



The New Victims Support Scheme

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Mari Vagg, Solicitor, WLSNSW on 12 August 2013. This webinar can be downloaded for free at www.asklois.org.au/webinars/past-webinars.

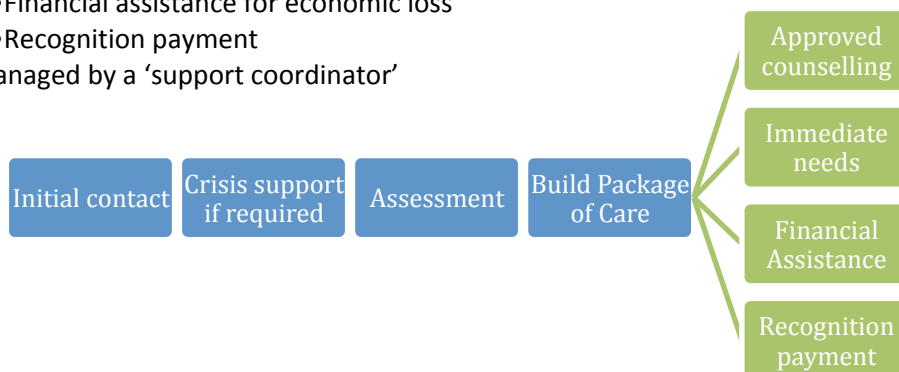
This fact sheet covers:

- Outline of the new victims support scheme
- Impact on existing victims compensation claims
- Role of support workers

Overview of the new Scheme

On 30 May 2013, the Victims Rights Support Bill was passed into legislation. The new Victims Support scheme replaces the previous Victims Compensation scheme and applies retrospectively.

- 'Act of violence' in NSW
- 'Package of care' could include:
 - Information, support and referral
 - Counselling
 - Financial assistance for immediate needs
 - Financial assistance for economic loss
 - Recognition payment
- Case managed by a 'support coordinator'



Key Concepts

Act of violence:

- Committed by one or more persons:
 - Apparently occurred in the course of the commission of an offence, and
 - Involved violent conduct, and
 - Resulted in injury or death
- Specifically includes sexual assault and domestic violence

Types of victims:

1. Primary Victim

s 20 Meaning of "primary victim"

- (1) A primary victim of an act of violence is a person who is injured, or dies, as a direct result of that act.
- (2) A primary victim of an act of violence extends to a person who is injured, or dies, as a direct result of:
 - (a) trying to prevent another person from committing that act, or
 - (b) trying to help or rescue another person against whom that act is being committed or has just been committed, or
 - (c) trying to arrest another person who is committing, or who has just committed, that act.

2. Secondary Victim – injured as a result of witnessing an act of violence



s 21 Meaning of “secondary victim”

(1) A secondary victim of an act of violence is a person who is injured as a direct result of witnessing the act of violence that resulted in the injury to, or death of, the primary victim of that act.

(2) A secondary victim of an act of violence extends to a person who is injured as a direct result of subsequently becoming aware of the act of violence that resulted in the injury to, or death of, the primary victim of that act, but only if:

- (a) the person is the parent or guardian of the primary victim of that act, and
- (b) the primary victim was under the age of 18 years at the time of that act, and
- (c) the person did not commit that act.

The person is taken, for the purposes of this Act, to have witnessed the act of violence.

(3) For the purposes of this section, a primary victim does not include a person who is a primary victim only because of the operation of section 20 (2).

3. Family Victim - immediate family member of a victim of homicide

s 22 Meaning of “family victim”

(1) A family victim of an act of violence is a person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act.

(2) It is immaterial whether or not the person suffers an injury in connection with the act of violence or death.

(3) A member of the immediate family of a primary victim is:

- (a) the victim’s spouse, or
- (b) the victim’s de facto partner who has cohabited with the victim for at least 2 years, or
- (c) a parent, guardian or step-parent of the victim, or
- (d) a child or step-child of the victim or some other child of whom the victim is the guardian, or
- (e) a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim.

Note. “De facto partner” is defined in section 21C of the Interpretation Act 1987

Counselling

- Available to all types of victims
- No time limit
- No evidence required
- Initial 10 hours, plus up to a further 12 hours if required - total of 22 hours
- Improved rates of pay for counsellors means there are now more approved counsellors in the scheme

Financial Assistance for Immediate Needs

- Urgent expenses for ‘primary victims’:
 - Assistance to relocate to safer location
 - Safety measures (e.g. changing locks)
 - Emergency medical and dental expenses
- Capped at \$5,000 in total
- Need a police or medical report + evidence of expenses claimed
- Time limit: 2 years from the incident or 2 years of turning 18 for children
- Family members of homicide victims can also claim for crime clean up and funeral costs
- Funeral costs have a separate cap of \$8,000

Financial assistance for economic loss

Available to:

- Primary victims
- Parent, step-parent or guardian of a child primary victim (for their economic loss as a direct result) – note s 26(2): reduce amount of financial assistance available for primary victim by the amount paid to their parents
- Family victims – justice-related expenses only



- Total limit \$30,000, including:
 - Loss of actual earnings, up to \$20,000
 - Includes loss of income by domestic violence victim who was dependant on violent partner
 - Loss of earnings calculated at the rate of weekly payment of compensation payable under the *Workers Compensation Act 1987* 'after the first 26 weeks of incapacity within the meaning of clause 1 of Part 19H of Schedule 6 to that Act' (Clause 7 of the **Victims Rights and Support Regulation 2013**)
 - Cost of living expenses, up to \$5,000 (for victims who were not employed at the time)
 - "Justice related" expenses, up to \$5,000
 - Only for criminal or coronial proceedings, mentions statements to police, victims impact statements, etc
 - Mostly used for travel expenses
 - Medical and dental expenses
 - Damage to clothing or personal effects, up to \$1,500
- Documentary evidence required:
 - Police report or report to 'government agency'
 - Evidence of injury (medical, dental, counselling)
 - Full particulars of loss
- Time limits:
 - 2 years from the incident
 - 2 years from turning 18 for children
 - No time limit for victims of child sexual abuse for claims for justice-related expenses or out-of-pocket expenses

Recognition Payments

Categories of recognition payments		
Category A		Act of violence apparently occurred in the course of the commission of a homicide:
	\$15,000	Payable to a family victim who, immediately before the death of the primary victim, was financially dependent on the primary victim.
	\$7,500	Payable to each parent, step-parent or guardian of a primary victim who died.
Category B	\$10,000	Payable to a primary victim of: (a) a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons, (b) a sexual assault, indecent assault or attempted sexual assault involving violence that is one of a series of related acts.
Category C	\$5,000	Payable to a primary victim of: (a) a sexual assault other than one referred to above, (b) an attempted sexual assault resulting in serious bodily injury, (c) an assault resulting in grievous bodily harm, (d) physical assault of a child that is one of a series of related acts.
Category D	\$1,500	Payable to a primary victim of: (a) an indecent assault, (b) an attempted sexual assault involving violence other than one referred to above, (c) a robbery involving violence, (d) an assault (not resulting in grievous bodily harm).



- Documentary evidence required:
 1. Police report or report to 'government agency'; and
 2. Evidence of injury (medical, dental, counselling)
- Time limits:
 - 2 years from the incident
 - 2 years from turning 18 for children
 - No time limit for victims of child sexual abuse
 - 10 years for domestic violence or sexual assault
 - For domestic violence, the time starts from the end of the relationship (or last incident if post separation)
 - Claims can continue to be made for 5 years from the date of the initial application (or until cap reached)
- Reduction of payments
 - Refusal or reduction of financial assistance or recognition payment:
 - Contributory behaviour, condition, attitude or disposition
 - Failure to report to the police within reasonable time
 - Failure to report to health professionals
 - Participation in the act of violence
 - Failure to provide reasonable assistance to those arresting and/or prosecuting
 - Failure to mitigate injury, or
 - Any other relevant factor
 - In awarding a recognition payment to a victim of domestic violence, it continues to be possible for Victims Services to have regard to the likelihood that the perpetrator may receive the benefit of the money (or part of it)

Lodging a claim

- Victims contact Victims Services directly
- Victims Access Line or website
 - www.lawlink.nsw.gov.au/vs
 - Access Line: 1800 633 063
 - Aboriginal Contact Line: 1800 019 123
 - (Phone lines: 8 am – 6 pm, Monday to Friday)
- Allocated a support coordinator to assist with lodging a claim & provide support through the process
- In person: Level 1, 160 Marsden St, Parramatta Downing Centre Local Court, once a week

Impact on Claims Filed Prior to New Act

- Automatically transferred to new scheme, including appeals
- Eligible for:
 - Recognition payment
 - Special grant of \$5000 (if within prescribed time period: 2 years from incident or 2 years from turning 18 for children)
- Not eligible for financial assistance for immediate needs nor economic loss

Role of Support Workers

- The new scheme 'removes the need for lawyers or legal advice' and solicitor's costs are no longer covered
- Support Coordinators to assist with claims and evidence
- Greater role for support workers



- When might clients still need help from a lawyer?
 - Vulnerable clients
 - If there are issues with the evidence and a statutory declaration is needed
 - If need to argue grievous bodily harm
 - If 'related acts' argument exists
 - Appealing a question of law

Resources

For further information and publications can be found on the Victims Services NSW website:

<http://www.lawlink.nsw.gov.au/vs>