

# NSW Victims Support Scheme

## Overview of *Victims Rights and Support Act 2013*



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Aboriginal Women's Legal Centre  
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# Legal disclaimer

- The information provided in this presentation is **ONLY** general information and **NOT** legal advice.
- We accept no loss that may result if you only rely on the information provided during this presentation.
- If you have a legal problem you should speak to a solicitor for specific legal advice.
- The presentation only covers the law in NSW.

# Summary

- The new law is contained in the *Victims Rights and Support Act 2013*
- There are **four** main areas of the new scheme that are important to focus on. They are:
  - Types of assistance
  - Time limits
  - Evidence required
  - Some of the law applies retrospectively to claims lodged before the new Act was introduced.

# What you need to prove

On the **balance of probabilities**:

1. There was an act of violence: AND
2. The act of violence resulted in an injury

(NOTE: family victims don't need to show that the homicide caused them injury).

# Act of violence

An act, or series of acts, that:

1. Involves **violent** conduct that occurred in NSW
1. Occurred when committing an **offence**
1. Resulted in **injury or death**

# Injury

- Actual bodily harm
- Grievous bodily harm
- Psychological or psychiatric harm

# Primary victim

A person who:

- is the direct victim of a violent crime **OR**
- tries to stop someone doing the violence against the victim **OR**
- tries to rescue or help the victim **OR**
- tries to arrest someone doing the violence against the victim

**AND** suffers an injury as a result.

# Secondary victim

A person who:

- witnesses a violent crime **OR**
- Is a parent or guardian of a child victim **under 18** who finds about the violent crime which happened to their child

**AND** suffers an injury

# Family victim

Following family members of a primary victim who was murdered:

- husband or wife
- de facto partner whom lived with the primary victim for 2 years
- parent, guardian or step-parent
- brother, sister, step-brother or step-sister, half-brother or half-sister
- child (step-child or child by guardianship)

# Types of assistance

## 1. Counselling.

## 1. **Three** main categories of financial assistance:

- Immediate needs
- Economic loss
- Recognition payments (lump sum payments, of which there are **four** categories)

# Counselling

- Still capped at **22** hours (except for homicide family victims)
- Increase in fees for counsellors
- Available to primary victims, secondary victims and family victims
- No time limit to apply for counselling

# Immediate needs-\$5,000

- Available to address urgent needs, such as:
  - Relocation costs
  - Safety upgrades
  - **Emergency** medical and dental needs
  - Crime scene clean up
- Available to **primary victims**
- **Family victims can claim funeral costs up to \$8,000**
- Must provide evidence of act of violence eg: police report, medical report, GP records, or report from refuge.

# Time limit: immediate needs

- **2 years** from violence or **2 years** from when a child victim turns **18**. NO late claims allowed.

# Economic loss – Max \$30,000

- Types:
  - Loss of wages (up to \$20,000)
  - Ongoing medical and dental expenses
  - Costs associated with criminal proceedings, eg: preparing statements (max \$5,000)
  - Damage to clothes or personal property worn at the time of the violence (max \$1,500)
- **MUST** have reported violence to police or a government agency.
- Parents, step-parents, guardians can claim for economic loss if caring for a child who was the primary victim.

# Economic Loss cont

- IF **CANNOT** prove loss of earnings can claim up to \$5,000 for **out of pocket expenses** eg:
  - Rent assistance
  - Household bills
- Will need to provide evidence of expenses.
- May be a refund, direct payment or allowance.
- Once application has been made can claim for expenses for up to a period of 5 years.

# Time Limits: Economic Loss

- Application **MUST** be made:
  - within 2 years after the act of violence: OR
  - if a victim is a child within **2 years** of the child turning **18 years** of age.
- **BUT NO time limit for child sexual assault victims** if applying for out of pocket expenses, or expenses associated with criminal proceedings.

# Recognition payments

- Payment for pain and suffering.
- **Four** categories - **Categories A-D**.
- Focus on the type of violence.
- **ONLY** available to **primary victims** and certain **family victims**
- To claim this payment the violence **MUST** be reported to police or a government agency.
- Still need to prove act of violence and an injury.
- **Time Limits**: vary depending on violence (see later slide).

# Category A

- Payment for certain family victims of a homicide.
- Family victim financially dependent on homicide victim at time of death - **\$15,000**
- Each parent, step-parent or guardian of homicide victim - **\$7,500**
- Under the old law more family members could apply and the applicants had to share \$50,000 (unless there were dependent family members).

# Category B - \$10,000

- Includes:
  - Victim of sexual assault resulting in serious bodily injury
  - Sexual assault with two or more offenders
  - Sexual assault involving a weapon.
  - Victims of sexual assaults, indecent assault or attempted sexual assaults that were a series of related acts (ie ongoing violence).
- Replaced Category 3 -sexual assault under old Schedule, which had a range of \$25,000 to \$50,000.

# Category C - \$5,000

- Includes:
  - A victim of sexual assault not covered by Category B.
  - An attempted sexual assault resulting in serious bodily harm.
  - An assault resulting in grievous bodily harm.
  - Physical assault of a child that is one of a series of related acts.
- This is the **highest** award available to domestic violence victims **IF** there was an assault resulting in **grievous bodily harm**.

# Category C cont

- **No** recognition of ongoing domestic violence.
- Under old law could claim for a specific domestic violence injury: \$7,500 to \$10,000 **OR** where there was severe psychological injury, Category 2: psychological disorder: \$30,000 to \$50,000

# Category D - \$1,500

- Includes:
  - An indecent assault
  - An attempted sexual assault involving violence other than serious bodily injury
  - A robbery involving violence
  - An assault NOT resulting in grievous bodily harm
- A domestic violence victim who was assaulted, but **NO** grievous bodily harm caused, can only claim for this recognition payment.

# Time limits: recognition payments

- An application for a **recognition payment** **MUST** be made:
  - within **2yrs** of the act of violence; **OR**
  - **2 years** once a child victim turns **18**
- **BUT** victims of:
  - **Domestic violence**
  - **Child physical assault** (different to child sexual assault)
  - **Adult sexual assault**  
can apply **within 10 years** of the act of violence or **10 years after a child turns 18 years of age**.
- There is **NO discretion** to accept applications outside the time limits.  
**Exception:** if there was a delay in establishing a homicide.

# Time limits: recognition payments for child sexual assault

- There is **NO** time limit for victims of child sexual assault.

# Evidence required

- **MUST** report the act of violence to police or a government agency for:
  - a recognition payment, or
  - payment for economic loss.
- Old scheme accepted a report made to other relevant agencies or services.

# How to apply

- Can apply online or contact Victims Services for a form.
- Applicant can be given a **support coordinator at Victims Services** who is meant to assist victim with the application and working out support the victim needs.
- Support Coordinator:
  - Cannot and should not advise client about merits of their case.
  - Cannot assist victim with legal submissions nor lodging an appeal.
- No fees will be paid to a lawyer who assists a victim.
- Applications still determined by an Assessor.

# What happens to claims lodged prior to the new Act?

- Called 'transitional matters'.
- New recognition payments **applies** to claims that were lodged **but not** assessed before **7/5/2013**.
- **BUT** new evidence requirements will **NOT** apply.

# Special grant of \$5,000

- Victims who applied under the old scheme **cannot** make an application for the new types of financial assistance.
- A **special grant of \$5,000.00** will be paid to successful primary and family victims **IF** they lodged their claim within **2 years** of the act of violence, or a child lodged it within 2 years of turning **18 years** old.
- Does not apply to secondary victims.

# Appeals

- If unhappy with decision can apply for an internal review.
  - Have **28 days** from date given notice to seek an internal review.
- If not happy with the internal review decision can lodge an appeal with the NSW Civil and Administrative Tribunal.
  - ONLY can appeal to NCAT re decisions about recognition payments.
  - Have **28 days** to lodge appeal.

# Some other issues

- **Secondary Victims:**
  - The only support a secondary victim will be able to claim for is counselling.

# Case Scenario 1

- Joanne's story

Joanne was in a relationship with Steve for 4 years. During this time there was a lot of domestic violence involving shoving, hitting and kicking. Much of it was unreported, but about a month ago Steve was charged with assaulting her when he slapped and punched her out front of their house and the neighbours called the police. The police have also applied for an AVO for her.

She left the house they were renting with just some clothes for herself and her three year old child. She is too scared to go back to the house as he always threatened to kill her if she left him or reported the violence. Joanne and her child are currently living at a refuge.

# Case Scenario 2

- Violet's story

Violet is a 50 year old woman who was sexually abused by her uncle for a number of years from about the age of 6 to 11 years old.

She is only starting to talk about the abuse and has been telling her support worker who works at a local NGO service for Aboriginal women. Her doctor has also been treating her severe depression for a number of years.

# Further information

- Wirringa Baiya: **9569 3847/ 1800 686 587**
- Victims Services:
  - Victims Access Line: **1800 633 063**
  - Aboriginal Contact Line: **1800 019 123**
  - [www.lawlink.nsw.gov.au/vs](http://www.lawlink.nsw.gov.au/vs)