



**Victims of Crime Assistance Tribunal
Chief Magistrate's Chambers Melbourne Magistrates' Court**

Practice Direction

No. 1 of 2022

AWARDS FOR COUNSELLING EXPENSES

PRACTICE DIRECTION ISSUED PURSUANT TO SECTION 58
OF THE *VICTIMS OF CRIME ASSISTANCE ACT 1996*

Background

The Victims of Crime Assistance Tribunal may award financial assistance to an eligible applicant for expenses actually incurred, or reasonably likely to be incurred, for reasonable counselling (sections 8, 10 and 13 of the *Victims of Crime Assistance Act 1996*).

Psychologists and psychiatrists who prepare reports for the Tribunal are providing opinions based on specialist knowledge and expertise. As expert witnesses, their overriding duty is to assist the Tribunal impartially on matters relevant to their areas of expertise.

Purpose

The purpose of this Practice Direction is to prescribe procedures to assist the Tribunal to determine an application for an award for counselling expenses, and in particular, to assess -

- the qualifications of the proposed counsellor to diagnose and/or treat the applicant;
- the appropriateness and efficacy of the proposed treatment to assist the applicant to recover from the act of violence which has led to them making an application to the Tribunal;
- whether the proposed cost of the treatment is 'reasonable';
- the progress of treatment provided to an applicant when further treatment is recommended; -

and to ensure that the applicant has been informed by the counsellor of the proposed treatment and endorses it.

This Practice Direction applies to reports filed by counsellors providing treatment, and is not applicable to assessment reports (i.e., reports where the report writer is not proposing to provide counselling to the applicant). Reference should be made to Practice Direction No. 2 of 2021 or direction regarding assessment reports by non-treating psychologists and psychiatrists.

Qualifications of Counsellor

The Tribunal recognises three separate qualifications for the purposes of psychological counselling: psychologists, mental health social workers and counsellors (non-psychologists). These three categories are consistent with the categories recognised by the TAC and reflect the relative level of qualifications to assess, diagnose and to treat psychological conditions. In relation to non-psychologists, it is required/preferred that they are members of P.A.C.F.A. (*Psychotherapy and Counselling Federation of Australia*) and A.R.C.A.P. (*the Australian Register of Counsellors and Psychotherapists*).

A provisional psychologist may also assist an applicant and will be paid at the discretion of the Tribunal. Upon filing a completed Form 5 invoice with the Tribunal, a provisional psychologist must also include their supervising psychologist details and signature.

Awards for counselling expenses

An award for a counselling expense is made to the applicant. The award authorises the applicant to incur counselling expenses with a particular counsellor consistent with the treatment plan proposed by that counsellor.

When an award for counselling expense is made, the report is the basis for measuring the effectiveness of the treatment provided and will be relevant in the assessment of any future application for an award for further counselling expenses.

For adult applicants accessing counselling for the first time with respect to an act of violence, the Tribunal will usually pay for the first five hours of counselling for the provision of “information, comfort, support, and practical assistance (psychological first aid)”¹ by an appropriately qualified counsellor. All expenses awarded are at the discretion of the Tribunal.

Applicants who have already accessed an initial five hours of counselling through the Victims Assistance and Counselling Program, Transport Accident Commission (TAC), WorkCover or the Medicare *Better Access to Psychiatrists, Psychologists and General Practitioners Benefits initiative* and who want additional counselling, will be required to make an application for an award for additional counselling expenses to be paid by the Tribunal (see **Form 2**).

All applicants seeking an award for counselling expenses are required to complete the *Application for Counselling* form (see **Form 4**).

The Tribunal will consider funding the cost of reasonable counselling services that are additional to the first five hours of counselling accessed by an applicant where:

- there is proper clinical justification;
- the counselling is likely to be effective in achieving and maintaining the applicant’s recovery;
- the proposed treatment method is considered by the professional associations/bodies to

¹ Phoenix Australia- Centre for Posttraumatic Mental Health (2013), *Australian Guidelines for the Treatment Acute Stress Disorder and Posttraumatic Stress Disorder*, Melbourne, Victoria

which the counsellor belongs to be an appropriate method; and

- *a treatment plan has been considered and approved by the Tribunal.*

The Tribunal is unlikely to pay counselling expenses incurred without prior approval of the Tribunal, except for the provision of 'psychological first aid' (i.e., the first five hours of counselling).

Phoenix Australia- Centre for Posttraumatic Mental Health, *Australian Guidelines for the Treatment of Acute Stress Disorder and Posttraumatic Stress Disorder*, (CPMH Guidelines)

The Tribunal may refer to the CPMH Guidelines to assist in making decisions about the assessment and treatment of Acute Stress Disorder (ASD) and Posttraumatic Stress Disorder (PTSD). The CPMH Guidelines acknowledge that ASD and PTSD are only some of the conditions faced by individuals affected by traumatic events.² The CPMH Guidelines will not be applicable to all applicants.

Treating counsellor reports

A counsellor must prepare one of the following reports in support of an application for an award for counselling expenses:

Initial Report – Up to Five Hours of Counselling (see **Form 1**)

This report is required when a counsellor has provided up to five hours of counselling, and the applicant does not seek an award for further counselling.

Initial Report – More than Five Hours of Counselling (see **Form 2**)

This report is required where the applicant seeks an award for more than 5 hours of counselling.

Subsequent Report – Additional Hours of Counselling (see **Form 3**)

This report is required when an applicant requests further counselling beyond that previously awarded by the Tribunal (that is, after an initial application for counselling expenses has already been approved).

All reports must be accompanied by:

- an *Application for Counselling* form signed by the applicant (see **Form 4**); and
- if a fee is claimed for the report, a completed *Counselling and Report Fee Invoice* for that report (see **Form 5**); and
- if a fee is claimed for the counselling sessions already provided, a completed *Counselling and Report Fee Invoice* for that counselling (may be included on invoice for report) (see **Form 5**).

² Ibid.

Non-attendance of applicant at scheduled session

If a counsellor intends to file an invoice with the Tribunal claiming a fee for a scheduled counselling session that an applicant failed to attend, the counsellor is required to write to the Tribunal within seven days of the scheduled session to advise of the following:

- date and time of scheduled session;
- date and time of notice (if any) received from the applicant regarding their non-attendance at the scheduled session; and
- the counsellor's published cancellation policy and as communicated to the applicant.

The letter from the counsellor must be accompanied by a *Counselling and Report Fee Invoice* (see **Form 5**) for the scheduled session, with an endorsement made on the invoice that the applicant did not attend the session as scheduled.

The initial request for non-attendance payment may be authorised by a Registrar of the Tribunal. Any subsequent non-attendance fee applications will be referred to a judicial officer for consideration and are likely to be deemed payable by the applicant.

Medicare gap fee entitlements

In accordance with s 20A(1) of the *Health Insurance Act 1973* if a provider chooses to bulk bill, they accept the Medicare benefit as full payment for the service(s) provided.

The patient assigns their right to the Medicare Benefit to the provider and the provider claims the benefit from the Department of Health and Human Services.

No additional charge can be raised irrespective of the purpose of the charge. This includes booking fees, administration fees, recording keeping or any other charges raised.

Providers cannot bulk bill the applicant and claim a gap amount from VOCAT.

However, where patients pay up front for their counselling and a proportion of that fee is reimbursed by Medicare, then the patient is entitled to claim the gap fee from VOCAT, provided it is reasonable. The gap fee is the difference between the Medicare rebate and the fee charged by the counsellor.

Travel expenses

The financial assistance awarded for counselling services (reports and counselling sessions) will not include assistance for travel expenses of the applicant and/or counsellor for attendance at a counselling session. Where an applicant seeks financial assistance for travel expenses to attend counselling, a specific request for that assistance must be made.

Change of counselling practitioner

In the event that an applicant ceases treatment with the author of the approved treatment plan and

approaches another counsellor for counselling, the proposed counsellor must write to the Tribunal to advise that they agree to provide counselling services consistent with the approved treatment plan, or to propose a new treatment plan. The Tribunal will then consider authorising that the previously awarded counselling be provided by the new counsellor.

The Tribunal is unlikely to pay any unauthorised counselling expenses incurred by the applicant with a counsellor with whom the Tribunal has not authorised the applicant to incur expenses.

Telehealth

If future counselling sessions have been awarded for an applicant, they are able to be conducted remotely where deemed appropriate by the service provider.

For a remote invoice to be accepted, a completed Form 5 invoice must be signed by the applicant. In circumstances where a Form 5 invoice cannot be signed by the applicant, the Tribunal must also be in receipt of written confirmation (eg. an email post session) from the applicant to demonstrate that a session was undertaken with the service provider. This written confirmation must include the session date and time that it was conducted.

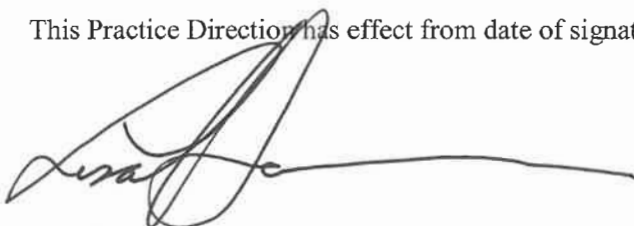
By a service provider co-signing this Form 5 declaration, it acknowledges an understanding of s.67 of the VOCA Act and the repercussions of knowingly giving false or misleading information to the Tribunal.

Revocation of previous Practice Direction

This Practice Direction revokes *Practice Direction 1 of 2021* (Awards for Counselling Expenses).

Commencement

This Practice Direction has effect from date of signature.



JUSTICE HANNAN
Chief Magistrate

Dated: 12/9/22 .