



New South Wales

# Victims Rights and Support Amendment (Transitional Claims) Regulation 2015

under the

Victims Rights and Support Act 2013

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Victims Rights and Support Act 2013*.

GABRIELLE UPTON, MP  
Attorney General

## Explanatory note

The object of this Regulation is to amend the *Victims Rights and Support Regulation 2013* to replace the previous arrangements for dealing with certain transitional claims for statutory compensation under the *Victims Support and Rehabilitation Act 1996* (the **former Act**) with the following arrangements:

- (a) a person who had applied for statutory compensation under the former Act, and whose application was not finally determined before the Bill for the *Victims Rights and Support Act 2013* (the **new Act**) was introduced into Parliament, will be able to apply for reassessment of that claim under the former Act not later than 1 September 2016,
- (b) the scheme for converting any such claim into an application for victims support under the new Act will no longer apply,
- (c) a person who withdrew an application will be able to apply but a person whose application was dismissed under that scheme will not be able to apply for reassessment unless the application was dismissed on the ground that the person was a family or secondary victim who was not entitled to a recognition payment,
- (d) payments of statutory compensation will be made from the Victims Support Fund under the new Act,
- (e) the Commissioner of Victims Rights may make guidelines for compensation assessors about assessment of the statutory compensation,
- (f) legal costs will not be payable for reassessment applications although disbursements may be paid,
- (g) the only appeal against a decision on a reassessment application will be an internal review by the Commissioner of Victims Rights and the review provisions of the former Act will not apply,
- (h) the amounts of statutory compensation awarded will be reduced by the amount of any victims support previously paid under transitional arrangements or any other provision of the new Act for the same act of violence. No statutory compensation is payable and no refund will be required if the victims support is more than the amount of statutory compensation awarded,
- (i) if a provisional order has been made for the payment of restitution by an offender, the restitution cannot be increased to cover any additional amount of statutory compensation payable for the same act of violence and no further application can be made for restitution for the same act of violence.

This Regulation is made under the *Victims Rights and Support Act 2013*, including sections 16 (f) and 117 (the general regulation-making power) and clause 1 of Schedule 2.

## **Victims Rights and Support Amendment (Transitional Claims) Regulation 2015**

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### **1 Name of Regulation**

This Regulation is the *Victims Rights and Support Amendment (Transitional Claims) Regulation 2015*.

### **2 Commencement**

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Victims Rights and Support Regulation 2013**

**[1] Part 5, Division 1, heading**

Insert before clause 14:

### **Division 1      Preliminary**

**[2] Part 5, Division 2, heading**

Insert after clause 14:

### **Division 2      Miscellaneous provisions consequent on enactment of Act**

**[3] Part 5, Division 3**

Insert after clause 16:

### **Division 3      Reassessment of applications for statutory compensation under repealed Act**

#### **17 Definitions**

In this Division:

*new Act* means the Act.

*reassessment application*—see clause 19.

#### **18 Operation of Division**

- (1) The provisions of this Division have effect despite any provision of Part 2 of Schedule 2 to the new Act.
- (2) An application cannot be dealt with under clause 5 of that Schedule or clause 15 of this Regulation after the commencement of this Division.

#### **19 Eligibility for reassessment applications**

- (1) A person whose application for statutory compensation was lodged, but not finally determined, under the repealed Act before the day the Bill for the new Act was first introduced into Parliament is eligible to make an application for reassessment of that application under this Division (a *reassessment application*).
- (2) A person is eligible to make a reassessment application even if the person subsequently withdrew the application for statutory compensation or withdrew from having the application dealt with under clause 5 of Schedule 2 to the new Act.
- (3) Despite subclause (1), a person whose application was dealt with under clause 5 of Schedule 2 to the new Act and was dismissed is not eligible to make a reassessment application unless the ground for dismissal was that the person was a family or secondary victim who was not entitled to a recognition payment under the new Act.
- (4) For the purposes of this section, an application was not finally determined if:
  - (a) any period for bringing an appeal as of right in respect of the application had not expired (ignoring any period that may have been available by way of extension of time to apply), or

- (b) any appeal in respect of the application was pending (whether or not it was an appeal brought as of right).

## **20 Reassessment applications**

- (1) A person cannot make a reassessment application after 1 September 2016.
- (2) A reassessment application is to be made by written notice to the Commissioner indicating that the applicant wishes to have the previous application for statutory compensation reassessed under this Division.
- (3) No fee is payable for making a reassessment application.
- (4) The Commissioner may require a person who makes a reassessment application to provide any documentary evidence or other information requested in writing by the Commissioner. The evidence or information must be provided not later than 6 months after the reassessment application is made.
- (5) If a request for evidence or information to be provided by the applicant is made by the Commissioner more than 3 months after the reassessment application is made, the applicant must provide the evidence or information not later than 3 months after the request is made.

## **21 Application of repealed Act to reassessment applications**

- (1) A reassessment application is to be determined as if it were an application for statutory compensation duly made under the repealed Act and the provisions of the repealed Act continue to apply to and in respect of a reassessment application, subject to this Division.
- (2) For the purposes of this Division, a reference in the repealed Act:
  - (a) to the Director or a compensation assessor is taken to be a reference to the Commissioner, and
  - (b) to a determination for restitution is taken to be a determination under Part 5 of the new Act (as applied by this Division), and
  - (c) to the Compensation Fund is taken to be a reference to the Victims Support Fund, and
  - (d) to the Compensation Fund Corporation is taken to be a reference to the Secretary of the Department of Justice.
- (3) The following provisions of the repealed Act do not apply to a reassessment application:
  - (a) sections 25 (2) and (3), 26, 34, 35 and 42 (1) (b),
  - (b) Divisions 6, 8 and 9 of Part 2,
  - (c) Part 3,
  - (d) Parts 4 and 5,
  - (e) Schedule 2.

## **22 Applications by family and secondary victims**

- (1) A reassessment application by a family victim of an act of violence is not to be determined by the Commissioner before 1 September 2016 unless all family victims of the act of violence have made a reassessment application.
- (2) A reassessment application by a secondary victim of an act of violence is not to be determined by the Commissioner before 1 September 2016 unless:
  - (a) all primary victims of the act of violence have made reassessment applications and those applications have been determined, and

- (b) all other secondary victims and family victims of the act of violence have made a reassessment application.

**23 Conditions of determinations**

Section 48 of the new Act applies to the determination of an award of statutory compensation under this Division in the same way as it applies to an approval referred to in subsection (1) or (2) of that section.

**24 Payments from Fund: section 16 (f) of new Act**

- (1) An amount of statutory compensation payable under an award made under this Division is to be paid from the Victims Support Fund.
- (2) Section 54 of the new Act applies to the payment of an award of statutory compensation under this Division in the same way as it applies to payment of victims support that is approved by the Commissioner.

**25 No legal costs for reassessment application**

- (1) A person who makes a reassessment application is not entitled to be awarded his or her legal costs in respect of the application.
- (2) However, the Commissioner may approve the payment of disbursements in accordance with the Table to clause 12 of the *Victims Support and Rehabilitation Rule 1997*.

**26 Guidelines for compensation assessors**

Section 65 (1) of the repealed Act applies to the determination of statutory compensation under this Division as if a reference in that subsection to the Tribunal were a reference to the Commissioner.

**27 Reviews of determinations**

Section 49 of the new Act (other than section 49 (5) (c)) applies to a person who makes a reassessment application in the same way as it applies to a person who is an applicant for victims support.

**28 Eligible persons who have already received victims support payments**

- (1) This clause applies to the following persons who make reassessment applications:
  - (a) a person who was awarded a payment under clause 5 of Schedule 2 to the new Act or clause 15 of this Regulation before the commencement of this Division (*transitional victims support*) in respect of an act of violence that is the subject of the reassessment application,
  - (b) a person who was awarded any other victims support under the new Act in respect of an act of violence that is the subject of the reassessment application.
- (2) The amount of any statutory compensation awarded to a person under this Division is to be reduced by the amount of any transitional victims support or victims support awarded to the person in respect of the same act of violence.
- (3) If the amount of transitional victims support or victims support awarded to a person exceeds the amount of statutory compensation that may be awarded to the person under this Division in respect of the same act of violence:
  - (a) no further compensation is payable to the person under the new Act in respect of the act of violence, and

- (b) the person is not required to refund any amount that exceeds the amount of statutory compensation that may be awarded to the person under this Division.

**29 Restitution proceedings**

- (1) Part 5 of the new Act applies to an award of statutory compensation made under this Division in the same way that it applies to awards under Part 4 of the new Act.
- (2) If a provisional order for restitution was made under Part 5 of the new Act before the commencement of this Division relating to victims support in respect of an act of violence for which an amount of statutory compensation is awarded under this Division:
  - (a) the amount of any restitution paid or payable cannot be increased to cover any additional amount of statutory compensation paid or payable in respect of that act of violence, and
  - (b) no further application can be made for restitution for the same act of violence.