

This document is a guide only. Please refer to the provisions of Schedule 18 and 19 of the *Courts and Crimes Legislation Further Amendment Act 2010*, the *Victims Support and Rehabilitation Regulation 2010* and the *Victims Support and Rehabilitation Amendment Rule 2010* for further information. Copies of legislation may be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

## THE MAIN CHANGES TO THE VICTIMS SUPPORT AND REHABILITATION ACT 1996 ARE AS FOLLOWS:

### Related Acts – Section 5(3)

Related acts now extends to acts that were:

- committed at approximately the same time, or
- over a period of time by the same person or group of persons

The Tribunal and Compensation Assessors will still retain the discretion to treat multiple claims as unrelated acts.

**Commencement:** Claims determined on or after commencement date 1 January 2011.

### Victims Assistance Scheme (VAS)

The words 'prescribed expenses' have been deleted from the Act.

The scheme continues to cover expenses that were previously prescribed but now extends to all actual expenses incurred by the victim of an act of violence.

This includes medical aids such as dentures, prosthesis and hearing aids.

It does not include actual loss of earnings, counselling services or loss of personal effects.

The \$500 limit for certain expenses has been removed.

The minimum of \$200 and maximum of \$1,500 still remain the same.

**Commencement:** Claims determined on or after commencement date 1 January 2011.

### Effect of Death of Secondary and Family Victims

Currently section 14(2) of the Act states that if a primary victim dies before the determination of the claim, s/he becomes ineligible for statutory compensation.

There is no such provision for secondary and family victims.

The amendments will bring secondary and family victims in line with primary victims. Therefore if a secondary or family victim dies before the determination of their claim they become ineligible for statutory compensation.

**Commencement:** Applies to all pending claims from date of commencement.

### Approved Counselling Changes – Section 21

The amendments make changes that streamline the approval of counselling services.

It is no longer a requirement that a Compensation Assessor considers counselling. The Act now states that the Director approves counselling and that this approval can be delegated to trained staff.

The initial hours have increased from 2 to 10 hours as on average a victim of crime needs six to eight hours of counselling.

The total hours that can be approved is still 22.

The Approved Counsellor will still be required to provide a report after two hours for payment of further hours to be processed.

**Commencement:** Applies to all pending claims from date of commencement

## **Preclusions from making claims for acts of violence that pre-date the determination of a successful claim – Section 23A**

The intention of this amendment is to encourage applicants to lodge all potential claims for victims compensation at the same time.

If a person has lodged a claim for victims compensation that has resulted in an award of compensation being made to that person, they are precluded from lodging any further claims for acts of violence that occurred before the date the successful claim was lodged.

For example: if someone has lodged a claim in 2006 and they are successful in receiving an award of compensation, they are then precluded from lodging any further claims for acts of violence that occurred before 2006.

**Commencement:** Claims determined on or after commencement date 1 January 2011.

## **Time for lodging claims - Family Victims – Section 26**

The new changes preclude leave being granted to family victims who lodge claims outside the two-year limitation period with two exceptions:

- leave may be granted for applications lodged by family victims who were under 18 years old at the time of the act of violence provided lodgement is within 2 years of those victims turning 18 years (so before their 20<sup>th</sup> birthday)
- leave may be granted for applications lodged within 2 years of it becoming apparent that the primary victim has died as a result of a homicide (where it was not or may not have been immediately apparent or established that the cause of death was a homicide - for example in cases of missing persons)

However, if the statutory maximum of \$50,000 has been awarded, leave will not be granted to any further family members who claim outside the 2 year period even if they fall within the above two exceptions.

**Commencement:** Claims determined on or after commencement date 1 January 2011.

## **Withdrawal of Application**

This amendment means that where a person requests a withdrawal their claim is deemed null and void. The withdrawal is not referred to an Assessor but is administratively removed from the pending cases.

The applicant will be able to lodge a claim in the future for the same act of violence as the withdrawn claim but leave provisions will apply.

No costs are awarded to solicitors, as there is no determination by a Compensation Assessor.

**Commencement:** Applies to all pending claims from date of commencement.

## **Lapsing of Application**

This amendment will enable the Director to lapse a claim if the applicant has not made any contact for six months. This means that the claim becomes null and void.

The procedure will involve the Director giving written notice to the applicant stating that if the applicant does not contact the Director by the date specified, the application will lapse.

The applicant will be able to lodge a claim in the future for the same act of violence as the lapsed claim but leave provisions will apply.

No costs are awarded to solicitors, as there is no determination by a Compensation Assessor.

**Commencement:** Applies to all pending claims from date of commencement.

## **Professional Costs (Section 35 & Rule 12)**

### ***Compensation Assessor***

The amendments make it clear that an award of professional costs is discretionary. The decision as to the appropriate level of costs to be awarded for each claim will be dependent on the amount of work involved and the complexity of a claim.

Currently a solicitor can receive \$825 where they act for a victim.

The amendments make it clear that a solicitor who acts in a successful matter may be awarded 'up to \$825'.

In matters that are dismissed a solicitor may be entitled to 'up to \$400'.

### ***Appeals***

Costs are also awarded on successful appeals to the Tribunal. Appeal costs have been halved so a solicitor may now receive 'up to \$500'.

*Commencement:* Claims determined on or after commencement date 1 January 2011.

## **Appeals on Costs – Section 36**

The amendments exclude appeals in relation to professional costs.

**Commencement:** Claims determined on or after commencement date 1 January 2011.

### **THE MAIN CHANGES TO THE VICTIMS RIGHTS ACT 1996 ARE AS FOLLOWS:**

To implement recommendations arising from a review of the Charter of Victims Rights ("the Charter") to improve implementation of victims' rights under the Charter, including:

- expressing victims rights more assertively
- establishing a Charter of Victims Rights Code of Practice which outlines service providers responsibilities in implementing the Charter
- including a right to complain and to be informed about complaint processes
- requiring non-government agencies and contractors (excluding legal officers and Medical Practitioners), funded by the State who provide support to victims to comply with the Charter, and
- clarifying the primary role of Victims Services in implementing the Charter.

The Victims Advisory Board has been increased to 12 members to incorporate representatives from the Indigenous community and the domestic violence sector.

By removing the reference to the Victims of Crime Bureau, all areas are now collectively referred to as "Victims Services". The section of Victims Services formally known as the Victims of Crime Bureau is now the "Policy and Service Delivery" section of Victims Services. This change has been implemented to better reflect that Victims Services is one agency with responsibilities across a range of areas.

**Commencement:** The above changes to the *Victims Rights Act 1996* are effective as of 7 December 2010.