



New South Wales

Victims Rights and Support Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to repeal the *Victims Support and Rehabilitation Act 1996* (the *VSRA*) and to replace the statutory scheme for compensation for victims of crimes of violence and approved counselling under that Act with a new support scheme (the *new Scheme*) that:
 - (i) provides for the approval of the giving of financial support and counselling and making of payments in recognition of the trauma suffered by certain such victims (*recognition payments*), and
 - (ii) provides for the Victims Compensation Tribunal to be abolished and its members to become a new Victims Support Division of the Administrative Decisions Tribunal, which is to have the power to review determinations relating to the approval of the making of recognition payments, and
 - (iii) provides for the cost of support paid under the new Scheme to be recovered from persons found guilty of the crimes giving rise to the approval of the giving of support, and

- (iv) imposes a levy on persons found guilty of crimes punishable by imprisonment for the purpose of partially funding the new Scheme that is similar to the levy that currently funds the statutory scheme for compensation under the VSRA, and
- (v) continues the alternative scheme established under the VSRA under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime,
- (b) to repeal and re-enact (with minor modifications) the provisions of the *Victims Rights Act 1996*,
- (c) to provide for a Commissioner of Victims Rights and confer on the Commissioner functions similar to those currently exercised by Victims Services under the VSRA and additional functions intended (among other things) to lead to greater compliance with the Charter of Victims Rights.

Outline of provisions

Part 1 Preliminary

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 the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act. *Victims support* is defined as support in the form of approved counselling services, financial support or a recognition payment under the new Scheme.

Part 2 Victims rights

Division 1 Preliminary

Clause 4 specifies the object of the proposed Part as being to recognise and promote the rights of victims of crime.

Clause 5 defines *victim of crime* for the purposes of the proposed Part in the same way as that term is currently defined in the *Victims Rights Act 1996*.

Division 2 Charter of Victims Rights

Clause 6 sets out the Charter of Victims Rights. It is essentially the same as the Charter currently set out in the *Victims Rights Act 1996*.

Clause 7 provides for the implementation of the Charter.

Part 3 Administration

Division 1 Commissioner of Victims Rights

Clause 8 provides for the employment of a Commissioner of Victims Rights (the *Commissioner*) and such staff as are necessary for the purposes of the proposed Act and also provides for the engagement of consultants and contractors.

Clause 9 provides for the Commissioner to exercise functions conferred on the Commissioner by or under the proposed, and any other, Act and to delegate those functions.

Clause 10 specifies in detail the functions of the Commissioner under the proposed Act. The Commissioner will be responsible for exercising the functions currently conferred on Victim Services under section 10 of the *Victims Rights Act 1996*. In addition, the Commissioner is empowered to consider and determine applications for victims support, recommend and assist agencies (including any person or non-government agency funded by the State to provide support services) to improve their compliance with the Charter of Victims Rights, to recommend that agencies apologise to victims of crime for breaches of the Charter of Victims Rights, to conduct, promote and monitor training, public awareness activities and research on victims of crime and to conduct reviews and inquiries, or both, on issues relating to victims of crime at the request of the Attorney General.

Clause 11 enables the Commissioner to carry out inquiries and investigations for the purposes of the proposed Act.

Clause 12 enables the Commissioner to require a person or agency to produce information (including documents) relevant to the exercise of the Commissioner's functions under the proposed Act.

Clause 13 provides for the Commissioner to make reports to Parliament.

Division 2 Victims Support Fund

Clause 14 establishes the Victims Support Fund (the *Fund*). Clause 9 of Schedule 2 to the proposed Act makes it clear that this is the same fund as the Victims Compensation Fund currently established under the VSRA.

Clause 15 provides for payments into the Fund.

Clause 16 provides for payments out of the Fund.

Part 4 Victims Support Scheme

Division 1 Preliminary

Clause 17 describes the object of the proposed Part as being to establish the new Scheme for the provision of victims support.

Clause 18 contains definitions for the purposes of the proposed Act. The definition of *injury* is wider than that contained in the VSRA. It extends to grievous bodily

harm, which is defined to include destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any harm.

Clause 19 defines *act of violence* for the purposes of the proposed Act. The definition is based on that currently contained in the VSRA. It deals with the circumstances in which a series of related acts is to be treated as a single act of violence for which only one approval of victims support is available.

Clause 20 defines *primary victim* of an act of violence as a person who is injured, or dies, as a direct result of that act. It includes certain other persons such as persons who are injured or die as a result of trying to help or rescue the person against whom an act of violence is being committed.

Clause 21 defines *secondary victim* of an act of violence as a person who is injured as a direct result of witnessing the act of violence that resulted in the injury to, or death of, the primary victim of that act. It includes certain other persons such as parents or guardians of a child victim suffering injury after becoming aware of the act of violence.

Clause 22 defines *family victim* of an act of violence as a person who, at the time the act is committed, is a member of the immediate family of a primary victim who has died as a direct result of the act.

Division 2 Eligibility for support

Clause 23 describes the eligibility for support of primary, secondary and family victims under the new Scheme. A parent, step-parent or guardian who is caring for a child who is a primary victim of an act of violence is also eligible for support under the new Scheme.

Clause 24 describes the effect of the death of a primary or family victim on eligibility for support under the new Scheme.

Clause 25 describes the persons who are ineligible for victims support under the new Scheme. The persons described are generally the same as those persons who are not currently eligible for compensation under the statutory scheme under the VSRA.

Division 3 Composition of support

Clause 26 describes the composition of the support under the new Scheme for which a primary victim is eligible. This comprises specified approved counselling services, financial assistance for immediate needs (such as the cost of relocating a victim from a situation of domestic violence or the cost of emergency medical or dental treatment), financial assistance for certain economic loss and, in some cases, a lump sum payment in recognition of the trauma suffered by the victim.

Clause 27 describes the composition of the support for which a parent, step-parent or guardian who is caring for a child who is a primary victim of an act of violence is eligible under the new Scheme. This comprises certain financial assistance for economic loss.

Clause 28 describes the composition of the support under the new Scheme for which a secondary victim is eligible. This comprises specified approved counselling services.

Clause 29 describes the composition of the support under the new Scheme for which a family victim is eligible. This comprises specified approved counselling services, financial assistance for immediate needs (such as re-location expenses and expenses arising from cleaning up a crime scene), certain economic loss and funeral expenses and, in some cases where the family member was a parent, step-parent or guardian or dependent on the deceased primary victim, a lump sum payment in recognition of the trauma suffered by the family victim.

Clause 30 contains provisions relating to the provision of financial assistance.

Division 4 Approved counselling services

Clause 31 enables the Commissioner to approve professional counsellors who may provide approved counselling services for the purposes of the proposed Part and to give approval for a victim resident outside Australia to select a counsellor of the victim's choice to provide such services.

Clause 32 enables the making of regulations with respect to authorising payment for approved counselling services.

Clause 33 enables the making of regulations with respect to the amounts to be paid for approved counselling services.

Division 5 Recognition payments

Clause 34 contains definitions for the purposes of the proposed Division.

Clause 35 describes the categories of recognition payments that may be made in respect of specified kinds of acts of violence.

Clause 36 specifies the amount payable in respect of each category of recognition payment.

Clause 37 provides for the making of regulations in relation to recognition payments.

Division 6 Applications for victims support

Clause 38 describes the persons who may make an application for victims support.

Clause 39 describes the documentary evidence required to accompany an application for victims support.

Clause 40 imposes time limits for the making of applications for victims support.

Clause 41 provides for withdrawal of applications for victims support.

Clause 42 requires the Commissioner to consider each application for victims support.

Clause 43 provides for the determination of applications by the Commissioner. The giving of victims support must not be approved unless the Commissioner is satisfied that the person to whom the application relates is a victim or parent, step-parent or guardian caring for a child victim and is eligible to receive support.

Clause 44 sets out the reasons for reducing the amount of financial support or recognition payment or refusing to approve the giving of such victims support.

Clause 45 provides that, if the applicant is also involved in the act of violence concerned, a proposed amount to be paid under an approval for the giving of victims support can be reduced by the amount of a proposed determination under proposed Part 5 for restitution by the applicant.

Clause 46 provides for the payment of financial support or a recognition payment to be made to the person to whom the application for victims support relates or to another person for the benefit of that person.

Clause 47 provides for the reimbursement of funeral and certain other expenses paid by persons other than family victims.

Clause 48 provides for the imposition of conditions on an approval of the giving of financial support or making of a recognition payment.

Division 7 Review of decisions concerning victims support

Clause 49 provides for the internal review of decisions with respect to applications for victims support.

Clause 50 provides that the procedure under proposed section 49 replaces the procedure for internal review under the *Administrative Decisions Tribunal Act 1997*.

Clause 51 provides for applications to the Administrative Decisions Tribunal (the *Tribunal*) for review of decisions concerning recognition payments.

Clause 52 describes the relationship of the proposed Act to certain provisions of the *Administrative Decisions Tribunal Act 1997*.

Clause 53 suspends payment of a recognition payment pending review of a decision concerning it by the Tribunal.

Division 8 Victims support payments

Clause 54 provides for the payment of approved financial support, recognition payments and victims' counselling from the Victims Support Fund (or the Consolidated Fund if that fund does not have sufficient money available).

Clause 55 provides that the approval of the giving of victims support does not prevent civil proceedings in connection with the same matter but subrogates any such right to damages to the State to the extent of the amount of support paid.

Clause 56 enables the recovery of the amount of victims support paid to a fraudulent applicant.

Part 5 Recovery of victims support payments from offenders

Division 1 Preliminary

Clause 57 states the object of the proposed Part as being to enable financial support paid and recognition payments made under the new Scheme to be recovered from persons found guilty of crimes giving rise to the payments.

Clause 58 contains definitions of terms used in the proposed Part.

Division 2 Restitution by offenders

Clause 59 provides that, if a person is convicted of an offence in respect of an act of violence giving rise to an approval of the giving of financial support or making of a recognition payment, the Commissioner may make a provisional order for restitution (of the amount of financial support or recognition payment paid) against the convicted person.

Clause 60 enables the Commissioner to make a provisional order for restitution (a *provisional order*) against any person who has disposed of property as part of a scheme for avoiding a liability under the proposed Division.

Clause 61 requires the Commissioner to serve notice of a provisional order on the person against whom it is made.

Clause 62 enables a person on whom a provisional order is served to object to the provisional order.

Clause 63 provides that the Commissioner may confirm a provisional order if the person does not object to it.

Clause 64 provides for the Commissioner to consider an objection to a provisional order.

Clause 65 requires the Commissioner to give notice of the Commissioner's decision on an objection to the objector.

Clause 66 enables an objector to apply to the Tribunal for review of the Commissioner's decision on an objection.

Clause 67 sets out the powers of the Tribunal to review the Commissioner's decision on an objection.

Clause 68 enables arrangements to be made for the payment of the amount of restitution under a provisional order.

Clause 69 makes provision for the matters to be taken into account when the Tribunal confirms a provisional order.

Clause 70 is a provision concerning costs in review proceedings.

Clause 71 makes provision with respect to restitution orders consequent on review of decisions with respect to recognition payments by the Tribunal.

Clause 72 makes an order for restitution enforceable as a judgment debt.

Clause 73 enables prison earnings to be attached to pay amounts payable under orders for restitution.

Clause 74 describes the effect of an order for restitution on subsequent civil proceedings with respect to the act of violence to which the order for restitution relates.

Clause 75 provides access to information about the whereabouts of a person for the purpose of taking action against the person under the proposed Division.

Clause 76 enables a charge to be placed on property that is subject to a restitution order.

Clause 77 enables the cancellation of a charge placed on property that is subject to a restitution order.

Division 3 Restraining orders and orders relating to the disposition of property by offenders

Clause 78 states the objects of the proposed Division as being to enable restraining orders to be obtained to prevent persons who may be, or are, subject to restitution orders from disposing of property so as to avoid paying restitution, and to enable orders to be made setting aside certain transactions contravening restraining orders or entered into for the purpose of avoiding payment of restitution.

Clause 79 applies the proposed Division to certain persons.

Clause 80 contains definitions of terms used in the proposed Division.

Clause 81 defines a restraining order for the purposes of the proposed Division.

Clause 82 enables appropriate officers to apply for restraining orders.

Clause 83 enables the Supreme Court to make a restraining order if satisfied about certain matters.

Clause 84 enables the Supreme Court to refuse to make a restraining order if the person applying for the order refuses or fails to give the Supreme Court undertakings as to the payment of costs or damages.

Clause 85 confers the power on the Supreme Court to make ancillary orders.

Clause 86 requires authorities to register restraining orders when charges over property may be registered and provides for the consequences of registration. It also enables the lodging of caveats in respect of the property concerned.

Clause 87 confers power on the Supreme Court to revoke a restraining order.

Clause 88 sets out the time when a restraining order cease to be in force.

Clause 89 makes it an offence to knowingly contravene a restraining order or to knowingly dispose of, or otherwise deal with, property for the purpose of avoiding a liability to pay restitution.

Clause 90 enables an application to be made to have any disposition or dealing in property contravening a restraining order set aside if not done in good faith or for sufficient consideration and enables the Supreme Court to set aside certain such dispositions or dealings.

Part 6 Compensation awarded by court

Division 1 Preliminary

Clause 91 states the object of the proposed Part as being to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.

Clause 92 contains definitions of terms used in the proposed Part.

Division 2 Compensation for injury

Clause 93 defines *aggrieved person* for the purposes of the proposed Division.

Clause 94 authorises the court that convicts a person to direct compensation to an aggrieved person from the property of the convicted person. The maximum amount of compensation is \$50,000.

Clause 95 specifies certain restrictions on the court's power to direct payment of compensation for injury.

Division 3 Compensation for loss

Clause 96 defines *aggrieved person* for the purposes of the proposed Division.

Clause 97 authorises the court that convicts a person to direct compensation to an aggrieved person from the property of the convicted person.

Clause 98 specifies certain restrictions on the court's power to direct payment of compensation for loss.

Division 4 General

Clause 99 specifies the factors to be taken into account by a court in directing compensation to be paid for loss or injury under proposed Division 2 or 3.

Clause 100 provides for the payment of the amount directed to be paid.

Clause 101 enables the amount directed to be paid to be enforced as a judgment debt.

Clause 102 deals with the effect of a direction in subsequent civil proceedings.

Clause 103 limits rights of appeal against directions.

Part 7 Victims support levies

Clause 104 states the object of the proposed Part as being to impose a levy on persons found guilty of crimes for the purpose of funding the Scheme established by the proposed Act.

Clause 105 applies the proposed Part to certain offences.

Clause 106 sets and imposes the levy.

Clause 107 provides for CPI adjustments of victims support levies.

Clause 108 stays the liability to pay the levy if proceedings by way of an appeal or review of a conviction or sentence are commenced.

Part 8 Victims Advisory Board

Clause 109 establishes the Victims Advisory Board (the *Board*). Clause 10 of Schedule 2 to the proposed Act makes it clear that this is basically the same board as the Victims Advisory Board currently established under the *Victims Rights Act 1996*.

Clause 110 provides for the membership and procedure of the Board. The Commissioner is to be the Chairperson of the Board as established under the proposed Act.

Clause 111 specifies the functions of the Board.

Part 9 Miscellaneous

Clause 112 states that the proposed Act binds the Crown.

Clause 113 makes certain evidence obtained under the proposed Act inadmissible in legal proceedings.

Clause 114 limits liability for certain actions taken in good faith.

Clause 115 provides for the taking of proceedings for offences under the proposed Act.

Clause 116 provides for the service of documents under the proposed Act.

Clause 117 provides for the making of regulations for the purposes of the proposed Act.

Clause 118 repeals the VSRA and statutory instruments made under that Act and the *Victims Rights Act 1996*.

Clause 119 provides for the review of the proposed Act.

Schedule 1 Provisions relating to Victims Advisory Board

Schedule 1 contains provisions relating to the membership and procedure of the Victims Advisory Board.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. Clauses 4 and 5 provide for the closure of the statutory scheme for compensation under the VSRA on the day the Bill for the proposed Act was first introduced in Parliament and provide for applications for compensation under the closed scheme that were lodged but not finally determined before that day to be dealt with as if they were certain applications for victims support under the new Scheme. Applicants who are not eligible for immediate financial assistance or financial assistance for economic loss under the transitional provisions are eligible for a special grant of \$5,000 from the Victims Support Fund in specified circumstances.

Schedule 3 Amendment of Acts and statutory instruments

Schedule 3 makes consequential amendments to the Acts and statutory instruments specified in the Schedule. Schedule 3.1 contains amendments to the *Administrative Decisions Tribunal Act 1997* to constitute a Victims Support Division of the Tribunal and allocate to that Division the functions of the Tribunal under the proposed Act. It also contains a number of consequential amendments and an amendment to the *Government Information (Public Access) Act 2009* to make certain information supplied by victims excluded information for the purposes of that Act.

Schedule 4 Victims Rights and Support Regulation 2013

Schedule 4 sets out the terms of the *Victims Rights and Support Regulation 2013*. Clause 3 of proposed Schedule 2 provides for the Schedule to be taken to be, and have effect as, a regulation under the proposed Act on the commencement of that clause.