

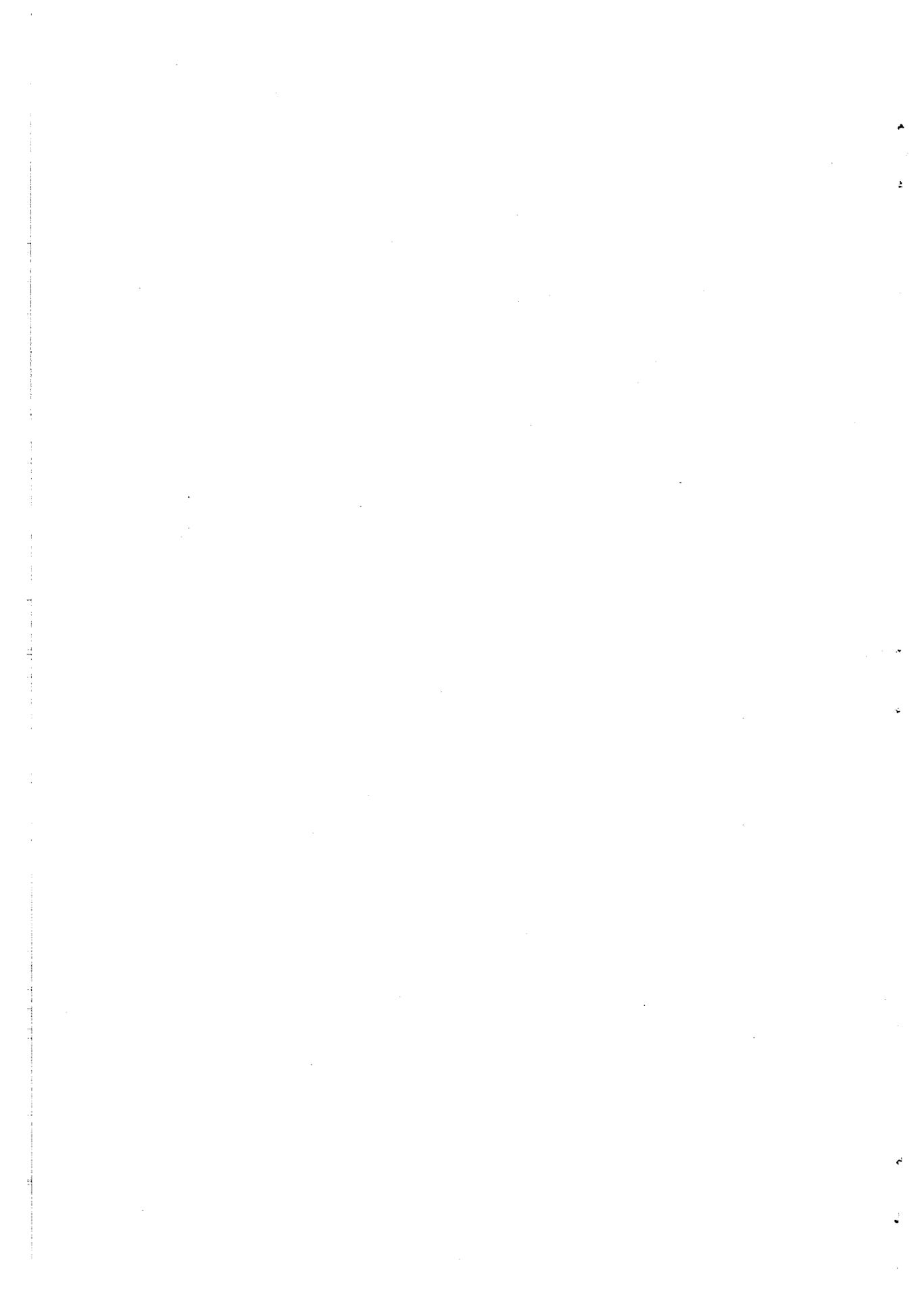
NORTHERN TERRITORY OF AUSTRALIA
CRIMES COMPENSATION AMENDMENT ACT 1989

No. 83 of 1989

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NORTHERN TERRITORY OF AUSTRALIA

No. 83 of 1989

AN ACT

to amend the *Crimes Compensation Act*

[Assented to 22 December 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Crimes Compensation Amendment Act 1989*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Crimes Compensation Act* is in this Act referred to as the Principal Act.

4. LONG TITLE

The long title to the Principal Act is amended by omitting "compensation for injury as a result of a criminal act" and substituting "assistance to certain persons injured or who suffer grief as a result of criminal acts".

5. CITATION

The Principal Act as amended by this Act may be cited as the *Crimes (Victims Assistance) Act*.

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6. APPLICATION

This Act, except where specifically provided, applies to offences committed, and to applications made under section 5, after the commencement of this Act, and an application made under section 5 which has not been determined before that commencement, or is made after that commencement in respect of an offence committed before that commencement, shall be heard and determined in accordance with the Principal Act as in force before that commencement, as if this Act had not come into operation.

7. INTERPRETATION

Section 4 of the Principal Act is amended -

- (a) by omitting from the definition of "applicant" the words and figures "section 5(1) or (2)" and substituting "section 5";
- (b) by omitting the definition of "compensation certificate" and substituting the following:

"'assistance certificate' means an assistance certificate issued by the Court under section 8(1);";

- (c) by inserting after the definition of "dependant" the following:

"'Fund' means the Victims' Assistance Fund established by section 25A;"; and

- (d) by inserting at the end of the definition of "injury" the words "but does not include an injury arising from the loss of or damage to property (which loss or damage is the result of an offence relating to that property)".

8. HEADING TO PART II

The Principal Act is amended by omitting from the heading to Part II "COMPENSATION CERTIFICATE" and substituting "ASSISTANCE CERTIFICATE".

9. APPLICATION FOR ASSISTANCE CERTIFICATE

Section 5 of the Principal Act is amended -

- (a) by omitting from subsection (1) "A victim may" and substituting "A victim or, where the victim is an infant or the Court is satisfied the victim, because of injury, disease or physical or mental infirmity, is not capable of managing his or her affairs in relation to the application, a person who, in the opinion of the

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Court, is a suitable person to represent the interests of a victim, may";

- (b) by omitting from subsections (1) and (2) "a compensation certificate" and substituting "an assistance certificate";
- (c) by omitting from subsection (2) "a certificate of compensation" and substituting "an assistance certificate";
- (d) by inserting after subsection (2) the following:

"(2A) Where a victim has died as a result of the injury suffered by the victim -

- (a) the widow or widower, or the de facto widow or de facto widower; or
- (b) where the victim at the date of death had not attained the age of 18 years, a parent,

of the victim may, within 12 months after the death of the victim, apply to the Court for an assistance certificate in respect of the grief suffered by that person as a result of the death of the victim.";

- (e) by omitting from subsection (3) "under subsection (1) or (2)" and substituting "under this section"; and
- (f) by adding at the end the following:

"(4) Subject to subsection (3), the limitation on the time for making an application under this section shall apply to and in relation to a person under a disability notwithstanding any provision to the contrary in the *Limitation Act*."

10. ASSISTANCE CERTIFICATE

Section 8 of the Principal Act is amended -

- (a) by omitting from subsection (1) "a compensation certificate" and substituting "an assistance certificate";
- (b) by omitting from subsection (2) all words before paragraph (a) and substituting the following:

"(2) An assistance certificate shall certify that the Territory shall pay -";

- (c) by omitting from subsection (2)(a) and (b) "compensation for" and substituting "assistance for";

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- (d) by omitting from subsection (2)(a) "the victim; or" and substituting "the victim;"; and
- (e) by omitting from subsection (2) "as the Court thinks fit),

together with such amount, if any, by way of costs as the Court thinks fit." and substituting the following:

"as the Court thinks fit); or

- (c) in respect of an application under -
 - (i) section 5(2A)(a) - to the widow or widower or the de facto widow or de facto widower; or
 - (ii) section 5(2A)(b) - to the parent, of the victim, an amount specified in the certificate for grief suffered by that person or those persons, as the case may be, as a result of the death of the victim (to be apportioned, where applicable, as the Court thinks fit).

"(3) Subject to subsection (5), the Court shall not issue an assistance certificate in respect of an application under section 5(2A)(a) or (b) for grief suffered by an applicant as a result of the death of a victim unless it is satisfied that no other person has applied, or may apply, for assistance under the same paragraph for grief suffered as a result of the death of that victim.

"(4) Where, under subsection (3), the Court is satisfied that another person has applied, or may apply, for assistance under the same paragraph of section 5(2A), the Court shall adjourn the hearing of the application and order that, where another person -

- (a) has applied for assistance, the applications be heard together; or
- (b) may apply for assistance, the applicant,

serve a copy of the application and a notice specifying the date and place to which the application is adjourned on such persons as the Court directs.

"(5) Where a person referred to in subsection (4) is served with a copy of the application and notice in accordance with that subsection, and that person -

- (a) attends the Court on the date and at the place specified in the notice, that person shall be deemed to have made the application jointly with the applicant, and the Court may proceed to hear and determine the application on that basis, and

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the amount specified in an assistance certificate, if issued, on the determination of the application shall be apportioned between the person and the applicant as the Court thinks fit; or

- (b) fails to attend the Court on the date and at the place specified in the notice, the Court shall, on being satisfied that the person has been served with a copy of the application and notice referred to in subsection (4), hear the application.

"(6) Service of the copy of an application and the notice referred to in subsection (4) shall be effected in such manner as the Court directs.

"(7) A person referred to in subsection 5(b) is, by virtue of this subsection, barred from making any other application under section 5(2A) in respect of the victim in relation to whose death the first application was made.

"(8) Where an application under section 5 is made by a person on behalf of another person, the Court may make such order as it thinks fit as to whom the assistance specified in the assistance certificate shall be paid and how that assistance is to be used or managed.

"(9) An order made under subsection (8) shall be endorsed on the assistance certificate.

"(10) Where the Court issues an assistance certificate it may make such order as to costs and disbursements as it thinks fit."

11. PRINCIPLES FOR ASSESSMENT OF ASSISTANCE

Section 9 of the Principal Act is amended -

- (a) by omitting "the amount of compensation to be specified in a compensation certificate" and substituting "the amount of assistance to be specified in an assistance certificate in respect of an application under section 5(1) or (2)"; and

- (b) by omitting paragraph (j) and substituting the following:

"(j) loss of, or damage to, the clothing of the victim being worn at the time of the commission of the offence."; and

- (c) by adding at the end the following:

"(2) For the purposes of subsection (1)(f), mental distress does not include grief."

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12. REPEAL AND SUBSTITUTION

Section 10 of the Principal Act is repealed and the following substituted:

"10. BEHAVIOUR OF VICTIM, &c., TO BE TAKEN INTO ACCOUNT

"(1) In considering an application for assistance, and in assessing the amount of assistance to be specified in an assistance certificate, the Court shall have regard to the conduct of the victim and to any other matters it considers relevant.

"(2) Where the Court, on having regard under subsection (1) to the conduct of the victim, is satisfied that the victim's conduct contributed to the injury or death of the victim it shall reduce the amount of assistance specified in the assistance certificate by such amount as it considers appropriate in all the circumstances.

"10A. CONSENT AGREEMENT

"(1) Notwithstanding this Act, but subject to this section, where all the parties to the proceedings agree on the amount of assistance to be specified in an assistance certificate, the Court shall, on being satisfied that such an agreement has been reached, issue an assistance certificate specifying the agreed amount.

"(2) Nothing in subsection (1) permits the issuing of an assistance certificate specifying an amount greater than that permitted by section 13.

"(3) Where the Court dispenses with service of an application on an offender under section 6(2), it may issue an assistance certificate specifying an amount agreed under subsection (1) notwithstanding that amount is not agreed to by the offender."

13. REPEAL AND SUBSTITUTION

Sections 12 and 13 of the Principal Act are repealed and the following substituted:

"12. ASSISTANCE CERTIFICATE NOT TO BE ISSUED IN CERTAIN CIRCUMSTANCES

"The Court shall not issue an assistance certificate -

- (a) where it is not satisfied, on the balance of probabilities, that the person whom the applicant claims was injured or killed was a victim within the meaning of this Act;

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- (b) where the commission of the offence was not reported to a member of the Police Force within a reasonable time after the commission of the offence, unless it is satisfied that circumstances existed which prevented the reporting of the commission of the offence;
- (c) where an applicant or victim has failed to assist the Police Force in the investigation or prosecution of the offence;
- (d) where it is satisfied that the applicant has made the application in collusion with the offender; or
- (e) in respect of an injury or death caused by, or arising out of, the use of a motor vehicle except where that use constitutes an offence under the Criminal Code.

"13. LIMITATION ON AMOUNT

"(1) The amount specified in an assistance certificate in respect of an application under -

- (a) section 5(1) or (2) - shall be not more than \$25,000 (including any amounts specified under section 9) or less than \$100; or
- (b) section 5(2A) - subject to subsection (3), shall be \$3,000.

"(2) In assessing the amount to be specified in an assistance certificate the Court shall have regard to the amount of any payment received by or payable to the victim or a dependant of the victim for the injury or death of the victim caused by the commission of the offence including the amount of any payment received or payable -

- (a) by way of compensation or damages from the offender or any person on behalf of the offender; or
- (b) under -
 - (i) the *Motor Accidents (Compensation) Act*;
 - (ii) the *Work Health Act*; or
 - (iii) a law of the Commonwealth, a State or another Territory of the Commonwealth relating to the payment of compensation to an employee in respect of death or injury resulting from an accident in or in connection with the employee's employment,

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and the Court shall reduce the amount so specified in the assistance certificate by such amount as it considers appropriate in the circumstances.

"(3) Notwithstanding subsection (1)(b), where more than one application is made under the same paragraph of section 5(2A) for grief suffered as the result of the death of a victim, the total of the amounts specified in the assistance certificates issued following the hearing of those applications shall be not greater than \$3000, apportioned as the Court thinks fit.

"13A. REPAYMENT OF ASSISTANCE IN CERTAIN CIRCUMSTANCES

"(1) Where the Court issues an assistance certificate and is satisfied that a victim or a dependant of a victim is, or may be, entitled to a payment referred to in section 13(2), the Court may make such order as to the repayment of the whole or a part of the amount specified in the certificate, if such a payment is received, under such circumstances as it thinks fit and specifies in the certificate.

"(2) A person who contravenes or fails to comply with an order under subsection (1) is guilty of an offence.

Penalty: \$2,000 or imprisonment for 6 months."

14. REPEAL AND SUBSTITUTION

Section 14 of the Principal Act is repealed and the following substituted:

"14. JOINT OFFENDERS, &c.

"Where a victim suffers an injury or dies as a result of -

- (a) an offence committed by more than one offender;
- (b) a series of offences committed consecutively by one offender in circumstances in which those offences constitute a single incident; or
- (c) a series of offences committed simultaneously or consecutively by more than one offender acting in concert or in circumstances in which those offences constitute a single incident,

only one application may be made -

- (d) under section 5(1) by or on behalf of the victim;
- (e) under section 5(2) by or on behalf of the dependants of the victim; or

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- (f) under section 5(2A) by each person permitted to make an application under that subsection,

in respect of that offence or incident, as the case may be."

15. PROCEDURE

Section 15 of the Principal Act is amended -

- (a) by omitting from subsections (1) and (2) "section 5(1) or (2)" and substituting "section 5"; and
- (b) by omitting from subsection (1) "and to the Regulations" and substituting ", the Regulations and any rules or practice directions made or given specifically for the conduct of the business of the Court under this Act".

16. ADJOURNMENTS

Section 16(1) of the Principal Act is amended -

- (a) by omitting "a compensation certificate" (first occurring) and substituting "an assistance certificate"; and
- (b) by omitting all words after and including "on the ground that" and substituting the following:

"on the ground that -

- (a) a prosecution for an offence in respect of which the issue of an assistance certificate is sought has been, or is about to be, commenced;
- (b) the victim or a dependant of the victim is, or may be, entitled to a payment referred to in section 13(2); or
- (c) the applicant has made, or is entitled to make, another application under section 5."

17. REPEAL AND SUBSTITUTION

Section 20 of the Principal Act is repealed and the following substituted:

"20. PAYMENTS BY TERRITORY

"The Territory shall, within 28 days after the issue of an assistance certificate, pay the amount specified in the certificate -

- (a) to the applicant; or

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- (b) in accordance with any order made under section 8(8),

as the case may be, and as soon as practicable pay such amount, by way of costs and disbursements, as is ordered by the Court."

18. RECOVERY FROM OFFENDER

Section 21 of the Principal Act is amended -

- (a) by omitting "the Minister has paid an amount under section 20(a)" and substituting "the Territory has paid an amount under section 20";
- (b) by omitting "the Minister may, on behalf of the Territory," and substituting "the Territory may";
- (c) by omitting "to the amount of compensation paid under section 20 and costs" and substituting "to the amount of assistance, costs and disbursements paid under section 20"; and
- (d) by adding at the end the following:

"(2) For the purposes of subsection (1), the Solicitor for the Northern Territory may file in the Court a notice of payment, in the prescribed form, specifying the amount of assistance, costs and disbursements paid under section 20.

"(3) Where a prescribed notice of payment is filed in the Court under subsection (2), the amount specified in the notice shall be deemed, by virtue of this section, to be a judgment of the Court against the offender for that amount in favour of the Territory, and that judgment may be enforced accordingly."

19. SUBROGATION

Section 22 of the Principal Act is amended by omitting "the Minister pays an amount under section 20(a), he" and substituting "the Territory pays an amount under section 20, the Territory".

20. PRESERVATION OF CIVIL REMEDY

Section 23 of the Principal Act is amended by omitting subsection (3).

21. TAXATION OF COSTS

Section 24(1) of the Principal Act is amended by omitting "section 5(1) or (2)" and substituting "section 5".

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22. RECOVERED MONEY TO FUND

Section 25 of the Principal Act is amended by omitting "the Consolidated Fund" and substituting "the Fund".

23. NEW PART

The Principal Act is amended by inserting after Part IV the following:

"PART IVA - VICTIMS' ASSISTANCE FUND

"25A. VICTIMS' ASSISTANCE FUND

"(1) There is established a fund to be known as the Victims' Assistance Fund.

"(2) The Fund shall consist of money -

(a) appropriated for the purposes of the Fund to the department for the time being principally responsible under the Minister for the administration of this Act;

(b) paid into the Fund under subsection (3);

(c) recovered by the Territory under this Act; and

(d) paid into the Fund in pursuance of any other Act.

"(3) In each financial year the prescribed proportion of the aggregate amount paid into the Consolidated Fund by way of fines, and the total amount of the levy imposed under section 25B, shall be paid into the Fund.

"(4) The money of the Fund shall be credited into an account of the Trust Fund established under the *Financial Administration and Audit Act*.

"(5) A payment made after the commencement of the *Crimes Compensation Amendment Act 1989* under this Act or the *Criminal Injuries (Compensation) Act* as continued in force by section 28(1) shall be debited to the Fund.

"25B. IMPOSITION OF LEVY

"(1) In this section -

'enforcement order' has the same meaning as in section 60A of the *Justices Act*;

'infringement notice' has the same meaning as in section 60A of the *Justices Act*;

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'notice of enforcement order' has the same meaning as in section 60A of the *Justices Act*;

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

"(2) A levy is imposed for the purpose of providing a source of revenue for the Fund.

"(3) Subject to such exceptions as may be prescribed, a levy is imposed on a person -

- (a) convicted of an offence after the commencement of the *Crimes Compensation Amendment Act 1989* other than where the person is imprisoned on conviction of the offence;
- (b) who discharges or expiates an offence, or who makes a payment of a specified sum in lieu of a penalty which may otherwise be imposed for an offence, in pursuance of an infringement notice issued after the commencement of the *Crimes Compensation Amendment Act 1989*; or
- (c) against whom an enforcement order is made after the commencement of the *Crimes Compensation Amendment Act 1989*.

"(4) Subject to subsections (5) and (6), the amount of the levy is, where the person is convicted of -

- (a) an offence following the presentation of an indictment - \$30; or
- (b) any other offence - \$20.

"(5) Where, but for this subsection, the amount of the levy payable by a person convicted of an offence by the Court, within the meaning of the *Juvenile Justice Act*, would exceed \$10, the amount of the levy is \$10.

"(6) Notwithstanding subsection (4), the levy imposed on a person referred to in subsection (3)(b) or (c) is \$5.

"(7) Where a levy is payable under this section by a person convicted of an offence -

- (a) the amount of the levy shall be shown in -
 - (i) any formal record of the conviction and sentence; and
 - (ii) any notice of the conviction or sentence given to the defendant; and

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(b) the levy shall, for all purposes, be deemed to be a fine or sum of money or to form part of the fine or sum of money adjudged to be paid by the court in respect of the offence to which the levy relates.

"(8) A court shall not reduce the levy payable under this section or exonerate a person convicted of an offence from liability to pay it.

"(9) For the purposes of this section, an infringement notice, enforcement order and a notice of enforcement order shall specify the amount of the levy.

"(10) Notwithstanding any other law in force in the Territory, a person referred to in subsection (3)(b) or (c) is not immune from prosecution in respect of an offence referred to in that subsection unless the sum specified in the infringement notice or the notice of enforcement order, as the case may be, and the levy imposed by this section is paid.

"(11) Where any money is paid by a person in respect of a penalty imposed for an offence or an alleged offence committed by that person, that money shall be firstly appropriated for the purpose of meeting the person's liability for the levy imposed by this section."

24. APPROPRIATION

Section 26 of the Principal Act is amended by omitting "the payment of compensation under section 20" and substituting "the purposes of any payment under section 25A(3)".
