

NORTHERN TERRITORY OF AUSTRALIA
VICTIMS OF CRIME ASSISTANCE ACT 2006

Act No. 15 of 2006

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

Act No. 15 of 2006

AN ACT

to establish schemes to provide victims of violent acts with counselling and with financial assistance for financial loss and compensable injuries, and for related matters

[Assented to 18 May 2006]
[Second reading 29 March 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Victims of Crime Assistance Act 2006*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Objects

The objects of this Act are:

- (a) to assist the rehabilitation of victims of violent acts by implementing schemes to provide counselling and financial assistance for financial loss and compensable injuries; and

- (b) to enable the Territory to recover money from offenders found guilty of committing violent acts resulting in payments of financial assistance to their victims; and
- (c) to establish a fund for the schemes implemented by this Act and to provide revenue for the fund by imposing a levy on certain people.

4. Definitions

In this Act, unless the contrary intention appears:

"adult" means a person who is 18 or more years of age;

"appeal" means an appeal under Part 4, Division 6 against a decision mentioned in section 48;

"applicant", for Part 4, means the eligible victim by or for whom an application for immediate assistance or an award is made;

"approved form" means a form approved under section 66;

"assessor", of an application for an award, means the assessor appointed under section 24 who is deciding the application;

"assistance" means counselling or financial assistance;

"award" means an award of financial assistance under Part 4, Division 4;

"child" means a person who is less than 18 years of age;

"compensable injury" has the meaning in section 7(1);

"counselling" means counselling provided under the counselling scheme;

"counselling scheme" means the Victims Counselling Scheme established by section 20;

"Court" means the Local Court;

"CVSU" means the Crime Victims Services Unit established under the *Victims of Crime Rights and Services Act*;

"Director" means the person holding or occupying the office of Director of the CVSU under the *Victims of Crime Rights and Services Act*;

"eligible victim", for Part 4, means a primary victim, secondary victim or family victim of a violent act;

"family victim" has the meaning in section 13;

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"financial assistance" means any of the following under the financial assistance scheme:

- (a) an immediate payment for financial loss;
- (b) an award for financial loss;
- (c) an award for a compensable injury;

"financial assistance scheme" means the Victims Financial Assistance Scheme established by section 23;

"Fund" means the Victims Assistance Fund established by section 60;

"guidelines" means guidelines issued under section 65;

"immediate payment" means a payment of financial assistance under Part 4, Division 2;

"injury" has the meaning in section 6;

"medical expenses" includes expenses for any of the following:

- (a) medical, surgical, dental, ophthalmic, psychological or psychiatric treatment;
- (b) transportation by ambulance;
- (c) hospitalisation;
- (d) physiotherapy;

"offender", in relation to a violent act, means a person who committed the act or is alleged to have committed the act;

"primary victim" has the meaning in section 9;

"related victim" has the meaning in section 15;

"secondary victim" has the meaning in section 11;

"standard amount", for a compensable injury, means the amount prescribed by regulation under section 7(2);

"violent act" has the meaning in section 5.

5. Violent act

(1) A violent act is a criminal act, or a series of related criminal acts, whether committed by one or more persons, that:

- (a) occurs in the Territory; and
- (b) directly results in the injury or death of one or more persons regardless of where the injury or death occurs.

(2) For this section, a criminal act is an act, omission or event done, made or caused by a person:

- (a) that constitutes a criminal offence; or
- (b) if the person is excused from criminal responsibility due to age, mental impairment or other legal incapacity or by some other lawful defence – that would otherwise constitute a criminal offence.

(3) A series of related criminal acts occurs if:

- (a) 2 or more acts are committed against the same person; and
- (b) 2 or more of those acts:
 - (i) occur at approximately the same time; or
 - (ii) occur over a period of time and are committed by the same person or group of persons; or
 - (iii) share another common factor.

(4) A series of related criminal acts, whether committed by one or more persons, constitutes a single violent act.

(5) A criminal act may be related to another criminal act even though charges for offences constituted by those criminal acts are tried or heard separately.

(6) A criminal act for which financial assistance has been awarded is not related to another criminal act that occurs after the date on which the assessor gives notice of the award to the Director under section 44(1).

(7) For this Act, a person who attempts to commit a criminal act is taken to have committed the criminal act.

6. Injury

(1) An injury is any of the following:

- (a) a physical illness or injury;
- (b) a recognisable psychological or psychiatric disorder;
- (c) pregnancy;
- (d) a combination of any injuries mentioned in paragraphs (a) to (c).

(2) Subsection (1) does not include an injury resulting from the loss of or damage to property.

7. Compensable injury and standard amount

(1) A compensable injury is an injury, prescribed by regulation, for which the assessor may award financial assistance to a primary victim or secondary victim of a violent act.

(2) The Regulations must prescribe a standard amount of financial assistance as the award for a compensable injury.

(3) The standard amount may be a specified amount or an amount within a specified range.

8. Form of applications and lodgment at CVSU

(1) An application made to the Director under this Act must be in the approved form.

(2) A person who makes an application to the Director, or is required to give a document to the Director or an assessor, must do so by lodging the application or document at an office of the CVSU or with a person acting for the CVSU.

(3) The lodgment may be by one or a combination of the following methods:

- (a) personal delivery;
- (b) postal delivery;
- (c) facsimile transmission;
- (d) email.

PART 2 – ELIGIBILITY TO APPLY FOR ASSISTANCE

Division 1 – Categories of victims of violent acts and eligibility

9. Primary victim

(1) A primary victim of a violent act is a person who suffers an injury or dies as a direct result of the violent act.

(2) Also, a primary victim of a violent act is a person who suffers an injury or dies as a direct result of any of the following:

- (a) trying to prevent another person from committing a violent act;
- (b) trying to help or rescue another person against whom a violent act is being committed or has just been committed;
- (c) trying to arrest another person who is committing or has just committed a violent act.

10. Primary victim's eligibility to apply for assistance

(1) A primary victim of a violent act is eligible to apply for counselling required because of the violent act.

(2) A primary victim in circumstances of financial hardship is eligible to apply for an immediate payment of financial assistance for the primary victim's financial loss.

(3) A primary victim is eligible to apply for an award of financial assistance for the primary victim's financial loss.

(4) A primary victim is eligible to apply for an award of financial assistance for one or more compensable injuries suffered as a direct result of the violent act.

(5) For this section, a primary victim's financial loss is any of the following:

- (a) loss of earnings suffered or reasonably likely to be suffered by the primary victim as a direct result of the violent act;
- (b) expenses incurred by the primary victim due to loss of clothing and other personal effects as a direct result of the violent act;
- (c) medical expenses reasonably incurred or reasonably likely to be incurred by the primary victim as a direct result of the violent act;

- (d) in exceptional circumstances – other expenses reasonably incurred or reasonably likely to be incurred by the primary victim to assist the victim's recovery from the effects of the violent act.

Examples for subsection (5)(d)

1. *Relocation expenses.*
2. *Costs of securing the primary victim's place of residence or business.*

Notes for section 10

1. *Section 27(5) specifies the maximum immediate payment.*
2. *Section 38 specifies the following:*
 - (a) *the maximum award;*
 - (b) *the maximum award for all financial loss;*
 - (c) *the minimum standard amount for compensable injuries.*

11. Secondary victim

(1) A secondary victim of a violent act is a person who is present at the scene of the violent act and suffers an injury as a direct result of witnessing the violent act.

(2) Also, a secondary victim of a violent act is one of the following persons who suffers an injury as a direct result of subsequently becoming aware of the violent act:

- (a) a child or stepchild of the primary victim, or a child under the guardianship of the primary victim, when the violent act occurs;
- (b) if the primary victim is a child – a parent, step-parent or guardian of the primary victim when the violent act occurs.

(3) A person is not a secondary victim if the person committed the violent act.

12. Secondary victim's eligibility to apply for assistance

(1) A secondary victim of a violent act is eligible to apply for counselling required because of the violent act.

(2) A secondary victim in circumstances of financial hardship is eligible to apply for an immediate payment of financial assistance for the secondary victim's financial loss.

(3) A secondary victim is eligible to apply for an award of financial assistance for the secondary victim's financial loss.

(4) A secondary victim is eligible to apply for an award of financial assistance for one or more compensable injuries suffered as a direct result of witnessing or becoming aware of the violent act.

(5) If a secondary victim is also a family victim of the same violent act, the secondary victim is also eligible to apply as a family victim for an immediate payment or award for funeral expenses mentioned in section 14.

(6) For this section, a secondary victim's financial loss is any of the following:

- (a) loss of earnings suffered or likely to be suffered by the secondary victim as a direct result of witnessing or becoming aware of the violent act;
- (b) medical expenses reasonably incurred or reasonably likely to be incurred by the secondary victim as a direct result of witnessing or becoming aware of the violent act;
- (c) in exceptional circumstances – other expenses reasonably incurred or reasonably likely to be incurred by the secondary victim to assist the victim's recovery from the effects of witnessing or becoming aware of the violent act.

Examples for subsection (6)(c)

- 1. *Relocation expenses.*
- 2. *Costs of securing the secondary victim's place of residence or business.*

Notes for section 12

- 1. *Section 27(5) specifies the maximum immediate payment.*
- 2. *Section 39 specifies the following:*
 - (a) *the maximum award for all secondary victims of the same violent act;*
 - (b) *the maximum award for all the financial loss of each secondary victim of the same violent act;*
 - (c) *the minimum standard amount for compensable injuries.*

13. Family victim

(1) A family victim of a violent act is a person who, when the violent act occurs, is one of the following:

- (a) the spouse or de facto partner of the primary victim of the violent act;
- (b) a parent, step-parent or guardian of the primary victim of the violent act;

- (c) a child or stepchild of the primary victim of the violent act or a child under the guardianship of the primary victim of the violent act;
- (d) a person entirely or substantially dependent for financial support on the primary victim of the violent act.

(2) In subsection (1)(c), a reference to a child of the primary victim includes a reference to a child of the primary victim born after the violent act occurs.

(3) It is immaterial whether or not the family victim suffers an injury as a result of the violent act.

(4) A person is not a family victim if the person committed the violent act.

14. Family victim's eligibility to apply for assistance

(1) A family victim of a violent act is eligible to apply for counselling required because of the violent act.

(2) A family victim of a violent act directly resulting in the death of the primary victim is eligible to apply for an immediate payment of financial assistance for the following financial loss:

- (a) funeral expenses for the primary victim incurred by the family victim;
- (b) if the family victim is in circumstances of hardship – financial loss mentioned in subsection (3)(b) to (d).

(3) A family victim of a violent act directly resulting in the death of the primary victim is eligible to apply for an award of financial assistance for any of the following financial loss:

- (a) funeral expenses for the primary victim incurred by the family victim;
- (b) if the family victim was entirely or substantially dependent on the primary victim for financial support – loss of money that, but for the death of the primary victim, the family victim would have been reasonably likely to receive from the primary victim during the year immediately after the death;
- (c) medical expenses reasonably incurred or reasonably likely to be incurred by the family victim for the primary victim as a direct result of the death;

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- (d) in exceptional circumstances – other expenses reasonably incurred or reasonably likely to be incurred by the family victim to assist the victim's recovery from the effects of the death of the primary victim.

Examples for subsection (3)(d)

1. *Relocation expenses.*
2. *Costs of securing the family victim's place of residence or business.*

Notes for section 14

1. *Section 27(5) specifies the maximum immediate payment.*
2. *Section 40 specifies the following:*
 - (a) *the maximum award for all family victims of the same violent act;*
 - (b) *the maximum award for all the financial loss of each family victim of the same violent act.*

15. Related victim

(1) A related victim of a violent act is a person who, when the violent act occurs, is one of the following:

- (a) a relative of the primary victim of the violent act;
- (b) a person in an intimate personal relationship with the primary victim of the violent act.

(2) A person is not a related victim of a violent act if the person:

- (a) is a family victim of the violent act; or
- (b) committed the violent act.

(3) The Regulations may exclude persons from the category of related victim.

16. Related victim's eligibility to apply for counselling

A related victim of a violent act is eligible to apply for counselling required because of the violent act.

Division 2 – Miscellaneous matters

17. Eligibility if injury suffered in motor accident

(1) A person who suffers an injury as a direct result of a violent act (the "injured person") is not eligible to apply as a primary victim for financial

assistance for the same (or substantially the same) injury if the person:

- (a) is being paid, or has been paid, a benefit under the *Motor Accidents (Compensation) Act* for the injury; or
- (b) is entitled to a benefit under the *Motor Accidents (Compensation) Act* for the injury, regardless of whether the injured person has made a claim for such a benefit.

(2) Subsection (1) applies even if the nature of the damage or loss for which a benefit is payable to the injured person under the *Motor Accidents (Compensation) Act* is different from the nature of the damage or loss for which the injured person would, apart from subsection (1), be eligible to apply for financial assistance.

(3) A person who would, apart from subsection (1), be a secondary victim or family victim of the violent act against the injured person is not eligible for financial assistance in connection with the violent act.

(4) Subsection (1) does not prevent:

- (a) the injured person from applying for counselling as a primary victim of the violent act; or
- (b) any other person from applying for counselling as a secondary victim, family victim or related victim of the violent act.

18. Eligibility if injury suffered in course of employment

(1) A worker who suffers an injury as a direct result of a violent act is not eligible to apply as a primary victim for financial assistance for the same (or substantially the same) injury if the worker:

- (a) is being paid, or has been paid, compensation under the *Work Health Act* for the injury; or
- (b) is entitled to compensation under the *Work Health Act* for the injury, regardless of whether the worker has made a claim for such compensation.

(2) Subsection (1) applies even if the nature of the damage or loss for which compensation is payable to the worker under the *Work Health Act* is different from the nature of the damage or loss for which the worker would, apart from subsection (1), be eligible to apply for financial assistance.

(3) A person who would, apart from subsection (1), be a secondary victim or family victim of the violent act against the worker is not eligible for financial assistance in connection with the violent act.

- (4) Subsection (1) does not prevent:
 - (a) the worker from applying for counselling as a primary victim of the violent act; or
 - (b) any other person from applying for counselling as a secondary victim, family victim or related victim of the violent act.
- (5) In this section:

"worker" has the same meaning as in the *Work Health Act*.

19. Deceased primary victim's estate

(1) Despite any law to the contrary, on the death of a primary victim of a violent act, the primary victim's eligibility for or entitlement to receive financial assistance does not survive for the benefit of the primary victim's estate.

(2) Subsection (1) does not prevent any other person from applying for counselling or financial assistance as a secondary victim, family victim or related victim of the violent act.

PART 3 – VICTIMS COUNSELLING SCHEME

20. Establishment of Victims Counselling Scheme

The Victims Counselling Scheme is established.

21. Approval of counsellors and organisations

(1) The Director may approve persons to be counsellors under the counselling scheme.

(2) The Director may approve organisations to provide counselling and related services under the counselling scheme.

(3) If the Director has approved an organisation under subsection (2), the Director need not approve a person to be a counsellor if the person is employed by the organisation to provide counselling under the counselling scheme.

22. Application for counselling

A primary victim, secondary victim, family victim or related victim may apply for counselling to a person or organisation approved under section 21.

PART 4 – VICTIMS FINANCIAL ASSISTANCE SCHEME

Division 1 – Preliminary matters

23. Establishment of Victims Financial Assistance Scheme

The Victims Financial Assistance Scheme is established.

24. Assessors

(1) The Minister may appoint persons to be assessors for the financial assistance scheme.

(2) A person appointed to be an assessor must be admitted to practise as a legal practitioner (however described) of the High Court or Supreme Court of a State or Territory.

(3) The Director may be appointed to be an assessor if he or she has the necessary qualification.

(4) Assessors have the functions conferred on them under this or any other Act and the powers necessary or convenient for performing the functions of office.

25. Applications for financial assistance generally

(1) An eligible victim may apply for financial assistance in only one of the categories of primary victim, secondary victim or family victim of a violent act unless the applicant is a secondary victim to whom section 12(5) applies.

(2) An eligible victim must not apply for more than one award for the same violent act.

(3) An eligible victim may apply for more than one immediate payment for the same violent act if the total of the immediate payments does not exceed the maximum amount mentioned in section 27(5).

(4) An eligible victim may apply for an award and an immediate payment for the same violent act.

(5) An application for financial assistance (including by an increased award) may be made for an eligible victim by a person who has a genuine interest in the welfare of the eligible victim, including the parent or guardian of an eligible victim who is a child.

Division 2 – Immediate payments of financial assistance

26. Application to Director for immediate payment

(1) An eligible victim of a violent act may apply to the Director for an immediate payment of financial assistance.

(2) The application must be made within the following period:

- (a) if the eligible victim has not applied for an award of financial assistance – within 2 years after the occurrence of the injury or death to which the application relates;
- (b) if the eligible victim has also applied for an award of financial assistance – at any time before the assessor decides the application.

(3) The application must include the following information:

- (a) whether the applicant is applying as a primary victim, secondary victim or family victim;
- (b) the reasons the immediate payment is required;
- (c) the amount of financial assistance sought;
- (d) whether the applicant has also applied for an award of financial assistance or intends to do so;
- (e) a brief description of the violent act, the name of the offender (if known) and the date on which the violent act occurred;
- (f) if the applicant is a primary victim – the date on which the applicant made a statement about the violent act to a police officer or the reasons why no statement has been made;
- (g) if the applicant is a secondary victim or family victim – the date on which the applicant made a statement to a police officer or, if the applicant did not make a statement, whether the primary victim has made a statement;
- (h) if the applicant is a primary victim or secondary victim – a description of the injury resulting from the violent act;
- (i) whether the applicant has made a claim for benefits or compensation under the *Motor Accidents (Compensation) Act* or *Work Health Act* as a result of the injury or death and, if so, the outcome or current status of the claim;
- (j) any other information required by regulation.

27. Decision about immediate payment

(1) As soon as practicable after receiving the application, the Director must decide whether to approve an immediate payment or refuse to do so.

(2) The Director must not approve the immediate payment unless the Director is satisfied:

- (a) the applicant has suffered or incurred, or is reasonably likely to incur, the financial loss described in the application; and
- (b) the financial loss results from the violent act described in the application; and
- (c) the applicant is otherwise an eligible victim.

(3) The Director may be satisfied about the matters mentioned in subsection (2) even if:

- (a) no person has been charged with or found guilty of the violent act resulting in the applicant's financial loss; or
- (b) a person has been charged with or found guilty of a different violent act than is described in the application.

(4) If the Director approves the payment, the Director must also decide the amount to be paid and whether any of the amount is to be paid to a person other than the applicant.

(5) The maximum amount of the payment is \$5 000.

(6) The Director must give the applicant written notice of the decision including the following information:

- (a) if the Director approves an immediate payment:
 - (i) the amount to be paid and the reason for the payment; and
 - (ii) if any of the amount is to be paid to a person other than the applicant – the name of the person and any other relevant details about the payment and its use; and
 - (iii) the effect of the decision under section 28(1); and
 - (iv) the circumstances when a reduction or refund of the financial assistance may be made or required;

- (b) if the Director refuses to approve an immediate payment:
 - (i) the reason for the refusal; and
 - (ii) the effect of the decision under section 28.

28. Effect of decision

(1) A decision under section 27 is final and is not subject to any review or appeal.

(2) A decision refusing to approve an immediate payment does not prevent an applicant who is an eligible victim from applying for an award of financial assistance.

29. Payment

As soon as practicable (but within 28 days) after the Director approves an immediate payment, the Territory must pay the financial assistance as specified in the notice given to the applicant by the Director.

Division 3 – Applications for awards of financial assistance

30. Application to Director for award

An eligible victim of a violent act may apply to the Director for an award of financial assistance.

31. Time limit for lodging application

(1) An application for an award must be made within 2 years after the occurrence of the injury or death described in the application (the "time limit").

(2) However, the Director may accept an application made after the expiry of the time limit (a "late application") if the Director considers the circumstances justify it.

(3) In deciding whether to accept a late application, the Director must have regard to the following matters:

- (a) whether the injury or death occurred as a result of sexual assault, domestic violence or child abuse;
- (b) the age of the applicant at the time of the violent act;
- (c) whether the offender was in a position of power, influence or trust in relation to the applicant;
- (d) any mental incapacity of the applicant;

- (e) whether the delay in making the application will affect the assessor's ability to make a proper decision;
 - (f) whether the violent act was reported to a police officer within a reasonable time after it occurred or at any time before the application is made.
- (4) If the Director refuses to accept a late application, the Director must give the applicant a notice of the refusal including the following information:
- (a) the reasons for the decision;
 - (b) details about the applicant's right to appeal against the decision.

32. Form of application

- (1) An application for an award must include the following information:
- (a) whether the applicant is applying as a primary victim, secondary victim or family victim of a violent act;
 - (b) a brief description of the violent act, the name of the offender (if known) and the date on which the violent act occurred;
 - (c) if the applicant is a primary victim – the date on which the applicant made a statement about the violent act to a police officer or the reasons why no statement has been made;
 - (d) if the applicant is a secondary victim or family victim – the date on which the applicant made a statement to a police officer or, if the applicant did not make a statement, whether the primary victim made a statement;
 - (e) if the applicant is a primary victim or secondary victim – a description of the injury resulting from the violent act;
 - (f) if the applicant is applying for financial assistance for one or more compensable injuries – the standard amount sought;
 - (g) if the applicant is applying for financial assistance for financial loss – the nature and amount of the loss;
 - (h) if financial assistance is sought for expenses incurred or reasonably likely to be incurred to assist the recovery from the effects of the violent act – a brief description of the applicant's exceptional circumstances;

- (i) whether the applicant has applied for or received an immediate payment of financial assistance;
 - (j) whether a civil or criminal proceeding has been commenced as a result of the injury or death or financial loss (if any) and, if so, the nature and outcome of the proceeding;
 - (k) whether the applicant has made a claim for benefits or compensation under the *Motor Accidents (Compensation) Act* or *Work Health Act* as a result of the injury or death and, if so, the outcome or current status of the claim;
 - (l) whether the applicant believes any other person may be a victim of the violent act;
 - (m) any other information required by regulation.
- (2) The application must be accompanied by the following documents:
- (a) a copy of the applicant's statement about the violent act made to a police officer, unless the applicant has given reasons why a statement has not been made;
 - (b) all documents in the applicant's possession supporting the application, such as medical reports and invoices for expenses incurred;
 - (c) any other documents required by the Director or by regulation.

33. Procedure after acceptance of application

(1) As soon as practicable after the Director accepts an application for an award, the Director must give the application to an assessor for a decision under Division 4.

(2) The Director must give a copy of the application and a notice about the entitlement under subsection (3) to the following persons:

- (a) if practicable – each offender named in the application;
- (b) any other person the Director considers to have an interest in the application.

(3) As soon as practicable (but within 28 days) after receipt of the notice given under subsection (2), the person to whom the notice is directed may give the Director a written submission relating to the application.

(4) The Director must give each submission to the assessor.

Division 4 – Deciding applications for awards of financial assistance

34. Deciding application and deferring decision

(1) The assessor must decide an application, in accordance with this Act, by awarding financial assistance or refusing to award financial assistance.

(2) The assessor must decide the application as soon as practicable after the end of the period for giving submissions under section 33(3).

(3) The assessor may defer the decision:

(a) until the assessor has obtained further information or reports considered necessary to make a proper decision; or

(b) if a civil or criminal proceeding has been commenced in relation to the applicant's injury, death or financial loss – until the proceeding is determined; or

(c) if the Territory is seeking to recover an amount of money from the applicant under Part 5 in relation to another application for financial assistance – until the proceeding for recovery of the amount is determined.

35. Examination of and report about applicant

(1) The assessor may, by written notice, require the applicant to undergo an examination by any of the following persons:

(a) a medical practitioner;

(b) a psychologist;

(c) a psychiatrist.

(2) A person who examines the applicant must make a report about the applicant's injury and give it to the assessor.

(3) The expenses of the examination and report must be paid by the Territory to the person making the report.

(4) The assessor may decide not to award financial assistance to the applicant if, without reasonable excuse, the applicant refuses or fails to undergo the examination.

36. Obtaining information and documents

(1) The assessor may obtain information and make the inquiries the assessor considers necessary to make a proper decision.

(2) The assessor may, by written notice, require the applicant to give the assessor further information or documents relevant to the application.

(3) The assessor may decide not to award financial assistance to the applicant if, without reasonable excuse, the applicant refuses or fails to give the assessor the information or documents.

(4) The assessor may, by written notice, require any other person to give the assessor the information or documents described in the notice within the time specified in the notice.

(5) A person must not, without reasonable excuse, contravene the requirements of the notice.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

37. Matters to be established initially

(1) Before considering whether to make an award, the assessor must be satisfied the applicant:

- (a) has suffered the injury or financial loss described in the application as a direct result of a violent act; and
- (b) is otherwise an eligible victim of the violent act.

(2) The assessor may be satisfied about the matters referred to in subsection (1) even if:

- (a) no person has been charged with or found guilty of the violent act resulting in the applicant's injury or financial loss; or
- (b) a person has been charged with or found guilty of a different violent act than is described in the application.

38. Award to primary victim

(1) The maximum financial assistance that may be awarded to a primary victim of a violent act is \$40 000, even if the victim's financial loss and the standard amount for the victim's compensable injuries exceed \$40 000.

(2) The maximum financial assistance that may be awarded to a primary victim for financial loss described in section 10(5) is \$10 000, less any amount paid as an immediate payment, even if the victim's financial loss exceeds \$10 000.

(3) The assessor may award a primary victim financial assistance for one or more compensable injuries only if the total of the standard amount for the injury or injuries is at least \$7 500.

39. Award to secondary victims

(1) The maximum financial assistance that may be awarded to all the secondary victims of the same violent act is \$40 000 (the "maximum amount"), even if the victims' financial loss and the standard amounts for the victims' compensable injuries exceed the maximum amount.

(2) The maximum financial assistance that may be awarded to each secondary victim for financial loss described in section 12(6) is \$10 000, less any amount paid as an immediate payment, even if the victim's financial loss exceeds \$10 000.

(3) The assessor may award a secondary victim financial assistance for one or more compensable injuries only if the total of the standard amount for the injury or injuries is at least \$7 500.

(4) If the total financial assistance for all the secondary victims of the same violent act is assessed to be more than the maximum amount, the assessor must proportionately reduce each amount awarded.

(5) However, subsections (6) and (7) apply if any of the secondary victims witnessed the death of the primary victim at the scene of the violent act and, at the time of the death, were:

- (a) the parents or guardians of the primary victim, being a child; or
- (b) the children of the primary victim; or
- (c) children under the guardianship of the primary victim.

(6) The assessor must award each of the secondary victims mentioned in subsection (5):

- (a) the financial assistance as assessed; or
- (b) if the total financial assistance for all of those secondary victims is assessed to be more than the maximum amount – financial assistance proportionately reduced.

(7) If the maximum amount has not been awarded under subsection (6), the assessor must award any other secondary victims the remaining financial assistance proportionately reduced.

40. Award to family victims

(1) The maximum financial assistance that may be awarded to all the family victims of the same violent act is \$40 000 (the "maximum amount"), even if the victims' financial loss exceeds the maximum amount.

(2) The maximum financial assistance that may be awarded to each family victim for financial loss described in section 14(3) is \$10 000, less any amount paid as an immediate payment, even if the victim's financial loss exceeds \$10 000.

(3) If financial assistance is to be awarded to a family victim for funeral expenses, it must be awarded before apportioning the remaining financial assistance.

(4) If the total financial assistance for all the family victims of the same violent act is assessed to be more than the maximum amount, the assessor must, after awarding any financial assistance under subsection (3), proportionately reduce each amount awarded.

(5) However, subsections (6) and (7) apply if any of the family victims were totally or substantially dependent on the primary victim.

(6) The assessor must award each of the family victims mentioned in subsection (5):

- (a) the financial assistance as assessed; or
- (b) if the total financial assistance for all of those family victims is assessed to be more than the maximum amount – financial assistance proportionately reduced.

(7) If the maximum amount has not been awarded under subsection (6), the assessor must award any other family victims the remaining financial assistance proportionately reduced.

(8) The assessor may award financial assistance to the family victims of the same violent act only if the assessor is satisfied no other family victim of the violent act is likely to make an application for an award.

(9) The assessor may be satisfied no other family victim of a violent act is likely to make an application for an award if:

- (a) at least 3 months has elapsed since the latest application was made by a family victim of the violent act; and
- (b) no other family victim of the violent act has made an application or notified the assessor that he or she intends to do so.

41. When award may be reduced

(1) The assessor may reduce an award after taking any of the following matters into account:

- (a) if the applicant is a primary victim or secondary victim of a violent act – any behaviour (including past criminal activity), condition, attitude or disposition of the victim that directly or indirectly contributed to the injury or financial loss;
- (b) whether the applicant participated in the violent act, encouraged another person to commit the violent act or gave assistance to the offender;
- (c) whether the applicant failed to take reasonable steps to mitigate the extent of the injury or financial loss, such as seeking appropriate medical advice or treatment or obtaining counselling, as soon as practicable after the violent act occurred;
- (d) whether the award is likely to benefit the offender because of a relationship or connection between the applicant and offender;
- (e) any other matters the assessor is satisfied justify the reduction.

(2) The reduction must be of an amount the assessor considers reasonable in the circumstances.

42. When award must be reduced

(1) The assessor must reduce an award if the applicant has received a payment for the injury, death or loss described in the application.

(2) A payment mentioned in subsection (1) includes any of the following:

- (a) an immediate payment to which the applicant was not entitled;
- (b) compensation or damages from the offender or any person for the offender;
- (c) private medical insurance benefit;
- (d) a benefit, compensation, damages or other award under an Act of the Territory, the Commonwealth, a State or another Territory;
- (e) an agreement or insurance policy.

(3) The assessor must reduce the award by an amount equal to the payment the applicant has received.

43. When financial assistance must not be awarded

The assessor must not award financial assistance to the applicant if any of the following circumstances apply:

- (a) the assessor is satisfied the applicant is not entitled to an award;
- (b) the violent act was not reported to a police officer within a reasonable time after its occurrence, unless the assessor is satisfied circumstances prevented the report being made;
- (c) the violent act was not reported to a police officer before the date the assessor decides the application, unless the assessor is satisfied circumstances prevented the report being made;
- (d) the applicant failed, without reasonable excuse, to assist police officers in a material way in the investigation or prosecution of the violent act, including by failing to make a formal complaint or statement;
- (e) the assessor is satisfied the applicant made the application in collusion with the offender;
- (f) the injury or death occurred during the commission of a crime by the applicant.

44. Notice of decision

(1) As soon as practicable after deciding the application, the assessor must give the Director a notice, in the approved form, of the assessor's decision.

(2) A notice awarding financial assistance must include the following information:

- (a) the total financial assistance awarded;
- (b) the amount of financial assistance awarded for each type of financial loss and each compensable injury (or all the compensable injuries) and the basis on which each amount is awarded;
- (c) if the assessor has reduced an award – the amount by which the award has been reduced and the reason for the reduction;
- (d) if the assessor has made an award to more than one secondary victim or family victim of the same violent act – details about the apportionment of financial assistance and the basis for each award;
- (e) if the application was made for the eligible victim by a person mentioned in section 25(5) – details about the payment of financial

assistance and requirements, directed to the person, about the use or management (including by the creation of a trust) of the financial assistance;

- (f) details about the applicant's right to appeal against the decision;
- (g) any other information the assessor considers should be included or that is required by regulation.

(3) A person must not, without reasonable excuse, contravene a requirement directed to the person under subsection (2)(e).

Penalty: 100 penalty units.

(4) A notice refusing to award financial assistance must include the following information:

- (a) the reasons for the decision;
- (b) if the assessor is satisfied the applicant received an immediate payment to which the applicant was not entitled – the requirement for a refund and the information mentioned in section 47(1) and (2)(a) to (c);
- (c) details about the applicant's right to appeal against the decision;
- (d) any other information the assessor considers should be included or that is required by regulation.

(5) The Director must give the notice to the applicant and give a copy to the following persons:

- (a) if practicable – each offender named in the application;
- (b) if the Director considers it appropriate – any person who gave the Director a submission under section 33(3) relating to the application.

Division 5 – Payments, increases and refunds of financial assistance

45. Payment of financial assistance

Within 28 days after the Director gives notice under section 44(5) to an applicant awarded financial assistance, the Territory must pay the financial assistance as specified in the notice.

46. Increase of financial assistance

(1) An applicant paid financial assistance under section 45 may, within the following period, apply to the Director for an increased award:

- (a) if the applicant was an adult at the date of payment – within 3 years after that date; or
- (b) if the applicant was a child at the date of payment – within 3 years after the person becomes an adult.

(2) The application must include the reason why the increase is sought, the amount of financial assistance sought and any other information required by regulation.

(3) The application must be accompanied by documents in support of the application.

(4) On receipt of the application from the Director, the assessor must decide the application in accordance with the relevant provisions of Division 4 and may decide to increase the award or refuse to do so.

(5) The assessor may increase the award only if satisfied:

- (a) the circumstances require it; and
- (b) the relevant maximum amount of financial assistance mentioned in section 38, 39 or 40 has not already been awarded.

(6) The assessor must give the Director a notice of the assessor's decision to increase the award or refuse to do so.

(7) The notice must be in the approved form including the following information:

- (a) the reasons for the decision;
- (b) if the assessor has increased the award:
 - (i) the amount of financial assistance to be paid to the applicant; and
 - (ii) if the application was made by a person mentioned in section 25(5) – details about the payment of financial assistance and requirements, directed to the person, about the use or management (including by the creation of a trust) of the financial assistance;
- (c) details about the applicant's right to appeal against the decision.

(8) A person must not, without reasonable excuse, contravene a requirement directed to the person under subsection (7)(b)(ii).

Penalty: 100 penalty units.

(9) The Director must give the notice to the applicant and, if practicable, give a copy to each offender named in the applicant's original application for an award.

(10) Within 28 days after the Director gives a notice to an applicant awarded increased financial assistance, the Territory must pay the financial assistance as specified in the notice.

47. Refund of financial assistance

(1) An assessor may require a person to refund an amount to the Territory if satisfied the person has received:

- (a) an award or immediate payment to which the person was not entitled; or
- (b) further payments of a type mentioned in section 42(2)(b) to (e) after being paid financial assistance under section 45 or 46.

(2) The assessor must give the Director notice of the requirement, in the approved form, including the following information:

- (a) the amount to be refunded;
- (b) the reasons the refund is required;
- (c) the time in which the person must refund the amount, which must be at least 28 days after receipt of the notice by the person;
- (d) details about the person's right to appeal against the decision.

(3) The Director must give the notice to the person required to refund the amount and, if practicable, give a copy to each offender named in the person's original application for financial assistance.

- (4) The amount to be refunded is a debt owing to the Territory.

Division 6 – Appeals

48. Decisions that may be appealed

(1) An applicant for an award may appeal against the following decisions:

- (a) a decision of the Director to refuse to accept a late application notified under section 31(4);
- (b) a decision of the assessor notified under section 44(5).

(2) An applicant for an increased award may appeal against a decision of the assessor notified under section 46(9).

(3) A person required to refund an amount to the Territory may appeal against the decision of the assessor notified under section 47(3).

- (4) The appeal must be to the Local Court.

49. Nature of appeal

(1) The appeal is a review of the decision of the Director or assessor on its merits and must be conducted with as little formality and technicality as possible.

(2) The Court is not bound by rules of evidence but may inform itself on any matter in the manner it considers appropriate.

(3) The Court may admit as evidence information and material that was not before the Director or assessor only if the Court is satisfied there were special reasons that prevented its presentation to the Director or assessor.

50. Determination of appeal

(1) In determining an appeal against a decision notified under section 31(4), the Court may:

- (a) confirm the Director's decision; or
- (b) set aside the Director's decision, accept the application for an award and refer it to the Director for a decision by an assessor under Division 4.

(2) In determining any other appeal, the Court may:

- (a) confirm the assessor's decision; or
- (b) vary the assessor's decision; or

- (c) set aside the assessor's decision and substitute another decision that could have been made instead.

(3) The Court may give the orders considered appropriate to give effect to the determination.

(4) If the Court determines an appellant is not entitled to receive financial assistance awarded by the assessor, or awards the appellant less financial assistance than was awarded by the assessor, any amount of financial assistance paid to the appellant that should not have been paid is a debt owing to the Territory.

51. Reservation of question of law

(1) The Court may reserve for the decision of the Supreme Court a question of law arising out of an appeal.

(2) The decision of the Supreme Court is binding on the Court.

(3) Costs consequent on the reservation for the Supreme Court's decision are in the discretion of the Supreme Court.

52. Operation and implementation of decision

(1) An appeal against a decision mentioned in section 48 does not affect the operation or implementation of the decision.

(2) However, the Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate.

(3) The order:

(a) is subject to the conditions specified in the order; and

(b) has effect:

(i) for the period specified in the order; or

(ii) if no period is specified – until the Court has determined the appeal.

53. No appeal to Supreme Court

A party to an appeal is not entitled to appeal to the Supreme Court against an order or determination of the Court.

Division 7 – Legal representation and costs

54. Applications

(1) A person may be represented by a legal practitioner in making an application under Division 4 or 5.

(2) However, the legal practitioner is not entitled to recover from the person any costs, except the legal practitioner's reasonable disbursements, incurred in representing the person.

(3) For subsection (2), the legal practitioner's disbursements do not include counsel's fees.

(4) The Territory is not liable to pay any costs incurred by a person or legal practitioner in making an application under Division 4 or 5.

55. Appeals

(1) An appellant under Division 6 may be represented by a legal practitioner.

(2) The Regulations may prescribe the costs allowable to a legal practitioner for work done in an appeal.

(3) The Regulations may provide for any other matter relevant to the costs of an appeal, including the following:

- (a) the Territory's liability for an appellant's costs;
- (b) the way in which the Court may exercise a discretion in making an order for costs.

PART 5 – RECOVERY OF MONEY FROM OFFENDERS

56. Territory may recover from offender

(1) If the Territory has paid financial assistance to a victim of a violent act, the Territory may commence a proceeding in the Court for recovery of an equal or lesser amount of money from the offender.

(2) The Territory must commence the proceeding within 3 years after the date of the payment of financial assistance to the victim.

(3) In the proceeding, the Territory must prove the following matters to the satisfaction of the Court:

- (a) the Territory paid the amount sought to be recovered;

- (b) the offender against whom the proceeding is brought:
 - (i) was found guilty of an offence that resulted in the payment;
or
 - (ii) on the balance of probabilities, committed an offence that resulted in the payment.
- (4) The Court may reduce the amount sought to be recovered by the Territory if:
 - (a) the offender satisfies the Court the victim contributed to the injury or death for which the amount was paid; or
 - (b) the Court is satisfied the financial assistance awarded to the victim was excessive in the circumstances.
- (5) If the Court is satisfied that all or some of the financial assistance should not have been awarded, it may order that the Territory is not entitled to recover from the offender all or part of the amount paid by the Territory.

57. Recovery by set-off

If the Court makes an order that the Territory may recover an amount from an offender (the "debtor"), the Territory is entitled to recover all or part of the amount by set-off if, under the financial assistance scheme, financial assistance is payable to the debtor as a victim of a violent act.

58. No appeal to Supreme Court

A party to a proceeding under this Part is not entitled to appeal to the Supreme Court against any order of the Court.

59. Recovered money to be paid into Fund

Any money recovered by the Territory under this Part must be paid into the Fund.

PART 6 – VICTIMS ASSISTANCE FUND AND LEVY

60. Victims Assistance Fund

- (1) The Victims Assistance Fund is established.
- (2) The Fund consists of the following:
 - (a) money appropriated for the Fund to the Agency primarily responsible for the administration of this Act;
 - (b) the total amount of the levy imposed under section 61;

- (c) money recovered by the Territory under this Act;
- (d) money paid into the Fund under any other Act.

(3) The money of the Fund must be credited into a fund maintained within the Agency Operating Account within the meaning of the *Financial Management Act*.

61. Imposition of levy

(1) A levy is imposed to provide a source of revenue for the Fund.

(2) Subject to any exceptions prescribed by regulation, a levy is imposed on a person:

- (a) who is found guilty of an offence but not imprisoned for the offence; or
- (b) who expiates an offence by paying an amount specified in an infringement notice issued to the person; or
- (c) against whom an enforcement order is made.

(3) The levy imposed under subsection (2)(a):

- (a) on an adult:
 - (i) is \$60 for an offence following prosecution on indictment; or
 - (ii) is \$40 for any other offence; or
- (b) on a child is \$20.

(4) The amount of the levy imposed on a person under subsection (2)(a) must be specified in:

- (a) the formal record of the finding of guilt and sentence; and
- (b) the notice of the finding of guilt or sentence given to the person.

(5) A levy imposed under subsection (2)(a) is taken to be the fine or money (or to form part of the fine or money) the court has ordered to be paid for the offence, and payment of the levy may be enforced under the *Fines and Penalties (Recovery) Act*.

(6) The levy imposed under subsection (2)(b) or (c):

(a) is \$10; and

(b) must be specified in the relevant infringement notice or enforcement order.

(7) Despite any other law in force in the Territory, a person on whom a levy is imposed under subsection (2)(b) or (c) is not immune from prosecution for the relevant offence unless the amount specified in the infringement notice or enforcement order and the levy imposed by this section are paid.

(8) If money is paid by a person on whom a levy is imposed under subsection (2)(b) or (c), the money must be initially appropriated towards meeting the person's liability for the levy.

(9) A court must not reduce a levy payable by a person or exonerate a person found guilty of an offence from liability to pay a levy.

(10) In this section:

"enforcement order" has the same meaning as in the *Fines and Penalties (Recovery) Act*;

"infringement notice" has the same meaning as in section 9 of the *Fines and Penalties (Recovery) Act*;

"offence" means any offence against a law in force in the Territory.

PART 7 – MISCELLANEOUS MATTERS

62. Preservation of civil claim for damages

(1) This Act does not affect the right of a person to claim or recover compensation or damages under any other law.

(2) A court in which an action for damages under any other law is heard must not take into consideration that financial assistance has been or may be paid.

63. Obstruction and providing false information

A person must not:

(a) hinder or obstruct a person exercising a power or performing a function under this Act; or

- (b) knowingly or recklessly provide false or misleading information to a person exercising a power or performing a function under this Act.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

64. Inadmissibility of certain information in proceedings

(1) Despite any law to the contrary, an application for financial assistance and any other document prepared solely for the application and given to the Director or an assessor are not admissible as evidence in any civil or criminal proceeding.

(2) In a proceeding, a person must not be required to produce a document mentioned in subsection (1).

(3) This section does not apply in relation to the following proceedings:

- (a) the hearing of an appeal;
- (b) a criminal proceeding in which the applicant for financial assistance is the defendant;
- (c) a proceeding for an offence against this Act;
- (d) any other proceeding if the person to whom the document principally refers has consented to the use or production of the document.

65. Guidelines

(1) The Minister may issue guidelines, consistent with this Act and the Regulations, relating to the performance of functions by the Director and assessors.

(2) The Director and assessors must have regard to the guidelines when performing their functions under this Act.

66. Approved forms

The Director may approve forms for use under this Act.

67. Delegations

The following persons may delegate to a person any of their powers under this Act:

- (a) the Minister;
- (b) the Director.

68. Protection from liability

- (1) This section applies to a person who is or has been:

- (a) the Director; or
- (b) an assessor; or
- (c) a person providing counselling or related services under the counselling scheme.

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

69. Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) The Regulations may deal with any of the following:

- (a) any matters in connection with the counselling scheme, including the exercise of discretions by the Director;
- (b) any matters in connection with the financial assistance scheme, including the exercise of discretions by the Director or an assessor;
- (c) procedures relating to medical examinations and reports ordered by an assessor and the costs and payments for those examinations and reports;

- (d) the assessment of financial loss, including the following:
 - (i) the method of calculating loss of earnings;
 - (ii) the special circumstances in which an assessor may award financial assistance to assist a victim of a violent act to recover from the effects of the violent act;
- (e) awards for compensable injuries, including the following:
 - (i) different awards for different categories of a compensable injury;
 - (ii) the assessment of a standard amount for more than one compensable injury directly resulting from the same violent act;
 - (iii) the reduction of a standard amount, including for the aggravation, acceleration, exacerbation or deterioration of an existing condition;
 - (iv) procedures to establish whether a person has a compensable injury or the degree of seriousness of a compensable injury;
 - (v) choices available to an applicant for an award;
- (f) increased awards of financial assistance;
- (g) requirements for refunds of financial assistance.

70. Review after 3 years

There is to be a review of the first 3 years of operation of this Act.

**PART 8 – REPEALS AND TRANSITIONAL MATTERS FOR VICTIMS
OF CRIME ASSISTANCE ACT 2006**

71. Definitions

In this Part:

"commencement day" means the day on which this Part comes into operation;

"repealed Act" means the *Crimes (Victims Assistance) Act* as in force immediately before the commencement day.

72. Repeals

The Acts specified in the Schedule are repealed.

73. Repealed Act applies to application for assistance certificate

The repealed Act continues to apply in relation to an application for an assistance certificate made before the commencement day.

74. Application of Act to violent act

This Act applies to an application for counselling or financial assistance even if the violent act to which the application relates occurred before the commencement day.

75. Fund

The Victims' Assistance Fund continues in force as the Fund.

SCHEDULE

Section 72

REPEALED ACTS

<i>Crimes Compensation Act 1982</i>	Act No. 46 of 1982
<i>Crimes Compensation Amendment Act 1989</i>	Act No. 83 of 1989
<i>Crimes (Victims Assistance) Amendment Act 1999</i>	Act No. 13 of 1999
<i>Crimes (Victims Assistance) Amendment Act 2002</i>	Act No. 57 of 2002
