



If you have suffered a loss or incurred an expense as a result of a Commonwealth offence you may wish to consider the issue of a reparation order. As a victim of crime, you have a right to seek a reparation order yourself, either personally or through a legal representative. Reparation orders can be both for restitution and compensation and cover non-economic as well as economic losses. This document provides basic information regarding reparation orders as they relate to Commonwealth matters and the role that the Office of the Director of Public Prosecutions (Cth) (CDPP) may perform in relation to them.

What is a reparation order?

A Court may order that an offender make some form of payment to a victim of crime.

Under Commonwealth law, the court has the discretion to order that an offender pay reparation to any person, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred by reason of the offence (s21B Crimes Act, 1914).

Reparation orders can be sought for both economic and non-economic loss.

When is a reparation order sought?

The Court may make a reparation order once a defendant has been convicted of a federal offence, or the offence is proven against the defendant but they are discharged by the court without conviction.

The issue of any reparation order is dealt with by the Court during the sentencing proceedings.

What is the role of the CDPP in relation to reparation orders?

The CDPP has issued a National Legal Direction concerning reparation orders as they relate to victims of crime. This National Legal Direction is available to the public via our website.

The CDPP does not act for victims of crime seeking a reparation order. The CDPP does and can provide some assistance in this area, however it cannot act as a victim's lawyer.

The CDPP aims to ensure that victims of crime are aware of their ability to seek a reparation order for both economic and non-economic losses. The CDPP provides basic information regarding reparation orders. In some cases, the CDPP prosecutor may request that a representative from the investigating agency (such as a police officer) provide reparation-related information to victims of crime.

The CDPP has the capacity to bring some reparation applications to the attention of the Court. The CDPP may assist the Court in putting before it applications for reparation orders in straightforward matters. These matters will involve clearly quantifiable amounts that, on the evidence that had been led in the criminal proceeding, are a loss suffered or expense incurred by reason of the offence for which the defendant was found guilty.

The fact that a reparation order has been applied for does not automatically mean that a Court will make such an order. The Court may decline to exercise its discretion to make a reparation order.

One basis that a Court may decline to exercise its discretion to consider an application is when the application involves a complicated claim or if an extensive investigation may be required in relation to the application.

The CDPP will advise you if the Court has made a reparation order in your favour.

The CDPP does not provide independent legal advice in relation to reparation orders.

Does the CDPP prosecutor have to put the application for a reparation order before the Court if I ask them to?

No. The CDPP has the discretion to decide whether or not to put an application for a reparation order to the Court. As already noted, the CDPP can only put straightforward claims before the Court. If you wish to discuss this decision you should contact the prosecutor concerned as soon as possible. If you are unsatisfied with the prosecutor's response or decision regarding any reparation order request, you may ask to speak with their manager.

Victims of crime are entitled to seek a reparation order from the Court themselves, either personally or through a legal representative, including seeking a reparation order in respect of which the CDPP has declined to take forward.

Who ultimately decides if a reparation order is made?

Whilst the CDPP prosecutor may request that the Court make a reparation order ultimately, it is a matter for the individual Magistrate or Judge to determine whether or not to make one.

The sentencing Magistrate or Judge may decline to make a reparation order.

You have the right to attend Court proceedings when the issue of a reparation order is being considered.

What sorts of loss and expense might a reparation order cover?

It is a matter for you to identify what, if any, type of loss and expense you may have incurred as a result of the offending.

The CDPP prosecutes a wide variety of offence types including online child sexual exploitation offences, terrorism, financial based offences, forced marriage, slavery and servitude type offences. Such offence types may result in different forms of loss or expense to the individuals concerned.

This can include medical and counselling expenses, loss of income and property, and non-economic losses such as pain and suffering, loss of amenities or loss of expectation of life.

When considering the issue of a reparation order you should consider your individual circumstances, the type of offending concerned and any associated loss or expense you may have incurred. You may also want to seek advice from a lawyer.

What should I do if I want the CDPP to seek a reparation order on my behalf?

You must advise the CDPP prosecutor well before any sentencing proceedings occur if you would like them to consider putting an application for a reparation order to the Court on your behalf. This will enable the prosecutor to consider any such request and ensure that any necessary discussion and preparation takes place in advance of the sentencing proceedings.

You should also provide the prosecutor with any supporting documentation regarding your request for a reparation order.

What kind of supporting documentation should I provide?

Supporting documentation for a reparation order request may include:

- » Receipts/bills for medical expenses relating to the offending;
- » Receipts/bills for counselling expenses relating to the offending;
- » Receipts concerning loss and/or damage to property;
- » Statement from an employer demonstrating any loss of wages incurred as a result of the offence; and
- » Other evidence of losses/expenses related to the offending.

If you have any questions or concerns regarding supporting documentation, you should discuss them with the relevant prosecutor as soon as possible.

Do I need to seek legal advice in relation to a reparation order?

You are entitled to seek independent legal advice in relation reparation orders.

The CDPP does not provide independent legal advice in relation to reparation orders.

In the event that the offender fails to pay the amount ordered by the Court, the CDPP has no role in recovering it on your behalf. The offender cannot be imprisoned for failing to make reparation.

The court has made a reparation order in my favour, now what?

If the CDPP has put a reparation order in your favour before the Court and the Court has made such an order, the CDPP will advise you of this.

The CDPP does not play a role in relation to compliance with reparation orders concerning individuals.

If any issues arise in relation to a reparation order, such as non-compliance, you should consider seeking independent legal advice.

Am I entitled to any other forms of financial assistance or compensation?

Whilst there is no general compensation scheme for victims of Commonwealth crime, some victims of Commonwealth offences may be entitled to seek compensation via state or territory based compensation schemes. This process is separate to the prosecution process and the CDPP does not provide independent legal advice in this regard. If you are interested in the issue of compensation you should contact the relevant service or scheme (contact details are available via the CDPP website www.cdpp.gov.au).

You may be able to take civil action for compensation against the offender, this legal process is separate to the prosecution. The CDPP is not responsible for instigating civil compensation action against federal offenders and does not provide independent legal advice in this regard. If you are interested in civil compensation action you should seek independent legal advice.

It is important to note that time limits may apply in certain circumstances.

Where can I get help?

You can seek independent legal advice in relation to reparation orders.

There are a wide range of legal and victim support services around Australia that may be able to assist victims of Commonwealth crime. Contact details for some of these legal and victim support services are available via the CDPP website (www.cdpp.gov.au).