



Reparation Orders

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REPARATION ORDERS IN GENERAL

General Principle

1. Section 21B of the *Crimes Act 1914* allows the Commonwealth or a public authority under the Commonwealth, or any other person, to seek to have a Court make an order that a convicted person pay them reparation for any loss suffered or expense incurred by reason of the offence.
2. Reparation orders can be both for restitution and compensation and cover non-economic as well as economic losses.
3. The CDPP does not act for a person seeking a reparation order. However, 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.
4. Should a person wish to seek a reparation order involving matters that extend beyond those the CDPP is able to put before the Court, the victim or their legal representative may make an application directly to the Court for such an order.

Victims

5. The CDPP should ensure that victims are aware of their ability to seek reparation orders under s21B and that they can be applied for in respect of any loss suffered or expense incurred by reason of the offence (noting that prior to 7 March 2013 it had to be “as a direct result of the offence” in respect of victims other than the Commonwealth or a public authority under the Commonwealth). It should be made clear that the losses can be both economic losses and non-economic losses.
6. Victims should be informed of the CDPP’s capacity to bring such applications to the attention of the Court in cases where the application involves straightforward matters in which the quantum of the loss or expense and their connection to the offending are clear. It is the CDPP’s decision as to what matters it is able to put before a court.
7. In some cases this may mean that the CDPP will be able to act in relation to only part of a victim’s desired claim for reparations. It is noted that this will not hamper a victim seeking an order themselves for that part of their desired claim that the CDPP is unable to put before the Court.

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8. Any victim should be told that they are entitled to seek a reparation order themselves, either personally or through a legal representative, including seeking a reparation order in respect of which the CDPP had declined to take forward.
9. It is a matter for the victim as to what they seek by way of reparation, rather than for the CDPP to determine what order is sought.
10. A victim should be informed of the Court's entitlement to decline to exercise its discretion to make a reparation order when it would involve a complicated or extensive investigation into the condition of the exercise of the discretion.

Legal Principles

11. A victim, being the potential beneficiary of a reparation order, has the ability to apply for an order in his or her favour.
12. There has been a long and accepted practice of the prosecution assisting the court by bringing to its attention claims by a victim for reparation. The doing so can clearly be seen as incidental or conducive to the performance of the CDPP's functions of carrying on summary, committal and indictable proceedings pursuant to s6(1)(b) and (e) of the *Director of Public Prosecutions Act 1983* and therefore fall within the terms of s6(1)(n) of that Act.
13. In making an application for reparation, the prosecution is assisting the court by bringing to its attention claims by a victim for reparation and the Court's power in respect of such claims. The function is limited to straightforward matters in which the quantum of the loss or expense and their connection to the offending are clear. For the CDPP to put forward claims for reparation involving more complicated matters, including claims for non-economic losses, would by necessity, involve the Office doing more than simply assisting the Court and instead acting on behalf of the victim. The CDPP has no power or function to act on behalf of a victim.
14. In making any application for reparation, the CDPP acts on behalf of the Crown and in the public interest as a whole, it does not act directly on behalf of victims nor does it give legal advice to victims.