

# Victims Rights Act 1996 No 114

[1996-114]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Victims Rights Act 1996 No 114



New South Wales

An Act to establish a charter of rights for victims of crime; to amend the *Criminal Procedure Act 1986* with respect to victim impact statements; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Victims Rights Act 1996*.

### 2 Commencement

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

### 3 Object of Act

The object of this Act is to recognise and promote the rights of victims of crime.

### 4 Definitions

In this Act:

**Charter of Victims Rights** means the Charter set out in section 6.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**support services** include welfare, health, counselling and legal assistance services.

**victim of crime** is defined in section 5.

**Victims Advisory Board** means the Victims Advisory Board established by this Act.

**Victims Services**—see section 9.

### 5 Meaning of victim of crime

(1) For the purposes of this Act, a **victim of crime** is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence.

- (2) A person suffers **harm** if, as a result of such an act:
  - (a) the person suffers actual physical bodily harm or psychological or psychiatric harm, or
  - (b) the person's property is deliberately taken, destroyed or damaged.
- (3) If the person dies as a result of the act concerned, a member of the person's immediate family is also a victim of crime for the purposes of this Act.
- (4) If a person dies as a result of the act concerned and there is more than one member of the person's immediate family, members of the immediate family may nominate a representative for the purposes of the Charter of Victims Rights.

## **Part 2 Charter of Victims Rights**

### **6 Charter of rights for victims of crime**

The following comprises the Charter of rights of victims of crime:

#### **6.1 Courtesy, compassion and respect**

A victim will be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity.

#### **6.2 Information about services and remedies**

A victim will be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

#### **6.3 Access to services**

A victim will have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

#### **6.4 Information about investigation of the crime**

A victim will, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim will be informed accordingly.

#### **6.5 Information about prosecution of accused**

- (1) A victim will be informed in a timely manner of the following:
  - (a) the charges laid against the accused or the reasons for not laying charges,
  - (b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to

the other charges,

- (c) the date and place of hearing of any charge laid against the accused,
- (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.

(2) A victim will be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless:

- (a) the victim has indicated that he or she does not wish to be so consulted, or
- (b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.

## **6.6 Information about trial process and role as witness**

A victim who is a witness in the trial for the crime will be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

## **6.7 Protection from contact with accused**

A victim will be protected from unnecessary contact with the accused and defence witnesses during the course of court proceedings.

## **6.8 Protection of identity of victim**

A victim's residential address and telephone number will not be disclosed unless a court otherwise directs.

## **6.9 Attendance at preliminary hearings**

A victim will be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

## **6.10 Return of property of victim held by State**

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim will be minimised and the property returned promptly.

## **6.11 Protection from accused**

A victim's need or perceived need for protection will be put before a bail authority by the prosecutor in any bail application by the accused.

## **6.12 Information about special bail conditions**

A victim will be informed about any special bail conditions imposed on the accused

that are designed to protect the victim or the victim's family.

### **6.13 Information about outcome of bail application**

A victim will be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

### **6.14 Victim impact statement**

A relevant victim will have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

### **6.15 Information about impending release, escape or eligibility for absence from custody**

A victim will, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

### **6.16 Submissions on parole and eligibility for absence from custody of serious offenders**

A victim will, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

### **6.17 Compensation for victims of personal violence**

A victim of a crime involving sexual or other serious personal violence is entitled to make a claim under a statutory scheme for victims compensation.

### **6.18 Information about complaint procedure where Charter is breached**

A victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making such a complaint.

## **7 Implementation of Charter**

- (1) The Charter of Victims Rights is, as far as practicable and appropriate, to govern the treatment of victims in the administration of the affairs of the State.
- (2) Any agency or person exercising official functions in the administration of the affairs of the State (other than judicial functions) must, to the extent that it is relevant and practicable to do so, have regard to the Charter of Victims Rights in addition to any other relevant matter.
- (3) In this section, the ***administration of the affairs of the State*** includes the

following:

- (a) the administration of justice,
- (b) the provision of police services,
- (c) the administration of any department of the Government,
- (d) the provision of services to victims of crime by any person or non-government agency funded by the State to provide those services.

## **8 Legal rights not affected**

- (1) Nothing in this Part gives rise to, or can be taken into account in, any civil cause of action, and without limiting the generality of the foregoing, nothing in this Part:
  - (a) operates to create in any person any legal rights not in existence before the enactment of this Part, or
  - (b) affects the validity, or provides grounds for review, of any judicial or administrative act or omission.
- (2) However, this section does not prevent a contravention of this Part from being the subject of disciplinary proceedings against an official or a complaint to Victims Services under Part 3.

## **Part 3 Victims Services**

### **9 Victims Services**

**Victims Services** is that part of the Department of Justice and Attorney General comprising the group of staff who are principally involved in the administration of this Act and the [Victims Support and Rehabilitation Act 1996](#).

### **10 Functions of Victims Services**

- (1) Victims Services has the following functions:
  - (a) to provide information to victims of crime about support services and compensation for victims of crime, and to assist victims of crime in the exercise of their rights,
  - (b) to co-ordinate the delivery of support services for victims of crime and to encourage the effective and efficient delivery of those services,
  - (c) to promote and oversee the implementation of the Charter of Victims Rights, including by publishing codes, guidelines and other practical guidance on the implementation of the Charter,
  - (d) to receive complaints from victims of crime about alleged breaches of the Charter



of Victims Rights and to use its best endeavours to resolve the complaints.

- (2) In this section, **victim of crime** includes a member of the immediate family of a missing person.

### **11 Report to Parliament**

- (1) Victims Services may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of its functions, including in connection with the implementation of the Charter of Victims Rights.
- (2) The annual report of the work of Victims Services is to be included in the annual report to Parliament of the Attorney General's Department.

## **Part 4 Victims Advisory Board**

### **12 Establishment of Victims Advisory Board**

There is established by this Act a Victims Advisory Board.

### **13 Membership and procedure of Victims Advisory Board**

- (1) The Victims Advisory Board is to consist of not more than 12 members appointed by the Minister, including:
- (a) 6 members representing the general community, and
  - (b) a member representing the Police Service, and
  - (c) a member representing the Attorney General's Department, and
  - (d) members representing other relevant Government agencies.
- (2) Schedule 1 has effect with respect to the membership and procedure of the Victims Advisory Board.

### **14 Functions of Victims Advisory Board**

- (1) The Victims Advisory Board has the following functions:
- (a) to advise the Minister on policies and administrative arrangements relating to support services and compensation for victims of crime,
  - (b) to consult victims of crime, community victim support groups and Government agencies on issues and policies concerning victims of crime,
  - (c) to promote legislative, administrative or other reforms to meet the needs of victims of crime.

- (2) Any advice given to the Minister may be given either at the request of the Minister or without any such request.

## **Part 5 Miscellaneous**

### **15 Act binds Crown**

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **16 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **17 (Repealed)**

### **18 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Provisions relating to membership and procedure of Victims Advisory Board**

(Section 13)

### **1 Definitions**

In this Schedule:

**Board** means the Victims Advisory Board.

**member** means a member of the Board, including the Chairperson of the Board.

### **2 Chairperson**

- (1) One of the members is to be appointed as Chairperson of the Board in and by the instrument of appointment of the person as a member or a separate instrument executed by the Minister.
- (2) The Minister may remove a member from office as Chairperson at any time.

- (3) The Chairperson vacates office as Chairperson if the person:
  - (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **3 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Allowances of members**

A member (other than a member who is employed by a Government agency) is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

### **5 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) A person (other than a person employed by a Government agency) while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

## **7 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any allowance payable to the person under this Act as a member.

## **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of those meetings is, subject to this Schedule and the regulations, to be determined by the Board.

## **10 Quorum**

The quorum for a meeting of the Board is a majority of the members for the time being.

## **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a member elected to chair the meeting by the members present) is to preside at a meeting of the Board.
- (2) The person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **13 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

## **Schedule 2 (Repealed)**