

# Background Paper

## Statutory Review of the *Victims Rights and Support Act 2013*

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# 1. Introduction

## 1.1. Purpose of this Background Paper

The *Victims Rights and Support Act 2013* (**the Act**) sets out the rights of victims of crime in New South Wales (**NSW**) and establishes a support scheme to provide practical and financial support for victims of violent crime. The key principles of this scheme are to ensure that victims receive timely support to meet their immediate needs, provide financial assistance and rehabilitation, and recognise and acknowledge the trauma suffered. The scheme is consistent with the United Nations (**UN**) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Under section 119 of the Act, the Attorney General is required to undertake a review of the Act to ensure that its policy objectives remain valid and the terms of the Act remain appropriate for securing those objectives.

This Background Paper (**the Paper**) is the first step in the review of the Act. It provides information about each Part of the Act, and invites stakeholders to consider the two questions specified in the review provision:

- i. Do the policy objectives of the Act remain valid?
- ii. Do the terms of the Act remain appropriate to meet those policy objectives?

The purpose of the Paper is to seek initial stakeholder views on these questions. Further comments are welcome on any other matters related to the Act. There will be further stakeholder consultation as part of subsequent stages of the review, including in relation to any potential options for reform.

## 1.2. Conduct of the review

The NSW Department of Communities and Justice (**the Department**) is undertaking this review on behalf of the Attorney General. The Paper will be published on the NSW Government 'Have Your Say' and the Department's website. Stakeholders are invited to consider and make submissions in response to the Paper.

### How to make your submission

To provide written comments in response to this Paper, please lodge your submission:

- By e-mail to: [policy@justice.nsw.gov.au](mailto:policy@justice.nsw.gov.au), or
- By mail to Policy, Reform & Legislation, Department of Communities and Justice, Locked Bag 5000, Parramatta NSW 2124

### Submissions close at 5PM on 11 July 2022.

Please note that the contents of the submissions may be made public, unless otherwise advised. If you wish for your submission to remain confidential, please clearly identify this when you make your submission.

If you are interested in participating in the consultation but are unable to make a written submission, please contact us at [policy@justice.nsw.gov.au](mailto:policy@justice.nsw.gov.au)

## 2. Supporting Victims of Crime in NSW

### 2.1. Support under the *Victims Rights and Support Act 2013*

The experience of being a victim of crime is complex and unique to each individual. It is important to recognise and respond to the different needs of victims and their families.

In NSW, the Act provides the overarching legal framework for promoting the rights of victims and access to certain types of supports. The Act establishes the Victims Support Scheme (**the VSS**), which is administered by Victims Services in the Department.

There are four pillars of support available under the VSS, comprising of counselling, financial assistance for immediate needs, financial assistance for economic loss, and recognition payments.

The VSS was introduced following an external review of the previous Victims Compensation Scheme in 2012 by PricewaterhouseCoopers (**PwC**), as commissioned by the Attorney General at the time. The review found the previous scheme to be financially unsustainable to accommodate for the growing demand for victim support, with claimants waiting an average of 30 months to receive compensation payments.

An overhaul to the scheme was recommended to enable these findings to be effectively implemented and to secure the scheme's ongoing financial viability in providing timely and tailored support to victims of crime. The intention of this was to produce results which better optimise the support and rehabilitation outcomes of as broad a group of victims as possible, while being financially sustainable.

In response, the Act established the VSS, which shifted the design of the scheme from a legal compensation awarding process to an administrative needs based process. The VSS provides eligible victims with up-front counselling and financial assistance in acknowledgement of the victim's immediate needs, as well as longer-term economic loss. Categories of recognition payments under the VSS are linked to the nature of the relevant act of violence. This is unlike the previous scheme, which assessed payments according to injuries to particular parts of the body under a "Schedule of Compensable Injuries".

### 2.2. Other supports available to victims

The VSS operates among other federal and NSW support programs contributing to a comprehensive package of supports for victims of crime. While it is not possible to include a detailed outline of all the support services in this Paper, particular references are made to victims support schemes for domestic and family violence and sexual assault, noting their growing prominence in reporting figures and in claims made under the VSS.

#### **Domestic and family violence support framework**

Where a person experiences domestic or family violence in NSW, they may be eligible for support under the VSS in addition to a number of other initiatives funded by the Commonwealth and NSW Governments. The NSW Domestic and Family Violence Blueprint for Reform 2016-2021 (**the Blueprint**) includes strategies to prevent domestic and family violence, intervene early with individuals and communities at risk, support victims, hold perpetrators to account, and improve the quality of services and the system as a whole. In 2022, the NSW Government will develop new whole-of-government plans

for domestic, family and sexual violence, which will align with commitments under the next National Plan to End Violence Against Women and Children 2022-2032.

A notable initiative under the Blueprint is Safer Pathway. Safer Pathway is the state-wide program that assists victim-survivors of domestic and family violence access the services and supports they need. Within Safer Pathway, relevant government and non-government agencies work together to identify people experiencing domestic and family violence, and to offer them support to improve their and their children's safety. Safer Pathway is underpinned by a victim-centred information sharing protocol to streamline referral pathways and support across agencies, assist victim-survivors to navigate the service system and reduce the need for victim-survivors to re-tell their stories.

Victim-survivors can also contact the NSW Domestic Violence Line. The NSW Domestic Violence Line is a free call service that provides support to women who are experiencing partner or ex-partner violence. The service is available 24 hours a day, seven days a week. This specialised service to female victim-survivors responds to the significant over-representation of women in domestic and family violence incidents. According to the NSW Bureau of Crime Statistics and Research (**BOCSAR**), approximately half of domestic and family violence incidents are committed in an intimate partner relationship, with women representing 77% of domestic and family violence-related murder victims.

Households affected by domestic and family violence may be able to access the full range of housing assistance options available through the NSW Government. These include Link2home and women's refuges. The Link2home Homelessness Information Line is a state-wide telephone service providing information, assessment and referral to specialist homelessness services, temporary accommodation and other appropriate services for people who are homeless or at risk of homelessness. Women's refuges provide accommodation and support for women and their children if they have escaped domestic and family violence.

The NSW Government is investing \$687 million over four years (\$204.9 million in 2021/22) to support victim safety and reduce domestic and family violence re-offending through the continuation of early intervention initiatives, victim support and perpetrator interventions (this includes \$80 million of Commonwealth funding across 2021-22 and 2022-23).

The 2021-2022 NSW Budget includes an additional \$32.5 million over four years to support more women and children experiencing domestic and family violence to stay safe and secure in their homes by expanding the *Staying Home Leaving Violence (SHLV)* program. The SHLV program commenced in 2004 and currently operates in 33 sites across NSW. This initiative secures a safe space for victims by removing the perpetrator from the family home and assisting victims with safety planning, home security, childcare support and legal processes.

In October 2021, the NSW Government announced it would invest an additional \$484.3 million to provide additional support to women and children escaping domestic and family violence. This includes:

- \$426.6 million over four years to expand Core and Cluster to deliver and operate around 75 extra women's refuges that support women and children escaping domestic and family violence;
- \$52.5 million over four years towards the Community Housing Innovation Fund (**CHIF**) partnership with the community housing sector, to provide approximately 200 sustainable, social and affordable housing dwellings for women experiencing domestic and family violence; and
- \$5.2 million over four years, for a trial in two districts to provide dedicated supports for accompanied children and young people experiencing or at risk of homelessness, with a focus on children and young people impacted by domestic and family violence.

Nationally, as part of the 2021-2022 Budget, the Commonwealth Government has committed funding to support the *Escaping Violence Payment trial* and to further expand the *Safe Places Emergency Accommodation Program*. *Escaping Violence Payment* is a two-year trial that provides women leaving a violent relationship with access to a one-off payment of up to \$5,000. The *Safe Places Emergency Accommodation Program* offers emergency accommodation for women and children experiencing family and domestic violence. These commitments at both the state and federal level recognise the seriousness of domestic and family violence and its impact on many Australian families.

## Sexual violence support framework

For victims of sexual violence, as with victims of domestic and family violence, the VSS provides access to approved counselling services, financial assistance and a lump sum payment in recognition of the trauma and pain associated with the incident.

The NSW Government funds or implements a variety of state-wide specialist sexual assault services and supports for child and adult victims, including integrated forensic, medical and counselling services. For victims involved in criminal proceedings, the Witness Assistance Service (**WAS**) allows appointed support persons to accompany the victims in their capacity as witnesses during the legal proceedings. The WAS extends support to victims of serious domestic and family violence and other people who are vulnerable due to disability, age, or mental health. Where children and young people appear before courts as victims and prosecution witnesses in sexual offence matters, the Child Sexual Offence Evidence Program (**CSOEP**) seeks to reduce the stress and trauma associated with the experience by allowing pre-recording of evidence and providing witness intermediaries to assist them during police interview and at court.

These specialised services acknowledge the vulnerability of children as victims and survivors of sexual assault in Australia. In the 12 months to September 2021, there were 15,262 incidents of sexual offence reported to the NSW Police Force. Two-thirds of the reported victims were children, with young female victims reporting sexual offences at more than three times the rate of young male victims.

The NSW Government introduced the first whole-of-government NSW Sexual Assault Strategy 2018-2021, which established a comprehensive framework to improve prevention and response to sexual assault in NSW.

The Strategy focused on actions to improve prevention, early intervention and responses to sexual assault, and responding to and supporting victims with a trauma-informed approach. The Strategy delivered a number of key initiatives to support victims. These include:

- prioritising adult survivors of child sexual assault, where eligible, for social housing;
- delivering integrated medical, forensic and crisis counselling services to those who have been sexually assaulted; in partnership with ACON, delivering specialist programs for LGBTIQ communities to raise awareness of sexual assault and access to support services;
- in partnership with Maari Ma Health Aboriginal Corporation in Far West NSW developing and piloting a sexual assault program as part of the existing Kalypi Paaka Mirika: Clear River Ahead Healing Program. This pilot program will provide culturally appropriate support services to Aboriginal people who have experienced sexual assault; and
- developing a suite of communication and information resources for people with intellectual disability who have experienced sexual assault, their families, support people and service providers.

The Strategy recognised that a range of different services are involved in supporting individuals who have experienced sexual assault including police, child protection, forensic, medical, legal, counselling, crisis support and courts. Effective co-ordination across these different components of the system ensures timely and tailored support is provided to victims of crime in their journey from prevention to education, therapeutic services and effective justice responses. Work is underway to develop the next NSW whole-of-government plan to prevent and respond to sexual violence, which will continue to focus on effective and trauma-informed responses to victims of sexual violence.

## **NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse**

For individuals who have experienced institutional child sexual abuse, the National Redress Scheme offers support through access to counselling, financial payments up to a maximum value of \$150,000, and a direct personal response from the responsible participating institutions. The National Redress Scheme was established on 1 July 2018 in response to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**). The purpose of the National Redress Scheme is to recognise and alleviate the impact of past institutional child sexual abuse and related abuse. NSW was one of the first jurisdictions to announce its participation in the National Redress Scheme.

On 23 June 2018, the NSW Government released a comprehensive response to the Royal Commission's Final Report, accepting the overwhelming majority of recommendations. A \$127 million funding package was announced in October 2018 aimed at addressing gaps in the service delivery system and ensuring greater access to assessment, treatment and support services for children and adults affected by child sexual abuse.

## 3. Victims Rights and Support Act 2013

This Chapter outlines key provisions of the Act to facilitate consideration of whether the objectives and terms of the Act remain valid and appropriate to improve outcomes for victims of crime.

The Act was introduced in 2013, replacing the now repealed *Victims Support and Rehabilitation Act 1996* and the *Victims Rights Act 1996*.

In 2018, the Department completed the first statutory review of the Act. As the review was undertaken only three years following the commencement of the Act, there was limited information available on the operation of the Act and the VSS. That review found that the terms of the Act continued to secure its policy objectives, despite some minor drafting anomalies and inconsistencies in the Act. The final report of the review made 17 recommendations aimed at facilitating greater legislative clarity and improving the overall administration of the VSS.

These recommendations have now been implemented by the *Victims Rights and Support Amendment (Statutory Review) Act 2018*, which has made a number of improvements to the Act and supporting regulations. Some of key reforms include:

- allowing documentary evidence of an act of violence for applications under the VSS to be provided by government funded non-government organisations;
- extending 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;
- expanding the initial limit of approved counselling services for family victims from 20 to 22 hours; and
- increasing the maximum amount payable as financial assistance to family victims for funeral expenses.

Where and as permitted by the Act, the Victims Rights and Support Regulation 2019 (**the Regulation**) provides the necessary detail to support the operation of the Act. Notably, the Regulation prescribes:

- time limits and authorised payment amounts for approved counselling services;
- maximum payment amounts for financial assistance for immediate needs and economic loss; and
- recognition payment amounts for each category (categories A–D).

Where relevant, the Paper refers to specific parts of the Regulation in its discussion of the Act to provide a fuller picture of the current operation of the Act.

The *Modern Slavery Act 2018* as amended by the *Modern Slavery Amendment Act 2021* will also make victims support generally available to victims of acts of modern slavery committed in NSW. The *Modern Slavery Act 2018*, as amended by the *Modern Slavery Amendment Act 2021*, commenced on 1 January 2022.

The following sections of this Chapter consider each Part of the Act in detail and invite stakeholder feedback on whether any changes are needed to improve the overall administration of the Act.

### 3.1. Objectives of the Act

The Act is divided into eight Parts, designed to secure specific policy objectives. These are outlined in **Figure A**.

**Figure A: Policy objectives of the Act**

Part of the Act	Policy objective
Part 1: Preliminary	Defining key words used in the Act.
Part 2: Victims rights	Recognising and promoting the rights of victims of crime.
<b>Part 3: Administration</b>	Establishing the role of the Commissioner of Victims Rights and the Victims Support Fund.
Part 4: Victims Support Scheme	Establishing a scheme for the provision of support for victims of acts of violence.
Part 5: Recovery of victims support payments from offenders	Enabling financial support paid and recognition payments made under the VSS to be recovered from persons found guilty of the crimes giving rise to the payments.
Part 6: Compensation awarded by court	Giving effect to an alternative scheme under which a court may order the person found guilty to pay compensation to any victim of the crime.
Part 7: Victims support levies	Imposing a levy on persons found guilty of crimes for the purposes of funding the VSS.
Part 8: Victims Advisory Board	Establishing the Victims Advisory Board including its membership and statutory functions.
<b>Part 9: Miscellaneous</b>	Prescribing other miscellaneous provisions related to the operation of the Act.

### 3.2. Victims Rights (Part 2)

The object of Part 2 of the Act is to recognise and promote the rights of victims of crime.

To achieve this aim, the Act establishes the Charter of Victims Rights (**the Charter**), originating from the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (**the UN Declaration**). As embodied by the UN Declaration, the Charter aims to safeguard and promote legal protections for victims of crime who have suffered harm as a direct result of a criminal offence. The Act provides that the Charter sets out how victims are to be treated in NSW. It must be upheld by all NSW Government agencies, and other people and organisations funded by the state who provide services to victims of crime.

The Charter applies to all victims who have suffered harm as a result of a criminal offence. This includes where a person suffers actual physical bodily harm or psychological or psychiatric harm, as well as where the person's property is deliberately taken, destroyed or damaged. In the case where the criminal act results in the victim's death, a member of the deceased's immediately family is also taken to be a victim of crime.

The Charter outlines 18 rights, including the right of the victim to:

- be treated with courtesy, compassion and respect;
- information about, and access to, welfare, health, counselling and legal services, where available;
- information about the investigation and prosecution of the offender; and
- protection from the offender and protection of privacy.

Victims of forensic patients have additional rights relating to matters before the Mental Health Review Tribunal (**the Tribunal**) under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. This includes informing the victim in a timely manner of any matter before the Tribunal or any fact related to the release or granting of leave to the forensic patient.

In practice, victims of crime can rely on the Charter to ensure they are treated with respect in their engagement with NSW government agencies and any non-government agencies and contractors funded by the State. If their rights are not respected, the victim may lodge a complaint to the relevant government agency. Where complaints cannot be resolved or the victim needs assistance with lodging a complaint, the victim may contact Victims Services for support. In these circumstances, the Commissioner of Victims Rights may make recommendations to agencies.

A full description of the rights of victims protected by the Charter is available at **Appendix A**.

### **3.3. Administration (Part 3)**

Part 3 of the Act contains provisions to ensure proper and effective administration of the Act.

While this Part does not explicitly contain specific objectives, it establishes the role of the Commissioner of Victims Rights (**the Commissioner**) and the Victims Support Fund.

Division 1 of Part 3 creates and defines the role of the Commissioner. The Commissioner is employed under Part 4 of the *Government Sector Employment Act 2013 (GSE Act)* as a Public Sector Senior Executive (**PSSE**). Part 4 of the GSE Act sets out the employment arrangements that apply to PSSE employees. The Commissioner is responsible for the administration of the Victims Support Scheme and its accompanying staff and operations.

Section 10 of the Act sets out specific functions of the Commissioner, which include (among other things):

- providing information and co-ordinating the delivery of victims support services;
- considering and determining applications for the VSS; and
- overseeing the implementation of the Charter.

Additionally, the Act provides that the Commissioner may, in connection with the exercise of the functions, make inquiries and undertake investigations considered necessary. The Commissioner may request that any person provide, or require any Government agency to provide, information relevant to the exercise of the functions under the Act. The Commissioner may also make a special report to the Minister to be tabled before Parliament on matters relating to the exercise of the Commissioner's functions.

Division 2 of Part 3 of the Act includes provisions relating to the Victims Support Fund, including a list of payments that are to be made into and from the Fund.

### 3.4. Victims Support Scheme (Part 4)

The objective of Part 4 of the Act is to establish a scheme (**the VSS**) for the provision of support for victims of acts of violence.

Since the commencement of the Act, there has been a significant growth in demand for victims support under the VSS. Between the financial years 2014 and 2021, the total number of applications for victims support grew by 131%. This is despite overall rates of crime in NSW remaining relatively stable.

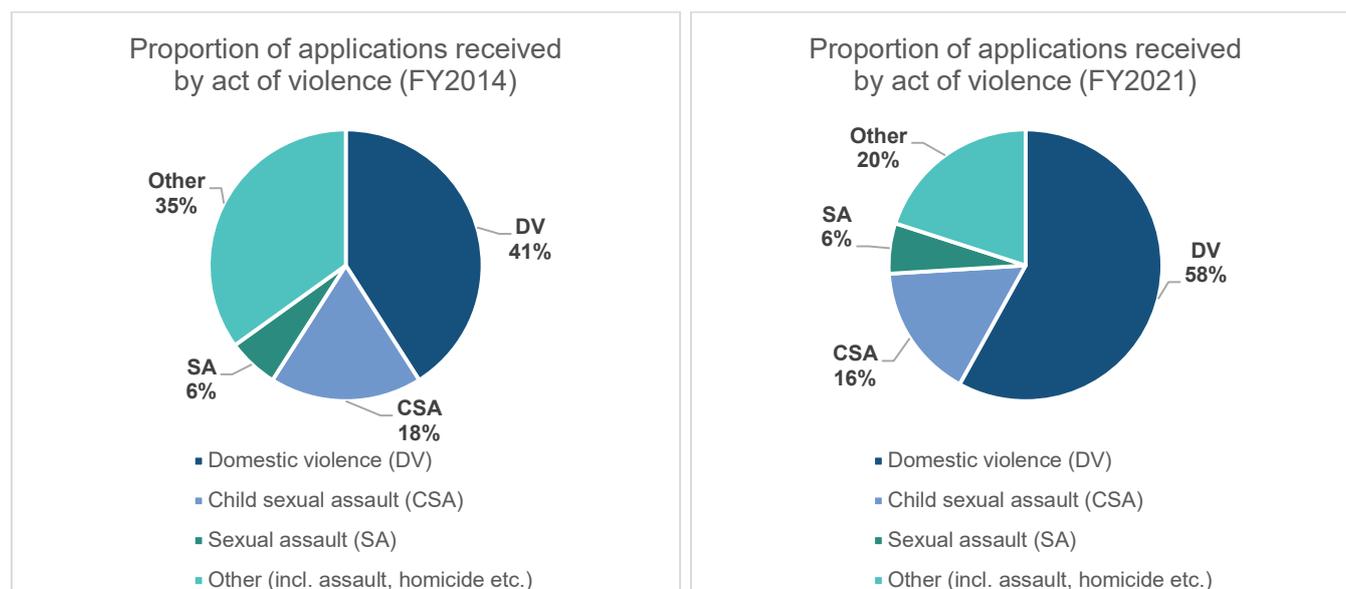
During the same period, as **Figure B** shows, there has been an even greater increase in the amounts of support provided to victims under each pillar of the VSS.

**Figure B: Growth in VSS demand and support provided between FY2013/14 and 2020/21**

Type of Support	FY2013-14	FY2020-21	% change since FY2013-14
Applications	10,489	24,205	131%
Financial assistance awarded	\$1.97m	\$30.67m	1,457%
Recognition payments awarded	\$5.7m	\$43.3m	659%
Counselling amounts paid	\$5.8m	\$27.1m	366%

This growth in demand has been predominantly driven by an increasing number of domestic violence applications. In FY2021, the majority of applications related to domestic violence (58%). This is a significant increase from FY2014, when domestic violence applications constituted 41% of the total number received (**Figure C**).

**Figure C: Comparison of VSS applications received by act of violence (FY2014 and FY2021)**



This trend may be attributed in part to changing attitudes and increased community awareness, with more victims being willing to report their experience of crime. It may also be attributed to increasing awareness of the range of support available to victims under the VSS and other schemes.

## Eligibility for the VSS

Part 4 of the Act establishes the VSS, which provides counselling and financial support to victims of acts of violence. The Act defines an “act of violence” to refer to any offence involving violent conduct resulting in injury or death to another person. Eligible classes of victims include:

- persons who are injured, or die as a direct result of the act of violence (primary victims);
- parents, step-parents or guardians of child primary victims;
- immediate family members of a primary victim who has died as a direct result of the act of violence (family victims); and
- persons who are injured as a direct result of witnessing an act of violence that resulted in the injury to, or death of, the primary victim (secondary victims).

These broad categories acknowledge that an act of violence may impact individuals other than the immediate victim. Different types of support are made available to different classes of victims, which align with the purpose for those types of support. For example, counselling is made available to primary, secondary and family victims, as all of those classes may experience psychological trauma as a result of the act of violence.

Certain groups are not eligible to claim for support under the VSS. These are listed in section 25 of the Act and include:

- offenders (where the act of violence occurred during an offence);
- convicted inmates (where the act of violence occurred in imprisonment);
- claimants for court compensation awards (see section 4.6); and
- victims of a motor accident within the meaning of the *Motor Accidents Compensation Act 1999*.

Section 25(3) prevents offenders from accessing victims support in respect of an act of violence if it occurred while the person was engaged in behaviour constituting an offence.

For convicted inmates, the Act allows exceptions to their ineligibility for victims support if they have been imprisoned only because of their failure to pay a pecuniary penalty or in special circumstances such as when they have suffered serious and permanent injury. The Commissioner may determine that other special circumstances exist to justify an exception being made in individual applications.

The exemptions relating to court compensation and victims of motor accidents prevent certain groups from accessing the VSS where an alternative compensation scheme is available. This is consistent with the VSS being a scheme of last resort, by limiting its accessibility to victims who are not eligible for other existing schemes which compensate for the same loss.

Applications for support are made using an approved form in accordance with Division 6, Part 4 of the Act, which specifies requirements relating to time limitations and necessary documents to be provided. Section 39 of the Act prescribes the documentary evidence that is required for applications for the VSS:

- For applications for financial assistance for immediate needs – evidence to support the applicant’s claim to be a victim of an act of violence. This can include a police report or a report from a government agency or government-funded organisation.
- For applications for financial assistance for economic loss or for recognition payment – a police report or a report from a government agency or government-funded organisation to support the

applicant's claim to be a victim of an act of violence, and a medical, dental or counselling report verifying the injury sustained by primary victim applicants.

For claims seeking payments to subsidise actual expenses or loss of earnings related to the act of violence, the application must also be accompanied by evidence of the expenditure incurred or to be incurred, such as copies of tax invoices, receipts, and information about earnings.

The Commissioner will consider each application in accordance with Part 4, and may approve financial assistance or recognition payments subject to specific conditions.

If an applicant is unsatisfied with the outcome of the application process, the applicant may apply to the Commissioner for an internal review of the decision pursuant to Division 7, Part 4 of the Act. The application for review must be made in writing within 90 days following notice of the original decision. Once the application for review is made, the Commissioner must, within 42 days, notify the applicant of the outcome of the internal review and the reasons for the decision. The notice must also set out the right of the applicant to seek a further review for applications for recognition payment by lodging an appeal at the NSW Civil and Administrative Tribunal (**NCAT**).

## **Four pillars of support under the VSS**

The key pillars of support available under the VSS are:

- counselling;
- financial assistance for immediate needs;
- financial assistance for economic loss; and
- recognition payments.

Each pillar of support serves a unique purpose in assisting victims of crime, acknowledging their complex and, at times, intersecting needs. A summary of the supports available under each pillar is provided in **Appendix B**.

## **Counselling**

Approved counselling services are provided under the VSS to assist victims to recover from the psychological and emotional impacts of crime.

Free counselling is available to primary, family and secondary victims of an act of violence. The amount and way in which payment is authorised are prescribed in the Regulation. Victims receive up to 22 hours of counselling, which can be extended in some circumstances. Victims of child sexual assault or physical abuse are eligible for ongoing counselling.

There is no time limit to submit a claim for counselling services under the VSS.

## **Financial assistance for immediate needs**

The VSS offers two types of financial assistance for victims of acts of violence – one for immediate needs, and another for economic loss.

Financial assistance for immediate needs provides payments to cover expenses for treatment or other urgent measures that need to be taken to safeguard the victim's safety, health or well-being. Primary and family victims, and parents, step-parents and guardians of child primary victims, are eligible for this

assistance. Funds may be provided to victims by way of grant (for example, the Immediate Needs Support Payments, detailed in **Appendix B**).

The Regulation prescribes that a maximum of \$5,000 is available for successful applicants.

Applications for financial assistance for immediate needs must be made within two years of the commission of the violent crime. Where the act of violence has resulted in the death of the primary victim, applications for financial assistance can be lodged by family victims within two years after it is established that the primary victim died as a result of the relevant act of violence. For child victims, applications may be made up to two years from turning 18.

## **Financial assistance for economic loss**

Financial assistance is also available under the VSS for economic loss - loss of earnings and other expenses related to the act of violence, such as medical bills and costs associated with court proceedings.

The Regulation prescribes the payment cap for financial assistance for economic loss for each class of victim, as well as the types of economic loss that can be claimed. Eligible classes include primary victims, family victims, and parents, step-parents and guardians of child primary victims. For primary victims and parents, step-parents and guardians of child primary victims, the maximum amount that can be claimed under this category is \$30,000. For family victims, the maximum amount claimable is \$5,000 for expenses associated with participating in criminal or coronial proceedings related to the act of violence and similar justice related expenses.

Applications for financial assistance for economic loss must be made within two years of the commission of the violent crime. Where the act of violence has resulted in the death of the primary victim, applications for financial assistance can be lodged by family victims within two years after it is established that the primary victim died as a result of the relevant act of violence. For child victims, applications may be lodged within two years of the child turning 18, and no time limit applies to subsidise out-of-pocket expenses for victims of child sexual assault. This includes expenses associated with criminal or coronial proceedings relating to the act of violence.

## **Recognition payments**

Under the VSS, recognition payments are made in recognition of the trauma suffered by a victim of an act of violence. Unlike the previous statutory scheme, which calculated payments according to a schedule of injuries, the VSS considers the nature and seriousness of the offence as a whole in providing the recognition payments.

Victims eligible for recognition payments and the prescribed amounts set by the Regulation are:

- family victims who were financially dependent on the primary victim immediately before the death of the primary victim (\$15,000);
- children of a primary victim who were under the age of 18 immediately before the death of the primary victim (\$15,000);
- spouses, de facto partners, parents, step-parents and guardians of a primary victim who were not financially dependent on the primary victim immediately before the death of the primary victim (\$7,500); and
- primary victims who suffered injury as a result of an act of violence (the maximum amount claimable (\$1,500, \$5,000 or \$10,000) depends on the nature of the act of violence and the severity of the resulting injury).

As with applications for financial assistance, an application for recognition payment must be made within two years of the commission of the violent crime. Where the act of violence has resulted in the death of the primary victim, applications for recognition payments can be lodged by family victims within two years after it is established that the primary victim died as a result of the relevant act of violence. Child victims may lodge applications within two years of turning 18. If the act of violence involved domestic violence, child abuse or sexual assault, applications may be made within 10 years after the occurrence of the violent incident, and within 10 years of turning 18 for child victims. There is no time limit to lodge an application for a recognition payment relating to child sexual abuse.

### **3.5. Recovery of victims support payments from offenders (Part 5)**

The object of Part 5 of the Act is to enable financial support paid and recognition payments made under the VSS to be recovered from persons found guilty of the crimes giving rise to the payments. This Part also aims to meet community expectations that offenders contribute financially to the recovery of the victim, rather than that cost being wholly met by the State.

#### **Restitution orders**

When a victim receives financial support or a recognition payment, the Commissioner can issue a restitution order to recover money from any person who has been convicted of a relevant offence relating to the victim's claim. A conviction includes bonds, fines, community service orders, imprisonment and other penalties, as well as an order made under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. The total amount that may be recovered by a restitution order is the amount paid to the victim by way of financial support or recognition payment.

An order for restitution cannot be made if the State has commenced civil proceedings against the convicted person for damages arising from substantially the same facts constituting the offence. A victim may, however, commence civil proceedings for injury or loss arising from the relevant offence, and be awarded damages, regardless of any order for restitution.

A convicted person may lodge an objection to an order for restitution to be considered, in the first instance, by the Commissioner. If the person is dissatisfied with the Commissioner's decision, they may then apply to the NCAT for review.

#### **Restraining orders**

Part 5 of the Act provides for restraining orders that can be obtained to ensure that people cannot avoid paying restitution orders by disposing of assets.

Under section 82 of the Act, an ‘appropriate officer’ may apply to the Supreme Court of NSW for a restraining order preventing a person from disposing of, or otherwise dealing with, property for the purpose of avoiding payment of restitution. An ‘appropriate officer’ includes the Commissioner, the Director of Public Prosecutions, the Commissioner of Police, or any other person as prescribed by the Regulation. The order may also set aside transactions that have been entered into by the defendant in contravention of an existing restraining order or to avoid compliance with the order.

The Division provides the mechanisms by which the Supreme Court may, in certain circumstances, refuse or revoke a restraining order. The Supreme Court may also make any other necessary ancillary orders in relation to the restitution of payment, including an order to examine the defendant and their property on oath before the Supreme Court, as well as an order to vary the restraining order and any relevant conditions.

### 3.6. Compensation awarded by the Court (Part 6)

The object of Part 6 is to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime. This Part allows victims to seek compensation promptly following a criminal conviction without having to commence separate civil proceedings. A direction for compensation under this Part, however, does not affect a victim’s right to commence civil proceedings and to be awarded damages in those proceedings.

As mentioned earlier, if a victim is entitled to compensation under a Court order, they are not eligible for support under the VSS. Similarly, a Court must not make a compensation order in relation to a victim who has been approved for support under the VSS.

In determining whether a compensation order is to be made, the Court must take into account certain matters including the behaviour, attitude or disposition of the victim which may have contributed to their injury or loss. The Court will also consider whether the victim has been awarded any damages in related civil proceedings. The maximum amount that can be directed under an order for compensation for injury is \$50,000. For compensation for loss, this is determined by the maximum amount that the Court is authorised to award in its civil jurisdiction for the recovery of debt.

If a convicted person fails to comply with the compensation order, the victim can take enforcement action against the person through civil proceedings.

### 3.7. Victims Support Levy (Part 7)

The object of Part 7 of the Act is to establish the Victims Support Levy (**the Levy**), which imposes a levy on persons found guilty of crimes for the purpose of funding the VSS.

The Levy is imposed automatically on an offender when they are convicted by a NSW Court, with some exclusions, including where an offender has been sentenced for an offence under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. A Court may direct that a person under the age of 18 is exempt from the obligation to pay the Levy.

The current rate of the Levy is \$156 for an offender sentenced in the NSW District Court or NSW Supreme Court, and \$69 for all other convictions. The Act requires that this amount is adjusted yearly according to the Consumer Price Index (**CPI**). The Levy is in addition to any other penalty or order for payment imposed in relation to the same offence, such as an order for restitution. Any money paid by the person will be applied to the Levy at the first instance before it is applied to discharging any other liability.

If a person appeals their conviction, the imposition of the Levy is stayed until the appeal is resolved.

### **3.8. Victims Advisory Board (Part 8)**

Part 8 establishes the Victims Advisory Board (**the Board**) and sets out its membership and procedure. The Board is chaired by the Commissioner of Victims Rights and is constituted by a mix of government officials and community representatives. The prescribed functions of the Board are to:

- advise the Minister on policies and administrative arrangements relating to support services and assisting victims;
- consult victims, community groups and government agencies on issues and policies concerning victims; and
- promote legislative, administrative or other reforms to meet the needs of victims.

As provided by the Act, the Board may give any advice to the Attorney General, either at the Attorney General's request or without any such request.

Schedule 1 of the Act sets out the administrative provisions relating to the Board.

### **3.9. Miscellaneous (Part 9)**

Part 9 contains miscellaneous provisions that support the effective operation of the Act. These include exemptions to certain provisions in the *Privacy and Personal Information Protection Act 1998* to enable victims rights agencies to disclose information to victims of crime that is reasonably necessary and consistent with victims' rights under the Charter.

It also includes exemptions to certain provisions in the *Privacy and Personal Information Protection Act 1998* to enable victims rights agencies (such as the Department, the NSW Police Force and the Office of the Director of Public Prosecutions) to disclose information to which victims are entitled under the Charter to victims of crime or family victims.

This Part makes certain information obtained under the Act inadmissible in subsequent legal proceedings. This includes an application for victims support and any documents supporting the application. The effect is to ensure that victims are not deterred from applying for support due to concerns the information will be used in future legal proceedings. There are some exceptions for criminal proceedings in which the applicant is the accused and proceedings before NCAT to determine an issue in relation to an application for victims support.

# Appendix A: The Charter of Victims Rights

## Charter of Victims Rights (*Victims Rights and Support Act 2013*)

### 1 Courtesy, compassion and respect

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

### 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.

### 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.

### 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.

### 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 for the accused to accept a plea of guilty 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 (1) (b) 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 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.

### 7 Protection from contact with accused

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

### 8 Protection of identity of victim

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

### 9 Attendance at preliminary hearings

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

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 17 Financial assistance for victims of personal violence

A victim of a crime involving sexual or other serious personal violence is entitled to make a claim under the Victims Support Scheme.

### 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.

# Appendix B: Four Pillars of the VSS

The following table summarises the different types of support available to eligible victims of crime. This operational guide has been extracted from the Victims Services website at [www.victimsservices.justice.nsw.gov.au/](http://www.victimsservices.justice.nsw.gov.au/).

PURPOSE	BENEFITS	WHO IS ELIGIBLE TO APPLY?	WHAT INFORMATION DO I NEED TO GIVE?	HOW LONG DO YOU HAVE TO CLAIM?
<b>Type of support: Counselling</b>				
To help in your recovery	Up to 22 hours of counselling and more for some victims	<ul style="list-style-type: none"> <li>Primary victims</li> <li>Secondary victims</li> <li>Family members</li> </ul>	<ul style="list-style-type: none"> <li>Application form</li> <li>Government issued ID</li> </ul>	No time limit
<b>Type of support: Financial assistance for immediate needs</b>				
To help pay for things you need urgently to be safe and healthy because of the violent crime	<p>You may get up to \$5,000 to help pay for:</p> <ul style="list-style-type: none"> <li>changing the locks on your doors; putting an alarm in your home</li> <li>moving house</li> <li>crime scene clean up</li> <li>emergency doctor, dentist and other medical bills</li> </ul> <p>You may get up to \$9,500 to help pay for the funeral</p>	<ul style="list-style-type: none"> <li>Primary victims</li> <li>Parents, step-parents and guardians</li> <li>Family victims</li> </ul>	<ul style="list-style-type: none"> <li>Application form</li> <li>Government issued ID</li> <li>Police* or government/government-funded organisation report that provides details about what happened, or a medical report that shows how the violent crime has affected you (not required for family victims)</li> </ul>	<p>Within 2 years from the violent crime*</p> <ul style="list-style-type: none"> <li>For children, within 2 years of turning 18</li> </ul>
<b>Type of support: Immediate needs support package (INSP)</b>				
To help pay for things you need urgently to be safe and healthy after the violent crime	<p>You may receive grants to help pay for:</p> <ul style="list-style-type: none"> <li>security</li> <li>relocation</li> <li>furniture and household items</li> <li>basic clothing and toiletries</li> </ul> <p>In total, you may receive up to a \$5,000 grant</p>	<ul style="list-style-type: none"> <li>Primary victims of domestic violence</li> </ul>	<ul style="list-style-type: none"> <li>Application form</li> <li>INSP Claim form</li> <li>Government issued ID</li> <li>Police* or government/government-funded organisation report that provides details about what happened, or a medical report that shows how the violent crime has affected you (not required for family victims)</li> </ul>	<p>Within 2 years from the violent crime*</p> <ul style="list-style-type: none"> <li>For children, within 2 years of turning 18</li> </ul>
<b>Type of support: Financial assistance for economic loss</b>				
To help pay for loss of earnings and other costs that assist you with your recovery	<p>We can help pay for:</p> <ul style="list-style-type: none"> <li>lost income because you had to take time off work (up to \$20,000)</li> <li>out of pocket expenses if it is hard for you to prove lost income (up to \$5,000)</li> <li>doctor, dentist or other medical bills (up to \$30,000)</li> <li>some costs of attending court or coronial proceedings (up to \$5,000)</li> <li>loss or damage to the clothes you wore or items you had when act of violence happened (up to \$1,500)</li> </ul> <p>In total, you may claim up to \$30,000</p>	<ul style="list-style-type: none"> <li>Primary victims</li> <li>Parents, step-parents and guardians</li> <li>Family victims</li> </ul>	<ul style="list-style-type: none"> <li>Application form</li> <li>Government issued ID</li> <li>Police* or government/government funded report that provides details about what happened (not required for family victims)</li> <li>Medical, dental or counselling reports that show how the violent crime has affected you (not required for family victims)</li> <li>Copies of tax invoices, receipts or treatment plans of costs you are claiming</li> <li>A description of how each cost relates directly to the violent crime</li> <li>Information about your earnings (if claiming lost income)</li> </ul>	<p>Within 2 years from the violent crime*</p> <ul style="list-style-type: none"> <li>For children, within 2 years of turning 18</li> <li>For victims of sexual assault who were children when the violent crime happened: <ul style="list-style-type: none"> <li>No time limit for claiming out-of-pocket expenses</li> <li>Within 2 years of turning 18 for loss of earnings, medical and dental, bills, and loss or damage to personal items</li> </ul> </li> </ul>
<b>Type of support: Recognition payment</b>				
To acknowledge that a violent crime has been committed against you	<p>Payment is based on the offence, for example:</p> <ul style="list-style-type: none"> <li>\$15,000 for financially dependent family victim or children under 18 at the time of death</li> <li>\$10,000 for primary victims of sexual assault involving serious bodily injury, multiple offenders, or an offensive weapon; a sexual assault, sexual act, or attempted sexual assault involving a series of incidents</li> <li>\$7,500 for parents, step-parents or guardians, current spouses, or de facto partners of a homicide victim</li> <li>\$5,000 for primary victims of a sexual assault (one incident), attempted sexual assault with serious bodily injury, assault with grievous bodily harm, or physical assault of a child that involves a series of incidents</li> <li>\$1,500 for primary victims of an attempted sexual assault (without serious bodily injury), sexual touching, a robbery involving violence, or an assault (without grievous bodily harm)</li> </ul>	<ul style="list-style-type: none"> <li>Primary victims</li> <li>Parents, step-parents and guardians</li> <li>Financially dependent family victims and children under 18 years at the time of death</li> </ul>	<ul style="list-style-type: none"> <li>Application form</li> <li>Government issued ID</li> <li>Police* or government/government-funded report that provides details about what happened (not required for family victims)</li> <li>Medical, dental or counselling reports that show how the violent crime has affected you (not required for family victims)</li> </ul>	<p>Within 2 years from the violent crime*</p> <ul style="list-style-type: none"> <li>For children, within 2 years of turning 18</li> <li>For victims of domestic violence, sexual assault and child abuse, within 10 years: <ul style="list-style-type: none"> <li>For children, within 10 years of turning 18</li> <li>For victims of sexual assault who were children when the incident happened, no time limits apply</li> </ul> </li> </ul>

\* If the violent crime was reported to the police, you do not need to send us a police report – just provide as much information as you can in the application form.

† If the violent crime directly resulted in the death of a victim, the two year time period commences from the date it was confirmed the death resulted from the act of violence.

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