

**2016**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**VICTIMS OF CRIME (FINANCIAL ASSISTANCE) REGULATION 2016**

**SL2016-10**

**EXPLANATORY STATEMENT**

**Presented by  
Simon Corbell MLA  
Attorney-General**

# **Victims of Crime (Financial Assistance) Regulation 2016**

## **Outline**

The Victims of Crime (Financial Assistance) Regulation 2016 is made under sections 24, 26 – 30, 53 and 96 of the *Victims of Crime (Financial Assistance) Act 2015* (the Act).

The Act establishes an administrative scheme for providing financial assistance to victims who have been injured as a result of an act of violence. The Act provides three main categories of financial assistance for victims of crime: immediate need payments; economic loss payments; and recognition payments.

The regulation sets out what constitutes an immediate need or economic loss, conditions on the making of a payment and maximum amounts payable. The regulation prescribes the amounts of recognition payments for primary victims under different circumstances and the amounts of recognition payments for class A related victims and class B related victims. The terms primary victim, class A related victim and class B related victim are defined in the Act. In summary, a primary victim is a person who has been injured or died as a direct result of an act of violence done by another person. A class A related victim is someone who, at the time a primary victim dies, is a dependant of the primary victim with a close family or other relevant relationship with the primary victim. A class B related victim is someone who, at the time the primary victim dies, is financially independent of the primary victim, but is a close family member with a genuine personal relationship with the primary victim or other relevant relationship with the primary victim.

The regulation also prescribes the maximum total financial assistance payable, prescribed maximum amount of funeral expenses and the limitations on lawyers' legal costs.

## **Human Rights Considerations**

A detailed analysis of the Human Rights considerations arising under the Act have been provided in the Explanatory Statement to the Act.

The Regulation engages a number of the rights in the *Human Rights Act 2004* (the HRA). The following HRA rights are engaged and supported by the Regulation:

- protection of family and children, section 11; and
- right to liberty and security of person, section 18.

## **Payment Amounts**

### *Nature of the right affected*

Section 8 of the HRA provides that ‘everyone is equal before the law and is entitled to the equal protection of the law without discrimination.’ The Regulation may be seen to engage this aspect of section 8 by prescribing different maximum amounts payable for the variety of payments provided for in the Act.

### *The importance of the purpose of the limitation*

The payment amounts were set to ensure an appropriate level of assistance is provided in the large range of circumstances victims of crime face, while also ensuring that the victims of crime financial assistance scheme is financially viable.

### *The nature and extent of the limitation*

The amount for each payment is determined by the clear legislative criteria prescribed by the Regulation. The amounts were set having regard to a number of factors including: the seriousness of the offence, maximum penalty for the offence, the effects of serious injury, the circumstances in which the act of violence occurred, the vulnerability of the victim at the time of the act of violence, the amount available under the current scheme and in other similar interstate schemes, commercial cost of services and the financial viability of the scheme.

### *The relationship between the limitation and its purpose*

The beneficial payments provided for in the Act and prescribed by the Regulation are all set at different levels to appropriately respond to the harmful effects of acts of violence.

### *Any less restrictive means reasonably available to achieve the purpose*

It is considered that there are no less restrictive means available to achieve this purpose. To the extent that there is any limitation on rights this is reasonable, justifiable, set by law and proportionate.

## Detail

### Notes on Clauses

#### **Clause 1 – Name of the regulation**

This clause is a formal provision that sets out the name of the regulation.

#### **Clause 2 – Commencement**

This clause provides the date for commencement of the regulation. The effect of this clause is that the regulation commences on the same day as the *Victims of Crime (Financial Assistance) Act 2016* commences.

#### **Clause 3 – Dictionary**

This is a technical clause identifying that the dictionary at the end of the regulation forms part of the regulation.

#### **Clause 4 – Notes**

This is a technical clause explaining the status of notes in the regulation.

#### **Clause 5 – Maximum total financial assistance – Act, s 24**

Section 24 of the Act provides that the maximum total amount of financial assistance that may be given to a person is the amount prescribed by regulation.

This clause prescribes a maximum total financial assistance of \$50 000 for a primary victim, \$30 000 for a class A related victim, \$20 000 for a class B related victim, \$10 000 for a class C related victim and \$10 000 for a homicide witness. An applicant cannot receive payments totalling more than the prescribed amount.

Notwithstanding clause 5(1), clause 5(2) provides that the prescribed total amount is \$10 000 if an application for financial assistance relates only to an act of violence that occurs in the course of an offence mentioned in schedule 1, division 1.2.2 (Domestic violence offences) of the Act. These are generally offences involving threatening behaviour or property damage.

#### **Clause 6 – Immediate need payment – Act, s 26 (3)**

Section 26(3) of the Act provides that the regulation may prescribe the immediate need payments that may be made and any conditions to the making of those payments. Section 26 of the Act also provides that the regulation may prescribe the maximum amount for each immediate need payment and the maximum aggregate amount of all immediate need payments. Table 6 sets out the prescribed immediate need, any conditions and the maximum amount payable.

Cleaning the scene of a homicide is a prescribed immediate need with a maximum amount payable of \$5 000.

Measures for personal security of a victim is a prescribed immediate need with a maximum amount payable of \$1 000. This is intended to include measures such as changing locks, installing a security system in the victim's home, purchasing a telephone to enable the victim to contact police and installing an alarm in the victim's vehicle.

Relocation for personal security of a victim is a prescribed immediate need with a maximum amount payable of \$4 000. It is expected that this immediate need will be utilised for expenses such as temporary accommodation, or hiring a removalist or a vehicle to move property.

Emergency medical costs and related services that would contribute to the victim's recovery is a prescribed immediate need with a maximum amount payable of \$10 000. This immediate need is conditional on the applicant not having the financial ability to pay for the treatment or service and is not available for a homicide witness. An applicant may apply for medical expenses as an economic loss payment if they are not eligible for an immediate need payment under this clause.

Clause 6(4) provides that the maximum aggregate amount of all immediate need payments that may be made for a single act of violence is \$10 000.

### **Clause 7 – Economic loss payment – Act, s27 (2)**

Section 27(2) of the Act provides that a regulation may prescribe the types of economic loss for which an economic loss payment may be made, conditions to making an economic loss payment for each economic loss and maximum amounts, if any, of the economic loss payment for each economic loss. Table 7 sets out prescribed economic loss, any conditions and the maximum amount payable.

Expenses for counselling or other psychological support is a prescribed economic loss. An economic loss payment for counselling or other psychological support is only available if the person applying was not able to access appropriate support under the victims services scheme. The *Victims of Crime Regulation 2000* sets out the services and levels of service victims are entitled to receive under the victims services scheme. It is expected that in practice the Victims of Crime Commissioner will actively case manage applications and will provide referrals to assist applicants to access the support available under the victims services scheme.

Expenses, other than legal costs, incurred in making the application are a prescribed economic loss. Lawyers' legal costs are limited under section 96 of the Act.

Medical and dental expenses are a prescribed economic loss.

Travel expenses are a prescribed economic loss, an example of travel expenses is the cost of flights and accommodation to attend interstate appointments or treatment for medical purposes.

Justice related expenses are a prescribed economic loss with a maximum amount payable of \$5 000. Any expenses, such as flights and accommodation, incurred in order to allow an applicant to attend court proceedings are a justice related expense.

Loss of actual earnings is a prescribed economic loss with a maximum amount payable of \$30 000. This includes actual loss of earnings incurred by the parent or carer of a primary victim as a result of an act of violence. Applicants are not able to claim an economic loss payment for projected loss of earnings as a result of reduced capacity under the scheme. Reasonable expenses incurred by the parent or carer of a primary victim as a result of an act of violence is a prescribed economic loss. A condition of this economic loss is that an amount given to a parent or carer is counted as a part of the amount prescribed for a primary victim as the maximum total financial assistance payable under section 5.

Other expenses in exceptional circumstances are a prescribed economic loss to ensure flexible assistance is available to meet the specific needs of a primary or related victim.

Loss of or damage to personal items are a prescribed economic loss. This economic loss is only available to a primary victim. An example of this type of loss is the replacement cost of clothing or a mobile telephone damaged during the act of violence.

Where no maximum amount is prescribed for an economic loss, the maximum total financial assistance prescribed by clause 5 will apply.

A homicide witness is only eligible for an economic loss payment for expenses for counselling or other psychological support and expenses incurred in making the application. All other types of prescribed economic loss include a condition that the loss is not available for a homicide witness. The scheme prioritises assistance for primary and related victims. A number of these types of assistance are unlikely to be required by a homicide witness, (for example dental expenses) or are available from other sources (for example justice related expenses are likely to be covered by the Office of the Director of Public Prosecutions).

### **Clause 8 – Recognition payment for primary victim – Act, s28 (2)**

Section 28(2) of the Act provides that the regulation may prescribe the types of offences in the course of which an act of violence must occur for a recognition payment to be given and the amounts payable.

Table 8 sets out the offences in the course of which an act of violence must occur for a recognition payment to be payable to a primary victim. Offences are categorised by offence type and the maximum penalty available for the offence. The Act provides definitions of a sexual offence and an offence against the person in the dictionary, and homicide is defined in section 10 of the Act.

The table provides non discretionary prescribed amounts payable generally, the amounts payable if the offence involves a circumstance of aggravation or more than one circumstance of aggravation and the amounts payable if the offence resulted in a very serious injury that is likely to be permanent. Section 8 of the Act provides the meaning of circumstance of aggravation. Very serious injury is defined in the dictionary of the Act.

Clause 8(6) deals with the treatment of an offence under section 66(1)(b) of the *Crimes Act 1900* – the offence of using the Internet to deprave young people. If section 66(1)(b), which relates to the penalty for this offence for a repeat offender, applies to an offence mentioned in table 8, column 2, item 3 it is taken to be an offence mentioned in table 8, column 2, item 6. The purpose of this clause is to treat *Crimes Act 1900* 66(1) (b) offences as if they have a lower penalty because the escalation of the penalty occurs if there are repeat offences irrespective of whether the victim is the same victim. As such the increased penalty is not indicative of increased harm to the victim so should not attract the higher recognition payment provided for in item 3. Instead the offence is treated as an item 6 offence.

#### **Clause 9 – Recognition payment for class A related victim – Act, s29 (2)**

Section 29(2) of the Act provides a recognition payment for a class A related victim is the amount prescribed by regulation. This clause provides that the amount prescribed is \$20 000.

#### **Clause 10 – Recognition payment for class B related victim – Act, s30 (2)**

Section 30(2) of the Act provides a recognition payment for a class B related victim is the amount prescribed by regulation. This clause provides that the amount prescribed is \$10 000.

#### **Clause 11 – Funeral expenses – Act, s53 (b)**

Section 53 of the Act provides that the maximum for funeral expenses that may be approved under Part 4 of the Act is the lesser of the reasonable costs of the funeral or the amount prescribed by regulation. This clause provides that the maximum funeral expenses amount is \$8 000.

#### **Clause 12 – Limitation on lawyers legal costs – Act, s96 (1)**

Section 96 provides that a lawyer must not charge or seek to recover legal costs that are higher than the prescribed amounts for legal services.

This clause provides that the amount prescribed for legal services that relate to an application for financial assistance is \$1 123 and the amount prescribed for legal services that relate to an appeal or review process for financial assistance is \$2 246.