Fighting Domestic Violence - Australia

4. Protection for domestic violence victims and relief granted

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N/A

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N/A

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N/A

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N/A

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N/A

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N/A

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N/A

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N/A

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N/A

# 4.2 Steps for receiving a protective order

# 4.2.1 What documentation is needed to obtain a civil protection order?

Each state has a similar procedure. Generally, applicants for a protection order are required to submit the following to their local magistrates’ court:

**Application form:** Each state’s application form varies slightly but, generally, the applicant is required to answer a series of fact-based questions about themselves and the respondent. Such questions include the name of both parties, date of birth, relationship, history of family violence, the respondent’s past mental health issues, drug and alcohol abuse and so forth.

**Affidavit:** This is used as evidence in support of the application. The applicant must outline the reasons why they fear or should fear domestic violence.

**Legislative requirements**

While there are differences in the nature and scope of domestic and family violence legislation across Australian states and territories, all contain provisions for certain courts in each jurisdiction to make civil orders (usually upon an application by the police or an individual) specifically to protect victims — or persons at risk — of domestic and family violence occurring in the context of a range of relationships, including those between current or former intimate partners.

**Australian Capital Territory**

*ACT Act*

In the Australian Capital Territory, protection orders available in family violence circumstances are referred to as family violence orders. To apply for a family violence order, an application form from the magistrates’ court registry must be lodged between 9 am and 11:30 am, Monday to Friday. An application outside of these times will only be accepted if lodged by a judicial officer. Please view the applicable form here: [link](file:///C:/Users/gsbdxb/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/IJIP1EQ9/b.%09https:/www.legalaidact.org.au/sites/default/files/files/publications/family_violence_personal_protection_order_3.pdf).

**New South Wales**

*NSW Act*

In New South Wales, protection orders available in family violence circumstances are referred to as apprehended domestic violence orders. To receive an apprehended domestic violence order, an application form must be submitted at the local court. This form can be viewed here: [link](file:///C:/Users/gsbdxb/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/IJIP1EQ9/b.%09https:/www.lawaccess.nsw.gov.au/Documents/Sample%20ADVO%20application.pdf).

When submitting this form, the following information should be provided:

the full name of the person the applicant wants protection from (the defendant)

the address of the defendant

the date of birth or an approximate age of the defendant

the relationship between the applicant and the defendant, for example, neighbors, de facto spouses or other family members

the names of anyone else the applicant wants protected by the order, for example, other family members who have lived with or who are living with the applicant

details of the incidents that are causing the applicant to fear the defendant, including the most recent incident

details of any reports or statements made to the police, including any event numbers

details of any doctors’ reports, or treatment by a doctor or hospital relating to any injuries caused by the defendant

evidence of any damage to property (for example, photos)

information about the defendant’s use of alcohol or drugs

information about the defendant’s access to firearms or other weapons

information about any mental health issues

whether any apprehended domestic violence orders or other orders have been made in the past to protect the applicant from the defendant

the orders the applicant thinks they need

Additionally, the application must specify the following:

whether the applicant and the defendant have an existing business relationship

whether the applicant owes money to the defendant

whether the defendant owes the applicant money

whether the applicant has previously been to court over a dispute with the defendant

**Northern Territory**

*NT Act*

In the Northern Territory, protection orders available in family violence circumstances are referred to as domestic violence orders. To apply for a domestic violence order, the following documents need to be completed:

[application for a domestic violence order](chttps://localcourt.nt.gov.au/publications?search&amp;type=32)

affidavit

service information form[5]

**Queensland**

*Queensland Act*

In Queensland, protection orders available in family violence circumstances are referred to as domestic violence orders.

To apply for a domestic violence order, the applicant must do the following:

Prepare an application [online](https://www.qld.gov.au/law/crime-and-police/abuse-family-matters-and-protection-orders/apply-for-a-protection-order).

Apply at a magistrates’ court using a [Form DV1 — application for a protection order](https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/162168/dva-f-1.pdf).

Get a police officer, lawyer or someone you trust to apply for you.

**South Australia**

*Interventions Orders (Prevention of Abuse) Act 2009 (South Australia)*

In South Australia, protection orders available in family violence circumstances are referred to as intervention orders. To receive an intervention order, the applicant must prepare a signed statement, i.e., Form 45 — affidavit (intervention order).[6] Additionally, an application form (Form 28AA — application for intervention order) needs to be submitted and must contain the following information:

brief information about the background of the relationship between the defendant and victim

details of the defendant’s recent behavior of concern

details of any other incidents or threats that happened in the past

details of relevant existing or pending court orders (Commonwealth Act orders, agreements, plans, injunctions, undertakings, orders or agreements for division of property, child protection orders, any existing restraining order or any other legal proceedings between the parties)

any weapons the defendant has

**Tasmania**

*Tasmanian Act*

In Tasmania, protection orders available in family violence circumstances are referred to as family violence orders. To obtain a family violence order, the applicant must complete either of the following forms and submit one at the nearest magistrates’ court registry:[7]

family violence order form

[application for a restraint order](https://www.magistratescourt.tas.gov.au/going_to_court/restraint_orders/application_forms_restraint_order)

**Victoria**

*Victorian Act*

In Victoria, protection orders available in family violence circumstances are referred to as family violence intervention orders. These orders can be obtained via the magistrates’ court in Victoria or through the Victoria Police.[8] When applying for a family violence intervention order at the magistrates’ court, the applicant must do the following:

Talk to the court registrar.

[Fill in an application form.](https://www.mcv.vic.gov.au/sites/default/files/2019-11/FVIO1-Application-for-Family-Violence-Intervention-Order.pdf)

Provide information about the people included in the application and the respondent.

The applicant must submit the following information:

names and birth dates of their children and other family members who need protecting and their relationship to the respondent

the respondent, including information that can help identify and find them

information about the applicant’s relationship with the respondent

if the respondent has a gun or a firearms permit

previous court orders, such as parenting orders or intervention orders

how the respondent has behaved, including details about the incidents and why the applicant believes they are likely to occur again

In addition to the above, the applicant will be asked what they want the respondent to be prevented from doing. There are standard conditions on the form to assist.

**Western Australia**

*WA Act*

In Western Australia, protection orders available in family violence circumstances are referred to as family violence restraining orders. Applicants may apply online through an approved legal service provider by filling out an application form and affidavit. This particular mode of application was newly introduced as a COVID-19 adjustment.[9]

# 4.2.2 Does the victim need to attend a hearing?

After the application is made, the applicant will receive a date to return to court (usually within two to 10 days). In most states, the respondent is notified of this date when the documents are served along with a copy of the application. However, in some states, such as South Australia, the applicant is required to attend court without the respondent. In Western Australia, the applicant can choose between these two options.

Where the applicant and respondent are required to attend court, an attempt is made to resolve the matter by agreement. If the matter is not resolved or the respondent does not consent to the protection order, the case will be postponed for a hearing. The applicant must attend the hearing; otherwise, the application may be dismissed. The respondent does not need to attend for the protection order to be made.

Alternatively, where the respondent is not notified, the applicant will attend a preliminary hearing. At this hearing, the court will decide whether there is enough evidence to issue an interim order. The interim order takes effect from when the police issue it against the respondent. After the order is used, the respondent is required to attend court. If the respondent does not attend, the protection order will be made final. If the matter is not resolved, a trial date will be set.

**Legislative requirements**

**Australian Capital Territory**

*ACT Act*

After submitting an application, the court will decide on a date for a return conference, which both the applicant and respondent must attend. This conference is held usually within two to 10 days from the submission of the application and will be held at the court. The purpose of a return conference is to try to resolve the matter by agreement and thereby prevent any further court proceedings. However, if the matter is not resolved at the return conference, then a hearing will occur.

**New South Wales**

*NSW Act*

After submitting an application, the respondent has the opportunity to decide whether to consent to the protection order. Should the respondent choose not to consent, then the case will be postponed for a hearing. The applicant and respondent will submit evidence at the hearing and the magistrate will ultimately decide if a protection order should be issued. If a hearing is ordered, it is essential for the applicant to attend, as the application will be dismissed if they do not. If the respondent does not attend the hearing, the application will not be dismissed, as the court can issue the protection order without the respondent.[11]

**Northern Territory**

*NT Act*

Once an application for a protection order is submitted, the respondent will be given a copy of the application and affidavits submitted. The court will then determine a date as to when the matter will be heard before the court.

**Queensland**

*Queensland Act*

After submitting the application, the applicant will be given a date to appear in court. This date is usually a few weeks after the form was lodged but may be sooner if the applicant has asked for the temporary protection order to be considered urgently. Once a date has been set, the respondent will receive a copy of the application along with the court date.[12]

**South Australia**

*Interventions Orders (Prevention of Abuse) Act 2009 (South Australia)*

After an application for a protection order is submitted either by the applicant at the magistrates’ court or by the police on the applicant’s behalf, a preliminary hearing is ordered. However, this may take several days to arrange. The applicant is required to attend this preliminary hearing without the respondent being present. The magistrate will read the application and relevant statements at this hearing and order an interim protection order if they are satisfied there is enough evidence. Only after the interim order is issued will the respondent be notified of the application and order against them. The respondent is required to then attend court for a hearing at a date set by the court. If the respondent does not attend, then the interim order will be made final.

**Tasmania**

*Tasmanian Act*

Tasmanian legislation permits the making of final orders by the consent of the applicant without admitting the allegations to the respondent. Should the court make a protection order, it will remain in force for as long as necessary (generally 12 months) or until an application is made to revoke the order. Once the order is made, the respondent will have the opportunity to contest the order. Should this occur, the application would be adjourned for a contested hearing. If required interim orders for protection of the applicant may be made during any such adjournments.[13]

**Victoria**

*Victorian Act*

Once an application for a protection order is submitted, the applicant and respondent will each receive a summons or safety notice outlining the date of the court hearing. If a safety notice is issued, this date will be within 14 days from issuing the notice. If there is an application and summons, the date is usually from three weeks after the applicant applies for an intervention order. However, this date may be brought forward where the respondent has been arrested.[14]

**Western Australia**

*WA Act*

When submitting an application for a protection order, the applicant may elect to have the first hearing without notifying the respondent. After this application is submitted, the court will hear the application as soon as possible. The first hearing will be closed court, preventing members of the public from entering the courtroom. However, the court may permit an approved support person to attend with the applicant. At this first hearing, the court may order an interim protection order, which is temporarily in place while the court considers whether a final protection order should be issued and it will remain in place until such decision is reached. The court will require the respondent to be notified of the application and be provided with the opportunity to attend court before it may issue a final protection order.[15]

# 4.2.3 Can you request remedies?

There are no financial or monetary remedies that you may request at the same time under a protection order application. Most application forms are limited to the following sections:

nature of relationship

person seeking to be protected

person you are seeking the restraining order against

person lodging the application

grounds for making the application

application details

additional information for respondent

Certain conditions may be imposed by the court under family violence legislation, although this remains at the judge’s discretion. The main conditions imposed are any conditions considered necessary to “protect the victim and any child from family violence, encourage the person to accept responsibility for the violence committed against the victim, or change his or her behaviour.”[16] Each state and territory permits the imposition of additional conditions prohibiting or restricting the person against whom the protection order is made, as follows:

committing family violence against the victim;

harassing, threatening or intimidating the victim;

verbally abusing or assaulting the victim;

entering the victim’s residence, workplace or any other specified premises—including where that person has a legal or equitable interest in the property;

being anywhere within a specified distance of the victim or a specified place;

approaching the victim or any specified premises—including within 12 hours of consuming intoxicating liquor or illicit drugs;

telephoning or otherwise contacting the victim—including by email or by text message, unless in the company of a police officer or specified person; and including attempting to contact the victim at a refuge either directly or through someone else;

interfering with or damaging the victim’s property;

stalking the victim;

locating or attempting to locate the victim;

causing another person to engage in behaviour prohibited by the protection order;

taking possession of specified personal property reasonably needed by the victim;

preventing the victim from obtaining and using personal property reasonably needed by the victim; and

possessing firearms, prohibited weapons, or a firearms license.[17]

In addition to the above, the protection order may contain conditions requiring the subject to do the following:

[To] undertake certain actions, such as: vacate premises—whether or not the person has a legal or equitable interest in the premises; surrender firearms and other weapons; return specified personal property required by the victim; attend an assessment to determine an appropriate form of intervention program and eligibility for such a program; or attend a rehabilitation program.[18]

Only two states in Australia impose mandatory conditions in their protection orders: New South Wales and Queensland. In New South Wales, the subject of the order is prevented from “assaulting, molesting, harassing, threatening, stalking and engaging in any intimidating conduct towards the victim or anyone with whom the victim has a domestic relationship.”[19] Conversely, in Queensland, the subject of the order is “to be of good behaviour and not commit family violence.”[20]

# 4.2.4 Are there time limits?

All states and territories except Tasmania do not have a time limit as to when an applicant must make an application for a protection order.[21] In relation to how long the applicant must wait for a hearing/a protection order to be issued, the length of interim orders, the length of the final orders and extending an order, these requirements will vary between each state and territory.

**Legislative requirements**

**Australian Capital Territory**

*ACT Act*

**1. Time limit for a court to make an order**

**Interim order sought**

If the court receives an application for a protection order and an interim order is sought, the court must set a return date for a hearing for the interim order that is not later than **two days** after the day the application is received.[22]

**Appeals to the court**

If a party disagrees with the court’s decision, they must file a notice of appeal within 28 days of the decision or the day the final order is served on the respondent if the respondent was not present.[23]

**2. Length of interim and final orders**

**Interim order**

An interim order is generally no longer than 12 months subject to any extensions.[24]

**Final order**

A final order will remain in force for the following periods:

If a final order is made as a consent order, the order must not be longer than two years.[25]

2 years, regardless of whether it is stated in the order; or

if a shorter period is stated in the order – the period stated; or

if the court is satisfied that there are special or exceptional circumstances that justify a longer period – the stated longer period.[26]

**3. Extending an order**

The applicant can apply to amend a final order (the original order), which includes extending the order for a stated period. The court must grant the extension for the stated period unless satisfied that an order is no longer necessary to protect the person from family violence.[27]

**New South Wales**

*NSW Act*

**1. Time limit for a court to make an order**

There is no specific time limit for a court to make an interim order or final order from the date of an application being made.

**2. Length of interim and final orders**

**Interim order**

An interim order will remain in force until it is revoked or a final order is made.[28]

**Final order**

An order remains in force for the following periods:

the period specified in the order by the court, or

if the court fails to specify a period in the order, the default period.[29]

A **default period** means the following:

if the order relates to a defendant who was under 18 years of age when the application for the order was first made—1 year after the date the order is made, or

in any other case—2 years after the date the order is made.[30]

The court may even determine that the order remain in force for an indefinite period (an indefinite order). In making this order, the court will need to be satisfied of the following:

the applicant has sought an indefinite order, and

the order relates to a defendant who was 18 years of age or older when the application for the order was first made, and

there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependents of the protected person, and that risk cannot be adequately mitigated by an order of limited duration.[31]

**3. Extending an order**

The applicant can apply to extend the order and the order will stay in force until the court hearing.[32] An application form to extend the order will need to be completed and filed at the court.[33] The court will then determine whether to extend the order.[34]

**Northern Territory**

*NT Act*

**1. Time limit for a court to make an order**

There is no specific time limit for a court to make an interim order or final order from the date of an application being made.

**2. Length of interim and final orders**

**Interim order**

An interim order will remain in force until it is revoked by a court or a final order is made.[35]

**Final order**

A final order is “in force for the period stated in it.”[36]

**3. Extending an order**

The applicant can apply to extend the order, which needs to be made in the approved form and be filed in the court.[37] The court may extend the order on an application to vary it or on its own initiative.[38]

**Queensland**

*Queensland Act*

**1. Time limit for a court to make an order**

Although there is no specific time limit for a court to make an interim order or final order, once an application is lodged, the applicant will be given a date to appear in court, usually in a **few weeks**.[39] The application process for a full protection order can take **several weeks**.[40]

**Appeals to the court**

If a party disagrees with the court’s decision, they must file a notice of appeal within 28 days of the decision. If the decision was made in the absence of the respondent, a party must file a notice of appeal by the earlier of (i) the day on which the copy of the decision is served on the appellant or (ii) the day on which a police officer tells the appellant about the existence of the decision.[41]

**2. Length of interim and final orders**

**Interim order**

An interim order will remain in force until it is revoked by a court or a final order is made.[42]

**Final order**

A final order remains in force until “the day stated by the court in the protection order”; if no day is stated, the final order remains in force for five years from the day the order is made.[43]

**3. Extending an order**

The applicant can apply to extend the order, which needs to be made in the approved form and be filed in the court.[44] The court may extend the order on an application to vary it or on its own initiative.[45]

**South Australia**

*Interventions Orders (Prevention of Abuse) Act 2009 (South Australia)*

**1. Time limit for a court to make an order**

Once an application is lodged, it can take **several days** to arrange a preliminary hearing where the judge will determine whether an interim order will be made.[46]

**Interim intervention order issued by a police or court**

If an interim intervention order is issued by a police officer or court, the order must require the defendant to appear before the court within eight days after the date of the order.[47]

**2. Length of interim and final orders**

Interim and final orders are ongoing and remain in force until they are revoked.[48] An issuing authority (i.e., a police officer or court) may not fix a date for the expiry of an intervention order.[49]

**3. Extending an order**

The applicant can apply to extend the order.[50] The court will need to have regard to the same matters it would have regard to when determining whether to grant an order in the first instance.[51]

**Tasmania**

*Tasmanian Act*

**1. Time limit for a court to make an order**

There are time constraints in relation to making a complaint for an offense against economic abuse and emotional abuse or intimidation, which fall under the definition of family violence.[52] The applicant must make an application against a person within **12 months** from the day on which the action of economic abuse or emotional abuse or intimidation occurred.

**Economic abuse**is defined as follows:

With intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

coercing his or her spouse or partner to relinquish control over assets or income;

disposing of property owned –

jointly by the person and his or her spouse or partner; or

by his or her spouse or partner; or

by an affected child –

without the consent of the spouse or partner or affected child;

preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;

preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;

withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.[53]

**Emotional abuse or intimidation**is where a person pursues the following course:

A course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.[54]

**A course of conduct** includes “limiting the freedom of movement of a person’s spouse or partner by means of threats or intimidation.”[55]

**2. Length of interim and final orders**

An order remains in force until it is revoked or for such period that the court considers necessary for the safety of the person who applied for the order.[56]

**3. Extending an order**

The applicant can apply to extend the order at any time.[57]

**Victoria**

*Victorian Act*

**1. Time limit for a court to make an order
Safety notice issued**

If a family violence safety notice has been issued and served on the respondent, then the first hearing date must be within **14 days** from when it was issued.[58]  A safety notice acts as a temporary order, as the police usually issue it if someone needs immediate protection.[59] The safety notice can protect the affected family members before an intervention order application is heard in court.[60]

**Mention the date for the proceedings for the final order**

If an interim order is made by a court, the proceedings for the final order should be listed for mention within the following time frames:

within **14 days** of making the order if the accused was before the court when the interim order was made

within **14 days** of the interim order being served on the accused[61]

**Appeals to the court**

If a party disagrees with the court’s decision or disagrees with the conditions of the order, they can apply to vary the order or appeal the decision within **28 days** of the decision.[62]

**2. Length of interim and final orders**

**Interim order**

An interim order remains in force until it is revoked or the court makes a final order.[63]

**Final order**

A final order remains in force for the specified period determined by the court or until it is revoked.[64] Orders commonly last for 12 months.[65]

**3. Extending an order**

The applicant can apply to extend the order. The court may extend the final order on an application or on its own initiative if the order was made by the court on its own initiative.[66] The court may grant the extension if it is satisfied that the respondent is likely to commit family violence against the applicant.[67]

**Western Australia**

*WA Act*

**1. Time limit for a court to make an order**

There is no specific time limit for a court to make an interim order or final order from the date of an application being made.

However, the relevant periods are as follows.

**Interim order made**

Once the respondent has received an interim order, they will have the following options:[68]

Agree to the order being made final, which they will need to respond to and provide consent for within **21 days** of being served the interim order. The order will then be made final as soon as the court receives the consent notice.

Object to the order being made final, which they will need to do within **21 days**. The court will then set a date for both parties to come to the court to attend a mention hearing or a final order hearing.

Do nothing. If they do not respond within **21 days**, the interim order will automatically become a final order against the respondent.

**No interim order made**

Where no interim order is made, this means that the applicant has chosen to have the first hearing in the presence of the respondent. The court will fix a mention hearing, usually in about four weeks from the date of the application being made to allow time for service on the respondent.[69] The respondent has the following options:[70]

Agree that the order should be made at the mention hearing.

Object to the restraining order being made at the mention hearing. The court will then organize a final order hearing.

Do not attend the hearing, which means the application will be decided in the respondent’s absence. The court will then decide if a final order is needed.

**2. Length of interim and final orders**

**Interim order**

An interim order remains in force until it is canceled or a final order is made.[71]

**Final order**

A final order remains in force for the period specified in the order; if no period is specified, the final order remains in force for two years from the date the order is made.[72]

**3. Extending an order**

The applicant can apply to extend the order. The court will then set a hearing date for the matter to be heard at court.[73]

# 4.2.5 Are there different rules in emergencies?

In all states and territories, an interim order (i.e., a temporary order) may be made if a person needs protection immediately, which will be made under the court’s discretion. Please refer to Section 4.3.1 for the grounds for making interim orders.[74]

Police officers may apply for and/or issue temporary orders if they believe a person needs immediate protection. These orders are named differently in each state and territory. Please see the table below as to how these orders are referenced.

**Legislative requirements**

**Australian Capital Territory**

*ACT Act*

There is no specific name for protection orders issued by police in the Australian Capital Territory. If the application for an order is urgent, the applicant can apply for an interim order (i.e., a temporary order). The interim order will take effect after the police have given a copy to the respondent. Please see the information below in Section 4.3.1 under “Interim order”[75] for the Australian Capital Territory.

**New South Wales**

*NSW Act*

Protection orders issued by police officers in New South Wales are known as provisional apprehended violence orders.

Section 26(1)(b) states that an application for a provisional order may be made if the following occurs:

[If] a police officer has good reason to believe a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by the provisional order or to prevent substantial damage to any property of that person.

Section 27(1)(a) imposes an obligation on police officers to make an application for a provisional order if the following occurs:

[If] a police officer investigating the incident is concerned, suspects or believes that –

a domestic violence offence or an offence against section 13 has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or

an offence under section 227 (Child and young person abuse) of the Children and Young Persons (Care and Protection) Act 1998 (but only in relation to a child) has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or

proceedings have been commenced against a person for an offence referred to in subparagraph (i) or (ii) committed against the person for whose protection an order would be made, and […]

the police officer is satisfied of the concerns specified in section 26(1)(b).

**Northern Territory**

*NT Act*

Protection orders issued by police officers in the Northern Territory are known as police domestic violence orders.

Section 41(1) specifically states the following:

An authorised police officer may make a domestic violence order if satisfied:

it is necessary to ensure a person’s safety:

because of urgent circumstances; or

because it is not otherwise practicable in the circumstances to obtain a Local Court DVO; and

a Local Court DVO might reasonably have been made had it been practicable to apply for one.

The act defines an **authorized police officer**as[76] “(a) a police officer of or above the rank of senior sergeant; or (b) the officer in charge for the time being of a police station.”

**Queensland**

*Queensland Act*

Protection orders issued by police officers in Queensland are known as police protection notices.

Section 101(1) specifically states the following:

A police officer may issue a notice (a police protection notice) against a person (the respondent) if the police officer:

reasonably believes the respondent has committed domestic violence; and

if the respondent is not present at the same location as the police officer—has made a reasonable attempt to locate and talk to the respondent, including by telephone, to afford the respondent natural justice in relation to the issuing of a police protection notice; and

reasonably believes that no domestic violence order has been made; and

reasonably believes a police protection notice is necessary or desirable to protect the aggrieved from domestic violence; and

reasonably believes the respondent should not be taken into custody.

**South Australia**

*SA Act*

Protection orders issued by police officers in South Australia are known as interim intervention orders.

Section 18(1) specifically states the following:

A police officer may issue an interim intervention order against a defendant if it appears to the police officer that there are grounds for issuing the order and the defendant is present before the police officer or in custody.

Following on in Section 18(2):

If the police officer issuing the order is not of or above the rank of sergeant, the officer must, before issuing the order, obtain the authorisation (either orally or in writing) of a police officer of or above that rank.

**Tasmania**

*Tasmanian Act*

Protection orders issued by police officers in Tasmania are known as police family violence orders.

Section 14(1) specifically states the following:

A police officer of the rank of sergeant or above, or authorised by the Commissioner of Police, may make a PFVO and issue it to a person if the officer is satisfied that the person has committed, or is likely to commit, a family violence offence.

**Victoria**

*Victorian Act*

Protection orders issued by police officers in Victoria are known as family violence safety notices.

Section 24 specifically states the following:

A police officer who responds in person to an incident involving family violence may apply to another police officer, who is of the rank of Sergeant or a higher rank, for a family violence safety notice.

**Western Australia**

*WA Act*

Protection orders issued by police officers in Western Australia are known as police orders.

Section 30A(1) specifically states that a police officer may make a police order if making the police order is necessary to ensure the safety of a person and the officer reasonably believes that the case meets one of the two criteria below:

a person has committed family violence and is likely again to commit that violence; or a child has been exposed to family violence committed by or against a person with whom the child is in a family relationship and the child is likely again to be exposed to that violence.

a person will have committed against the person family violence; or a child will be exposed to family violence committed by or against a person with whom the child is in a family relationship.[77]

# 4.3 Judicial discretion

# 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

Judges in every state and territory have discretion in granting protection orders.[78] However, the factors that judges must take into account before granting a protection order differ between states and territories. Conditions that may be imposed at the judge’s discretion include any conditions considered necessary to “protect the victim and any child from family violence, encourage the person to accept responsibility for the violence committed against the victim, or change his or her behaviour.”[79]

**Legislative requirements**

**Australian Capital Territory**

*ACT Act*

Judges retain full discretion to issue protection orders in the Australian Capital Territory. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

The court may make an interim order if satisfied that the order is necessary to do either or both of the following until the application for the final order is decided:

to ensure the safety of an affected person from family violence

to prevent substantial damage to an affected person’s property[80]

**Final order**

A court may, upon an application, make a final order if satisfied of the following:

the affected person has reasonable grounds to fear family violence by the respondent

the respondent has used family violence against the affected person[81]

**New South Wales**

*NSW Act*

Judges retain full discretion to issue protection orders in New South Wales. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

A court may make an interim protection order if it appears to the court that it is necessary or appropriate to do so in the circumstances.[82]

**Final order**

The court has the power to make a protection order. It can also make an order for the protection of a person with whom the person for whose protection the order was sought has a domestic relationship.[83]

**Northern Territory**

*NT Act*

Judges retain full discretion to issue protection orders in the Northern Territory. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

The court may make a protection order at any time during the proceedings for the hearing of an application for a protection order.[84]

**Final order**

The issuing authoring, including the court, can make a protection order if satisfied that there are reasonable grounds for the protected person to fear domestic violence against the defendant.[85]

**Queensland**

*Queensland Act*

Judges retain full discretion to issue protection orders in Queensland. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

The court has the power to make a temporary protection order.[86]

**Final order**

The court may make a protection order if the court is satisfied of the following:[87]

a relevant relationship exists between the applicant and the respondent

the respondent has committed domestic violence against the applicant

the protection order is necessary or desirable to protect the applicant from domestic violence

**South Australia**

*Interventions Orders (Prevention of Abuse) Act 2009 (South Australia)*

Judges retain full discretion to issue protection orders in South Australia. However, the court must make different considerations when granting an interim order as opposed to a final order.

Generally, to issue a protection order, the court must be satisfied of the following:[88]

it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person

issuing the order is appropriate in the circumstances

**Interim order**

At the preliminary hearing, the court may do the following:[89]

The court may issue an interim protection order against a defendant if it appears to the court that there are grounds for issuing the order.

The court may issue dismiss the application on the grounds that the application is frivolous, vexatious, without substance or has no reasonable prospect of success or on any other ground considered sufficient by the court.

**Final order**

On the hearing of an application for a final protection order, the court may do the following:[90]

The court may confirm the interim order issued against the defendant as a final intervention order.

The court may issue a final order in substitution for an interim order issued against the defendant.

The court may dismiss the application and revoke the interim order issued against the defendant.

**Tasmania**

*Tasmanian Act*

Judges retain full discretion to issue protection orders in Tasmania. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

At any stage during the proceedings, a court may make an interim protection order, whether or not it is satisfied of the matters set out when making the final protection order.[91]

**Final order**

A court may make a protection order if satisfied, on the balance of probabilities, of the following:[92]

a person has committed family violence

that person may again commit family violence

**Victoria**

*Victorian Act*

Judges retain full discretion to issue protection orders in Victoria. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

The court has the power to make an interim order if the following conditions are satisfied:[93]

a person has applied to the court for a protection order and the court is satisfied, on the balance of probabilities, that an interim order is necessary pending a final decision about the application:

to ensure the safety of the affected family member

to preserve any property of the affected family member

to protect an affected family member who is a child who has been subjected to family violence committed by the respondent

a person has applied to the court for a protection order and the parties to the proceeding have consented to or do not oppose the making of an interim order for the application

a family violence safety notice has been issued for an affected family member and the court is satisfied, on the balance of probabilities, that there are no circumstances that would justify discontinuing the protection of the person until a final decision about the application

**Final order**

The court has the power to make the final protection order if the court is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to continue to do so or do so again.[94]

**Western Australia**

*WA Act*

Judges retain full discretion to issue protection orders in Western Australia. However, the court must make different considerations when granting an interim order as opposed to a final order.

**Interim order**

The court may make an interim protection order.[95]

**Final order**

A court may make a protection order if it is satisfied of the following:[96]

the respondent has committed family violence against a person seeking to be protected and the respondent is likely again to commit family violence against that person in the future

a person seeking to be protected or a person who has applied for the order on behalf of that person has reasonable grounds to believe that the respondent will commit family violence against the person seeking to be protected

# 4.3.2 Are there age limits on who can obtain orders?

Yes, while any person including a child of any age may be protected by a protection order, age limits exist in some states where children cannot apply for a protection order on their own and instead need an adult to apply on their behalf. Most states define a child as a person under 18 years old.[97]

**Legislative requirements**

**Australian Capital Territory**

*Children and Young People Act 2008 (Australian Capital Territory) and ACT Act*

There are no age limits in the Australian Capital Territory when applying for a protection order. The legislation states that any “affected person” may apply to the court for a protection order, which includes any child (a person under 12 years old)[98] who hears, witnesses or is otherwise exposed to family violence committed against another person.[99] It is possible for a parent or guardian to apply on behalf of the child. However, if the child and the child’s parent are each an affected person in relation to the same family violence, the child may apply for a protection order in the same application as the child’s parent.[100]

**New South Wales**

*Children and Young Persons (Care and Protection) Act 1998 (New South Wales) and NSW Act*

Under New South Wales legislation, an adult or police officer must apply on behalf of a child when applying for a protection order.[101] In this state, a child is defined as any person under 16 years old.[102]

**Northern Territory**

*NT Act and Care and Protection of Children Act 2007 (Northern Territory)*

Under legislation in the Northern Territory, an application for a domestic violence order can be made and obtained where the applicant is one of the following:[103]

an adult or young person in a domestic relationship with the defendant

an adult acting for a person (whether an adult or child) in a domestic relationship with the defendant

a police officer on behalf of another person (whether an adult or child)

In this territory, a child is defined as any person under 18 years old.[104]

**Queensland**

*Queensland Act and Child Protection Act 1999 (Queensland)*

There are no age limits in Queensland when applying for a protection order. An application for a protection order can be made by the following:[105]

an aggrieved (an adult or child)

an authorized person for an aggrieved

a police officer

a person acting under another act for the aggrieved

In this state, a child is defined as any person under 18 years old.[106]

**South Australia**

*Interventions Orders (Prevention of Abuse) Act 2009 (South Australia) and Children and Young People (Safety) Act 2017 (South Australia)*

There is a conditional age limit in South Australia when applying for a protection order. Generally, an application for a protection order can be made by the following:

a police officer

a person against whom it is alleged the defendant may commit an act of abuse or a suitable representative of such a person given permission to apply by the court

a child who it is alleged may hear, witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against a person

if the defendant or a person proposed to be protected by the order is a child and there is a state child protection order in force in respect of the child, the minister responsible for the administration of the Children and Young People (Safety) Act 2017[107]

If the person entitled to apply is a child, the application may be made by the following:

by the child with the permission of the court if the child is 14 years old or older

on behalf of the child by the following:

a parent or guardian of the child

a person with whom the child normally or regularly resides

some other suitable representative of the child given permission to apply by the court[108]

In this state, a child is defined as any person under 18 years old.[109]

**Tasmania**

*Tasmanian Act and Children, Young Persons and Their Families Act 1997 (Tasmania)*

There is a conditional age limit in Tasmania when applying for a protection order. Generally, an application for a family violence order can be made by and obtained by the following:[110]

a police officer

an affected person

an affected child if the court is satisfied that the child **is capable of understanding the nature of the proceedings**

any other person to whom leave to apply is granted by a court

In this state, a child is defined as any person under 18 years old.[111]

**Victoria**

*Victorian Act and Children, Youth and Families Act 2005 (Victoria)*

There is a conditional age limit in Victoria when applying for a protection order. According to the legislation, an application for a family violence intervention order can be made by the following:[112]

a police officer

an affected family member

if the affected family member is an adult, any other person with the written consent of the affected family member

if the affected family member is a child, by the following:

a parent of the child

any other person with the written consent of a parent of the child or with the leave of the court

the affected family member with the leave of the **court if the affected family member is or is above 14 years old**

if the affected family member has a guardian, by the following:

the guardian

any other person with the leave of the court

In this state, a child is defined as any person under 17 years old.[113]

**Western Australia**

*WA Actand Children and Community Services Act 2004 (Western Australia)*

Under Western Australia legislation, an adult or police officer must apply on behalf of a child when applying for a protection order. Generally, an application for a protection order can be made by the following:[114]

an authorized person on behalf of the person seeking to be protected

the person seeking to be protected if they are introduced to the authorized magistrate by an authorized person

a parent or guardian of the child if the person seeking to be protected is a child

In this state, a child is defined as any person under 18 years old.[115]

# 4.4 Restitution and remedies available to victims

# 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes, depending on the state and territory, victims of crime may obtain compensation through the following means:

1. Victims of crime may obtain compensation through a state government funded scheme. Each state and territory has set out their own eligibility criteria. In addition:

Compensation may be awarded to cover counseling and medical expenses, loss of earnings and more.

In relation to legal costs, legal practitioners may not be entitled to recover costs associated with assisting the victim in applying for assistance. This will vary between each state and territory.

2. Victims of crime may obtain compensation through a criminal court case against the offender after the offender has been convicted.

3. Victims of crime may obtain compensation through a civil claim against the offender.

As per the response under Section 4.2.3, when applying for a protection order, victims cannot request for costs and restitution to be paid in their application.

**Legislative requirements**

**Australian Capital Territory**

*Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory) and Victims of Crime (Financial Assistance) Regulation 2016 (Australian Capital Territory)*

**1. State government funded compensation
Victims Support ACT**

Victims Support ACT is a government agency that provides information, financial support and support services to victims of crime.

**Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory)**

Victims can rely on Part 3, Division 3 of the act for a claim of compensation.[116] The types of compensation available depend on what level the victim is classified as. Primary victims, Class A-related victims and Class B-related victims are all entitled to apply for the following:

(a) an immediate need payment

(b) an economic loss payment

(c) a recognition payment[117]

In contrast, a Class C-related victim may apply for only an immediate need payment or an economic loss payment.[118]

The act defines these classes in Part 2.

A **primary victim** is defined as “a person who has been injured or dies as a direct result of an act of violence done by another person.”[119]

A **Class A-related victim** is defined as follows:

A person who, at the time a primary victim dies—

(a) is a dependant of the primary victim; and

(b) is 1 of the following:

i. a close family member of the primary victim;

ii. (an intimate partner of the primary victim).[120]

A **Class B-related victim** is defined as follows:

A person who, at the time a primary victim dies—

(a) is financially independent of the primary victim; and

(b) is either—

i. a close family member of the primary victim who has a genuine personal relationship with the primary victim; or

ii. an intimate partner of the primary victim.[121]

A **Class C-related victim** is defined as follows:

A person who, at the time a primary victim dies—

(a) is financially independent of the primary victim; and

(b) is a family member of the primary victim.[122]

Compensation may be awarded to cover the following:

an immediate need payment — costs made quickly to promote recovery and to prevent further harm

an economic loss payment — payment for loss of earnings caused by the injury

a recognition payment — payments to acknowledge the trauma suffered

**Legal costs**

A legal practitioner must not charge or seek to recover legal costs higher than the following:

AUD 1,123 for providing legal services that relate to an application for financial assistance[124]

AUD 2,246 for providing legal services that relate to an appeal or review process[125]

**2. Criminal court case**

A victim of crime may be able to claim compensation from the offender after the offender has been convicted of an offense.[126] The victim can make a compensation application to the court that convicted the offender.

**3. Civil action against the offender**

A victim may bring a civil court claim as another option to try to claim compensation from the offender who is responsible for the victim’s injuries.[127]

**New South Wales**

*NSW Act, Criminal Procedure Act 1986 (New South Wales) and Victims Support and Rehabilitation Act 1996 (New South Wales)*

**1. State government funded compensation
Victims’ Services and Support**

Victims’ Services and Support is a government agency that provides information, financial support and support services to victims of crime.

**Victims Support and Rehabilitation Act 1996 (New South Wales)**

Victims can rely on Part 2, Division 1 of the act for a claim of compensation. A person is only eligible for compensation if they are considered the primary victim, the secondary victim or the family victim of an act of violence.[128]

The act defines these classes as follows.

A **primary victim** is defined as “a person who receives a compensable injury, or dies, as a direct result of that act.”[129] In addition:

A person who receives a Compensable injury, or dies, as a direct result of

(a) trying to prevent another person from committing that act,

(b) trying to help or rescue another person against whom that

(c) trying to arrest another person who is committing, or who or act is being committed or has just been committed, or has just committed, that act.[130]

A **secondary victim** is defined as follows:

A person who receives a compensable injury as a direct result of witnessing the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act.[131]

In addition:

A person who receives a compensable injury as a direct result of subsequently becoming aware of the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act, but only if

(a) the person is the parent or guardian of the primary victim of that act, and

(b) the primary victim was under the age of 18 years at the time of that act, and

(c) the person did not commit that act

The person is taken, for the purposes of this Act, to have witnessed the act of violence.[132]

However, “a primary victim does not include a person who is a primary victim only because of the operation of section 7 (2).”[133]

A **family victim** is defined as follows:

A person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act.[134]

In addition:

A member of the immediate family of a primary victim is:

(a) the victim’s spouse, or

(b) the victim’s de facto spouse, or partner of the same sex, who has cohabited with the victim for at least 2 years, or

(c) a parent, guardian or step-parent of the victim, or

(d) a child or step-child of the victim or some other child of

(e) a brother, sister, step-brother or step-sister of the victim.[135]

Furthermore:

A family victim is a dependent family member if:

(a) the person was wholly or mainly dependent on the primary victim’s income at the relevant time, or

(b) the person is a child of the primary victim born after the death of the victim where, had the child been born in the victim’s lifetime, the child would have been a dependent family member of the victim by virtue of paragraph (a).[136]

Compensation limitations are outlined in the act as follows:

Primary victim: A primary victim of an act of violence is eligible to be compensated for compensable injuries received as a direct result of the act of violence and compensation for financial loss incurred as a direct result of any such compensable injury. If the primary victim dies, they cease to be eligible for statutory compensation.[137] However, the family member of the primary victim may then become eligible for compensation.[138]

Secondary victim: A secondary victim of an act of violence is eligible to be compensated for compensable injuries received as a direct result of witnessing the act of violence and compensation for financial loss incurred as a direct result of any such compensable injury.[139]

Family victim: Statutory compensation for all family victims of an act of violence is capped at AUD 50,000.[140]  Where there are two or more family victims, the victims are eligible to an equal share of AUD 50,000.[141] However, victims who were not dependent family members at the time of the act of violence are not eligible if there were also dependent family members at that time.[142]

Compensable injuries: Compensation for compensable injuries is payable in accordance with the schedule of compensable injuries.[143]

**2. Criminal court case**

A victim of crime may be able to claim compensation from the offender after the offender has been convicted of an offense.[144] The victim can make a compensation application to the court that convicted the offender. There is no time limit as to when the victim may apply after the conviction.

**Legal costs**

If the offender is found guilty, the court may order them to pay the prosecutor’s legal costs.

**3. Civil action against the offender**

The courts power to award costs in apprehended violence order proceedings is found in Section 99 of the NSW Act and Chapter 4, Part 2, Division 4 of the Criminal Procedure Act 1986 (New South Wales).

According to Section 99 of the NSW Act:

In apprehended violence order proceedings, a court may award costs to the applicant for the order or decision concerned or the defendant in accordance with this section.

Costs are to be determined in accordance with Chapter 4, Part 2, Division 4 of the Criminal Procedure Act 1986 (New South Wales).

A court is not to award costs against an applicant who is the person for whose protection an apprehended domestic violence order is sought unless satisfied that the application was frivolous or vexatious.

A court is not to award costs against a police officer who makes an application unless satisfied that the police officer made the application knowing it contained facts that were false or misleading in a material particular.

Subsections (3) and (4) have effect despite any other act or law.

**Northern Territory**

*Victims of Crime Assistance Act 2006 (Northern Territory)*

**1. State government funded compensation
Victims of Crime NT**

Victims of Crime NT is a government agency that provides information, financial support and support services to victims of crime.

**Victims of Crime Assistance Act 2006 (Northern Territory)**

Victims can rely on Division 1 of the act for a claim of compensation. The types of compensation available depend on what level the victim is classified as: primary victim, secondary victim, family victim or related victim.

The act defines these classes as follows.

Where the violent act is a compensable violent act, a **primary victim** is defined as “a person against whom the violent act has been committed regardless of whether the person suffers an injury or dies as a direct result of the violent act.”[146]Otherwise, they are “a person against whom the violent act has been committed and who suffers an injury or dies as a direct result of the violent act.”[147]

Additionally a primary victim of an act of violence is defined as follows:

A person who suffers an injury or dies as a direct result of any of the following:

(a) trying to prevent another person from committing a violent act;

(b) trying to help or rescue another person against whom a violent act is being committed or has just been committed;

(c) trying to arrest another person who is committing or has just committed a violent act.[148]

A **secondary victim** is defined as “a person who is present at the scene of the violent act and suffers an injury as a direct result of witnessing the violent act.”[149] Where the person suffers an injury as a direct result of subsequently becoming aware of the violent act, they are defined as follows:

(a) a child or stepchild of the primary victim, or a child under the guardianship of the primary victim, when the violent act occurs;

(b) if the primary victim is a child – a parent, step-parent or guardian of the primary victim when the violent act occurs.[150]

A person is not a secondary victim if the person committed the violent act.

A **family victim** is defined as follows:

A person who, when the violent act occurs, is one of the following:

(a) The spouse or de facto partner of the primary victim of the violent act;

(b) A parent, step-parent or guardian of the primary victim of the violent act;

(c) A child or stepchild of the primary victim of the violent act or a child under the guardianship of the primary victim of the violent act;

(d) A person entirely or substantially dependent for financial support on the primary victim of the violent act.[151]

A child of the primary victim, as referenced above in (c), includes “a reference to a child of the primary victim born after the violent act occurs.” [152]It is immaterial whether the family victim suffers injury as a result of the violent act. A person is not a family victim if the person committed the violent act.

A **related victim** is defined as follows:

A person who, when the violent act occurs, is one of the following:

(a) A relative of the primary victim of the violent act;

(b) A person in an intimate personal relationship with the primary victim of the violent act.[153]

A person is not related to the victim of a violent act if they are considered a family victim or if they committed the violent act. Regulations may exclude persons from the category of related victim.

Compensation is specified in the act as follows:

Primary victim: A primary victim is entitled to apply for an immediate payment of financial assistance for their financial loss when in circumstances of financial hardship.[154]They are also eligible to apply for an award of financial assistance. Where the violent act is a compensable violent act, the primary victim is entitled to an award for the violent act having merely been committed, one or more of the compensable injuries suffered as a direct result of the violent act or otherwise one or more of the compensable injuries suffered as a direct result of the violent act. [155]

Secondary victim: A secondary victim is entitled to apply for an immediate payment of financial assistance for their financial loss when in circumstances of financial hardship.[156] They are also eligible to apply for an award of financial assistance for their financial loss and for one or more compensable injuries suffered as a direct result of witnessing or becoming aware of the violent act.[157]  If the secondary victim is also a family victim of the same violent act, the victim is eligible to apply as a family victim for immediate payment or an award for funeral expenses.[158]

Family victim: A family victim of a violent act directly resulting in the death of the primary victim is eligible to apply for immediate payment of financial assistance for the following financial loss:

(a) Funeral expenses for the primary victim incurred by the family victim;

(b) If the family victim is in circumstances of hardship – financial loss mentioned in subsection (3)(b) to (d).[159]

Related victim: A related victim is eligible to apply for counseling required because of the violent act but not for any financial assistance.[160]

**Legal costs**

A legal practitioner is not entitled to recover any costs, except for reasonable disbursements from the victim that they represented.[161]

**2. Criminal court case**

A victim of crime may be able to claim compensation from the offender after the offender has been convicted of an offense. The victim can make a compensation application to the court that convicted the offender.

**3. Civil action against the offender**

A victim may bring a civil court claim as another option to try to claim compensation from the offender who is responsible for the victim’s injuries.[163]

**Queensland**

*Queensland Act and Victims of Crime Assistance Act 2009 (Queensland)*

**1. State government funded compensation Victims of Crime Assistance**

Victims of Assistant is a government agency that provides information, financial support and support services to victims of crime.

**Victims of Crime Assistance Act 2009 (Queensland)**

Victims can rely on Section 51, Part 9 of the act for a claim of compensation. The types of compensation available depend on what level the victim is classified as: primary victim, secondary victim, parent secondary victim, witness secondary victim or related victim.

The act defines these classes as follows.

A **primary victim** is defined as “a person who dies or is injured as a direct result of the act [of violence] being committed against the person.”[164]

A **secondary victim** is defined as “a person who is a parent secondary victim or witness secondary victim of the act [of violence].”[165]

A **parent secondary victim** is defined as follows:

A person who –

is a parent of a child who is injured as a direct result of the act [of violence] being committed against the child; and

is injured as a direct result of becoming aware of the act [of violence].[166]

A **witness secondary victim** is defined as “a person who is injured as a direct result of witnessing the act [of violence].”[167]

A **related victim** is defined as follows:

A person who is a close family member, or a dependent, of a primary victim of the act who has died as a direct result of the act [of violence].[168]

Each class of victims are entitled to different amounts of compensation, as follows:

Primary victims can receive up to AUD 75,000.[169]

Parent secondary victims can receive up to AUD 50,000.[170]

Witness secondary victims can receive up to AUD 50,000 if the act of violence is more serious and up to AUD 10,000 if the act of violence is less serious.[171]

Related victims can receive up to a combined total of AUD 100,000. An individual related victim may receive up to AUD 50,000.[172]

Compensation may be awarded to pay for the following (non-exhaustive):

counseling and medical expenses

loss of earnings

distress payment

legal costs to apply for assistance[173]

**2. Civil action against the offender**

A victim may bring a civil court claim as another option to try to claim compensation from the offender who is responsible for the victim’s injuries.[174] These payments awarded by a court could affect the financial assistance received from Victim Assist Queensland.

**3. Civil action against the offender**

A victim may bring a civil court claim as another option to try to claim compensation from the offender who is responsible for the victim’s injuries.[175] These payments awarded by a court could affect the financial assistance received from Victim Assist Queensland.

**South Australia**

*Victims of Crime Act 2001 (South Australia)*

**1. State government funded compensation Victims of Crime Act 2001 (South Australia)**

Victims can rely on Section 17 of the act for a claim of compensation from the government’s Victims of Crime fund. For a person to be eligible, they must be the immediate victim of the offense,[176] apply within three years of the offense having been committed[177] and satisfy at least one of the following:

the offence involved the use of violence or a threat of violence against the person or a member of the person’s immediate family;

the offence created a reasonable apprehension of imminent harm to the person or a member of the person’s immediate family;

the offence is a sexual offence;

the offence caused death or physical injury.[178]

An **immediate victim** is defined as follows:

A victim of any of the following classes:

a person who suffers physical injury as a result of the commission of the offence;

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;

if the offence was committed against a child—a parent or guardian of the child;

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.[179]

The following people who are not the immediate victim can also apply to receive compensation:

a person who has suffered grief as a result of a homicide if the person is the deceased victim’s spouse, domestic partner, child (if the child was under 18 years old at the time of the offense) or a parent of the deceased where the deceased victim was a child[180]

dependents of the deceased victim who have suffered financial loss and the victim died as a result of the injury[181]

a person who has paid for or who is responsible for payment of the victim’s funeral expenses, and the victim has died as a result of the offense[182]

Compensation may be awarded to pay for the following (non-exhaustive):

physical and psychological injury

financial loss (e.g., loss of earnings and treatment costs)

future treatment costs

funeral expenses

**Legal costs**

If the claim for compensation is successful, the government fund will generally pay for the associated legal costs. However, the victim will bear the legal costs of an unsuccessful claim.[183]

**2. Criminal court case**

A victim of crime may be able to claim compensation from the offender after the offender has been convicted of an offense.[184] The victim should consult their investigating officer if they wish to seek compensation from the offender. Compensation from the offender will be available depending on whether the offender has the financial capacity to pay the compensation.

**3. Civil action against the offender**

Bringing a civil court action in one of South Australia’s courts is another option to try to claim compensation from the offender.[185] The victim must know who the offender is for this process and it is only worthwhile if the offender has the financial capacity to pay. This civil action is a separate court process to the criminal court case. A victim of family violence may make a civil claim as a plaintiff against the abuser (defendant) and a remedy may be awarded to the plaintiff.

**Tasmania**

*Victims of Crime Assistance Act 1976 (Tasmania)*

**1. State government funded compensation Victims of Crime Assistance Act 1976 (Tasmania)**

Victims can rely on Section 4 of the act for a claim of compensation. A person may be eligible to apply for compensation if they are a primary victim, secondary victim or a related victim. The three categories of victims are set out below.

**A. Primary victim**

A **primary victim** is defined as a “person against whom an offence is committed.”[186] An offense is one that involves violence and includes a crime under the Criminal Code Act 1924 (Tasmania).[187]

Primary victims can receive up to AUD 30,000 where there is a single offense and AUD 50,000 where there is more than one offense.[188] Compensation may cover the following:

expenses actually and reasonably incurred as a result of the injury (injury includes “references to any impairment of bodily or mental health, and also to becoming pregnant” )[189]

future cost of medical, dental, psychological or counseling services

loss of wages or salary as a result of their total or partial incapacity to work due to their injury

pain and suffering

expenses reasonably incurred in claiming compensation[190]

**B. Secondary victim**

A **secondary victim** is defined as follows:

a. a person who suffers injury as a result of witnessing an offence; or

b. a parent, step-parent or guardian of a primary victim who was under 18 years of age at the time of the offence.

Secondary victims can receive up to AUD 20,000 for the following:[191]

expenses actually and reasonably incurred as a result of their own injury

expenses (other than funeral expenses) actually and reasonably incurred as a result of the death or injury of the primary victim if the secondary victim is a parent, stepparent or guardian of the primary victim

future cost of medical, dental, psychological or counseling services

loss of wages or salary as a result of their total or partial incapacity to work: (a) arising from their own injury; or (b) while providing care to the primary victim

pain and suffering

expenses reasonably incurred in claiming compensation

**C. Related victim**

A **related victim** is defined as follows:

a. the spouse or a child, stepchild, brother, sister, stepbrother or stepsister of a primary victim; or

b. a parent or step-parent of a primary victim who was over 18 years of age at the time of the offence; or

c. in a personal relationship, within the meaning of the Relationships Act 2003, with a primary victim.[194]

The total amount that can be awarded to anyone related to the victim is AUD 10,000 and the total pool for all related victims in relation to any one crime is AUD 50,000.[195] Compensation may cover the following:

expenses actually and reasonably incurred as a result of their own injury

expenses (other than funeral expenses) actually and reasonably incurred as a result of the death or injury of the primary victim

future cost of medical, dental, psychological or counseling services

loss of wages or salary as a result of their total or partial incapacity to work: (a) arising from their own injury; or (b) while providing care to the primary victim

pain and suffering

financial loss if the related victim was dependent on the primary victim in the event the primary victim dies

expenses reasonably incurred in claiming compensation[196]

In the case of the death of a primary victim as a result of criminal conduct, a person may apply for funeral expenses incurred or likely to be incurred.[197]

**Legal costs**

Any legal costs associated with the preparation of the victim’s application are at the discretion of the commissioner and they may be deducted from the victim’s award. If the victim’s application is rejected, the victim may be responsible for the payment of such legal costs.[198]

**2. Criminal court case**

A victim of crime may be able to claim compensation from the offender after the offender has been convicted of an offense.[199]  The victim can make a compensation application to the court that convicted the offender.

**3. Civil action against the offender**

A victim may bring a civil court claim as another option to try to claim compensation from the offender who is responsible for the victim’s injuries.[200]

**Victoria**

*Victims of Crime Assistance Act 1996 (Victoria)*

**1. State government funded compensation**

Victims of Crime Assistance Act 1996 (Victoria)

Victims can rely on Part 2 of the act for a claim of compensation by applying to the Victims of Crime Assistance Tribunal. The Victims of Crime Assistance Tribunal can provide financial assistance to eligible victims of violent crimes in the following circumstances:

the crime happened in Victoria

the crime was reported to the police within a reasonable time

the crime directly led to injury to the victim

People who have been victims of violent crime are only eligible to apply for assistance in one of three categories: primary, secondary and related victims.[201] The victim cannot apply for assistance in more than one capacity. The three categories of victims are set out below.

**A. Primary victim**

A primary victim is a person who is injured or dies as a direct result of the following:

an act of violence committed against them

trying to stop an act of violence

helping the victim of an act of violence

trying to arrest someone who has committed an act of violence[202]

Where the primary victim has died, their next of kin may be a related victim.

Primary victims can receive up to AUD 60,000 for the following:

medical and counseling expenses

safety-related expenses

loss of earnings (up to AUD 20,000)

replacement of lost or damaged clothing worn at the time of the act of violence[203]

**B. Secondary victim**

A secondary victim is a person who is injured as a direct result of the following:

being at the scene and witnessing an act of violence

becoming aware of an act of violence (this applies to a parent/guardian of a primary victim who was less than 18 years old at the time of the act)[204]

Secondary victims are entitled to up to AUD 50,000 for the following:

medical and counseling expenses

loss of earnings of up to AUD 20,000 (in exceptional circumstances)[205]

**C. Related victim**

A related victim is a person who at the time of an act of violence had a close relationship with the person who died (the primary victim). They must be one of the following:

a close family member (e.g., a spouse, parent, guardian, stepparent, child, stepchild, sibling or stepsibling)

a dependent

have been in an intimate personal relationship [206]

Related victims may be entitled to the following:

medical or funeral expenses

counseling expenses

assistance for distress experienced

loss of money expected to be received from the deceased (up to two years after the death)

The total amount that can be awarded to any one related victim is AUD 50,000 and the total pool for all related victims is AUD 100,000.[207]

**Legal costs**

A legal practitioner acting for the applicant is not entitled to recover any costs in respect of proceedings before the tribunal from the applicant.[208]  A lawyer cannot charge an applicant costs in respect of an application unless the tribunal approves those costs.[209]  In addition:

Where an application for financial assistance is successful, the reasonable legal costs incurred by the applicant will usually be paid by the Tribunal, directly to the applicant’s legal representative.[210]

**Definitions**

An act of violence is defined as follows:

[...] a criminal act or a series of related criminal acts, whether committed by one or more persons, that has— (a) occurred in Victoria; and (b) directly resulted in injury or death to one or more persons, irrespective of where the injury or death occurs.[211]

An **injury** is defined as follows:

(a) actual physical bodily harm; or

(b) mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or

(c) pregnancy; or

(d) any combination of matters referred to in paragraphs (a), (b) and (c) arising from an act of violence—

but does not include injury arising from loss of or damage to property.[212]

**2. Criminal court case**

A victim of crime may be able to claim compensation from the offender after the offender has been sentenced for the crime committed against the victim.[213] The prosecutor of the case, which is either the police or the Office of Public Prosecutions, must bring a claim within 12 months of the sentence. Compensation from the offender will be available depending on a range of factors such as the following:

whether the offender has the financial capacity to pay the compensation

how much it will cost to enforce the order for compensation if the offender refuses to pay

**3. Civil action against the offender**

Bringing civil court action in one of Victoria’s courts is another option to try to claim compensation from the offender.[214] This civil action is a separate court process to the criminal court case. A victim of family violence may make a civil claim as a plaintiff against the abuser (defendant) and a remedy may be awarded to the plaintiff.

**Western Australia**

*Criminal Injuries Compensation Act 2003 (Western Australia)*

**1. State government funded compensation**

**Criminal Injuries Compensation Act 2003 (Western Australia)**

Victims can rely on Part 2 of the act for a claim of compensation by applying to the Office of Criminal Injuries Compensation. A person must lodge a compensation application within three years of the date of the offense or the last offense if more than one offense was committed.[215] A person may be eligible to claim compensation under the actif they “have suffered injury as a consequence of the commission of a proved offence”that bears the meaning of “a crime, misdemeanour or simple offence of which a person has been convicted,” or if they are a “close relative of a person who dies as a consequence of the commission of a proved offence” and experience financial loss as a result of that offense. [216] A close relative means a spouse, de facto partner, parent, grandparent, stepparent, child, stepchild or grandchild.[217]

The victim will need to show that they have sustained an injury, as defined as “bodily harm, mental and nervous shock, or pregnancy” resulting from an offense.[218]

Compensation may be awarded to cover the following (non-exhaustive):

pain and suffering

medical or psychological expenses

loss of earnings

loss of enjoyment of life

other incidental expenses, such as damage of clothing or travel for medical treatment[219]

Where the victim has died, a close relative can apply for funeral expenses and loss of financial support.[220]

**2. Civil action against the offender**

A victim may bring a civil court claim as another option to try to claim compensation from the offender who is responsible for the victim’s injuries.[221]

# 4.4.2 Can they recover wages and profits lost?

Yes. Each state and territory sets out different requirements for what types of victims are eligible, as well as the maximum amount able to be claimed.

**Legislative requirements**

**Australian Capital Territory**

*Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory)*

Yes. Based on the response to Section 4.4.1, the act allows the following types of victims to claim compensation for an economic loss payment (i.e., loss of earnings):

a primary victim

a Class A-related victim

a Class B-related victim

a Class C-related victim

a homicide witness[222]

**New South Wales**

*Victims Support and Rehabilitation Act 1996 (New South Wales)*

Yes. Based on the response to Section 4.4.1, primary and secondary victims may be awarded compensation for financial loss incurred as a direct result of a compensable injury.[223]

Compensation for financial loss is defined as compensation for the following:[224]

(a) actual expenses

(b) actual loss of earnings:

compensation for actual loss of earnings is to be calculated at “the rate of weekly payment compensation payable under the Workers Compensation Act 1987 after the first 26 weeks of incapacity within the meaning of that Act”[225]

(c) loss of personal effects (primary victim only):

compensation for loss of personal effects is defined in the act as follows:

[…] compensation payable to a primary victim who has received a compensable injury for the loss of, or for damage to, any personal effects that were worn or carried by the primary victim at the time of the act of violence and that were lost or damaged as a direct result of that act. The maximum amount payable in respect of an act of violence is $1,000.[226]

A person’s entitlement to compensation for financial loss is capped at AUD 10,000 in respect of an act of violence.[227]

Compensation for financial loss is not payable to a person to the extent that the person has received or is entitled to receive payment for that loss under insurance or agreement, or under any other act or law.[228]

**Northern Territory**

*Victims of Crime Assistance Act 2006 (Northern Territory)*

Yes. Based on the response to Section 4.4.1, the act allows primary, secondary and family victims to be awarded compensation for the following financial loss:

A primary victim’s financial loss includes any of the following if suffered as a direct result of the violent act:

loss of earnings suffered or reasonably likely to be suffered

expenses incurred by the primary victim due to loss of clothing or other personal effects

medical expenses reasonably incurred or reasonably likely to be incurred

in exceptional circumstances, other expenses reasonably incurred or reasonably likely to be incurred by the primary victim’s recovery from the effects of the violent act[229]

A secondary victim’s financial loss includes any of the following if suffered as a direct result of witnessing or becoming aware of the violent act:

loss of earnings suffered or reasonably likely to be suffered

medical expenses reasonably incurred or reasonably likely to be incurred

in exceptional circumstances, other expenses reasonably incurred or reasonably likely to be incurred by the secondary victim’s recovery from the effects of witnessing or becoming aware of the violent act[230]

A family victim of a violent act directly resulting in the death of the primary victim is eligible to apply for an award of financial assistance for the following financial loss:

funeral expenses for the primary victim incurred by the family victim

if the family victim was entirely or substantially dependent on the primary victim of financial support, loss of money that, but for the death of the primary victim, the family victim would have been reasonably likely to receive from the primary victim during the year immediately after the death

medical expenses reasonably incurred or reasonably likely incurred

in exceptional circumstances, other expenses reasonably incurred or reasonably likely to be incurred by the family victim’s recovery from the effects of the death of the primary victim[231]

**Queensland**

*Victims of Crime Assistance Act 2009 (Queensland)*

Yes. Based on the response to Section 4.4.1, the act allows the following types of victims to claim compensation for loss of earnings:

a primary victim — up to AUD 20,000

a parent secondary victim — up to AUD 20,000 in exceptional circumstances

a witness secondary victim — up to AUD 20,000 in exceptional circumstances[232]

**South Australia**

*Victims of Crime Act 2001 (South Australia)*

Yes. Based on the response to Section 4.4.1, the act allows immediate victims of crime and the dependents of a deceased victim to claim compensation for loss of earnings.[233]

**Tasmania**

*Victims of Crime Assistance Act 1976 (Tasmania)*

Yes. Based on the response to Section 4.4.1, the act allows primary, secondary and related victims to be awarded compensation for loss of wages or salary, as follows:

A primary victim may receive compensation for loss of wages or salary as a result of their total or partial incapacity to work.[234]

A secondary and related victim may receive compensation for loss of wages or salary as a result of their total or partial incapacity to work: (a) arising from their own injury; or (b) while providing care to the primary victim.[235]

**Victoria**

*Victims of Crime Assistance Act 1996 (Victoria)*

Yes. Based on the response to Section 4.4.1, the act allows primary and secondary victims of crime to be awarded a compensation amount of up to AUD 20,000 for loss of earnings.[236] The earnings lost must be 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.”[237]

**Western Australia**

*Criminal Injuries Compensation Act 2003 (Western Australia)*

Yes. Based on the response to Section 4.4.1, the act allows a victim of an offense to be awarded compensation for loss of earnings suffered as a direct consequence of the victim’s injury.[238] An injury “means bodily harm, mental and nervous shock, or pregnancy.”[239]

# 4.4.3 Is a separate civil process required?

Yes, a separate civil process is required if the victim seeks to claim compensation by bringing a civil claim. Please see the response in Section 4.4.1.

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