



NSW Legislative Council Hansard

Victims Support and Rehabilitation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 22 November 2006.

Second Reading

The Hon. MICHAEL COSTA (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [9.23 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

This Government has a proud record of supporting the needs of victims of crime. We have listened to victims and their support groups. We are responding by making some important changes in this Bill that will benefit victims of crime in NSW.

The main purpose of this Bill is to implement the key recommendations from the report of the statutory review of the *Victims Support and Rehabilitation Act 1996* and the *Victims Rights Act 1996*. There will also be a change to the *Crimes (Sentencing Procedure) Act 1999* concerning victim impact statements.

This Bill implements the majority of the report's recommendations. A small number of these recommendations have been changed or altered to take into account some of the concerns raised by stakeholders. It also contains a number of new reforms. The Victims Advisory Board and victims support groups have provided invaluable assistance in developing the changes contained in this Bill.

Victims Assistance Scheme

The report of the statutory review recommended that a scheme be established to allow victims of crime who are not eligible for statutory compensation to elect to be reimbursed for certain actual expenses up to a maximum amount.

Consultation with victims' groups has confirmed the need for such a scheme.

The Bill extends compensation to a new category of victims, who will be eligible to be reimbursed for certain prescribed expenses.

It will provide some financial relief for victims who currently fall under the threshold for statutory compensation for compensable injuries.

It will also allow victims to be reimbursed at an earlier stage for some of their expenses while their general statutory compensation claim (under section 14 of the Act) is determined.

The expansion of the scheme further emphasises the rehabilitation role of the Act. It is an important and practical way to assist victims to re-establish their lives in the aftermath of crime.

Eligible victims will be able to claim for actual expenses incurred as a result of an act of violence. These expenses must total at least \$200 and cannot exceed \$1,500.

The kinds of expenses that are recoverable will be set out in the Victims Support and Rehabilitation Regulation. So that Members can see what types of expenses will be covered by the scheme, the Regulation has been prepared and is set out in Schedule 4 of the Bill. The regulation will commence when the other provisions relating to the scheme commence.

The expenses to be covered by the expanded scheme include the provision of

- an ambulance service,
- dental services,
- physiotherapy,
- domestic assistance during the victim's recovery from the act of violence,
- cleaning of property (other than clothing or other wearable items),
- security measures; and

- the replacement of prescription glasses or prescription contact lenses.

The expanded scheme also contemplates that a victim may be eligible for compensation for prescribed expenses, but then may later wish to lodge a claim for general statutory compensation. This could be in circumstances where, for example, further medical evidence comes to light about a permanent disability that has resulted from the act of violence.

To prevent double dipping, the amount of any award for prescribed expenses will be deducted from a later successful award for general statutory compensation.

A person must lodge their application for prescribed expenses within two years of the act of violence. No leave can be given to accept a late application.

The process for applying for prescribed expenses will be simple. It is anticipated that once applications are received, they will be dealt with speedily. As a result no legal costs or other disbursements will be payable in relation to an application for prescribed expenses.

Where a person lodges an application for general statutory compensation, but is awarded prescribed expenses only, an assessor will have a discretion to award costs in special circumstances. This proposed section is designed to discourage applicants from lodging applications for general statutory compensation where there is a little prospect of receiving it. In the case of genuine applications for general statutory compensation, which are ultimately dismissed, the current law with respect to costs will continue to apply.

A victim will be able to have the amount of the prescribed expenses compensation award reviewed by the Director of Victim Services. Otherwise the usual review and appeal mechanisms applying to general compensation will apply.

Domestic violence and sexual assault victims

The Government is strongly committed to supporting victims of sexual assault and domestic violence. The Government has recently introduced a number of changes to the criminal law designed to protect women and children and send a message to perpetrators that their behaviour is totally unacceptable.

The Bill before the House contains further changes which will benefit victims of domestic violence and sexual assault. Previously a victim of domestic violence or sexual assault, in the absence of physical injuries, had to prove a psychological or psychiatric disorder before they were eligible to receive compensation or counselling under the Act.

The amendments in this Bill will improve access to compensation and counselling to victims of domestic violence and sexual assault who manifest psychological or psychiatric harm. In line with the common law, the requisite "harm" need not be permanent in nature, but must be more than merely transient or trifling.

This change recognises the unique nature of sexual assault and domestic violence offences and demonstrates the Government's commitment to supporting victims of these particularly traumatic crimes.

It also means that compensation assessors will generally be able to draw on existing documents relevant to the compensation claim, such as medical records, court records, counselling records and school reports to determine that there is an injury. This will remove the need for a victim to undergo additional psychiatric or psychological examinations. The process of applying for compensation will now be less traumatic for victims of sexual assault, including children.

The Bill also amends section 30 of the Act so that a compensation assessor will be able to consider other reports which the victim made to health professionals and other relevant agencies about the crime, not only reports they may have made to police. An assessor, when considering whether victims of sexual assault or domestic violence took reasonable steps to mitigate the extent of their injury, will also be required to have regard to the nature of the relationship between the victim and the offender.

The Bill narrows the definition of "domestic violence" to exclude instances of violence occurring in more remote relationships. While it has seldom occurred in practice, the report of the statutory review concluded that the use of the broad definition in the Crimes Act could lead to inappropriate compensation payments. For example, a victim who receives an injury inflicted by an ex-flat mate at a social event would, under the current law, automatically attract the minimum domestic violence award of \$7,500. This type of relationship cannot properly be characterised as "domestic violence" for the purposes of compensation applications.

I emphasise that this change will not affect entitlements for victims of domestic violence in family settings or intimate relationships.

Family victims in homicide cases

The Government is always seeking appropriate ways to support the families of homicide victims. The Bill makes a number of changes which will directly benefit family victims in homicide cases.

The Bill makes a half sister or half brother eligible for compensation in homicide cases.

A person, including a victim's grandparent, who has incurred reasonable expenses for the funeral of a homicide victim will be reimbursed even if there is no "family victim" eligible for compensation. This amendment recognises that it is a traumatic time for the extended family and friends of a homicide victim. It is appropriate to extend this benefit to a person who organises and pays for the funeral of the primary victim.

In relation to an interim application for funeral expenses, the Bill provides that an assessor will be able to consider whether those expenses are "reasonable". Where it is considered that funeral expenses are excessive, all eligible family members may have to agree to the money being paid out of the \$50,000 that is available for the family victim award.

The Bill amends the *Crimes (Sentencing Procedure) Act 1999* to expand the categories of victims who are entitled, in homicide cases, to make a victim impact statement to include the homicide victim's grandparent, grandchild, half brother, half sister or fianc(e)é.

This amendment builds on the Government's commitment to ensuring that victims of crime, including family victims, have their voices heard in the court process at the time of sentencing.

Counselling

One of the main aims of the Act is to provide support and rehabilitation for victims through the provision of approved counselling.

There will be a number of changes to the counselling scheme which enhance the rehabilitative focus of the Act.

The Government is committed to processing an application for counselling within 48 hours. To make this possible in practice, victims of an act of violence will be able to apply for the initial two hours of counselling even if it has not yet been established that the person is a victim, provided the compensation assessor is satisfied that counselling may assist in establishing that they are a victim.

This change to the application process will give a counsellor the opportunity to assess the nature of any psychological or psychiatric harm before considering whether further counselling (up to a maximum of 20 hours) is needed.

As mentioned above, the Bill also changes the definition of "injury" to include psychological or psychiatric harm. Applicants for counselling who do not have a physical injury will benefit from this change, as it means that they will not need to provide that a psychological or psychiatric disorder exists before they are eligible for more than the initial 2 hours of counselling under the approved scheme.

The Bill also makes clear that a victim is entitled to apply for counselling even if an application for compensation was dealt with under the previous victims' compensation legislation (the *Victims Compensation Act 1987*).

The rules will contain further details about how the counselling scheme will operate and the rule making power has been expanded accordingly.

Other changes to the Victims Support and Rehabilitation Act

There are a number of other discrete changes to the Victims Support and Rehabilitation Act.

These include allowing a compensation assessor to adjourn a compensation application in matters where the applicant may be liable to pay restitution as a convicted offender. Compensation awarded to the applicant will be able to be set off against an existing or proposed restitution debt.

The Bill will also confirm that compensation is available to a victim even where the offender cannot be held criminally responsible for an offence because of age or mental illness or impairment.

The Bill clarifies the correct statutory path to follow when assessing the amount of compensation payable to a victim. It provides that the total amount payable for compensable injuries is the total amount arrived at after reductions are made under sections 19, 30, 31 or the Schedule of Compensable Injuries. This change is necessary in light of the (unreported) District Court decision in the matter of *Appeal of Rice v Victims Compensation Fund Corporation*.

Victims Rights Act 1996

The *Victims Rights Act 1996* enacts the Charter of Victims' Rights and establishes the Victims of Crime Bureau and the Victims Advisory Board.

This Bill makes two changes to the Victims Rights Act arising from the recommendations in the statutory review.

The terms "mental illness or nervous shock" will be replaced with the term "psychological or psychiatric harm". This reflects modern legal and medical terminology for describing harm.

The Charter of Victims' Rights will be amended to incorporate the principles of multiculturalism that are contained in other legislation and form an important part of the policy of the State of New South Wales.

Commencement

Overall this Bill extends the benefits of the compensation and counselling schemes to a larger range of victims in a way which ensures the continuing viability of the Victims Compensation Fund.

This Bill will commence in stages. It is anticipated that the amendments to expand the compensation scheme to include prescribed expenses will commence in early 2007. This will give the Victims Compensation Tribunal the period of time necessary to prepare for the introduction of the expanded scheme. Most of the remaining provisions are expected to commence in December this year.

Review of Government services and grants

Finally, as I noted in the House on 18 October 2006, this Government is committed to listening to victims and improving the services we provide.

In the coming months, the Government will start reviewing services for victims in New South Wales in order to identify key areas of need and to improve coordination between agencies.

The review will involve looking at whether victims of crime have appropriate access to support services with the important emphasis on ensuring disadvantaged groups and people from rural and remote areas are properly supported. The aim will be to identify key gaps and areas for improvement.

The review will also look at the arrangements for the support of family members of homicide victims. A working group will be established to develop a set of principles and standards for supporting family members of homicide victims. The standards will cover a range of important issues such as quality, ethics, cultural sensitivity and timely provision of support.

Once the service review has been conducted, options for better service co-ordination and funding, including grants, will be developed.

The provisions in this Bill build on the Government's record of listening to victims of crime and responding to their support needs with sensitivity and respect.

I commend this Bill to the House.