

# The Shopfront

## YOUTH LEGAL CENTRE

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## Victims' compensation and support

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### 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 under the Victims Support and Rehabilitation Act 1996 (**Old Act**), 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.

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**).

**The VRS Act was recently amended** by the *Victims Rights and Support Amendment (Statutory Review) Act 2018 (VRS 2018 Amendment Act)*. Most of the amendments came into force on 14 January 2019 (a few amendments commenced on 1 December 2018). These amendments are mostly helpful for vulnerable victims, for example: a victim may report an act of violence to "an agency that provides support services to victims of crime" instead of the police or a government agency. The time to lodge an internal review application has also been extended from 28 days to 3 months.

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### 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.

## 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, government agency or any other agency that provides support services to victims of crime

To be eligible for a recognition payment or financial assistance, 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) or *an agency that provides support services to victims of crime*.

The phrase “*agency that provides support services to victims of crime*” was added by the VRS 2018 Amendment Act which commenced on 14 January 2019. There is no definition of the phrase included in the VRS Act, but we understand that it includes community legal centres, counselling services, refuges and other non-government agencies.

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, leave cannot 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 or serving time for fine defaults). 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 victim **did not co-operate with the police** in the prosecution process.
- (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.

There was also a requirement to report to police or a relevant health professional or practitioner, or a relevant agency within a reasonable time. However, this was deleted by the VRS 2018 Amendment Act which commenced on 14 January 2019.

## 4 Victims support for primary victims

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

However it is important to note that the limits on counselling apply to each act of violence ie. if you have 4 claims for 4 different acts of violence then you are entitled to 4 times the amount of counselling hours. Additionally, victims of child physical or sexual abuse are entitled to unlimited hours of counselling. These additional counselling benefits were added by the VRS 2018 Amendment Act.

### 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.

## 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 or under 18 years old immediately before the death of a primary victim and \$7,500 to each parent, step-parent or guardian or spouse or de facto partner 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.

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.

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## 5 How to apply

### 5.1 Application forms

The victim may submit an online application form via the Victims Services website (<http://www.victimsservices.justice.nsw.gov.au>).

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.

We would encourage vulnerable victims to seek advice or assistance from a lawyer (although it is important to note that Victims Services does not pay for legal costs).

### 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, or a report from an agency that provides support services to victims of crime, sufficient to support the applicant's claim that they were a victim of an act of violence on the balance of probabilities. The applicant will also 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**. The victim also 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.

As discussed above, the phrase "an agency that provides support services to victims of crime" was inserted in this section by the VRS 2018 Amendment Act.

#### 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, report of a Government agency or a report from an agency that provides support services to victims of crime. As discussed above, the phrase "an agency that provides support services to victims of crime" was inserted in this section by the VRS 2018 Amendment Act.

#### When and how to submit supporting documents

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.

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## 6 Withdrawal or lapsing of applications

### 6.1 Withdrawal

A victim may withdraw his or her application at any time before the application is determined by written notice to the Commissioner. In practice this can be done by email or letter. There are no formal requirements.

This withdrawal does not prevent the victim from making another application for support. However be aware that the strict time limits described above still apply to any new application. Therefore, there is a risk that when you are ready to re-lodge the application, the relevant time limit could have expired.

### 6.2 Lapse

A section providing for applications to lapse was added by the VRS 2018 Amendment Act which commenced on 14 January 2019.

An application will lapse if:

- (a) 12 months has passed since the victim was first requested to provide evidence to support the application, and
- (b) The victim has, during that 12-month period, been requested on at least 3 separate occasions to provide the evidence, and
- (c) The Commissioner decides that the victim has no valid reason for failing to provide that evidence.

The section provides that if an application is lapsed, the victim can lodge a another claim. However, the extensive delays currently at Victims Services (up to 2 years) would mean that such a victim could wait years for their claim to be finalised. Also, the strict time limits described above still apply to any new application. Therefore, there is a risk that when you are ready to re-lodge the application, the relevant time limit could have expired.

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## 7 How the claim is determined

### 7.1 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.

### 7.2 How long does it take?

When the new scheme commenced in 2013, it was intended that applications would be processed more quickly than under the old scheme. This was true for the first year of the new Scheme.

However it is our experience that there is now a backlog and it could take about 36 months to receive a decision.

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

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## 8 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. This is done by making an application in writing stating the grounds of the application.

The application must be lodged within 90 days of receipt of the decision. Before the VRS 2018 Amendment Act, which commenced on 14 January 2019, the period was only 28 days.

Although the VRS Act states that the application is reviewed as if it were being made when the application was originally received, we have found that in practice, new material or evidence has been accepted at the internal review. In fact, the latest fact sheet from Victims Services specifically contemplates this.

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

There is no longer the option of an appeal to the District Court. There is also no right of appeal from NCAT to the Supreme Court.

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## 9 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.

However many victims, particularly of recent assaults or domestic violence, are very concerned about restitution. This is because the order for restitution contains the victim's name and the amount they received.

The power to order restitution is discretionary. If a victim is concerned about the consequences of a restitution order being made, they may make submissions to the Commissioner seeking an undertaking that restitution be waived if an amount of Victims Support is awarded. It is important to get this undertaking before accepting any financial assistance or recognition payments.

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## 10 Victims Services contact details

Victims Services  
Locked Bag 5118, PARRAMATTA NSW 2124 or  
Level 1, 160 Marsden Street, Parramatta NSW 2124  
Tel: 1800 633 063  
Fax: (02) 8688 9630  
<http://www.victimsservices.justice.nsw.gov.au>

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*This document was last updated in January 2019 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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