

NORTHERN TERRITORY OF AUSTRALIA
CRIMES (VICTIMS ASSISTANCE) AMENDMENT ACT 2002

Act No. 57 of 2002

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

Act No. 57 of 2002

AN ACT

to amend the *Crimes (Victims Assistance) Act*

[Assented to 18 October 2002]
[Second reading 22 August 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Crimes (Victims Assistance) Amendment Act 2002*.

2. Commencement

This Act comes into operation on 1 November 2002.

3. Principal Act

The *Crimes (Victims Assistance) Act* is in this Act referred to as the Principal Act.

4. Repeal and substitution

Sections 6 and 7 of the Principal Act are repealed and the following substituted:

"6. Service of copy of application

"(1) A copy of an application under section 5 is to be served on the Territory at the Office of the Solicitor for the Northern Territory not later than 7 days after the application is filed at the Court.

"(2) Service under subsection (1) may be effected by post, facsimile transmission or personal service.

"7. Parties

"The parties to proceedings in respect of an application under section 5 are the applicant or applicants and the Territory."

5. Consent agreement

Section 10A of the Principal Act is amended –

- (a) by omitting from subsection (1) "all"; and
- (b) by omitting subsection (3) and substituting the following:

"(3) If an applicant rejects an offer made by the Territory to pay an amount of assistance to him or her and, after hearing the application in respect of which that offer was made, the Court –

- (a) issues an assistance certificate that specifies an amount of assistance equal to or less than the amount offered; and
- (b) makes an order that the applicant is entitled to be paid costs in respect of his or her application,

the applicant is not entitled to costs incurred by him or her after the date on which the Territory made that offer."

6. Assistance certificate not to be issued in certain circumstances

Section 12 of the Principal Act is amended –

- (a) by inserting after paragraph (b) the following:
 - "(ba) where the commission of the offence has not been reported to a member of the Police Force before the date on which the Court considers the issuing of the assistance certificate, unless the Court is satisfied that circumstances existed which prevented the reporting of the commission of the offence;"
- (b) by omitting from paragraph (d) "or";
- (c) by omitting from paragraph (e) "Code." and substituting "Code; or"; and

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(d) by adding at the end the following:

"(f) in respect of an injury or death that occurred during the commission of a crime by the victim."

7. Limitation on amount

Section 13 of the Principal Act is amended –

(a) by omitting from subsection (2)(a) "offender; or" and substituting "offender;"; and

(b) by inserting after subsection (2)(a) the following:

"(aa) by way of private medical insurance benefit; or".

8. Procedure

Section 15 of the Principal Act is amended by adding at the end the following:

"(4) A Judicial Registrar appointed under section 9(1) of the *Local Court Act* may exercise all the powers and perform all the functions of the Court under this Act, subject to practice directions given by the Chief Magistrate."

9. New section

The Principal Act is amended by inserting after section 15 the following:

"15A. Appeal from order of Judicial Registrar or Registrar

"(1) A party to proceedings in respect of an application under section 5 may appeal to the Court constituted by a magistrate against a determination made by a Judicial Registrar that an assistance certificate is, or is not, to be issued.

"(2) A party to proceedings commenced under section 21 may appeal to the Court constituted by a magistrate against a determination made by a Judicial Registrar –

(a) that the Territory is entitled to recover from an offender a specified amount; or

(b) that the Territory is not entitled to recover any amount from an offender.

"(3) An appeal under subsection (1) or (2) is to be in accordance with Part 37 of the Local Court Rules.

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"(4) A party to proceedings under this Act may appeal to the Court constituted by a magistrate against an order in those proceedings made by a Judicial Registrar or Registrar.

"(5) An appeal under subsection (4) is to be in accordance with rule 4.04 of the Local Court Rules.

"(6) A party to proceedings under this Act is not entitled to appeal to the Supreme Court against a determination or an order to which this section applies.

"(7) An appeal under this section does not operate as a stay of the determination or order appealed against unless a magistrate orders otherwise."

10. Adjournments

Section 16 of the Principal Act is amended –

- (a) by omitting from subsection (1) "Solicitor for the Northern";
- (b) by inserting after subsection (1)(a) the following:

"(aa) the victim or dependant of the victim is an alleged offender in proceedings in respect of another application for an assistance certificate or in proceedings commenced or to be commenced under section 21;" and

- (c) by omitting from subsection (2) "Solicitor for the Northern".

11. Proof and evidence

Section 17 of the Principal Act is amended by adding at the end the following:

"(3) In proceedings under this Act, all evidence is to be given by affidavit and a party is not entitled to cross-examine the deponent of an affidavit without the leave of the Court."

12. New section

The Principal Act is amended by inserting after section 17 the following:

"17A. Legal professional privilege and section 12(2) of *Evidence Act* not to apply

"(1) In this section –

'hospital report' means a statement in writing concerning a victim made by or on behalf of a hospital, rehabilitation centre or other medical institution;

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'medical expert' means a person lawfully practising in a branch of medicine, dentistry, pharmacology, occupational therapy, physiotherapy, rehabilitation, ergonomics or related field;

'medical report' means a statement in writing by a medical expert concerning a victim and includes a document which the medical expert intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently.

"(2) The common law rule known as legal professional privilege does not apply to a medical report, hospital report or other medical document that relates to an application under section 5.

"(3) Section 12(2) of the *Evidence Act* does not apply in relation to proceedings under this Act."

13. Repeal and substitution

Sections 21 and 22 of the Principal Act are repealed and the following substituted:

"21. Territory may commence proceedings to recover from offender

"(1) Where the Territory has paid an amount under section 20, it may commence proceedings for recovery of an equal amount from the offender alleged to have committed the offence that resulted in the injury or death in respect of which the payment was made.

"(2) Proceedings under this section are to be commenced not later than 3 years after the date of issue of the assistance certificate relating to the amount paid under section 20.

"(3) In proceedings under this section, the Territory must prove to the satisfaction of the Court –

- (a) that the Territory paid an amount under section 20;
- (b) the total amount paid by the Territory under section 20; and
- (c) that the offender named in the proceedings was found guilty of an offence that resulted in the injury or death in respect of which that payment was made or that on the balance of probabilities the offender committed that offence.

"(4) The Court may reduce the amount to be recovered by the Territory in proceedings under this section if –

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- (a) the offender satisfies the Court that the victim contributed to his or her injuries or death; or
- (b) the Court is satisfied that the amount paid under section 20 was excessive in the circumstances.

"(5) Subsection (4) applies even though the amount of assistance has already been reduced under section 10(2).

"(6) If the Court is satisfied that the assistance certificate specifying the amount to be paid by the Territory should not have been issued, the Court may determine that the Territory is not entitled to recover any amount from the offender.

"22. Right of Territory to recover by set-off

"After an order has been made in proceedings under section 21 that the Territory may recover an amount from a person who is an alleged offender in respect of an application under section 5, the Territory has the right to recover all or part of that amount by way of set-off where, in respect of another application under section 5, an amount of assistance is payable to that person."

14. Costs

Section 24 of the Principal Act is amended by adding at the end the following:

"(3) If the Court dismisses or strikes out an application under section 5, the Court may order that the applicant must pay all or part of the costs incurred by the Territory in respect of the application.

"(4) The Regulations –

- (a) may prescribe a lump sum fee for specified work done in respect of an application under section 5, and specified disbursements incurred in doing that work, as the costs allowable in respect of that application; and
- (b) may prescribe a percentage of the costs otherwise allowable under the Appendix to Order 63 of the Supreme Court Rules as the costs allowable for work done in respect of an application under section 5.

"(5) A legal practitioner who is entitled to recover costs in respect of an application under section 5 may claim those costs as prescribed under subsection (4)(a) or as prescribed under subsection (4)(b)."

15. Amendments of Crimes (Victims Assistance) Regulations

(1) The Crimes (Victims Assistance) Regulations are amended by adding at the end the following:

"5. Costs: lump sum fees etc. allowable if assistance not over \$5 000

"(1) For the purposes of section 24(4)(a) of the Act, the fees and disbursements allowable as costs in respect of an application under section 5 of the Act, where the assistance certificate specifies an amount not exceeding \$5 000, are as follows:

- (a) a fee of –
 - (i) \$750 for work up to and including the first prehearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application, attending the mention and attending the first prehearing conference; or
 - (ii) \$1 050 if the work referred to in subparagraph (i) also includes an application for an extension of time for the purposes of section 5(3) of the Act;
- (b) an additional fee of –
 - (i) \$350 for further work up to the hearing of the application, including obtaining additional expert medical reports, attending further prehearing conferences and all preparation for the hearing of the application; or
 - (ii) \$700 if the work referred to in subparagraph (i) relates to an application in respect of which the offender has not been found guilty of the offence that resulted in the injury suffered by the victim and where it was necessary to obtain police records or obtain evidence from witnesses;
- (c) for attending the hearing of an application, an additional fee of –
 - (i) \$400 if the hearing does not exceed half a day;
 - (ii) \$800 if the hearing exceeds half a day but does not exceed one day; or
 - (iii) \$800 for the first day of the hearing plus \$400 for each day or part of a day thereafter;
- (d) all reasonable disbursements, excluding counsel's fees.

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"(2) A fee referred to in subregulation (1)(c) is not allowable if, during the hearing of the application, the parties reach an agreement in pursuance of section 10A of the Act and the Court specifies the agreed amount in the assistance certificate.

"6. Costs: lump sum fees etc. allowable if assistance over \$5 000

"(1) For the purposes of section 24(4)(a) of the Act, the fees and disbursements allowable as costs in respect of an application under section 5 of the Act, where the assistance certificate specifies an amount exceeding \$5 000, are as follows:

- (a) a fee of –
 - (i) \$1 000 for work up to and including the first prehearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application, attending the mention and attending the first prehearing conference; or
 - (ii) \$1 300 if the work referred to in subparagraph (i) also includes an application for an extension of time for the purposes of section 5(3) of the Act;
- (b) an additional fee of –
 - (i) \$400 for further work up to the hearing of the application, including obtaining additional expert medical reports, attending further prehearing conferences and all preparation for the hearing; or
 - (ii) \$800 if the work referred to in subparagraph (i) relates to an application in respect of which the offender has not been found guilty of the offence that resulted in the injury suffered by the victim and where it was necessary to obtain police records or obtain evidence from witnesses;
- (c) for attending the hearing of an application, an additional fee of –
 - (i) \$500 if the hearing does not exceed half a day;
 - (ii) \$850 if the hearing exceeds half a day but does not exceed one day; or
 - (iii) \$850 for the first day of the hearing plus \$500 for each day or part of a day thereafter;
- (d) all reasonable disbursements, excluding counsel's fees.

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"(2) A fee referred to in subregulation (1)(c) is not allowable if, during the hearing of the application, the parties reach an agreement in pursuance of section 10A of the Act and the Court specifies the agreed amount in the assistance certificate.

"7. Costs: percentage of Supreme Court costs allowable

"For the purposes of section 24(4)(b) of the Act, the prescribed percentage is 40%."

(2) A regulation inserted by subsection (1) may be amended or repealed by a regulation as if the insertion had been by a regulation.

16. Further amendments

The Principal Act is amended as set out in the Schedule.

17. Transitional provisions

(1) Subject to this section, the Principal Act as amended by this Act applies in relation to an application made under section 5 of the Principal Act whether made before, on or after 1 November 2002.

(2) Sections 6 and 7 of the Principal Act as amended by this Act apply only in relation to applications filed at the Court on or after 1 November 2002.

(3) Section 10A of the Principal Act as in force immediately before 1 November 2002 continues to apply, on and after that date, to an application made before that date.

(4) Despite subsection (3), if an applicant to whom that subsection applies rejects an offer made by the Territory that is agreed to by the offender, and, after hearing the application in respect of which that offer was made, the Court –

- (a) issues an assistance certificate that specifies an amount of assistance equal to or less than the amount offered; and
- (b) makes an order that the applicant is entitled to be paid costs in respect of his or her application,

the applicant is not entitled to costs incurred by him or her after the date on which the Territory made that offer.

(5) Section 24(4) and (5) of the Principal Act as amended by this Act and regulations 5, 6 and 7 of the Crimes (Victims Assistance) Regulations apply only in relation to costs for work done on or after 1 November 2002.

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SCHEDULE

Section 16

Provision	Amendment	
	omit	substitute
Section 4(1)		
– paragraph (a) of the definition of "dependant"	him	the victim
Section 5(1)	suffered by him	suffered by the victim
Section 5(2)	him, prior to the issue to him	the victim prior to the issue to him or her
Section 8(10)	may make	may, subject to this Act and the Regulations, make
Section 9(1)(b) and (c)	his	his or her
Section 11	compensation to be specified in a compensation	assistance to be specified in an assistance
Section 19(2)	shall be in	are, subject to this Act and the Regulations, in
Section 23(2)	compensation	an amount by way of assistance
Section 25B(3)(a) and (4)	convicted	found guilty
Section 25B(4)(a)	\$30	\$60
Section 25B(4)(b)	\$20	\$40
Section 25B(5)	\$10	\$20
Section 25B(6)	\$5	\$10
Section 25B(7)	convicted	found guilty

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Section 25B(7)(a)(i)
and (ii)

conviction

finding of guilt

ALTERATION TO SECTION HEADING

On the day on which the *Crimes (Victims Assistance) Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the heading to section 11 of the *Crimes (Victims Assistance) Act* is altered by omitting "**compensation**" and substituting "**assistance**".