

Passed by both Houses



New South Wales

Victims Rights and Support Amendment (Statutory Review) Bill 2018

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Victims Rights and Support Amendment (Statutory Review) Bill 2018

Act No , 2018

An Act to make miscellaneous amendments to the *Victims Rights and Support Act 2013* and the *Victims Rights and Support Regulation 2013* resulting from a review of that legislation; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Victims Rights and Support Amendment (Statutory Review) Act 2018*.

2 Commencement

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

Schedule 1 Amendment of Victims Rights and Support Act 2013 No 37

[1] Section 36 Recognition payments

Omit section 36 (1) (a) and (b). Insert instead:

- (a) a category A recognition payment of an amount prescribed by the regulations is payable:
 - (i) to each family victim (other than a child referred to in subparagraph (ii)) who, immediately before the death of a primary victim as a result of an act of violence described in section 35 (1), was financially dependent on the primary victim, and
 - (ii) to each child of a primary victim who, immediately before the death of the primary victim as a result of an act of violence described in section 35 (1), was under the age of 18 years,
- (b) a category A recognition payment of an amount prescribed by the regulations is payable to the following who were not, immediately before the death of the primary victim concerned, financially dependent on a primary victim who died as a result of an act of violence described in section 35 (1):
 - (i) a parent, step-parent or guardian of the primary victim,
 - (ii) any person who, immediately before the death of the primary victim, was the victim's spouse or de facto partner as referred to in section 22 (3) (b),

[2] Section 39 Documentary evidence

Insert "or a report by an agency that provides support services to victims of crime" after "police report" in section 39 (2) (a).

[3] Section 39 (2) (b)

Omit the paragraph. Insert instead:

- (b) for an application for financial assistance for economic loss under section 26 or 27 or for a recognition payment—is:
 - (i) a police report, or a report by a Government agency or any other agency that provides support services to victims of crime, sufficient to support, on the balance of probability, the applicant's claim to be a victim of an act of violence, and
 - (ii) a medical, dental or counselling report verifying that the applicant or child who is the primary victim concerned has actually been injured as a result of an act of violence.

[4] Section 40 Time for making, and duration of, applications

Omit "subsections (2) and (3)" from section 40 (1). Insert instead "this section".

[5] Section 40 (1) and (3)

Insert "or a recognition payment" after "financial support" wherever occurring.

[6] Section 40 (4)

Omit the subsection.

[7] Section 41A

Insert after section 41:

41A Lapsing of application if evidence to support application not provided

- (1) An application for victims support lapses if:
 - (a) 12 months has passed since the applicant was first requested to provide evidence to support the application, and
 - (b) the applicant has, during that 12-month period, been requested on at least 3 separate occasions to provide that evidence, and
 - (c) the Commissioner decides that the applicant does not have a valid reason for failing to provide that evidence.
- (2) Subsection (1) applies regardless of whether any claim under the application has been determined.
- (3) The Commissioner is to notify the applicant that the application has lapsed under this section.
- (4) The lapsing of an application for victims support under this section does not prevent the applicant from making another application for victims support.

[8] Section 43 Determination of applications

Insert after section 43 (6):

- (7) The Commissioner may, only on the Commissioner's own initiative, amend a notice given under this section to correct an error in the notice.

[9] Section 44 Reasons for not approving the giving of victims support or for reducing amount of financial support or recognition payment

Omit "condition," from section 44 (1) (a).

[10] Section 44 (1) (b) and (c) and (2)

Omit the provisions.

[11] Section 48 Victims support may be approved subject to conditions

Insert after section 48 (2):

- (2A) An approval of victims support is also subject to the condition that the person to or for whose benefit the approval is given must notify the Commissioner of any amount that the person has already received from other sources in connection with the act of violence to which the victims support relates.
- (2B) Payment under section 54 of the whole or any part of victims support may be withheld by the Commissioner if the person to or for whose benefit the approval is given fails to comply with subsection (2A).

[12] Section 49 Internal review of victims support decisions

Omit "28 days" from section 49 (2). Insert instead "90 days".

[13] Section 58 Definitions

Omit the definition of *relevant offence*. Insert instead:

relevant offence means any of the following:

- (a) an offence in respect of which an act of violence (whether or not a series of related acts) is found to have been committed,

- (b) an offence for or in respect of which victims support is given under this Act,
- (c) any other offence if an offence referred to in paragraph (a) or (b) was taken into account (under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) when sentence was passed on the offender for that other offence.

[14] Section 66 Administrative reviews by Tribunal

Insert after section 66 (7):

- (8) In any review proceedings, a person who is a victim of the relevant offence to which the proceedings relate is competent, but not compellable, to give evidence or produce documents.

Note. See also section 113 which provides that an application for victims support and any documents supporting the application are, subject to that section, not admissible as evidence in any legal proceedings.

[15] Section 99 Factors to be taken into consideration

Omit “condition,” from section 99 (a).

[16] Section 101 Enforcement of directions for compensation

Insert “the name and address of” after “specifies” in section 101 (1) (b).

[17] Section 112A Provision of personal information to victims of crime and family victims

Insert after section 112A (2):

- (2A) The personal information that may be provided by a victims rights agency to a victim of crime in accordance with subsection (1) may, if the victim is a child under the age of 18 years or lacks the capacity to understand the nature of the information, be disclosed by the agency to a parent or guardian of the victim.

[18] Section 113 Inadmissibility and use of certain evidence in subsequent legal proceedings

Insert after section 113 (2):

- (2A) However, if any medical report supporting an application for victims support:
 - (a) is lodged with the Tribunal under section 58 of the *Administrative Decisions Review Act 1997* in connection with review proceedings under Part 5 of this Act, or
 - (b) is admitted as evidence in review proceedings under Part 5, the report must not be disclosed or provided to the applicant in those proceedings.

[19] Schedule 2 Savings, transitional and other provisions

Omit “awards under Part 5” from clause 16 (1). Insert instead “amounts paid under Part 4”.

[20] Schedule 2

Insert after Part 3:

Part 4 Provisions consequent on enactment of Victims Rights and Support Amendment (Statutory Review) Act 2018

25 Application of amendments

- (1) In this clause:
amending Act means the *Victims Rights and Support Amendment (Statutory Review) Act 2018*.
former Act means the *Victims Support and Rehabilitation Act 1996* or the Act repealed by that Act.
- (2) Subject to this clause, an amendment made by Schedule 1 to the amending Act does not apply in relation to an application for victims support made before the commencement of the amendment.
- (3) Sections 43 (7) and 48 (2A) and (2B), as inserted by the amending Act, extend to an application for victims support made, but not determined, before the commencement of those provisions.
- (4) The amendments to sections 44 and 49 made by the amending Act extend to an application for victims support made, but not determined, before the commencement of those amendments.
- (5) The amendment to section 58 made by the amending Act extends to an order for restitution made under Part 5 of this Act or a former Act before the commencement of that amendment and that has not been determined by the Tribunal.
- (6) Section 113 (2A), as inserted by the amending Act, does not apply in relation to proceedings before the Tribunal that have commenced before the commencement of that provision.
- (7) This clause does not apply to the amendments made by the amending Act to this Schedule.

Schedule 2 Amendment of Victims Rights and Support Regulation 2013

[1] Clause 4 Definitions

Omit the definitions of *generalist counsellor* and *specialist counsellor*.

Insert in alphabetical order:

generalist counsellor tier 1 means a person who is a registered psychologist or is eligible for membership of the Australian Association of Social Workers (other than as a student member).

generalist counsellor tier 2 means a person who:

- (a) is a registered psychologist or is eligible for membership of the Australian Association of Social Workers (other than as a student member), and
- (b) has provided (whether before or after this definition was inserted by the *Victims Rights and Support Amendment (Statutory Review) Act 2018*) approved counselling services under the Act for more than 3 consecutive years, and
- (c) holds post-graduate qualifications consisting of a Masters degree (or a higher level qualification) in social work, clinical psychology, clinical neuropsychology, counselling psychology or forensic psychology, and
- (d) has, in the opinion of the Commissioner, specialist counselling skills that justify the person being paid at the rate applicable to a generalist counsellor tier 2.

[2] Clause 4A

Insert after clause 4:

4A Approval of other persons as counsellors

- (1) The Commissioner may approve a person who:
 - (a) has counselling qualifications and experience the Commissioner considers to be relevant, and
 - (b) is not a generalist counsellor tier 1 or tier 2,
to provide approved counselling services in any part of the State where, in the opinion of the Commissioner, there is a shortage of generalist counsellors tier 1 or tier 2 to provide those services.
- (2) The approval of a person under this clause to provide approved counselling services is subject to any conditions imposed by the Commissioner.
- (3) In approving a person under this clause, the Commissioner is to have regard to the following:
 - (a) the person's experience in dealing with victims of crime,
 - (b) whether there is an existing therapeutic relationship between the person and victims of crime living in the part of the State concerned.
- (4) A person who is approved under this clause to provide approved counselling services is, for the purposes of clause 6, taken to be a generalist counsellor tier 1.

[3] Clause 5 Authorisation of payments for approved counselling services

Insert before clause 5 (1):

- (1A) Any limit imposed by this clause:
- (a) on the period that payments for approved counselling services may be authorised for a person, or
 - (b) on the amount of payments for approved counselling services that may be authorised for a person,
- is a limit that applies to each act of violence committed in respect of the person.

[4] Clause 5 (6) (a)

Omit “20 hours”. Insert instead “22 hours”.

[5] Clauses 5A and 5B

Insert after clause 5:

5A Immediate access to counselling services

- (1) Without limiting clause 5 (2), the Commissioner may consider a person to be a victim of an act of violence for the purposes of authorising payments for approved counselling services for that person in accordance with this Part.
- (2) Subclause (1) is subject to any subsequent finding by the Commissioner that the person is not a victim of an act of violence.

5B Ongoing counselling services for victims of child sexual assault or physical abuse

Despite any provision of clause 5 to the contrary, the Commissioner may authorise payments for approved counselling services on an ongoing basis for:

- (a) a person under the age of 18 years who is a victim of sexual assault or physical abuse, or
- (b) a person who, while under the age of 18 years, was a victim of sexual assault or physical abuse.

[6] Clause 6 Amount of payments

Insert after clause 6 (4):

- (4A) A reference in this clause to the provision of approved counselling services to a victim includes, in the case where approved counselling services are provided to a group of victims under an approved program, a reference to the provision of the services to that group.

[7] Clause 6, Table

Omit “Generalist counsellors”. Insert instead “Generalist counsellors tier 1”.

[8] Clause 6, Table

Omit “Specialist counsellors”. Insert instead “Generalist counsellors tier 2”.

[9] Clause 7 Calculation of actual loss of earnings

Omit “the *Workers Compensation Act 1987* after the first 26 weeks of incapacity within the meaning of clause 1 of Part 19H of Schedule 6 to that Act”.

Insert instead “section 37 of the *Workers Compensation Act 1987* (as in force immediately before its substitution by the *Workers Compensation Legislation Amendment Act 2012*) and indexed in accordance with law”.

[10] Clauses 10 (2) and 11 (b)

Omit “\$8,000” wherever occurring. Insert instead “\$9,500”.

[11] Part 5, Division 4

Insert after Division 3:

Division 4 Provisions consequent on enactment of Victims Rights and Support Amendment (Statutory Review) Act 2018

30 Definition

In this Division:

amending Act means the *Victims Rights and Support Amendment (Statutory Review) Act 2018*.

31 Application of amendments

Except as provided by clause 32, an amendment made by Schedule 2 to the amending Act does not apply in relation to an application for victims support that was made before the commencement of the amendment.

32 Existing counsellors

- (1) A person who was a generalist counsellor immediately before the commencement of Schedule 2 [1] to the amending Act is, on that commencement, taken to be a generalist counsellor tier 1.
- (2) A person who was a specialist counsellor immediately before the commencement of Schedule 2 [1] to the amending Act is, on that commencement, taken to be a generalist counsellor tier 2.

Schedule 3 Amendment of other legislation

3.1 Children (Criminal Proceedings) Act 1987 No 55

Section 15A Publishing and broadcasting of names prohibited

Insert after section 15A (7):

- (8) Proceedings for an offence against this section that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence.

3.2 Civil and Administrative Tribunal Act 2013 No 2

Schedule 3 Administrative and Equal Opportunity Division

Insert after clause 13A:

13B Review proceedings under Part 5 of Victims Rights and Support Act 2013

Despite section 46 of this Act, the Tribunal may not compel a witness to give evidence or produce documents in review proceedings under Part 5 of the *Victims Rights and Support Act 2013* if the witness is the victim of the relevant offence (within the meaning of that Part) to which the review proceedings relate.

3.3 Crimes Act 1900 No 40

Section 578A Prohibition of publication identifying victims of certain sexual offences

Insert after section 578A (8):

- (9) Proceedings for an offence against this section that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence.

3.4 Crimes (Domestic and Personal Violence) Act 2007 No 80

Section 40A Apprehended violence order may be made in care proceedings

Omit “and” from section 40A (1) (a). Insert instead “or”.