



New South Wales

# Victims Rights Act 1996 No 114

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New South Wales

## **Victims Rights Act 1996 No 114**

Act No 114, 1996

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An Act to establish a charter of rights for victims of crime; to amend the *Criminal Procedure Act 1986* with respect to victim impact statements; and for other purposes. [Assented to 2 December 1996]

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See also *Victims Compensation Act 1996*.

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**The Legislature of New South Wales enacts:**

## **Part 1      Preliminary**

### **1 Name of Act**

This Act is the *Victims Rights Act 1996*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Object of Act**

The object of this Act is to recognise and promote the rights of victims of crime.

### **4 Definitions**

In this Act:

*Charter of Victims Rights* means the Charter set out in section 6.

*exercise* a function includes perform a duty.

*function* includes a power, authority or duty.

*support services* include welfare, health, counselling and legal assistance services.

*victim of crime* is defined in section 5.

*Victims Advisory Board* means the Victims Advisory Board established by this Act.

*Victims Bureau* means the Victims of Crime Bureau established by this Act.

### **5 Meaning of victim of crime**

- (1) For the purposes of this Act, a *victim of crime* is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence.

- (2) A person suffers *harm* if, as a result of such an act:
  - (a) the person suffers actual physical bodily harm, mental illness or nervous shock, or
  - (b) the person's property is deliberately taken, destroyed or damaged.
- (3) If the person dies as a result of the act concerned, a member of the person's immediate family is also a victim of crime for the purposes of this Act.

## **Part 2       Charter of Victims Rights**

### **6 Charter of rights for victims of crime**

The following comprises the Charter of rights of victims of crime:

#### **6.1 Courtesy, compassion and respect**

A victim should be treated with courtesy, compassion, and respect for the victim's rights and dignity.

#### **6.2 Information about services and remedies**

A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

#### **6.3 Access to services**

A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

#### **6.4 Information about investigation of the crime**

A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.

#### **6.5 Information about prosecution of accused**

A victim should, on request, be informed of the following:

- (a) the charges laid against the accused or the reasons for not laying charges,
- (b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision for the accused to accept a plea of guilty to a less serious charge in return for a full discharge with respect to the other charges,

- (c) the date and place of hearing of any charge laid against the accused,
- (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.

### **6.6 Information about trial process and role as witness**

A victim who is a witness in the trial for the crime should be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

### **6.7 Protection from contact with accused**

A victim should be protected from unnecessary contact with the accused and defence witnesses during the course of court proceedings.

### **6.8 Protection of identity of victim**

A victim's residential address and telephone number should not be disclosed unless a court otherwise directs.

### **6.9 Attendance at preliminary hearings**

A victim should be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

### **6.10 Return of property of victim held by State**

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should be minimised and the property returned promptly.

### **6.11 Protection from accused**

A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.

### **6.12 Information about special bail conditions**

A victim should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

### **6.13 Information about outcome of bail application**

A victim should be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

### **6.14 Victim impact statement**

A relevant victim should have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

### **6.15 Information about impending release, escape or eligibility for absence from custody**

A victim should, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

### **6.16 Submissions on parole and eligibility for absence from custody of serious offenders**

A victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

### **6.17 Compensation for victims of personal violence**

A victim of a crime involving sexual or other serious personal violence should be entitled to make a claim under a statutory scheme for victims compensation.

## **7 Implementation of Charter**

- (1) The Charter of Victims Rights is, as far as practicable and appropriate, to govern the treatment of victims in the administration of the affairs of the State.
- (2) Any agency or person exercising official functions in the administration of the affairs of the State (other than judicial functions) must, to the extent that it is relevant and practicable to do so, have regard to the Charter of Victims Rights in addition to any other relevant matter.
- (3) The *administration of the affairs of the State* includes the administration of justice, the provision of police services and the administration of any department of the Government.

## **8 Legal rights not affected**

- (1) Nothing in this Part gives rise to, or can be taken into account in, any civil cause of action, and without limiting the generality of the foregoing, nothing in this Part:
  - (a) operates to create in any person any legal rights not in existence before the enactment of this Part, or
  - (b) affects the validity, or provides grounds for review, of any judicial or administrative act or omission.
- (2) However, this section does not prevent a contravention of this Part from being the subject of disciplinary proceedings against an official or a complaint to the Victims Bureau under Part 3.

## **Part 3       Victims of Crime Bureau**

### **9   Establishment of Victims of Crime Bureau**

- (1) There is established by this Act a Victims of Crime Bureau as a branch of the Attorney General's Department.
- (2) The Victims Bureau comprises a Director and other staff employed under Part 2 of the *Public Sector Management Act 1988* for the purposes of the Victims Bureau.

### **18   Functions of Victims of Crime Bureau**

The Victims Bureau has the following functions:

- (a) to provide information to victims of crime about support services and compensation for victims of crime, and to assist victims of crime in the exercise of their rights,
- (b) to co-ordinate the delivery of support services for victims of crime and to encourage the effective and efficient delivery of those services,
- (c) to promote and oversee the implementation of the Charter of Victims Rights,
- (d) to receive complaints from victims of crime about alleged breaches of the Charter of Victims Rights and to use its best endeavours to resolve the complaints.

### **11   Report to Parliament**

- (1) The Victims Bureau may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of its functions.
- (2) The annual report of the work of the Victims Bureau is to be included in the annual report to Parliament of the Attorney General's Department.

## **Part 4 Victims Advisory Board**

### **12 Establishment of Victims Advisory Board**

There is established by this Act a Victims Advisory Board.

### **13 Membership and procedure of Victims Advisory Board**

- (1) The Victims Advisory Board is to consist of not more than 10 members appointed by the Minister, including:
  - (a) 4 members representing the general community, and
  - (b) a member representing the Police Service, and
  - (c) a member representing the Attorney General's Department, and
  - (d) members representing other relevant Government agencies.
- (2) Schedule 1 has effect with respect to the membership and procedure of the Victims Advisory Board.

### **14 Functions of Victims Advisory Board**

- (1) The Victims Advisory Board has the following functions:
  - (a) to advise the Minister on policies and administrative arrangements relating to support services and compensation for victims of crime,
  - (b) to consult victims of crime, community victim support groups and Government agencies on issues and policies concerning victims of crime,
  - (c) to promote legislative, administrative or other reforms to meet the needs of victims of crime.
- (2) Any advice given to the Minister may be given either at the request of the Minister or without any such request.

## **Part 5      Miscellaneous**

### **15 Act binds Crown**

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **16 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **17 Amendment of Criminal Procedure Act 1986 No 209 and consequential repeal**

- (1) The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.
- (2) The *Crimes (Sentencing) Amendment Act 1987* is repealed. If that Act has commenced, section 447C of the *Crimes Act 1900* (as inserted by that Act) is also repealed.

### **18 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Provisions relating to membership and procedure of Victims Advisory Board**

(Section 13)

### **1 Definitions**

In this Schedule:

*Board* means the Victims Advisory Board.

*member* means a member of the Board, including the Chairperson of the Board.

### **2 Chairperson**

- (1) One of the members is to be appointed as Chairperson of the Board in and by the instrument of appointment of the person as a member or a separate instrument executed by the Minister.
- (2) The Minister may remove a member from office as Chairperson at any time.
- (3) The Chairperson vacates office as Chairperson if the person:
  - (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **3 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **4 Allowances of members**

A member (other than a member who is employed by a Government agency) is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

#### **5 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) A person (other than a person employed by a Government agency) while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

#### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence *so* punishable.
- (2) The Minister may remove a member from office at any time.

#### **7 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any allowance payable to the person under this Act as a member.

#### **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of those meetings is, subject to this Schedule and the regulations, to be determined by the Board.

#### **10 Quorum**

The quorum for a meeting of the Board is a majority of the members for the time being.

### **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a member elected to chair the meeting by the members present) is to preside at a meeting of the Board.
- (2) The person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **13 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

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## Schedule 2 Amendment of Criminal Procedure Act 1986

(Section 17)

### [ 1 ] Part 6A

Insert after Part 6:

### Part 6A Sentencing—victim impact statements

#### 23A Definitions

In this Part:

*court* means the Supreme Court or the District Court.

*family victim*, in relation to an offence, means a person who is, at the time the offence was committed, a member of the immediate family of a primary victim of the offence who has died as a direct result of that offence (whether or not the person suffered personal harm as a result of the offence).

*member of the immediate family* of a primary victim means:

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

*offence* means an indictable offence that involves an act of actual or threatened violence (including sexual assault) and that is being dealt with on indictment.

*personal harm* means actual physical bodily harm, mental illness or nervous shock.

*primary victim*, in relation to an offence, means a person:

- (a) against whom the offence was committed, or
- (b) who was a witness to the act of actual or threatened violence,

and who has suffered personal harm as a direct result of the offence.

*victim* means a primary victim or a family victim.

### **23B What is a victim impact statement?**

A *victim impact statement* is a statement containing particulars of

- (a) in the case of a primary victim—any personal harm suffered by the victim as a direct result of the offence, or
- (b) in the case of a family victim—the impact of the death of the primary victim on the members of the immediate family of the primary victim.

### **23C When victim impact statements may be received and considered by court**

- (1) A court may receive and consider a victim impact statement relating to an offence, if the court considers it appropriate to do so, after a person has been convicted of the offence and before the court determines the punishment for the offence.
- (2) A victim impact statement may also be received and considered by the Supreme Court when it determines an application under section 13A of the Sentencing Act 1989 for the determination of a minimum term and an additional term for an existing life sentence referred to in that section.
- (3) The court must receive a victim impact statement given by a family victim under this section and acknowledge its receipt and may make any comment on it that the court considers appropriate. However, the court must not consider the statement in connection with the determination of the punishment for the offence unless the court considers that it is appropriate to do so.

### **23D Victim impact statements discretionary**

- (1) The giving of a victim impact statement is not mandatory.
- (2) A victim impact statement may not be received or considered by a court if the victim or any of the victims to whom the statement relates objects to the statement being given to the court.
- (3) The absence of a victim impact statement is not to give rise to an inference that an offence had little or no impact on a victim.

### **23E Formal requirements for victim impact statements**

- (1) A victim impact statement must be in writing and comply with such other requirements as may be prescribed by the regulations.
- (2) If a primary victim is incapable of providing information for or objecting to a victim impact statement about the personal harm suffered by the victim, a family member or other representative of the victim may, subject to the regulations, act on behalf of the victim for that purpose.
- (3) A court may only receive and consider a victim impact statement if it is given in accordance with and complies with the requirements prescribed by or under this Part.

[Minister's second reading speech made in—  
Legislative Council on 15 May 1996  
Legislative Assembly on 27 November 1996]