



New South Wales

Victims Rights and Support Amendment (Statutory Review) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Victims Rights and Support Act 2013* and the *Victims Rights and Support Regulation 2013* as follows:

- (a) to allow reports that have been prepared by agencies that provide support services to victims of crime to be used as documentary evidence in applications for victims support,
- (b) to vary the time during which an application for a recognition payment can be made by a family victim where the primary victim dies as a result of an act of violence,
- (c) to extend eligibility for recognition payments to a child, spouse or de facto partner of a homicide victim even though the child or person was not financially dependent on the victim,
- (d) to provide that, in review proceedings before the NSW Civil and Administrative Tribunal, a victim is a competent but non-compellable witness and medical reports supporting the victim's application for support are not to be provided to the offender concerned,
- (e) to increase the initial limit of approved counselling services for family victims from 20 to 22 hours,
- (f) to enable the Commissioner of Victims Rights (the **Commissioner**) to approve persons who are not otherwise qualified in accordance with the regulations to provide approved counselling services in any part of the State where there is a shortage of qualified counsellors to provide those services,
- (g) to increase the maximum amount payable as financial assistance to family victims for funeral expenses from \$8,000 to \$9,500,

(h) to make other amendments of an administrative, minor or technical nature.

This Bill also:

- (a) amends other legislation to extend the time for bringing proceedings for offences involving the publication or broadcasting of the names of children involved in criminal proceedings and their siblings, or victims of sexual assaults, from 6 months to 2 years, and
- (b) makes a consequential amendment to the *Civil and Administrative Tribunal Act 2013*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Schedule 1 [1] modifies the eligibility for category A recognition payments (that is, payments intended to provide recognition of the trauma suffered by close family members of acts of violence that apparently occurred in the course of the commission of a homicide). The amendment:

- (a) provides that a child whose parent is a homicide victim is eligible for a recognition payment of \$15,000 without needing to prove financial dependence on the victim, and
- (b) provides that a spouse or de facto partner of a homicide victim is eligible for a recognition payment of \$7,500 without needing to prove financial dependence on the victim.

Schedule 1 [2] provides that a report prepared by a victims support agency that an act of violence has occurred or that an injury has been sustained is documentary evidence supporting an application for financial assistance for immediate needs.

Schedule 1 [3] provides that, in the case of an application for financial assistance for economic loss or for a recognition payment, a report by a victims support agency that the applicant is a victim of an act of violence is documentary evidence to support the application.

Schedule 1 [4]–[6] modify the time limit for making an application for a recognition payment made by a family victim where it has been established that the primary victim died as a result of an act of violence.

Schedule 1 [7] provides that an application for victims support lapses if the applicant fails to provide all supporting evidence within 12 months after being requested to do so on at least 3 separate occasions and the Commissioner decides that the applicant does not have a valid reason for failing to provide that evidence.

Schedule 1 [8] enables the Commissioner to amend a notice of the determination of an application for victims support for the purposes of correcting an error.

Schedule 1 [9] omits a requirement that the Commissioner must consider any condition of the primary victim that directly or indirectly contributed to the injury or death sustained by the victim in determining whether or not to approve the giving of victims support and in determining the amount of financial support to be given or recognition payment to be made.

Schedule 1 [10] provides that any delay in a victim reporting a crime to police, or any failure to report an act of violence to a relevant health professional or practitioner or a relevant agency, will no longer be matters that the Commissioner must have regard to in determining whether or not to approve the giving of victims support and related matters.

Schedule 1 [11] provides that:

- (a) the approval of victims support is subject to the condition that the victim must notify the Commissioner of any amount that the victim has already received from other sources in connection with the relevant act of violence, and
- (b) the Commissioner may withhold all or part of the money that would otherwise be payable to the victim if the victim has received an amount from another source and failed to notify the Commissioner.

Schedule 1 [12] extends (from 28 days to 90 days) the period in which an applicant for victims support can apply for an internal review of a decision relating to the application.

Schedule 1 [13] modifies the definition of *relevant offence* for the purposes of the scheme under Part 5 of the Act for the recovery of victims support payments from offenders.

Schedule 1 [14] provides that a victim is competent but cannot be compelled to give evidence or produce documents in any proceedings that an offender takes in NCAT for administrative review of the order for restitution made against the offender.

Schedule 1 [15] omits an existing requirement that a court determining whether to give a direction for compensation to a victim must consider any condition of the victim that directly or indirectly contributed to the injury or death sustained by the victim.

Schedule 1 [16] authorises the registrar of a court that has given a direction for compensation to provide the offender's name and address to the victim.

Schedule 1 [17] authorises a victims rights agency to provide certain information to a parent or guardian of a victim if the victim is under the age of 18 years or lacks the capacity to understand the information.

Schedule 1 [18] provides that any medical report that supported an application for victims support and that is provided to NCAT in connection with review proceedings under Part 5 of the Act or is admitted as evidence in those proceedings must not be disclosed or provided to the person who is the applicant in those proceedings.

Schedule 1 [19] corrects a cross-reference in a transitional provision about recovery proceedings against offenders for amounts payable under a statutory award of compensation.

Schedule 1 [20] inserts savings and transitional provisions that are consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Victims Rights and Support Regulation 2013

Schedule 2 [1] replaces the way in which persons who provide counselling services are categorised. The new categories are:

- (a) generalist counsellor tier 1, which replaces the current category of generalist counsellor and requires the same qualifications as at present, and
- (b) generalist counsellor tier 2, which replaces the current category of specialist counsellor, with the additional requirement that to be eligible for the higher rates of payment as a generalist counsellor tier 2 a person will need to have been providing approved counselling services for more than 3 consecutive years.

Schedule 2 [2] enables the Commissioner to approve additional persons (who are not otherwise qualified in accordance with the regulations) 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. A person may only be approved if the person has counselling qualifications and experience that the Commissioner considers to be relevant.

Schedule 2 [3] provides that any limit imposed on payments for approved counselling services applies in relation to each act of violence committed in respect of any person and not in respect of each person (as at present), so that a person who makes a further application for victims support for a separate act of violence is not disadvantaged.

Schedule 2 [4] increases the period for approved counselling services for a victim who is a family victim or relevant family member from 20 hours to a maximum of 22 hours (consistent with the existing entitlement of primary victims who are eligible for 22 hours of counselling).

Schedule 2 [5] enables victims to have immediate access to counselling services by making it clear that the Commissioner may authorise payments for approved counselling services even though the application for victims support has not yet been determined. The amendment also enables the Commissioner to authorise payments for approved counselling services on an ongoing basis to victims of child sexual assault or physical abuse while under the age of 18 years.

Schedule 2 [6] allows payments for the provision of approved counselling services to a group of victims under an approved program to be determined at an hourly rate for the group as a whole, rather than being based on the hours provided to each victim in the group.

Schedule 2 [7] and [8] update the table of amounts payable per hour of approved counselling services as a consequence of the amendment made by Schedule 2 [1].

Schedule 2 [9] modifies the way in which actual loss of earnings is calculated for the purposes of providing financial assistance to victims.

Schedule 2 [10] increases the maximum amount payable to family victims for funeral expenses from \$8,000 to \$9,500.

Schedule 2 [11] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of other legislation

Schedule 3.1 amends the *Children (Criminal Proceedings) Act 1987* to provide that proceedings for an offence against section 15A (which prohibits the publishing and broadcasting of the names of children involved in criminal proceedings and their siblings) that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence. At present, the time limit for commencing those proceedings is 6 months after the offence.

Schedule 3.2 amends the *Civil and Administrative Tribunal Act 2013* as a consequence of the amendment made by Schedule 1 [14] to the proposed Act.

Schedule 3.3 amends the *Crimes Act 1900* to provide that proceedings for an offence against section 578A (which prohibits the publication of matter that identifies victims of certain sexual offences) that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence. At present, the time limit for commencing those proceedings is 6 months after the offence.

Schedule 3.4 amends the *Crimes (Domestic and Personal Violence) Act 2007* to make it clear that when the Children's Court is hearing care proceedings, the Court may make an apprehended violence order for the protection of either the child to whom the care proceedings relates or any other person who is a relative of the child or who resides on the same property, as well as an order protecting both. At present the provision may be interpreted as requiring the apprehended violence order to be made for the protection of both the child and a relative or other person.