



New South Wales

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.

First print



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Victims Compensation Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Victims Compensation Act 1996* to make further provision with respect to payments for approved counselling services, compensation for family victims and compensation in respect of psychological or psychiatric disorder; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Victims Compensation Amendment Act 2000</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.	5 6
(2) Schedule 1 [22]–[24] commence on the date of assent.	7
3 Amendment of Victims Compensation Act 1996 No 115	8
The <i>Victims Compensation Act 1996</i> is amended as set out in Schedule 1.	9 10

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Long title	3
	Omit “compensation to”. Insert instead “support and rehabilitation for”.	4
[2]	Section 1 Name of Act	5
	Omit “ <i>Compensation</i> ”. Insert instead “ <i>Support and Rehabilitation</i> ”.	6
[3]	Section 3 Objects of Act	7
	Omit section 3 (a). Insert instead:	8
	(a) to provide support and rehabilitation for victims of crimes of violence by giving effect to an approved counselling scheme and a statutory compensation scheme,	9 10 11 12
[4]	Section 3 (b) and (c)	13
	Insert “compensation” after “statutory” wherever occurring.	14
[5]	Part 2, heading	15
	Omit “ Statutory ”.	16
	Insert instead “ Approved counselling scheme and statutory ”.	17
[6]	Section 16 Compensation payable to family victims	18
	Omit section 16 (3) (a). Insert instead:	19
	(a) the person was dependent on the primary victim at the relevant time, or	20 21

[7] Part 2, Division 3A	1
Omit section 21. Insert instead:	2
Division 3A Approved counselling scheme	3
21 Special payments for approved counselling services	4
(1) In this section:	5
<i>approved counselling services</i> means services provided by a professional counsellor chosen by the victim from a list of counsellors approved by the Director under section 21A.	6
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	8
<i>relevant family member</i> 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 within the meaning of this Act.	9
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	11
<i>victim</i> means:	12
(a) a family victim, or	13
(b) a primary victim or a secondary victim, or	14
(c) a person who is a victim of an act of violence but who, merely because the person did not receive a compensable injury, is not a primary victim or secondary victim within the meaning of this Act, or	15
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(d) a relevant family member,	19
but does not include a person who is the victim of an act of violence arising in the circumstances described in section 24 (2), (3) or (4).	20
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(2) A victim may apply for payment for approved counselling services for the victim as a consequence of an act of violence. Such an application is to be made to the Director.	23
	24
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(3) Payments for approved counselling services for a victim (other than a family victim or relevant family member) may be made:	26
	27
(a) for an initial period of 2 hours of counselling (including counselling for the purposes of an application for continued counselling), and	28
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(b) for such further periods of counselling (not exceeding 20 hours) as may be considered appropriate by a compensation assessor.	31
	32
	33

(4) Payments for approved counselling services for a victim who is a family victim or relevant family member may be made:	1
(a) for a period of up to 20 hours of counselling, and	2
(b) for such further periods of counselling as may be requested by the family victim or relevant family member.	3
(5) Payments may be made for approved counselling services even though:	4
(a) the victim is entitled to workers compensation in respect of the act of violence concerned or is awarded compensation by a court under Part 4, or	5
(b) the maximum amount of statutory compensation is payable in respect of the act of violence concerned.	6
(6) Payments for approved counselling services may be made only with the approval of a compensation assessor. Any payments for a period of counselling to the extent to which it exceeds 20 hours may be made only with the approval of the Director.	7
(7) Payments for approved counselling services are to be made from the Compensation Fund directly to the service provider, except that payments for an initial period referred to in subsection (3) (a) 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 approval for the payment before undertaking the counselling.	8
(8) An appeal does not lie to the Tribunal against a decision of a compensation assessor or the Director under this section. However, a decision of a compensation assessor may be reviewed by the Director and a decision of the Director may be reviewed by a member of the Tribunal.	9
(9) The rules may make provision for or with respect to payments for approved counselling services, including the application (with or without modification) of the provisions of this Act relating to statutory compensation.	10
[8] Section 22 Secondary or family victims	11
Omit section 22 (4).	12

[9] Section 29 Determination of applications	1
Insert after section 29 (1):	2
(1A) An award of statutory compensation may be made to a family victim whenever the compensation assessor who is determining the application is satisfied that there is no other family victim who is likely to make an application for statutory compensation.	3 4 5 6 7
(1B) For the purposes of subsection (1A), the compensation assessor may assume that there is no other family victim who is likely to make an application if:	8 9 10
(a) 3 months has elapsed since the application being determined was lodged, and	11 12
(b) no other family victim has lodged an application or notified the Director that an application is intended to be made.	13 14 15
[10] Section 30 Reasons for not making award or for reducing amount of compensation payable	16 17
Insert after section 30 (1) (d):	18
(d1) whether that 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, or undertaking counselling, as soon as practicable after the act of violence was committed,	19 20 21 22 23
[11] Section 30 (5)	24
Insert “(other than subsection (3))” after “This section”.	25
[12] Section 33A	26
Insert after section 33:	27
33A Reimbursement of persons who incur funeral expenses	28
(1) This section applies if:	29
(a) one or more family victims of an act of violence are eligible for statutory compensation, and	30 31

(b)	reasonable expenses relating to the funeral of the primary victim have been incurred by a person who is not eligible for statutory compensation as a family victim.	1 2 3 4
(2)	Such a person may apply for payment of the amount of the reasonable funeral expenses incurred by the person. Such an application is to be made to the Director.	5 6 7
(3)	A compensation assessor may approve payment to the person of an amount that the assessor considers to be fair and reasonable.	8 9 10
(4)	Any such payment:	11
(a)	is to be paid from the amount of statutory compensation for which the family victims are eligible, and	12 13 14
(b)	is taken to be an award of statutory compensation despite section 6.	15 16
(5)	Accordingly, and despite section 16, the amount of \$50,000 payable to the family victims concerned may be reduced if an application for payment of reasonable funeral expenses is approved by the compensation assessor under this section.	17 18 19 20
[13]	Section 34 Compensation may be awarded subject to conditions	21
	Insert after section 34 (1):	22
(1A)	An award of compensation is subject to the following conditions:	23 24
(a)	the person to or for whose benefit the award is made must notify the Director of any money received in the future from other sources in connection with the injuries, expenses and losses taken into account in the award,	25 26 27 28 29
(b)	the person to or for whose benefit the award is made must repay from the amount awarded any such future amounts referred to in paragraph (a) on demand by the Director,	30 31 32 33

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(c)	the person to or for whose benefit the award is made must repay to the Director the amount awarded if it is subsequently ascertained that the award was obtained by fraud or collusion,	1 2 3 4
(d)	the person to or for whose benefit the award is made (if a primary or secondary 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.	5 6 7 8 9
(1B)	If an amount is required to be repaid in accordance with the conditions to which an award of compensation is subject and the amount is not repaid, that amount may be recovered as a debt due to the Compensation Fund Corporation.	10 11 12 13
[14]	Section 34 (2)	14
	Insert “other” after “prescribe”.	15
[15]	Section 54 Order for restitution to be a judgment enforceable by Tribunal	16 17
	Omit “Compensation rules” from section 54 (4).	18
	Insert instead “Rules”.	19
[16]	Part 3, heading	20
	Omit “of statutory scheme”.	21
[17]	Section 63 Director, Registrar of Tribunal and other staff	22
	Omit “Director of Victims Compensation” from section 63 (1).	23
	Insert instead “Director, Victims Services”.	24

[18] Section 65A	1
Insert after section 65:	2
65A Inquiries and investigations	3
Subject to section 27 (2), a compensation assessor may, in connection with exercising the functions of a compensation assessor under this Act, make such inquiries and undertake such investigations as the assessor considers necessary.	4 5 6 7
[19] Section 69 Payments from Compensation Fund	8
Omit “victims’ counselling” from section 69 (a).	9
Insert instead “approved counselling services”.	10
[20] Section 87 Rules	11
Omit “compensation rules” wherever occurring.	12
Insert instead “rules”.	13
[21] Schedule 1, clause 5 (1A)	14
Insert after clause 5 (1):	15
(1A) In determining such an application, the Tribunal or compensation assessor concerned is not required to have regard to any report or assessment other than the assessment referred to in subclause (1).	16 17 18 19
[22] Schedule 1, clause 5 (3)	20
Insert after clause 5 (2):	21
(3) The compensable injury of psychological or psychiatric disorder (category 1) applies only in relation to an act of violence that has apparently occurred in the course of the commission of any of the following offences:	22 23 24 25
(a) armed robbery,	26
(b) abduction,	27
(c) kidnapping.	28

[23] Schedule 3 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Victims Compensation Amendment Act 2000</i>	3
[24] Schedule 3, Part 4	4
Insert after Part 3:	5
Part 4 Provisions consequent on enactment of Victims Compensation Amendment Act 2000	6 7
17 Compensation for psychological or psychiatric disorder	8
Clause 5 (3) of Schedule 1 to this Act (as inserted by Schedule 1 [22] to the <i>Victims Compensation Amendment Act 2000</i>) applies to or in respect of an application for statutory compensation that is, or was, lodged on or after the day on which the Bill for that Act was introduced into the Legislative Assembly.	9 10 11 12 13 14
18 Compensation for family victims	15
Schedule 1 [9] to the <i>Victims Compensation Amendment Act 2000</i> applies to or in respect of an application for statutory compensation whether lodged before or after the commencement of that item.	16 17 18 19
19 Compensation rules	20
Any rules made under section 87 and in force immediately before the amendment of that section by the <i>Victims Compensation Amendment Act 2000</i> are taken to have been made under section 87 as amended by that Act.	21 22 23 24
[25] Dictionary	25
Omit the definition of <i>compensation rules</i> .	26
[26] Dictionary	27
Omit “Director of Victims Compensation” from the definition of <i>Director</i> . Insert instead “Director, Victims Services”.	28 29

[27] The whole Act	1
Omit “compensation rules” wherever occurring (except in a provision that is repealed or amended elsewhere by this Act).	2
Insert instead “rules”.	3
	4