



News

Wall collapse: compensation under the Sentencing Act

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Recent compensation settlements involving families of pedestrians killed by a wall collapse highlight a rarely used avenue to compensation: claims under the *Sentencing Act 1991* (*'Sentencing Act'*).

Background

On 28 March 2013, a 15-metre-high wall on a building site on Swanston Street collapsed, killing three pedestrians. The site where the collapse occurred was controlled by the construction company Grocon. WorkSafe Victoria charged Grocon and another company with breaching workplace safety laws in relation to the incident. In 2014, Grocon pleaded guilty to the charge in the Magistrates' Court and were ordered to pay a \$250,000 fine.

Family members of those killed then made applications for compensation under the *Sentencing Act* for their pain and suffering and counselling/medical expenses. Shortly before the *Sentencing Act* claims were to be heard by the Magistrates' Court, Grocon settled with the claimants on confidential terms.

Sentencing Act vs Wrongs Act

Australian law does not recognise claims for wrongful death – that is, claims brought by the kin of the deceased due directly to the death itself. Instead, family and friends of the deceased may bring claims arising from their own psychological/psychiatric injury flowing from the wrongful death of their loved ones.

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In Victoria, this type of claim is typically brought under the *Wrongs Act 1958* ('*Wrongs Act*'). In order to succeed under the *Wrongs Act*, the claimant must establish that:

- they have sustained a 'significant injury' within the meaning of the Act being a whole person psychiatric impairment of greater than 10%; and
- the defendant was negligent in the death of the claimants loved one.

These elements can be difficult to establish and may require protracted, expensive and stressful litigation.

By contrast, claims under the *Sentencing Act* are designed to provide a quick, efficient and cheap means of providing compensation. Within 12 months of the conviction of the defendant, any person who has suffered loss or injury as a direct result of the crime can seek restitution and compensation orders from the Court. This compensation is non-punitive and has no bearing on the sentence imposed for the crime.

Under the *Sentencing Act*, there is no need for the claimant to establish that they have sustained 'significant injury'. The liability of the Defendant for the injury will ordinarily have already been established in the preceding criminal prosecution.

It should be noted, however, that the ability of the Defendant to pay compensation under a *Sentencing Act* claim remains an issue, just as it does under the *Wrongs Act*. Unless the wrongdoer is insured or has significant assets, it will likely be difficult for the claimant to actually obtain the compensation.

If the claimant has already received money from the Victims of Crime Assistance Tribunal ('VOCAT'), this amount is deducted from the award under the *Sentencing Act*. Pursuing compensation under the *Sentencing Act* does not prevent a claimant from separately pursuing compensation under the *Wrongs Act*.

Particularly in circumstances where the wrongdoer is insured, as was the case in the Grocon matter, making a claim under the *Sentencing Act* in place of or in addition to a *Wrongs Act* claim is worthy of consideration.

If you or someone you know has suffered injury due to the negligence or criminal acts of another party, call our experts at Adviceline Injury Lawyers on (03) 9321 9988.

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