was in operation 2001 – 9/2003 it identified via the CIS CP history the files of children/young people in care throughout the State considered likely to qualify for Criminal Injuries Compensation. The CIC team's intention was to assist District Centres to clear the backlog of cases by physically examining previously identified files. 138 CIC briefs were prepared for young people whose history and the available records demonstrated might qualify for compensation. It is likely, due to the inadequacy of early CIS CP records, poor recording practices and mobility of clients between offices, that some eligible young people may not have been assessed.

The CIC team has recorded details of the files which were examined on several data bases. To check whether a CIC assessment was made on a client contact Lionel Lovell, Supervisor Special Projects CIC Team –Customer Relations Unit.

30/8/04 **How long does it take?**

Q. How long does it take for an application to be processed?

A. To a considerable extent this depends on the complexity of the case and the quality of the evidence. The better the information that can be provided about police involvement date, names of officers, station involved the more readily the solicitor will be able to obtain copies of the original police documentation via FOI.
If the attached medical and psychological reports are several years old the solicitor may need to obtain up to date reports.
There are certain delays for service of notices, etc, which are prescribed in the Act but these are usually not significant in the scheme of things.
Some cases have been settled within 6 months of the application, others might take 2 years.

30/8/04

Q. The solicitor seems to be taking an awfully long time (months) to do anything with the case. Can we do anything about it?

A. The allocated worker should contact the solicitor to see why the delay is occurring. Unfortunately there have been instances of a solicitor not doing anything with cases. If this happens discuss the matter with Lionel Lovell Customer Relations Unit who will follow the matter up and if the solicitor is unable or unwilling to progress the matter reassign the matter to other counsel.

14/10/04

Youth Allowance or Pension

Q. What is the effect of a VIC/CIC award on a young person's Centrelink payments?

A. The question was referred to the policy division of Centrelink. The reply referred to various parts of their Act and to the Guide to Social Security Law.

It will depend on how the CIC compensation is treated under the Social Security Act.

Section 17(2B) of the Social Security Act advises "that a payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute compensation for the purposes of this Act."

Section 17(2C) then goes on to advise that "the reference in subsection 2(B) to a criminal injury is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence".

The Guide to Social Security Law [4.13.1.20](#) 'Assessment of Compensatory Type Payments' states that "a compensation payment is assessed as ordinary unearned income if it does not fall within the section 17(2) definition of 'compensation'.

However, here clarity is lost as the Guide goes on to say that this unearned income may include payments which are compensatory in nature but do not contain economic loss due to personal injury. Examples of payments that do not fall within the Section 17(2) definition: victims of crime schemes, including statutory criminal injury compensation and death benefits.

According to CIC division of the Attorney General's Department payments for pain and suffering are exempt and CIC will only compensate the economic loss to the extent of the difference between DSS payment and the wages earned. **For most cases therefore it is likely that CIC payments for GOM children will be exempt in terms of Section 17 (2) of the Social Security Act.**

I can only recommend that the individual cases be discussed with Centrelink.

If the CIC is not compensation within the meaning of Section 17(2) of the SS Act the compensation is paid as a lump sum is assessed as ordinary unearned income for allowances/benefits in the fortnight it is received, but ignored as income for pensions.

As the compensation is received as a lump sum then, depending on how it is used, it may continue to have an impact on the customer's payment (eg. if it is invested with a financial institution it will be treated as a financial investment and deemed).

The arrangement with the Public Trustee to hold the young person's money until 18 years of age is court-ordered. It is covered in the Guide to Social Security Law [4.7.3.70](#) 'Assessable Income & Assets from Statutory Trusts'. This section basically states that interest generated is treated as the income of the customer and the assets held are also treated as the assets of the customer.

The capital and the income derived from the capital will be taken into account in the income and assets test applied to Centrelink payments.

Income and Assets Tests for Youth Allowance:

Youth Allowance is subject to an Income Test and Assets Test. If you are not independent a Parental Income test applies. A Family Actual Means test may also apply. These tests are effective from 20 September 2004.

Personal Income test:

- Gross income is assessed.
- There is an income free area of \$62 per fortnight for unemployed and \$236 per fortnight for students.
- Income above the income free area reduces payment (unless credit in Income Bank).
- Go to the Personal Income Test Chart.

Assets test:

- If not independent, family assets test applies (no personal assets test):
 - No payment can be made if family's assets exceed \$490 500.
 - A 75 percent discount for farm/business assets applies to the family assets test.
- If independent:
 - Non-Homeowners go to assets test for non-homeowners.
- Payment may be deferred when liquid assets exceed \$2 500 (single) or \$5 000 (couple or single with dependents).
- Hardship provisions may apply to the personal assets test.

For more information about which assets are assessed by Centrelink go to Assets information.

It is unlikely that most young people under the Guardianship of the Minister and who are the beneficiaries of VIC/Criminal Injuries Compensation will have sufficient income or assets to be affected by the above tests when they apply for Centrelink benefits.

10/11/04

Suicides

Q A parent committed suicide in the presence of the child who is now grossly traumatised. Is the Child eligible for compensation?

A Suicide, and attempted suicide, was decriminalised several years ago. As there is no criminal offence there will usually be no grounds for a claim.

However, the Attorney General's Department advises that there are circumstances in which a claim may be possible. Eg, If the parent attempted to kill the victim before successfully killing themselves; or, the parent, in the presence of the child, threw herself in front of a car thereby endangering the driver, may be considered as the elements of an offence can possibly be established. If some other person assisted the person to commit or attempt the suicide, then this may also qualify.

If you have case of suicide with unusual features, further advice should be sought.

10/11/04

The Injury occurred while the Young Person was living interstate.

Q A young person is now living in South Australia. While domiciled in another state he/she was the victim of a criminal offence in which he/she suffered harm. How can he/she make a claim?

A All States have provision for Victims of Crime compensation. However there are differences in the means by which applications are made. Some appear to require matters to be handled via solicitors; others allow compensation to be sought by application to the authority on the appropriate form.

The following links will provide information about the eligibility requirements and application procedures for each State

TASMANIA

<http://www.legalaid.tas.gov.au/Factsheets/VAU.html>

VICTORIA

<http://www.vocat.vic.gov.au/CA256E0000835B12/HomePage?ReadForm&l=Home~&2=~&3=~>

NEW SOUTH WALES

http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_index

QUEENSLAND

<http://www.justice.qld.gov.au/courts/about/compo.htm>

NORTHERN TERRITORY

<http://www.ntu.edu.au/faculties/lba/schools/Law/apl/vocal/>

WESTERN AUSTRALIA

<http://www.legalaid.wa.gov.au/InfoAboutLaw/aspx/default.aspx?Page=Victims.xml>

16/11/04 **Special Investigations**

Q When a Special Investigation occurs and there are grounds for a VIC/CIC application for the child how will the Social Worker find out about it?

A There is an agreement between the Special Investigation Unit and Customer Relations Unit for all completed Special Investigations to be advised when there is evidence of harm to children / young persons in care which may be grounds for a VIC/CIC claim or for a Civil Liability claim.

When such grounds exist, the Supervisor CIC will advise the Supervisor of the District Centre Team responsible for the case management of the child / young person.

18/5/2005 **Debit Code for VIC/CIC claims.**

Q What account line is used to fund the disbursements being sought by the solicitor handling the claim to pay for FOI fees and medical opinions, etc?

A The Natural Account code for **Victims of Crime/Criminal Injuries Compensation** is **76227** under Children Payment Incidentals.
DC Cost Centre. Activity M747 Children's Payments. 76227

The Victims of Crime Act has tightened the criteria for the admission of expert opinion evidence. Therefore when a solicitor suggests getting a further expert opinion it is necessary to check whether the Crown will be prepared to refund the cost of this new opinion when the claim is settled.

19/5/2005. **Murder of sibling**

Q Can a child claim VIC/CIC when a sibling is murdered?

A **Yes.**

The interpretations in Section 4 of the Act define the **"immediate family" of a person and mean** any one or more of the following:

- (a) a spouse;
- (b) a parent;
- (c) a grandparent;
- (d) a child (including an adult child);
- (e) a grandchild (including an adult grandchild);
- (f) a brother or sister;**

"immediate victim", in relation to an offence, means a victim of any of the following classes:

- (a) a person who suffers physical injury as a result of the commission of the offence;
- (b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences;

.....

- (d) if the offence was committed against a person who dies as a result of the offence— a member of the immediate family of the deceased;**

Where an application for statutory Compensation arises due to the death of a victim it is necessary to apply for this compensation within 12 months of the death of the victim.

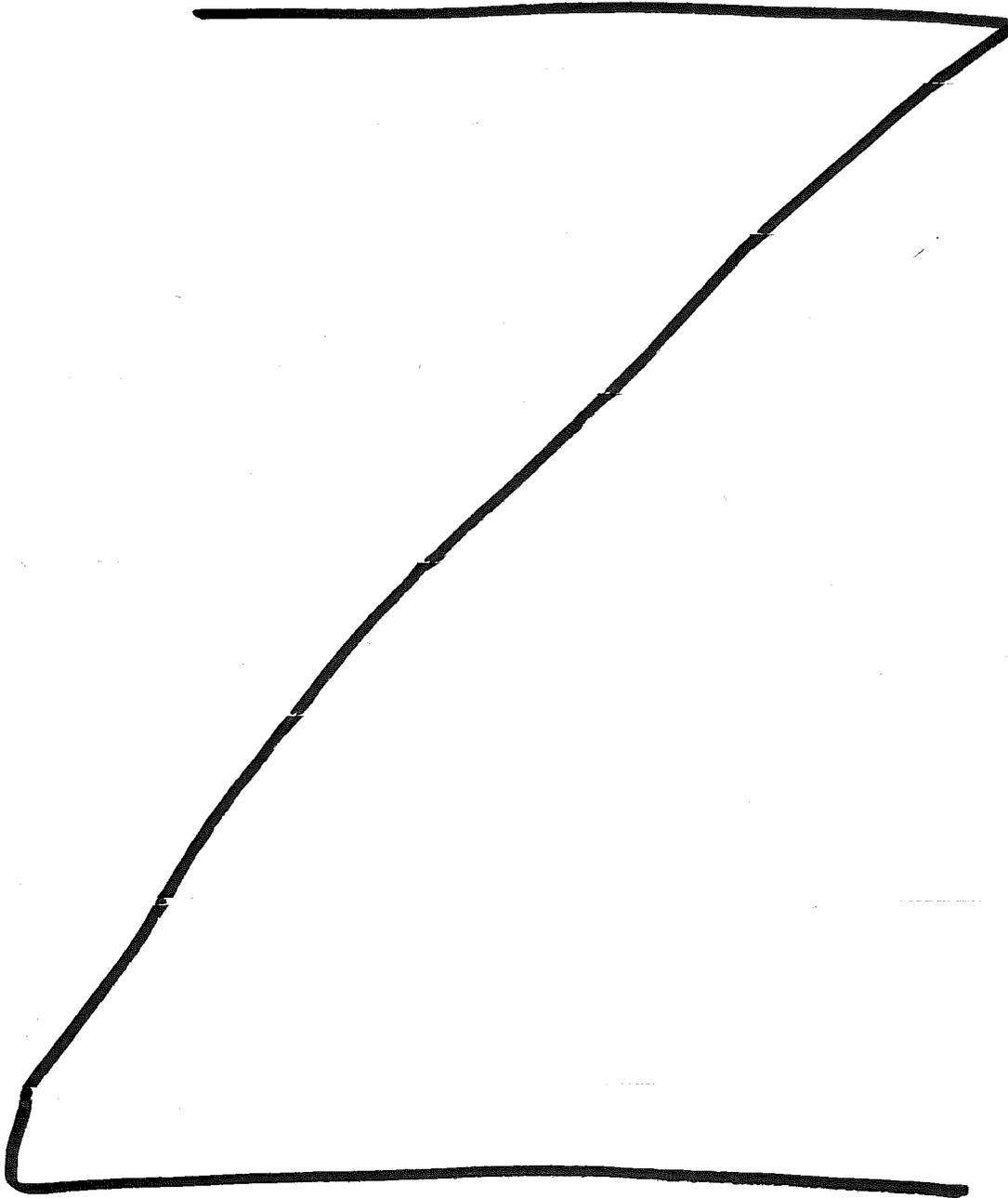
7/6/2006

Bankruptcy of the convicted offender.

This does not alter the Victim's right to make a claim as the VIC/CIC claim is against the Crown.

- Q. If the convicted offender becomes bankrupt how does this affect the Crown's right to recover the amount of the award?

~~_____~~
~~_____~~



13/12/2006

**PUBLIC TRUSTEE – ADMINISTRATION OF MONEY HELD IN TRUST
FOR MINORS UNDER THE GUARDIANSHIP OF THE MINISTER**

Q. What happens to the money when it is sent to the Public Trustee?

A. There is a recent agreement with the Public Trustee that the Department will not seek to access funds in Children's Trust accounts as any extraordinary needs can now be financed by other funding.

sources such as TILA, Cross Roads or the Dame Roma Mitchell Trust Fund.

The Public Trustee has now agreed to spread the initial Capital commission of 4.4% over the life of the Trust. This will lessen the possibility of the trust funds reducing in the first year of administration.

In addition the Public Trustee will waive the income commission of 5.5% with immediate effect. This will ensure that the funds will grow more rapidly than previously.

When the funds are received from the Court, they will now be invested immediately into a portfolio combination of Australian shares, International shares, Property Trusts and Cash Management funds. This strategy should ensure overall higher returns than the previous arrangement.

The Public Trustee will send a birthday card to the young persons on the occasion of their 17th birthday and invite them and their guardian to attend a meeting with a Trust officer to discuss investing funds after they have turned 18.

See also Divisional Circular 93

13/12/2006

The Young Person was a Victim of Crime while domiciled in another State before s/he came to live in South Australia.

- Q. According to the information I have read on interstate Victims of Crime procedures for that State, the claim will need to be made through a solicitor. Can a solicitor in SA prepare the claim?
- A This matter was raised with Solicitor Matthew Mitchell who advises that the matter will need to be handled through a solicitor in that State. He suggests that the Victims of Crime Support organisation in that State will be able to advise the name of a suitable solicitor. Most State VIC/CIC websites detail the information required.

It is recommended that the information be collected in a brief as you would in a South Australian case and forward it to Lionel Lovell Supervisor Special Projects in Customer Relations Unit who will arrange for the matter to be forwarded to an appropriate solicitor.