

# Victims Rights and Support Regulation 2013

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New South Wales

## Status Information

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### Provisions in force

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

### Authorisation

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New South Wales

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# Victims Rights and Support Regulation 2013



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Victims Rights and Support Regulation 2013*.

### 2 Commencement

This Regulation commences on the commencement of the Act.

### 3 Interpretation

(1) In this Regulation:

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

(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** 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).

**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.

**specialist counsellor** means a person who holds general registration under the Health Practitioner Regulation National Law to practise as a psychologist, or is eligible for membership of the Australian Association of Social Workers (other than as a student member), and who:

- (a) 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, or

- (b) in the opinion of the Commissioner, has specialist counselling skills due to the person's qualifications or experience.

**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) 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 10 hours of counselling (including counselling for the purposes of an application for continued counselling), and
  - (b) for such further periods of counselling as the Commissioner may consider appropriate.
- (2) The Commissioner may consider a person to be a victim (other than a family victim or relevant family member) referred to in subclause (1), 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.
- (3) The Commissioner must not authorise payments for more than a total of 22 hours of counselling services for a person described in subclause (1) within Australia unless satisfied that there are exceptional reasons for doing so.
- (4) The Commissioner must not authorise payments for counselling services provided outside Australia for more than a total of 22 hours or a maximum of \$5,500, whichever is the lesser.
- (5) The Commissioner may, if the Commissioner considers it appropriate, authorise the provision of approved counselling services to a relevant family member.
- (6) 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 20 hours of counselling, and
  - (b) for such further periods of counselling as may be requested by the family victim or relevant family member.
- (7) 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.
- (8) 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 (2) 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.
- (9) 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 Amount of payments

- (1) For the purposes of section 33 of the Act, the amount of the payment to be made or reimbursed for each hour of approved counselling services provided to a victim who is resident in Australia is 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.
- (2) In addition to the amount approved in accordance with the scale set out in the Table to this clause, the amount so approved is to include the amount of any GST that is payable in respect of the provision of any such approved counselling services.
- (3) 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.
- (4) Subclause (2) does not permit the approval of an amount that is greater than 10% of the amount of the costs approved (apart from that subclause).
- (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	\$120 per hour
2	Specialist counsellors	\$144 per hour
3	Psychiatrists	\$256 per hour

## **Part 3 Financial assistance**

### **7 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 the *Workers Compensation Act 1987* after the first 26 weeks of incapacity within the meaning of clause 1 of Part 19H of Schedule 6 to that Act.

### **8 Primary victims**

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

### **9 Parent, step-parent or guardian of primary victim**

For the purpose of section 27 (1) of the Act, a parent, step-parent or guardian who is caring for a child who is the primary victim of an act of violence is eligible for financial assistance of an amount in total not exceeding \$30,000 for the following economic loss arising as a direct result of the act of violence concerned:

- (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—up to \$20,000,
- (b) if the parent, step-parent or guardian cannot demonstrate such a loss of actual earnings—up to \$5,000 for out-of-pocket expenses,
- (c) medical and dental expenses of the child (other than expenses for which immediate financial assistance is available for the child under section 26 (1) (b) of the Act),
- (d) up to \$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) up to \$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.

#### **10 Family victim**

- (1) For the purposes of section 29 (1) (b) of the Act, the prescribed amount of financial assistance for immediate needs is an amount not exceeding \$5,000.
- (2) For the purposes of section 29 (1) (c) of the Act, a family victim of an act of violence is eligible for payment of an amount not exceeding \$8,000 in total for funeral expenses described in that paragraph.
- (3) For the purposes of section 29 (1) (d) of the Act, the prescribed amount of financial assistance is an amount not exceeding \$5,000 in total 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.

#### **11 Funeral and other expenses incurred by persons other than family victims**

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

- (a) immediate needs—is an amount not exceeding \$5,000, and
- (b) funeral expenses—is an amount not exceeding \$8,000.

#### **12 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

### 13 Costs and expenses

Costs and expenses 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 section 60 of 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 cost and expenses payable in respect of proceedings for victims support under the Act.

## Part 5 Savings and transitional provisions

### Division 1 Preliminary

#### 14 Definitions

In this Part:

**statutory compensation** means statutory compensation within the meaning of the repealed Act.

**the repealed Act** means the [Victims Support and Rehabilitation Act 1996](#) (and the regulations and rules made under it) as in force immediately before its repeal by the Act.

### Division 2 Miscellaneous provisions consequent on enactment of Act

#### 15 Applications for compensation under statutory compensation scheme

- (1) The reference to an application under section 26 (1) (b) or (c) of the Act for victims support in clause 5 (3) of Schedule 2 to the Act extends to an application that would, if it had been made by a family victim for victims support as referred to in section 29 (1) (b) or (d) of the Act, have been duly lodged in accordance with the Act within the prescribed period referred to in that subclause.

**Note—**

A family victim may accordingly be eligible for a special grant of \$5,000 in the circumstances set out in clause 5 of Schedule 2 to the Act.

- (2) The amount determined to be payable to an applicant under clause 5 of Schedule 2 to

the Act who is a family victim is not, despite clause 5 (6) of that Schedule, to be reduced by the amount of any interim award of statutory compensation made to the applicant under section 33 of the repealed Act in respect of funeral expenses.

#### **16 Appeals against determinations regarding applications for statutory compensation**

- (1) Despite the repeal of section 36 of the repealed Act, if notice of a determination of a compensation assessor was served before that repeal and an appeal could have been duly made in accordance with section 36 (3) (a) if it were still in force, an appeal may be made after 3 June 2013 as if section 36 (other than section 36 (2) and (3) (b)) were still in force.
- (2) An appeal referred to in subclause (1) is to be treated as if it were a proceeding referred to in clause 14 of Schedule 2 to the Act.
- (3) Proceedings to which clause 14 of Schedule 2 to the Act applies (including proceedings referred to in subclause (1)) are, subject to clause 13 of Schedule 2 to the Act, to be determined under section 38 (other than section 38 (5) (b)) of the repealed Act as if the repealed Act were still in force.
- (4) For those purposes, a reference in the repealed Act:
  - (a) to the Director or a compensation assessor is taken to be a reference to the Commissioner, and
  - (b) to the Victims Compensation Tribunal is taken to be a reference to the Civil and Administrative Tribunal.
- (5) Despite clause 4 (1) of Schedule 2 to the Act, statutory compensation determined to be payable (less any deductions under section 19A of the repealed Act) pursuant to a determination under section 38 of the repealed Act as provided in accordance with subclause (3) is payable from the Victims Support Fund under the Act.

### **Division 3 Reassessment of applications for statutory compensation under repealed Act**

#### **17 Definitions**

In this Division:

***new Act*** means the Act.

***reassessment application***—see clause 19.

#### **18 Operation of Division**

- (1) The provisions of this Division have effect despite any provision of Part 2 of Schedule 2 to the new Act.

- (2) An application cannot be dealt with under clause 5 of that Schedule or clause 15 of this Regulation after the commencement of this Division.

### **19 Eligibility for reassessment applications**

- (1) A person whose application for statutory compensation was lodged, but not finally determined, under the repealed Act before the day the Bill for the new Act was first introduced into Parliament is eligible to make an application for reassessment of that application under this Division (a **reassessment application**).
- (2) A person is eligible to make a reassessment application even if the person subsequently withdrew the application for statutory compensation or withdrew from having the application dealt with under clause 5 of Schedule 2 to the new Act.
- (3) Despite subclause (1), a person whose application was dealt with under clause 5 of Schedule 2 to the new Act and was dismissed is not eligible to make a reassessment application unless the ground for dismissal was that the person was a family or secondary victim who was not entitled to a recognition payment under the new Act.
- (4) For the purposes of this section, an application was not finally determined if:
  - (a) any period for bringing an appeal as of right in respect of the application had not expired (ignoring any period that may have been available by way of extension of time to apply), or
  - (b) any appeal in respect of the application was pending (whether or not it was an appeal brought as of right).

### **20 Reassessment applications**

- (1) A person cannot make a reassessment application after 1 September 2016.
- (2) A reassessment application is to be made by written notice to the Commissioner indicating that the applicant wishes to have the previous application for statutory compensation reassessed under this Division.
- (3) No fee is payable for making a reassessment application.
- (4) The Commissioner may require a person who makes a reassessment application to provide any documentary evidence or other information requested in writing by the Commissioner. The evidence or information must be provided not later than 6 months after the reassessment application is made.
- (5) If a request for evidence or information to be provided by the applicant is made by the Commissioner more than 3 months after the reassessment application is made, the applicant must provide the evidence or information not later than 3 months after the request is made.

## **21 Application of repealed Act to reassessment applications**

- (1) A reassessment application is to be determined as if it were an application for statutory compensation duly made under the repealed Act and the provisions of the repealed Act continue to apply to and in respect of a reassessment application, subject to this Division.
- (2) For the purposes of this Division, a reference in the repealed Act:
  - (a) to the Director or a compensation assessor is taken to be a reference to the Commissioner, and
  - (b) to a determination for restitution is taken to be a determination under Part 5 of the new Act (as applied by this Division), and
  - (c) to the Compensation Fund is taken to be a reference to the Victims Support Fund, and
  - (d) to the Compensation Fund Corporation is taken to be a reference to the Secretary of the Department of Justice.
- (3) The following provisions of the repealed Act do not apply to a reassessment application:
  - (a) sections 25 (2) and (3), 26, 34, 35 and 42 (1) (b),
  - (b) Divisions 6, 8 and 9 of Part 2,
  - (c) Part 3,
  - (d) Parts 4 and 5,
  - (e) Schedule 2.

## **22 Applications by family and secondary victims**

- (1) A reassessment application by a family victim of an act of violence is not to be determined by the Commissioner before 1 September 2016 unless all family victims of the act of violence have made a reassessment application.
- (2) A reassessment application by a secondary victim of an act of violence is not to be determined by the Commissioner before 1 September 2016 unless:
  - (a) all primary victims of the act of violence have made reassessment applications and those applications have been determined, and
  - (b) all other secondary victims and family victims of the act of violence have made a reassessment application.

### **23 Conditions of determinations**

Section 48 of the new Act applies to the determination of an award of statutory compensation under this Division in the same way as it applies to an approval referred to in subsection (1) or (2) of that section.

### **24 Payments from Fund: section 16 (f) of new Act**

- (1) An amount of statutory compensation payable under an award made under this Division is to be paid from the Victims Support Fund.
- (2) Section 54 of the new Act applies to the payment of an award of statutory compensation under this Division in the same way as it applies to payment of victims support that is approved by the Commissioner.

### **25 No legal costs for reassessment application**

- (1) A person who makes a reassessment application is not entitled to be awarded his or her legal costs in respect of the application.
- (2) However, the Commissioner may approve the payment of disbursements in accordance with the Table to clause 12 of the [Victims Support and Rehabilitation Rule 1997](#).

### **26 Guidelines for compensation assessors**

Section 65 (1) of the repealed Act applies to the determination of statutory compensation under this Division as if a reference in that subsection to the Tribunal were a reference to the Commissioner.

### **27 Reviews of determinations**

Section 49 of the new Act (other than section 49 (5) (c)) applies to a person who makes a reassessment application in the same way as it applies to a person who is an applicant for victims support.

### **28 Eligible persons who have already received victims support payments**

- (1) This clause applies to the following persons who make reassessment applications:
  - (a) a person who was awarded a payment under clause 5 of Schedule 2 to the new Act or clause 15 of this Regulation before the commencement of this Division (**transitional victims support**) in respect of an act of violence that is the subject of the reassessment application,
  - (b) a person who was awarded any other victims support under the new Act in respect of an act of violence that is the subject of the reassessment application.
- (2) The amount of any statutory compensation awarded to a person under this Division is

to be reduced by the amount of any transitional victims support or victims support awarded to the person in respect of the same act of violence.

- (3) If the amount of transitional victims support or victims support awarded to a person exceeds the amount of statutory compensation that may be awarded to the person under this Division in respect of the same act of violence:
  - (a) no further compensation is payable to the person under the new Act in respect of the act of violence, and
  - (b) the person is not required to refund any amount that exceeds the amount of statutory compensation that may be awarded to the person under this Division.

## **29 Restitution proceedings**

- (1) Part 5 of the new Act applies to an award of statutory compensation made under this Division in the same way that it applies to awards under Part 4 of the new Act.
- (2) If a provisional order for restitution was made under Part 5 of the new Act before the commencement of this Division relating to victims support in respect of an act of violence for which an amount of statutory compensation is awarded under this Division:
  - (a) the amount of any restitution paid or payable cannot be increased to cover any additional amount of statutory compensation paid or payable in respect of that act of violence, and
  - (b) no further application can be made for restitution for the same act of violence.