



## Victims Rights and Support Bill 2013

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Extract from NSW Legislative Council Hansard and Papers Wednesday 29 May 2013.

#### Second Reading

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [8.01 p.m.]: I move:

That this bill be now read a second time.

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

#### Leave granted.

The Government is very pleased to introduce the Victims Rights and Support Bill 2013.

The purpose of the bill is to establish a new Victims Support Scheme to replace the existing Victims Compensation Scheme and to provide for a new Commissioner of Victims Rights.

The Victims Compensation Scheme was established in 1987 and revamped in 1996.

But, by mid-2010 the Victims Compensation Scheme that was meant to help victims of violent crime was crippled by a growth in demand that had almost doubled in the previous five years. This led not only to cost blowouts but to protracted delays for victims in receiving compensation. The Auditor General identified from 2009 that the then Government needed to take action to deal with the backlog of claims.

Despite these warnings, the previous Labor Government did very little to try and stem the ballooning liability of the scheme.

The consequences of inaction are only too clear. The most recent figures show that victims now wait on average at least 30 months before they receive any money, long after the bills for medical treatment, funeral expenses and the costs of relocating out of harm's way.

This is simply not good enough. Having to wait such a long time undermines the very spirit of the scheme, which was designed to help rehabilitate victims of violent crime. Victims need to be supported while they recover and come to terms with what has happened to them, not wait years for a handout that they hope will cover all those unexpected medical bills and relocation costs while worrying how they will manage in the meantime.

Victims of violent crime deserve better than that. That is why this Government decided to tackle the tough job of taking a good, long, hard look at the Victims Compensation Scheme and see how it could be brought up to date and in line with the demands of the twenty-first century.

The Government commissioned PricewaterhouseCoopers to review the Victims Compensation Scheme and provide an independent assessment of how it could be improved to provide faster and more effective support to victims of violent crime.

The review involved consultation with a broad range of stakeholders—but the unanimous points were:

- (1) that assisting victims at the earliest point after the act of violence delivers the best outcomes;
- (2) that the provision of counselling is supported and should continue; and
- (3) that a lump sum payment in recognition of trauma is an important part of the rehabilitation process.

In reviewing the scheme, PricewaterhouseCoopers noted that:

*whilst counselling in general is provided in a timely and effective manner, there [are] other services and supports identified which are not currently provided by the scheme, but which would be beneficial to claimants and assist them to begin their healing process shortly following the act of violence. These include relocation assistance, security upgrades and assistance with medical and dental expenses.*

PricewaterhouseCoopers' report was delivered to the Government in the second half of 2012. It recommended a radical overhaul of the way in which victims are supported, by closing the Victims Compensation Scheme and replacing it with a new scheme—the Victims Support Scheme—that is underpinned by the following key principles:

- first: financial viability—to ensure that victims receive timely support;
- second: appropriate prioritisation of funds to:
  - Ø meet the immediate needs of victims of violent crimes;
  - Ø provide financial assistance and rehabilitation; and
  - Ø recognise and acknowledge the trauma suffered;
- third: consistency with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

It is my great pleasure today to announce that the Government has adopted PricewaterhouseCoopers' recommendations. We acknowledge that the Victims Compensation Scheme needed to be replaced with something more effective. This bill does just that—it establishes the new Victims Support Scheme which is modelled very closely on the scheme proposed by PricewaterhouseCoopers. It is an excellent scheme that the Government is confident will provide an infinitely better response to victims than that provided by the Victims Compensation Scheme.

Instead of reducing everything to a lump sum compensation payment, the focus of the Victims Support Scheme will instead be on providing a package of practical and financial support, tailored to victims' individual needs and provided to victims at the time they need it, while still providing a lump sum payment in recognition of the trauma experienced by victims of crime. But instead of the lump sum being determined according to what is known under the existing legislation as a "Schedule of Compensable Injuries"—that is, compensation for specific injuries to particular parts of the body—under the new scheme the payment will be related to the nature of the violent act.

Counselling will continue to be provided, but the rates have been increased and counsellors will now be able to claim for travel time in excess of two hours. This is so the scheme will improve access to counselling services in rural, remote and Aboriginal communities.

The Victims Support Scheme will provide the following types of support to victims who have sustained an injury as a result of a violent crime:

- firstly, 22 hours of counselling, which can be extended where appropriate;
- secondly, an individually tailored package of up to \$5,000 to address a victim's immediate needs. This might include emergency medical or dental treatment, the costs of cleaning up a crime scene and expenses for relocation from a situation of continuing or potential violence or installation of safety measures in the home;
- thirdly, up to \$8,000 for funeral expenses incurred by family members of homicide victims;
- fourthly, needs-based financial assistance of up to \$30,000 for victims who can demonstrate economic loss, to aid in their rehabilitation and recovery. This is designed to cover items such as ongoing medical or dental expenses, up to \$5,000 for expenses associated with related criminal or coronial proceedings and up to \$1,500 for expenses incurred through loss or damage to clothing or personal effects worn or carried at the time of the act of violence and up to \$20,000 for demonstrated loss of actual earnings, or up to \$5,000 for out-of-pocket expenses where loss of actual earnings cannot be demonstrated; and
- finally, a lump sum payment to acknowledge the violence and trauma. The amount will vary, depending on the nature of the act of violence, as follows:
  - \$15,000 for a family member who was financially dependent on a homicide victim;
  - \$7,500 for a parent of a homicide victim but who was not a dependent;
  - \$10,000 for a victim of the most serious kind of sexual assault—one involving serious injury, the use of a weapon or multiple offenders or for a victim of a series of related acts involving sexual assault, indecent assault or attempted sexual assault involving serious bodily injury;
  - \$5,000 for a victim of a less serious sexual assault, a victim of an attempted sexual assault resulting in serious injury or an assault resulting in grievous bodily harm, including the loss of a foetus, or for a victim of a series of related acts involving the physical assault of a child; and
  - \$1,500 for a victim of an indecent assault, an attempted sexual assault involving violence, a robbery involving violence or an assault not resulting in grievous bodily harm.

While these amounts are less than the maximum amounts of compensation available under the Victims Compensation Scheme, they are in addition to financial assistance available for immediate needs and longer-term expenses. And, most importantly, they will be able to be paid up front, rather than victims having to wait for two or three or more years. In general therefore, victims will be better served by the new Victims Support Scheme with its emphasis on up-front practical and financial assistance at a time when they need it most.

Staff within Victims Services in my department will assist victims to quickly access appropriate help under the Victims Support Scheme, by assessing victims' immediate needs and preparing an appropriately tailored support package,

including counselling, financial assistance and referral to local support agencies. Victims Services will also help victims to understand what documentation they need to provide and to navigate the service system. Accessing help from the Victims Support Scheme will be so much simpler and more straightforward than the Victims Compensation Scheme, which means that there will be no need for victims to routinely obtain lawyers to help them apply for assistance.

The fact that victims of crime regularly sought legal representation in order to apply for compensation was a clear indication to this Government that the existing scheme was not easily accessible to the public.

Claims for financial assistance will need to be lodged within two years of the incident—or within two years of a child victim turning 18. Claims for a recognition payment must also be lodged within two years of the incident, or two years of a child victim turning 18, with the exception of claims in relation to domestic violence, child abuse and sexual assault which must be lodged within 10 years of the incident, or 10 years of a child victim turning 18.

The bill will abolish the Victims Compensation Tribunal, in line with the Government's general approach to streamlining the justice system and rationalising the number of tribunals, and establish in its place a Victims Support Division of the Administrative Decisions Tribunal. The NSW Civil and Administrative Tribunal, which will replace the Administrative Decisions Tribunal in 2014, will also have a Victims Support Division. Victims will be able to seek a review of a decision related to an application for a recognition payment, by applying to the Administrative Decisions Tribunal or the Civil and Administrative Tribunal.

The Victims Compensation Scheme will be closed immediately and all existing claims that have not yet been finalised will be transferred to the Victims Support Scheme. This will provide a speedier resolution for victims with existing claims, who will be able to seek counselling and a recognition payment right away—plus an additional payment of \$5,000, provided they lodged their claim within two years of the incident, or of turning 18 if they were a child at the time.

This will also enable the contingent liability to be addressed expeditiously. Continuing the Victims Compensation Scheme in tandem with the new scheme would mean that the contingent liability could not be paid out for several years. When combined with the additional resources that would be required to deal with the extra administrative overheads involved in dealing with two schemes, it would result in significantly less funding for victims in the short to medium term.

Any appeals that are currently on foot before the Victims Compensation Tribunal will be finalised by the Administrative Decisions Tribunal or the Civil and Administrative Tribunal, under the rules of the old scheme.

The bill will retain related provisions from the old scheme, appropriately amended, that enable Victim Support Scheme payments to be recovered from offenders responsible for the relevant acts. Also retained will be the provisions that impose levies on all persons convicted of certain crimes to help fund the Victims Support Scheme and the provisions allowing a court to award compensation, as an alternative to the statutory scheme.

The Charter of Victims Rights will be transferred into the bill from the Victims Rights Act 1996, along with the provisions establishing the Victims Advisory Board.

In addition, the bill will fulfil one of the Government's commitments under NSW 2021: A plan to make New South Wales number one, by establishing a Commissioner of Victims Rights. The commissioner will be appointed as the head of Victims Services in my department and will oversee the Victims Support Scheme and otherwise assist victims of crime in exercising their rights.

The commissioner will promote and oversee the implementation of the Charter of Victims Rights, helping government and non-government agencies to improve their compliance with the charter and receive complaints about breaches. Where complaints cannot be resolved, the commissioner will be able to recommend that agencies apologise to victims of crime and to provide me with a report to present to this House. The commissioner will also be the Chair of the Victims Advisory Board.

And finally, in keeping with the Government's adopted principle of reducing regulation, the bill will repeal both the Victims Support and Rehabilitation Act 1996 and the Victims Rights Act 1996.

I commend the bill to the House.