

2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Tucker)

**Victims of Crime (Financial Assistance)
Amendment Bill 2000**

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Victims of Crime (Financial Assistance) Amendment No , 2000

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**Victims of Crime (Financial Assistance)
Amendment Bill 2000**

A BILL

FOR

**An Act to amend the *Victims of Crime (Financial Assistance)*
Act 1983, and for a related purpose**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Victims of Crime (Financial Assistance) Amendment Act 2000*.

Victims of Crime (Financial Assistance) Amendment No , 2000

2 Commencement

(1) This Act (except Part 3) commences on the day it is notified in the Gazette.

5 (2) Part 3 of this Act is taken to have commenced immediately after the commencement of Part 6 (Transitional) of the *Victims of Crime (Financial Assistance) (Amendment) Act 1999*.

**PART 2—VICTIMS OF CRIME (FINANCIAL ASSISTANCE)
ACT 1983**

3 Act amended

5 This Part amends the *Victims of Crime (Financial Assistance) Act 1983*.

4 Definitions

Section 2 is amended—

- (a) by omitting the definition of *extremely serious injury*; and
- (b) by inserting the following definition:

10 “*serious injury*—see section 11.”.

5 Financial assistance for primary victims and responsible persons

Section 10 is amended—

- 15 (a) by adding at the end of paragraph (1) (a) “, including any expense reasonably incurred because of the victim’s incapacity to continue to perform unpaid domestic work or childcare”; and
- (b) by omitting paragraphs (1) (d), (e) and (f) and substituting the following paragraph:

20 “(d) if the injury is a serious injury—special assistance of no more than \$50,000 by way of reasonable compensation for pain and suffering resulting from the injury.”; and

- (c) by omitting subsection (2) and substituting the following subsection:

25 “(2) Special assistance for a primary victim may only be awarded by the court under paragraph (1) (d) if the victim has obtained such assistance from the victims services scheme, or by arrangement under the victims services scheme, as is reasonably available, unless the person is physically incapable of benefiting from any such assistance.”; and

- 30 (d) by omitting subsection (5).

6 Substitution

Section 11 is repealed and the following section substituted:

"11 What is a serious injury?

5 **"(1)** An injury to a primary victim that satisfies the requirements of this section is a *serious injury*.

"(2) The injury must be a criminal injury.

"(3) The injury must reasonably require treatment by a health professional.

10 **"(4)** The court must be satisfied that the injury is serious, taking into account the effects of the injury on the victim, including the following:

- (a) impairment or loss of a bodily function;
- (b) disfigurement;
- (c) mental or behavioural disturbance or disorder;
- (d) loss of quality of life;

15 **"(5)** Despite subsections (3) and (4), the loss of a foetus is taken to be a serious injury for this Act.

"(6) In this section:

health professional includes a registered psychologist under the *Psychologists Act 1994*."

20 **7 Exhaustion of workers compensation remedies**

Section 13 is amended—

(a) by omitting the heading and substituting the following heading:

"13 Workers' compensation"; and

25 (b) by omitting subsection (1) and substituting the following subsection:

"(1) If a criminal injury arises out of, or in the course of, the primary victim's employment, an application must be made by the victim, or on the victim's behalf, for workers' compensation under the applicable workers' compensation law before an application is made for financial assistance for the injury."; and

30 (c) by omitting from the note "Note Under sections 33 and 34" and substituting "Note 1 Under sections 35 and 36"; and

(d) by omitting from the note “section 32” and substituting “section 33”;
and

(e) by adding at the end the following notes:

5 “Note 2 Under section 42 of this Act, the court may adjourn proceedings on
an application for financial assistance under this Act until appropriate action is
taken to pursue a workers’ compensation claim, or until the outcome of a
workers’ compensation claim is known.

10 “Note 3 Under section 53 of this Act, if a primary victim receives an amount
of workers’ compensation for the criminal injury after a final award of
financial assistance under this Act has been made, the Territory may recover
an amount equal to the amount of the assistance, or the amount of workers’
compensation, whichever is less.”.

8 Financial assistance for related victims

15 Section 17 is amended by adding at the end of paragraph (1) (a)
“, including, if the primary victim had (before the injury) performed unpaid
domestic work or childcare, any expense for domestic work or childcare
reasonably incurred by the related victim as a consequence of the primary
victim’s criminal injury or death”.

9 Application for financial assistance

20 Section 27 is amended by omitting subparagraph (1) (c) (v) and
substituting the following subparagraph:

25 “(v) if special assistance is applied for by a primary victim—a brief
statement of any assistance obtained from, or by arrangement
under, the victims services scheme, certified as accurate by the
person in charge of the responsible service agency prescribed by
regulation under the *Victims of Crime Act 1994*, or, if the victim is
physically incapable of benefiting from such assistance, a
statement explaining why the victim is so incapable.”.

10 Relevant considerations

30 Section 31 is amended by omitting from paragraph (2) (a)
“condition,” and substituting “condition (for example, intoxication),”.

11 Repeal

Section 37 is repealed.

12 Adjournment of proceedings pending ascertainment of set-off amounts

Section 42 is amended—

- (a) by omitting the heading and substituting the following heading:

5 **“42 Adjournment of proceedings to allow other claims to be pursued”**; and

- (b) by omitting subsection (2) and substituting the following subsection:

10 **“(2) If this section applies, the court may, by order, adjourn proceedings on the application until—**

(a) appropriate action is taken to pursue the relevant entitlement; or

(b) the outcome of any action to claim the relevant entitlement is known.”.

15 **13 Insertion**

After Part 5 the following Part is inserted:

“PART 5A—TRANSITIONAL

“70A Definitions—pt 5A

In this Part, the following definitions apply:

20 **Note** A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).

1999 Amendment Act means the *Victims of Crime (Financial Assistance) (Amendment) Act 1999*.

25 **award** means an award of compensation or financial assistance made under this Act, including an interim award under section 43.

commencement day means the day the *Victims of Crime (Financial Assistance) Amendment Act 2000* commenced.

30 **transitional application** means an application for compensation or financial assistance under this Act made after 23 June 1998 in relation to criminal conduct that happened before the commencement day, including such an application made on or after the commencement day, but does not include an application

for special assistance mentioned in section 18 of the 1999 Amendment Act.

Note Section 70B is relevant to the determination of the date of criminal conduct.

5 **transitional award** means a final award of compensation or financial assistance made on or after 24 December 1999 and before the commencement day on an application under this Act made after 23 June 1998, but does not include an award of an amount of special assistance made on an application mentioned in section 18
10 of the 1999 Amendment Act.

“70B When did criminal conduct happen?

For this Part—

- 15 (a) if criminal conduct consisted of an act or omission persisting over a period of time, the conduct is taken to have happened at the beginning of the period; and
- (b) if criminal conduct consisted of a number of acts or omissions occurring on different days, the conduct is taken to have happened on the earliest of those days; and
- 20 (c) if there is any doubt about the date of criminal conduct, there is a rebuttable presumption that the conduct happened before the commencement day.

“70C Transitional applications

“(1) This Act as in force immediately before 24 December 1999 applies (subject to this section) in relation to—

- 25 (a) a transitional application; and
- (b) any award made on a transitional application (subject to section 70D).

Note The substantive provisions of the 1999 Amendment Act (the *Victims of Crime (Financial Assistance) Amendment Act 1999*) commenced on 24 December 1999.

30 **“(2)** The court has jurisdiction to determine all transitional applications made on or after 24 December 1999 (even if it would not have had such jurisdiction under this Act as in force immediately before 24 December 1999).

35 **“(3)** If, before the commencement day, an award of an amount of special assistance had been made in relation to the injury that is the subject of the transitional application, any amount of compensation for pain and suffering

that would (if it were not for this subsection) be awarded in the final award made on the transitional application must be reduced by the amount of special assistance.

“70D Transitional awards

- 5 “(1) This section applies if a person in whose favour a transitional award has been made would have been entitled to an award of compensation for pain and suffering under this Act if this Act as in force immediately before 24 December 1999 had applied in relation to the making of the award.

10 *Note* The substantive provisions of the 1999 Amendment Act (the *Victims of Crime (Financial Assistance) Amendment Act 1999*) commenced on 24 December 1999.

- 15 “(2) If this section applies, the court may, on application by the person under section 46 for a variation of the transitional award, increase the amount of financial assistance by an amount of compensation for pain and suffering, less an amount equivalent to the amount of special assistance (if any) that has already been awarded to the person.

“(3) The court may not increase the amount of a transitional award by an amount that would result in the total amount awarded exceeding \$50,000.

“70E Applications for special assistance under 1999 Amendment Act (s 18)

- 20 “(1) An application for an award of special assistance mentioned in section 18 of the 1999 Amendment Act is taken to be dismissed by the court if, before the commencement day—

- (a) no award had been made on the application; or
25 (b) an interim award had been made on the application, but no final award had been made.

“(2) Subsection (1) does not affect a primary victim’s entitlement to an amount of special assistance under an interim award, subject to subsections 70C (3) and 70D (2).

“70F Expiry of pt 5A

- 30 “(1) This Part is a provision to which section 42 (Repeal does not end transitional or validating effect etc) of the *Interpretation Act 1967* applies.

“(2) This Part expires 3 years after the commencement day.”

**PART 3—VICTIMS OF CRIME (FINANCIAL ASSISTANCE)
(AMENDMENT) ACT 1999**

14 Act amended

5 This Part amends the *Victims of Crime (Financial Assistance)
(Amendment) Act 1999*.

15 Repeal

Part 6 (Transitional) is repealed.

Endnote

Act amended

1 Republished as in force on 1 March 2000 (Republication No 5).