



New South Wales

Victims Rights and Support Amendment (Statutory Review) Bill 2018

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 Rights and Support Act 2013* and the *Victims Rights and Support Regulation 2013* as follows:

- (a) to allow reports that have been prepared by agencies that provide support services to victims of crime to be used as documentary evidence in applications for victims support,
- (b) to vary the time during which an application for a recognition payment can be made by a family victim where the primary victim dies as a result of an act of violence,
- (c) to extend eligibility for recognition payments to a child, spouse or de facto partner of a homicide victim even though the child or person was not financially dependent on the victim,
- (d) to provide that, in review proceedings before the NSW Civil and Administrative Tribunal, a victim is a competent but non-compellable witness and medical reports supporting the victim's application for support are not to be provided to the offender concerned,
- (e) to increase the initial limit of approved counselling services for family victims from 20 to 22 hours,
- (f) to enable the Commissioner of Victims Rights (the **Commissioner**) to approve persons who are not otherwise qualified in accordance with the regulations to provide approved counselling services in any part of the State where there is a shortage of qualified counsellors to provide those services,
- (g) to increase the maximum amount payable as financial assistance to family victims for funeral expenses from \$8,000 to \$9,500,

(h) to make other amendments of an administrative, minor or technical nature.

This Bill also:

- (a) amends other legislation to extend the time for bringing proceedings for offences involving the publication or broadcasting of the names of children involved in criminal proceedings and their siblings, or victims of sexual assaults, from 6 months to 2 years, and
- (b) makes a consequential amendment to the *Civil and Administrative Tribunal Act 2013*.

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.

Schedule 1 Amendment of Victims Rights and Support Act 2013 No 37

Schedule 1 [1] modifies the eligibility for category A recognition payments (that is, payments intended to provide recognition of the trauma suffered by close family members of acts of violence that apparently occurred in the course of the commission of a homicide). The amendment:

- (a) provides that a child whose parent is a homicide victim is eligible for a recognition payment of \$15,000 without needing to prove financial dependence on the victim, and
- (b) provides that a spouse or de facto partner of a homicide victim is eligible for a recognition payment of \$7,500 without needing to prove financial dependence on the victim.

Schedule 1 [2] provides that a report prepared by a victims support agency that an act of violence has occurred or that an injury has been sustained is documentary evidence supporting an application for financial assistance for immediate needs.

Schedule 1 [3] provides that, in the case of an application for financial assistance for economic loss or for a recognition payment, a report by a victims support agency that the applicant is a victim of an act of violence is documentary evidence to support the application.

Schedule 1 [4]–[6] modify the time limit for making an application for a recognition payment made by a family victim where it has been established that the primary victim died as a result of an act of violence.

Schedule 1 [7] provides that an application for victims support lapses if the applicant fails to provide all supporting evidence within 12 months after being requested to do so on at least 3 separate occasions and the Commissioner decides that the applicant does not have a valid reason for failing to provide that evidence.

Schedule 1 [8] enables the Commissioner to amend a notice of the determination of an application for victims support for the purposes of correcting an error.

Schedule 1 [9] omits a requirement that the Commissioner must consider any condition of the primary victim that directly or indirectly contributed to the injury or death sustained by the victim in determining whether or not to approve the giving of victims support and in determining the amount of financial support to be given or recognition payment to be made.

Schedule 1 [10] provides that any delay in a victim reporting a crime to police, or any failure to report an act of violence to a relevant health professional or practitioner or a relevant agency, will no longer be matters that the Commissioner must have regard to in determining whether or not to approve the giving of victims support and related matters.

Schedule 1 [11] provides that:

- (a) the approval of victims support is subject to the condition that the victim must notify the Commissioner of any amount that the victim has already received from other sources in connection with the relevant act of violence, and
- (b) the Commissioner may withhold all or part of the money that would otherwise be payable to the victim if the victim has received an amount from another source and failed to notify the Commissioner.

Schedule 1 [12] extends (from 28 days to 90 days) the period in which an applicant for victims support can apply for an internal review of a decision relating to the application.

Schedule 1 [13] modifies the definition of *relevant offence* for the purposes of the scheme under Part 5 of the Act for the recovery of victims support payments from offenders.

Schedule 1 [14] provides that a victim is competent but cannot be compelled to give evidence or produce documents in any proceedings that an offender takes in NCAT for administrative review of the order for restitution made against the offender.

Schedule 1 [15] omits an existing requirement that a court determining whether to give a direction for compensation to a victim must consider any condition of the victim that directly or indirectly contributed to the injury or death sustained by the victim.

Schedule 1 [16] authorises the registrar of a court that has given a direction for compensation to provide the offender's name and address to the victim.

Schedule 1 [17] authorises a victims rights agency to provide certain information to a parent or guardian of a victim if the victim is under the age of 18 years or lacks the capacity to understand the information.

Schedule 1 [18] provides that any medical report that supported an application for victims support and that is provided to NCAT in connection with review proceedings under Part 5 of the Act or is admitted as evidence in those proceedings must not be disclosed or provided to the person who is the applicant in those proceedings.

Schedule 1 [19] corrects a cross-reference in a transitional provision about recovery proceedings against offenders for amounts payable under a statutory award of compensation.

Schedule 1 [20] inserts savings and transitional provisions that are consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Victims Rights and Support Regulation 2013

Schedule 2 [1] replaces the way in which persons who provide counselling services are categorised. The new categories are:

- (a) generalist counsellor tier 1, which replaces the current category of generalist counsellor and requires the same qualifications as at present, and
- (b) generalist counsellor tier 2, which replaces the current category of specialist counsellor, with the additional requirement that to be eligible for the higher rates of payment as a generalist counsellor tier 2 a person will need to have been providing approved counselling services for more than 3 consecutive years.

Schedule 2 [2] enables the Commissioner to approve additional persons (who are not otherwise qualified in accordance with the regulations) to provide approved counselling services in any part of the State where, in the opinion of the Commissioner, there is a shortage of generalist counsellors tier 1 or tier 2 to provide those services. A person may only be approved if the person has counselling qualifications and experience that the Commissioner considers to be relevant.

Schedule 2 [3] provides that any limit imposed on payments for approved counselling services applies in relation to each act of violence committed in respect of any person and not in respect of each person (as at present), so that a person who makes a further application for victims support for a separate act of violence is not disadvantaged.

Schedule 2 [4] increases the period for approved counselling services for a victim who is a family victim or relevant family member from 20 hours to a maximum of 22 hours (consistent with the existing entitlement of primary victims who are eligible for 22 hours of counselling).

Schedule 2 [5] enables victims to have immediate access to counselling services by making it clear that the Commissioner may authorise payments for approved counselling services even though the application for victims support has not yet been determined. The amendment also enables the Commissioner to authorise payments for approved counselling services on an ongoing basis to victims of child sexual assault or physical abuse while under the age of 18 years.

Schedule 2 [6] allows payments for the provision of approved counselling services to a group of victims under an approved program to be determined at an hourly rate for the group as a whole, rather than being based on the hours provided to each victim in the group.

Schedule 2 [7] and [8] update the table of amounts payable per hour of approved counselling services as a consequence of the amendment made by Schedule 2 [1].

Schedule 2 [9] modifies the way in which actual loss of earnings is calculated for the purposes of providing financial assistance to victims.

Schedule 2 [10] increases the maximum amount payable to family victims for funeral expenses from \$8,000 to \$9,500.

Schedule 2 [11] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of other legislation

Schedule 3.1 amends the *Children (Criminal Proceedings) Act 1987* to provide that proceedings for an offence against section 15A (which prohibits the publishing and broadcasting of the names of children involved in criminal proceedings and their siblings) that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence. At present, the time limit for commencing those proceedings is 6 months after the offence.

Schedule 3.2 amends the *Civil and Administrative Tribunal Act 2013* as a consequence of the amendment made by Schedule 1 [14] to the proposed Act.

Schedule 3.3 amends the *Crimes Act 1900* to provide that proceedings for an offence against section 578A (which prohibits the publication of matter that identifies victims of certain sexual offences) that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence. At present, the time limit for commencing those proceedings is 6 months after the offence.

Schedule 3.4 amends the *Crimes (Domestic and Personal Violence) Act 2007* to make it clear that when the Children's Court is hearing care proceedings, the Court may make an apprehended violence order for the protection of either the child to whom the care proceedings relates or any other person who is a relative of the child or who resides on the same property, as well as an order protecting both. At present the provision may be interpreted as requiring the apprehended violence order to be made for the protection of both the child and a relative or other person.



New South Wales

Victims Rights and Support Amendment (Statutory Review) Bill 2018

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New South Wales

Victims Rights and Support Amendment (Statutory Review) Bill 2018

No. , 2018

A Bill for

An Act to make miscellaneous amendments to the *Victims Rights and Support Act 2013* and the *Victims Rights and Support Regulation 2013* resulting from a review of that legislation; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Victims Rights and Support Amendment (Statutory Review) Act 2018*.

3

2 Commencement

4

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

5

Schedule 1	Amendment of Victims Rights and Support Act	1
	2013 No 37	2
[1] Section 36 Recognition payments		3
Omit section 36 (1) (a) and (b). Insert instead:		4
(a) a category A recognition payment of an amount prescribed by the regulations is payable:		5
(i) to each family victim (other than a child referred to in subparagraph (ii)) who, immediately before the death of a primary victim as a result of an act of violence described in section 35 (1), was financially dependent on the primary victim, and		6
(ii) to each child of a primary victim who, immediately before the death of the primary victim as a result of an act of violence described in section 35 (1), was under the age of 18 years,		7
(b) a category A recognition payment of an amount prescribed by the regulations is payable to the following who were not, immediately before the death of the primary victim concerned, financially dependent on a primary victim who died as a result of an act of violence described in section 35 (1):		8
(i) a parent, step-parent or guardian of the primary victim,		9
(ii) any person who, immediately before the death of the primary victim, was the victim’s spouse or de facto partner as referred to in section 22 (3) (b),		10
[2] Section 39 Documentary evidence		11
Insert “or a report by an agency that provides support services to victims of crime” after “police report” in section 39 (2) (a).		12
[3] Section 39 (2) (b)		13
Omit the paragraph. Insert instead:		14
(b) for an application for financial assistance for economic loss under section 26 or 27 or for a recognition payment—is:		15
(i) a police report, or a report by a Government agency or any other agency that provides support services to victims of crime, sufficient to support, on the balance of probability, the applicant’s claim to be a victim of an act of violence, and		16
(ii) a medical, dental or counselling report verifying that the applicant or child who is the primary victim concerned has actually been injured as a result of an act of violence.		17
[4] Section 40 Time for making, and duration of, applications		18
Omit “subsections (2) and (3)” from section 40 (1). Insert instead “this section”.		19
[5] Section 40 (1) and (3)		20
Insert “or a recognition payment” after “financial support” wherever occurring.		21
[6] Section 40 (4)		22
Omit the subsection.		23

[7] Section 41A	1
Insert after section 41:	2
41A Lapsing of application if evidence to support application not provided	3
(1) An application for victims support lapses if:	4
(a) 12 months has passed since the applicant was first requested to provide evidence to support the application, and	5 6
(b) the applicant has, during that 12-month period, been requested on at least 3 separate occasions to provide that evidence, and	7 8
(c) the Commissioner decides that the applicant does not have a valid reason for failing to provide that evidence.	9 10
(2) Subsection (1) applies regardless of whether any claim under the application has been determined.	11 12
(3) The Commissioner is to notify the applicant that the application has lapsed under this section.	13 14
(4) The lapsing of an application for victims support under this section does not prevent the applicant from making another application for victims support.	15 16
[8] Section 43 Determination of applications	17
Insert after section 43 (6):	18
(7) The Commissioner may, only on the Commissioner’s own initiative, amend a notice given under this section to correct an error in the notice.	19 20
[9] Section 44 Reasons for not approving the giving of victims support or for reducing amount of financial support or recognition payment	21 22
Omit “condition,” from section 44 (1) (a).	23
[10] Section 44 (1) (b) and (c) and (2)	24
Omit the provisions.	25
[11] Section 48 Victims support may be approved subject to conditions	26
Insert after section 48 (2):	27
(2A) An approval of victims support is also subject to the condition that the person to or for whose benefit the approval is given must notify the Commissioner of any amount that the person has already received from other sources in connection with the act of violence to which the victims support relates.	28 29 30 31
(2B) Payment under section 54 of the whole or any part of victims support may be withheld by the Commissioner if the person to or for whose benefit the approval is given fails to comply with subsection (2A).	32 33 34
[12] Section 49 Internal review of victims support decisions	35
Omit “28 days” from section 49 (2). Insert instead “90 days”.	36
[13] Section 58 Definitions	37
Omit the definition of <i>relevant offence</i> . Insert instead:	38
<i>relevant offence</i> means any of the following:	39
(a) an offence in respect of which an act of violence (whether or not a series of related acts) is found to have been committed,	40 41

(b)	an offence for or in respect of which victims support is given under this Act,	1 2
(c)	any other offence if an offence referred to in paragraph (a) or (b) was taken into account (under Division 3 of Part 3 of the <i>Crimes (Sentencing Procedure) Act 1999</i>) when sentence was passed on the offender for that other offence.	3 4 5 6
[14]	Section 66 Administrative reviews by Tribunal	7
	Insert after section 66 (7):	8
(8)	In any review proceedings, a person who is a victim of the relevant offence to which the proceedings relate is competent, but not compellable, to give evidence or produce documents.	9 10 11
	Note. See also section 113 which provides that an application for victims support and any documents supporting the application are, subject to that section, not admissible as evidence in any legal proceedings.	12 13 14
[15]	Section 99 Factors to be taken into consideration	15
	Omit “condition,” from section 99 (a).	16
[16]	Section 101 Enforcement of directions for compensation	17
	Insert “the name and address of” after “specifies” in section 101 (1) (b).	18
[17]	Section 112A Provision of personal information to victims of crime and family victims	19 20
	Insert after section 112A (2):	21
(2A)	The personal information that may be provided by a victims rights agency to a victim of crime in accordance with subsection (1) may, if the victim is a child under the age of 18 years or lacks the capacity to understand the nature of the information, be disclosed by the agency to a parent or guardian of the victim.	22 23 24 25
[18]	Section 113 Inadmissibility and use of certain evidence in subsequent legal proceedings	26 27
	Insert after section 113 (2):	28
(2A)	However, if any medical report supporting an application for victims support:	29
(a)	is lodged with the Tribunal under section 58 of the <i>Administrative Decisions Review Act 1997</i> in connection with review proceedings under Part 5 of this Act, or	30 31 32
(b)	is admitted as evidence in review proceedings under Part 5, the report must not be disclosed or provided to the applicant in those proceedings.	33 34 35
[19]	Schedule 2 Savings, transitional and other provisions	36
	Omit “awards under Part 5” from clause 16 (1). Insert instead “amounts paid under Part 4”.	37

[20] Schedule 2	1
Insert after Part 3:	2
Part 4 Provisions consequent on enactment of Victims Rights and Support Amendment (Statutory Review) Act 2018	3
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25 Application of amendments	6
(1) In this clause:	7
<i>amending Act</i> means the <i>Victims Rights and Support Amendment (Statutory Review) Act 2018</i> .	8
<i>former Act</i> means the <i>Victims Support and Rehabilitation Act 1996</i> or the Act repealed by that Act.	9
(2) Subject to this clause, an amendment made by Schedule 1 to the amending Act does not apply in relation to an application for victims support made before the commencement of the amendment.	10
(3) Sections 43 (7) and 48 (2A) and (2B), as inserted by the amending Act, extend to an application for victims support made, but not determined, before the commencement of those provisions.	11
(4) The amendments to sections 44 and 49 made by the amending Act extend to an application for victims support made, but not determined, before the commencement of those amendments.	12
(5) The amendment to section 58 made by the amending Act extends to an order for restitution made under Part 5 of this Act or a former Act before the commencement of that amendment and that has not been determined by the Tribunal.	13
(6) Section 113 (2A), as inserted by the amending Act, does not apply in relation to proceedings before the Tribunal that have commenced before the commencement of that provision.	14
(7) This clause does not apply to the amendments made by the amending Act to this Schedule.	15
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Schedule 2	Amendment of Victims Rights and Support Regulation 2013	1
		2
[1] Clause 4 Definitions		3
	Omit the definitions of <i>generalist counsellor</i> and <i>specialist counsellor</i> .	4
	Insert in alphabetical order:	5
	<i>generalist counsellor tier 1</i> means a person who is a registered psychologist or is eligible for membership of the Australian Association of Social Workers (other than as a student member).	6
		7
		8
	<i>generalist counsellor tier 2</i> means a person who:	9
	(a) is a registered psychologist or is eligible for membership of the Australian Association of Social Workers (other than as a student member), and	10
		11
		12
	(b) has provided (whether before or after this definition was inserted by the <i>Victims Rights and Support Amendment (Statutory Review) Act 2018</i>) approved counselling services under the Act for more than 3 consecutive years, and	13
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	(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	17
		18
		19
	(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.	20
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		22
[2] Clause 4A		23
	Insert after clause 4:	24
4A Approval of other persons as counsellors		25
(1)	The Commissioner may approve a person who:	26
(a)	has counselling qualifications and experience the Commissioner considers to be relevant, and	27
		28
(b)	is not a generalist counsellor tier 1 or tier 2,	29
	to provide approved counselling services in any part of the State where, in the opinion of the Commissioner, there is a shortage of generalist counsellors tier 1 or tier 2 to provide those services.	30
		31
		32
(2)	The approval of a person under this clause to provide approved counselling services is subject to any conditions imposed by the Commissioner.	33
		34
(3)	In approving a person under this clause, the Commissioner is to have regard to the following:	35
		36
(a)	the person's experience in dealing with victims of crime,	37
(b)	whether there is an existing therapeutic relationship between the person and victims of crime living in the part of the State concerned.	38
		39
(4)	A person who is approved under this clause to provide approved counselling services is, for the purposes of clause 6, taken to be a generalist counsellor tier 1.	40
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		42

[3] Clause 5 Authorisation of payments for approved counselling services	1
Insert before clause 5 (1):	2
(1A) Any limit imposed by this clause:	3
(a) on the period that payments for approved counselling services may be authorised for a person, or	4 5
(b) on the amount of payments for approved counselling services that may be authorised for a person,	6 7
is a limit that applies to each act of violence committed in respect of the person.	8 9
[4] Clause 5 (6) (a)	10
Omit “20 hours”. Insert instead “22 hours”.	11
[5] Clauses 5A and 5B	12
Insert after clause 5:	13
5A Immediate access to counselling services	14
(1) Without limiting clause 5 (2), 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.	15 16 17
(2) Subclause (1) is subject to any subsequent finding by the Commissioner that the person is not a victim of an act of violence.	18 19
5B Ongoing counselling services for victims of child sexual assault or physical abuse	20 21
Despite any provision of clause 5 to the contrary, the Commissioner may authorise payments for approved counselling services on an ongoing basis for:	22 23
(a) a person under the age of 18 years who is a victim of sexual assault or physical abuse, or	24 25
(b) a person who, while under the age of 18 years, was a victim of sexual assault or physical abuse.	26 27
[6] Clause 6 Amount of payments	28
Insert after clause 6 (4):	29
(4A) 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.	30 31 32 33
[7] Clause 6, Table	34
Omit “Generalist counsellors”. Insert instead “Generalist counsellors tier 1”.	35
[8] Clause 6, Table	36
Omit “Specialist counsellors”. Insert instead “Generalist counsellors tier 2”.	37

[9] Clause 7 Calculation of actual loss of earnings	1
Omit “the <i>Workers Compensation Act 1987</i> after the first 26 weeks of incapacity within the meaning of clause 1 of Part 19H of Schedule 6 to that Act”.	2 3
Insert instead “section 37 of the <i>Workers Compensation Act 1987</i> (as in force immediately before its substitution by the <i>Workers Compensation Legislation Amendment Act 2012</i>) and indexed in accordance with law”.	4 5 6
[10] Clauses 10 (2) and 11 (b)	7
Omit “\$8,000” wherever occurring. Insert instead “\$9,500”.	8
[11] Part 5, Division 4	9
Insert after Division 3:	10
Division 4 Provisions consequent on enactment of Victims Rights and Support Amendment (Statutory Review) Act 2018	11 12
30 Definition	13
In this Division:	14
<i>amending Act</i> means the <i>Victims Rights and Support Amendment (Statutory Review) Act 2018</i> .	15 16
31 Application of amendments	17
Except as provided by clause 32, an amendment made by Schedule 2 to the amending Act does not apply in relation to an application for victims support that was made before the commencement of the amendment.	18 19 20
32 Existing counsellors	21
(1) A person who was a generalist counsellor immediately before the commencement of Schedule 2 [1] to the amending Act is, on that commencement, taken to be a generalist counsellor tier 1.	22 23 24
(2) A person who was a specialist counsellor immediately before the commencement of Schedule 2 [1] to the amending Act is, on that commencement, taken to be a generalist counsellor tier 2.	25 26 27

Schedule 3	Amendment of other legislation	1
3.1	Children (Criminal Proceedings) Act 1987 No 55	2
	Section 15A Publishing and broadcasting of names prohibited	3
	Insert after section 15A (7):	4
	(8) Proceedings for an offence against this section that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence.	5 6 7
3.2	Civil and Administrative Tribunal Act 2013 No 2	8
	Schedule 3 Administrative and Equal Opportunity Division	9
	Insert after clause 13A:	10
	13B Review proceedings under Part 5 of Victims Rights and Support Act 2013	11
	Despite section 46 of this Act, the Tribunal may not compel a witness to give evidence or produce documents in review proceedings under Part 5 of the <i>Victims Rights and Support Act 2013</i> if the witness is the victim of the relevant offence (within the meaning of that Part) to which the review proceedings relate.	12 13 14 15 16
3.3	Crimes Act 1900 No 40	17
	Section 578A Prohibition of publication identifying victims of certain sexual offences	18
	Insert after section 578A (8):	19
	(9) Proceedings for an offence against this section that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence.	20 21 22
3.4	Crimes (Domestic and Personal Violence) Act 2007 No 80	23
	Section 40A Apprehended violence order may be made in care proceedings	24
	Omit “and” from section 40A (1) (a). Insert instead “or”.	25