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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

VICTIMS OF CRIME (FINANCIAL ASSISTANCE) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
Mr Jon Stanhope MLA

VICTIMS OF CRIME (FINANCIAL ASSISTANCE) AMENDMENT BILL 2003

This explanatory statement relates to the Bill as introduced into the Legislative Assembly.

Overview of Bill

This Bill amends the *Victims of Crime (Financial Assistance) Act 1983* (the Act) and the *Victims of Crime (Financial Assistance) Regulations 1998*. The Act deals primarily with the provision of financial assistance by the Territory to victims of a violent crime, and certain other affected persons.

These amendments are consequential upon the Government's response to a report prepared by Dr Anthony Dare "Assistance for Victims of Crime in the ACT – A review of the operation of the *Victims of Crime (Financial Assistance) Act 1983* and the victims services scheme" (the Dare Report). The Government Response to the report was tabled in the Legislative Assembly on 17 June 2003.

This Bill amends the Act by removing awards in respect of pain and suffering for police officers, ambulance officers and firefighters as these provisions were widely regarded as being unfair and inequitable. Similarly, awards in respect of pain and suffering for victims of sexual offences are also removed to place all victims of crime on an equal footing.

The Act will no longer make it mandatory for a victim to report the relevant crime to the police before being eligible to claim financial assistance and the *Victims of Crime (Financial Assistance) Regulations 1998* will be amended to increase the legal fee cap of \$650 to \$800.

Outline of provisions

Clause 1 Name of Act

This clause sets out the name of the proposed Act as the *Victims of Crime (Financial Assistance) Amendment Act 2003*.

Clause 2 Commencement

This clause provides that the Act will commence the day after its notification on the Legislation Register.

Clause 3 Act amended

This clause states that the Bill amends the *Victims of Crime (Financial Assistance) Act 1983*. The Bill also amends the *Victims of Crime (Financial Assistance) Regulations 1998*.

Clauses 4 and 5 Definitions for Act Section 2, definitions and remainder

Clause 4 places the dictionary at the end of the Act and clause 5 provides that the dictionary forms part of the Act defining particular words and expressions used in the Act.

New section 2A makes clear that notes in the Act are explanatory only and do not form part of the Act.

Clause 6 Financial assistance for primary victims and responsible persons
Section 10(1)(d), (e) and (f)

Under the present Act awards in respect of pain and suffering are only available to specified occupational groups – police, firefighters and ambulance officers and in respect of specified crimes – sexual offences. These eligibility provisions of the Act drew the most comment during the review and the retention of pain and suffering awards for some categories of victims, but not others, was regarded as unfair. This clause removes the award of special assistance for pain and suffering in respect of these victims.

The removal of this special award for pain and suffering will see all victims of crime placed on an equal footing. No classes of persons will be eligible for special compensation over and above other victims of crime merely on the basis of an occupation or characteristic that is not related to the severity of the actual injury sustained. It should be noted that these victims, particularly of sexual offences, will not be left without recourse. Apart from the payment of expenses of up to \$20,000, many may be eligible for the “special assistance” payment of \$30,000 under section 10(1)(d) of the Act, if their injury is an “extremely serious injury” under the Act.

Section 10(1)(d) is amended to remove the reference to former paragraphs (e) and (f), which contained the provisions relating to police, firefighters, ambulance officers and sexual offence victims respectively.

Clause 7 Section 10(5)

This clause is consequential upon the amendment in clause 6 and omits the definitions of “ambulance officer” and “firefighter”. Police officer was not defined for this section.

Clause 8 No financial assistance for primary victims or responsible persons
Section 12(1)(b) and (c)

The Act presently makes it mandatory for a victim to report the relevant crime to the police before financial assistance may be claimed. This clause removes this requirement as it is recognised that some victims, particularly women, are extremely reluctant to report to the police out of fear, embarrassment, shame, discomfort, social or cultural reasons. This amendment will enable these victims to seek financial assistance in respect of their injuries without making a police report.

It should be noted that applicants will still be required to establish, on the balance of probabilities, that the relevant offence was committed. As a matter of practice, if that offence has not previously been reported or investigated by the police, it may be very difficult for a victim to provide the court with sufficient evidence to support their application. Victims who choose not to report to the police are likely to face increased delays and expenses in establishing their claim if they, rather than the police, have to collect the necessary evidence to satisfy the court that the offence was committed. Importantly, victims who have not reported to the police are also more likely than other victims to be required to give evidence in court (and to be cross-examined) about their claims. Conversely, where there is a comprehensive police report, a claim is more likely to be dealt with quickly and “on the papers”.

A technical amendment has been made to section 12(1)(b) (removing the “or”).

Clause 9 No financial assistance for related victims

Section 18(1)(c) and (d)

This clause removes the requirement for a report to be made to the police prior to claiming financial assistance where assistance is sought by a related victim, consistent with the removal of the reporting requirement for primary victims.

A technical amendment has been made to section 18(1)(c).

Clause 10 Application for financial assistance

Section 27(1), note

Clause 10 omits the note relating to the use of approved forms under the Act and relocates it – see clause 12.

Clause 11 Section 27(1)(b)(v)

This is a technical amendment.

Clause 12 New section 27(1)(b)(vi)

This clause provides that an applicant attach any other document under their control, such as photographs, dental records and witness statements, that is relevant to their claim for financial assistance. Even though a police report will not be mandatory, an applicant will still be required to establish, on the balance of probabilities, that the relevant offence was committed to support their claim for financial assistance. The provision will assist applicants to turn their mind to the types of documents that could be relied on to make a best case for financial assistance.

Clause 13 New part 8

This clause contains a new Part 8 providing transitional provisions.

80 *Meaning of commencement day for pt 8*

New section 80 defines the term “commencement day” as meaning the day the provisions of this Bill commence. This will be the day after the notification of the Bill on the Legislation Register.

81 *Pre-commencement day applications*

New section 81 provides that the current section 27 (unamended), which deals with the application process for financial assistance, continues to apply to applications lodged before the commencement day. However, if an application is lodged after the commencement day, then the new, amended section 27, requiring any other relevant information to be filed with the application, will apply. As section 27 is a procedural provision not affecting the substantive rights of the individual, it is considered more expedient that all applicants comply with the same application process for ease of administration.

82 *Pre-commencement day injuries*

New section 82 makes it clear that the provisions of the Act as unamended (other than section 27), continue to apply in relation to an injury that occurred before the commencement day. This means that if, for example, a police officer is injured in the course of duty, or a person is a victim of a sexual offence before the amendments commence, they would still be able to apply for special assistance by way of reasonable compensation for pain and suffering under the previous legislation. This provision is necessary to ensure that these applicants do not have their rights to claim financial assistance adversely affected, or it could be regarded as an acquisition of property and

be invalid. Applicants will still be required to make a police report in respect of injuries that occurred before the commencement day, consistent with the previous law.

83 *Expiry of part 8*

New section 83 provides that the transitional provisions will have effect for two years from the commencement day. This is to accommodate applications that may be made 12 months from the day before the commencement day and for any applications that may be granted an out of time motion by the court. However, section 88 of the *Legislation Act 2001* has the effect of continuing the transitional provisions beyond the expiry date if necessary.

Clause 14 New dictionary

This clause inserts the dictionary and relocates the definitions under the Act.

Clause 15 Victims of Crime (Financial Assistance) Regulations 1998, regulation 3A

This clause amends the regulations, raising the capped fee that may be charged by solicitors who provide legal assistance in preparing an application for financial assistance. The fee will be increased from \$650 to \$800. This takes into account the amount of work that some financial assistance applications can involve, while balancing the need to avoid placing an increased financial burden on victims of crime. Anything more than \$800 could prove prohibitive for some victims.