



New South Wales

Victims Rights and Support Regulation 2019

under the

Victims Rights and Support Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Victims Rights and Support Act 2013*.

MARK SPEAKMAN, MP

Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to repeal and replace, with minor amendments, the *Victims Rights and Support Regulation 2013*. The Regulation makes provision with respect to the following:

- (a) the approval of persons to provide approved counselling services,
- (b) the authorisation of payments for approved counselling services,
- (c) the amount of payment for approved counselling services,
- (d) the financial assistance for immediate needs, economic loss and other purposes provided for by the *Victims Rights and Support Act 2013*.

This Regulation is made under the *Victims Rights and Support Act 2013*, including section 117 (the general regulation-making power) and the sections referred to in the Regulation.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Interpretation	3
Part 2 Approved counselling services	
4 Definitions	4
5 Authorisation of payments for approved counselling services	4
6 Immediate access to counselling services	5
7 Ongoing counselling services for victims of child sexual assault or physical abuse	5
8 Amount of payments	5
Part 3 Financial assistance	
9 Calculation of actual loss of earnings	7
10 Primary victims	7
11 Parent, step-parent or guardian of primary victim	7
12 Family victim	8
13 Funeral and other expenses incurred by persons other than family victims	8
14 Recognition payments	8
Part 4 Miscellaneous	
15 Costs	9
16 Repeal and savings	9

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Victims Rights and Support Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Victims Rights and Support Regulation 2013* which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

(1) In this Regulation:

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

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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 tier 1 means a person who is approved by the Commissioner under section 31 of the Act and is not a generalist counsellor tier 2.

generalist counsellor tier 2 means a person who:

- (a) is a registered psychologist or is eligible for membership of the Australian Association of Social Workers (other than as a student member), and
- (b) has provided (whether before or after this definition was inserted by the *Victims Rights and Support Amendment (Statutory Review) Act 2018*) approved counselling services under the Act for more than 3 consecutive years, and
- (c) 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, and
- (d) has, in the opinion of the Commissioner, specialist counselling skills that justify the person being paid at the rate applicable to a generalist counsellor tier 2.

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.

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) A limit imposed by this clause:
 - (a) on the period that payments for approved counselling services may be authorised for a person, or
 - (b) on the amount of payments for approved counselling services that may be authorised for a person,is a limit that applies to each act of violence committed in respect of the person.
- (2) 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 22 hours of counselling (including counselling for the purposes of an application for continued counselling), and
 - (b) for further periods of counselling if the Commissioner considers it appropriate.
- (3) The Commissioner may consider a person to be a victim referred to in subclause (2), 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.

- (4) The Commissioner must not authorise payments for more than a total of 22 hours of counselling services for a victim described in subclause (2) within Australia unless satisfied that there are exceptional reasons for doing so.
- (5) If counselling services are provided for a victim outside of Australia, the Commissioner must not authorise payments for those counselling services for more than a total of 22 hours or a maximum of \$5,500, whichever is the lesser.
- (6) The Commissioner may, if the Commissioner considers it appropriate, authorise the provision of approved counselling services to a relevant family member.
- (7) 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 22 hours of counselling, and
 - (b) for a further period of counselling if requested by the family victim or relevant family member.
- (8) 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.
- (9) 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 (3) 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.
- (10) 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 Immediate access to counselling services

- (1) Without limiting clause 5 (3), the Commissioner may consider a person to be a victim of an act of violence for the purposes of authorising payments for approved counselling services for that person in accordance with this Part.
- (2) Subclause (1) is subject to any subsequent finding by the Commissioner that the person is not a victim of an act of violence.

7 Ongoing counselling services for victims of child sexual assault or physical abuse

Despite any provision of clause 5 to the contrary, the Commissioner may authorise payments for approved counselling services on an ongoing basis for:

- (a) a person under the age of 18 years who is a victim of sexual assault or physical abuse, or
- (b) a person who, while under the age of 18 years, was a victim of sexual assault or physical abuse.

8 Amount of payments

- (1) For the purposes of section 33 of the Act, the amount of the payment to be made or reimbursed for approved counselling services provided to a victim who is resident in Australia is the sum of the following:

- (a) 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,
 - (b) the amount of GST that is payable in respect of the provision of the approved counselling service,
 - (c) the amount, determined by the Commissioner, to be appropriate to cover costs incurred, or likely to be incurred, in connection with the approved counselling service.
- (2) 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.
- (3) Subclause (1) (b) does not permit the approval of an amount that is greater than 10% of the amount of the costs referred to in subclause (1) (a).
- (4) A reference in this clause to the provision of approved counselling services to a victim includes, in the case where approved counselling services are provided to a group of victims under an approved program, a reference to the provision of the services to that group.
- (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 tier 1	\$120 per hour
2	Generalist counsellors tier 2	\$144 per hour
3	Psychiatrists	\$256 per hour

Part 3 Financial assistance

9 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 section 37 of the *Workers Compensation Act 1987* (as in force immediately before its substitution by the *Workers Compensation Legislation Amendment Act 2012*) and indexed in accordance with law.

10 Primary victims

- (1) For the purpose of section 26 (1) (b) of the Act, the maximum amount prescribed in relation to financial assistance for immediate needs is \$5,000.
- (2) For the purpose of section 26 (1) (c) of the Act, the maximum amount of financial assistance for economic loss suffered by the primary victim of an act of violence as a direct result of that act of violence is \$30,000.
- (3) Despite subclause (2), the following limits apply in respect of the following economic loss suffered by the primary victim as a direct result of the act of violence:
 - (a) if the victim can demonstrate loss of actual earnings—\$20,000,
 - (b) if the victim cannot demonstrate loss of actual earnings—\$5,000 for out-of-pocket expenses,
 - (c) the actual medical and dental expenses incurred (other than expenses for which financial assistance for immediate needs is available under section 26 (1) (b) of the Act),
 - (d) \$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) \$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.

11 Parent, step-parent or guardian of primary victim

- (1) For the purpose of section 27 (1) of the Act, the maximum amount of financial assistance for economic loss suffered by a parent, step-parent or guardian who is caring for a child who is the primary victim of an act of violence is \$30,000.
- (2) Despite subclause (1), the following limits apply in respect of particular kinds of economic loss suffered by a parent, step-parent or guardian who is caring for a child who is the primary victim of an act of violence:
 - (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—\$20,000,
 - (b) if the parent, step-parent or guardian cannot demonstrate loss of actual earnings—\$5,000 for out-of-pocket expenses,
 - (c) the actual medical and dental expenses of the child (other than expenses for which financial assistance for immediate needs is available for the child under section 26 (1) (b) of the Act),
 - (d) \$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) \$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.

12 Family victim

- (1) For the purposes of section 29 (1) (b) of the Act, the maximum amount of financial assistance payable to a family victim of an act of violence for immediate needs is \$5,000.
- (2) For the purposes of section 29 (1) (c) of the Act, the maximum amount payable to a family victim of an act of violence for funeral expenses is \$9,500 in total for funeral expenses described in that paragraph.
- (3) For the purposes of section 29 (1) (d) of the Act, the maximum amount of financial assistance payable to a family victim of an act of violence is \$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.

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

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

- (a) immediate needs—is \$5,000, and
- (b) funeral expenses—is \$9,500.

14 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.

Part 4 Miscellaneous

15 Costs

Costs payable with respect to proceedings before the Civil and Administrative Tribunal under the Act relating to victims support are to be determined in accordance with the *Civil and Administrative Tribunal Act 2013*.

Note. This clause replaces so much of clause 20 of Schedule 2 to the Act as relates to costs payable in respect of proceedings for victims support under the Act.

16 Repeal and savings

- (1) The *Victims Rights and Support Regulation 2013* is repealed.

Note. The repeal of the *Victims Rights and Support Regulation 2013* does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect the operation of savings or transitional provisions contained in that Regulation. Part 5 of that Regulation contained savings and transitional provisions.

- (2) Any act, matter or thing that, immediately before the repeal of the *Victims Rights and Support Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.