



New South Wales

Victims Compensation Amendment Act 1998 No 134

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New South Wales

Victims Compensation Amendment Act 1998 No 134

Act No 134, 1998

An Act to amend the *Victims Compensation Act 1996* with respect to deductions from awards of statutory compensation, entitlement to counselling, the making of restitution orders, restraining orders and other orders relating to property, and compensable injuries; and for other purposes. [Assented to 30 November 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Victims Compensation Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Victims Compensation Act 1996 No 115

The *Victims Compensation Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 5 Act of violence

Omit "apprehended" from section 5 (2).

[2] Section 19A

Insert after section 19:

19A Deduction from certain awards

- (1) There is to be deducted from each award of statutory compensation payable to any person who is awarded an amount of statutory compensation that is less than \$20,001 (or such other amount as may be prescribed by the regulations) the amount of \$750 (or such other amount as may be prescribed by the regulations).
- (2) A deduction under this section is to be made only if, when an award is made to a victim, the total amount of statutory compensation awarded to a primary victim and any secondary victims claiming through the primary victim, is less than \$20,001.
- (3) This section does not apply to statutory compensation payable to family victims.
- (4) A deduction under this section is not to be taken into account for the purpose of determining whether statutory compensation is payable to a single person as set out in section 20.

[3] Section 21 Special payments for counselling of victims

Omit "who is eligible for statutory compensation" from section 21 (1).

[4] Section 21 (6)

Omit the subsection.

[5] Section 21 (10)

Omit the subsection. Insert instead:

(10) In this section:

approved counselling services means services provided by a professional counsellor chosen by the victim from a list of counsellors approved by the Director under section 21A.

victim means:

- (a) a family victim, or
- (b) a primary victim or a secondary victim, or
- (c) a person who is a victim of an act of violence but who, merely because the person did not receive a compensable injury, is not a primary victim or a secondary victim within the meaning of this Act,

but does not include a person who is the victim of an act of violence arising in the circumstances described in section 24 (2), (3) or (4).

[6] Section 21A

Insert after section 21:

21A Approved counselling services

- (1) The Director may approve professional counsellors who may provide approved counselling services for the purposes of section 21.
- (2) The Director may:
 - (a) suspend or revoke an approval, and
 - (b) make an approval subject to conditions, and
 - (c) vary or revoke any condition of an approval or impose additional conditions on an approval.

[7] Section 44 Recovery from fraudulent claimants

Insert "and to the creation of charges on land" after "restitution" where firstly occurring in section 44 (3).

[8] Section 45 Definitions

Insert "or 46A" after "section 46" in the definition of *provisional order for restitution*.

[9] Section 46 Director may make provisional order for restitution by offender

Omit section 46 (5) (a). Insert instead:

- (a) 2 years or more have elapsed since:
 - (i) the date on which the relevant award of statutory compensation was made, or
 - (ii) the date on which the person was convicted of the relevant offence,
- whichever is the later, or

[10] Section 46A

Insert after section 46:

46A Director may make provisional order for restitution by other person

- (1) If the Director is of the opinion that a person against whom a provisional order for restitution has been made under section 46 has disposed of property as part of a scheme for the purpose of avoiding a liability (whether actual or potential) under this Division, the Director may make a provisional order for restitution against any person:
 - (a) who was a party to the scheme, and
 - (b) who obtained property under the scheme without giving sufficient consideration.

- (2) A provisional order may be made against a person under this section whether or not the person has retained the property concerned.
- (3) The Director must cause notice of the provisional order to be served on the person against whom it is made in accordance with the compensation rules.
- (4) The notice of the provisional order must:
 - (a) set out the terms of the order, and
 - (b) specify the person against whom the restitution order under section 46 has been made and the transaction that formed part of the scheme to avoid the liability under this Division, and
 - (c) state that the person on whom the notice is served has 28 days in which to object to the order by a notice filed in the office of the Director, and
 - (d) state that if the person does not object the order will be confirmed by the Tribunal and become a judgment debt payable by the person, and
 - (e) state that if the person files a notice of objection the Tribunal will conduct a hearing into whether the order should be confirmed, and
 - (f) contain such other particulars as the compensation rules may require.
- (5) A provisional order may not be made under this section if 2 years or more have elapsed since the provisional order on which it is based was made under section 46.
- (6) A provisional order for restitution may not be made under this section (and any such order that has been made ceases to be in force) if the order under section 46 on which it is based is not confirmed or any consequent restitution order is set aside or ceases to be in force.
- (7) The total amount that may be recovered under an order under this section and under the order under section 46 on which it is based is not to exceed the amount payable under the order under section 46.

[11] Section 49 Hearing by Tribunal to confirm provisional order for restitution if defendant objects to order

Omit "the provisional order" where firstly occurring in section 49 (2).

Insert instead "a provisional order made under section 46".

[12] Section 49 (2A)

Insert after section 49 (2):

(2A) The Tribunal may confirm a provisional order made under section 46A if satisfied that:

- (a) a person against whom a provisional order for restitution has been made under section 46 has disposed of property as part of a scheme for the purpose of avoiding a liability (whether actual or potential) under this Division, and
- (b) the defendant was a party to the scheme and obtained property under the scheme without giving sufficient consideration.

If the Tribunal is not so satisfied, it must discharge the provisional order.

[13] Section 53 Orders for restitution to be subject to appeals against relevant awards of statutory compensation

Insert ", or to which it relates," after "arises" in section 53 (1) (a).

[14] Sections 58A and 58B

Insert after section 58:

58A Charge on property subject to restitution orders

- (1) The Director may apply to the Registrar-General for registration of a restitution order in relation to any land owned by the defendant (including any land owned jointly with another person).
- (2) An application must define the land to which it relates.

- (3) The Registrar-General must, on application under this section and lodgment of a copy of the restitution order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
- (4) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the Compensation Fund Corporation of the amount payable under the order.
- (5) The charge created by force of this section is subject to every charge or encumbrance to which the property was subject immediately before the charge was created and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.
- (6) Such a charge ceases to have effect in relation to the land:
 - (a) on registration of cancellation of the charge under section 58B, or
 - (b) on the sale or other disposition of the land with the consent of the Compensation Fund Corporation, or
 - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge, or
 - (d) on full payment of the amount payable under the restitution order,whichever first occurs.

58B Cancellation of charges

- (1) The Compensation Fund Corporation may cancel a charge created under section 58A at any time for good reason.
- (2) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.

[15] Part 2, Division 9, sections 58C–58M

Insert after Division 8 of Part 2:

**Division 9 Restraining orders and orders relating to the
disposition of property by offenders**

58C Application of Division

(1) This Division applies where:

- (a) a person has been charged with an offence in relation to which an act of violence occurred resulting in an injury to a victim for which statutory compensation may be paid, or
- (b) a person has been convicted of an offence in relation to which any such act of violence occurred, or
- (c) a person was a party to a scheme to avoid a liability (whether actual or potential) under Division 8 and obtained property under that scheme without giving sufficient consideration.

(2) In this Division:

appropriate officer means the Director, the Director of Public Prosecutions, the Commissioner of Police or any other person, or a person of a class, prescribed by the regulations for the purposes of this definition.

the defendant means a person referred to in subsection (1) (a), (b) or (c).

(3) In this Division, a reference to a person being charged with an offence is a reference to an information being laid against the person for an offence whether or not:

- (a) a summons to require the attendance of the person to answer the information has been issued, or
- (b) a warrant for the arrest of the person has been issued.

58D Nature of restraining order

A restraining order is an order of the Supreme Court directing that any property of the defendant, or under the effective control of the defendant, is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.

58E Application for restraining order

- (1) An appropriate officer may apply, ex parte, to the Supreme Court for a restraining order in relation to property of the defendant or property under the effective control of the defendant.
- (2) On an application under this section:
 - (a) the Supreme Court may, if it thinks fit, require the person making the application to give notice of the application to a person who the Court has reason to believe has an interest in the property or part of the property, and
 - (b) a person to whom the Court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

58F Making of restraining order

- (1) On an application under section 58E relating to a defendant charged with, or convicted of, an offence, the Supreme Court may make a restraining order in relation to the defendant's property or property under the effective control of the defendant, if it is satisfied (on the information contained in or accompanying the application) that:
 - (a) the defendant has been charged with an offence in relation to which an act of violence occurred resulting in an injury to a victim for which statutory compensation may be paid or has been convicted of an offence in relation to which any such act of violence occurred, and

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- (b) amounts of statutory compensation are or are likely to be payable, and
 - (c) it is appropriate to make the order in the circumstances of the case.
 - (2) On application under section 58E relating to a defendant who was a party to a scheme to avoid a liability (whether actual or potential) under Division 8, the Supreme Court may make a restraining order in relation to the defendant's property or property under the control of the defendant, if it is satisfied (on the information contained in or accompanying the application) that:
 - (a) the defendant was a party to a scheme to avoid a liability (whether actual or potential) under Division 8 and obtained property under that scheme without giving sufficient consideration, and
 - (b) an order has been, or may be, made against the defendant under section 46A, and
 - (c) it is appropriate to make the restraining order in the circumstances of the case.
 - (3) Without limiting this section, in considering whether to make a restraining order, the Supreme Court is to consider the effect of any proposed order on the defendant's ability to pay his or her reasonable living expenses or those of his or her dependents or on the defendant's ability to meet legal expenses.
 - (4) The Supreme Court may not make a restraining order in relation to property if the property is affected by a restraining order in force under the *Criminal Assets Recovery Act 1990* or the *Confiscation of Proceeds of Crime Act 1989*.
 - (5) A restraining order may be made in relation to property under the *Criminal Assets Recovery Act 1990* or the *Confiscation of Proceeds of Crime Act 1989* even though the property is subject to a restraining order under this Act.
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58G Undertakings

The Supreme Court may refuse to make a restraining order if the person making the application refuses or fails to give to the Court such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.

58H Ancillary orders

- (1) If the Supreme Court makes a restraining order, it may make any ancillary orders that it considers appropriate.
- (2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:
 - (a) an order for the examination on oath of:
 - (i) the defendant, or
 - (ii) another person,before the Supreme Court, or an officer of the Court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,
 - (b) an order varying the restraining order in respect of the property to which it relates.
 - (c) an order varying any conditions to which the restraining order was subject.
- (3) An ancillary order may be made on application:
 - (a) by the applicant for the restraining order, or
 - (b) by the defendant, or
 - (c) with the leave of the Supreme Court, by any other person.
- (4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.

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- (5) A person being examined under this section is not excused from answering a question on the ground that:
 - (a) the answer to the question might tend to incriminate the person or make the person liable to a forfeiture or penalty, or
 - (b) the answer would disclose information that is the subject of legal professional privilege.
 - (6) A statement or disclosure made by the person in answer to a question put in the course of an examination under this section, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any civil or criminal proceedings, except proceedings that comprise:
 - (a) proceedings in respect of the false or misleading nature of a statement or disclosure made under this Act, or
 - (b) proceedings on an application under this Act, or
 - (c) proceedings ancillary to an application under this Act, or
 - (d) proceedings for enforcement of a restitution order.

58I Registration of restraining orders and lodging of caveats

- (1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.
- (2) If the particulars of a restraining order are so recorded, a person who subsequently deals with the property is, for the purposes of section 58L, taken to have notice of the restraining order.
- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

58J Court may revoke restraining order

- (1) The Supreme Court may revoke a restraining order, on application made to it by the person in relation to whose property it was made.
- (2) The Supreme Court may refuse to revoke the order if the person does not:
 - (a) give security satisfactory to the Court for the payment of any amount for which the person may become liable under Division 8 as a result of the person's commission of an act of violence, or
 - (b) give undertakings satisfactory to the Court concerning the person's property.
- (3) The Supreme Court may revoke a restraining order, on application made to it by an appropriate officer.
- (4) This section does not limit the discretion of the Supreme Court to revoke or refuse to revoke a restraining order.

58K Time when restraining order ceases to be in force

- (1) If, after a restraining order is made in reliance on the charging of a person with an offence:
 - (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal—the restraining order ceases to be in force when the charge is withdrawn, or
 - (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal—the restraining order ceases to be in force when the acquittal occurs.
- (2) If a restraining order is made in reliance on the charging of a person with (or the conviction of a person of) an offence, the restraining order ceases to be in force 2 years after it is made.
- (3) If a restraining order is made against a person referred to in section 58C (1) (c), the restraining order ceases to be in force 2 years after it is made.

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- (4) The Supreme Court may, on the application of an appropriate officer, extend for a specified period the period for which a restraining order is in force under this section.

58L Avoidance of liabilities

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.

Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.

- (2) A person who knowingly disposes of, or otherwise deals with property, as a part of a scheme for the purpose of avoiding a liability under Division 8 (whether actual or potential) is guilty of an offence.

Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.

- (3) Proceedings for an offence under this section may be dealt with:
- (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (4) If any such proceedings are brought before a Local Court, the maximum fine that the Court may impose for an offence is \$10,000.

58M Orders setting aside dispositions of property

- (1) **Application for order setting aside disposition of or dealing with property**

If:

- (a) a restraining order is made or may be sought against property, and

- (b) the property is disposed of, or otherwise dealt with:
 - (i) in contravention of the restraining order, or
 - (ii) before a restraining order is obtained as part of a scheme for the purpose of avoiding a liability under Division 8 (whether actual or potential), and
- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,

an appropriate officer may apply to the Supreme Court for an order that the disposition of or dealing with the property be set aside.

(2) **Order setting aside disposition or dealing**

If an application is made under subsection (1) and the Supreme Court is satisfied as to the matters set out in subsection (1) (a), (b) and (c), the Court may make an order:

- (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
- (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

(3) **Protection of successors in title**

This section does not affect the rights of a person who acquired property from a person in good faith and by giving consideration that was at least as valuable as the market value of the property at the time of its acquisition.

[16] Section 68 Payments into Compensation Fund

Insert after section 68 (e):

, and

- (f) all fines paid for offences under section 58L.

[17] Section 69 Payments from the Compensation Fund

Insert after section 69 (c):

- (c1) all fees to which the Public Trustee is entitled under section 53 of the *Confiscation of Proceeds of Crime Act 1989*.

[18] Section 87 Compensation rules

Insert after section 87 (2) (e):

- , and
- (f) the establishment of panels of appropriately qualified persons for the purpose of recommending:
 - (i) counsellors for approval by the Director under section 21A, or
 - (ii) persons eligible to be placed on lists of people designated under this Act as being able to provide assessments for the purposes of claims under this Act.

[19] Schedule 1 Compensable injuries

Omit clause 5. Insert instead:

5 Psychological or psychiatric disorder

- (1) For the purposes of establishing whether there is a compensable injury of psychological or psychiatric disorder, an application relating to statutory compensation for such an injury must be accompanied by a written assessment of the applicant's condition prepared by a qualified person chosen from a list of qualified persons designated by the Director.
- (2) The Director may suspend or revoke the designation of a person under subclause (1).

[20] Schedule 1, clause 7A

Insert after clause 7:

7A Domestic violence

- (1) The compensable injury of domestic violence consists of the following:
 - (a) injury resulting from an act that occurred in the commission of a domestic violence offence (within the meaning of the *Crimes Act 1900*),
 - (b) without limiting paragraph (a), injury arising from the intimidation or stalking of a person (within the meaning of section 562A of the *Crimes Act 1900*) in apparent contravention of an apprehended violence order in force under Part 15A of that Act.
- (2) Subclause (1) (a) is subject to any guidelines issued by the Tribunal under section 65 relating to the determination of circumstances in which there is a compensable injury of domestic violence.

[21] Schedule 1, Table

Insert in alphabetical order:

Domestic violence	2,400–10,000
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[22] Schedule 1, Table

Insert in alphabetical order:

Psychological or psychiatric disorder

Category 1, chronic psychological or psychiatric disorder that is moderately disabling.....	5,000–15,000
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Category 2, chronic psychological or psychiatric disorder that is severely disabling.....	30,000–50,000
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[23] Schedule 1, Table

Omit the matter relating to shock.

[24] Schedule 2 Provisions relating to Tribunal

Insert at the end of Part 3:

Part 4 Other powers

23 Tribunal may compel production of documents

- (1) The Tribunal may, of its own motion or at the request of an assessor and for the purposes of the determination of an application for statutory compensation or a related appeal by the assessor or the Tribunal by instrument in writing require any person on whom the instrument is served personally or by post to produce to the Tribunal any document that is relevant to the application, at a time, date and place specified in the instrument.
- (2) When a document is produced to the Tribunal in accordance with a requirement under this clause, the Tribunal may take and keep possession of the document, or, in the case of a document requested on behalf of an assessor, allow the assessor to keep possession of the document, for such period as the Tribunal considers necessary for the purpose of determining the application.
- (3) The functions conferred on the Tribunal by subclause (1) may be exercised on behalf of the Tribunal by the Registrar of the Tribunal.

24 Refusal to comply with requirement

A person must not fail to comply with a requirement made of the person under clause 23 to the extent to which the person is lawfully able to comply with the requirement.

Maximum penalty: 5 penalty units.

[25] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Victims Compensation Amendment Act 1998

[26] Schedule 3, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Victims Compensation Amendment Act 1998**

10 Definition

In this Part:

amending Act means the *Victims Compensation Amendment Act 1998*.

11 Deductions from statutory compensation

Section 19A, as inserted by the amending Act, applies to amounts of statutory compensation awarded where the application for compensation is made after the commencement of that section, whether or not the act of violence that resulted in the injury for which the compensation is awarded occurred before or after that commencement.

12 Compensation for shock

The provisions of Schedule 1 relating to shock that were omitted by the amending Act continue to have effect in the case of any person who applied for statutory compensation for the compensable injury of shock before the omission of those provisions.

13 Compensation for new injuries

- (1) A person may apply for statutory compensation for a psychological or psychiatric disorder, or for the compensable injury of domestic violence, whether or not the injury resulted from an act of violence that occurred before the insertion of those categories of injury in Schedule 1.
- (2) This clause does not affect the operation of section 26.

14 Provisional restitution orders

The Director may make a provisional order for restitution under section 46A, as inserted by the amending Act, whether or not the order is based on an order that was granted, or a transaction relating to property that occurred, before the commencement of that section.

15 Charges on property

An application may be made under section 58A, as inserted by the amending Act, to register a restitution order whether or not the restitution order was made before or after the commencement of that section.

16 Restraining orders and other property orders

An application may be made for an order under Division 9 of Part 2 concerning the property of a person whether or not:

- (a) the person was charged with, or convicted of, an offence before or after the commencement of that Division, or
- (b) the property was (in the case of an order under section 58M) disposed of or dealt with before or after the commencement of that Division.

[27] Dictionary

Omit paragraphs (b) and (c) of the definition of *injury*. Insert instead:

- (b) psychological or psychiatric disorder.

[28] Dictionary, definition of "sexual assault and apprehended domestic violence"

Omit "*apprehended*".

[29] Dictionary, definition of “sexual assault and domestic violence”

Insert after paragraph (f):

, or

- (g) any other act resulting in injury that occurred in the commission of a domestic violence offence (within the meaning of the *Crimes Act 1900*).

[Minister's second reading speech made in—
Legislative Council on 22 October 1998
Legislative Assembly on 25 November 1998]

BY AUTHORITY