

# Victims of Crime Amendment Regulation 2023 (No 1)

Subordinate Law SL2023-9

made under the

*Victims of Crime Act 1994*

## EXPLANATORY STATEMENT

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This Explanatory Statement is designed to assist the reader of the regulation. It must be read in conjunction with the regulation but does not form part of the regulation.

### BACKGROUND

The *Victims of Crime Act 1994* (the Act) helps victims of crime in the ACT deal with the effects of criminal offences and provides for the delivery of support services to victims of crime. The *Victims of Crime Regulation 2000* (the Regulation), made under the Act, establishes the Victims Services Scheme (the Scheme), and determines eligibility for entitlement to certain types of support and assistance under the Scheme.

### OVERVIEW OF THE REGULATION

The *Victims of Crime Amendment Regulation 2023 (No 1)* (the Amendment Regulation) amends the Regulation by increasing the pool of victims eligible to access support under the Scheme to include family members of victims who have been killed in motor vehicle accidents involving an offence.

The Amendment Regulation also deletes a duplicate provision in the Regulation.

### CONSISTENCY WITH HUMAN RIGHTS

The Amendment Regulation supports the protection of the family and children under section 11 of the *Human Rights Act 2004* (HR Act) by facilitating access of family members of a victim who has been killed in motor vehicle accidents involving an offence to support and assistance under the Scheme. This includes access to immediate crisis counselling, case coordination and ongoing therapeutic support.

### CLAUSE NOTES

**Clause 1**     **Name of regulation**

This clause provides that the name of the regulation is the *Victims of Crime Amendment Regulation 2023 (No 1)*.

## **Clause 2 Commencement**

This clause provides that the regulation commences on the day after its notification day.

## **Clause 3 Legislation amended**

This clause provides that the regulation amends the *Victims of Crime Regulation 2000*.

## **Clause 4 Section 24 heading**

The current heading for section 24 is '**Eligible victims under the victims services scheme**'.

This clause substitutes that heading with '**Victims who are not eligible for assistance under victims services scheme**'.

The new heading more accurately describes the operation of the provision as amended by clause 5, by making it clear that the provision identifies victims who are 'not' eligible for assistance under the Scheme rather than seeking to define or identify all eligible victims.

## **Clause 5 Section 24 (1) and (2)**

This clause substitutes current sections 24(1) and 24(2) and inserts a new section 24(1). New section 24(1) expands the pool of eligible victims under the Scheme to include family members of primary victims killed in a motor vehicle accident involving an offence. As section 24(2) duplicates a provision in the Act, no new provision is inserted into the Regulation.

### Section 24(1)

Section 24(1) of the Regulation currently provides that all victims are eligible for the Scheme except for those excluded by section 24(2). This means individuals who suffer harm as a result of the death of a family member in a motor vehicle involving a serious crime are not eligible for assistance under the Scheme.

This gap has been raised by individuals and advocacy services and was also identified in the Projects Assisting Victims' Experience and Recovery (PAVER) Review completed in February 2021.

New section 24(1) specifies that a person is not eligible for assistance under the Scheme if the victim suffered harm caused by, or arising out of the use of, a motor vehicle, and no primary victim died because of the harm suffered. The effect of this amendment, when read in conjunction with the Act, is that the family member of a primary victim who died as a result of the motor vehicle accident involving an offence

will now be eligible for assistance, such as immediate therapeutic support, under the Scheme.

#### Section 24(2)

Section 24(2) of the Regulation duplicates section 6(2) of the Act and is not required. This amendment omits section 24(2) of the Regulation.

#### **Clause 6 Section 24 (3)**

Section 24(3) of the Regulation sets out the matters to which the Victims of Crime Commissioner may have regard when deciding ‘whether a person is an eligible victim’ under the Scheme.

The amendment to section 24(3) changes the language to provide that the commissioner may consider the matters listed in sections 24(3)(a) and (b) of the Regulation when deciding ‘a person’s eligibility for assistance’ under the Scheme. This amendment alters the language of the subsection to be consistent with the language used in the other amendments of this Regulation.

#### **Clause 7 Dictionary, note 3**

The definition of *harm* in the Regulation is not required because subsection 6(3) of the Act provides a relevant definition of harm. This amendment omits the unnecessary definition of harm from the Dictionary in the Regulation.

A new definition of *harm* is inserted into the Dictionary in the Regulation by Clause 9.

#### **Clause 8 Dictionary, definition of *eligible victim***

This amendment is consequential to the removal of section 24(2) from the Regulation.

The definition of *eligible victim* in the Regulation current refers to the eligibility provision in section 24(2). The Amendment Regulation omits section 24(2) from the Regulation. Accordingly, this amendment inserts a new definition of ‘eligible victim’ into the Regulation.

The new definition provides that an *eligible victim* is a victim other than a victim who is not eligible for assistance under the Scheme under new section 24(1) of the Regulation as inserted by the Amendment Regulation.

#### **Clause 9 Dictionary, new definition of *harm***

This amendment is consequential to the amendment made by Clause 6 which omits the definition of harm from the Dictionary in the Regulation.

This clause inserts a new definition of the term *harm* to have the same meaning as section 6(3) of the Act.