



AUSTRALIAN CAPITAL TERRITORY

Victims of Crime (Financial Assistance) (Amendment) Act 1999

No. 91 of 1999

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AUSTRALIAN CAPITAL TERRITORY

Victims of Crime (Financial Assistance) (Amendment) Act 1999

No. 91 of 1999

**An Act to amend the *Criminal Injuries Compensation Act 1983*, the *Victims of Crime Act 1994* and the *Crimes Act 1900*,
and for related purposes**

[Notified in ACT Gazette S65: 23 December 1999]

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

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Victims of Crime (Financial Assistance) (Amendment) Act 1999*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

PART II—CRIMINAL INJURIES COMPENSATION ACT 1983

3. Principal Act

In this Part, “Principal Act” means the *Criminal Injuries Compensation Act 1983*.

4. Long title

The title of the Principal Act is amended by omitting “compensation” and substituting “financial assistance”.

5. Substitution

Parts I and II of the Principal Act are repealed and the following Parts substituted:

“PART I—PRELIMINARY

“1. Short title

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

“2. Interpretation

In this Act, unless the contrary intention appears—

‘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;
- (b) a parent, guardian or step-parent of the victim;
- (c) a child or step-child of the victim, or some other child of whom the victim is the guardian; or

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- (d) a brother, sister, step-brother, step-sister, 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’ has the meaning given by 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; and
- (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;
- (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;

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- ‘eligible property owner’ has the meaning given by section 21;
- ‘extremely serious injury’ has the meaning given by 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 II, 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 Director of Family Services 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;
 - (b) pregnancy;
 - (c) the aggravation, acceleration or recurrence of any physical or mental injury;
 - (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’ has the meaning given by section 9;
- ‘Registrar’ means the Registrar of the Magistrates Court;
- ‘related victim’ has the meaning given by 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 first-mentioned offence is—
 - (i) in relation to a law of the Territory—an offence against Part VIII of the *Crimes Act 1900*; or
 - (ii) in relation to any other law—an offence against a provision of such a law corresponding to any provision of Part VIII of the *Crimes Act 1900*;

‘sexual crime’ means any of the following offences:

- (a) an offence against Part III of the *Crimes Act 1900*, or against Part VIII of the *Crimes Act 1900* in relation to an offence against Part III of the *Crimes Act 1900*;
- (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’ has the meaning given by 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
92EA	Sexual relationship with young person
92F - 92K (inclusive)	Indecency offences

Offence	Description
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;
- (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;
- (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 1 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, unless the contrary intention appears—

- (a) a reference to an applicant shall be read as a reference to the person on whose behalf the application is made;

- (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;
- (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 II—ELIGIBILITY FOR FINANCIAL ASSISTANCE

“Division 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 sections 92A to 92L of the *Crimes Act 1900* (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 paragraph (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 ACT 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 Australian Capital Territory 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 section 7 of the *Fire Brigade Act 1957*; 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;
- (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 33 and s 34 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 32 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* and the regulations made under that Act.

“Division 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 subsection 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;
- (b) where the amount of the assistance that would be awarded but for this subsection is less than \$100;
- (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* and the regulations made under that Act.

“Division 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* and the regulations under that Act.

“PART III—AWARD OF FINANCIAL ASSISTANCE

“Division 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;
- (b) be in accordance with the form in the Schedule; and
- (c) be accompanied by a copy of—
 - (i) any relevant medical report;
 - (ii) any relevant statement made to a police officer;
 - (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;
 - (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.

“(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 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 of Part II applies—the primary victim and any person responsible for the maintenance of the victim;
 - (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 or 4 would equal or exceed the amount of the award of financial assistance that the court would otherwise order.

“Division 3—Set-offs: primary victims, responsible persons and eligible property owners

“34. **Application of Division—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 (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 section 437 of the *Crimes Act 1900* 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* of the Commonwealth; 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 1947* of the Commonwealth payable as a consequence of the injury.

“36. Set-offs—special assistance (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 (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 (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 4—Set-offs: related victims

“39. Application of Division—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 (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 section 437 of the *Crimes Act 1900*;
- (d) an amount in respect of the injury payable—
 - (i) as a medicare benefit under the *Health Insurance Act 1973* of the Commonwealth; or
 - (ii) under a contract of insurance;
- (e) the amount of any pension or allowance under the *Social Security Act 1947* of the Commonwealth payable as a consequence of the injury.

“41. Set-offs—special assistance (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 5—Miscellaneous

“42. Adjudgment 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 or 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.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.

“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 IV—RECOVERY OF FINANCIAL ASSISTANCE

“Division 1—Preliminary

“52. Interpretation

In this Part—

‘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 section 448 of the *Crimes Act 1900*) when sentence was passed on the offender for that other offence.

“Division 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 3 or 4 of Part III 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.

Penalty: 50 penalty units or 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 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 Part IV of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

“(4) A notice of a provisional order shall—

- (a) set out the terms of the order;
- (b) specify the date on which the final award was made and the facts on which the award was based;
- (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;
- (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;
- (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;
- (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 2 in respect of the relevant criminal conduct—

- (a) where the amount paid under Division 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 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 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 2 in respect of the relevant criminal conduct—

- (a) where the amount paid under Division 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 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 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

“(1) 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;
- (d) the Registrar of Motor Vehicles.

“(2) In this section—

‘chief police officer’ means the police officer who is responsible for the day-to-day administration and control of police services in the Territory.

“Division 4—Reimbursement of offenders

“64. Reimbursement of offender where amounts paid under Divisions 2 and 3

“(1) This section applies where—

- (a) a defendant has fully complied with an order for restitution made under Division 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 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 3 under the order for restitution;
- (b) the amount of the assisted person’s liability under Division 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.”.

6. Insertion

The Principal Act is amended by inserting after section 35 the following section:

“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.”.

7. Renumbering—Criminal Injuries Compensation Act

(1) The provisions of the Principal Act (as in force immediately before the day on which this section commences), being the provisions listed in column 1 of the following table, are renumbered in accordance with the following table:

Existing provision	Renumbered provision
Part III	Part V
Section 34A	Section 65
Section 34B	Section 66
Section 34C	Section 67
Section 34D	Section 68
Section 34E	Section 69
Section 34F	Section 70
Part IV	Part VI
Section 35	Section 71
Section 36	Section 73

(2) A reference in this Act to a provision of the Principal Act that is renumbered by this section (other than in text inserted by this Act into the Principal Act or another Act) is to be taken to be a reference to that provision as numbered in the Principal Act immediately before the day on which this section commences.

(3) A reference to a provision of the Principal Act that has been renumbered by this section, being a reference—

- (a) in a provision of the Principal Act as in force immediately before the day on which this section commences, whether or not the latter provision has commenced;
- (b) in a provision of another law of the Territory made before the day on which this section commences, whether or not the latter provision has commenced; or
- (c) in any instrument or document;

shall (except as regards the operation of the provision before it was renumbered) be construed as a reference to that provision as so renumbered.

PART III—VICTIMS OF CRIME ACT 1994

8. Principal Act

In this Part, “Principal Act” means the *Victims of Crime Act 1994*.

9. Interpretation

Section 3 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of the definition of “victim” in subsection (1) “or” (last occurring);
- (b) by adding at the end of paragraph (c) of the definition of “victim” in subsection (1) “or”;
- (c) by adding at the end of the definition of “victim” in subsection (1) the following paragraph:
 - “(d) a primary victim, a related victim or an eligible property owner within the meaning of the *Victims of Crime (Financial Assistance) Act 1983*”; and
- (d) by inserting in subsection (1) the following definition:
 - “ ‘victims services scheme’ means the scheme established under Part IV.”.

10. Insertion

After section 18 of the Principal Act the following Part is inserted:

“PART IV—VICTIMS SERVICES SCHEME

“19. Victims services scheme—establishment

“(1) A victims services scheme shall be established in accordance with the regulations.

“(2) Regulations made for the purposes of this section may provide for the following matters:

- (a) the nomination of a service agency to be responsible for the management of the scheme;
- (b) the establishment of a Victims Assistance Board with the following functions:
 - (i) the preparation of guidelines for the management of the scheme;
 - (ii) the management of funding arrangements for the responsible service agency;
 - (iii) such other functions relating to the scheme as are prescribed by the regulations;
- (c) conditions for eligibility for the scheme;
- (d) different levels of services for different categories of victim, or for victims in different circumstances;
- (e) the performance of functions in relation to the scheme by the Coordinator (other than functions inconsistent with the Coordinator’s other functions under this Act);
- (f) the nomination of a person or body as the annual reporting authority for the scheme;
- (g) any other matters necessary or convenient for the establishment or operation of the scheme.

“20. Victims services scheme—eligibility

All victims are eligible for assistance under the victims services scheme, subject to regulations made for the purposes of section 19.

“21. Victims services scheme—annual report

The *Annual Reports (Government Agencies) Act 1995* applies in relation to the victims services scheme as if—

- (a) the annual reporting authority nominated pursuant to the regulations were a public authority within the meaning of that Act;
- (b) that Act required the annual reporting authority to prepare an annual report relating to the operations of the scheme within the relevant reporting period; and
- (c) the appropriate administrative unit for the purposes of that Act were the administrative unit responsible for the administration of this Act.

“22. Victims services scheme—access to information and protection of privacy

For the avoidance of doubt—

- (a) the victims services scheme is declared to be a health service provider for the purposes of the *Health Records (Privacy and Access) Act 1997*; and
- (b) that Act accordingly applies in relation to any health record (within the meaning of that Act) held by the victims services scheme in relation to a victim.”.

11. Renumbering—Victims of Crime Act

- (1) Part IV of the Principal Act is renumbered as Part V.
- (2) Section 19 of the Principal Act is renumbered as section 23.

PART IV—CRIMES ACT 1900

12. Reparation orders

Section 437 of the *Crimes Act 1900* is amended by inserting after subsection (1) the following subsection:

“(1A) A person who has suffered loss or incurred expense as a direct result of the commission of an offence referred to in subsection (1) may, before the court passes sentence on the offender, apply to the court in a form prescribed by the regulations for an order referred to in subsection (1).”.

PART V—CONSEQUENTIAL AMENDMENTS

13. Consequential amendments

- (1) The *Criminal Injuries Compensation Act 1983* is further amended as set out in Schedule 1.
- (2) The Acts specified in Schedule 2 are amended as set out in that Schedule.
- (3) The *Criminal Injuries Compensation Regulations* are amended as set out in Schedule 3.

PART VI—TRANSITIONAL

14. Interpretation

In this Part—

“amended Act” means the *Criminal Injuries Compensation Act 1983*, as amended by this Act;

“award” means—

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

as the case requires;

“commencement day” means the day on which the provisions of this Act except sections 1 and 2 commence;

“Compensation Act” means the *Criminal Injuries Compensation Act 1983*, as in force before the commencement day;

“compensation for pain and suffering” means compensation for pain and suffering as referred to in paragraph 6 (1) (c) of the Compensation Act;

“final award” means—

- (a) an award of compensation under Part II of the Compensation Act; or
- (b) an award of financial assistance under Part II of the amended Act;

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

“interim award” means—

- (a) an interim award of compensation under section 16 of the Compensation Act; or
- (b) an interim award of financial assistance under section 43 of the amended Act;

as the case requires;

“undetermined application for compensation” means an application for compensation under the Compensation Act where, immediately before the commencement day—

- (a) no award had been made in relation to the application;
- (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.

15. Proceedings instituted on or before 23 June 1998

The Compensation 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 the Compensation Act effected by this Act had not been made.

16. Undetermined applications—proceedings instituted after 23 June 1998

(1) The Compensation Act continues to apply in relation to an undetermined application for compensation made after 23 June 1998 as if the amendments to the Compensation Act effected by this Act had not been made, subject to this section.

(2) Where, 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;

- (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) Nothing in this section prevents 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.

17. Variation of orders—proceedings instituted after 23 June 1998

(1) The Compensation Act continues to apply in relation to the variation, under section 18 of that Act, of a final award made under the Compensation Act pursuant to an application for compensation made after 23 June 1998, subject to this section.

(2) A final award made under the Compensation 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) Nothing in this section prevents a court from varying a final award made under section 18 of the Compensation Act in its application under subsection (1) with the effect of decreasing any amount of compensation for pain and suffering included in the award.

18. Claims for special assistance where compensation for pain and suffering not available

- (1) Where, pursuant to an undetermined application for compensation made after 23 June 1998 in relation to a prescribed injury within the meaning of the Compensation 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 shall be lodged in the office of the Registrar of the Magistrates Court within the period of 12 months after the commencement day.
- (3) The Magistrates 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 lodging of 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.

SCHEDULE 1

Subsection 13 (1)

CRIMINAL INJURIES COMPENSATION ACT 1983—

FURTHER AMENDMENTS

Section 34A (definition of “levy”)—

Omit “subsection 34D (1)”, substitute “subsection 68 (1)”.

Subsection 35 (1)—

Omit “Registrar of the Supreme Court” (first occurring), substitute “Registrar”.

Paragraphs 35 (1) (a) and (b)—

Omit “for compensation”.

Paragraph 35 (1) (d)—

Omit “Registrar of the Supreme Court”, substitute “Registrar”.

The Schedule—

(a) Omit “Section 10”, substitute “Section 26”.

(b) Omit “*Criminal Injuries Compensation Act 1983*” (first occurring), substitute “*Victims of Crime (Financial Assistance) Act 1983*”.

(c) Omit all the words from and including “To: The Registrar of the Supreme Court of the Australian Capital Territory*” to and including “*Criminal Injuries Compensation Act 1983*”, substitute:

“IN THE MAGISTRATES COURT No. of [year]
AT CANBERRA

To the Registrar:

I, [name], of [address], apply to the court for an award of financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*.”.

(d) Omit paragraphs (1) (c), (d) and (e), substitute the following paragraph:

“ * (c) as a person who, immediately before the death of [name of deceased] (a death resulting from the injury specified below) had the following relationship with the deceased:

* (i) *close family member*;†

* (ii) *dependant*;‡

* (iii) *intimate personal relationship*.”.

SCHEDULE 1—continued

(e) Add at the end the following notes:

“† A **close family member** (as defined in the Act) is a person who had a genuine personal relationship with the deceased person immediately before the person’s death, and who was at that time—

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

‡ A **dependant** (as defined in the Act) is—

- (a) a person wholly or partly dependent on the deceased person’s income;
- (b) a person who would have been wholly or partly dependent on the income of the deceased person but for the incapacity of the person due to the relevant injury before his or her death; or
- (c) a child of the deceased born after his or her death who would have been a dependant by virtue of paragraph (a) or (b) if he or she had been born before the death of the deceased.”.

SCHEDULE 2

Subsection 13 (2)

CONSEQUENTIAL AMENDMENTS—OTHER ACTS

Evidence (Closed-Circuit Television) Act 1991

Paragraph 4 (1) (ea)—

Omit “*Criminal Injuries Compensation Act 1983*”, substitute “*Victims of Crime (Financial Assistance) Act 1983*”.

Magistrates Court Act 1930

Subsection 141 (1A)—

Omit “Part III of the *Criminal Injuries Compensation Act 1983*”, substitute “Part V of the *Victims of Crime (Financial Assistance) Act 1983*”.

Section 146 (definition of “fine”, paragraph (d))—

Omit “*Criminal Injuries Compensation Act 1983*”, substitute “*Victims of Crime (Financial Assistance) Act 1983*”.

Supreme Court Act 1933

Sub-subparagraph 37B (2) (c) (v) (C)—

Omit the sub-subparagraph.

SCHEDULE 3

Subsection 13 (3)

CRIMINAL INJURIES COMPENSATION REGULATIONS

Regulation 1—

Omit “*Criminal Injuries Compensation Regulations*”, substitute “*Victims of Crime (Financial Assistance) Regulations*”.

Regulation 3 (definition of “Act”)—

Omit “*Criminal Injuries Compensation Act 1983*”, substitute “*Victims of Crime (Financial Assistance) Act 1983*”.

Regulation 3 (definition of “levy”)—

Omit “subsection 34D (1)”, substitute “subsection 68 (1)”.

New regulation 3A—

After regulation 3 insert the following regulation:

“3A Maximum legal fees

For section 47 of the Act, the maximum amount of legal fees that a legal practitioner may charge or recover in respect of proceedings under the Act is \$650.”.

Paragraphs 4 (3) (d) and (i)—

Omit “section 34D”, substitute “section 68”.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 26 November 1998]

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