

Passed by both Houses



New South Wales

Victims Rights and Support Bill 2013

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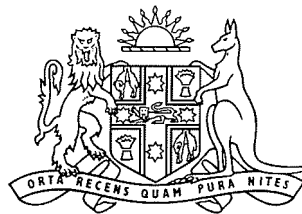
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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2013*



New South Wales

Victims Rights and Support Bill 2013

Act No , 2013

An Act to establish a new Victims Support Scheme to replace the compensation scheme established under the *Victims Support and Rehabilitation Act 1996* and to repeal that Act; to provide for a Commissioner of Victims Rights; and to repeal and re-enact (with minor modifications) provisions of the *Victims Rights Act 1996*.

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:

Part 1 Preliminary

1 Name of Act

This Act is the *Victims Rights and Support Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act:

agency means any of the following:

- (a) a Government agency,
- (b) a person or non-government agency funded by the State to provide support services to victims of crime.

Charter of Victims Rights means the Charter set out in section 6.

Commissioner means the Commissioner of Victims Rights.

conviction includes:

- (a) an order made under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, and
- (b) except in Part 5, an order made under section 33 of the *Children (Criminal Proceedings) Act 1987* (other than section 33 (1) (a) (i)).

Director-General means the Director-General of the Department of Attorney General and Justice.

function includes a power, authority or duty and **exercise** a function includes perform a duty.

Fund means the Victims Support Fund.

Scheme means the Victims Support Scheme established by this Act.

support services include welfare, health, counselling and legal assistance services.

Tribunal means the Administrative Decisions Tribunal.

victim of an act of violence—see section 18.

victim of crime—see section 5.

Victims Advisory Board means the Victims Advisory Board established by this Act.

victims support—see section 18.

- (2) Notes included in this Act do not form part of this Act.

Part 2 Victims rights

Division 1 Preliminary

4 Object of Part

The object of this Part is to recognise and promote the rights of victims of crime.

5 Meaning of “victim of crime”

- (1) For the purposes of this Part, a *victim of crime* is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence.
- (2) A person suffers *harm* if, as a result of such an act:
 - (a) the person suffers actual physical bodily harm or psychological or psychiatric harm, or
 - (b) the person’s property is deliberately taken, destroyed or damaged.
- (3) If the person dies as a result of the act concerned, a member of the person’s immediate family is also a victim of crime for the purposes of this Part.
- (4) If a person dies as a result of the act concerned and there is more than one member of the person’s immediate family, members of the immediate family may nominate a representative for the purposes of the Charter of Victims Rights.

Division 2 Charter of Victims Rights

6 Charter of rights of victims of crime

The following comprises the Charter of rights of victims of crime:

6.1 Courtesy, compassion and respect

A victim will be treated with courtesy, compassion, cultural sensitivity and respect for the victim’s rights and dignity.

6.2 Information about services and remedies

A victim will be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

6.3 Access to services

A victim will have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

6.4 Information about investigation of the crime

A victim will, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim will be informed accordingly.

6.5 Information about prosecution of accused

- (1) A victim will be informed in a timely manner of the following:
 - (a) the charges laid against the accused or the reasons for not laying charges,
 - (b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,
 - (c) the date and place of hearing of any charge laid against the accused,
 - (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.
- (2) A victim will be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless:
 - (a) the victim has indicated that he or she does not wish to be so consulted, or
 - (b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.

6.6 Information about trial process and role as witness

A victim who is a witness in the trial for the crime will be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

6.7 Protection from contact with accused

A victim will be protected from unnecessary contact with the accused and defence witnesses during the course of court proceedings.

6.8 Protection of identity of victim

A victim's residential address and telephone number will not be disclosed unless a court otherwise directs.

6.9 Attendance at preliminary hearings

A victim will be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

6.10 Return of property of victim held by State

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim will be minimised and the property returned promptly.

6.11 Protection from accused

A victim's need or perceived need for protection will be put before a bail authority by the prosecutor in any bail application by the accused.

6.12 Information about special bail conditions

A victim will be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

6.13 Information about outcome of bail application

A victim will be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

6.14 Victim impact statement

A relevant victim will have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

6.15 Information about impending release, escape or eligibility for absence from custody

A victim will, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

6.16 Submissions on parole and eligibility for absence from custody of serious offenders

A victim will, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

6.17 Financial assistance for victims of personal violence

A victim of a crime involving sexual or other serious personal violence is entitled to make a claim under the Victims Support Scheme.

6.18 Information about complaint procedure where Charter is breached

A victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making such a complaint.

7 Implementation of Charter

- (1) The Charter of Victims Rights is, as far as practicable and appropriate, to govern the treatment of victims in the administration of the affairs of the State.
- (2) Any agency or person exercising official functions in the administration of the affairs of the State (other than judicial functions) must, to the extent that it is relevant and practicable to do so, have regard to the Charter of Victims Rights in addition to any other relevant matter.
- (3) In this section, the *administration of the affairs of the State* includes the following:
 - (a) the administration of justice,
 - (b) the provision of police services,

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Part 2 Victims rights

- (c) the administration of any department of the Government,
- (d) the provision of services to victims of crime by any person or non-government agency funded by the State to provide those services.

Part 3 Administration

Division 1 Commissioner of Victims Rights

8 Commissioner and other staff

- (1) A Commissioner of Victims Rights and such other staff as are necessary for the purposes of this Act are to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.
- (2) The Commissioner may arrange for the use of the services of any staff or facilities of a Government agency and may, with the approval of the Director-General, engage such consultants or contractors as are necessary for the purposes of this Act.

9 Functions generally of Commissioner

- (1) The Commissioner has and may exercise such functions as are conferred or imposed on the Commissioner by or under this or any other Act.
- (2) The Commissioner may delegate the exercise of any function of the Commissioner (other than this power of delegation) to the following:
 - (a) any member of staff referred to in section 8,
 - (b) any person of a class prescribed by the regulations.

10 Functions of Commissioner

- (1) The Commissioner has the following functions:
 - (a) to provide information to victims of crime (and members of the immediate family of missing persons) about support services and assistance for victims of crime and such persons, and to assist victims of crime in the exercise of their rights,
 - (b) to co-ordinate the delivery of support services for victims of crime and members of the immediate family of missing persons and to encourage the effective and efficient delivery of those services,
 - (c) to promote and oversee the implementation of the Charter of Victims Rights, including by publishing codes, guidelines and other practical guidance on the implementation of the Charter,
 - (d) to make recommendations to assist agencies to improve their compliance with the Charter of Victims Rights, including but not limited to conducting training and recommending changes to policies and procedures,
 - (e) to receive complaints from victims of crime (and members of the immediate family of missing persons) about alleged breaches of

the Charter of Victims Rights and to use the Commissioner's best endeavours to resolve the complaints,

- (f) to recommend that agencies apologise to victims of crime for breaches of the Charter of Victims Rights,
 - (g) to conduct, promote and monitor training, public awareness activities and research on victims of crime,
 - (h) to conduct reviews and inquiries, or both, on issues relating to victims of crime at the request of the Attorney General,
 - (i) to consider, and determine, applications under this Act for victims support.
- (2) This section does not affect the exercise of functions of the Director-General under the *Public Sector Employment and Management Act 2002* with respect to the Commissioner.

11 Inquiries and investigations

The Commissioner may, in connection with the exercise of the functions of the Commissioner under this Act, make such inquiries and undertake such investigations as the Commissioner considers necessary.

12 Powers of Commissioner to compel production of information

- (1) The Commissioner may, by notice in writing, request that any person provide, or require any Government agency to provide, the Commissioner with information (including documents) relevant to the exercise of the Commissioner's functions under this Act.
- (2) Any such notice may specify a day on or before which the information is required to be provided.
- (3) A person who provides the Commissioner with information that the person knows is false or misleading in a material particular is guilty of an offence.
Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.
- (4) If documents are given to the Commissioner under this section, the Commissioner:
 - (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for the purposes of exercising the function concerned, and

- (c) during that period must permit the documents to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Commissioner.
- (5) A Government agency is not required to provide any information under this section if there is an overriding public interest against the disclosure of the information for the purposes of the *Government Information (Public Access) Act 2009* or if access to the information would otherwise be denied under that Act.

13 Report to Parliament

- (1) The Commissioner may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of the Commissioner's functions, including in connection with the implementation of the Charter of Victims Rights.
- (2) Without limiting subsection (1), the Commissioner may make such a special report with respect to any breaches by an agency of the Charter of Victims Rights, if the Commissioner considers it to be appropriate to do so.
- (3) Before making the report, the Commissioner is to advise the head of the agency concerned and consult that head.
- (4) A copy of a report given to the Minister under subsection (1) is to be laid before Parliament within 14 sitting days after it is given.
- (5) The annual report of the work of the Commissioner is to be included in the annual report of the Department of Attorney General and Justice.

Division 2 Victims Support Fund

14 Victims Support Fund

- (1) There is established in the Special Deposits Account a fund called the Victims Support Fund.
- (2) The Director-General has the control and management of the Fund.
- (3) The Director-General may invest money in the Fund:
 - (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
 - (b) if that Act does not confer power on the Department of Attorney General and Justice to invest that money—in any manner authorised for the investment of trust funds.

15 Payments into Fund

The following are to be paid into the Fund:

- (a) all proceeds confiscated under the *Confiscation of Proceeds of Crime Act 1989*,
- (b) all money required by the *Criminal Assets Recovery Act 1990* to be credited to the Fund,
- (c) all money recovered under Parts 5 and 7 of this Act,
- (d) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act,
- (e) all other money required by or under this or any other Act to be paid into the Fund,
- (f) all fines paid for offences under section 89 (Avoidance of liabilities).

16 Payments from Fund

The following are to be paid from the Fund:

- (a) all payments with respect to victims support under this Act,
- (b) all expenses incurred by the Commissioner and other staff in the exercise of their functions under this Act,
- (c) all expenses incurred by the Commissioner and the Victims Advisory Board under this Act and any other expenses incurred in the provision of victims support services (including Tribunal and other administration expenses) approved by the Minister,
- (d) all fees to which the NSW Trustee and Guardian is entitled under section 53 of the *Confiscation of Proceeds of Crime Act 1989*,
- (e) all expenses incurred in the administration or management of the Fund,
- (f) all other payments required by or under this Act to be paid from the Fund.

Part 4 Victims Support Scheme

Division 1 Preliminary

17 Object of Part

The object of this Part is to establish a scheme for the provision of support for victims of acts of violence.

18 Definitions

In this Act:

act of violence—see section 19.

approved means approved by the Commissioner.

approved counselling services—see section 31.

family victim—see section 22.

financial support means the following:

- (a) financial assistance for immediate needs under section 26 (1) (b) or 29 (1) (b),
- (b) financial assistance in respect of economic loss under section 26 (1) (c), 27 or 29 (1) (d),
- (c) funeral expenses under section 29 (1) (c).

grievous bodily harm includes the destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm.

injury means actual bodily harm, grievous bodily harm or psychological or psychiatric harm but does not include injury arising from loss or damage to property.

primary victim—see section 20.

recognition payment—see section 34.

secondary victim—see section 21.

sexual assault and domestic violence—see section 19 (8).

victim of an act of violence means a primary victim, secondary victim or family victim of the act of violence.

victims support means support in the form of approved counselling services, financial support or a recognition payment under the Scheme.

19 Meaning of “act of violence”

- (1) In this Act, *act of violence* means an act or series of related acts, whether committed by one or more persons:
- (a) that has apparently occurred in the course of the commission of an offence, and
 - (b) that has involved violent conduct against one or more persons, and
 - (c) that has resulted in injury or death to one or more of those persons.
- (2) For the avoidance of doubt, the reference to an offence in subsection (1) (a) extends to conduct of a person that would constitute an offence were it not for the fact that the person cannot, or might not, be held to be criminally responsible for the conduct because of the person’s age or mental illness or impairment.
- (3) For the purposes of this section, violent conduct extends to sexual assault and domestic violence.
- (4) Except as provided by subsections (5) and (6), a *series of related acts* is two or more acts that are related because:
- (a) they were committed against the same person, and
 - (b) in the opinion of the Tribunal or the Commissioner:
 - (i) they were committed at approximately the same time, or
 - (ii) they were committed over a period of time by the same person or group of persons, or
 - (iii) they were, for any other reason, related to each other.
- (5) An act is not related to another act if, in the opinion of the Tribunal or the Commissioner, having regard to the particular circumstances of those acts, they ought not to be treated as related acts.
- (6) An act is not related to any earlier act in respect of which support is given under this Act if it occurs after the support is given.
- (7) For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of violence.
- (8) In this Act:
sexual assault and domestic violence means any of the following:
- (a) sexual intercourse (within the meaning of section 61H of the *Crimes Act 1900*) with a person without his or her consent or with consent obtained by means of a non-violent threat,

-
- (b) sexual intercourse (within the meaning of section 61H of the *Crimes Act 1900*) with a child under the age of 16 years or with a person having a cognitive impairment (within the meaning of that section),
 - (c) self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat (within the meaning of that section),
 - (d) the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person,
 - (e) participation with a child under the age of 18 years in an act of child prostitution (within the meaning of section 91C of the *Crimes Act 1900*) or the use of a child under the age of 18 years for the production of child abuse material (within the meaning of section 91FB of the *Crimes Act 1900*),
 - (f) any other act resulting in injury that occurred in the commission of a personal violence offence (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*) against any of the following persons:
 - (i) a person who is or has been married to the person who committed the offence,
 - (ii) a person who is or has been a de facto partner of the person who committed the offence,
 - (iii) a person who has or has had an intimate personal relationship with the person who committed the offence, whether or not the intimate relationship involves or has involved a relationship of a sexual nature,
 - (iv) a person who, at the time of the offence, was living in the same household as the person who committed the offence,
 - (v) a person who, at the time of the offence, was living as a long-term resident in the same residential facility as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*),
 - (vi) a person who, at the time of the offence, had a relationship involving his or her dependence on the ongoing paid or unpaid care of the person who committed the offence,
 - (vii) a person who is or has been a parent, guardian or step-parent of the person who committed the offence,

- (viii) a person who is or has been a child or step-child of the person who committed the offence, or some other child of whom the person is the guardian,
- (ix) a person who is or has been a brother, sister, half-brother, half-sister, step-brother or step-sister of the person who committed the offence.

20 Meaning of “primary victim”

- (1) A *primary victim* of an act of violence is a person who is injured, or dies, as a direct result of that act.
- (2) A primary victim of an act of violence extends to a person who is injured, or dies, as a direct result of:
 - (a) trying to prevent another person from committing that act, or
 - (b) trying to help or rescue another person against whom that act is being committed or has just been committed, or
 - (c) trying to arrest another person who is committing, or who has just committed, that act.

21 Meaning of “secondary victim”

- (1) A *secondary victim* of an act of violence is 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.
- (2) A secondary victim of an act of violence extends to a person who is injured as a direct result of subsequently becoming aware of the act of violence that resulted in the injury to, or death of, the primary victim of that act, but only if:
 - (a) the person is the parent or guardian of the primary victim of that act, and
 - (b) the primary victim was under the age of 18 years at the time of that act, and
 - (c) the person did not commit that act.

The person is taken, for the purposes of this Act, to have witnessed the act of violence.
- (3) For the purposes of this section, a primary victim does not include a person who is a primary victim only because of the operation of section 20 (2).

22 Meaning of “family victim”

- (1) A *family victim* of an act of violence is a person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act.
- (2) It is immaterial whether or not the person suffers an injury in connection with the act of violence or death.
- (3) A *member of the immediate family* of a primary victim is:
 - (a) the victim’s spouse, or
 - (b) the victim’s de facto partner who has cohabited with the victim for at least 2 years, or
 - (c) a parent, guardian or step-parent of the victim, or
 - (d) a child or step-child of the victim or some other child of whom the victim is the guardian, or
 - (e) a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim.

Note. “De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

Division 2 Eligibility for support**23 Eligibility for support**

- (1) A primary victim of an act of violence is eligible for the support under the Scheme described in section 26.
- (2) A parent, step-parent or guardian who is caring for a child who is a primary victim of an act of violence is eligible for the support under the Scheme described in section 27.
- (3) A secondary victim of an act of violence is eligible for the support under the Scheme described in section 28.
- (4) A family victim of an act of violence is eligible for the support under the Scheme described in section 29.

24 Death of victim

- (1) A primary victim who dies ceases to be eligible for support under the Scheme, but a family victim may then become eligible for support under the Scheme. Any pending application for support made by or on behalf of the primary victim does not survive the death of the primary victim.
- (2) A family victim who dies ceases to be eligible for victims support. Any pending application made by or on behalf of a family victim does not survive the death of the family victim.

25 Persons not eligible for support

(1) Claimants for court compensation awards

A person is not eligible to receive victims support in respect of an act of violence if the person has been paid, or is entitled to be paid, compensation awarded by a court in respect of that act under Part 6 or if the person's application for such compensation is pending.

(2) Motor vehicle accidents

A person is not eligible to receive victims support in respect of an act of violence if that act took the form of, or the injury arose as a consequence of, a motor accident within the meaning of the *Motor Accidents Compensation Act 1999*.

(3) Offenders

A person is not eligible to receive victims support in respect of an act of violence if it occurred while the person was engaged in behaviour constituting an offence.

(4) Convicted inmates

A person is not, except as provided by subsection (5), eligible to receive victims support in respect of an act of violence if it occurred while the person was imprisoned as a convicted inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999* (unless the person was imprisoned only because of the person's failure to pay a pecuniary penalty).

(5) Exception to ineligibility of convicted inmates

However, any such convicted inmate may, in special circumstances, receive victims support. Any such support is not to be given unless the Commissioner is satisfied that the special circumstances of the case justify an exception being made to the general ineligibility of convicted inmates.

(6) Without limiting subsection (5), the Commissioner may determine that special circumstances exist if the convicted inmate is seriously and permanently injured as a result of the act of violence concerned.

(7) Regulations may be made for the purposes of this section prescribing the persons, or class of persons, who are not eligible to receive victims support in respect of an act of violence.

Division 3 Composition of support

26 Composition of support—primary victims

- (1) The support under the Scheme for which a primary victim of an act of violence is eligible comprises the following:
 - (a) approved counselling services with respect to that act of violence,
 - (b) financial assistance for immediate needs up to a maximum amount in total prescribed by the regulations to cover expenses for treatment or other measures that need to be taken urgently, as a direct result of that act of violence, to secure the victim's safety, health or well being,
 - (c) financial assistance of up to a maximum amount in total prescribed by the regulations for the economic loss suffered by the primary victim as a direct result of that act of violence of a kind described in the regulations,
 - (d) if a recognition payment is payable under this Part in respect of the act of violence—that recognition payment.
- (2) Financial assistance for which a primary victim of an act of violence is eligible is reduced by the total amount paid or approved for payment to the victim's parent, step-parent or guardian under section 27 in respect of that act of violence.

27 Composition of support—parent, step-parent or guardian of child primary victim

- (1) A parent, step-parent or guardian who is caring for a child who is the primary victim of an act of violence is eligible for financial assistance of up to a maximum amount in total prescribed by the regulations for the economic loss arising as a direct result of that act of violence of a kind described in the regulations.
- (2) Financial assistance for which a parent, step-parent or guardian is eligible under this section is reduced by the total amount paid or approved for payment to the primary victim under section 26 (1) (c) in respect of that act of violence.

28 Composition of support—secondary victims

The support under the Scheme for which a secondary victim of an act of violence is eligible comprises approved counselling services with respect to the act of violence.

29 Composition of support—family victims

- (1) The support under the Scheme for which a family victim of an act of violence is eligible comprises the following:
 - (a) approved counselling services,
 - (b) financial assistance for immediate needs up to a maximum amount in total prescribed by the regulations to cover expenses of measures that need to be taken urgently, as a direct result of that act of violence, to secure the victim's safety, health or well being (less any amount payable under section 47),
 - (c) a payment of up to a maximum amount in total prescribed by the regulations for funeral expenses actually incurred, or reasonably likely to be incurred, by the family victim for the funeral of the primary victim who died as a result of that act of violence (less any amount payable under section 47),
 - (d) financial assistance of up to a maximum amount in total prescribed by the regulations for economic loss suffered by the family victim as a direct result of that act of violence of a kind described in the regulations.
- (2) If more than one family victim is eligible for a payment under subsection (1) (c) in relation to the same act of violence, the total amount that may be granted for funeral expenses to all such family victims is the maximum amount prescribed by the regulations, less any amount payable under section 47.

Note. Section 47 provides for direct reimbursement of funeral expenses to persons other than family victims.
- (3) In addition, if a recognition payment is payable under this Part in respect of the relevant act of violence, each family member who is a parent, step-parent or guardian or a dependent family member is eligible to be given that recognition payment.
- (4) A family victim is a *dependent family member* for the purposes of this section if:
 - (a) the person was financially dependent on the primary victim at the relevant time, or
 - (b) the person is a child of the primary victim born after the death of the victim where, had the child been born in the victim's lifetime, the child would have been a financially dependent family member of the victim by virtue of paragraph (a).

30 Financial assistance

- (1) Financial assistance under this Part may take the form of a grant, allowance, refund of expenditure, direct payment of an invoice, or any other form of financial assistance that the Commissioner may approve generally, or in a particular case or class of cases.
- (2) Financial assistance is not payable to a victim of an act of violence or the parent, step-parent or guardian of a victim, to the extent that the victim, parent, step-parent or guardian has received, or is entitled to receive, payment for that loss arising from that act of violence under any insurance or agreement or arrangement under any other Act or law.
- (3) The regulations may make provision for or with respect to any of the following:
 - (a) the particular kinds of expenses for immediate needs or economic loss for which a person may or may not be given financial assistance under this Part,
 - (b) the maximum amount that a person may be given under this Part in respect of a particular kind of expense for immediate needs or for economic loss,
 - (c) the circumstances in which a person may be given financial assistance,
 - (d) the maximum amount that a person may be given under this Part in respect of a particular kind of economic loss.

Division 4 Approved counselling services**31 Approved counselling services**

- (1) The Commissioner may:
 - (a) approve professional counsellors who may provide approved counselling services for the purposes of this Act, or
 - (b) in the case of counselling services to be provided to a victim of an act of violence who is resident outside Australia—give approval for the victim to select a professional counsellor of the victim's choice to provide the victim with approved counselling services for the purposes of this Act.
- (2) The Commissioner 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.

32 Authorisation of payments for approved counselling services

- (1) The regulations may make provision for or with respect to the authorisation of payments for or in relation to approved counselling services provided to victims of acts of violence (whether resident in Australia or elsewhere), including the application (with or without modification) of the provisions of this Act relating to financial support or recognition payments.
- (2) The regulations may make provision for or with respect to the provision of approved counselling services, and authorisation of payments for such services, to persons who are relatives of primary victims who have died as a result of an act of violence, but who are not family victims within the meaning of this Act.

33 Amount of payments

- (1) Payment for or in relation to approved counselling services under this Act may take the form of a grant, allowance, refund of expenditure, direct payment of an invoice, or any other form of payment that the Commissioner may approve generally, or in a particular case or class of cases.
- (2) The amount of the payment for approved counselling services is the amount, or amount determined in the manner, prescribed by the regulations.

Division 5 Recognition payments

34 Definitions

In this Division:

category of recognition payment means a category of recognition payment described in section 35.

indecent assault means the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person.

recognition payment means a payment made in recognition of the trauma suffered by a victim of an act of violence.

series of related acts has the same meaning as in section 19 (4).

sexual assault has the meaning it has in paragraph (a), (b), (c) or (e) of the definition of *sexual assault and domestic violence* in section 19 (8).

35 Categories of recognition payment

- (1) A *category A recognition payment* is a payment given in respect of an act of violence that apparently occurred in the course of the commission of a homicide.
- (2) A *category B recognition payment* is a payment given in respect of an act of violence of the following kinds:
 - (a) a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons,
 - (b) a sexual assault, indecent assault or attempted sexual assault involving violence that is one of a series of related acts.
- (3) A *category C recognition payment* is a payment given in respect of an act of violence involving any of the following:
 - (a) a sexual assault other than one referred to in subsection (2) (b),
 - (b) an attempted sexual assault resulting in serious bodily injury,
 - (c) an assault resulting in grievous bodily harm,
 - (d) physical assault of a child that is one of a series of related acts.
- (4) A *category D recognition payment* is a payment given in respect of an act of violence involving any of the following:
 - (a) an indecent assault,
 - (b) an attempted sexual assault involving violence other than one referred to in subsection (3) (b),
 - (c) a robbery involving violence,
 - (d) an assault (not resulting in grievous bodily harm).

36 Recognition payments

- (1) Recognition payments are payable as follows:
 - (a) a category A recognition payment of an amount prescribed by the regulations is payable to a family victim who, immediately before the death of a primary victim of an act of violence described in section 35 (1), was financially dependent on the primary victim,
 - (b) a category A recognition payment of an amount prescribed by the regulations is payable to each parent, step-parent or guardian of a primary victim who died as a result of an act of violence described in section 35 (1),
 - (c) a category B recognition payment of an amount prescribed by the regulations is payable to a primary victim who suffered injury as a result of an act of violence described in section 35 (2),

- (d) a category C recognition payment of an amount prescribed by the regulations is payable to a primary victim who suffered injury as a result of an act of violence described in section 35 (3),
 - (e) a category D recognition payment of an amount prescribed by the regulations is payable to a primary victim who suffered injury as a result of an act of violence described in section 35 (4).
- (2) Only one recognition payment is payable to a single victim in respect of a series of related acts of violence against the victim.

37 Regulations

The regulations may make provision for or with respect to:

- (a) the kind of acts of violence in respect of which a particular category of recognition payment may be made under this Division, or
- (b) the circumstances in which a recognition payment is payable under this Division.

Division 6 Applications for victims support

38 Applications for victims support

- (1) An application for victims support may be made by the following:
- (a) a victim of an act of violence,
 - (b) a parent, step-parent or guardian of a primary victim who is a child,
 - (c) any other person, on behalf of a victim, who has a genuine interest in the welfare of that victim.
- (2) The application is to be made to the Commissioner in the approved form, which is to be supplied by the Commissioner free of charge.

39 Documentary evidence

- (1) An application for victims support is to be accompanied by such documentary evidence as may be required by the approved form.
- (2) Without limiting subsection (1), the documentary evidence to be required:
- (a) for an application for financial assistance for immediate needs under section 26—is documentary evidence (such as a medical or police report) sufficient to support, on the balance of probability, the applicant's claim to be a victim of an act of violence, and
 - (b) for an application for financial assistance for economic loss under section 26 or 27 or for a recognition payment—is a police report

or report of a Government agency and 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.

- (3) An application for financial assistance under section 26 (1) (c), 27 or 29 is to give full particulars of any economic loss for which the assistance is sought.
- (4) The application is to include:
 - (a) in the case of actual expenses—receipts, invoices or other approved forms of substantiation of the expenditure incurred or to be incurred, or
 - (b) in the case of actual loss of earnings—the name and address of the employer, the period of absence from work and a statement from the employer substantiating those particulars.

40 Time for lodging, and duration of, applications

- (1) Except as provided by subsections (2) and (3), an application for financial support must be duly made within 2 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, within 2 years after the day on which the child concerned turns 18 years of age.
- (2) An application for financial support or a recognition payment may be made by a family victim more than 2 years after the relevant act of violence that resulted in the death of the primary victim occurred if it was only established (whether or not by a court) that the primary victim died as a direct result of the relevant act of violence subsequently to the occurrence.
- (3) In the circumstances described in subsection (2), an application for financial support may be duly made within 2 years after it is established that the primary victim died as a direct result of the relevant act of violence.
- (4) Except as provided by subsection (5), an application for a recognition payment must be duly made within 2 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, within 2 years after the day on which the child concerned turns 18 years of age.
- (5) An application for a recognition payment in respect of an act of violence involving domestic violence, child abuse or sexual assault must be duly made within 10 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, within 10 years after the day on which the child concerned turns 18 years of age.

- (6) Claims may continue to be made under an application that is duly made in respect of an act of violence until whichever of the following first occurs:
- (a) the expiration of the period of 5 years after the application is made,
 - (b) the total maximum amount of financial support that the victim is eligible to receive under this Act in respect of that act of violence has been given.
- (7) This section (other than subsection (6)) does not apply to an application for financial support, being for financial assistance of a kind specified in clause 8 (2) (b) or (d) of the *Victims Rights and Support Regulation 2013*, or a recognition payment for a person who is a primary victim of an act of violence that occurs in the course of the commission of a sexual offence against the person when the person is under 18 years of age. There is no time limit on when such an application can be made.

41 Withdrawal of application

- (1) An applicant for victims support may withdraw his or her application at any time before the application is determined by written notice to the Commissioner.
- (2) The withdrawal of an application for victims support under this section does not prevent the applicant from making another application for support.

42 Consideration of applications

- (1) Each duly made application for victims support is to be considered by the Commissioner.
- (2) The Director-General or any other public servant may not direct, overrule or interfere with a determination of the Commissioner with respect to an application for victims support.

43 Determination of applications

- (1) After considering an application for victims support, the Commissioner must determine the application:
 - (a) by approving the giving of the victims support, or
 - (b) by dismissing the application.
- (2) The Commissioner may defer the determination of the application if the Commissioner is of the opinion that there are relevant matters requiring further consideration or clarification.

Note. Section 11 enables the Commissioner to carry out inquiries and investigations with respect to applications.

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- (3) The Commissioner must not approve the giving of victims support unless satisfied that the person to whom the application relates:
 - (a) is a primary victim, secondary victim or family victim of an act of violence or is a parent, step-parent or guardian who is caring for a child who is a primary victim of an act of violence, and
 - (b) is eligible to receive the victims support concerned.
 - (4) Written notice is to be given to the applicant of the determination of the application.
 - (5) If approval is given, the notice must include a statement of the amount (if any) payable by way of financial support (including whether for immediate needs or economic loss, or both) or by way of recognition payment, together with a statement of the reasons for approving the giving of those amounts.
 - (6) If the application is dismissed, the notice must include a statement of the reasons for the dismissal.

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

- (1) 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, the Commissioner must have regard to the following:
 - (a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim,
 - (b) whether the act of violence was reported to a police officer within a reasonable time,
 - (c) whether the act of violence was reported to a relevant health professional or practitioner, or a relevant agency,
 - (d) whether the victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed,
 - (e) whether the victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed,

- (f) whether the victim failed to take reasonable steps to mitigate the extent of the injury sustained by the victim, such as seeking appropriate medical advice or treatment, as soon as practicable after the act of violence was committed,
 - (g) such other matters as the Commissioner considers relevant.
- (2) In determining whether a matter relating to a victim was reported to a police officer within a reasonable time, the Commissioner may have regard to such matters as the Commissioner considers relevant, including the following:
- (a) the age of the victim when the act of violence is alleged to have occurred,
 - (b) any intellectual or psychiatric disability to which the victim is subject,
 - (c) the nature of the relationship between the victim and the person or persons by whom the act of violence is alleged to have been committed,
 - (d) any fear of retaliation by any such person or persons to which the victim is subject,
 - (e) the nature of any injury alleged to have been sustained by the victim,
 - (f) any representation made by or on behalf of a police officer to a victim as to whether he or she should withdraw his or her complaint in relation to the act of violence or consent to no further action being taken in relation to the act of violence.
- (3) In determining the matter referred to in subsection (1) (f) in the case of an act of violence involving sexual assault or domestic violence, the Commissioner must have regard to the nature of the relationship between the victim and the person or persons by whom the act of violence is alleged to have been committed.
- (4) In determining the amount of financial support to be given or the recognition payment to be made to a person, the Commissioner must have regard to:
- (a) any amount that has been paid to the person or that the person is entitled to be paid:
 - (i) by way of damages awarded in civil proceedings, or
 - (ii) under any other Act or law (including workers compensation), or
 - (iii) under any insurance or other agreement or arrangement, and

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- (b) any other amount that has been received by the person or that (in the opinion of the Commissioner) is likely to be received by the person,
- in respect of the act of violence to which the application for financial support or a recognition payment relates.
- (5) If the Commissioner is satisfied that the applicant may be entitled to workers compensation (or payment in the nature of workers compensation) in respect of the act of violence to which the application relates, the Commissioner is to postpone the determination of the application until any entitlements to workers compensation have been determined.
- (6) If the Commissioner is satisfied that the applicant may be entitled to death and disability payments under Part 9B of the *Police Act 1990* in respect of the act of violence to which the application relates, the Commissioner is to postpone the determination of the application until any entitlements to those payments have been determined.
- (7) The Commissioner may postpone the determination of a person's application pending the determination of another application for financial support or a recognition payment if the person has been convicted of an offence that is a *relevant offence* under section 58 in relation to that other application.

45 Determination for restitution may be set off against amount of financial support or recognition payment

- (1) For the purpose of giving effect to a determination for restitution under Part 5 that has been made or is to be made against a person in respect of whom approval for the giving of financial support or making of a recognition payment has been given, the Commissioner may reduce the amount of financial support to be given or recognition payment to be made by the amount of the determination for restitution or proposed determination for restitution.
- (2) On the reduction under this section of the amount of victims support to be given or made, the person is taken to have paid the amount of the determination or proposed determination for restitution to the extent of the reduction.

46 Persons to whom financial support or recognition payment may be made

- (1) The financial support or recognition payment approved by the Commissioner under section 43 may be made payable:
- (a) to the person to whom the application for such victims support relates, or
- (b) to any other person for the benefit of that person.

- (2) In making a decision as to whom the victims support should be made payable, the Commissioner must have regard to the likelihood that a person by whom an act of violence was allegedly committed may receive the benefit of the victims support or any part of it.
- (3) Sections 77, 78 and 79 of the *Civil Procedure Act 2005* apply to money payable under this section in the same way as they apply to money recovered as referred to in section 77 (1) of that Act.

47 Reimbursement of persons who incur funeral and certain other expenses

- (1) This section applies if the following expenses have been incurred by a person who is not eligible for support in the form of financial assistance for immediate needs or payment of funeral expenses under section 29 as a family victim:
 - (a) expenses relating to the funeral of a primary victim of an act of violence,
 - (b) expenses associated with cleaning up damage caused to premises and property as a direct result of an act of violence.
- (2) The person may apply to the Commissioner for payment of the amount of the reasonable expenses incurred by the person.
- (3) The Commissioner may approve payment to the person of an amount not exceeding the maximum amount in total prescribed by the regulations and that the Commissioner considers to be fair and reasonable.
- (4) Any such payment:
 - (a) is to be paid from the amount of financial assistance for immediate needs or payment of funeral expenses for which the family victims are eligible under section 29, and
 - (b) is taken to be an approval for the giving of such financial assistance despite section 29.
- (5) Accordingly, and despite section 29, the amount payable to the family victims concerned may be reduced if an application for payment of reasonable expenses is approved by the Commissioner under this section.

48 Victims support may be approved subject to conditions

- (1) Approval for the giving of financial support or making of a recognition payment may be given by the Commissioner subject to any of the following conditions:
 - (a) notification to the Commissioner of such matters (including matters relating to the financial circumstances of the person to or

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- for whose benefit the approval is given) as may be specified in the notice of determination relating to the approval,
- (b) assignment by the person to or for whose benefit the approval is given of that person's right to any entitlement that the person has by way of damages awarded in civil proceedings,
 - (c) repayment of the whole or any part of the amount of the financial support or recognition payment under such circumstances as may be specified in the notice of determination relating to the approval,
 - (d) in the case of victims support that is payable to a person for the benefit of some other person:
 - (i) as to the payment of the money received under the approval to or for the benefit of that other person, or
 - (ii) as to the holding of the whole or any part of that money on trust for that other person.
- (2) An approval of victims support is subject to the following conditions:
- (a) the person to or for whose benefit the approval is given (other than a family victim) must notify the Commissioner of any money received in the future from other sources in connection with the injuries, expenses and losses taken into account in giving the approval,
 - (b) the person to or for whose benefit the approval is given (other than a family victim) must repay from the amount approved any such future amounts referred to in paragraph (a) on demand by the Commissioner,
 - (c) the person to or for whose benefit the approval is given must repay to the Commissioner the amount approved if it is subsequently ascertained that the approval was obtained by fraud or collusion,
 - (d) the person to or for whose benefit the approval is given (if a primary victim of an act of violence) is to provide reasonable assistance to any person or body engaged in the official investigation of the act of violence.
- (3) The regulations may prescribe other conditions to which an approval of victims support is subject.
- (4) An amount that is required to be repaid in accordance with the conditions to which an approval of victims support is subject and that is not repaid may be recovered by the Commissioner as if it were a debt due to the Commissioner.

Division 7 Review of decisions concerning victims support

49 Internal review of victims support decisions

- (1) An applicant for victims support may apply to the Commissioner for an internal review of the decision made by a person to whom the Commissioner has delegated the Commissioner's functions with respect to an application for victims support (in this Division called the *decision maker*).
- (2) The application must be made within 28 days after the day on which the applicant is given notice of the decision maker's decision.
- (3) An application for an internal review must be in writing and state fully the grounds of the application.
- (4) An internal review is to be done by making a new decision, as if the decision being reviewed (the *original decision*) had not been made, with the new decision being made as if it were being made when the application for support to which the review relates was originally received.
- (5) Within 42 days after the application for the internal review is lodged (or such other period as the Commissioner and the applicant agree on), the Commissioner must notify the applicant in writing of:
 - (a) the outcome of the internal review, and
 - (b) the reasons for the decision in the internal review, and
 - (c) the right of the person to have a decision with respect to a recognition payment reviewed by the Tribunal under section 51.

50 No internal review under the Administrative Decisions Tribunal Act 1997

- (1) The procedure for internal review of a decision provided for by this Part applies to the exclusion of section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* in the case of a decision with respect to a recognition payment.
- (2) A reference in the *Administrative Decisions Tribunal Act 1997* to internal review of a reviewable decision under that Act is, in its application to a decision with respect to a recognition payment under this Part, to be read as a reference to internal review of the decision under this Part.

51 Application to Tribunal for review of decision concerning recognition payment

- (1) An applicant for a recognition payment who is aggrieved by the decision of a decision maker in respect of the application may apply to the Tribunal for review of a decision made by the Commissioner

following an internal review under section 49 of the decision maker's decision with respect to the recognition payment.

- (2) An applicant for a recognition payment who is aggrieved by the decision of the Commissioner in respect of the application may apply to the Tribunal for review of a decision made by the Commissioner.

52 Operation of other Administrative Decisions Tribunal Act 1997 provisions

- (1) The provisions of Division 2 (Effect of pending applications on reviewable decisions) of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* do not apply to an application to the Tribunal for review under this Division.
- (2) The provisions of sections 113 and 115 of the *Administrative Decisions Tribunal Act 1997* do not apply to any decisions with respect to recognition payments under this Act.

53 Payment of recognition payment suspended pending application to Tribunal

Subject to any order of the Tribunal to the contrary, an application to the Tribunal for review of a decision concerning a recognition payment suspends the application of section 16 in relation to the payment pending the determination of the review by the Tribunal.

Division 8 Victims support payments

54 Victims Support Fund to pay victims support

- (1) A claim for payment of the whole or any part of victims support for which approval is given by the Commissioner under section 43 is to be made to the Commissioner.
- (2) On receiving the application for payment, the Commissioner must (subject to the conditions of the approval and any deductions made in accordance with those conditions) pay the relevant amount to the person to whom it is payable.
- (3) The amount is to be paid out of the Fund or, if sufficient money is not available in that Fund, out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

55 Effect of approval on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom the giving of victims support has been approved under this Part on the basis of the same facts as those on which the civil proceedings are based.

- (2) Subject to subsection (3), approval of the giving of victims support does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings must be assessed without regard to the approval.
- (3) On the payment to a person of approved victims support, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the approval is based is, by operation of this section, subrogated to the State to the extent of the amount of support so paid.
- (4) This section does not limit the operation of section 74 or 102.

56 Recovery from fraudulent claimants

- (1) The Tribunal may, on application by the Commissioner, make an order for restitution for such amount as has been paid to a person as victims support if the person is convicted of:
 - (a) an offence of obtaining approval for the giving of victims support by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement, or
 - (b) an offence, in relation to the obtaining of such approval, of a kind prescribed by the regulations.
- (2) An order for restitution may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence.
- (3) The provisions of Part 5 relating to the recovery of money under an order for restitution and to the creation of charges on land under that Part apply to an order for restitution under this section.

Part 5 Recovery of victims support payments from offenders

Division 1 Preliminary

57 Object of Part

The object of this Part is to enable financial support paid and recognition payments made under the Scheme to be recovered from persons found guilty of the crimes giving rise to the payments.

58 Definitions

In this Part:

defendant means the person on whom a provisional order is served.

objection means notice by the defendant under section 62 of objection to the confirmation of a provisional order.

order for restitution means a provisional order that is confirmed by the Commissioner or the Tribunal under section 63, 64 or 67.

provisional order means a provisional order for restitution that is made by the Commissioner under section 59 or 60.

relevant offence means the following:

- (a) an offence arising from substantially the same facts as those constituting an act of violence in respect of which an approval for the giving of victims support has been given,
- (b) any other offence if an offence referred to in paragraph (a) 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,
- (c) an offence involving one or more acts of a series of related acts (within the meaning of section 19 (4)) in respect of which victims support is given under this Act.

review proceedings means proceedings of the Tribunal concerning the confirmation of a provisional order.

victim means a person to whom an amount has been paid under an approval for the giving of financial support or the making of a recognition payment under Part 4.

Division 2 Restitution by offenders

59 Commissioner's discretion to make provisional order for restitution by offender

- (1) If the Commissioner is of the opinion that, before or after an approval for the giving of financial support or making of a recognition payment is given, a person has been convicted of a relevant offence, the Commissioner may make a provisional order for restitution against the person.
- (2) A provisional order may not be made against a person if:
 - (a) 2 years or more have elapsed since:
 - (i) the end of the period in which a claim may be made under an application for victims support under section 40 (6), or
 - (ii) the date on which the person was convicted of the relevant offence,whichever is the later, or
 - (b) civil proceedings have been commenced or are being maintained against the person, by or on behalf of the State, in respect of an action for damages arising from substantially the same facts as those on which the relevant approval was based.

60 Commissioner's discretion to make provisional order for restitution by other person

- (1) If the Commissioner is of the opinion that a person against whom a provisional order has been made under section 59 has disposed of property as part of a scheme for the purpose of avoiding a liability (whether actual or potential) under this Division, the Commissioner 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) 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.
- (4) A provisional order may not be made under this section (and any such order that has been made ceases to be in force) if the order on which it is based is not confirmed or any consequent restitution order is set aside or ceases to be in force.

- (5) The total amount that may be recovered under an order under this section and under the order under section 59 on which it is based is not to exceed the amount payable under the order under section 59.

61 Notification of decision

- (1) The Commissioner must serve notice of a provisional order personally or by post on the person against whom it was made.
- (2) The notice must:
- (a) set out the terms of the order, and
 - (b) include a statement of the grounds on which the order was made, and
 - (c) set out the effect of sections 63 and 64, and
 - (d) set out an explanation of:
 - (i) the right to object, within 28 days after the notice is served, to the confirmation of the order and the procedure for objecting, and
 - (ii) the effect of objecting or failing to object.

62 Objection to provisional order

- (1) A person served with a notice of a provisional order may lodge a written objection to confirmation of the order with the Commissioner.
- (2) The objection must be lodged within 28 days (or such longer period, not exceeding 90 days, as the Commissioner may allow) after the notice was served.
- (3) The grounds for the objection must be stated fully and in detail in the objection.
- (4) On an objection, the defendant has the onus of proving the defendant's case.

63 Confirmation by Commissioner of provisional order if no objection

- (1) The Commissioner may confirm a provisional order without conducting a hearing if the Commissioner is satisfied that the person has not lodged an objection within 28 days after notice of the order was served on the person.
- (2) Before confirming such a provisional order, the Commissioner may vary the order by reducing the amount payable under it.
- (3) On confirmation of the provisional order under this section, the amount payable under the order may be recovered (subject to section 71) by the Commissioner under section 72.

64 Powers of Commissioner on objection

- (1) After considering an objection, the Commissioner may:
 - (a) allow the objection in whole or in part or disallow the objection, and
 - (b) accordingly reverse, vary or confirm the decision to which the objection was made.
- (2) On confirmation of the decision the amount payable under the provisional order concerned may be recovered (subject to section 71) by the Commissioner under section 72.
- (3) The Commissioner must discharge the provisional order concerned if the Commissioner reverses the original decision.
- (4) For the purpose of enabling a defendant to apply to the Tribunal for a review, the Commissioner is taken to have failed to determine an objection if 90 days have passed since the objection was lodged with the Commissioner.
- (5) The Commissioner's failure to determine an objection within the period referred to in subsection (4) does not prevent the Commissioner from continuing to deal with the objection after that period has expired.
- (6) In calculating a period referred to in subsection (4), the period between the date on which the Commissioner requests further information or supporting evidence from the defendant in relation to the objection and the date on which that further information or supporting evidence is furnished is excluded.

65 Notice of determination of objection

- (1) The Commissioner must give a defendant who makes an objection written notice of the determination of the objection.
- (2) The Commissioner must, in the notice, give the reasons for disallowing the objection or for allowing the objection in part only.
- (3) The reasons for a determination of an objection must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the determination.
- (4) The notice must also inform the defendant of the defendant's right to make an application for review under section 66 in the case of a determination to disallow the objection or to allow the objection in part only.

66 Reviews by Administrative Decisions Tribunal

- (1) The defendant may apply to the Tribunal for a review of the decision (the *original decision*) to which an objection was made if:
 - (a) the defendant is dissatisfied with the Commissioner's determination of the objection, or
 - (b) 90 days have passed as referred to in section 64 since the objection was lodged with the Commissioner and the Commissioner has not determined the objection.
- (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The applicant has the onus of proving the applicant's case in an application for review.
- (4) An application for review:
 - (a) following a determination by the Commissioner of an objection—must be made not later than 60 days after the date of issue of the notice of the Commissioner's determination of the objection, or
 - (b) following a failure of the Commissioner to determine an objection within the relevant 90-day period—may be made at any time after the end of that period (but must be made as required by paragraph (a) following a subsequent determination of the objection by the Commissioner).
- (5) The Tribunal may extend the time for making an application for review.
- (6) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section:
 - (a) Part 2 of Chapter 5,
 - (b) section 55 (1) (b) and (d),
 - (c) Division 2 of Part 3 of Chapter 5.
- (7) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:
 - (a) the obligation of the Commissioner under that paragraph to lodge a statement of reasons with the Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and
 - (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Commissioner—the Commissioner may rely on reasons previously given to the defendant by the Commissioner under this Act for the

determination of the objection in explanation of that part of the original decision.

67 Powers of Tribunal on review

- (1) On a review, the Tribunal may:
 - (a) confirm, vary or reverse the original decision the subject of review, and
 - (b) make any other orders it thinks fit.
- (2) This section does not limit the generality of Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.
- (3) The Tribunal may confirm a provisional order made under section 59 if satisfied that the applicant for review has been convicted of a relevant offence. If the Tribunal is not so satisfied, it must reverse the original decision.
- (4) The Tribunal may confirm a provisional order made under section 60 if satisfied that:
 - (a) a person against whom a provisional order has been made 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 applicant 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 reverse the original decision.

68 Arrangements for payment under order for restitution

- (1) The Commissioner and a defendant may enter into an arrangement with respect to payment under a provisional order or any such order that is confirmed.
- (2) Such an arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.
- (3) For the purpose of enabling the Commissioner and the defendant to come to such an arrangement, the Tribunal may adjourn review proceedings for such period as it considers appropriate.
- (4) If the defendant does not comply with such an arrangement, review proceedings may be taken by the Commissioner for the purposes of confirming the provisional order for the total amount payable under the order.

69 Provisions relating to orders for restitution confirmed by Tribunal

- (1) The Tribunal may reduce the amount to be paid under a provisional order that it confirms having regard to:
 - (a) the financial means of the defendant, and
 - (b) such other matters as are, in the opinion of the Tribunal, relevant to the determination.
- (2) The maximum amount that may be ordered to be paid under an order for restitution (whether made against one or more defendants) is the amount that has been paid to the victim under an approval for the giving of financial support or making of a recognition payment to which the order relates.
- (3) If an order for restitution is made against 2 or more defendants in respect of the same approval for the giving of financial support or making of a recognition payment, each of the defendants is jointly and severally liable under the order.
- (4) If the Tribunal decides under subsection (1) to reduce the amount payable by a defendant under an order made against 2 or more defendants, the Tribunal may confirm the order subject to the liability of the defendant concerned being limited under the order to an amount specified in the order.

70 Costs in review proceedings

The Tribunal does not have jurisdiction to order payment of costs in relation to review proceedings.

Note. Section 141 of the *Administrative Decisions Tribunal Act 1997* provides for payment of allowances and expenses of witnesses appearing or giving evidence before the Tribunal.

71 Orders for restitution to be subject to review of relevant approvals of victims support

- (1) An order for restitution does not have any effect:
 - (a) until the period within which an application may be made to the Tribunal for review of the decision to approve the making of a recognition payment from which it arises, or to which it relates, has expired, or
 - (b) if such an application is duly made within that period, until the application is finally determined.
- (2) If the approval of the making of a recognition payment to which such an application relates is set aside or varied as a result of the review, the order for restitution ceases to have effect.

- (3) In the event that the decision is varied, a new provisional order may be made in accordance with this Division as if the original order had not been made.

72 Enforcement of order for restitution

- (1) An order for restitution made against a person may be enforced by the Commissioner as if it were an order made in civil proceedings against the person to recover a debt due to the Commissioner.
- (2) The debt arising from the order is taken to be a judgment debt.
- (3) Money payable under an order for restitution and not paid may be written off in accordance with a relevant policy on the matter determined by the Minister.

73 Enforcement of orders for restitution by attachment of prison earnings

- (1) This section applies to an order for restitution in connection with a relevant offence for which the person liable under the order is convicted and sentenced to imprisonment or children's detention.
- (2) An amount payable under an order for restitution to which this section applies that is not paid by the due date may also be enforced by deducting the amount due from the person's prison earnings.
- (3) If it is to be so enforced, the Commissioner is to serve notice of the amount unpaid on the relevant custodial officer, who may make the appropriate deduction from the person's prison earnings.

- (4) In this section:

children's detention means detention under an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

prison earnings means:

- (a) in the case of a person sentenced to imprisonment—the person's earnings at the correctional centre in which the person is imprisoned, or
- (b) in the case of a person sentenced to children's detention—the funds held on behalf of the person at the detention centre in which the person is detained.

relevant custodial officer means:

- (a) in the case of a person sentenced to imprisonment—the Commissioner of Corrective Services or the governor of the correctional centre in which the person is imprisoned, or
- (b) in the case of a person sentenced to children's detention—the Director-General of the Department of Family and Community

Services or the person in charge of the detention centre in which the person is detained.

74 Effect of order for restitution on subsequent civil proceedings

- (1) This section applies to civil proceedings in respect of an injury or loss sustained by a person to whom an approval for the giving of victims support has been given under Part 4 (being an approval in respect of which an order for restitution has been made) on the basis of the same facts as those on which the civil proceedings are based.
- (2) An order for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the order.
- (3) However, the right of the State, under section 55, to commence or maintain civil proceedings is extinguished by an order for restitution.
- (4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the State under section 55.
- (5) This section does not limit the operation of section 55 or 102.

75 Access to information about whereabouts of defendant

Police officers, Roads and Maritime Services and other Government agencies are authorised to provide the Commissioner with information about the address of a defendant for the purpose of serving a provisional order on the defendant or taking any action against the defendant to enforce an order for restitution.

76 Charge on property subject to restitution orders

- (1) The Commissioner 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 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 77, or
 - (b) on the sale or other disposition of the land with the consent of the Commissioner, 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.

77 Cancellation of charges

- (1) The Commissioner may cancel a charge created under section 76 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.

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

78 Objects

The objects of this Division are:

- (a) 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
- (b) to enable orders to be made setting aside certain transactions contravening restraining orders or entered into for the purpose of avoiding payment of restitution.

79 Application of Division

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 financial support may be paid or a recognition payment made, 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 2 and obtained property under that scheme without giving sufficient consideration.

80 Interpretation

- (1) In this Division:
- appropriate officer* means the Commissioner, 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.
- restraining order*—see section 81.
- the defendant* means a person referred to in section 79.
- (2) In this Division, a reference to a person being charged with an offence is a reference to a person:
- (a) in respect of whom a charge sheet has been completed by a police officer where proceedings for an offence are to be commenced against the person, or
 - (b) against whom proceedings for an offence have been commenced.

81 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.

82 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.

83 Making of restraining order

- (1) On an application under section 82 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 financial support may be paid, or a recognition payment may be made, or has been convicted of an offence in relation to which any such act of violence occurred, and
 - (b) amounts of victims support are or are likely to be payable, and
 - (c) it is appropriate to make the order in the circumstances of the case.
- (2) On an application under section 82 relating to a defendant who was a party to a scheme to avoid a liability (whether actual or potential) under Division 2, 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 2 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 60, 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 dependants 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.

84 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.

85 Ancillary orders

- (1) If the Supreme Court makes a restraining order, it may make any ancillary orders that it considers appropriate.
- (2) Without limiting 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 by the following:
 - (a) the applicant for the restraining order,
 - (b) the defendant,
 - (c) with the leave of the Supreme Court, 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.
- (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:
 - (a) in respect of the false or misleading nature of a statement or disclosure made under this Act, or

- (b) on an application under this Act, or
- (c) ancillary to an application under this Act, or
- (d) for enforcement of a restitution order.

86 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 89, 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.

87 Court may revoke restraining order

- (1) The Supreme Court may revoke a restraining order on application 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 2 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 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.

88 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

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- (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 79 (c), the restraining order ceases to be in force 2 years after it is made.
- (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.

89 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 part of a scheme for the purpose of avoiding a liability under Division 2 (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.

90 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 2 (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 this section and the Supreme Court is satisfied as to the matters set out in subsection (1), 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.

Part 6 Compensation awarded by court

Division 1 Preliminary

91 Object of Part

The object of this Part is 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.

92 Definitions

In this Part:

aggrieved person:

- (a) in relation to an injury—has the meaning it has in section 93, and
- (b) in relation to loss—has the meaning it has in section 96.

direction for compensation:

- (a) for an injury—means a direction for compensation under section 94, and
- (b) for loss—means a direction for compensation under section 97.

Division 2 Compensation for injury

93 Definition

In this Division:

aggrieved person, in relation to an offence:

- (a) other than an offence in respect of the death of a person—means a person who has sustained injury through or by reason of:
 - (i) an offence for which the offender has been convicted, or
 - (ii) an offence 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 offence, or
- (b) in respect of the death of a person—means a member of the immediate family of the person.

94 Directions for compensation for injury

- (1) A court that convicts a person of an offence may (on the conviction or at any time afterwards), by notice given to the offender, direct that a sum not exceeding \$50,000 be paid out of the property of the offender to any:
 - (a) aggrieved person, or
 - (b) aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any injury sustained through, or by reason of, the offence or any other offence 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 offence.

- (2) A direction for compensation may be given by a court on its own initiative or on application made to it by or on behalf of an aggrieved person.

95 Restrictions on court's power to give directions for compensation for injury

- (1) A direction for compensation under this Division must not be given in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Division:
- (a) on the conviction of any other person for that offence, or
 - (b) on the conviction of that or any other person for a related offence, exceeds \$50,000.
- (2) A direction for compensation under this Division for which financial support is payable under Part 4 must not be given if an approval for the giving of such financial support in respect of the injury has been made under that Part to or for the benefit of the aggrieved person.
- (3) For the purposes of this section, an offence is related to another offence if:
- (a) both of the offences were committed against the same person, and
 - (b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

However, an offence is not related to any earlier offence in respect of which a direction for compensation has been given if it is committed after the direction was given.

- (4) In this section, a reference to a direction for compensation previously given under this Division includes a reference to a direction for compensation previously given under the following:
- (a) Part 6 of the *Victims Compensation Act 1987*,
 - (b) Part 2 of the *Victims Support and Rehabilitation Act 1996*,
 - (c) section 437 or 554 (3) of the *Crimes Act 1900*.

Division 3 Compensation for loss

96 Definitions

In this Division:

aggrieved person, in relation to an offence, means a person who has sustained loss through or by reason of:

- (a) an offence for which the offender has been convicted, or
- (b) a further offence that a court has taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* in imposing a penalty for an offence for which the offender has been convicted.

court means the Supreme Court, the Court of Criminal Appeal, the District Court or the Local Court.

97 Directions for compensation for loss

- (1) A court that convicts a person of an offence may (on the conviction or at any time afterwards), by notice given to the offender, direct that a specified sum be paid out of the property of the offender to any:
 - (a) aggrieved person, or
 - (b) aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any loss sustained through, or by reason of, the offence or, if applicable, any further offence that the court has taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* in imposing a penalty for an offence for which the offender has been convicted.

- (2) A direction for compensation may be given by a court on its own initiative or on an application made to it by or on behalf of the aggrieved person.

98 Restrictions on court's power to give directions for compensation for loss

A court may not give a direction for compensation:

- (a) for economic loss for which financial support is payable under this Act or compensation is payable under Division 2, or
- (b) for an amount in excess of the maximum amount that, in its civil jurisdiction, the court is empowered to award in proceedings for the recovery of a debt.

Division 4 General

99 Factors to be taken into consideration

In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court must have regard to the following:

- (a) any behaviour (including past criminal activity), condition, attitude or disposition of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person,
- (b) any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted,
- (c) such other matters as it considers relevant.

100 Payment of sum directed

Subject to section 9 of the *Criminal Appeal Act 1912* and to the provisions of the *Criminal Procedure Act 1986*, any sum directed to be paid by an offender to an aggrieved person, under a direction for compensation, must be paid immediately, or within such period (if any) as is specified in the direction, to the registrar of the court for payment to the aggrieved person.

101 Enforcement of directions for compensation

- (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar of the court must, on the application of the aggrieved person, issue to the aggrieved person a certificate that:
 - (a) identifies the direction, and
 - (b) specifies the offender, and
 - (c) specifies the amount required by the direction to be paid which has not, as at the date of the certificate, been paid to the registrar.
- (2) The registrar must not subsequently accept any payment from the offender in respect of the direction for compensation identified in a certificate issued under this section.
- (3) An aggrieved person may file such a certificate in the registry of a court having jurisdiction to order payment of the amount specified in the certificate, and the registrar of that court must immediately enter

judgment in favour of the aggrieved person against the offender specified in the certificate for:

- (a) the amount specified in the certificate as having not been paid, and
 - (b) any fees payable to the registrar in respect of the filing of the certificate.
- (4) A direction for compensation may only be enforced in accordance with this section and any amount not paid is not payable from the Fund or any other public money.

102 Effect of directions for compensation on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based.
- (2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the direction.
- (3) The judgment of the court in which the civil proceedings are determined:
 - (a) must not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid under the direction for compensation, and
 - (b) must not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid under the direction for compensation.
- (4) This section does not limit the operation of section 55 or 74.

103 Directions for compensation not appealable on certain grounds

An appeal does not lie against a direction for compensation merely because, in civil proceedings arising from substantially the same facts as those on which the offender was convicted, the aggrieved person is awarded a lesser amount in damages than the amount of compensation required to be paid by the direction.

Part 7 Victims support levies

104 Object of Part

The object of this Part is to impose a levy on persons found guilty of crimes for the purpose of funding the Scheme.

105 Application of Part

- (1) This Part applies to all offences (other than any offences of a class referred to in subsection (2) or prescribed by the regulations) that are dealt with by:
 - (a) the Supreme Court, or
 - (b) the District Court, or
 - (c) the Drug Court, or
 - (d) the Local Court, or
 - (e) the Land and Environment Court, or
 - (f) the Industrial Relations Commission in Court Session, or
 - (g) the Children's Court, or
 - (h) any other court prescribed by the regulations.
- (2) This Part does not apply to offences relating to the following:
 - (a) engaging in offensive conduct,
 - (b) the use of offensive language,
 - (c) travelling on public transport without paying the fare or without a ticket,
 - (d) the parking or standing of a vehicle.
- (3) This Part does not apply to an offence merely because it is taken into account (as referred to in Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies.
- (4) In this Part, **conviction** does not include an order made under section 10 (1) (a) of the *Crimes (Sentencing Procedure) Act 1999* in relation to an offence that is not punishable by imprisonment (whether or not it is also punishable by some other penalty).

106 Imposition of victims support levy

- (1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the State a levy of:
 - (a) \$156, if the person is convicted on indictment or pursuant to a committal under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*, or
 - (b) \$69, if the person is convicted otherwise than as referred to in paragraph (a).
- (2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.
- (3) A person who is under the age of 18 years is not liable to pay such a levy if the court by which the person is convicted directs, whether when it convicts the person or at any time afterwards, that the person is exempt from liability to pay the levy.
- (4) Any money paid to the State in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

107 CPI adjustments of victims support levy

- (1) Starting at the end of the 2012–2013 financial year, each of the amounts of the levy payable under section 106 (1) is to be adjusted as provided by this section at the end of each financial year (the *current financial year*) to provide a *new amount* for the next financial year. The new amount applies for the next financial year and replaces the amount that applied for the current financial year.
- (2) The new amount for a financial year is to be calculated in accordance with the following formula:

$$A = \frac{L \times B}{C}$$

where:

A is the new amount being calculated.

L is the amount of the levy for the current financial year.

B is the Sydney CPI number for March in the current financial year.

C is the Sydney CPI number for March in the financial year before the current financial year.

- (3) Before the end of each financial year (starting with the 2012–2013 financial year), the Minister is to publish a notice on the NSW

legislation website of the amounts that are to apply for the purposes of section 106 for the next financial year. Failure to publish the notice or late publication of the notice does not affect the validity of an adjustment under this section.

- (4) If the amount calculated pursuant to an adjustment under this section as the new amount for a financial year is not a whole number of dollars, the amount is to be rounded up to the nearest whole dollar.
- (5) If an adjustment under this section would result in the new amount for the next financial year being less than the amount for the current financial year, the new amount for the next financial year is to be the same as the amount for the current financial year.
- (6) The new amount for a financial year is to be adjusted in accordance with the regulations if the Australian Statistician:
 - (a) stops issuing Sydney CPI numbers, or
 - (b) fails to issue a relevant Sydney CPI number before the start of the financial year for which the new amount is required to be calculated.
- (7) It is to be presumed, in the absence of evidence to the contrary, that any amounts specified in a notice published under this section for a particular financial year are correct.

- (8) In this section:

financial year means a year starting on 1 July.

Sydney CPI number means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

108 Effect of appeal proceedings

- (1) The commencement of any proceedings by way of appeal against, or review of, a conviction or sentence in respect of which a victims support levy has been imposed on a person under section 106 stays the liability of the person to pay the levy.
- (2) The setting aside of any such conviction annuls that liability.
- (3) The dismissal of any such proceedings removes the stay of liability.

Part 8 Victims Advisory Board

109 Establishment of Victims Advisory Board

There is established by this Act a Victims Advisory Board.

110 Membership and procedure of Victims Advisory Board

The Victims Advisory Board is to consist of the Commissioner (who is to be the Chairperson of the Board) and not more than 11 other members appointed by the Minister, including:

- (a) 6 members representing the general community, and
- (b) a member representing the NSW Police Force, and
- (c) a member representing the Department of Attorney General and Justice, and
- (d) members representing other relevant Government agencies.

Note. Schedule 1 contains provisions with respect to the membership and procedure of the Board.

111 Functions of Victims Advisory Board

- (1) The Victims Advisory Board has the following functions:
 - (a) to advise the Minister on policies and administrative arrangements relating to support services and assisting victims of crime,
 - (b) to consult victims of crime, community victims support groups and Government agencies on issues and policies concerning victims of crime,
 - (c) to promote legislative, administrative or other reforms to meet the needs of victims of crime.
- (2) Any advice given to the Minister may be given either at the request of the Minister or without any such request.

Part 9 Miscellaneous

112 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

113 Inadmissibility and use of certain evidence in subsequent legal proceedings

- (1) Despite any rule of law to the contrary:
 - (a) an application for victims support, and
 - (b) any documents supporting the application (whether or not furnished when the application is lodged) or any documents furnished to, or prepared by or on behalf of, the Commissioner at any time in connection with the application,are not admissible as evidence in any legal proceedings (whether criminal or civil) other than criminal proceedings in which the applicant is the accused arising from substantially the same facts as those on which the application is based.
- (2) Subsection (1) does not prevent the admission of evidence:
 - (a) against the applicant in criminal proceedings in which the applicant is the accused, or
 - (b) in proceedings before the Tribunal to determine any issue arising under or in relation to the determination of an application for victims support.
- (3) A person cannot be required (whether by subpoena or any other procedure) to produce any application or document that is not admissible in evidence in legal proceedings under subsection (1) in, or in connection with, any such legal proceeding.

114 Personal liability of Commissioner and others

A matter or thing done (or omitted to be done) by the Commissioner, any member of staff employed for the purposes of this Act or a person acting under the direction of the Commissioner does not, if the matter or thing was done (or omitted to be done) in good faith for the purpose of exercising a function under this Act, subject the Commissioner, the member of staff or the person so acting personally to any action, liability, claim or demand.

115 Proceedings for offences

- (1) Proceedings for an offence under this Act (other than section 89) or the regulations may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under section 89 may be dealt with summarily before:
 - (a) the Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (3) The maximum fine the Local Court may impose for an offence in proceedings before it under section 89 is \$10,000.

116 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person or by email to the email address of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate or by email to the email address of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

117 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to

be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, regulations may be made for or with respect to the establishment of panels of appropriately qualified persons for the purpose of recommending counsellors for approval by the Commissioner under Part 4.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

118 Repeals

- (1) The *Victims Support and Rehabilitation Act 1996*, *Victims Support and Rehabilitation Regulation 2012* and *Victims Support and Rehabilitation Rule 1997* are repealed.
- (2) The *Victims Rights Act 1996* is repealed.

119 Reviews of Act

- (1) The Minister is to undertake reviews of this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The reviews are to be undertaken:
 - (a) for the first review—as soon as possible after the period of 3 years from the date of assent to this Act, and
 - (b) for subsequent reviews—at intervals of not less than 3 years and not more than 5 years.
- (3) A report on the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the review.

Schedule 1 Provisions relating to Victims Advisory Board

(Section 110)

1 Definitions

In this Schedule:

Board means the Victims Advisory Board.

member means a member of the Board, other than the Chairperson of the Board.

2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Allowances of members

A member (other than a member who is employed by a Government agency) is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

4 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) A person (other than a person employed by a Government agency) while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister, or

- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Effect of certain other Acts

- (1) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any allowance payable to the person under this Act as a member.

8 General procedure

The procedure for the calling of meetings of the Board and for the conduct of those meetings is, subject to this Schedule and the regulations, to be determined by the Board.

9 Quorum

The quorum for a meeting of the Board is a majority of the members (including the Chairperson) for the time being.

10 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a member elected to chair the meeting by the members present) is to preside at a meeting of the Board.
- (2) The person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

12 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Regulations under this clause may have effect despite any provision of Part 2.

Part 2 Provisions consequent on enactment of this Act

2 Interpretation

- (1) In this Part:

introduction day means the day the Bill for this Act was first introduced into Parliament.

statutory compensation means statutory compensation within the meaning of the repealed Act.

the repealed Act means the *Victims Support and Rehabilitation Act 1996* as in force immediately before its repeal by this Act.
- (2) For the purposes of this Part, proceedings are not finally determined if:
 - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or

-
- (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

3 Victims Rights and Support Regulation 2013

- (1) Schedule 4 sets out the terms of the *Victims Rights and Support Regulation 2013*.
- (2) On and from the commencement of this clause:
- (a) Schedule 4 is taken to be, and to have effect as, a regulation under this Act, and
- (b) the regulation set out in Schedule 4 is taken, for the purposes of section 10 of the *Subordinate Legislation Act 1989*, to have been published on the commencement of this clause, and
- (c) sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in Schedule 4 (but apply to any amendment or repeal of the regulation).
- (3) Schedule 4 is repealed on the day following the day on which this clause commences.

Note. The continued effect of the regulation set out in Schedule 4 is unaffected by the repeal of Schedule 4. See section 30 of the *Interpretation Act 1987*.

4 Statutory compensation scheme closure

- (1) Statutory compensation is not payable after the introduction day unless an application for the statutory compensation was finally determined before that day.
- (2) Statutory compensation that would have been payable (less any deductions under section 19A of the repealed Act) from the Victims Compensation Fund pursuant to an application that was finally determined before the introduction day is payable (less such deductions) from the Victims Support Fund under this Act.

5 Applications for compensation under statutory compensation scheme

- (1) An application for statutory compensation that was lodged, but not finally determined, under the repealed Act before the introduction day is to be dealt with under this Act (subject to this clause) as if it were an application for victims support.
- (2) The applicant concerned is eligible for victims support under the Scheme comprising approved counselling services or a recognition payment, or both.
- (3) The applicant concerned is not eligible for victims support under the Scheme comprising financial assistance for immediate needs or financial assistance for economic loss. However, if the application

would, if it had been made for victims support referred to in section 26 (1) (b) or (c) of this Act, have been duly lodged in accordance with this Act within the prescribed period, the applicant is eligible for a special grant of \$5,000 payable from the Victims Support Fund.

- (4) In subclause (3):
prescribed period means:
- (a) the period of 2 years after the act of violence in respect of which the application is made was committed (the ***relevant act of violence***), or
 - (b) if the victim concerned was a child when the relevant act of violence was committed—within 2 years after the child reaches 18 years of age.
- (5) Any application determined under subclause (1) is taken to have been determined as an application for victims support under this Act.
- (6) The amount determined to be payable to the applicant under this clause is to be reduced by the amount of any interim award of statutory compensation made to the applicant under section 33 of the repealed Act.
- (7) The applicant is not required to refund any part of an interim award of statutory compensation made to the applicant under section 33 of the repealed Act that is more than the amount determined to be payable under this clause.

6 No victims support payable under both repealed Act and this Act

Victims support is not payable under this Act to a primary victim, secondary victim or family victim of an act of violence if the victim has already been awarded compensation or assistance under the repealed Act.

7 Approved counselling services

Section 32 of this Act extends to any application for payment for approved counselling services that was made to the Director under the repealed Act before the commencement of that section, but does not affect any decision made under the repealed Act before that commencement.

8 Application of approved counselling scheme to previous acts of violence

Despite clause 7, Division 4 of Part 4 of this Act extends to a victim of an act of violence in respect of which an application for compensation has been made and dealt with under the repealed Act.

9 Continuation of Fund

The Victims Compensation Fund established by the repealed Act becomes, on the repeal of that Act, the Victims Support Fund established by this Act.

10 Victims Advisory Board

- (1) The Victims Advisory Board established by the *Victims Rights Act 1996* (the *old Board*) as in force immediately before its repeal by this Act is taken to be the Victims Advisory Board established by this Act.
- (2) A person (other than the Chairperson) who, immediately before the commencement of this clause, held office as a member of the old Board is taken (subject to this Act) to be a member of the Victims Advisory Board established by this Act.
- (3) The person who, immediately before the commencement of this clause, was the Chairperson of the old Board ceases to hold that office on that commencement and is not entitled to any remuneration or compensation because of the loss of that office.

11 Previous acts of violence

Subject to this Act, this Act extends to an act of violence that occurred before the introduction day (other than an act of violence in respect of which an application for compensation has been made and dealt with under the repealed Act).

12 Former members of Victims Compensation Tribunal

- (1) The Victims Compensation Tribunal (as constituted under the repealed Act) is abolished on the commencement of this clause.
- (2) Each person who immediately before the commencement of this clause held office as a member of the Victims Compensation Tribunal:
 - (a) ceases to hold office as such, and
 - (b) is taken to have been appointed, for the remainder of the term of office for which the person was appointed as a member of the Victims Compensation Tribunal, as a judicial member of the Administrative Decisions Tribunal assigned to the Victims Support Division of that Tribunal.
- (3) A person who was appointed on a part-time basis as a member of the Victims Compensation Tribunal is taken, on the commencement of this clause, to have been appointed under subclause (2) (b) on a part-time basis.

- (4) The person who, immediately before the abolition of the Victims Compensation Tribunal, was the Chairperson of that Tribunal is taken, on the commencement of this clause, to be the Deputy President of the Victims Support Division of the Administrative Decisions Tribunal.
- (5) A person does not cease to be a Magistrate merely because of the abolition of the Victims Compensation Tribunal.
- (6) This clause does not prevent a person referred to in subclause (2) from being appointed, with the consent of the person, to a different or additional office of the Administrative Decisions Tribunal or from vacating office in accordance with the provisions of that Act.

13 Pending proceedings before the Victims Compensation Tribunal

- (1) If proceedings to determine an application for statutory compensation or to hear an objection to the making of a provisional order for restitution under Division 8 of Part 2 of the repealed Act were initiated or commenced before the Victims Compensation Tribunal but not finally determined before the abolition of that Tribunal, the proceedings are taken on that abolition to have been duly initiated or commenced before the Administrative Decisions Tribunal.
- (2) The proceedings are to be heard, subject to clause 12 and in accordance with any practice notes or directions of the President of the Administrative Decisions Tribunal, by the person or persons determining the matter before the abolition.

14 Pending appeals and objections to Victims Compensation Tribunal

- (1) This clause applies to proceedings before the Victims Compensation Tribunal on an appeal under section 36 of the repealed Act or hearing on an objection under Division 8 of Part 2 of that Act that have not been finally determined on the commencement of this clause.
- (2) The person or persons determining the matter the subject of the appeal or objection:
 - (a) are (subject to any practice notes or directions of the President of the Administrative Decisions Tribunal) to continue on and from the commencement of this clause to determine the matter, sitting as the Administrative Decisions Tribunal, and
 - (b) have and may exercise, while sitting as the Administrative Decisions Tribunal under this clause, all the functions that the Victims Compensation Tribunal had immediately before that commencement.

15 Pending District Court proceedings

- (1) This clause applies to proceedings before the District Court on an appeal under section 39 of the repealed Act that have not been finally determined by that Court on the commencement of this clause.
- (2) Proceedings to which this clause applies are to be determined as if this Act had not been enacted.

16 Recovery proceedings against offender for amount payable under statutory award of compensation

- (1) Part 5 of this Act applies to statutory awards of compensation made under Part 2 of the repealed Act that were not the subject of a provisional order for restitution under Division 8 of Part 2 of the repealed Act before its repeal in the same way as it applies to awards under Part 5 of this Act.
- (2) A provisional order for restitution made in respect of a statutory award of compensation under Division 8 of Part 2 of the repealed Act before its repeal is (unless notice of objection to the order has been filed and proceedings on the notice have not been finally dealt with) taken on that repeal to have been made by the Commissioner under Part 5 of this Act and is to be dealt with accordingly.
- (3) A provisional order for restitution made in respect of a statutory award of compensation under Division 8 of Part 2 of the repealed Act before its repeal in relation to which a notice of objection has been filed but in respect of which no hearing under section 49 of the repealed Act has commenced is taken on that repeal to have been a provisional order in respect of which an objection has been lodged under section 62 of this Act and is to be dealt with accordingly.
- (4) If a hearing on a notice of objection has commenced but has not been finally dealt with under section 49 of the repealed Act, the matter is (subject to clause 14) to be heard as if Division 8 of Part 2 of the repealed Act were in force.
- (5) However, if a provisional order is confirmed in proceedings referred to in subclause (4), the provisions of Division 2 of Part 5 of this Act apply to any proceedings for recovery of an amount payable under the relevant order for restitution.

17 Compensation awarded by a court

- (1) Part 6 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.

- (2) A direction for the payment of compensation given under Part 4 of the repealed Act may be recovered as if it had been given under Part 6 of this Act.

18 Support levies

- (1) Part 7 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A compensation levy imposed by the operation of Part 5 of the repealed Act may be recovered as if it had been imposed as a victims support levy by Part 7 of this Act.

19 Legal rights not affected

- (1) Nothing in Part 2 of this Act gives rise to, or can be taken into account in, any civil cause of action.
- (2) Without limiting subclause (1), nothing in that Part:
- (a) operates to create in any person any legal rights not in existence before the enactment of Part 2 of the *Victims Rights Act 1996*, or
 - (b) affects the validity, or provides grounds for review, of any judicial or administrative act or omission.
- (3) However, this clause does not prevent a contravention of Part 2 of this Act from being the subject of disciplinary proceedings against an official or a complaint to the Commissioner under section 10.

20 Costs and expenses

Part 4 of the *Victims Support and Rehabilitation Rule 1997* as in force immediately before the commencement of this clause continues to apply for the purposes of determining costs and expenses payable with respect to proceedings for compensation under the repealed Act or for victims support under this Act until regulations or rules, as the case requires, are made under this Act or the *Administrative Decisions Tribunal Act 1997* for that matter.

21 General savings

- (1) If anything done, initiated or commenced under an Act repealed by this Act before the commencement of this clause and still having effect or not completed immediately before that commencement could have been done, initiated or completed under this Act if it had been in force when the thing was done, initiated or commenced:
- (a) the thing done continues to have effect, or

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- (b) the thing initiated or commenced may be completed as if it had been done, initiated or commenced under this Act.
- (2) This clause is subject to any express provision of this Act on the matter.

Schedule 3 Amendment of Acts and statutory instruments

3.1 Administrative Decisions Tribunal Act 1997 No 76

[1] Schedule 1 Divisions of Tribunal

Insert in alphabetical order:

Victims Support Division

[2] Schedule 2 Composition and functions of Divisions

Insert after Part 3C:

Part 3D Victims Support Division

Division 1 Composition of Division

1 Division members

- (1) Subject to subclauses (2) and (3), the Victims Support Division of the Tribunal is to be composed of the following members:
 - (a) a Divisional Head,
 - (b) such other members as may be assigned to the Division by or under this Act.
- (2) A member is not to be appointed as Divisional Head unless the Minister has consulted with the relevant Minister about the appointment.
- (3) The President is not to assign a member to the Division unless:
 - (a) the Minister has consulted with the relevant Minister about the assignment, and
 - (b) the Minister has advised the President of the result of the consultation.
- (4) In this clause:
relevant Minister means the Minister administering the *Victims Rights and Support Act 2013*.

Division 2 Functions of Division

2 Functions allocated to Division

The functions of the Tribunal in relation to the following enactments are allocated to the Victims Support Division of the Tribunal:

Victims Rights and Support Act 2013

[3] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Victims Rights and Support Act 2013

3.2 Anti-Discrimination Act 1977 No 48

[1] Section 111A Compensation to offenders in custody—payment to Victims Support Fund

Omit “Victims Compensation Fund established under the *Victims Support and Rehabilitation Act 1996*” from section 111A (2).

Insert instead “Victims Support Fund established under the *Victims Rights and Support Act 2013*”.

[2] Section 111A (3)

Omit “Compensation”. Insert instead “Support”.

3.3 Civil Liability Act 2002 No 22

[1] Section 3B Civil liability excluded from Act

Omit “, the *Victims Support and Rehabilitation Act 1996*” from section 3B (1) (g).

[2] Section 3B (1) (h)

Insert after section 3B (1) (g):

- (h) civil liability for financial assistance for economic loss under the *Victims Rights and Support Act 2013*—the whole Act.

[3] Section 26J Authority for deduction from damages

Omit “Division 8 of Part 2 of the *Victims Support and Rehabilitation Act 1996*” wherever occurring in section 26J (2) and (3).

Insert instead “Division 2 of Part 5 of the *Victims Rights and Support Act 2013*”.

[4] Section 26J (3C)

Omit “*Victims Support and Rehabilitation Act 1996*”.

Insert instead “*Victims Rights and Support Act 2013*”.

3.4 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 138 Release of offender on parole

Omit “clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*” from section 138 (1B).

Insert instead “the definition of *sexual assault and domestic violence* in section 19 of the *Victims Rights and Support Act 2013*”.

[2] Section 141 Decision following review

Omit “clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*” from section 141 (3B).

Insert instead “the definition of *sexual assault and domestic violence* in section 19 of the *Victims Rights and Support Act 2013*”.

[3] Section 151 Release of serious offender on parole

Omit “clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*” from section 151 (1B).

Insert instead “the definition of *sexual assault and domestic violence* in section 19 of the *Victims Rights and Support Act 2013*”.

3.5 Crimes (Appeal and Review) Act 2001 No 120

Section 3 Definitions

Omit paragraph (a) (iv) of the definition of *sentence* in section 3 (1).

Insert instead:

- (iv) any direction for compensation under section 94 (Directions for compensation for injury) or 97 (Directions for compensation for loss) of the *Victims Rights and Support Act 2013*, and

3.6 Crimes (Sentencing Procedure) Regulation 2010

Clause 8 Persons who may prepare victim impact statement

Omit “section 21A of the *Victims Support and Rehabilitation Act 1996*” from clause 8 (3) (a).

Insert instead “section 31 of the *Victims Rights and Support Act 2013*”.

3.7 Criminal Appeal Act 1912 No 16

Section 2 Definitions

Omit paragraph (f) of the definition of *Sentence* in section 2 (1).

Insert instead:

- (f) any direction for compensation made by the court of trial in respect of a person under section 94 (Directions for compensation for injury) or 97 (Directions for compensation for loss) of the *Victims Rights and Support Act 2013*, or

3.8 Criminal Assets Recovery Act 1990 No 23

Section 32 Establishment and use of Proceeds Account

Omit “Victims Compensation Fund established under the *Victims Support and Rehabilitation Act 1996*” from section 32 (3) (c).

Insert instead “Victims Support Fund established under the *Victims Rights and Support Act 2013*”.

3.9 Fines Act 1996 No 99

[1] Section 3 Definitions

Omit the definition of *compensation levy* from section 3 (1).

Insert in alphabetical order:

victims support levy means a victims support levy payable under Part 7 of the *Victims Rights and Support Act 2013*.

[2] Section 4 Meaning of “fine”

Omit “compensation levy” wherever occurring in section 4 (1) (d) and (2A).

Insert instead “victims support levy”.

[3] Section 18 Special provisions relating to certain victims support levies

Omit “compensation levy” wherever occurring.

Insert instead “victims support levy”.

[4] Schedule 3 Savings, transitional and other provisions

Insert after Part 9:

**Part 10 Provisions consequent on enactment of
Victims Rights and Support Act 2013**

27 Enforcement of compensation levy

A compensation levy to which section 18 applied immediately before the amendment of that section by the *Victims Rights and Support Act 2013* may continue to be enforced as if that section had not been amended.

3.10 Government Information (Public Access) Act 2009 No 52

Schedule 2 Excluded information of particular agencies

Insert at the end of item 4:

The Commissioner of Victims Rights—functions relating to dealing with confidential information concerning victims contained in applications for victims support under the *Victims Rights and Support Act 2013*.

3.11 Legal Profession Act 2004 No 112

Section 337 Interpretation and application

Omit section 337 (2) (a).

3.12 Mental Health (Forensic Provisions) Act 1990 No 10

Section 41 Definitions

Omit the definitions of *victim* from section 41 (1).

Insert in alphabetical order:

victim means a primary victim within the meaning of the *Victims Rights and Support Act 2013* and includes a member of the immediate family of a victim within the meaning of section 22 of that Act.

victim of a patient means a victim who is a victim of an act of violence (within the meaning of the *Victims Rights and Support 2013*) committed by a patient.

Schedule 4 Victims Rights and Support Regulation 2013

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Victims Rights and Support Regulation 2013*.

2 Commencement

This Regulation commences on the commencement of the Act.

3 Interpretation

(1) In this Regulation:

the Act means the *Victims Rights and Support Act 2013*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Approved counselling services

4 Definitions

In this Part:

generalist counsellor 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).

relevant family member means a person who is a relative of a primary victim who has died as a result of an act of violence, but who is not a family victim.

specialist counsellor means a person who holds general registration under the Health Practitioner Regulation National Law to practise as a psychologist, or is eligible for membership of the Australian Association of Social Workers (other than as a student member), and who:

- (a) 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, or
- (b) in the opinion of the Commissioner, has specialist counselling skills due to the person's qualifications or experience.

victim means:

- (a) a family victim, or

-
- (b) a primary victim or a secondary victim, or
 - (c) a relevant family member,
- but does not include a person who is the victim of an act of violence:
- (d) arising in the circumstances described in section 25 (2) of the Act, unless the person is a family victim of the act and the act apparently occurred in the course of the commission of the offence of murder or manslaughter, or
 - (e) arising in the circumstances described in section 25 (3) or (4) of the Act.

5 Authorisation of payments for approved counselling services

- (1) For the purposes of section 32 of the Act, the Commissioner may authorise payments for approved counselling services for a victim (other than a family victim or relevant family member):
 - (a) for a period of up to 10 hours of counselling (including counselling for the purposes of an application for continued counselling), and
 - (b) for such further periods of counselling as the Commissioner may consider appropriate.
- (2) The Commissioner may consider a person to be a victim (other than a family victim or relevant family member) referred to in subclause (1), for the purposes of authorising payments for an initial period of 2 hours of counselling for the person, if satisfied that counselling may assist in establishing whether or not the person is a victim.
- (3) The Commissioner must not authorise payments for more than a total of 22 hours of counselling services for a person described in subclause (1) within Australia unless satisfied that there are exceptional reasons for doing so.
- (4) The Commissioner must not authorise payments for counselling services provided outside Australia for more than a total of 22 hours or a maximum of \$5,500, whichever is the lesser.
- (5) The Commissioner may, if the Commissioner considers it appropriate, authorise the provision of approved counselling services to a relevant family member.
- (6) The Commissioner may authorise payments for approved counselling services within Australia for a victim who is a family victim or relevant family member:
 - (a) for a period of up to 20 hours of counselling, and
 - (b) for such further periods of counselling as may be requested by the family victim or relevant family member.

- (7) Payments may be made for approved counselling services even though:
 - (a) the victim is entitled to workers compensation or a payment under Part 9B of the *Police Act 1990* in respect of the act of violence concerned, or
 - (b) the maximum amount of financial assistance for economic loss is payable in respect of the act of violence concerned.
- (8) Payments for approved counselling services provided to a victim who is resident in Australia are to be made from the Fund directly to the service provider, except that payments for up to 2 hours of the period referred to in subclause (2) may be made from that Fund by way of reimbursement of the victim if it was not reasonably practicable for the victim to obtain the Commissioner's authorisation for the payment before undertaking the counselling.
- (9) Payments for approved counselling services provided to a victim who is resident outside Australia are to be made in the manner approved by the Commissioner generally or in a particular case from the Fund on production of an invoice, statement or other document verifying provision of the relevant approved counselling service.

6 Amount of payments

- (1) For the purposes of section 33 of the Act, the amount of the payment to be made or reimbursed for each hour of approved counselling services provided to a victim who is resident in Australia is the amount calculated in accordance with the scale set out in the Table to this clause in respect of the relevant class of counsellor providing the service.
- (2) In addition to the amount approved in accordance with the scale set out in the Table to this clause, the amount so approved is to include the amount of any GST that is payable in respect of the provision of any such approved counselling services.
- (3) Any period of more than 2 hours during which a counsellor travels to provide approved counselling services to a victim is to be counted in calculating the amount of payment to be made or reimbursed for each hour of approved counselling services provided to that victim under this clause.
- (4) Subclause (2) does not permit the approval of an amount that is greater than 10% of the amount of the costs approved (apart from that subclause).

- (5) In this clause:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Table

1	Generalist counsellors	\$120 per hour
2	Specialist counsellors	\$144 per hour
3	Psychiatrists	\$256 per hour

Part 3 Financial assistance

7 Calculation of actual loss of earnings

For the purposes of this Part, financial assistance for actual loss of earnings is to be calculated at the rate of weekly payment of compensation payable under 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.

8 Primary victims

- (1) For the purpose of section 26 (1) (b) of the Act, the prescribed amount of financial assistance for immediate needs is an amount not exceeding \$5,000.
- (2) For the purpose of section 26 (1) (c) of the Act, the prescribed amount of financial assistance is an amount in total not exceeding \$30,000 for the following economic loss suffered by the primary victim as a direct result of the act of violence concerned:
 - (a) if the victim can demonstrate loss of actual earnings—up to \$20,000,
 - (b) if the victim cannot demonstrate loss of actual earnings—up to \$5,000 for out-of-pocket expenses,
 - (c) medical and dental expenses (other than expenses for which immediate financial assistance is available under subclause (1)),
 - (d) up to \$5,000 for expenses associated with criminal or coronial proceedings relating to the act of violence, making statements to police, preparing victim impact statements and similar justice related expenses,
 - (e) up to \$1,500 for expenses incurred through loss of, or damage to, clothing or other personal effects worn or carried by the primary victim at the time of the act of violence.

9 Parent, step-parent or guardian of primary victim

For the purpose of section 27 (1) of the Act, a parent, step-parent or guardian who is caring for a child who is the primary victim of an act of violence is eligible for financial assistance of an amount in total not exceeding \$30,000 for the following economic loss arising as a direct result of the act of violence concerned:

- (a) if the parent, step-parent or guardian can demonstrate loss of actual earnings because of the need to care for the child as a direct result of the act of violence—up to \$20,000,
- (b) if the parent, step-parent or guardian cannot demonstrate such a loss of actual earnings—up to \$5,000 for out-of-pocket expenses,
- (c) medical and dental expenses of the child (other than expenses for which immediate financial assistance is available for the child under section 26 (1) (b) of the Act),
- (d) up to \$5,000 for expenses associated with criminal or coronial proceedings relating to the act of violence, making statements to police, preparing victim impact statements and similar justice related expenses,
- (e) up to \$1,500 for expenses incurred through loss of, or damage to, clothing or other personal effects worn or carried by the primary victim at the time of the act of violence.

10 Family victim

- (1) For the purposes of section 29 (1) (b) of the Act, the prescribed amount of financial assistance for immediate needs is an amount not exceeding \$5,000.
- (2) For the purposes of section 29 (1) (c) of the Act, a family victim of an act of violence is eligible for payment of an amount not exceeding \$8,000 in total for funeral expenses described in that paragraph.
- (3) For the purposes of section 29 (1) (d) of the Act, the prescribed amount of financial assistance is an amount not exceeding \$5,000 in total for expenses associated with criminal or coronial proceedings relating to the act of violence, making statements to police, preparing victim impact statements and similar justice related expenses.

11 Funeral and other expenses incurred by persons other than family victims

For the purposes of section 47 (3) of the Act, the prescribed amount for expenses incurred for:

- (a) immediate needs—is an amount not exceeding \$5,000, and
- (b) funeral expenses— is an amount not exceeding \$8,000.

12 Recognition payments

The following are the prescribed amounts of recognition payment for the purposes of section 36 of the Act:

- (a) for a category A recognition payment referred to in section 36 (1) (a) of the Act—\$15,000,
- (b) for a category A recognition payment referred to in section 36 (1) (b) of the Act—\$7,500,
- (c) for a category B recognition payment—\$10,000,
- (d) for a category C recognition payment—\$5,000,
- (e) for a category D recognition payment—\$1,500.