

Victims Compensation Amendment Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Victims Compensation Act 1996* as follows:

- (a) to provide that payments for approved counselling services may be made to family members who are related to a primary victim who has died as a result of an act of violence, but who are not “family victims” as defined in the Act,
- (b) to provide that such family members, along with the family victims of the deceased primary victim, may be paid for up to 20 hours of counselling,
- (c) to provide that a family victim may be awarded compensation whenever the compensation assessor who is determining the claim is satisfied that there are no other family victims who are likely to apply for compensation,
- (d) to make other procedural changes in relation to the awarding of compensation to family victims,
- (e) to provide that a person who has incurred reasonable expenses relating to the funeral of a primary victim, but who is not a family victim eligible for compensation, may have those expenses reimbursed from the amount of compensation payable to the family victims of the primary victim,
- (f) to require a compensation assessor, when determining whether or not to make an award of compensation and in determining the amount of compensation to award, to have regard to whether the victim has failed to take reasonable steps to mitigate the extent of the injury concerned,
- (g) to make it clear that the Victims Compensation Tribunal or a compensation assessor is not, when determining an application for compensation for psychological or psychiatric disorder, required to have regard to any report or assessment other than the written assessment of the applicant’s condition that is required to accompany the application,
- (h) to provide that compensation for chronic psychological or psychiatric disorder that is moderately disabling will be available only to victims of armed robbery, abduction or kidnapping,
- (i) to make other minor or consequential amendments (including changing the name of the Act), as well as savings and transitional provisions as a consequence of the proposed Act.

Outline of provisions

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

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

Clause 3 is a formal provision giving effect to the amendments to the *Victims Compensation Act 1996* set out in Schedule 1.

Schedule 1 Amendments

Approved counselling scheme

Section 21 of the Act currently makes provision for the payment of approved counselling services to victims as a consequence of an act of violence.

Schedule 1 [7] replaces section 21 with a new section that makes it clear that payments for approved counselling services may only be made with the approval of a compensation assessor. The new section also provides that payments for approved counselling services may be made not only to “family victims” (ie the members of the immediate family of a primary victim who has died as a result of an act of violence) but also to other relatives of the primary victim

who are not family victims. Such relatives, along with the family victims of the primary victim, may be paid for up to 20 hours of counselling and for such further periods as may be requested.

Schedule 1 [19] makes a consequential amendment.

Compensation for family victims

Section 16 of the Act currently provides for the total amount of compensation in respect of which all of the family victims of a primary victim who has died as a result of an act of violence are eligible. If there are 2 or more family victims, those who were not “dependent family members” at the time of the act of violence are not eligible for any share of that total amount if there are also dependent family members at that time.

Schedule 1 [6] broadens the test for determining whether a family victim is a dependent family member by removing the requirement that the person had to be wholly or mainly dependent on the primary victim’s income.

Schedule 1 [9] enables compensation to be awarded to a family victim whenever the compensation assessor is satisfied that there is no other family victim who is likely to make an application for compensation. The assessor may assume this is the case if 3 months has elapsed since the original application was made and no other family victim has come forward.

Schedule 1 [8] is a consequential amendment that removes a provision which prevents the awarding of compensation to any family victim within 3 months after the application was made.

Schedule 1 [11] provides that section 30 (3) of the Act, which requires a compensation assessor to have regard to amounts such as those payable by way of damages, workers compensation or insurance when determining the amount of statutory compensation to award to a person, will not apply in relation to an application for statutory compensation by a family victim and to the primary victim through whom the claim is made. The effect of the amendment is that the entitlement of a family victim to an award of compensation will not be affected by an amount referred to in section 30 (3).

Payment of funeral expenses

Section 33 of the Act currently provides for the payment of an interim award of compensation to a family victim where payment is due for the funeral expenses of the primary victim concerned.

Schedule 1 [12] provides that a person who has incurred expenses in relation to the funeral of a primary victim, but who is not eligible for compensation as a family victim, may apply for reimbursement of the expenses incurred by the person. If the payment is approved, the amount that may be paid to the person is to be taken out of the amount of statutory compensation for which the family victims are eligible.

Compensation for psychological or psychiatric disorder

At present, an application relating to compensation for psychological or psychiatric disorder must be accompanied by a written assessment of the applicant’s condition prepared by a qualified person chosen from a list of persons designated by the Director, Victims Services.

Schedule 1 [21] provides that in determining such an application, the Victims Compensation Tribunal or the compensation assessor concerned is not required to have regard to any report or assessment other than the assessment that accompanies the application.

Schedule 1 [22] provides that compensation for the injury of chronic psychological or psychiatric disorder that is moderately disabling will be available only to victims of an act of violence comprising armed robbery, abduction or kidnapping. Compensation for the injury of chronic psychological or psychiatric disorder that is severely disabling is not affected by the amendment.

Miscellaneous amendments

Schedule 1 [1]–[5], [15], [16], [20], [25] and **[27]** change the long title, name and objects of the Act, the headings to Parts 2 and 3 of the Act, and the description of the rules made under the Act, in order to fully recognise the provision of approved counselling services in the scheme of the Act.

Schedule 1 [10] provides that a compensation assessor will be required, in determining whether or not to make an award of compensation and in determining the amount of compensation to award, to have regard to whether the victim has failed to take reasonable steps to mitigate the extent of the injury in respect of which the victim is claiming compensation.

Schedule 1 [13] restates in the Act certain conditions relating to the awarding of compensation that are currently contained in the rules under the Act. The conditions relate to the requirements to notify the Director, Victims Services of certain matters, to repay compensation in certain cases (eg where the amount awarded was obtained by fraud or collusion) and to co-operate with persons engaged in the official investigation of the act of violence that gave rise to the award of compensation. The amendment also makes it clear that any amount that is required to be repaid in accordance with the conditions to which an award of compensation is subject may be recovered as a debt. **Schedule 1 [14]** is a consequential amendment.

Schedule 1 [17] changes the name of the position of Director of Victims Compensation to Director, Victims Services. **Schedule 1 [26]** is a consequential amendment.

Schedule 1 [18] makes it clear that compensation assessors have the power to make inquiries and conduct investigations in connection with their functions under the Act.

Schedule 1 [23] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [24] inserts transitional provisions with respect to the operation of certain amendments. The amendment made by Schedule 1 [9] will extend to applications for compensation that are pending as at the commencement of the amendment. The amendment made by Schedule 1 [22], which restricts the availability of compensation for psychological or psychiatric disorder, will apply to applications for compensation that are, or were, duly lodged on or after the date of introduction into the Legislative Assembly of the Bill for the proposed Act.