

Passed by both Houses



New South Wales

# Victims Support and Rehabilitation Amendment Bill 2006

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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, , 2006*



New South Wales

## **Victims Support and Rehabilitation Amendment Bill 2006**

Act No , 2006

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An Act to amend the *Victims Support and Rehabilitation Act 1996* with respect to assistance and compensation for victims of violence; and for other purposes.

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*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.*

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Victims Support and Rehabilitation Amendment Act 2006*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Victims Support and Rehabilitation Act 1996 No 115**

The *Victims Support and Rehabilitation Act 1996* is amended as set out in Schedules 1 and 3.

**4 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

**5 Victims Support and Rehabilitation Regulation 2006**

- (1) Schedule 4 is taken to be and has effect as a regulation made under the *Victims Support and Rehabilitation Act 1996*.
- (2) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in Schedule 4.
- (3) For the purposes of section 10 of the *Subordinate Legislation Act 1989*, the regulation set out in Schedule 4 is taken to have been published on the date of assent to this Act.
- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in Schedule 4.

**6 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## **Schedule 1      Amendments to Victims Support and Rehabilitation Act 1996**

(Section 3)

**[1] Section 5 Act of violence**

Insert after section 5 (1):

- (1A) 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.

**[2] Section 9 Who is a family victim?**

Insert "half-brother, half-sister," after "sister," in section 9 (3) (e).

**[3] Section 14 Compensation payable to primary victims other than for prescribed expenses**

Insert after section 14 (2):

- (3) This section does not apply to statutory compensation for prescribed expenses and statutory compensation under this section is not payable for financial loss to the extent that statutory compensation for prescribed expenses has been awarded for that loss.

**[4] Section 14A**

Insert after section 14:

**14A Compensation payable to primary victims for prescribed expenses**

- (1) The statutory compensation for which a primary victim is eligible includes statutory compensation for prescribed expenses.
- (2) Statutory compensation for prescribed expenses is compensation for actual expenses of such kinds as are prescribed by the regulations and incurred by a primary victim of an act of violence as a direct result of the act of violence.
- (3) No statutory compensation is payable to a person under this section unless the total amount payable to the person as statutory compensation for prescribed expenses is at least:
- (a) subject to paragraph (b)—\$200, or
- (b) such other amount as is prescribed by the regulations.

- (4) The regulations may prescribe the maximum amount that may be awarded in respect of a particular kind of actual expense under this section.
- (5) The total amount that may be awarded to a primary victim as statutory compensation for prescribed expenses in respect of an act of violence is not to exceed:
  - (a) subject to paragraph (b)—\$1,500, or
  - (b) such other amount as is prescribed by the regulations.
- (6) Statutory compensation for prescribed expenses is not payable to a primary victim who has already been awarded statutory compensation to which section 14 applies in respect of the same act of violence.
- (7) Statutory compensation for prescribed expenses is not payable to a primary victim to the extent that the primary victim has received, or is entitled to receive, payment for that loss under any insurance or agreement or under any other Act or law.
- (8) A primary victim who dies ceases to be eligible for statutory compensation for prescribed expenses. Any pending application for compensation made by or on behalf of the primary victim does not survive the death of the primary victim.

**Note.** If a primary victim dies as the direct result of an act of violence, a member of the victim's family may become eligible under Division 1 of this Part for statutory compensation.
- (9) For the purposes of this section, expenses incurred by a primary victim of an act of violence for the provision of security measures in response to the act of violence are taken to be expenses incurred by the primary victim as a direct result of the act of violence.

**[5] Section 18 Compensation for financial loss**

Insert after section 18 (3):

- (3A) The rules may make provision limiting the amount that may be awarded as compensation for the cost of counselling services (for example, by reference to a maximum hourly rate for counselling services and the maximum amount payable). Compensation for counselling services is to be calculated in accordance with any such provisions of the rules.

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**[6] Section 18 (6)**

Insert after section 18 (5):

- (6) This section does not apply to statutory compensation for prescribed expenses.

**[7] Section 19A Deduction from certain awards**

Insert “or statutory compensation for prescribed expenses” after “victims” in section 19A (3).

**[8] Section 20 Threshold amount of compensation**

Omit “\$2,400” from section 20 (1) (a). Insert instead “\$7,500”.

**[9] Section 20 (1) (b)**

Omit “fixed by proclamation”. Insert instead “prescribed by the regulations”.

**[10] Section 20 (2)**

Omit the subsection.

**[11] Section 20 (3)**

Insert “or statutory compensation for prescribed expenses” after “victims”.

**[12] Section 20 (3A)**

Insert after section 20 (3):

(3A) For the purposes of this section:

- (a) the total amount of compensation payable to a person as compensation for compensable injuries is the total amount arrived at after any reduction in that compensation to be made under section 19, 30 or 31 or the schedule of compensable injuries, and
- (b) no other reduction in that compensation made under this Act is to be taken into account in determining the total amount of that compensation.

**[13] Section 21 Special payments for approved counselling services**

Insert after section 21 (3):

- (3A) Subject to the rules, a person may be considered to be a victim for the purposes of payments for approved counselling services for an initial period of 2 hours if a compensation assessor is satisfied that counselling may assist in establishing whether or not the person is a victim.

**[14] Section 22 Secondary or family victims**

Insert “to which section 14 applies” after “compensation” where secondly occurring in section 22 (1).

**[15] Section 23 Eligibility to receive compensation in respect of same act of violence**

Insert “(except as provided by subsection (1A))” after “violence” in section 23 (1).

**[16] Section 23 (1A)**

Insert after section 23 (1):

- (1A) This section does not prevent a person from receiving an award of statutory compensation to which section 14 applies in addition to an award of statutory compensation for prescribed expenses in respect of the same act of violence.

**Note.** However, section 14 (3) prevents a person from being granted compensation for financial loss to the extent that statutory compensation for prescribed expenses has been awarded for that loss. Further, under section 14A (6), statutory compensation for prescribed expenses is not payable to a person to the extent that the person has been awarded statutory compensation to which section 14 applies in respect of the same act of violence.

**[17] Section 25 Lodging of applications**

Omit “Clerk” wherever occurring in section 25 (3). Insert instead “registrar”.

**[18] Section 26 Time for lodging applications**

Insert after section 26 (2):

- (2A) However, leave may not be given for the acceptance of an application lodged out of time if the application is for statutory compensation for prescribed expenses.

**[19] Section 29 Determination of applications**

Insert after section 29 (1):

- (1AA) If the application is for statutory compensation to which section 14 applies and the compensation assessor is satisfied that the applicant is not eligible to receive that kind of statutory compensation (solely because of the operation of section 20), but is eligible to receive statutory compensation for prescribed expenses, the compensation assessor may, with the consent of the applicant, determine the application as if it were an application for statutory compensation for prescribed expenses.

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**[20] Section 29 (5) (a)**

Insert “(or compensation for prescribed expenses)” after “financial loss”.

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

Insert after section 30 (1) (b):

- (b1) whether the act of violence was reported to a relevant health professional or practitioner, or a relevant agency,

**[22] Section 30 (2A)**

Insert after section 30 (2):

- (2A) In determining the matter referred to in subsection (1) (d1) in the case of an act of violence involving sexual assault or domestic violence, the compensation assessor 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.

**[23] Section 30 (4A)**

Insert after section 30 (4):

- (4A) The compensation assessor may postpone the determination of a person’s application for statutory compensation pending the determination of another application for statutory compensation if the person has been convicted of an offence that is a *relevant offence* under section 46 in relation to that other application.

**[24] Section 31 Determination for restitution may be set off against award of compensation**

Insert “has been made or” after “Division 8 that” in section 31 (1).

**[25] Section 31 (1)**

Insert “determination for restitution or” before “proposed determination”.

**[26] Section 31 (2)**

Omit the subsection. Insert instead:

- (2) On the reduction under this section of the amount of an award made to a person, the person is taken to have paid the amount of the determination or proposed determination for restitution to the extent of the reduction.



**[27] Section 33 Interim awards of compensation**

Insert after section 33 (4):

- (5) An interim award of statutory compensation for funeral expenses referred to in subsection (1) (b) may only be made to the extent that the expenses are reasonable.

**[28] Section 33A Reimbursement of persons who incur funeral expenses**

Omit section 33A (1). Insert instead:

- (1) This section applies if expenses relating to the funeral of a primary victim of an act of violence have been incurred by a person who is not eligible for statutory compensation as a family victim.

**[29] Section 34 Compensation may be awarded subject to conditions**

Insert “, other than a family victim,” after “award is made” in section 34 (1A) (a).

**[30] Section 34 (1A) (b)**

Insert “(other than a family victim)” after “award is made”.

**[31] Section 35 Costs of applications for compensation and proceedings before Tribunal**

Insert after section 35 (7):

- (8) This section does not apply in relation to an application for statutory compensation for prescribed expenses except in a case where the application has been determined as an application for statutory compensation for prescribed expenses because of the operation of section 29 (1AA).
- (9) In any such case, the Tribunal or a compensation assessor may award an applicant his or her costs in respect of the application, and in such amounts as the Tribunal or assessor thinks fit, if the Tribunal or assessor is of the opinion that the special circumstances of the case justify such an award being made.

**[32] Part 2, Division 6, heading**

Omit the heading. Insert instead:

**Division 6      Reviews by Director and appeals and  
references to Tribunal and District Court**

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**[33] Section 35A**

Insert before section 36:

**35A Review of amount awarded as statutory compensation for prescribed expenses**

- (1) An applicant for statutory compensation for prescribed expenses may apply to the Director for the correction of a miscalculation in the amount awarded by a compensation assessor as statutory compensation for prescribed expenses.
- (2) An application to the Director under this section must be made within 28 days after the day on which the relevant notice of the determination of the compensation assessor was duly served.
- (3) Any such application must be in the form required by the rules and must be lodged with the Director.
- (4) The Director may determine the application by:
  - (a) affirming the amount awarded by the compensation assessor, or
  - (b) varying the award by correcting any miscalculation in the amount of the award.
- (5) Written notice is to be given to an applicant under this section of the determination of the Director.

**[34] Section 36 Appeal to Tribunal by applicant**

Insert after section 36 (1):

- (1A) The applicant may not appeal to the Tribunal for the correction of a miscalculation in the amount awarded as statutory compensation for prescribed expenses.

**Note.** An applicant may apply to the Director under section 35A for the correction of such a miscalculation.

**[35] Section 42 Compensation Fund Corporation to pay compensation**

Insert “(other than statutory compensation for prescribed expenses)” after “statutory compensation” in section 42 (1).

**[36] Section 42 (1)**

Insert “(including costs awarded in respect of an application for statutory compensation for prescribed expenses)” after “costs”.

**[37] Section 42 (1A)**

Insert after section 42 (1):

- (1A) After an award of statutory compensation for prescribed expenses is made, the Director is required to forward to the Compensation Fund Corporation a copy of the notice under section 29 of the determination concerned.

**[38] Section 42 (2)**

Omit “such an application”.

Insert instead “the application or notice (as the case may be)”.

**[39] Sections 74, 75 (1)–(3) and 77F (1)–(3)**

Omit “or clerk” wherever occurring.

**[40] Sections 75 (3) and 77F (3)**

Omit “office or” wherever occurring.

**[41] Schedule 1 Compensable injuries**

Omit clause 7A (1) (a). Insert instead:

- (a) injury resulting from an act that occurred in the commission of a domestic violence offence,

**[42] Schedule 1, clause 7A**

Insert after clause 7A (2):

- (3) In this clause:

*domestic violence offence* means a personal violence offence (within the meaning of the *Crimes Act 1900*) against any of the following persons:

- (a) a person who is or has been married to the person who committed the offence,
- (b) a person who has or has had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the person who committed the offence,
- (c) 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,
- (d) a person who, at the time of the offence, was living in the same household as the person who committed the offence,

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- (e) 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*),
  - (f) 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,
  - (g) a person who is or has been a parent, guardian or step-parent of the person who committed the offence,
  - (h) 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,
  - (i) 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.

**[43] Schedule 1, table**

Omit “first” from column 1 of the matter relating to “**Burns**”.

Insert instead “third”.

**[44] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Victims Support and Rehabilitation Amendment Act 2006*

**[45] Schedule 3, Part 2, clause 4A**

Insert after clause 4 of Schedule 3:

**4A Application of approved counselling scheme to previous acts of violence**

Despite clause 4, section 21 extends to a victim of an act of violence (including a victim within the meaning of that section) in respect of which an application for compensation has been made and dealt with under the repealed Act.

[46] **Schedule 3, Part 6**

Insert after Part 5 of Schedule 3:

**Part 6 Provisions consequent on enactment of  
Victims Support and Rehabilitation  
Amendment Act 2006**

**21 Definition**

In this Part:

*amending Act* means the *Victims Support and Rehabilitation Amendment Act 2006*.

**22 General**

Except as otherwise provided by this Part, an application for statutory compensation lodged under this Act, but not finally determined, before the commencement of a provision of the amending Act is to continue to be dealt with in accordance with the Act as in force immediately before the commencement of the provision.

**23 Acts of violence**

The amendment made to section 5 by the amending Act extends to an act of violence that occurs before the commencement of the amendment.

**24 Statutory compensation for prescribed expenses**

A primary victim of an act of violence is eligible to receive statutory compensation for prescribed expenses in respect of an act of violence only if the act of violence occurs after the commencement of section 14A (as inserted by the amending Act).

**25 Threshold amount of compensation**

Section 20 (3A), as inserted by the amending Act, extends to the determination of whether or not statutory compensation is payable in relation to an application for statutory compensation that is lodged, but not finally determined, before the commencement of that subsection.

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**26 Application of certain amendments to domestic violence or sexual assault**

- (1) Section 30 (1) (b1) and (2A), as inserted by the amending Act, extend to the determination of an application for statutory compensation lodged, but not finally determined, before the commencement of those provisions, where the act of violence concerned involves domestic violence or sexual assault.
- (2) The definition of *injury*, appearing in the Dictionary at the end of this Act, as amended by the amending Act, extends to an injury resulting from an act of violence the subject of an application for statutory compensation lodged, but not finally determined, before the commencement of the amendment, where the act of violence involves domestic violence or sexual assault.

**27 Postponement of determination of award pending possible determination for restitution**

Section 30 (4A), as inserted by the amending Act, extends to an application for statutory compensation lodged, but not finally determined, before the commencement of that subsection.

**28 Determination for restitution as set off against award of compensation**

Section 31, as amended by the amending Act, extends to an application for statutory compensation lodged, but not finally determined, before the commencement of those amendments.

**29 Reimbursement of persons who incur funeral expenses**

Section 33A, as amended by the amending Act, applies only if the primary victim concerned died as a direct result of an act of violence occurring after the commencement of section 14A (as inserted by the amending Act).

**[47] Dictionary**

Omit “disorder” from paragraph (b) of the definition of *injury*.

Insert instead “harm”.

**[48] Dictionary, definition of “sexual assault and domestic violence”**

Omit paragraph (g) of the definition. Insert instead:

- (g) any other act resulting in injury that occurred in the commission of a personal violence offence (within the meaning of the *Crimes Act 1900*) 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 has or has had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with 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.

**[49] Dictionary**

Insert in alphabetical order:

*statutory compensation for prescribed expenses*—see section 14A.



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## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Crimes (Sentencing Procedure) Act 1999 No 92

#### [1] Section 26 Definitions

Insert after paragraph (b) of the definition of *member of the primary victim's immediate family*:

(b1) a person to whom the victim is engaged to be married, or

#### [2] Section 26, definition of "member of the primary victim's immediate family"

Insert "grandparent," after "parent," in paragraph (c) of the definition.

#### [3] Section 26, definition of "member of the primary victim's immediate family"

Insert ", grandchild" after "a child" in paragraph (d) of the definition.

#### [4] Section 26, definition of "member of the primary victim's immediate family"

Insert "half-brother, half-sister," after "sister," in paragraph (e) of the definition.

### 2.2 Victims Rights Act 1996 No 114

#### [1] Sections 5 and 6

Omit ", mental illness or nervous shock" wherever occurring.

Insert instead "or psychological or psychiatric harm".

#### [2] Section 6 Charter of rights for victims of crime

Insert "cultural sensitivity" after "compassion," in item 6.1.

**Schedule 3      Amendments to Victims Support and Rehabilitation Act 1996 consequential on commencement of Part 15A of Crimes Act 1900**

(Section 3)

**[1]    Schedule 1 Compensable injuries**

Insert “Part 15A of” before “the *Crimes Act 1900*” in clause 7A (3).

**[2]    Dictionary**

Insert “Part 15A of” before “the *Crimes Act 1900*” in paragraph (g) of the definition of *sexual assault and domestic violence*.

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## Schedule 4 Victims Support and Rehabilitation Regulation 2006

(Section 5)

### 1 Name of Regulation

This Regulation is the *Victims Support and Rehabilitation Regulation 2006*.

### 2 Commencement

This Regulation commences on the commencement of section 5 of the *Victims Support and Rehabilitation Amendment Act 2006*.

### 3 Definition

- (1) In this Regulation:  
*the Act* means the *Victims Support and Rehabilitation Act 1996*.
- (2) Notes included in this Regulation do not form part of this Regulation.

### 4 Statutory compensation for prescribed expenses

- (1) For the purposes of section 14A (2) of the Act, the kinds of actual expenses that may be paid to a primary victim of an act of violence as statutory compensation for prescribed expenses are expenses incurred for any of the following:
  - (a) the provision of ambulance services,
  - (b) the provision of dental services,
  - (c) the provision of physiotherapy services,
  - (d) the replacement or repair of prescription glasses or prescription contact lenses,
  - (e) the provision of domestic assistance, such as personal care and home help, to the primary victim during the victim's recovery from the act of violence,
  - (f) the cleaning of any property (other than clothing or other wearable items),
  - (g) the provision of security measures.

- 
- (2) For the purposes of section 14A (4) of the Act, the maximum amount that may be awarded in respect of each of the expenses referred to in subclause (1) (e)–(g) is \$500.