

Compensation Orders



Can I receive financial compensation as part of a complaint?

This fact sheet provides information for Complainants who are seeking financial compensation as part of their complaint about the conduct of their lawyer.

Introduction

If you have lost money because of something your lawyer did or failed to do, then you may request a compensation order as part of your complaint.

Section 490 of the *Legal Profession Act 2007* (Act) enables a complainant who has suffered financial (pecuniary) loss because of conduct of a lawyer that is the subject of a complaint, to request a compensation order.

This fact sheet will help you understand:

- orders for compensation
- how to make a request for compensation
- our role and obligations

Compensation Orders

Who makes a compensation order?

A compensation order is made by the Disciplinary Tribunal or the Supreme Court of Tasmania.

When will a compensation order be made?

If you make a complaint to the Legal Profession Board of Tasmania (the Board), the complaint will be assessed and may be investigated further. At the end of the investigation, the Board decides whether there is enough evidence to commence disciplinary proceedings against the lawyer, either before the Board or the Disciplinary Tribunal or Supreme Court. If proceedings are commenced in the Tribunal or the Supreme Court, the Tribunal or the Supreme Court may make a compensation order, at your request, if it finds that:

- The lawyer's conduct is found to amount to unsatisfactory professional conduct or professional misconduct
- You have suffered a financial loss as a result of the lawyer's conduct
- It is in the interests of justice that the order be made

The Board does not have the power to make orders for compensation.

What is a compensation order?

If the conduct of your lawyer has resulted in significant financial losses on your part, or damage that is not financial, it is recommended that you consult another lawyer regarding your rights and remedies to recover your financial losses.

Compensation Orders

COMPENSATION ORDERS	
✓ CAN:	<ul style="list-style-type: none"> ✓ compensate you for financial loss up to \$10,000 ✓ repay you part or all of the professional fees already paid to your lawyer ✓ order your lawyer to provide certain legal work for free or a reduced rate ✓ stop your lawyer seeking payment of legal fees ✓ recover important legal documents ✓ compensate you for financial loss over \$10,000 if you and your lawyer consent to the order
✗ CAN'T:	<ul style="list-style-type: none"> ✗ guarantee full compensation for all your financial losses ✗ compensate you for your distress, psychological injuries or damage to reputation ✗ compensate you without a disciplinary finding being made against the lawyer ✗ compensate you if you are entitled to be paid from the Guarantee Fund or another fund from any other jurisdiction

Examples of when a compensation order may be made are:

- You are being sued by your lawyer for the recovery of legal fees for work which was not provided diligently or competently
 - *You may receive a compensation order preventing the recovery of all or some of those legal fees*
- You have already been sued by your lawyer for outstanding legal fees and have paid the outstanding amount
 - *You may receive a compensation order for some or all of your fees to be repaid to you*

- You have retained another law firm because of the unsatisfactory professional conduct or professional misconduct of your previous lawyer
 - *You may receive a compensation order to reimburse the legal costs of your new lawyer up to \$10,000*
- Your lawyer failed to do work on your matter, for example a conveyance, and you lost money as a result
 - *You may receive a compensation order to reimburse your loss up to \$10,000*

The above compensation orders can only be made after a finding of unsatisfactory professional conduct or professional misconduct.

Will the compensation order affect my other legal proceedings?

Obtaining a compensation order does not affect any other legal avenues you may choose to pursue, but the amount may be taken into account if you are successful in other legal proceedings relating to the same financial loss.

Enforcing a compensation order

When a compensation order is made, a copy may be filed in the Supreme Court and the order can be enforced as if it is an order of the Court. The Board does not assist in the recovery or enforcement of your compensation order. If the lawyer does not comply with the compensation order, you should seek independent legal advice.

Requesting Compensation

If you have lost money because of something your lawyer did or failed to do then you may request a compensation order. Your financial loss is usually identified in your initial complaint to the Board, even if you don't know the full amount when you make the complaint. You must be able to show that the loss suffered was due to the conduct of your lawyer.

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The request for compensation:

- must describe the financial loss suffered by you and the relevant circumstances; and
- must be made in the complaint or by notice in writing to the Board at any time after you have made your complaint but before it has been finalised.

If proceedings are commenced in the Disciplinary Tribunal with respect to your complaint, and you have not previously made a request for compensation, then you must seek leave from the Tribunal to make the request.

A request for compensation may only be made within 3 years after the conduct that caused your loss is alleged to have occurred.

Our role

The Board was established under the *Legal Profession Act 2007* (the Act) and is the sole body responsible for receiving and investigating complaints about the conduct of lawyers. The purpose of the Act is to regulate legal practice in the interests of the administration of justice and for the protection of consumers of legal services and the public generally.

The aims of the complaint process are consistent with the purposes of the Act. While the Board itself cannot provide compensation for loss occasioned by the conduct of practitioners, we can provide information to assist you to make a claim for compensation. The Board does not act on your behalf in relation to obtaining a compensation order. It is only the Disciplinary Tribunal or the Supreme Court who can make a compensation order.

If the Board makes a determination that a lawyer is guilty of unsatisfactory professional conduct it can make a determination about the repayment or waiver of any legal fees. That determination is not a compensation order.

You can find further information about the Board, including our role and responsibilities on our website at www.lpbt.com.au

The information contained in this fact sheet does not constitute legal advice.



Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

We are located at Level 3,
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