



Australian Capital Territory

Victims of Crime (Financial Assistance) Act 1983 No 11

Republication No 7

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Last amendment made by Act 2001 No 62

Amendments incorporated to 1 December 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Victims of Crime (Financial Assistance) Act 1983* as in force on 3 December 2001. It includes any amendment, repeal or expiry affecting the republished law to 1 December 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
1 December 2001



Australian Capital Territory

Victims of Crime (Financial Assistance) Act 1983

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Amendments incorporated to
1 December 2001



Australian Capital Territory

Victims of Crime (Financial Assistance) Act 1983

An Act relating to financial assistance for victims of crime and certain other persons

Part 1 Preliminary

1 Short title

This Act may be cited as the *Victims of Crime (Financial Assistance) Act 1983*.

2 Definitions for Act

In this Act, the following definitions apply:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

another law means a law of the Territory other than this law, or a law of the Commonwealth, a State or another Territory.

application means an application to the court for an award of financial assistance under this Act.

close family member, in relation to a deceased primary victim, means a person who had a genuine personal relationship with the victim at the time of the victim's death, and who was, at that time—

- (a) the husband or wife of the victim; or
- (b) a parent, guardian or step-parent of the victim; or
- (c) a child or stepchild of the victim, or some other child of whom the victim is the guardian; or
- (d) a brother, sister, stepbrother, stepsister, half-brother or half-sister of the victim.

court means the Magistrates Court.

criminal conduct means—

- (a) an act or omission that constitutes, or is an element of, an offence; or

- (b) in relation to an offence believed on reasonable grounds by a police officer to be about to be committed, or to have been committed—an act or omission that the police officer believes on reasonable grounds would constitute, or constitutes, an offence, or an element of an offence.

criminal injury—see section 4.

damage, in relation to property, includes the loss or destruction of the property.

damages means an amount of damages recovered or recoverable in the Territory or elsewhere, and—

- (a) includes an amount paid under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not; but
- (b) does not include an amount paid for costs incurred in connection with proceedings in a court.

dependant, in relation to a deceased primary victim, means—

- (a) a person who was wholly or partly dependent for economic support on the victim at the time of the victim's death; or
- (b) a person who would have been wholly or partly dependent for economic support on the victim's income at the time of the victim's death but for the incapacity of the victim due to a criminal injury, being the injury as a result of which he or she died; or
- (c) a child of the victim born after the victim's death who would have been a dependant of the victim by virtue of paragraph (a) or (b) if he or she had been born before the victim's death.

eligible property damage, in relation to an eligible property owner, means the damage by virtue of which the person is an eligible property owner.

eligible property owner—see section 21.

extremely serious injury—see section 11.

file means lodge for filing in the office of the registrar or the court (as the case may be).

final award means an award of financial assistance under part 2, but does not include an interim award.

financial assistance means financial assistance awarded pursuant to an application, including any amount of special assistance forming part of that award.

guardian does not include the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility) or any other person who is a guardian by virtue of the person's occupation of a statutory office, whether within the Territory or elsewhere.

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

injury means a physical or mental injury, and includes—

- (a) mental shock or nervous shock; and
- (b) pregnancy; and
- (c) the aggravation, acceleration or recurrence of any physical or mental injury; and
- (d) the contraction, aggravation, acceleration or recurrence of a disease; and
- (e) damage to spectacles, a contact lens, a hearing aid, artificial teeth, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance.

interim award means an interim award of financial assistance under section 43.

minor crime means an offence against another law other than—

- (a) a violent crime; or

(b) a serious crime.

offence means an offence against a law in force in the Territory.

primary victim—see section 9.

registrar means the registrar of the Magistrates Court.

related victim—see section 16.

serious crime means any of the following offences against another law:

- (a) an offence against the person;
- (b) an offence relating to property;
- (c) an offence involving a drug of dependence or a prohibited substance within the meaning of the *Drugs of Dependence Act 1989*;
- (d) an offence involving dishonesty;
- (e) an offence in relation to any of the offences referred to in paragraph (a), (b), (c) or (d), where the firstmentioned offence is—
 - (i) in relation to a law of the Territory—an offence against the *Crimes Act 1900*, part 8; or
 - (ii) in relation to any other law—an offence against a provision of such a law corresponding to any provision of the *Crimes Act 1900*, part 8.

sexual crime means any of the following offences:

- (a) an offence against the *Crimes Act 1900*, part 3, or against part 8 in relation to an offence against the *Crimes Act 1900*, part 3;
- (b) an offence against a law of the Commonwealth, a State or another Territory that corresponds to an offence referred to in paragraph (a).

victim means a primary victim, a related victim or an eligible property owner.

victims services scheme means the scheme for providing services to victims of crime provided for under the *Victims of Crime Act 1994*.

violent crime—see section 3.

3 What is a violent crime?

A **violent crime** is an offence against another law listed in the following table:

offence	description
<i>Crimes Act 1900</i> (section)	
12	murder
15	manslaughter
30	threat to kill
19, 20, 25, 31	grievous bodily harm offences
23, 24	actual bodily harm offences
21	wounding
22, 26	assault offences
27	endangering life
28	endangering health
32	demands with threats
34	forcible confinement
34A	stalking
35	torture
36	abduction of young person
37	kidnapping
38	unlawfully taking child
39	exposing or abandoning child
40	child destruction
41	childbirth—grievous bodily harm
43	procuring another's miscarriage
92A, 92B, 92C	sexual assault offences
92D	sexual intercourse without consent
92E	sexual intercourse with young person

offence	description
92EA	sexual relationship with young person
92F-92K	indecent offences
92L	incest
92M	abduction
92W, 92X	female genital mutilation offences
100, 101	robbery offences
347	attempt to commit violent crime listed elsewhere in this table
prescribed offence	any offence against another law, being an offence prescribed by regulations made under this Act

4 What is a criminal injury?

- (1) A *criminal injury* is an injury—
- (a) by virtue of which the person who has sustained the injury is a primary victim; and
 - (b) sustained in the Territory; and
 - (c) sustained after 30 June 1983.
- (2) For the purposes of this Act, if a primary victim sustains 2 or more criminal injuries, they shall be taken to be a single criminal injury if—
- (a) the injuries were sustained at approximately the same time; or
 - (b) the injuries resulted from the criminal conduct of each of 2 or more persons acting together; or
 - (c) the injuries otherwise arose out of the same circumstances.

5 References to applications and awards made on behalf of other persons

- (1) This section applies where—

- (a) an application is made by a person on behalf of another person; or
 - (b) an amount of financial assistance is awarded, or is to be awarded, for the benefit of a person pursuant to such an application.
- (2) Where this section applies, in this Act—
- (a) a reference to an *applicant* shall be read as a reference to the person on whose behalf the application is made; and
 - (b) a reference to an *application* by a person shall be read as a reference to the application made on behalf of that person by another person; and
 - (c) a reference to an *amount of financial assistance* awarded (or to be awarded) to a person shall be read as a reference to the amount of financial assistance awarded (or to be awarded) for the benefit of that person.

6 References to convictions—finding of proof without proceeding to conviction

- (1) This section applies where—
- (a) a person has been charged before a court with an offence against another law; and
 - (b) the court has found the offence to be proved; and
 - (c) the court did not proceed to a conviction for that offence.
- (2) In this Act—
- (a) a reference to a person who has been *convicted* of an offence against another law shall be read as including a reference to a person to whom this section applies in relation to the offence; and

- (b) a reference to a **conviction** for an offence against another law shall be read as including a reference to a finding by the court to which this section applies.

7 Evidence of criminal conduct

- (1) This section applies where a person has been convicted of an offence and—
 - (a) no appeal against the conviction has been instituted; or
 - (b) an appeal against the conviction has been determined without the conviction's being set aside.
- (2) For the purpose of proceedings on an application, a conviction of a person to which this section applies is deemed to be conclusive evidence that the person did every act, and made every omission, that constituted or was an element of the offence of which the person was convicted.

8 Legal incapacity—criminal intent

For the purposes of this Act, a person is deemed to have intended an act or omission that, if done or made with intent, would have constituted criminal conduct notwithstanding that he or she was legally incapable of forming that intent (whether by reason of age, mental condition, intoxication or otherwise).

Part 2 **Eligibility for financial assistance**

Division 2.1 **Financial assistance for primary victims and responsible persons**

9 **Who is a primary victim?**

A *primary victim* is a person who is injured as a direct result of—

- (a) a violent crime committed against him or her; or
- (b) assisting a police officer in the course of any of the following actions by the police officer:
 - (i) an attempt to prevent the commission of an act or omission that the police officer believes on reasonable grounds would constitute an offence;
 - (ii) an attempt to arrest another person whom the police officer believes on reasonable grounds to have committed an offence;
 - (iii) an attempt to aid or rescue another person against whom the police officer believes on reasonable grounds an offence has been committed.

10 **Financial assistance for primary victims and responsible persons**

- (1) On an application by a primary victim who has sustained a criminal injury, the court may, by order, award financial assistance to the victim in an amount equal to the sum of the following amounts:
 - (a) the expense reasonably incurred by or on behalf of the victim as a consequence of the injury;
 - (b) the pecuniary loss suffered by the victim as a consequence of total or partial incapacity for work due to the injury;

-
- (c) the expense incurred in making the application for financial assistance, other than by way of fees paid to a legal practitioner;
 - (d) unless paragraph (e) or (f) applies—special assistance in an amount of \$30 000;
 - (e) if the victim is a police officer, ambulance officer or firefighter, and the criminal injury was sustained in the course of the exercise of his or her functions as a police officer, ambulance officer or firefighter—special assistance by way of reasonable compensation for pain and suffering in an amount of no more than \$50 000;
 - (f) if the criminal injury was sustained as a result of a violent crime consisting of an offence against the *Crimes Act 1900*, sections 92A to 92L (in part 3A ‘Sexual offences’)—special assistance by way of reasonable compensation for pain and suffering in an amount of no more than \$50 000.
- (2) Special assistance for a primary victim may only be awarded by the court under subsection (1) (d) if—
- (a) the criminal injury is an extremely serious injury; and
 - (b) the victim has obtained such assistance from the victims services scheme as is reasonably available, unless the person is physically incapable of benefiting from the scheme.
- (3) On an application by a person responsible for the maintenance of a primary victim who has sustained a criminal injury, the court may, by order, award financial assistance to the applicant in an amount equal to the sum of the following amounts:
- (a) the expense reasonably incurred by the person as a consequence of the injury;
 - (b) the pecuniary loss suffered by the person as a consequence of the injury, to the extent only that such loss is a result of the person’s inability to work.

- (4) An applicant under this section in respect of a criminal injury must serve a copy of the application on each other person whom the applicant believes to be entitled to financial assistance under this section in respect of that injury.

- (5) In this section:

ambulance officer means—

- (a) a member of the ambulance service, or its chief officer, under the *Emergency Management Act 1999*; or
- (b) a casual volunteer under that Act while participating in an operation undertaken by the ACT Ambulance Service.

firefighter means—

- (a) a member of the fire brigade, or the fire commissioner; or
- (b) a volunteer who, at or immediately after a fire, has placed his or her services at the disposal of the fire commissioner, while exercising functions under the *Fire Brigade Act 1957*, section 7; or
- (c) a bushfire brigade member, a fire control officer, an emergency volunteer firefighter, or the chief fire control officer, under the *Bushfire Act 1936*; or
- (d) a member of a firefighting organisation established in any area of a State or another Territory, while assisting at or immediately after a fire in the Territory.

11 What is an extremely serious injury?

- (1) An extremely serious injury is a criminal injury that results in any of the following consequences:
- (a) a permanent impairment of a bodily function that is extremely serious and will remain so permanently;
 - (b) a permanent loss of a bodily function that is extremely serious and will remain so permanently;

- (c) a permanent disfigurement that is extremely serious and will remain so permanently;
 - (d) a permanent mental or behavioural disturbance or disorder that is extremely serious and will remain so permanently;
 - (e) the loss of a foetus.
- (2) An impairment, loss, disfigurement, disturbance or disorder is only to be taken to be extremely serious if—
- (a) it results in a great and permanent reduction in the injured person's quality of life; and
 - (b) it is otherwise extremely serious.
- (3) An impairment, loss, disfigurement, disturbance or disorder is not to be taken to be extremely serious where, if the injured person were to undergo suitable medical or other treatment at any time—
- (a) it would cease to be extremely serious by virtue of an alleviation of the reduction in the injured person's quality of life occasioned by the injury; or
 - (b) it would otherwise cease to be extremely serious.

12 No financial assistance for primary victims or responsible persons

- (1) The court shall not award financial assistance to a primary victim or a person responsible for the maintenance of a primary victim—
- (a) where the criminal injury arose out of the use of a motor vehicle; or
 - (b) where the amount of the assistance that would be awarded but for this subsection is less than \$100; or
 - (c) if the primary victim is such a victim by virtue of the commission of a violent crime against him or her—unless a report of the violent crime is made to a police officer.

- (2) The court shall not award financial assistance to a primary victim where, at the time the criminal injury was sustained, the primary victim was engaged in the commission of a serious crime.

13 Exhaustion of workers compensation remedies

- (1) If a criminal injury arises out of or in the course of the primary victim's employment, the victim may not apply for financial assistance until—
- (a) an application has been made by the victim, or on the victim's behalf, for workers compensation under the applicable workers compensation law; and
 - (b) either workers compensation is awarded to the victim, or workers compensation is refused following any applicable arbitration procedure under that workers compensation law.

- (2) In this section:

workers compensation law means the *Workers Compensation Act 1951*, or any other law applying in the Territory that provides for the payment of compensation for injuries arising out of or in the course of employment.

Note Under s 35 and s 36 of this Act, if a primary victim has received, or is entitled to receive, an amount of workers compensation in respect of his or her criminal injury, any amount of financial assistance the primary victim might otherwise be awarded under this Act is reduced by that amount. Under s 33 of this Act, if the amount of workers compensation exceeds the amount of financial assistance that would otherwise be awarded, no financial assistance is payable under this Act.

14 Maximum award—primary victims and responsible persons

The maximum aggregate financial assistance that may be awarded under this division in respect of a criminal injury is \$50 000 (including any award of special assistance and any award to a person responsible for the maintenance of the primary victim).

15 Victims services scheme—primary victims

A primary victim is eligible for assistance under the victims services scheme, subject to the *Victims of Crime Act 1994*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Division 2.2 Financial assistance for related victims

16 Who is a related victim?

A *related victim* in relation to a deceased primary victim is a person who, at the time of the primary victim's death, had any of the following relationships with him or her:

- (a) the person was a close family member in relation to the primary victim;
- (b) the person was a dependant of the primary victim;
- (c) the person had an intimate personal relationship with the primary victim.

17 Financial assistance for related victims

- (1) If a primary victim dies as a result of sustaining a criminal injury, the court may, on a single or joint application by a related victim or related victims in relation to the primary victim, by order award financial assistance to each related victim in an amount equal to the sum of the following amounts:
 - (a) the expense reasonably incurred by or on behalf of the related victim as a consequence of the primary victim's criminal injury and death;
 - (b) the pecuniary loss suffered by or on behalf of the related victim as a consequence of the primary victim's criminal injury and death;

- (c) the expense incurred in making the application for financial assistance, other than by way of fees paid to a legal practitioner;
 - (d) special assistance in an amount calculated in accordance with section 19 (2).
- (2) A related victim applying for financial assistance in relation to the death of a primary victim must serve a copy of the application on each other person whom the applicant believes to be another related victim in relation to the deceased primary victim.

18 No financial assistance for related victims

- (1) The court shall not award financial assistance to any related victim—
- (a) where the criminal injury arose out of the use of a motor vehicle; or
 - (b) where the amount of the assistance that would be awarded but for this subsection is less than \$100; or
 - (c) where, at the time the criminal injury was sustained, the primary victim was engaged in the commission of a serious crime; or
 - (d) if the primary victim was such a victim by virtue of the commission of a violent crime against him or her—unless a report of the violent crime is made to a police officer.
- (2) The court shall not award financial assistance to a particular related victim if criminal conduct by that related victim contributed substantially towards the criminal injury that resulted in the death of the primary victim.

19 Maximum award—related victims

- (1) The maximum aggregate financial assistance that may be awarded under this division in respect of the death of a primary victim is \$50 000.

- (2) The amount of special assistance to be awarded to each related victim as part of an award under this division shall be—
- (a) if financial assistance is awarded to only 1 related victim—\$30 000; or
 - (b) if financial assistance is awarded to 2 or more related victims—such proportion of \$30 000 as the court thinks fit, such that the total amount of special assistance awarded is \$30 000.

20 Victims services scheme—related victims

A related victim is eligible for assistance under the victims services scheme, subject to the *Victims of Crime Act 1994*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Division 2.3 Financial assistance for eligible property owners

21 Who is an eligible property owner?

An *eligible property owner* is a person whose property is damaged while the person was assisting a police officer in course of any of the following actions by the police officer:

- (a) an attempt to prevent the commission of an act or omission that the police officer believes on reasonable grounds would constitute an offence;
- (b) an attempt to arrest another person whom the police officer believes on reasonable grounds to have committed an offence;
- (c) an attempt to aid or rescue another person against whom the police officer believes on reasonable grounds an offence has been committed.

22 Financial assistance for eligible property owners

The court may, by order, award financial assistance to an eligible property owner in respect of reasonable costs incurred by the property owner as a result of the eligible property damage.

23 Maximum award—eligible property owners

The maximum aggregate financial assistance that may be awarded under this division in respect of any eligible property damage is \$50 000.

24 No financial assistance for eligible property owners

The court shall not award financial assistance to an eligible property owner where, at the time the eligible property damage occurred, the eligible property owner was engaged in the commission of a serious crime.

25 Victims services scheme—eligible property owners

An eligible property owner is eligible for assistance under the victims services scheme, subject to the *Victims of Crime Act 1994*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Part 3 Award of financial assistance

Division 3.1 Procedure

26 Jurisdiction of Magistrates Court

The Magistrates Court has jurisdiction to determine an application for financial assistance under this Act.

27 Application for financial assistance

- (1) An application shall—
- (a) be in writing, supported by a statutory declaration; and
 - (b) be accompanied by a copy of—
 - (i) any relevant medical report; and
 - (ii) any relevant statement made to a police officer; and
 - (iii) any document showing the receipt of an amount payable under another law in respect of the relevant injury or property damage, or which is relevant to a claim for such a payment; and
 - (iv) any document showing the receipt of any damages for the relevant injury or property damage, or which is relevant to a claim for such damages; and
 - (v) if special assistance is applied for by a primary victim—a brief statement of any assistance obtained from 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 the scheme, a statement explaining why the victim is so incapable.

Note If a form is approved under s 73 (Approved forms) for an application, the form must be used.

- (2) An application, together with the required statutory declaration and each accompanying document, shall be filed with the office of the registrar within the period of 12 months after the day on which the relevant injury or property damage was sustained.
- (3) The court may, on application made at any time (whether before or after the expiration of the period referred to in subsection (2)), extend the time for the filing of an application if the court considers it just to do so.
- (4) Within 14 days after an application is filed, the registrar shall—
 - (a) forward a copy of the application, statutory declaration and each accompanying document to the government solicitor; and
 - (b) by notice in writing to the person for whom financial assistance is sought (or to the person making the application, if that is a different person) and to the government solicitor, fix a date, time and place for the determination of the application.

28 Procedure for determination of applications

- (1) The *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to proceedings in the court on an application for financial assistance as if those proceedings were instituted in the court by filing an application referred to in section 22 of that Act.
- (2) The Territory has a right of appearance in proceedings on an application.
- (3) If the Territory enters an appearance, it is a party to the application.

29 Civil standard of proof

It shall be sufficient for the court to be satisfied on the balance of probabilities in relation to any matter to be determined in proceedings on an application, including whether an offence has been committed where no conviction has been recorded.

30 Medical examinations

- (1) If the Territory is a party to an application by a primary victim or a person responsible for the maintenance of a primary victim, it may require the primary victim to undergo examination by a health professional chosen by the victim from a list of health professionals approved by the Minister as having suitable expertise for examining and treating injuries of the type allegedly suffered by the victim.
- (2) The costs of an examination undertaken pursuant to subsection (1) shall be borne by the Territory.
- (3) If a primary victim refuses to submit to a requirement made under subsection (1), the court shall not award any financial assistance pursuant to the application.

Division 3.2 General criteria

31 Relevant considerations

- (1) On an application, the court shall take into account the relevant considerations specified in subsection (2) in determining—
 - (a) whether or not to award financial assistance; and
 - (b) the amount of financial assistance to be awarded.
- (2) The relevant considerations in relation to an application are as follows:
 - (a) the behaviour, condition, attitude and disposition, before and at the time the criminal injury or eligible property damage was sustained, of—
 - (i) in the case of an application to which division 2.2 applies—the primary victim and any person responsible for the maintenance of the victim; or
 - (ii) in the case of an application by a related victim—the related victim; or

- (iii) in the case of an application by an eligible property owner—the eligible property owner;
- (b) any other considerations the court considers relevant.

32 Expenses—victims services scheme

On an application, the court shall, in determining whether an expense for a service has been reasonably incurred, take into account the availability of such a service to the victim under the victims services scheme.

33 Dismissal of application—set-offs exceeding entitlements

The court may dismiss an application if the amount by which a potential award of financial assistance to an applicant would be reduced by virtue of the operation of division 3.3 or 3.4 would equal or exceed the amount of the award of financial assistance that the court would otherwise order.

**Division 3.3 Set-offs—primary victims,
responsible persons and eligible
property owners**

**34 Application of div 3.3—primary victims, responsible
persons and eligible property owners**

This division applies in respect of an application by a primary victim, a person responsible for the maintenance of a primary victim or an eligible property owner in respect of a criminal injury or eligible property damage (as the case may be).

**35 Set-offs—other entitlements of primary victims,
responsible persons and eligible property owners**

- (1) Where this section applies, the court shall reduce the amount of the financial assistance (other than any amount by way of special assistance) that it would otherwise award to the applicant by the aggregate of the amounts in relation to which this section applies.

- (2) This section applies where an applicant in respect of whom this division applies has received, or is entitled to receive, payment (or the benefit of payment) of 1 or more of the following amounts:
- (a) such portion of any amount of damages that the court is satisfied is attributable to the expenses and pecuniary loss incurred by or on behalf of the applicant as a consequence of the injury or damage;
 - (b) such portion of any amount payable under another law that the court is satisfied is attributable to the expenses and pecuniary loss incurred by or on behalf of the applicant as a consequence of the injury or damage;
 - (c) an amount of reparation in respect of the injury or damage payable pursuant to an order under the *Crimes Act 1900*, section 437 in the applicant's favour;
 - (d) an amount in respect of the injury or damage payable—
 - (i) as a medicare benefit under the *Health Insurance Act 1973* (Cwlth); or
 - (ii) under a contract of insurance;
 - (e) in the case of an application by a primary victim or a person responsible for the maintenance of a primary victim—the amount of any pension or allowance under the *Social Security Act 1991* (Cwlth) payable as a consequence of the injury.

36 Set-offs—special assistance for primary victims

- (1) Where this section applies, the court shall reduce the amount of any special assistance that it would otherwise award to the primary victim by the aggregate of the amounts in relation to which this section applies.
- (2) This section applies where a primary victim in respect of whom this division applies has received, or is entitled to receive, payment (or the benefit of payment) of either or both of the following amounts:

- (a) an amount of damages in respect of the injury or damage less any amount of those damages that the court is satisfied is attributable to the expenses and pecuniary loss incurred by or on behalf of the applicant as a consequence of the injury or damage;
- (b) an amount payable under another law less any amount that is attributable to the expenses and pecuniary loss incurred by or on behalf of the applicant as a consequence of the injury or damage.

37 Set-offs—intoxication of primary victims

- (1) On an application by a primary victim who is a primary victim solely by virtue of having had a violent crime committed against him or her, if the victim was intoxicated at the time the criminal injury was sustained, the court shall calculate the amount of financial assistance to be awarded to the victim by reference to the degree of injury the court considers that the victim would have sustained if he or she had not been intoxicated at that time.
- (2) Subsection (1) does not apply in the case of an application by a primary victim if the criminal injury resulted from criminal conduct in relation to a sexual crime committed against the primary victim.
- (3) In this section:

intoxicated means intoxicated as a result of the voluntary consumption of alcohol or the voluntary administration of a drug of dependence, or a prohibited substance, within the meaning of the *Drugs of Dependence Act 1989*.

38 Set-offs—minor crimes by primary victims and eligible property owners

On an application by a primary victim or an eligible property owner, if the applicant was engaged in the commission of a minor crime at the time the injury or damage was sustained, the court shall calculate the amount of financial assistance to be awarded by

reference to the degree of injury or damage the court considers that the applicant would have sustained if he or she had not been so engaged at that time.

Division 3.4 Set-offs—related victims

39 Application of div 3.4—related victims

This division applies in respect of an application to the court by a related victim or related victims for financial assistance in respect of a criminal injury.

40 Set-offs—other entitlements of related victims

- (1) Where this section applies in relation to an application, the court shall reduce the aggregate amount of the financial assistance (other than any amount by way of special assistance) that it would otherwise award to all related victims in relation to whom the application is made by the aggregate of the amounts in relation to which this section applies.
- (2) This section applies where any related victim in respect of whom this division applies has received, or is entitled to receive, payment (or the benefit of payment) of 1 or more of the following amounts:
 - (a) such portion of any amount of damages that the court is satisfied is attributable to the expenses and pecuniary loss incurred by or on behalf of the related victim as a consequence of the injury;
 - (b) such portion of any amount payable under another law that the court is satisfied is attributable to the expenses and pecuniary loss incurred by or on behalf of the related victim as a consequence of the injury;
 - (c) an amount of reparation in respect of the injury payable pursuant to an order under the *Crimes Act 1900*, section 437;
 - (d) an amount in respect of the injury payable—

- (i) as a medicare benefit under the *Health Insurance Act 1973* (Cwlth); or
 - (ii) under a contract of insurance;
- (e) the amount of any pension or allowance under the *Social Security Act 1991* (Cwlth) payable as a consequence of the injury.

41 Set-offs—special assistance for related victims

- (1) Where this section applies in relation to an application, the court shall reduce the aggregate amount of any special assistance that it would otherwise award to all the related victims in relation to whom the application is made by the aggregate of the amounts in relation to which this section applies.
- (2) This section applies where any related victim in respect of whom this division applies has received, or is entitled to receive, payment (or the benefit of payment) of either or both of the following amounts:
 - (a) an amount of damages in respect of the injury less any amount of those damages that the court is satisfied is attributable to the expenses and pecuniary loss incurred by or on behalf of the related victim as a consequence of the injury;
 - (b) an amount payable under another law less any amount that is attributable to the expenses and pecuniary loss incurred by or on behalf of the related victim as a consequence of the injury.

Division 3.5 Miscellaneous

42 Adjournment of proceedings pending ascertainment of set-off amounts

- (1) This section applies where, in proceedings on an application—
 - (a) the applicant has not received, and is not entitled to receive, an amount that is liable to be set-off under division 3.3 or 3.4 in

respect of the relevant injury or damage, other than an amount of damages; and

- (b) the court considers that the applicant would become entitled to that amount if appropriate action were taken.
- (2) Where this section applies, the court shall, by order, adjourn proceedings on the application until such time as the outcome of any appropriate action to claim the relevant amount is known.

43 Interim awards

- (1) The court may, if it thinks just, by order, make an interim award of financial assistance to an applicant pending the making of a final award to the applicant where the court—
- (a) is satisfied that financial assistance should be awarded to the applicant; and
 - (b) does not have sufficient information before it to enable the determination of the amount of a final award to the applicant.
- (2) An interim award to an applicant ceases to have effect when a final award is made to the applicant.
- (3) The court shall take into account the amount of an interim award to an applicant in the determination of the amount of a final award to the applicant.

44 Conditions of awards of financial assistance

- (1) An award of financial assistance may be made subject to such conditions as the court determines.
- (2) Without limiting the generality of subsection (1), an award may be made subject to conditions relating to—
- (a) the disposal or apportionment of any amount to be paid in pursuance of the award; and
 - (b) the holding of any amount to be paid in pursuance of the award in trust for a person entitled to the benefit of that amount.

- (3) Where the court makes an award subject to the condition that any amount of the assistance awarded is to be held in trust for a person entitled to the benefit of that amount, the award shall require that the amount to be held in trust be apportioned as follows:
- (a) a specified amount (if any) is to be paid towards expenses reasonably incurred by or on behalf of the beneficiary of the trust as a consequence of the relevant criminal injury or eligible property damage;
 - (b) a specified amount (if any) is to be paid towards the pecuniary loss suffered by the beneficiary;
 - (c) any amount of special assistance awarded is to be paid towards the maintenance, education or benefit of the beneficiary.

45 Restriction on publication

- (1) The court may make an order prohibiting the publication of any report or account of proceedings on an application, or any part of such proceedings, if satisfied that it is necessary in the public interest.
- (2) In proceedings on an application, the court may make an order prohibiting the publication of a person's name or any particulars likely to lead to his or her identification in the case of any of the following persons:
- (a) the primary victim;
 - (b) the applicant;
 - (c) a person whose criminal conduct is relevant to the proceedings.
- (3) The court may only make an order under subsection (2) if—
- (a) the person has not been convicted of any offence relevant to the proceedings; or
 - (b) the court is satisfied that the making of the order is necessary in the interests of the administration of justice.

(4) In considering whether or not to make an order under this section, the court shall have regard to the desirability of the public being made aware of the principles applied by the court with regard to applications.

(5) A person shall not contravene an order made under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

46 Variation of final awards of financial assistance

(1) The court may, on application by the government solicitor or the person in whose favour a final award was made, by order vary a final award by increasing or reducing the amount of financial assistance awarded, or otherwise.

(2) In considering an application for the variation of a final award, the court shall have regard to the following considerations:

- (a) any further evidence that has become available since the date on which the award was made in relation to the circumstances in which a criminal injury or eligible property damage was sustained, or criminal conduct occurred;
- (b) any change in the economic circumstances of the successful applicant that has occurred since the date on which the award was made;
- (c) any other matter the court considers relevant.

47 Legal fees

A legal practitioner must neither charge nor seek to recover in respect of a proceeding under this Act an amount by way of fees that exceeds the amount allowable under the regulations.

48 Territory liability to pay financial assistance

Where an interim or final award of financial assistance is made to a person, an amount equal to the amount of the assistance is payable by the Territory to that person, subject to this Act.

49 Copies of awards and arrangements for payment

- (1) Following the making of an order for an interim or final award, the registrar shall give a copy of the order to the following persons:
 - (a) the person or persons in whose favour the award is made, or to the person making the application (if that is a different person);
 - (b) if an amount of financial assistance is awarded to be held in trust—the trustee;
 - (c) the government solicitor.
- (2) On receiving a copy of an order for an interim or final award, the government solicitor shall make arrangements for the payment of financial assistance in accordance with the order.

50 Prohibition on financial assistance being applied to other purposes by operation of law or in the course of civil proceedings

Financial assistance, whether paid or payable, is not subject to any of the following:

- (a) attachment under a law in force in the Territory, other than a Commonwealth Act;
- (b) assignment, charge or being taken in execution;
- (c) being set off in any proceedings.

51 Other rights not affected

The making of an interim or final award does not affect the rights or liabilities of any person under any other law in force in the Territory

in relation to the relevant criminal injury or eligible property damage, or the relevant criminal conduct.

Part 4 Recovery of financial assistance

Division 4.1 Preliminary

52 Definitions for pt 4

In this part:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

assisted person means a person to whom a final award has been made.

defendant means the person on whom a provisional order for restitution is served.

notice of objection means notice by the defendant under section 55 of objection to the confirmation of a provisional restitution order.

order for restitution means a provisional order for restitution that is confirmed by the court under section 56 or 57.

provisional order for restitution means a provisional order for restitution that is made by the registrar under section 54.

recovery proceedings means proceedings of the court concerning the confirmation of a provisional order for restitution.

related crime, in relation to an award of financial assistance in respect of criminal conduct, means—

- (a) an offence arising from substantially the same facts as those constituting that conduct; or
- (b) any other offence if an offence referred to in paragraph (a) was taken into account (under the *Crimes Act 1900*, section 448) when sentence was passed on the offender for that other offence.

Division 4.2 Recovery from assisted persons

53 Repayment of financial assistance where civil damages recovered

- (1) This section applies to an assisted person who has recovered either or both of the following amounts:

- (a) an amount of damages in respect of the relevant criminal injury or eligible property damage;
- (b) an amount under another law in respect of that injury or damage;

unless the amount of financial assistance awarded to the person was set off under division 5.3 or 5.4 by the amount or amounts referred to in paragraph (a) or (b).

- (2) An assisted person to whom this section applies is liable to pay the Territory—

- (a) if the amount (or the aggregate of the amounts) referred to in subsection (1) is less than the amount of financial assistance awarded to the person—an amount equal to the amount (or the aggregate of the amounts) referred to in subsection (1); or
- (b) if the amount (or the aggregate of the amounts) referred to in subsection (1) is equal to or greater than the amount of financial assistance awarded to the person—an amount equal to the amount of financial assistance.

- (3) A person who is liable under subsection (2) to pay an amount to the Territory shall, within 28 days after the date on which the liability to pay that amount arose, notify the chief executive in writing accordingly.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) The chief executive shall file with the court—

- (a) a copy of a notice received under subsection (3); and

- (b) if an amount is paid to the Territory under subsection (2)—notice of such payment.

Division 4.3 Recovery from offenders

54 Provisional order for restitution

- (1) If the registrar considers that, before or after a final award is made in relation to criminal conduct, a person has been convicted of a related crime, the registrar may make a provisional order for the restitution of the amount of the award to the Territory by the person so convicted.
- (2) A provisional order for restitution may only be made on an application to the registrar by the Territory that is filed in the office of the registrar within 2 years after the date of the final award.
- (3) The registrar shall cause notice of a provisional order to be served on the convicted person in accordance with the *Magistrates Court (Civil Jurisdiction) Act 1982*, part 4.
- (4) A notice of a provisional order shall—
 - (a) set out the terms of the order; and
 - (b) specify the date on which the final award was made and the facts on which the award was based; and
 - (c) specify the related crime to which the order relates and the date on which it is alleged that the person was convicted of that crime; and
 - (d) state that the person has 28 days in which to object to the order by a notice filed in the office of the registrar; and
 - (e) state that if the person does not object, the order will be confirmed by the court and become a judgment debt payable by the person; and

- (f) state that if the person files a notice of objection, the court will conduct a hearing into whether the order should be confirmed; and
- (g) contain such other particulars as may be prescribed by the regulations.

55 Notice of objection by defendant

- (1) A defendant served with a provisional order for restitution may, within 28 days after service, file in the office of the registrar a notice of objection to the confirmation of the order.
- (2) A notice of objection shall—
 - (a) include a statement of the grounds of objection on which the defendant intends to rely; and
 - (b) otherwise comply with the regulations.

56 Confirmation of provisional order—no recovery proceedings

- (1) On application by the Territory, the court may confirm a provisional order for restitution without conducting a hearing if satisfied that the defendant has not filed a notice of objection within 28 days after notice of the provisional order was duly served on the defendant.
- (2) If the court is satisfied that the assisted person has paid the Territory an amount under division 4.2 in respect of the relevant criminal conduct—
 - (a) where the amount paid under division 4.2 is equal to or greater than the amount of restitution under the provisional order—the court shall discharge the order; or
 - (b) where the amount paid under division 4.2 is less than the amount of restitution under the provisional order—if the provisional order is confirmed, the court shall vary the order to reduce the amount of restitution so that it is equal to the

difference between the amount paid under division 4.2 and the amount of the relevant final award.

57 Confirmation of provisional order—recovery proceedings in court

- (1) If the defendant files a notice of objection to a provisional order for restitution within 28 days after notice of the provisional order was duly served on the defendant, the court shall conduct a hearing to determine whether the provisional order should be confirmed.
- (2) The court may confirm a provisional order for restitution in relation to a final award if satisfied that the defendant has been convicted of a related crime.
- (3) The court may vary a provisional order for restitution that it confirms.
- (4) If the court is satisfied that the assisted person has paid the Territory an amount under division 4.2 in respect of the relevant criminal conduct—
 - (a) where the amount paid under division 4.2 is equal to or greater than the amount of restitution under the provisional order—the court shall discharge the order; or
 - (b) where the amount paid under division 4.2 is less than the amount of restitution under the provisional order—if the provisional order is confirmed, the court shall vary the order to reduce the amount of restitution so that it is equal to the difference between the amount paid under division 4.2 and the amount of the relevant final award.

58 Arrangements for payment pursuant to order for restitution

- (1) The Territory and a defendant may enter into an arrangement with respect to payment under a provisional order for restitution or any such order that is confirmed.

- (2) An arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.
- (3) For the purpose of enabling the Territory and the defendant to come to an arrangement, the court may adjourn recovery proceedings for such period as it considers appropriate.
- (4) If the defendant does not comply with an arrangement, the Territory may take or continue recovery proceedings for the purposes of confirming the provisional order for restitution for the total amount payable under the order.

59 Confirmed order for restitution

- (1) The court may, when it confirms a provisional order for restitution, reduce the amount to be paid under the provisional order having regard to—
 - (a) the financial means of the defendant; and
 - (b) such other matters as are, in the opinion of the court, relevant to the determination.
- (2) The maximum amount that may be ordered to be paid under an order for restitution (whether made against 1 or more defendants) is the amount that has been paid to the assisted person under the final award to which the order relates.
- (3) If an order for restitution is made against 2 or more defendants in respect of the same final award, each of the defendants is jointly and severally liable under the order.
- (4) If the court decides under subsection (1) to reduce the amount payable by a defendant under an order made against 2 or more defendants, the court may confirm the order subject to the liability of the defendant concerned being limited under the order to an amount specified in the order.

60 Effect of appeals against award of financial assistance, and variations of awards

- (1) An order for restitution does not have any effect—
 - (a) until the period within which an appeal may be made against the final award from which it arises has expired; or
 - (b) if such an appeal is duly made within that period—until the appeal is finally disposed of.
- (2) If the final award to which such an appeal relates is set aside as a result of the appeal, the order for restitution ceases to have effect.
- (3) If the effect of such an appeal is to vary the amount of financial assistance awarded, on application by the Territory or the defendant the court may, by order, amend the order for restitution accordingly and make such ancillary orders as are necessary as a consequence.
- (4) If a final award is varied as a result of an application under section 46 after an order for restitution has been made in relation to the award, on application by the Territory or the defendant the court may, by order, amend the order for restitution accordingly and make such ancillary orders as are necessary as a consequence.

61 Supreme Court appeals

An appeal may be brought as of right by the defendant or the Territory to the Supreme Court from an order for restitution.

62 Effect of order for restitution on civil proceedings

- (1) This section applies to civil proceedings by or on behalf of an assisted person for the recovery of damages in respect of the criminal injury or eligible property damage in relation to which financial assistance was awarded.
- (2) The making of an order for restitution does not affect a person's right to commence or maintain civil proceedings to which this section applies, and damages in such proceedings shall be assessed without regard to the order.

63 Access to information about defendant's whereabouts

For the purposes of serving a provisional order for restitution on a defendant, or taking any action against the defendant to enforce an order for restitution, the registrar may, in writing, require any of the following persons to give the registrar information about the address of the defendant:

- (a) the commissioner for housing;
- (b) the chief police officer;
- (c) the chief executive (however described) of a government agency;

Division 4.4 Reimbursement of offenders

64 Reimbursement of offender where amounts paid under div 4.2 and div 4.3

- (1) This section applies where—
 - (a) a defendant has fully complied with an order for restitution made under division 4.3 in relation to a final award to an assisted person; and
 - (b) on or after the date of the order, payment is made to the Territory in full satisfaction of the assisted person's liability under division 4.2 in relation to that award.
- (2) Where this section applies, the Territory is liable to pay to the defendant the lesser of the following amounts:
 - (a) the amount of the defendant's liability under division 4.3 under the order for restitution;
 - (b) the amount of the assisted person's liability under division 4.2 in relation to the final award.
- (3) On the written request of the defendant, the Territory may pay an amount equal to part or all of the applicable amount under

subsection (2) to another person or persons nominated by the defendant, instead of paying such an amount to the defendant.

Part 5 Compensation levy

65 Meaning of *levy*

In this part:

levy means the levy imposed under section 68 (1).

66 Application of pt 5

- (1) Subject to subsection (2), this part applies to all offences that are dealt with by the Supreme Court, the Magistrates Court, or the Childrens Court.
- (2) This part does not apply to an offence—
 - (a) in respect of which a reparation order is made under—
 - (i) the *Crimes Act 1900*, section 437; or
 - (ii) the *Children and Young People Act 1999*, section 96 (Disposition of young offenders); or
 - (iii) the *Crimes Act 1914* (Cwlth), section 21B; or
 - (b) in respect of which an infringement notice has been served.
- (3) In subsection (2):

infringement notice means—

 - (b) an offence notice under the *Drugs of Dependence Act 1989*; or
 - (c) a litter notice under the *Litter Act 1977*; or
 - (d) an infringement notice under the *Dog Control Act 1975*, the *Nature Conservation Act 1980*, the *Sale of Motor Vehicles Act 1977* or the *Road Transport (General) Act 1999*.

67 Extended meaning of conviction

For the purposes of this part, a person who has committed an offence—

- (a) in respect of which an order has been made under—
 - (i) the *Crimes Act 1900*, subsection 556A (1); or
 - (ii) the *Children and Young People Act 1999*, section 98 (Disposition without proceeding to conviction); or
 - (iii) the *Crimes Act 1914* (Cwlth), section 19B (1); or
- (b) that has been taken into account under the *Crimes Act 1900*, section 448;

shall be taken to have been convicted of that offence.

68 Imposition of levy

- (1) If a person is convicted of an offence that this part applies to, the person is liable to pay the Territory a levy of \$50.
- (2) The levy is in addition to, and does not form part of, any pecuniary penalty imposed in respect of the offence.
- (3) Any money paid to the Territory in respect of an offence to which this part applies is to be applied towards the discharge of liability for the levy before it is applied towards the discharge of liability for any pecuniary penalty imposed in respect of the offence.

69 Exemptions

- (1) A person who is under 18 years of age is not liable to pay the levy if the court by which the person is convicted directs (whether at the time of conviction or at any later time) that the person is exempt from liability to pay the levy.
- (2) The court before which a person is convicted of an offence may exempt the person from liability to pay the levy in respect of—

- (a) that offence if, earlier on the same day, the court had convicted the person of another offence; or
- (b) another offence which the court has taken into account under the *Crimes Act 1900*, section 448 in passing sentence for the firstmentioned offence.

70 Effect of appeal etc

- (1) The commencement of any proceedings by way of appeal against, or review of, a conviction for an offence in respect of which a levy is imposed on a person stays the liability of the person to pay the levy.
- (2) The setting aside of a conviction of a person annuls the liability of the person to pay the levy.
- (3) The dismissal of proceedings by way of appeal against, or review of, a conviction removes the stay of liability.

Part 6 Miscellaneous

71 Annual report

- (1) The registrar shall, within 60 days after the end of each financial year, submit to the Attorney-General a report in writing setting out—
 - (a) the number of applications made during that year; and
 - (b) particulars of awards made in pursuance of those applications; and
 - (c) a brief description of the facts and circumstances to which those applications related; and
 - (d) such other particulars relating to the operation of this Act during that year as the registrar thinks fit.
- (2) The Attorney-General shall cause a report referred to in subsection (1) to be laid before the Legislative Assembly within 15 sitting days of the Assembly after its receipt by the Attorney-General.

72 Review of Act and victims services scheme

- (1) The Minister must commission an independent review covering the operation of this Act and the victims services scheme during the 2 year period after this section commences.
- (2) The Minister must table the final report of the review in the Legislative Assembly within 3 months after the end of that 2-year period.

73 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A form in the schedule immediately before the commencement of this section is, after the commencement, taken to be an approved form.
- (5) However, the form need not be notified under the *Legislation Act 2001*.
- (6) Subsections (4) and (5) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (7) Subsections (4) to (6) and this subsection expire 1 year after this section commences.

73A Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Part 7 Transitional

74 Definitions for pt 7

In this part:

amended Act means this Act as amended by the amending Act.

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

award means—

- (a) an interim award or a final award of compensation under the unamended Act; or
- (b) an interim award or a final award of financial assistance under the amended Act;

as the case requires.

commencement day means 24 December 1999.

Note This was the commencement of s 3 to s 18 of the amending Act.

compensation for pain and suffering means compensation for pain and suffering as mentioned in the unamended Act, section 6 (1) (c).

final award means—

- (a) an award of compensation under the unamended Act, part 2; or
- (b) an award of financial assistance under the amended Act, part 2;

as the case requires, but does not include an interim award.

unamended Act means this Act as in force before the commencement day.

undetermined application for compensation means an application for compensation under the unamended Act if, immediately before the commencement day—

- (a) no award had been made in relation to the application; or
- (b) an interim award had been made in relation to the application, but no final award had been made; or
- (c) if a final award had been made—
 - (i) an appeal in relation to the final award had been made but not finally disposed of; or
 - (ii) the period for making any such appeal had not expired.

75 Proceedings begun on or before 23 June 1998

The unamended Act continues to apply in relation to an application for compensation made on or before 23 June 1998, and to any award made pursuant to such an application, as if the amendments to that Act made by the amending Act had not been made.

76 Undetermined applications—proceedings begun after 23 June 1998

- (1) The unamended Act continues to apply in relation to an undetermined application for compensation made after 23 June 1998 as if the amendments to that Act made by the amending Act had not been made, subject to this section.
- (2) If, by an undetermined application for compensation made after 23 June 1998, compensation for pain and suffering is claimed—
 - (a) if no award was made before the commencement day pursuant to the application—any award may not include provision for any compensation for pain and suffering; or
 - (b) if an interim award was made pursuant to the application before the commencement day, but no final award had yet been made—
 - (i) if the interim award includes provision for compensation for pain or suffering—any final award pursuant to the

application may not increase the amount of such provision; or

- (ii) if the interim award does not include any such provision—any final award pursuant to the application may not include any such provision; or
- (c) if a final award was made before the commencement day pursuant to the application, and, immediately before that day—
 - (i) an appeal in relation to the award had been made but not finally disposed of; or
 - (ii) the period for making any such appeal had not expired;

the court hearing any such appeal may not make an order with the effect of providing for any compensation for pain and suffering not ordered in previous proceedings, or increasing the amount of any such compensation ordered in previous proceedings.

- (3) This section does not prevent a court from making an order with the effect of decreasing any amount of compensation for pain and suffering included in an award made before the commencement day.

77 Variation of orders—proceedings begun after 23 June 1998

- (1) The unamended Act continues to apply in relation to the variation, under section 18 of that Act, of a final award made under that Act pursuant to an application for compensation made after 23 June 1998, subject to this section.
- (2) A final award made under the unamended Act pursuant to an application made after 23 June 1998 may not be varied (under section 18 of that Act in its application under subsection (1)) to allow a claim for the award of compensation for pain and suffering, or to provide for the increase of the amount of any such award.
- (3) This section does not prevent a court from varying a final award made under the unamended Act, section 18 in its application under

subsection (1) with the effect of decreasing any amount of compensation for pain and suffering included in the award.

78 Claims for special assistance if compensation for pain and suffering not available

- (1) If, pursuant to an undetermined application for compensation made after 23 June 1998 in relation to a prescribed injury within the meaning of the unamended Act, no award in the nature of compensation for pain and suffering had been made before the commencement day, the applicant may also apply under the amended Act for financial assistance in the nature of special assistance in relation to that injury.
- (2) An application for financial assistance to which subsection (1) applies must be lodged in the office of the registrar of the Magistrates Court within 12 months after the commencement day.
- (3) The Magistrates Court may, on application made at any time (whether before or after the end of the period mentioned in subsection (2)), extend the time for lodging an application for financial assistance to which subsection (1) applies if the court considers it just to do so.
- (4) The amended Act otherwise applies in relation to an application for financial assistance to which subsection (1) applies.

79 Expiry of pt 7

- (1) This part expires on 31 December 2003.
- (2) This part is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

The *Victims of Crime (Financial Assistance) Act 1983* was originally the *Criminal Injuries Compensation Ordinance 1983*.

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth)) and the *ACT Self-Government (Consequential Provisions) Act 1988* (Cwlth) provided for the conversion of certain ordinances to Territory enactments after self-government. The *Victims of Crime (Financial Assistance) Act 1983* became a Territory enactment on 1 July 1990.

It was renamed by the *Victims of Crime (Financial Assistance) (Amendment) Act 1999* (see pt 2).

Legislation before self-government

Victims of Crime (Financial Assistance) Act 1983 No 11

notified 30 June 1983
commenced 30 June 1983

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985
commenced 1 February 1986 (s (2) and Gaz 1986 No 3)

Criminal Injuries Compensation (Amendment) Ordinance 1986 No 28

notified 31 July 1986
commenced 31 July 1986

Legislation after self-government

Self-Government (Consequential Amendments) Ordinance 1990 No 5

notified 27 June 1990
s 1, s 2 commenced 27 June 1990 (s 2 (1))
remainder commenced 1 July 1990 (s 2 (2))

Criminal Injuries Compensation (Amendment) Act 1991 No 13

notified 30 April 1991
commenced 30 April 1991 (Gaz 1991 No S30)

Magistrates and Coroner's Courts (Registrar) Act 1991 No 44

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
remainder commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Endnotes

3 Legislation history

Criminal Injuries Compensation (Amendment) Act 1992 No 7

notified 28 May 1992 (Gaz 1992 No S59)
commenced 28 May 1992

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
remainder commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Statute Law Revision (Penalties) Act 1994 No 81

notified 29 November 1994 (Gaz 1994 No S253)
s 1, s 2 commenced 29 November 1994 (s 2 (1))
remainder commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

Criminal Injuries Compensation (Amendment) Act 1996 No 68

notified 20 December 1996 (Gaz 1996 No S328)
s 1, s 2 and s 3 commenced 20 December 1996 (s 2 (1))
remainder commenced 1 January 1997 (s 2 (2) and Gaz 1996 No S352)

Legal Practitioners (Consequential Amendments) Act 1997 No 96

notified 1 December 1997 (Gaz 1997 No S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
remainder commenced 1 June 1998 (s 2 (2))

Motor Traffic (Amendment) Act (No 2) 1999 No 50

notified 17 September 1999 (Gaz 1999 No S54)
s 1, s 2 and s 3 commenced 17 September 1999 (s 2 (1))
remainder (ss 4-19) commenced 6 October 1999 (s 2 (2) and Gaz 1999 No S58)

Children and Young People (Consequential Amendments) Act 1999 No 64

notified 10 November 1999 (Gaz 1999 No 45)
s 1, s 2 commenced 10 November 1999 (s 2 (1))
remainder commenced 10 May 2000 (s 2 (2))

Road Transport Legislation Amendment Act 1999 No 79

notified 23 December 1999 (Gaz 1999 No S65)
commenced 1 March 2000 (s 2 and Gaz 2000 No S5)

Victims of Crime (Financial Assistance) (Amendment) Act 1999 No 91

notified 23 December 1999 (Gaz 1999 No S65)

s 1, s 2 commenced 23 December 1999 (s 2 (1))

remainder (ss 3-18) commenced 24 December 1999 (s 2 (2) and Gaz 1999 No S69)

Victims of Crime (Financial Assistance) Amendment Act 2000 No 32

notified 6 July 2000 (Gaz 2000 No S33)

commenced 6 July 2000 (s 2)

Statute Law Amendment Act 2000 No 80

notified 21 December 2000 (Gaz 2000 No S69)

commenced 21 December 2000 (s 2 (1))

Statute Law Amendment Act 2001 No 11

notified 29 March 2001 (Gaz 2001 No 13)

commenced 29 March 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 409

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 409 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Road Transport (Public Passenger Services) Act 2001 No 62 pt 1.8

notified 10 September 2001 (Gaz 2001 No S66)

s 1, s 2 commenced 10 September 2001 (IA s 10B)

pt 1.8 commenced 1 December 2001 (s 2 and CN 2001 No 2)

4 Amendment history**Title**

title am 1999 No 91 s 4

Preliminary

pt 1 hdg ins 1996 No 68
sub 1999 No 91 s 5

Short title

s 1 sub 1999 No 91 s 5

Definitions for Act

s 2 am 1985 No 67; 1990 No 5; 1991 No 13; 1991 No 44; 1992
No 7; 2000 No 80 amdt 3.29, amdt 3.30
sub 1999 No 91 s 5

Endnotes

4 Amendment history

What is a violent crime?

s 3 am 1991 No 13
sub 1999 No 91 s 5

What is a criminal injury?

s 4 am 1990 No 5
sub 1999 No 91 s 5

References to applications and awards made on behalf of other persons

s 5 orig s 5 am 1990 No 5; 1997 No 96
om 1999 No 91 s 5
ins 1999 No 91 s 5
am 2000 No 80 amdt 3.31

References to convictions—finding of proof without proceeding to conviction

s 6 orig s 6 am 1990 No 5
om 1999 No 91 s 5
ins 1999 No 91 s 5

Evidence of criminal conduct

s 7 orig s 7 am 1986 No 28; 1991 No 13
om 1999 No 91 s 5
ins 1999 No 91 s 5

Legal incapacity—criminal intent

s 8 sub 1999 No 91 s 5

Eligibility for financial assistance

pt 2 hdg ins 1996 No 68
pt 2 orig pt 2 om 1999 No 91 s 5
ins 1999 No 91 s 5

Financial assistance for primary victims and responsible persons

div 2.1 hdg (prev pt 2 div hdg) renum R6 LA

Who is a primary victim?

s 9 sub 1999 No 91 s 5

Financial assistance for primary victims and responsible persons

s 10 am 1985 No 67; 1990 No 5; 1991 No 13; 1991 No 44; 1992
No 7; 2000 No 80 amdt 3.32, amdt 3.33
sub 1999 No 91 s 5

What is an extremely serious injury?

s 11 am 1985 No 67; 1988 No 89; 1992 No 7
sub 1999 No 91 s 5

No financial assistance for primary victims or responsible persons

s 12 am 1985 No 67; 1990 No 5; 1991 No 44; 1992 No 7; 1994
No 38
sub 1999 No 91 s 5

Exhaustion of workers compensation remedies

s 13 sub 1999 No 91 s 5

Maximum award—primary victims and responsible persons

s 14 am 1990 No 5
om 1991 No 13

Victims services scheme—primary victims

s 15 am 1990 No 5; 1991 No 13; 2001 No 44 amdt 1.4240,
amdt 1.4241
sub 1999 No 91 s 5

Financial assistance for related victims

div 2.2 hdg (prev pt 2 div 2 hdg) renum R6 LA

Who is a related victim?

s 16 sub 1999 No 91 s 5

Financial assistance for related victims

s 17 am 1994 No 81
sub 1999 No 91 s 5

No financial assistance for related victims

s 18 am 1991 No 13; 1992 No 7
sub 1999 No 91 s 5

Maximum award—related victims

s 19 am 1992 No 7
sub 1999 No 91 s 5

Victims services scheme—related victims

s 20 am 1990 No 5; 1992 No 7; 2001 No 44 amdt 1.4242, amdt
1.4243
sub 1999 No 91 s 5

Financial assistance for eligible property owners

div 2.3 hdg (prev pt 2 div 3 hdg) renum R6 LA

Who is an eligible property owner?

s 21 am 1991 No 13; 1992 No 7
sub 1999 No 91 s 5

Financial assistance for eligible property owners

s 22 am 1990 No 5; 1992 No 7
sub 1999 No 91 s 5

Maximum award—eligible property owners

s 23 am 1992 No 7; 1994 No 81
sub 1999 No 91 s 5

No financial assistance for eligible property owners

s 24 am 1990 No 5; 1992 No 7; 1994 No 81
sub 1999 No 91 s 5

Endnotes

4 Amendment history

Victims services scheme—eligible property owners

s 25 am 1992 No 7; 2001 No 44 amdt 1.4244, amdt 1.4245
sub 1999 No 91 s 5

Award of financial assistance

pt 3 ins 1999 No 91 s 5

Procedure

div 3.1 hdg (prev pt 3 div 1 hdg) renum R6 LA

Jurisdiction of Magistrates Court

s 26 am 1992 No 7
sub 1999 No 91 s 5

Application for financial assistance

s 27 am 1990 No 5; 2001 No 44 amdt 1.4246-1.4248
sub 1999 No 91 s 5

Procedure for determination of applications

s 28 am 1990 No 5; 1992 No 7
sub 1999 No 91 s 5

Civil standard of proof

s 29 am 1990 No 5; 1994 Nos 38 and 81
sub 1999 No 91 s 5

Recovery of compensation from offenders

s 29A ins 1991 No 13
om 1999 No 91 s 5

Reimbursement of offender

s 29B ins 1991 No 13
om 1999 No 91 s 5

Medical examinations

s 30 am 1985 No 67; 1990 No 5; 1991 Nos 13 and 44; 1992 No 7
sub 1999 No 91 s 5

General criteria

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA

Relevant considerations

s 31 am 1990 No 5
sub 1999 No 91 s 5

Expenses—victims services scheme

s 32 sub 1999 No 91 s 5

Dismissal of application—set-offs exceeding entitlements

s 33 am 1990 No 5
sub 1999 No 91 s 5

Set-offs—primary victims, responsible persons and eligible property owners

div 3.3 hdg (prev pt 3 div 3 hdg) renum R6 LA

Application of div 3.3—primary victims, responsible persons and eligible property owners

s 34 am 1990 No 5; 1992 No 7
sub 1999 No 91 s 5

Set-offs—other entitlements of primary victims, responsible persons and eligible property owners

s 35 sub 1999 No 91 s 5

Set-offs—special assistance for primary victims

s 36 sub 1999 No 91 s 5

Set-offs—intoxication of primary victims

s 37 ins 1999 No 91 s 5

Set-offs—minor crimes by primary victims and eligible property owners

s 38 ins 1999 No 91 s 5

Set-offs—related victims

div 3.4 hdg (prev pt 3 div 4 hdg) renum R6 LA

Application of div 3.4—related victims

s 39 ins 1999 No 91 s 5

Set-offs—other entitlements of related victims

s 40 ins 1999 No 91 s 5

Set-offs—special assistance for related victims

s 41 ins 1999 No 91 s 5

Miscellaneous

div 3.5 hdg (prev pt 3 div 5 hdg) renum R6 LA

Adjournment of proceedings pending ascertainment of set-off amounts

s 42 ins 1999 No 91 s 5

Interim awards

s 43 ins 1999 No 91 s 5

Conditions of awards of financial assistance

s 44 ins 1999 No 91 s 5

Restriction on publication

s 45 ins 1999 No 91 s 5

Variation of final awards of financial assistance

s 46 ins 1999 No 91 s 5

Legal fees

s 47 ins 1999 No 91 s 5

Territory liability to pay financial assistance

s 48 ins 1999 No 91 s 5

Copies of awards and arrangements for payment

s 49 ins 1999 No 91 s 5

Endnotes

4 Amendment history

Prohibition on financial assistance being applied to other purposes by operation of law or in the course of civil proceedings

s 50 ins 1999 No 91 s 5

Other rights not affected

s 51 ins 1999 No 91 s 5

Recovery of financial assistance

pt 4 hdg ins 1996 No 68

pt 4 ins 1999 No 91 s 5

Preliminary

div 4.1 hdg (prev pt 4 div 1 hdg) renum R6 LA

Definitions for pt 4

s 52 ins 1999 No 91 s 5

Recovery from assisted persons

div 4.2 hdg (prev pt 4 div 2 hdg) renum R6 LA

Repayment of financial assistance where civil damages recovered

s 53 ins 1999 No 91 s 5

Recovery from offenders

div 4.3 hdg (prev pt 4 div 3 hdg) renum R6 LA

Provisional order for restitution

s 54 ins 1999 No 91 s 5

Notice of objection by defendant

s 55 ins 1999 No 91 s 5

Confirmation of provisional order—no recovery proceedings

s 56 ins 1999 No 91 s 5

Confirmation of provisional order—recovery proceedings in court

s 57 ins 1999 No 91 s 5

Arrangements for payment pursuant to order for restitution

s 58 ins 1999 No 91 s 5

Confirmed order for restitution

s 59 ins 1999 No 91 s 5

Effect of appeals against award of financial assistance, and variations of awards

s 60 ins 1999 No 91 s 5

Supreme Court appeals

s 61 ins 1999 No 91 s 5

Effect of order for restitution on civil proceedings

s 62 ins 1999 No 91 s 5

Access to information about defendant's whereabouts

s 63 ins 1999 No 91 s 5

am 2000 No 80 amdt 3.34, amdt 3.35

Reimbursement of offenders

div 4.4 hdg (prev pt 4 div 4 hdg) renum R6 LA

Reimbursement of offender where amounts paid under div 4.2 and div 4.3

s 64 ins 1999 No 91 s 5

Compensation levy

pt 5 hdg (prev pt 3 hdg) ins 1996 No 68
renum 1999 No 91 s 7

Meaning of levy

s 65 (prev s 34A) ins 1996 No 68
renum 1999 No 91 s 7
am 1999 No 91 s 13 sch 1

Application of pt 5

s 66 (prev s 34B) ins 1996 No 68
am 1999 No 50; 1999 No 79 s 5 sch 3
renum 1999 No 91 s 7
am 1999 No 64 s 4 sch 2; 2000 No 80 amdt 3.36; 2001 No 62
amdt 1.28

Extended meaning of conviction

s 67 (prev s 34C) ins 1996 No 68
renum 1999 No 91 s 7
am 1999 No 64 s 4 sch 2

Imposition of levy

s 68 (prev s 34D) ins 1996 No 68
renum 1999 No 91 s 7
am 2000 No 32 s 4

Exemptions

s 69 (prev s 34E) ins 1996 No 68
renum 1999 No 91 s 7

Effect of appeal etc

s 70 (prev s 34F) ins 1996 No 68
renum 1999 No 91 s 7

Miscellaneous

pt 6 hdg (prev pt 4 hdg) renum 1999 No 91 s 7

Annual report

s 71 (prev s 35) am 1990 No 5; 1992 No 7
renum 1999 No 91 s 7
am 1999 No 91 s 13 sch 1; 2000 No 80 amdt 3.37

Review of Act and victims services scheme

s 72 ins 1999 No 91 s 6

Endnotes

4 Amendment history

Approved forms

s 73 (prev s 36) am 1990 No 5
renum 1999 No 91 s 7
sub 2000 No 80 amdt 3.38
sub 2001 No 44 amdt 1.4249
(4)-(7) exp 12 September 2002 (s 73 (7))

Regulation-making power

s 73A ins 2001 No 44 amdt 1.4249

Transitional

pt 7 hdg ins 2001 No 11 amdt 3.270
exp 31 December 2003 (s 79 (1))

Definitions for pt 7

s 74 ins 2001 No 11 amdt 3.270
exp 31 December 2003 (s 79 (1))

Proceedings begun on or before 23 June 1998

s 75 ins 2001 No 11 amdt 3.270
exp 31 December 2003 (s 79 (1))

Undetermined applications—proceedings begun after 23 June 1998

s 76 ins 2001 No 11 amdt 3.270
exp 31 December 2003 (s 79 (1))

Variation of orders—proceedings begun after 23 June 1998

s 77 ins 2001 No 11 amdt 3.270
am R6 LA
exp 31 December 2003 (s 79 (1))

Claims for special assistance if compensation for pain and suffering not available

s 78 ins 2001 No 11 amdt 3.270

Expiry of pt 7

s 79 ins 2001 No 11 amdt 3.270
am 2001 No 44 amdt 1.4250
exp 31 December 2003 (s 79 (1))

Schedule

sch am 1991 Nos 13 and 44; 1999 No 91 s 13 sch 1
om R6 (LA s 116 (1) (k) (iii))

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1991 No 13	31 May 1991
2	Act 1992 No 7	31 August 1992
3	Act 1994 No 38	31 July 1994
4	Act 1996 No 68	1 January 1997
5	Act 1999 No 91	1 March 2000
6	Act 2001 No 44	12 September 2001

6 Renumbered provisions

as made by 1999 No 91

Previous	Renumbered as	Previous	Renumbered as
Part 3	Part 5	34E	69
34A	65	34F	70
34B	66	Part 4	Part 6
34C	67	35	71
34D	68	36	73

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