

## Recent amendments to the *Victims Support and Rehabilitation Act 1996*

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The purpose of this fact sheet is to clarify the application of the recent amendments to the *Victims Support and Rehabilitation Act 1996*. It should be read in conjunction with the [Guide to changes to legislation](#), released in December 2010.

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### SECTION 5(3)

The amendment to section 5(3) allows compensation assessors or the Tribunal to consider claims as related, as and when it is considered necessary. The decision of whether claims are related will be made on a case-by-case basis and taking into account the particular circumstances and facts of each matter. It is not accurate to predict how the definition will be applied in particular scenarios, as this will depend on the compensation assessor's evaluation of each case.

Notwithstanding the new definition of "related acts", the Tribunal or compensation assessor can find that an act is not related to another act if, having regard to the particular circumstances of those acts, they ought not to be related acts.

The amendment does not prevent an applicant for victims compensation lodging multiple claims. An applicant will still be able to lodge multiple claims, however the compensation assessor will have the discretion to determine whether those claims are related based on the new definition.

The recommendation to amend section 5(3) was first made by the Chairperson of the Victims Compensation Tribunal in his 2007/2008 Annual Report in response to a substantial increase in the number of multiple claims being lodged by applicants. There were concerns that this was becoming an unsustainable drain on the Victims Compensation Fund and that other victims of crime would lose out in the long run.

The compensation scheme was never intended to provide full compensation to victims of crime, equivalent to common law damages. It is the Government's duty to ensure that the scheme works fairly in relation to all victims of crime and within the financial limits of the Victims Compensation Fund.

The amendment brings New South Wales into line with Queensland and Victoria's definition of related acts.

### SECTION 23A

#### ***Interpretation of section 23A***

The policy behind this amendment was to encourage victims to lodge all their claims at the same time. It is the view of the Victims Compensation Tribunal that the section should be read as follows:

When the assessor or the Tribunal determines a claim, s/he will look at a person's eligibility to claim compensation on the date the person lodged the claim, not the date at which the claim is being determined. The assessor will look retrospectively to the date the claim was lodged and assess whether, on that date, there was any previous award of compensation which would operate, by virtue of section 23A, to prevent the current claim being made.

Therefore if a person lodges all their claims at around the same time whether the claims are determined at the same time will not affect their eligibility pursuant to section 23A.

This reading of the section is consistent with the policy, which is to put the decision-maker in a position to assess all claims at the same time. It is also supported by section 37(b) of the transitional provision relevant to section 23A, which states that the section "affects any claim for statutory compensation that was made before" the commencement of the amending act.

If a compensation assessor or the Victims Compensation Tribunal considers that there are exceptional circumstances, s/he can allow a further claim to be lodged in relation to an earlier act of violence even where the person has previously been awarded compensation.

Please note the section only applies to acts of violence that occur prior to a successful claim. If an applicant is subjected to an act of violence after the lodgement of a successful claim they are still able to lodge claims for those acts of violence.

## Section 35

The amendments to legal costs merely clarify the discretion that was already available to compensation assessors to award legal costs based on the scale of costs. However, prior to the amendments the wording of the section created an expectation that legal costs would be paid irrespective of the outcome of an application and irrespective of the amount of work involved.

The amount of legal fees awarded will not automatically be reduced for successful claims. Costs will be awarded based on the amount of work that has been performed in relation to a claim or the complexity of a claim. Assessors have been using these criteria to award costs for several years. This could mean awarding costs at the top end of the scale for successful or complex claims, or awarding costs at the lower end of the scale for simple claims.

The compensation assessors retain the discretion to award more or less than the amount prescribed in the scale of costs.

The Chairperson of the Victims Compensation Tribunal made this recommendation in his 2007/2008 Annual Report. This was following one firm of solicitors receiving \$862,683 in legal costs in that financial year. Reducing the amount of legal costs that is paid from the Victims Compensation Fund will enable more money to be paid out in compensation and other services for victims. Administrative changes have been made to make applying for compensation simpler and quicker.

### **Compensation Users Forum**

Victims Services will be holding a **Compensation Users Forum on 27 April 2011.**

The intention is for Victims Services to hold regular forums where people working in the area and accessing the services can attend and discuss recent trends and issues.

The aim is to make the process of applying for compensation and counselling easier for the people working in the area and more accessible to victims of crime.

Solicitors who work in victims compensation matters and any agencies or groups interested can attend on that day.

It will be held at **10.00am**  
on **Wednesday 27 April 2011**  
**Level 4, Justice Precinct Building**  
**160 Marsden Street Parramatta**

The Forum will be hosted by the **Director, Victims Services** and the **Registrar, Victims Compensation Tribunal.**

Please **RSVP** to  
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by **25 March 2011**