

# **The Law Handbook**

**YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES**

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# Victims Support

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## [39.10] Overview

A person who is a victim of violent crime in New South Wales can seek assistance and support from Victims Services, which is part of the New South Wales Department of Justice.

On 3 June 2013, the *Victims Rights and Support Act 2013* (NSW) (the *Act*) commenced. The *Act* enshrines the NSW Charter of Victims Rights and established the NSW Commissioner of Victims Rights.

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### Charter of Victims Rights

If you are a victim of crime in NSW, the Charter of Victims Rights protects your rights. The Charter is contained in the *Act* and states how you should be treated and assisted if you are a victim of crime.

*What is the Code of Practice?*

The *NSW Code of Practice for the Charter of Victims Rights* supplements the Charter of Victims Rights and sets minimum standards for all responsible agencies to adhere to. The Code sets out minimum standards for service providers on how to treat victims under the Charter. Not all service providers are responsible for each of the rights under the Charter. However, it is expected that staff in all agencies are aware of the rights available to victims under the Charter.

*Who is covered by the Charter of Victims Rights?*

- A person who suffers harm as a direct result of an act committed by another person in the course of a criminal offence in NSW.
- A member of the immediate family if someone dies as a result of an act committed.

This includes children and young people who have been harmed as a result of a criminal offence.

*Who must uphold the Charter?*

- Everyone working in NSW government departments.
- People working in non-government agencies, and private contractors, funded by the state, who provide services to victims of crime.

*What can I do if I think my rights under the Charter are not being met?*

- You should talk to the person you are dealing with about the problem. Usually the problem can be fixed that way.
- If you are still not satisfied, you have the right to ask the person to tell you how to make a complaint to their department. The department should be able to arrange interpreters or other assistance if required. You can get a support person to help you make the complaint. This can be a friend or worker.
- If you are still not satisfied after the complaint has been looked at by the department, you can contact Victims Services.

*As a victim of crime, what can I expect from service providers?*

Service providers are responsible for ensuring victims receive their Charter rights, and how they

do this is set out in the Code. *You can reasonably expect:*

*Charter Right 1: Courtesy, compassion and respect*

- You will be treated with courtesy and compassion.
- You will be treated with cultural sensitivity and respect for your rights and dignity.

*Charter Right 2: Information about services and remedies*

- Contact details of any service provider that may be helpful.
- Information about the role and function of each service provider so you have a clear understanding of what you can expect.

*Charter Right 3: Access to services*

- You will be helped to get the health, counselling, legal and other assistance that you need.
- All the service providers helping you will work together to provide the best possible service.
- Details of the Victims Access Line will be given to you.

*Charter Right 4: Information about the investigation of a crime*

- You can ask the police about the progress of the investigation of the crime. Sometimes they can't tell you everything if it will affect the investigation.

The NSW Police Force will:

- provide you with an event number and a Victims Card;
- contact you within seven days of the incident being reported;
- give you updates at least every 28 days or at particular milestones during any investigation;
- provide ongoing advice on the investigation, including if the suspect has been arrested and any decision not to charge or release them.

*Charter Right 5: Information about prosecution of accused*

The prosecutor will:

- tell you what the accused has been charged with, or reasons for not charging;

- let you know the date and location of any hearings in advance;
- tell you the outcome of the hearing;
- inform you about any decisions not to proceed with charges laid against the accused, or to accept a plea of guilty to a lesser charge;
- consult with you if the offender offers to plead guilty to a lesser charge (for serious personal violence matters).

*Charter Right 6: Information about trial process and role as witness*

- A victim who is a witness in a trial will be told what happens in a court and what to expect in the trial.
- Your role as a witness will be explained.

If you are not already being supported by a service, you can expect to be:

- referred to the Victims Access Line who will provide you support and information;
- referred to a court support agency (with your consent) that operates at the courthouse where your matter will be heard.

*Charter Right 7: Protection from contact with accused*

- You will be protected from unnecessary contact with the accused and defence witnesses during the court proceedings.
- You can request a safe place to wait in the courtroom.

*Charter Right 8: Protection of identity of victim*

- You can expect your privacy to be respected in court.
- Your address and telephone number will not be disclosed unless a court directs otherwise.

*Charter Right 9: Attendance at preliminary hearings*

- You are not required to attend preliminary hearings, mentions or committals unless the court directs you to attend.

*Charter Right 10: Return of property of victim held by state*

- If your property has been held for the purpose of investigation or evidence, the inconvenience to you will be minimised and your property returned promptly.
- The length of time property is held varies and may depend on whether it is needed in court and for any appeals.
- The police officer or prosecutor will tell you if you can collect your property.

*Charter Right 11: Protection from accused*

- If you have concerns for your safety tell the police officer or prosecutor handling the bail application.

- Your safety needs and concerns will be raised by the prosecutor before the court on a bail application.

*Charter Right 12: Information about special bail conditions*

- You will be told about any special bail conditions imposed on the accused that are meant to protect you or your family.

*Charter Right 13: Information about outcome of bail application*

This right applies to victims of serious personal violence.

- The police will make it a priority to tell you about bail decisions.

*Charter Right 14: Victim impact statement*

A victim impact statement lets you tell the court about the effect of the crime on you:

- You will be told if you are eligible to make a victim impact statement, its purpose and how to prepare one.
- You will be given help to write a victim impact statement if you need it.

*Charter Right 15: Information about the impending release, escape or eligibility for absence from custody*

Eligible victims may be entitled to have their names listed with a Victims Register, if the offender has been found guilty of certain offences, and be given certain information about the offender or forensic patient.

If the offender is in gaol or custody, you can be told if the offender is eligible for day release, is going to be released soon, or has escaped.

*Charter Right 16: Submissions on parole and eligibility for absence from custody of serious offenders*

Eligible victims registered with a Victims Register will be provided with information about making a submission to the relevant decision-making authority, if the offender is going to be released from gaol on parole or is eligible for day release.

*Charter Right 17: Financial assistance for victims of personal violence*

If you have been injured as a result of a serious personal violence offence, you may be eligible for financial assistance under the Victims Support Scheme.

*Charter Right 18: Information about complaint procedure where Charter is breached*

You can make a complaint if you think your rights under the Charter have not been met.

Service providers will tell you how to make a complaint or you can call the Victims Access Line.

*What you need to do as a victim of crime*

- Let people know if you would like to be contacted by phone, email or in person and provide details.

- Let people know if any of those details change.
- Give consent for information about yourself to be shared with identified service providers.
- If children are involved, nominate a parent or guardian and provide current contact details.
- In homicide matters, nominate a person who represents the family and provide current contact details.
- When police tell you that your property is available for collection, let them know within 28 days if you want it. After 28 days, police may destroy any uncollected property.

## [39.20] The Victims Support Scheme

The Victims Support Scheme is administered by the Commissioner of Victims Rights through Victims Services and provides victims of violent crime with a range of services designed to assist recovery and provide support when they need it the most.

The scheme provides victims with a coordinated approach to information, referrals, advice, and an emphasis on counselling, financial assistance and recognition payments.

Victims may seek the following support from Victims Services:

- information;
- referral;
- victims support (counselling, immediate financial support, recognition payment).

## [39.30] Information and referral

Victims of violent crime are provided with information and support about the court process, criminal justice and human services systems.

Victims Services staff can assist victims directly with providing information, guidance, crisis support, referrals to a wide range of other services available to victims of crime, and assistance with the process of applying for victims support.

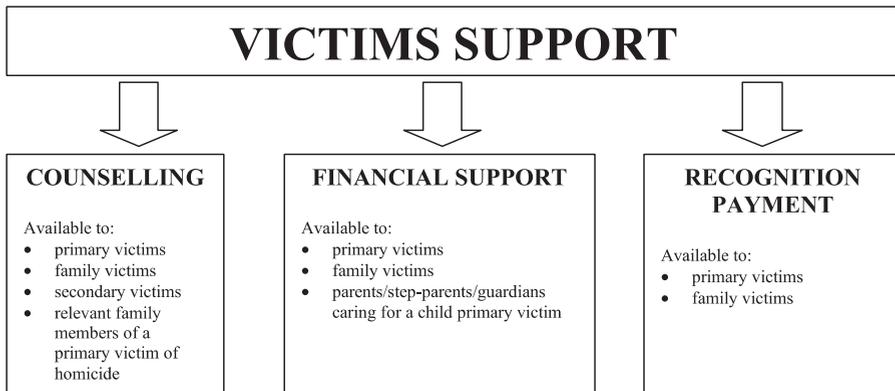
## [39.40] What is victims support?

“Victims support” describes the package of counselling services, financial support and recognition payment available to victims through the *Act*.

Specific conditions and prescribed amounts of victims support are contained in the *Victims Rights and Support Regulation 2019* (NSW) (the *Regulation*).

## [39.50] Composition of victims support

Victims support is divided into the three subcategories: counselling, financial support and recognition payment, as indicated in the diagram below. Also, indicated are the victims who are eligible to access each type of support. The terms “victims support” and “financial support” are specifically defined in s 18 of the *Act*.



## [39.60] Who can apply for victims support?

Victims support under the *Act* is potentially available to a person who is a:

- primary victim of an act of violence;
- family victim of an act of violence;
- secondary victim of an act of violence;
- parent, step-parent, or guardian of a child primary victim (through both the primary victim's application and as a secondary victim).

The *Act* also makes some allowance for paying third-party expenses, such as for a funeral or cleaning of a crime scene, incurred in connection with an act of violence involving homicide (s 47).

## [39.70] How to apply for victims support

An application can be completed by:

- using the online application process and submitting a completed form electronically.

Alternatively, the form can be:

- downloaded from the Victims Services website and emailed or posted; or
- Victims Services can be contacted and a copy provided on request.

Applicants may also contact Victims Services by phone for assistance with completing their application for support with a Victims Services staff member.

A single application for victims support relating to an act of violence may contain claims for counselling, financial assistance and/or a recognition payment. Each application form is intended to relate to one act of violence, including an act of violence that involves related acts over a period of time.

Following the making of an eligible application, claims for support may continue to be made for a period of five years after the application was received by Victims Services, or until the maximum financial support has been approved.

## [39.80] What evidence is needed? (s 39)

Documentary evidence requirements apply to applications for victims support. The amount of evidence required varies depending on the level of support requested.

The following table outlines the relationship between the level of support and the evidence required.

<i>Victims support claimed</i>	<i>Evidence required</i>
Counselling only	Application form
Financial assistance for immediate needs	Application form plus: <ul style="list-style-type: none"> <li>• documentary evidence (eg, a medical or police report) sufficient to support the application, on balance.</li> </ul>
Financial assistance for economic loss	Application form plus: <ul style="list-style-type: none"> <li>• a police report or report of a government agency or, for applications made after 14 January 2019, a report from a non-government agency that provides support services to victims of crime;</li> <li>• a medical, dental or counselling report verifying injury to the primary victim;</li> <li>• full particulars of economic loss;</li> <li>• approved forms of substantiation such as receipts and invoices;</li> <li>• in the case of actual loss of earnings – the name and address of the employer, the period of absence from work, and a statement from the employer substantiating those particulars.</li> </ul>
Recognition payment	Application form plus: <ul style="list-style-type: none"> <li>• a police report or report of a government agency or, for applications made after 14 January 2019, a report from a non-government agency that provides support services to victims of crime.</li> <li>• a medical, dental or counselling report verifying injury to the primary victim.</li> </ul>

In the case of a claim for financial assistance for immediate needs, there is flexibility regarding supporting documentation. A claim for immediate needs must relate to a specific expense.

Evidence can be submitted after an application is made however an application can only be approved when the necessary evidence is available. Victims Services generally obtain police and court evidence on behalf of an applicant and can assist with obtaining other forms of evidence, such as medical records.

A non-government agency that provides evidence to Victims Services, in support of an application for financial support or recognition payment, must be funded by the New South Wales and/or Commonwealth Government to provide welfare, health, counselling or legal assistance to victims of crime.

### Decisions concerning applications for victims support (ss 42, 43)

Once an application is lodged with Victims Services, an assessment of the applicant's eligibility for the support requested is undertaken by a person with the delegated authority of the Commissioner of Victims Rights (the decision-maker).

The decision-maker (usually an assessor) determines eligibility for victims support by considering the application lodged by the victim and any other supporting documentation provided or obtained on the victim's behalf, as outlined above.

In determining a duly made application for support, the decision-maker must approve the giving of support, dismiss the application, or defer the determination of the application pending relevant matters requiring further clarification.

A written determination is provided to the applicant. If approval is given, the notice includes a statement of the approved amount of financial support and/or recognition payment, together with reasons for approving those amounts. If the application is dismissed or support not approved, the notice also includes a statement of the reasons for the decision.

The matters that the decision-maker will assess to determine eligibility are discussed below.

## [39.90] What is an act of violence?

- apparently occurred in the course of the commission of an offence; and

- involved violent conduct against one or more persons; and
- resulted in injury or death to one or more of those persons.

To fall within the jurisdiction of the *Act*, the act of violence must have occurred in New South Wales.

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*An offender does not need to be found guilty of a criminal offence for an act of violence to be established. It must only be apparent to the decision-maker that the elements of an offence are evident. The decision-maker does not make an actual finding of guilt under any Act or law.*

Additionally, a person who might not be held criminally responsible because of age or mental illness can be considered as an offender for the purposes of establishing an act of violence.

*Violent conduct* has a broad definition that has been shaped in part by the decisions of courts. For example, there is no requirement for physical contact or intent to harm and no more than a minimal degree of force is required.

The definition specifies acts committed by *persons*, thereby ruling out violent acts committed by animals, unless under the direct control of a person.

Acts that constitute sexual assault and domestic violence are deemed to involve violent conduct by s 19(3). Specific definitions applying to these types of violence are contained in s 19(8), which draws from current criminal and domestic violence legislation. Further definitions are applied to sexual assault in s 34 of the *Act*, in relation to recognition payments.

### Related acts as a single act of violence (s 19(4), 19(5), 19(6), 19(7))

According to s 19(4), a series of related acts are two or more acts that are related because:

- they were committed against the same person, *and* (in the opinion of the decision-maker);
- were committed at approximately the same time; *or*
- were committed over a period of time by the same person or group of persons; *or*
- were, for any other reason, related to each other.

A finding can be made by the decision-maker that more than one violent act constitutes a single act of violence. This finding may elevate the category of recognition payment that is potentially available and/or vary the maximum amount of financial support available.

For example, a child who is a primary victim of an act of violence involving related acts that include physical assault is eligible for a higher category of recognition payment than a victim of a single act.

The *Act* also offers a discretion to the decision-maker to find that acts otherwise meeting the definition of “related acts” ought not be treated as related acts, for the purposes of giving support under the *Act*. This approach could create an entitlement to more than one recognition payment and/or vary the maximum amount of financial support available.

For example, the decision-maker may consider that an act of violence involving sexual abuse should be the subject of a separate recognition payment to one recognising acts of physical abuse, committed by the same perpetrator during the same period (requiring a separate recognition payment application).

Where support has been approved for a victim of an act of violence, a subsequent and otherwise related act of violence (that occurred after the approval of support) cannot be related to the pending application and must be made the subject of a new application.

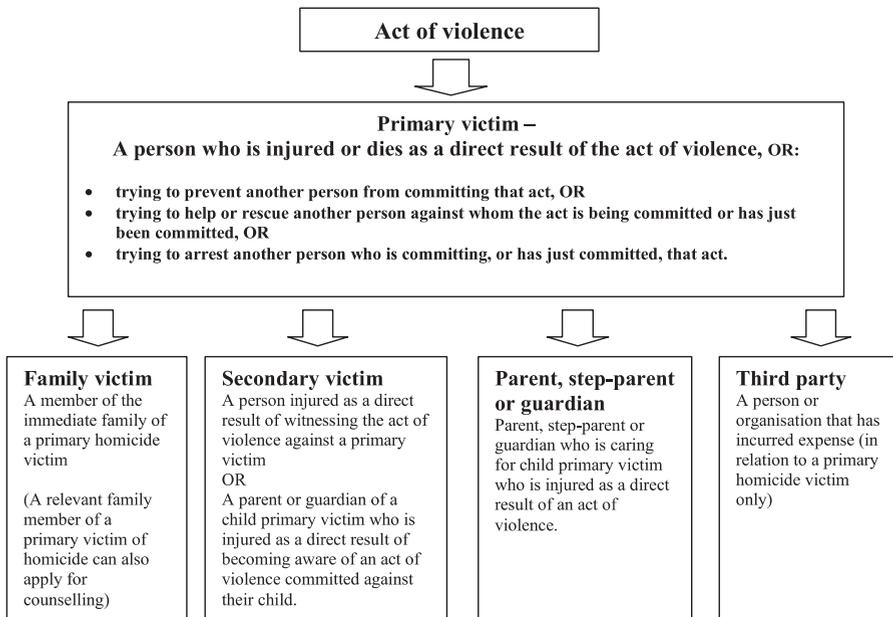
### How does the act of violence relate to the applicant?

Once it is established that the application relates to an act of violence in New South Wales, the applicant’s relationship to that act of violence is considered to determine what type of victim they are and what support they may be eligible for. This is illustrated in the following diagram.

It must be established that an act of violence involved a primary victim, whether or not they apply for victims support in their own right.

Family victims include immediate family members and other relatives of the primary homicide victim however eligibility for support varies depending on their relationship. A member of the immediate family of a primary victim (at the time the act was committed) includes the victim’s:

- spouse;
- de facto partner (defined in the *Interpretation Act 1987* (NSW), s 21C) who has cohabited with the victim for at least two years;
- parent, guardian or step-parent;
- child, step-child, or child under his/her guardianship;
- brother, sister half-brother, half-sister, step-brother, or step-sister.



A relevant family member means a person who is a relative of a primary homicide victim who is not included above.

Distinct eligibility criteria for recognition payments apply to different family victims, depending on a number of factors that are discussed at [39.120].

## [39.100] Persons not eligible for support (s 25)

In addition to establishing eligibility as a victim of an act of violence, there are a number of other reasons why a person applying for victims support may not be eligible for some or all of the types of support available.

Specific criteria are contained in s 25 of the *Act* that may exclude eligibility for victims support in certain circumstances.

A person is not eligible to receive victims support in respect of an act of violence if:

- the person has been paid, or is entitled to be paid *compensation awarded by a court*, in respect of the act of violence. The decision-maker will take the specific intent of the award into account. This provision applies only to compensation awarded by a Court under Divs 2 and 3 of the *Act*. These awards are mutually exclusive with support available under the Victims Support Scheme (Pt 4 of the *Act*);
- subject to the exceptions below, if that act took the form of, or the injury arose as a consequence of, *a motor vehicle accident* within the meaning of the *Motor Accidents Compensation Act 1999* (NSW);
- the exceptions to ineligibility applying to a motor vehicle accident (for applications made after 14 January 2019) are:
  - the act of violence took the form of the intentional killing of the primary victim, and a person has been charged with murder in relation to the death of the primary victim;
  - the act of violence was a terrorist act within the meaning of the *Terrorism (Police Powers) Act 2002* (NSW);
- the act of violence occurred while the person was *engaged in behaviour constituting an offence*;

- subject to the exceptions below, the act of violence occurred while the person was *imprisoned as a convicted inmate* within the meaning of the *Crimes (Administration of Sentences) Act 1999* (NSW);
- the exceptions to the ineligibility of convicted inmates are:
  - the person was imprisoned only because of the person's failure to pay a pecuniary penalty;
  - special circumstances are evident that justify an exception being made (such as the inmate being seriously and permanently injured).

Other circumstances that might affect eligibility for victims support include time limits for lodgment and matters under s 44 of the *Act*, both of which are discussed below.

It is also important to note that eligibility for victims support under a pending application does not survive the death of an applicant, in accordance with s 24 of the *Act*.

## [39.110] Components of victims support

### Counselling (ss 26(1)(a), 28, 29)

Fully funded counselling is available to primary, family and secondary victims of an act of violence through the Approved Counselling Service.

An initial 22 hours is available to a family, primary or secondary victim, where their application states that they were the victim in an incident that occurred in New South Wales, involving violent conduct in the course of an apparent criminal offence. Time limits do not apply to counselling applications.

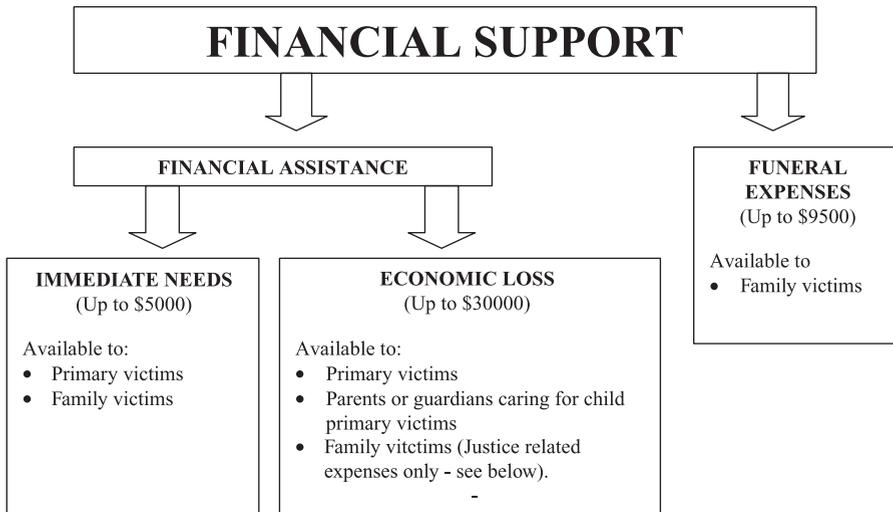
Once the allocation of hours is used, further hours can be approved where the victim and counsellor agree to this and exceptional reasons are evident.

For applications made after 14 January 2019, exceptional reasons to approve more than 22 hours of counselling are not required for a person who was a victim of sexual assault or physical abuse, while under the age of 18 years.

## Financial support

Financial support is intended to meet the urgent and specific financial needs of primary and family victims. Financial support is composed of financial

assistance for immediate needs and economic loss, and funeral expenses, as illustrated in the diagram below.



### Financial assistance for immediate needs (ss 26(1)(b), 29(1)(b), cll 10 and 12)

Up to \$5,000 of financial assistance for immediate needs is available to a primary or family victim of an act of violence.

As well as relating to a specific expense, an approval of immediate needs must meet the following criteria.

The expense must be:

As a direct result of the act of violence, for treatment or other measures that need to be taken urgently to secure the victims safety, health or wellbeing.

Examples of the types of expense that may be approved as an immediate need include medical expenses, home security upgrades and urgent relocation costs.

In addition to the application form, the evidence required to establish an entitlement to immediate needs includes a document such as a medical or police report that is sufficient to support the claim.

It should also be noted that strict time limits apply to claims for financial assistance for immediate needs (see [39.140]).

Where expenses exceed the immediate needs cap of \$5,000, further expenses may be approved as financial assistance for economic loss.

Access to immediate needs is also available to third parties incurring expenses in relation to the aftermath of a homicide.

### Financial assistance for economic loss (ss 26(1)(c), 29(1)(d), cll 10, 11, 12)

Financial assistance for economic loss is available to primary victims and parents, step-parents or guardians caring for a primary victim aged under 18. Financial assistance for economic loss is also available to family victims for justice related expenses only.

Like financial assistance for immediate needs, approval of financial assistance for economic loss requires a specific loss or expense that is a *direct result of the act of violence*. The loss must also be of a kind described in the *Regulation*, outlined in the table below.

The *Regulation* also sets individual caps for each type of loss, with an overall limit of \$30,000 for each eligible application. The table below outlines the types of loss for which support is available, caps for each type, and eligible victims.

<i>Economic loss description</i>		<i>Available to</i>	<i>Limit of support</i>	
<b>Loss of actual earnings</b>	<i>Reduced earnings from an actual rather than potential source must be established. The amount of assistance that can be approved is then calculated with reference to cl 9 of the Regulation.</i>	<ul style="list-style-type: none"> <li>• primary victim;</li> <li>• parent, step-parent or guardian caring for a primary victim aged under 18.</li> </ul>	<b>Up to \$20,000</b>	<b>Overall limit of \$30,000</b>
<b>Out-of-pocket expenses</b>	<i>Available if loss of actual earnings cannot be demonstrated.</i>	<ul style="list-style-type: none"> <li>• primary victim;</li> <li>• parent, step-parent or guardian caring for a primary victim aged under 18.</li> </ul>	<b>Up to \$5,000</b>	
<b>Medical and dental expenses</b>	<i>Available where financial assistance for medical and dental expenses under immediate needs is exhausted.</i>	<ul style="list-style-type: none"> <li>• primary victim;</li> <li>• parent, step-parent or guardian caring for a primary victim aged under 18 (expenses for the primary victim only).</li> </ul>	<b>Up to \$30,000</b>	
<b>Justice related expenses</b>	<i>For expenses associated with criminal or coronial proceedings, including making statements.</i>	<ul style="list-style-type: none"> <li>• primary victim;</li> <li>• family victim;</li> <li>• parent, step-parent or guardian caring for a primary victim aged under 18.</li> </ul>	<b>Up to \$5,000</b>	
<b>Loss or damage to clothing or person effects</b>	<i>Restricted to items worn or carried by the primary victim at the time of the act of violence.</i>	<ul style="list-style-type: none"> <li>• primary victim;</li> <li>• parent, step-parent or guardian caring for a primary victim aged under 18.</li> </ul>	<b>Up to \$1,500</b>	

In addition to the application form, the evidence required to establish an entitlement to financial assistance for economic loss includes a police report *or* report of a government agency, *or* a report of a non-government agency (for applications made after 14 January 2019) *and* a medical, dental or counselling report.

It should also be noted that strict time limits apply to claims for financial assistance for economic loss (see [39.140]).

### **Funeral expenses (s 29(1)(c), cl 12)**

Family victims can apply for financial assistance for expenses associated with the funeral of a primary homicide victim.

Up to \$9,500 is available under this category of support, for applications made after 14 January 2019, and this is intended to cover the cost of the funeral and associated expenses, for example, a wake or memorial.

As with other types of financial support, documentary evidence requirements and time limits apply (see [39.140]).

### Payment to persons other than family victims (s 47, cl 13)

In certain circumstances, the support available to family victims in association with a homicide is also available to persons other than family victims.

For approval, the expense must directly relate to the funeral of a homicide victim, or the cleaning of property associated with a homicide crime scene. Full particulars of the expense claimed must be provided. The payment is drawn from the pool of funds set aside for an eligible family victim.

### [39.120] Recognition payments (ss 35, 36, cl 14)

Recognition payment is the third element of victims support and is intended to recognise the impact of the criminal offence committed by an offender against a victim and the harm and trauma caused.

There are four categories of recognition payment, divided into 12 subcategories. Recognition payment amounts are prescribed by the *Regulation*.

Category A recognition payments are available to family victims only. The other three categories are available to primary victims only.

The following table details the categories of recognition payment and the prescribed amounts:

<i>Category</i>	<i>Act of violence</i>	<i>Prescribed amount</i>	<i>Payable to</i>
<b>A</b>	<ul style="list-style-type: none"> <li>• <i>commission of a homicide against the primary victim</i></li> </ul>	<b>\$15,000</b>	<b>Family victims</b>
		<p><i>Where:</i></p> <ul style="list-style-type: none"> <li>• <i>financially dependent on primary victim;</i></li> <li>• <i>or, a child of the primary victim and under 18 at the time of their death.</i></li> </ul> <hr/> <p><b>\$7,500</b></p> <p><i>Where not financially dependent on primary victim and:</i></p> <ul style="list-style-type: none"> <li>• <i>a parent, step-parent, or guardian of the primary victim;</i></li> <li>• <i>or, the spouse or de facto partner of the primary victim at the time of their death.</i></li> </ul>	
<b>B</b>	<ul style="list-style-type: none"> <li>• <i>a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by two or more persons;</i></li> <li>• <i>a sexual assault, sexual touching or sexual act or attempted sexual assault involving violence that is one of a series of related acts.</i></li> </ul>	<b>\$10,000</b>	<b>Primary victims</b>

Category	Act of violence	Prescribed amount	Payable to
C	<ul style="list-style-type: none"> <li>• a sexual assault other than one referred under category B;</li> <li>• an attempted sexual assault resulting in serious bodily injury;</li> <li>• an assault resulting in grievous bodily harm;</li> <li>• physical assault of a child that is one of a series of related acts.</li> </ul>	\$5,000	
D	<ul style="list-style-type: none"> <li>• sexual touching or sexual act;</li> <li>• an attempted sexual assault involving violence other than that referred to under category C;</li> <li>• a robbery involving violence;</li> <li>• an assault (not resulting in grievous bodily harm).</li> </ul>	\$1,500	

A single recognition payment is available to a victim of an act of violence, including an act of violence that consisted of related acts (s 36(2)).

In addition to the application form, the evidence required to establish an entitlement to a recognition payment includes a police report or report of a government agency, or a report of a non-government agency (for applications made after 14 January 2019) and a medical, dental or counselling report.

Strict time limits apply to applications for a recognition payment. Limited exceptions apply to acts of violence involving sexual assault, domestic violence and child abuse, detailed below (see [39.140]).

### [39.130] Reasons for not approving victims support or reducing the amount of financial support or recognition payment (s 44)

Aside from the provisions barring eligibility under s 25 of the *Act*, referred to above, s 44 of the *Act* addresses factors that can adversely affect the approval of victims support.

Unlike s 25, s 44 allows the decision-maker to reduce the amount approved to an applicant, or dismiss the application, where a relevant issue (provided for in the *Act*) is raised.

The decision-maker must take the following factors into account when considering an approval of victims support:

- contributory behaviour (including past criminal behaviour) on the part of the primary victim that directly or indirectly contributed to their injury or death;
- whether the victim participated in the act of violence, encouraged someone to commit the act of violence, or assisted someone who committed the act of violence;
- whether the victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of the offender or alleged offender;
- whether the victim did not take reasonable steps to mitigate the extent of the injury by, for example, seeking medical advice or treatment as soon as practicable;
- such other matters as the Commissioner considers relevant, for example, a matter of public interest.

In considering the above factors, the decision-maker will take into account the circumstances of an act of violence involving sexual assault or domestic violence, and the specific difficulties a victim of those offences may face.

### Other payments or court orders (s 44(4), 44(5), 44(6))

The amount of victims support approved may also be reduced if the victim has received, or is entitled to receive money from any other source, in relation to the act of violence, including:

- damages in civil proceedings;

- amounts under another Act or law (such as workers' compensation);
- insurance or any other agreement;
- a private health fund or Medicare.

If the decision-maker is satisfied that the applicant may be entitled to workers' compensation in respect of the act of violence, the decision-maker is to postpone the determination of the application until any entitlements to those payments have been determined.

Unlike s 44(1), the matters under s 44(4) relate to actual amounts received by an applicant. For example, an applicant is still eligible under the *Act* for any shortfall in medical expenses not covered by health insurance.

### [39.140] Time limits (s 40)

Time limits apply to applications for financial support and recognition payment. Eligible applications for approved counselling are not subject to a time limit.

The standard time limit for financial support and recognition payment is two years, however there are a number of extensions, depending on the victim type; the time between the occurrence of the act of violence and lodgement of the application; the age of victim at the time of lodgement or the time the act of violence occurred; and the type of violence.

The following table outlines the relevant time limits and exceptions:

<i>Type of victim and their age when the act of violence occurred</i>	<i>Counselling</i>	<i>Financial assistance – immediate needs</i>	<i>Financial assistance – economic loss</i>	<i>Recognition payment</i>	<i>Funeral and crime scene expense</i>
Primary victim of sexual/indecent assault as a child (under 18)	Unlimited	By 20th birthday of applicant	By 20th birthday of applicant for loss of earnings, medical and personal effects. Unlimited for out of pocket and justice related expenses	Unlimited	Not applicable
Primary victim of abuse (non-sexual) as a child	Unlimited	By 20th birthday of applicant	By 20th birthday of applicant	By 28th birthday of applicant	Not applicable
Primary victim of domestic violence as a child	Unlimited	By 20th birthday of applicant	By 20th birthday of applicant	By 28th birthday of applicant	Not applicable
Primary victim when a child (not domestic violence, sexual assault, child abuse, child sexual assault)	Unlimited	By 20th birthday of applicant	By 20th birthday of applicant	By 20th birthday of applicant	Not applicable
Primary victim of sexual assault that occurred when the applicant was 18 years or over	Unlimited	Two years	Two years	10 years	Not applicable

<i>Type of victim and their age when the act of violence occurred</i>	<i>Counselling</i>	<i>Financial assistance – immediate needs</i>	<i>Financial assistance – economic loss</i>	<i>Recognition payment</i>	<i>Funeral and crime scene expense</i>
Primary victim of domestic violence that occurred when the applicant was 18 years or over	Unlimited	Two years	Two years	10 years	Not applicable
Primary victim of an act of violence that occurred when the applicant was 18 years or over (not involving domestic violence or sexual assault)	Unlimited	Two years	Two years	Two years	Not applicable
Family victim when aged 18 years or over	Unlimited	Two years from confirmed homicide	Two years from confirmed homicide	Two years from confirmed homicide	Two years from confirmed homicide (funeral)
Family victim when under 18 years of age	Unlimited	By 20th birthday of applicant or two years from confirmed homicide, whichever is later	By 20th birthday of applicant or two years from confirmed homicide, whichever is later	By 20th birthday of applicant or two years from confirmed homicide, whichever is later	By 20th birthday of applicant or two years from confirmed homicide, whichever is later (funeral)
Secondary victim of any age	Unlimited	Not applicable	Not applicable	Not applicable	Not applicable
		Exception for a secondary victim who is also a parent/guardian of a child primary victim. In that case, the same time limit as that for the primary victim applies	Exception for a secondary victim who is also a parent/guardian of a child primary victim. In that case, the same time limit as that for the primary victim applies		
3rd party (age not applicable)	Unlimited	Not applicable	Not applicable	Not applicable	Two years

<i>Type of victim and their age when the act of violence occurred</i>	<i>Counselling</i>	<i>Financial assistance – immediate needs</i>	<i>Financial assistance – economic loss</i>	<i>Recognition payment</i>	<i>Funeral and crime scene expense</i>
		Unless approved service provider through primary or family claim, then same time limit as primary victim or family victim	Unless approved service provider through primary or family claim, then same time limit as primary victim or family victim		

As indicated in the table, where the applicant is a child at the time of the act of violence, the standard two-year time-limit for financial assistance and recognition payment is extended. There is no time limit for an application for a recognition payment for a victim of child sexual assault and a similar, unlimited extension applies to justice-related and out of pocket expenses.

Ten year extensions for recognition payments apply to acts of violence involving sexual assault, child abuse and domestic violence.

The time limit applying to a family victim application is dependent on when it is confirmed that the primary victim was a victim of homicide. This may occur some time after the primary victim's death or disappearance.

Further claims for financial support, through an eligible application, may continue to be made for a period of five years after the application was received by Victims Services, or until the maximum financial support has been reached.

### Lapsing of an application for victims support

An application for victims support will lapse if supporting evidence has been requested and not received, and the Commissioner decides that there is no valid reason given for failing to provide the requested evidence.

Before an application can lapse, Victims Services must request evidence from the applicant on at least three separate occasions, over a 12-month period.

The applicant will be notified that the application has lapsed and is not precluded from making another application for victims support after an application has lapsed, however the

legislative time limits and evidence requirements will apply to any fresh application.

### [39.150] Obtaining payment of financial support and/or recognition payment

After the application has been determined, the victim or their representative is sent a "Determination Package" containing a "Notice of Decision" which includes the written decision of the decision-maker. If financial support or a recognition payment is approved, the victim will also receive an "Acceptance of Payment" form. This document is a statutory declaration and must be completed and signed by the victim and a witness, attesting to the acceptance of the payment of support made. It must be returned to Victims Services for processing of the support payment.

The "Acceptance of Payment" form requires the victim to acknowledge the standard conditions of the approval (such as repayment, if money is received from another source for the same act of violence). The application is forwarded to Victims Services for payment. Payments are processed 28 working days from receipt of the Acceptance of Payment form.

### Payment to victims under 18

If a recognition payment is approved for a child under 18 years of age, the decision-maker may direct the approved amount to be held in trust for the child's benefit by the NSW Trustee and Guardian until the child attains 18 years of age. The child's guardian may apply to the NSW Trustee and Guardian for an advance of some of the funds to meet specified needs of the child.

A parent, step-parent or guardian caring for a child primary victim may apply for financial assistance for immediate needs and economic loss and receive payment directly.

### Conditions applying to financial support and recognition payment (s 48)

All approvals for support are subject to standard conditions, including that a person must notify the Commissioner of any financial benefits received from other sources that relate to the act of violence. The Commissioner or delegated decision-maker may attach other conditions to an approval of victims' support, such as payment into trust, for the benefit of a victim who is a child.

## [39.160] Reviews of determinations of victims support (s 49)

### Internal review

An applicant who disagrees with a determination of the decision-maker may apply in writing for an internal review of the decision. The review request must be received by Victims Services within 90 days after the day on which advice of the decision was sent from Victims Services. A 28-day time limit applies to decisions made before 15 January 2019. The internal review request should set out the reasons for review however these can be provided at a later stage.

Within 42 days after the application for internal review is lodged, Victims Services is required to notify the applicant in writing of the outcome of the internal review, including the reasons for the decision. However, the applicant and Victims Services can agree to defer the review if more time is needed. The applicant also has the right to have a decision with respect to a recognition payment administratively reviewed by the NSW Civil and Administrative Tribunal (NCAT).

### Administrative review (s 51)

An applicant has 28 days in which to seek administrative review of the internal review (regarding a recognition payment only) with the NSW Civil and Administrative Tribunal (NCAT). Leave to extend the time to lodge the administrative review may be applied for to NCAT.

On administrative review, NCAT will hear the application and can determine it in accordance with the *Act*, substituting its decision for any decision concerning a recognition payment previously made by the decision-maker.

## [39.170] Recovery of payments of victims support (Pt 5)

### Provisional orders for restitution (s 59)

If a person has been convicted of a relevant offence which gave rise to the payment of financial support and/or a recognition payment to a victim of crime, the Commissioner of Victims Rights may commence recovery proceedings against the convicted offender. The Commissioner will issue a *provisional order for restitution* in the first instance against the offender. The premise of the provisional order is to recover from the offender some or all of the support paid to the victim. This order can extend to other persons in limited circumstances.

### Provisional order time limits (s 59)

A provisional order for restitution must be issued within two years of:

- the end of the five-year period in which a claim may be made under an application for victims support under s 40(6); or
- the date on which the defendant was convicted of a relevant offence, whichever is the later.

### Notice of objection (s 62)

The person may file a notice with the Commissioner objecting to the order within 28 days, or for up to 90 days, as the Commissioner may allow.

### If there is an objection

If a notice of objection is lodged, the Commissioner must consider the objection. The Commissioner may:

- allow the objection in whole or in part or disallow the objection; and
- reverse, vary or confirm the decision to which the objection was made.

### What the decision-maker will consider on objection

Generally, when determining the objection, the Commissioner will have regard to:

- the circumstances of the offence giving rise to the approval of victims support, including if there were multiple offenders;
- their current financial circumstances, including potential for a change in those circumstances;
- such other matters as are, in the opinion of the Commissioner, relevant to the determination and raised in the objection.

### Arrangements (s 68)

The defendant who has been served with a Provisional Order can also enter an arrangement with the Commissioner of Victims Rights. The arrangement may relate to the time for payment or to a reduction in the total amount payable under the order. If the defendant defaults on the arrangement, recovery proceedings may be taken for the purpose of confirming the order for restitution for the total amount of the provisional order.

Appropriate arrangements can be made, with the endorsement of the Commissioner, for the restitution debt incurred to be repaid by instalments.

### Enforcement (s 72)

An order for restitution is taken to be a judgment debt, as if an order made in civil proceedings against the person to recover the amount. This includes the Commissioner obtaining a charge or interest over any land owned by a defendant to secure the payment of restitution money (s 76).

An order for restitution can be referred to the Fines Commissioner at Revenue New South Wales, to be made into a court fine enforcement order under the *Fines Act 1996* (NSW), if the order is confirmed and administrative review rights have been exhausted or expired.

### Administrative review (s 66)

An order made by the Commissioner may be administratively reviewed by a defendant making application to the NSW Civil and Administrative Tribunal. An administrative review must be lodged within 90 days after the date of issue of the notice of the Commissioner's determination of the objection.

### Restraining orders (Pt 5, Div 3)

A person can be prohibited by a Supreme Court restraining order from disposing of or otherwise dealing with their property, if the person:

- has been charged or convicted in relation to an offence for which compensation has been paid by the tribunal; or
- is party to a scheme to avoid a restitution order.

### Ancillary orders (s 85)

The Supreme Court can also make appropriate ancillary orders, including:

- orders for examination on oath by the defendant;
- orders varying the restraining order.

The *Act* also contains provisions enabling dispositions of or dealings with property by the defendant or other persons to be set aside by the Supreme Court.

### Access to victim's evidence

Victims cannot be subpoenaed to give evidence or produce documents during restitution proceedings, and the restitution defendant is not permitted to access a victim's medical evidence.

### Other agencies within Victims Services *Families and Friends of Missing Persons Unit (FFMPU)*

FFMPU provides counselling and support from trained professionals to families and friends of missing people.

Services provided by FFMPU include:

- free and confidential counselling, information and referrals for families and friends affected by the loss of a missing person;
- support groups meetings and events to help bring families together;
- help understanding missing persons' issues, agencies and search options;
- a Facebook page and other missing persons' publications;
- policy development;
- research into missing persons' issues;
- clinical support and information for service providers;
- liaison with agencies across the missing persons' sector.

FFMPU does not search for people but works collaboratively with search agencies to support those left behind. If you need assistance searching for someone, please contact one of the listed search agencies.

### ***Specialist Victims Support Service***

The Specialist Victims Support Service (SVSS) is a dedicated support service for victims who are going through the forensic mental health system (rather than the ordinary criminal justice system). The team is independent from the Mental Health Review Tribunal (the Tribunal) and maintains the Specialist Victims Register (the Register) on behalf of the Commissioner of Victims Rights. Persons listed on the Register can request to be told certain information about the relevant forensic patient and be notified about relevant matters, for example, when a Tribunal hearing is coming up or if the Tribunal is considering granting leave to the forensic patient.

- Early intervention – SVSS works closely with the Director of Public Prosecutions (DPP) Witness Assistance Service to ensure that clients understand what is happening when an accused person enters the forensic mental health system. This will include explaining court and Tribunal processes and supporting victims as the matter progresses from the court to the Tribunal.
- Crisis referral – When clients are referred for crisis support, SVSS can provide immediate referrals to relevant supports for assistance with temporary accommodation and other immediate needs. We will assess each client's needs and priorities to determine how we can best support the client.
- Planned support – SVSS works with clients to ensure that they are supported in all aspects of their lives, by conducting client assessments and referring clients to, for example housing assistance, counselling, financial support or any other referrals as required.
- Communication and education – In addition to helping clients understand court and Tribunal processes, SVSS manages the Register.
- Tribunal process support – SVSS can help clients communicate with the Tribunal, prepare submissions and update their victim impact statements so that they have a say in the process. SVSS also has a dedicated hearing room in Parramatta where clients can attend Tribunal hearings via videolink. A member of the SVSS team will explain what is happening during the hearing to ensure that victims are supported through the process.

# Contact points

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**[39.180]** If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the Australian Government Accesshub and National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number) or 0423 677 767 (SMS Relay). For more information, see [www.communications.gov.au](http://www.communications.gov.au).

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online, see [www.tisnational.gov.au](http://www.tisnational.gov.au).

Changes are expected to the websites for many NSW government departments that were not available at the time of printing. See [www.service.nsw.gov.au](http://www.service.nsw.gov.au) for further details.

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## **Australasian Legal Information Institute (AustLII)**

[www.austlii.edu.au](http://www.austlii.edu.au)

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## **Enough is enough**

[www.enoughisenough.org.au](http://www.enoughisenough.org.au)

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## **Homicide Victims' Support Group (Aust) Inc**

[www.hvsgnsw.org.au](http://www.hvsgnsw.org.au)

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## **LawAccess NSW**

[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

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## **Law and Justice Foundation of NSW**

[www.lawfoundation.net.au](http://www.lawfoundation.net.au)

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## **The Law Society of NSW**

[www.lawsociety.com.au](http://www.lawsociety.com.au)

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## **Legal Aid NSW**

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

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## **Rape & Domestic Violence Services Australia**

[www.rape-dvservices.org.au](http://www.rape-dvservices.org.au)

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## **Victims of Crime Assistance League Inc NSW (VOCAL)**

[www.vocal.org.au](http://www.vocal.org.au)

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## **Victims Services NSW**

[www.victimsservices.justice.nsw.gov.au](http://www.victimsservices.justice.nsw.gov.au)

email: [vs@justice.nsw.gov.au](mailto:vs@justice.nsw.gov.au)

*Victims Access Line*

ph: 1800 633 063

(8 am to 6 pm, Monday to Friday – excluding public holidays)

*Aboriginal Contact Line*

ph: 1800 019 123

*Families and Friends of Missing Persons Unit (FFMPU)*

ph: 1800 227 772

email: [ffmpu@justice.nsw.gov.au](mailto:ffmpu@justice.nsw.gov.au)

