

Practice Note – Applications for Compensation under s85B of the *Sentencing Act* 1991



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Title	Applications for Compensation under s85B of the <i>Sentencing Act</i> 1991 (s85B applications)
Subject	Common Law Division Appeals and Post Sentence Applications List
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Authorised By	Judge Misso and Judge O'Neill

Preliminary

- 1 As from the 1 August 2019, applications for compensation made pursuant to the provisions of Division 2 of Part 4 of the *Sentencing Act* 1991 ("the Act") (s85B applications) will, save as provided in this Practice Note, be managed, listed and determined within the Common Law Division of the Court.
- 2 This Practice Note supersedes any practice note within the Criminal Division relating to s85B applications.
- 3 Judge O'Neill (or such other judge as may be appointed by the judge in charge of the Common Law Division) is the judge in charge of the Appeals and Post Sentence Applications List (APSA List), including s85B applications.
- 4 It is the intention of the Court to manage and determine s85B applications in a just, efficient, timely and cost effective manner.

Determination by criminal trial judge

- 5 Nothing in this Practice Note shall act to prevent or preclude a judge sitting in the Criminal Division, in his or her discretion, from hearing and determining a s85B application, after pronouncing a sentence against a person found guilty of an offence ("the offender").
- 6 A person seeking compensation pursuant to s85B of the Act ("the applicant") may make a s85B application to the trial judge after sentence is pronounced. The judge will either list the matter for hearing before himself or herself; alternatively, refer the matter to the Common Law Division in accordance with these provisions.

Time within which an application may be brought

- 7 A s85B application must be brought within twelve (12) months of the offender being found guilty or convicted of an offence (s85C(a) of the Act).
- 8 In the event a s85B application is made after the expiry of twelve months from the date the offender was found guilty or convicted of an offence, the applicant may seek leave of the Court to extend the time within which such an application may be made (s85D). The Court may extend the time *if it is of the opinion it is in the interests of justice to do so* (s85D(i)).

Form and content of the application

- 9 A s85B application shall be in the form as set forth in Schedule 1.
- 10 The application shall include:
- (a) the applicant's date of birth, address, telephone number and email address. Unless indicated to the contrary, the email address will be the applicant's address for service of all documents. Save as may be permitted by the judge hearing the application or directions hearing, that information shall not be provided to the offender;
 - (b) if the applicant is represented by a legal practitioner, that practitioner's contact details;
 - (c) particulars of the injury for which compensation is sought;
 - (d) the judge before whom, the date of and the offences for which the offender was found guilty or convicted;
 - (e) whether the application is made on behalf of another person (s85E(2));
 - (f) whether the application seeks an extension of time (s85D).
- 11 The application shall have attached:
- (a) the prosecution opening (if available);
 - (b) the sentencing judge's reasons or remarks (if available);
 - (c) the applicant's victim impact statement (if relevant);
 - (d) any award made under the *Victims of Crime Assistance Act 1996* (if applicable);
 - (e) a copy of any medical or like reports relied upon;
 - (f) a list of any medical and like expenses claimed, with receipts (s85A);

- (g) details of any other costs claimed.

The filing of the application

- 12 The application and any relevant attached documents shall be filed with the Civil Registry of the Court.
- 13 The documents may be filed:
- (a) in person at the Registry or by mail to Civil Registry, County Court of Victoria, 250 William Street, Melbourne VIC 3000 or by email to sentencingcompensation@countycourt.vic.gov.au (if the applicant is unrepresented); or
 - (b) via the Court's iManage digital filing system (if the applicant has legal representation).
- 14 The Registry shall seal the application and fix a date for the hearing of a directions hearing. A copy of the sealed application shall be returned to the applicant for service. Wherever possible, the directions hearing will be within listed within 45 days of the filing of the application.
- 15 At the time of the filing of the application, the applicant shall notify the Registry whether the offender is in custody to enable a videolink to be arranged for the directions hearing.

Service of the application and attached documents

- 16 A copy of the sealed application and all attached documents shall be served in person upon the offender prior to the directions hearing. If the offender is incarcerated, the application and attached documents may be sent by pre-paid mail to the offender at the prison where he/she is incarcerated. An affidavit of service must be filed on or before the directions hearing.
- 17 The applicant shall not be required to disclose to the offender his/her address, telephone number or email address.

The Directions Hearing

- 18 The directions hearing will be conducted before the Judge in Charge of the APSA List or such other judge as he/she shall nominate.
- 19 At the directions hearing, each party shall appear in person or by videolink.
- 20 The judge at the directions hearing may make orders as to:
- (a) the filing of any further material on behalf of the applicant;

- (b) the filing of any material on behalf of the offender, including:
 - (i) any medical or like reports;
 - (ii) a statement of the offender's financial circumstances, including his/her assets, liabilities, income and expenditure;
- (c) the filing of any material relating to extending the time for the bringing of the application;
- (d) the date for the hearing of the application including any extension application;
- (e) whether one or other party should appear by videolink at the hearing;
- (f) whether one or other party will require an interpreter for the hearing;
- (g) such further orders as may be considered necessary.

- 21 If a party requires an interpreter at the hearing of the application, that party shall ensure a properly accredited professional interpreter is arranged and attends court. In exceptional circumstances, a judge may order the Registry of the Court arrange an interpreter to attend the hearing. An application to this effect should be made at the directions hearing.

The hearing

- 22 The hearing will be conducted and the evidence presented as the judge hearing the application shall determine and in accordance with s85G of the Act.
- 23 Further, unless the judge hearing the application directs to the contrary, the following shall apply:
- (a) if either party intends to rely upon the evidence of a lay witness, that party shall file a witness statement which will stand as the evidence-in-chief of that witness;
 - (b) if either party intends to rely upon the evidence of a doctor or like practitioner, then the report of that doctor shall stand as the evidence-in-chief of that witness;
 - (c) if one or other party seeks to cross-examine a lay witness or doctor proposed to be relied upon, that party shall give notice to that effect at least 30 days prior to the hearing, and the party seeking to rely upon that evidence must arrange for that witness to attend;
 - (d) each party shall be entitled to open their case for no longer than 20 minutes, and make final submissions for no longer than 30 minutes;

- (e) examination-in-chief of each party shall not exceed one hour. Cross-examination of each party or any other witness shall not exceed one hour.

Judge Christopher O'Neill
1 October 2019

Schedule A

IN THE COUNTY COURT
OF VICTORIA
AT

Case No:

IN THE MATTER OF:

...

Applicant

and

...

Offender

Application for Compensation

Part A

I, HEREBY APPLY for a compensation order against the offender for pursuant to the provisions of s85B of the *Sentencing Act* 1991.

This application is listed for directions at 9.30am on Friday,

The address of the offender is

The injury for which compensation is sought is

The offender was found guilty/was convicted of offences before Judge
in the County Court on 20..

The application is made on behalf of the **applicant/another person** (give details).

The application **includes/does not include** an application to extend time.

I **have/do not have** legal representation

Details of legal representation:

Date:

.....
Applicant or Applicant's Legal Practitioner

.....
Registrar/Deputy Registrar of the County Court of Victoria

IN THE COUNTY COURT
OF VICTORIA
AT

Case No:

IN THE MATTER OF:

... Applicant

and

... Offender

Application for Compensation

Part B

I intend to represent myself at the hearing of this application

My contact details are:

Address

.....

Email address:

Telephone:

Note: Unless otherwise directed, all communication will be via the applicant's email address.

This document or the details contained are not to be provided to the Offender