

GUIDELINES FOR THE PROVISION OF AN EX GRATIA PAYMENT UNDER THE BEREAVEMENT PAYMENT SCHEME FOR THE LOSS OF A FOETUS AS A RESULT OF A THIRD PARTY CRIMINAL ACT

Introduction

The NSW Government recognises the profound harm that is caused when an offender's criminal actions result in the loss of a foetus. This bereavement payment scheme seeks to ensure that victims and families are supported to seek counselling and other services in these tragic circumstances.

This document describes the circumstances in which an application for an ex gratia payment may be made, the procedures which must be followed, and the payment amount available in circumstances where a foetus has been lost as a result of a third party criminal offence, and an offence under section 54A or section 54B of the *Crimes Act 1900* (NSW) (**relevant offences**) has been charged by the relevant prosecutorial authority.

1. Who can apply and when?

In circumstances where a foetus has been lost as a result of a third party criminal offence after the commencement of this scheme, an application for an ex gratia payment may be made by:

- (a) the primary victim of the offence (being the person who was pregnant with the foetus at the time of the offence), or
- (b) in the circumstances where the primary victim as died as a result of the offence, the next of kin of the primary victim.

The decision maker must be sufficiently satisfied that the application is bona fide and is made in good faith.

An intended parent will not be eligible to receive any payment under this scheme if they are the accused person. The victim's eligibility in this scenario will not be impacted.

Applications can be made at any time after a relevant offence has been charged, however, they cannot be processed until the Department of Communities and Justice (**DCJ**) obtains appropriate supporting materials from prosecution agencies (see Guideline 3). Payment will not be made until after this process is complete.

Ordinarily, payments are available only when a relevant offence has been charged. Payments are not available for conduct that occurred prior to the introduction of these offences (being before the 29 March 2022).

Only one payment per loss is available, regardless of family circumstances.

2. What are the criteria?

The applicant must establish that:

- (a) a relevant offence has been charged against a third party, and
- (b) a foetus of the applicable gestational period prescribed by the relevant offences has been lost as a result of an unlawful act of a third party*

*evidence of this criterion will ordinarily be supported by the charging of a relevant offence as this is an element of the offences.

3. What procedures must be followed?

An application form must be completed in writing by an eligible person as prescribed by Guideline 1. The application form must detail:

- (a) the name of the applicant;
- (b) if the applicant is not the primary victim, the name of the primary victim and their relation to the primary victim;
- (c) the charge number or JusticeLink number;

- (d) if known by the applicant, the name of the accused;
- (e) if known by the applicant, the criminal offence charged;
- (f) the applicant's bank details, details of another nominated bank account, or other suitable payment method (if electronic funds transfer is not possible).

Application forms must be submitted to: bereavement.scheme@dcj.nsw.gov.au

Upon receipt of the application, DCJ will contact the relevant prosecutorial agency (being the NSW Police Force (**NSWPF**) or, if necessary, the Office of the Director of Public Prosecutions (**ODPP**)) in order to obtain copies of the Court Attendance Notice(s) (**CAN**) or the Indictment.

DCJ may also require copies of the police facts or crown case statement, however, these will only be sought if essential to establishing the validity of an application.

All documents obtained by DCJ will be treated as sensitive and confidential.

Once the criteria as contained at Guideline 2 is established with reference to the documents provided by the prosecutorial agency, DCJ will brief the Attorney General.

The Attorney General will determine the application, and, if approved, payment will be made to the applicant's nominated account.

A plea or finding of guilt is not required for the purposes of this ex gratia payment.

4. Disclosure required

When making an application for the ex gratia payment under the scheme, it is important that an applicant acts in good faith and provides the correct information. If, at any stage of the application, it appears that the applicant has acted unreasonably, has not made full disclosure in the circumstances, or has attempted multiple or fraudulent applications (including, where relevant, without the primary victim's knowledge and consent), the application may be terminated.

If this occurs, disciplinary action may be initiated against that person. Any overpayment will be sought by DCJ.

5. Payment and intended coverage

One payment in the amount of \$3,000 per foetus lost will be made to a nominated account specified by the applicant, or by another suitable means (if required).

The purpose of this payment is to provide victims and families with support, including assisting with certain costs such as funeral or memorial expenses, for the loss of the foetus (noting that funeral expenses for the loss of a foetus as a result of a motor vehicle accident are covered under the *Motor Accident Injuries Act 2017*), and the ability for close family members affected by the loss to seek counselling or other assistance.

This payment is provided independently of any other payments or benefits that a victim or their family may be entitled to under the *Victims Rights and Support Act 2013* or the *Motor Accident Injuries Act 2017*. However, any payment made under this scheme may be considered by the Commissioner of Victims Rights when making a payment under the *Victims Rights and Support Act 2013*.

6. Who will pay?

The scheme is administered by the DCJ and all decisions are determined by the Attorney General.

7. Enquiries

Any enquiries regarding the ex gratia assistance scheme can be made to: bereavement.scheme@dcj.nsw.gov.au.