

## Chapter 10: Domestic violence and victims support

Victims of crimes that occurred in NSW may be eligible for financial support and counselling through the NSW Victims Support Scheme. This scheme replaced the previous Victims Compensation Scheme in 2013.

This chapter will guide you through the new scheme and will focus on the support available to your client as a primary victim of an act of violence. Victims support is also available for family members and secondary victims and further information on the support available can be found by visiting Victims Services at [www.victimsservices.justice.nsw.gov.au](http://www.victimsservices.justice.nsw.gov.au)

### WATCH THIS SPACE

There are potential changes coming to the victims support scheme so please ensure that you are up to date with any changes that may have been introduced following the writing of this chapter.

### Legislation

The *Victims Rights and Support Act 2013* (NSW) (VRSA), supplemented by the *Victims Rights and Support Regulation 2013* (VRSR) established the Victims Support Scheme.

### Role of lawyers

The VRSA does not provide for solicitors' professional fees or disbursements to be paid. Victims Services staff are available to provide assistance with the preparation of the claim and to obtain evidence.

Despite this, if a lawyer lodges an application for a victim or notifies Victims Services that the victim is represented, they will direct all correspondence to the lawyer rather than the client. Victims Services will also expect the lawyer to provide evidence other than police records unless they are notified otherwise.

### Act of violence

To be eligible for victims support, a person must have been the victim of an act of violence in NSW. Section 19 of the VRSA defines an act of violence as:

*an act or series of related acts, whether committed by one or more persons:*

- a) that has apparently occurred in the course of the commission of an offence, and*
- b) that has involved violent conduct against one or more persons, and*
- c) that has resulted in injury or death to one or more of those persons.*

Section 19(3) states that this specifically includes sexual assault and domestic violence.

### Primary victim of an act of violence

A primary victim of an [act of violence](#) is a person who is injured, or dies, as a direct result of that act (s 20(1)). It also extends to a person who is injured, or dies, as a direct result of trying to prevent another person from committing that act, or trying to help or rescue another person against whom that act is being committed or has just been committed, or trying to arrest another person who is committing, or who has just committed, that act (s 20(2)).

### Composition of support for a primary victim

A victim of an act of violence may be eligible for a range of different types of support:

- ▶ information, support and referral;
- ▶ counselling;
- ▶ financial assistance for immediate needs;
- ▶ financial assistance for economic loss; and/or
- ▶ recognition payment.

### Counselling

A victim of violence can apply for free counselling under the scheme. Applicants can apply for an initial ten hours of counselling, which can be extended for up to a further twelve hours if recommended by the counsellor. Counselling is capped at twenty-two hours unless there are exceptional reasons. There is no cap for victims of child sexual assault.

The application form requires that the applicant provide personal details and a brief description of

the act of violence. Documentary evidence is not required.

#### Practitioner tip

The contents of the counselling session may be used in the preparation of a report to Victims Services for the purposes of subsequent counselling, financial assistance and/or recognition payment applications.

There is no time limit for applications for counselling.

#### Financial assistance for immediate needs

A victim of violence may be eligible for up to \$5000 in financial assistance for immediate needs to cover expenses for treatment or other measures that need to be taken urgently to secure their safety, health or wellbeing (s 26(1)(b)). An application must be lodged within two years of the act of violence or two years from turning 18 for children (s 40(1)). There are no out of time provisions for filing an application for financial assistance for immediate needs.

Financial assistance may cover urgent expenses such as:

- ▶ safety measures including changing locks, fitting alarms and screens;
- ▶ expenses associated with relocating to a safer location, which may include a rental bond, removal services and accommodation costs;
- ▶ emergency medical and dental expenses.

The expenses must have arisen as a direct result of the act of violence. A victim may apply for reimbursement of an expense already outlaid or direct payment to a service provider.

The applicant needs to provide documentary evidence that they reported an act of violence to police or a medical professional in accordance with section 39 and copies of receipts or invoices.

#### Financial assistance for economic loss

Section 26(1)(c) and regulation 8(2) provide that a victim of violence may be eligible for up to \$30,000 in financial assistance for economic loss for the following economic losses:

- ▶ up to \$20,000 for loss of earnings;
- ▶ if the victim cannot demonstrate loss of earnings, up to \$5000 for out-of-pocket expenses,

which may include rent, furniture, childcare and household bills;

- ▶ medical and dental expenses;
- ▶ up to \$5000 for justice-related expenses, being expenses associated with criminal or coronial proceedings related to the act of violence, which may include expenses associated with making statements to police, preparing victim impact statements, or travel to court proceedings. The fees of a legal practitioner cannot be reimbursed as a 'justice-related expense'; or
- ▶ up to \$1500 for loss of, or damage to, clothing or personal effects worn or carried by the primary victim at the time of the act of violence.

Section 39(2)(b) of the VRSA states that the following documentary evidence must support an economic loss application:

- ▶ a police report or report of a government agency detailing the act of violence; and
- ▶ a medical, dental or counselling report verifying that the applicant has actually been injured as a result of the act of violence.

The applicant must also provide details and evidence of the financial losses claimed in accordance with section 39(4).

Applications for financial support must be lodged within two years of the act of violence, or two years from turning 18 for children (s 40(1)). There are no out of time provisions for filing an application for economic loss.

Section 40(7) states that there is no time limit for applications by child sexual abuse victims for claims for out-of-pocket expenses or justice-related expenses.

#### Recognition payments

A victim of violence may be eligible for a lump-sum payment in recognition of the trauma they have suffered. There are four categories of recognition payments set out in section 35:

##### Category A

- ▶ \$15,000 payment to a family member who was financially dependent upon a homicide victim;
- ▶ \$7,500 to each parent, step-parent or guardian of a homicide victim.

### Category B

A \$10,000 payment to a victim of:

- ▶ sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by two or more persons;
- ▶ sexual assault, indecent assault or attempted sexual assault which was one of a series of related acts.

### Category C

A \$5,000 payment to a victim of:

- ▶ sexual assault other than one which falls within those in Category B;
- ▶ attempted sexual assault resulting in serious bodily injury;
- ▶ assault resulting in grievous bodily harm;
- ▶ physical assault of a child that is one of a series of related acts.

### Category D

A \$1,500 payment to a victim of:

- ▶ an indecent assault;
- ▶ an attempted sexual assault involving violence other than in Category B and C;
- ▶ a robbery involving violence;
- ▶ an assault (not involving grievous bodily harm).

#### Practitioner tip

Serious bodily injury has been found to include both physical and psychological injury see *CRT v Commissioner of Victims Rights [2017] NSWCATAD 174*.

Grievous bodily harm has been found to include a serious psychological injury see *BMF v Commissioner of Victims Rights [2016] NSWCATAD 144* and *BWQ v Commissioner of Victims Rights [2015] NSWCATAD 197*

There are no out of time provisions for filing an application for a recognition payment so it is important to determine the relevant time frame within which an application should be filed:

- ▶ applications relating to domestic violence, child abuse or sexual assault must be lodged within ten years after the act of violence or ten years from turning 18 for children (s 40(5));
- ▶ for all other types of acts of violence, an application for a recognition payment must be

lodged within two years from the date of the act of violence, or two years from turning 18 for children (s40(4));

- ▶ there is no time limit for an application for a recognition payment by a victim of child sexual abuse (s40(7)).

Section 39(2)(b) requires an application to be supported by the following documentary evidence:

- ▶ a police report or report of a government agency detailing the act of violence; and
- ▶ a medical, dental or counselling report verifying that the applicant has actually been injured as a result of the act of violence.

### Further claims

Section 40(6) allows a victim to continue to make applications for financial assistance for five years from the date of the initial application or, in relation to applications for financial support, until a cap has been reached.

### Internal reviews

Where an applicant is aggrieved by a decision made in relation to their application for victims support they can request an internal review under section 49.

An Internal Review Request Form is sent with the Notice of Decision, or can be downloaded from the Victims Services website, however, it is not a requirement that the form be used. There is no fee. The application must set out grounds of review and full particulars should be provided to substantiate each ground.

A senior assessor will determine the review by making a new decision, as if the original decision had not been made. New or additional evidence or submissions can be filed and considered on review. As with the first determination, internal reviews are decided on the papers.

An application for an internal review must be lodged within 28 days from the date on which the applicant is given notice of the decision (s 49).

Section 49 of the VRSA makes clear there is no further right of review following an internal review of a decision regarding counselling or financial support.

## Review by NCAT

An applicant who is aggrieved by the decision of a Victims Services Senior Assessor regarding a recognition payment has a right under section 51 of review to the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT).

An application to NCAT for administrative review must be lodged within 28 days from the date the applicant is notified of the internal review decision in accordance with rule 24 of the *Civil and Administrative Tribunal Rules 2014* (NSW). Section 41 of the *Civil and Administrative Tribunal Act 2013* allows the Tribunal to grant leave to accept an application filed out of time.

Reviews at NCAT can be decided on the papers or the applicant can give oral evidence in support of their claim. New or additional evidence or submissions can be filed and considered on review.

Schedule 3, clause 15 of the *Civil and Administrative Tribunal Act 2013* (NSW), states there is no further right to review from a decision of NCAT.

## Restitution

Under section 59 of the VRSA, Victims Services can recover money paid to victims from the perpetrator of violence if they were convicted of an offence arising from substantially the same facts as those constituting the act of violence, by issuing the perpetrator with a provisional order for restitution. A 'conviction' includes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). Victims Services has discretion not to pursue a perpetrator for restitution in cases where, for example, pursuing restitution may place the victim at further risk. An applicant (or the applicant's solicitor) can write submissions to the Commissioner asking for the exercise of discretion.