

Passed by both Houses



New South Wales

Victims Compensation Amendment Bill 2000

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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, , 2000*



New South Wales

Victims Compensation Amendment Bill 2000

Act No , 2000

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Victims Compensation Amendment Act 2000*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 [22]–[24] commence on the date of assent.

3 Amendment of Victims Compensation Act 1996 No 115

The *Victims Compensation Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Long title

Omit “compensation to”. Insert instead “support and rehabilitation for”.

[2] Section 1 Name of Act

Omit “*Compensation*”. Insert instead “*Support and Rehabilitation*”.

[3] Section 3 Objects of Act

Omit section 3 (a). Insert instead:

- (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,

[4] Section 3 (b) and (c)

Insert “compensation” after “statutory” wherever occurring.

[5] Part 2, heading

Omit “**Statutory**”.

Insert instead “**Approved counselling scheme and statutory**”.

[6] Section 16 Compensation payable to family victims

Omit section 16 (3) (a). Insert instead:

- (a) the person was dependent on the primary victim at the relevant time, or

[7] Part 2, Division 3A

Omit section 21. Insert instead:

Division 3A Approved counselling scheme

21 Special payments for approved counselling services

(1) In this section:

approved counselling services means services provided by a professional counsellor chosen by the victim from a list of counsellors approved by the Director under section 21A.

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 within the meaning of this Act.

victim means:

- (a) a family victim, or
- (b) a primary victim or a secondary victim, or
- (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
- (d) a relevant family member,

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).

- (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.
- (3) Payments for approved counselling services for a victim (other than a family victim or relevant family member) may be made:
 - (a) for an initial period of 2 hours of counselling (including counselling for the purposes of an application for continued counselling), and
 - (b) for such further periods of counselling (not exceeding 20 hours) as may be considered appropriate by a compensation assessor.

- (4) Payments for approved counselling services for a victim who is a family victim or relevant family member may be made:
 - (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.
- (5) Payments may be made for approved counselling services even though:
 - (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
 - (b) the maximum amount of statutory compensation is payable in respect of the act of violence concerned.
- (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) 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) 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) 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.

[8] Section 22 Secondary or family victims

Omit section 22 (4).

[9] Section 29 Determination of applications

Insert after section 29 (1):

- (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.
- (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:
 - (a) 3 months has elapsed since the application being determined was lodged, and
 - (b) no other family victim has lodged an application or notified the Director that an application is intended to be made.

[10] Section 30 Reasons for not making award or for reducing amount of compensation payable

Insert after section 30 (1) (d):

- (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,

[11] Section 30 (5)

Insert “(other than subsection (3))” after “This section”.

[12] Section 33A

Insert after section 33:

33A Reimbursement of persons who incur funeral expenses

- (1) This section applies if:
 - (a) one or more family victims of an act of violence are eligible for statutory compensation, and

- (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.
- (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.
- (3) A compensation assessor may approve payment to the person of an amount that the assessor considers to be fair and reasonable.
- (4) Any such payment:
 - (a) is to be paid from the amount of statutory compensation for which the family victims are eligible, and
 - (b) is taken to be an award of statutory compensation despite section 6.
- (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.

[13] Section 34 Compensation may be awarded subject to conditions

Insert after section 34 (1):

- (1A) An award of compensation is subject to the following conditions:
 - (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,
 - (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,

- (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,
- (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.

(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.

[14] Section 34 (2)

Insert “other” after “prescribe”.

[15] Section 54 Order for restitution to be a judgment enforceable by Tribunal

Omit “Compensation rules” from section 54 (4).
Insert instead “Rules”.

[16] Part 3, heading

Omit “of statutory scheme”.

[17] Section 63 Director, Registrar of Tribunal and other staff

Omit “Director of Victims Compensation” from section 63 (1).
Insert instead “Director, Victims Services”.

[18] Section 65A

Insert after section 65:

65A Inquiries and investigations

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.

[19] Section 69 Payments from Compensation Fund

Omit “victims’ counselling” from section 69 (a).
Insert instead “approved counselling services”.

[20] Section 87 Rules

Omit “compensation rules” wherever occurring.
Insert instead “rules”.

[21] Schedule 1, clause 5 (1A)

Insert after clause 5 (1):

(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).

[22] Schedule 1, clause 5 (3)

Insert after clause 5 (2):

(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:

- (a) armed robbery,
- (b) abduction,
- (c) kidnapping.

[23] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Victims Compensation Amendment Act 2000

[24] Schedule 3, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Victims Compensation Amendment Act 2000**

17 Compensation for psychological or psychiatric disorder

Clause 5 (3) of Schedule 1 to this Act (as inserted by Schedule 1 [22] to the *Victims Compensation Amendment Act 2000*) 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.

18 Compensation for family victims

Schedule 1 [9] to the *Victims Compensation Amendment Act 2000* applies to or in respect of an application for statutory compensation whether lodged before or after the commencement of that item.

19 Compensation rules

Any rules made under section 87 and in force immediately before the amendment of that section by the *Victims Compensation Amendment Act 2000* are taken to have been made under section 87 as amended by that Act.

[25] Dictionary

Omit the definition of *compensation rules*.

[26] Dictionary

Omit “Director of Victims Compensation” from the definition of *Director*.
Insert instead “Director, Victims Services”.

[27] The whole Act

Omit “compensation rules” wherever occurring (except in a provision that is repealed or amended elsewhere by this Act).

Insert instead “rules”.