

The Shopfront

YOUTH LEGAL CENTRE

Victims' compensation and support

1 Introduction

The *Victims Rights and Support Act 2013 (VRS Act)* came into force on 3 June 2013, and established a new support scheme for victims of violent crime in New South Wales.

This new scheme is different to the previous scheme, as it does not give out lump sums of compensation but focuses on financial assistance and counselling with a small "recognition payment" for trauma suffered by the victim. This new focus means that most victims will now receive much less than they would have under the previous scheme.

Most importantly, the VRS Act is **retrospective**. This means that any application filed under the *Victims Support and Rehabilitation Act 1996 (Old Act)* that was not finally determined by 7 May 2013 will be dealt with under the new VRS Act.

Under the VRS Act, the Victims Compensation Tribunal no longer exists and the role of determining claims has been given to the newly-appointed Commissioner of Victims Rights (**Commissioner**).

2 Types of support available

A victim of violent crime can now apply for one or more of the following:

1. Financial assistance for immediate needs;
 2. Financial assistance for economic loss;
 3. Approved counselling;
 4. A recognition payment.
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3 Eligibility for victims support

3.1 Act of violence

The applicant must be a victim of an **act of violence** (for example, assault, sexual abuse, stalking, or robbery where violent threats are made).

It is not necessary for the offender to have been found guilty. It is enough if the Commissioner is satisfied on the **balance of probabilities** that the act of violence occurred. It doesn't matter if the offender can't be held criminally responsible because of their young age or mental impairment.

3.2 Types of victim

A victim can be either:

1. A **primary victim**: the person injured by the act of violence or in trying to prevent the offender committing the act; or
 2. A **secondary victim**: a person who is injured as a direct result of witnessing an act of violence (note: secondary victims are now only entitled to receive approved counselling and no other payments); or
 3. A **family victim**: a close relative of a homicide victim.
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3.3 Injury

The applicant must have suffered an **injury** (physical or psychological harm) as a result of the act of violence.

3.4 Reporting to police or government agency

To be eligible for a recognition payment, you (or someone on your behalf) must have reported the act of violence to the police or a Government agency (for example, Department of Family and Community Services). For further information, see section 5.2 below.

3.5 Time limits

Strict time limits apply to applications under the VRS Act. Unlike the Old Act, there is no provision for leave to be granted outside the time limit. The time limits are:

1. Applications for financial assistance and most applications for recognition payments must be made within 2 years of the act of violence (except for a child victim who must apply within 2 years of turning 18);
2. Applications for recognition payments for victims of domestic violence, child abuse or adult sexual assault must be made within 10 years of the act of violence (or for a child victim within 10 years of the child turning 18);
3. There is no time limit for certain financial support or recognition payments for child victims of sexual assault.

3.6 Exclusions

Section 25 of the VRS Act prevents a victim from claiming if:

- (a) The act of violence was committed when the victim was **servicing a prison sentence** (this does not include being on remand, serving time for fine defaults, or doing a control order in a juvenile detention centre). Sentenced prisoners may be able to claim compensation in special circumstances (for example, a serious and permanent injury);
- (b) The act of violence was committed while the victim was engaged in behaviour constituting any criminal **offence**;
- (c) The injury arose in the course of a **motor vehicle accident**; or
- (d) The victim has already received, or is claiming, **compensation through the court which convicted the offender** (Part 6 of the VRS Act allows the court to order the offender to pay compensation directly).

3.7 Discretion to refuse or reduce compensation

Section 44 of the VRS Act allows the Commissioner to refuse a claim, or reduce the amount of financial support or recognition payment, if:

- (a) The crime was **not reported to the police** within a reasonable time, or the victim **did not co-operate with the police** in the prosecution process. A victim who did not report the matter to the police promptly, or did not co-operate with the police, will usually have to show a good reason for this (for example, because the victim was a young child or had a real fear of retribution). To be eligible for a recognition payment, the matter must have been reported to the police or a Government agency at some stage (see section 5.2 below);
- (b) The victim was involved in **contributory behaviour** (for example, provoking an assault);
- (c) The victim fails to take reasonable steps **to mitigate or reduce the extent of the injury** (for example, seeking appropriate medical advice, treatment or counselling); or
- (d) The victim has received, or is likely to receive, **compensation from another source** including an insurance payment, workers compensation or a civil personal injury claim.

4 Victims support for primary victims

Primary victims are entitled to a package consisting of four different types of assistance and support.

4.1 Approved counselling services

The Commissioner will pay for counselling by approved counsellors. These are counsellors that have been authorised by the Commissioner to provide these counselling services. They are listed on the Victims Services website and a victim has a right to choose a counsellor from this list.

Initially the approval is for 10 hours of counselling and then for such further periods as the Commissioner may consider appropriate. The Regulations state that the Commissioner cannot authorise payments for more than a total of 22 hours for a victim unless there are exceptional reasons for doing so.

4.2 Financial assistance for immediate needs

This is financial assistance for expenses for treatment or other measures that need to be taken urgently, up to a maximum of \$5000. Examples are:

- emergency medical and/or dental expenses;
- relocation expenses; and
- crime scene clean-up.

4.3 Financial assistance for economic loss

This is a payment for economic losses suffered as a result of the act of violence up to a maximum of \$30,000. Examples are:

- actual loss of earnings up to \$20,000 (not potential loss of earnings);
- justice-related expenses up to \$5,000 (these include making statements to police, preparing victim impact statements and travel to the trial of the perpetrator);
- damage to clothing capped at \$1500; and
- medical and dental expenses, capped at \$5,000.

4.4 Recognition payments

The main form of victims support that young people are likely to be eligible for will be one of the recognition payments. These are divided into four categories (note that the first category known as Category A is for family victims of a homicide and is therefore not available to primary victims):

- 1 **Category A recognition payment** which is a payment given in respect of an act of violence that apparently occurred in the course of the commission of a homicide (\$15,000 to a family victim who was financially dependent on the primary victim and \$7,500 to each parent, step-parent or guardian of a primary victim).
- 2 **Category B recognition payment** which is a payment given in respect of:
 - (a) a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by two or more persons; or
 - (b) a sexual assault, indecent assault or attempted sexual assault involving violence that is one of a series of related acts.
 (\$10,000).
- 3 **Category C recognition payment** which is a payment given in respect of:
 - (a) a sexual assault other than the one referred to in sub-paragraph 2(b);
 - (b) an attempted sexual assault resulting in serious bodily injury;
 - (c) an assault resulting in grievous bodily harm; or
 - (d) physical assault of a child that is one of a series of related acts.

(\$5,000).

4 **Category D recognition payment** which is a payment for the following:

- (a) an indecent assault;
- (b) an attempted sexual assault involving violence other than one referred to in sub-paragraph 3(b);
- (c) a robbery involving violence;
- (d) an assault (not resulting in grievous bodily harm).

(\$1,500).

A significant difference between recognition payments and compensation under the Old Act is that recognition payments relate mainly to the nature of the violence and not to the injury or harm experienced by the victim. There is also no compensation specifically allocated for psychological trauma or for domestic violence.

Terms such as “grievous bodily harm” and “serious bodily injury” are not defined in the VRS Act and are open to interpretation.

4.5 Legal costs

Unlike under the old scheme, the victim’s legal fees will **not** be paid for by the Commissioner and the Commissioner actively discourages victims from using a lawyer. The ban on charging legal fees for victims’ support applications by lawyers has been abolished, so a private lawyer may charge a fee to prepare a claim for a client.

The Commissioner may still pay legal fees and other disbursements for victims with claims lodged under the Old Act.

In relation to disbursements for victims under the VRS Act, such as costs of medical reports, the Commissioner will pay for costs that it considers necessary. However given that there is virtually no recognition of psychological disorders under the VRS Act, it is unlikely that the Commissioner will pay the costs of a psychological or psychiatric report.

5 How to apply

5.1 Application forms

The victim may submit an on-line application form via the Victims Services website (www.lawlink.nsw.gov.au/vs).

Alternatively, a victim can contact Victims Services by phone or email. They will then be assigned a support coordinator who will assist with the claim, including filling out the application form.

The Commissioner discourages victims from using lawyers to assist in victims support, although there is room on the application form for a third party (although not specifically a lawyer) to fill in the form on the victim’s behalf.

5.2 Evidence required to support application

For each category of victims support, there are strict requirements in respect of documentary evidence to support these applications.

Counselling

There are no specific evidentiary requirements, just an application form.

Financial assistance

An application for financial assistance for **immediate needs** requires documentary evidence such as a medical or police report sufficient to support the applicant’s claim that they were a victim of an act of violence on the balance of probabilities. In addition they will need to include receipts, invoices or other approved forms of substantiation of the expenditure incurred or to be incurred.

There is a similar requirement for financial assistance for **economic loss**. In addition, the victim needs to provide the name and address of their employer, the period of absence from work and a statement from the employer substantiating those details.

Recognition payments

Unlike the Old Act, the VRS Act will not accept a statement or statutory declaration as the sole evidence of an act of violence or the injury inflicted as a result of the act of violence.

An application for a recognition payment must be accompanied by:

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

These supporting documents can be submitted at a later date if not available at the time of lodging the application. The Commissioner has advised that they have negotiated access to the Police COPS system and so they will be able to provide the police report rather than requiring victims to do it for themselves.

The requirement for a report from police or a Government agency will present some difficulties. Many victims of sexual assault and domestic violence are reluctant to report to police or to Government agencies, and have instead disclosed to counsellors, trusted adults, family members and friends. These reports are not sufficient evidence for an application for a recognition payment.

6 How the claim is determined

6.1 Who makes the decision?

Although the VRS Act states that applications will be dealt with by the Commissioner, this power has been delegated to assessors (defined in the VRS Act as decision makers) who used to work at the Victims Compensation Tribunal.

The decision maker reads the application and supporting documents, and determines the claim according to the Act and any guidelines issued by the Commissioner. Nearly all claims are decided on the papers, without a hearing. The offender is not contacted and has no involvement in the process at this stage.

6.2 How long does it take?

The Commissioner has stated that the new scheme will mean that applications will be processed more quickly than under the old scheme.

Some payments such as financial assistance for immediate needs will be paid very quickly, whilst recognition payments may take slightly longer.

In addition, the Commissioner has stated that the current backlog of claims will be cleared within the next 24 months. They will be clearing these old applications at the same time as dealing with new ones.

7 Appeal and review rights

A victim who is not satisfied with the amount of victims support awarded by the decision maker may request an internal review by the Commissioner. The internal review is done by making an application in writing stating fully the grounds of the application. The application must be lodged within 28 days of receipt of the decision maker's determination. New material or evidence will not be accepted at the internal review.

A victim who is unhappy with the internal review may appeal to the Administrative Decisions Tribunal (ADT) but only in relation to a recognition payment.

There is no longer the option of an appeal to the District Court.

8 Recovery of money from the offender

If a victim has received financial assistance or a recognition payment, the Commissioner will attempt to recover this money from the offender where possible. This is called **restitution**. Whether restitution is successful or not will not affect the victim's claim.

9 Application of the VRS Act to existing applications lodged under the Old Act

The VRS Act contains provisions which apply to all applications for victims compensation made under the Old Act which have been lodged but not yet finally determined by 7 May 2013. "Finally determined" means a decision has been made and the 3-month time limit for appeal has expired.

Under these provisions, primary victims of an act of violence are entitled to counselling services and a recognition payment (if the act of violence and the resulting injury falls within one of the categories of recognition payments under the VRS Act).

Financial assistance for immediate needs and economic loss are not available under these provisions. However, if the application under the Old Act was lodged within 2 years of the act of violence (or within 2 years of a child victim turning 18) a special grant of \$5,000 may be awarded.

There is no flexibility in the VRS Act. This means that if you have lodged an application outside the 2-year time limit, but you had been granted leave by the Tribunal to lodge that application out of time, you will not be able to access the special grant (unless you were a child victim and you lodged your application under the Old Act before you turned 20).

There is virtually no recognition of psychological trauma, nor is there any specific reference to domestic violence under the categories of recognition payments, under the VSR Act. This means that even if you had a valid claim under the Old Act, you may find you will receive either a substantially smaller amount of money, or have your claim dismissed.

10 Victims Services contact details

Victims Services
Locked Bag 5118, PARRAMATTA NSW 2124 or
Level 1, 160 Marsden Street, Parramatta NSW 2124
Tel: (02) 8688 5511 or 1800 069 054
Fax: (02) 8688 9630
www.lawlink.nsw.gov.au/vs

The Shopfront Youth Legal Centre Updated June 2013

The Shopfront Youth Legal Centre
356 Victoria Street
Darlinghurst NSW 2010
Tel: 02 9322 4808
Fax: 02 9331 3287
www.theshopfront.org
shopfront@theshopfront.org

The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills in association with Mission Australia and The Salvation Army.

This document was last updated in June 2013 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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