

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**EXPLANATORY MEMORANDUM**

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

**CIRCULATED BY AUTHORITY OF  
KERRIE TUCKER MLA**

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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

### **Explanatory Memorandum**

#### **OUTLINE**

This Bill amends The 1999 Victims of Crime (Financial Assistance) (Amendment) Act 1999 in order to make entitlements for assistance and compensation for victims of violent crime fair and equitable.

Key amendments of the Victims of Crime (Financial Assistance) (Amendment) Act 1999 were the introduction of financial assistance by way of reasonable compensation for pain and suffering for police officers, emergency service employees and victims of sexual assault, only; and a requirement for victims to pursue workers compensation entitlements, before seeking financial assistance under the scheme.

The Victims of Crime (Financial Assistance) Amendment Bill 2000 provides for equitable access to entitlements for all victims of criminal injury, including applications for financial assistance by way of fair compensation for pain and suffering. The court is vested with discretion in awarding such assistance, and in the amount of that award, and is charged to take into account the degree of impairment and the impact of such injury on the victim applying for assistance.

This Bill also addresses the 1999 Act's provision for the less generous arrangements under the amended Act to apply retrospectively. These provisions will apply to applications for compensation made after 23 June 1998.

This bill removes the transitional arrangements of the 1999 Act that provided for the retrospective application of the more limited entitlements introduced under the Act. Under the proposed new transitional arrangements, the principal Act will apply as in force before the commencement of the 1999 Act (ie before 24 December 1999) to applications and awards in respect of criminal conduct occurring before the commencement of the amendments effected by this Bill. The new transitional provisions will also allow awards made in accordance with retrospective transitional arrangements for the 1999 Act to be varied to negate the impact of these arrangements.

The Bill also amends the entitlements for financial assistance for primary victims, responsible persons and related victims into specify treasonable costs of childcare and domestic work that the primary victim is unable to continue to perform. While it is arguable that such costs are covered in the existing legislation, this Bill makes such consideration explicit.

The Victims of Crime (Financial Assistance) Amendment Bill 2000 also addresses aspects of compulsion and coercion in the Act.

Amendments in this Bill offer victims of crime some choice in dealing with the Victims Services Scheme. While it appears that the draft regulations for the scheme allows for other agencies to provide support services under the scheme's auspices, it is not clear that it would be possible for people to refer themselves to approved specialist agencies in the first instance. However, agencies such as the Domestic Violence Crisis Service and Canberra Rape Crisis have a credibility and visibility in the community that makes them acceptable to women intimidated by other services. This Bill allows for the VSS to make arrangements with agencies to permit such self-referral.

The amendments made by the 1999 Act also require the final entitlement of victims to workers compensation to be determined before an application is made for assistance under the Act, if criminal conduct occurs in the workplace. Since it can take a long time before a workers compensation claim is settled, this Bill will relax the strict requirement of the 1999 amendments.

Under the proposed new provisions, all that will be required before an application is made for financial assistance under the Act is that the victim of a workplace crime should have applied for workers' compensation for his or her injuries. If the workers compensation claim is not, in the opinion of the court being pursued sufficiently vigorously, the court will be given discretion to adjourn proceedings on the claim of financial assistance under the Act until appropriate action is taken by the victim. The court will also have discretion to adjourn proceedings until a workers' compensation claim is finalised.

These discretions of the court under the amendments proposed in this Bill will also extend to other cases where victims may have entitlements to compensation other than under the Act.

## **NOTES ON CLAUSES**

### **PART 1 – PRELIMINARY**

#### **Clauses 1 and 2 - Commencement arrangements**

Clause one and two set out the name of the Bill once enacted and the commencement arrangements.

Subclause (2) will have the effect of retrospectively repealing Part 6 of the 1999 Amendment Act in order to avoid confusion about the application of the Part between 24/12/99 (when the 1999 Act came into effect) and the commencement day of this Bill.

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

#### **Clause 3 - Identifies the Act amended by this Part**

#### **Clause 4 - Definition of serious injury**

Clause 4 amends the definitions in the Act, substituting "serious injury" for "extremely serious injury" as defined in Section 11 as amended.

#### **Clause 5 - Financial assistance for primary victims and responsible persons**

Clause 5 amends section 10 (Financial assistance for primary victims and responsible persons) as follows:

- (a) Par 10 (1) (a) is amended to recognise expressly that incapacity to perform unpaid domestic work or childcare may be a consequence of a criminal injury. The amendment will ensure that expenses reasonably incurred as a result are able to be recovered by the victim. A similar amendment is proposed (at cl 8) to section 17 (Financial assistance for related victims).
- (b) Pars 10 (1) (d), (e) and (f) of the Act currently discriminate between the type of 'special assistance' (over and above expenses) available for police officers, ambulance officers and firefighters and victims of sexual assault (up to \$50,000 compensation for pain and suffering) and that which is available to any other victim (\$30,000, but only for 'extremely serious injuries' as defined in s 11). Proposed new par 10 (1) (d) will remove this

discrimination by allowing up to \$50,000 compensation for pain and suffering for all victims who have suffered 'serious injuries' (to be defined by proposed new s 11 - see cl 6). As a consequence, s 10 (5) (which defines 'ambulance officer' and 'firefighter') is omitted by cl 5 (d).

- (c) s 10 (2) currently requires victims (other than those eligible for pain and suffering compensation under s 10 (1) (e) and (f)) to obtain assistance from the victims services scheme as a prerequisite to obtaining special assistance. This subsection is replaced by a new subsection which will end this discrimination by applying the requirement to all victims claiming special assistance. It will also allow greater flexibility by allowing assistance from 'arrangements under the victims services scheme' as well as assistance directly from the scheme (a consequential amendment to s 27 is proposed in cl 9).
- (d) Consequential on the amendment in cl 5 (b) (see above).

#### **Clause 6 - Serious injury test for special assistance**

Currently, section 11 defines the 'extremely serious injuries' which may allow victims to qualify for special assistance. A new threshold test of 'serious injury' for special assistance will be provided by the proposed amendment to s 10 in clause 5. The new test is intended to be less stringent than the current test of 'extremely serious injury', principally by removing the criterion of permanency. New s 11 is intended to give the court guidance in determining which injuries are sufficiently 'serious' to enable victims to qualify for special assistance.

#### **Clause 7 – Workers' compensation**

Section 13 currently requires workers remedies to be entirely exhausted before the victim of criminal conduct at the workplace may apply for assistance under the Act. New s13 (1) (see cl 7 (b)) will relax this requirement by providing only that an application for workers' compensation must have been made (but not necessarily settled) before the victim makes an application for assistance under the Act. Workers' compensation cases can take several years whereas the purpose of this Act is to provide timely and effective assistance. Clause 12 will amend Section 42 to give the court discretion to adjourn proceedings until action is taken to pursue or exhaust other entitlements, such as workers compensation.

Paragraphs 7 (b) and (c) will correct errors in the explanatory note to s 13. Paragraph 7 (d) will add explanatory notes indicating the interaction of s 13 with ss 42 and 53.

#### **Clause 8 - financial assistance for related victims**

Section 17 is to be amended to expressly entitle related victims (close family members, dependents etc of deceased victims of crime – see s 16) to assistance for reasonable expenses relating to domestic work and childcare. A similar amendment is made (at cl 5 (a)) in relation to assistance for primary victims.

#### **Clause 9 - application for financial assistance**

Paragraph 27 (1) (c)(v) of the Act requires primary victims who apply for special assistance to state what assistance (if any) has been received from the victims services scheme. This is rewritten slightly to take into account the change to s 10 (2) proposed in cl 5 (c).

#### **Clauses 10 and 11 - relevance of intoxication**

Section 37 of the Act (inserted by the 1999 Act) requires the court to award financial assistance for primary victims who were intoxicated at the time of the criminal injury by reference to the degree of injury that would have been sustained if the victim had not been intoxicated. But s 31 of the Act already allows the court to take into account the "behaviour, condition and attitude" of a victim (at the time of the criminal injury) in making an award. Clause 10 amends section 31 by expressly indicating that intoxication is a specific example of a 'condition' that may be taken into account. Clause 11 repeals s 37 to allow the court to exercise its discretion more flexibly under s 31 in taking into account the intoxication of the primary victim.

#### **Clause 12 - adjournment to pursue other entitlements**

Section 42 of the Act (inserted by the 1999 Act) requires the court to adjourn proceedings if it considers that the applicant for assistance would be otherwise entitled (for example, by making an insurance claim) to an amount other than common law damages that would be set-off against the amount of assistance applied for. The court is required to adjourn until the outcome of action to claim that entitlement is known. New s 42 (2), substituted by cl 12 (b), will replace these absolute requirements with a discretion to adjourn proceedings (or not), taking into account individual circumstances.

In addition, new s 42 (2) (a) will expressly allow the court to adjourn until 'appropriate action is taken to pursue the relevant entitlement'. This would, for example, allow the court to adjourn proceedings on an application relating to a criminal injury at the workplace until the primary victim (who must have applied for workers' compensation, under s 13 (1) as amended by cl 7 (b)) takes action to keep the claim alive (for example, responding to requests by the employer for further information about the claim).

#### **Clause 13 - new transitional arrangements.**

##### **PART 5A -TRANSITIONAL**

This Part replaces pt 6 (transitional) of 1999 Act with new transitional arrangements. It applies the Victims of Crime Financial Assistance Act, as in force before 1999 Act commencement (24/12/99), to:

1. all applications ('transitional applications') for financial assistance relating to criminal conduct occurring between 23/6/98 and commencement day of the amendments in this Bill ('the commencement day'), whenever the application has been made or is made application is made, and even if application has not been made before the commencement day.
2. all awards of financial assistance ('transitional awards') made between 24/12/99 and the commencement day, allowing variation of award to recover additional compensation for pain and suffering

### **New Section 70A - definitions**

This section defines a number of terms for use in Part 5A. The most important of these ('transitional application', 'transitional award' and 'commencement day' are described above).

There are references to s 18 awards of special assistance in these definitions: The 1999 Act s 18 allowed for secondary applications for special assistance to be made where the 1999 Act (pt 6) retrospectively denied the applicants compensation for pain and suffering. 1999 Act s 18 applications are therefore not included in the definitions of those terms, but are dealt with in new pt 5A at ss 70C (3), s 70D (2) & s 70E..

### **New Section 70B - when did criminal conduct happen?**

The new Part 5A will apply the pre-1999 Act provisions to 'transitional applications', which are defined as applications relating to criminal conduct occurring before the commencement day of the amendments in this Bill

New Section 70B is inserted to ensure that if there is any doubt about the precise date of criminal conduct, it is taken to have occurred at the earlier of any possible dates (see s 70B (a) & (b)). If the date of the criminal conduct is unknown, it is presumed to have occurred before the commencement day (but that presumption may be overturned by evidence in court) (see s 70B (c)).

### **New Section 70C - transitional applications**

Subsection 70C (1) will apply the pre-1999 Act provisions of the Act to 'transitional applications' and awards made in relation to them (see above).

This will have the effect of allowing applicants to recover compensation for pain and suffering for criminal conduct occurring before the commencement day (of the amendments in this Bill). This applies even if the application is made after the commencement day.

The effect of s 70C (2), taken together with s 70C (1), is as follows:

- For applications made before 24 December 1999, the court to whom the application was made (whether that is the Magistrates Court or the Supreme Court), or the registrar of the Supreme Court if the application was made to the registrar, will continue to have jurisdiction to hear the application (see s 11 of the Act as in force before 24/12/99)
- For applications made on or after 24 December 1999, the Magistrates Court will have jurisdiction (or will continue to have jurisdiction) to hear the application.

In other words, if an application has been made before the commencement day, the court (or the registrar) having jurisdiction to hear it before the commencement day will continue to have jurisdiction to hear it after that day. If the application is made after the commencement day, the Magistrates Court will have jurisdiction to hear it.

Subsection 70C (3) allows the court hearing a transitional application to reduce the amount of the final award by any amount of special assistance already awarded to the applicant.

### **New Section 70D – returning the entitlement to pain and suffering**

This section provides for the court to vary a transitional award made under the provisions of 1999 Act, where the victim would have been entitled to an award of pain and compensation under Act prior to 24 December 1999.

The court may increase the amount of financial assistance made in the transitional award by an amount of compensation for pain and suffering, less any amount of special assistance already awarded, with total award not to exceed \$50,000.

**New Section 70E - when special assistance no longer applies**

Once this Act has commenced applications for special assistance under s 18 of the 1999 Act will be no longer pertinent and will be taken to be dismissed.

**New Section 70F - expiry of transitional arrangements**

This is essentially a housekeeping provision. After three years these transitional arrangements will expire, although the effect of the arrangements will continue.

**PART 6 - VICTIMS OF CRIME (FINANCIAL ASSISTANCE) (AMENDMENT) ACT 1999**

**Clauses 14 and 15 - repeals Part 6 of the 1999 Act.**

This Part (clauses 14 and 15) will repeal the transitional provisions in Part 6 of the 1999 Act. Those provisions are replaced by the transitional provisions in proposed new part 5A (see notes above). The repeal is taken to have commenced immediately after Part 6 of the 1999 Act commenced (see cl 2 (3)).