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Victims of Crime Assistance Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 states that the purpose of the Act is to provide assistance to victims of crime.
- Clause 2 sets out the Act's commencement dates. Part 1 commences when the Act receives Royal Assent. The remaining provisions of the Act come into operation on the day or days to be proclaimed. However if a provision does not come into operation before 1 July 1997 it comes into operation on that day.
- Clause 3 sets out definitions of terms used in the Act.
- Clause 4 sets out the circumstances in which a criminal act is related to another criminal act resulting in one award of assistance. However the Tribunal has a discretion to find that an act is not related having regard to the particular circumstances.
- Clause 5 provides that on the death of a primary victim, any right to receive assistance under the Act does not survive for the benefit of the primary victim's estate.
- Clause 6 sets out the objective of the Act as providing a scheme whereby victims of crime will be provided with assistance to help them recover from the act of violence to which they have been subjected and says the scheme is intended to complement other services provided by government to victims of crime.

PART 2—ELIGIBILITY FOR ASSISTANCE

Division 1—Primary Victims

- Clause 7 defines a primary victim as a person who is injured or dies as a result of an act of violence committed against them. It also includes a person who is injured or dies trying to arrest someone who is committing an act of violence, or trying to prevent the commission of an act of violence or trying to aid or rescue a victim of an act of violence, whether or not the act of violence was actually committed.
- Clause 8 sets out the maximum amount of assistance which may be awarded to a primary victim as \$60 000. This includes expenses actually and reasonably incurred or reasonably likely to be incurred for counselling, medical expenses, and loss of earnings. The maximum amount which can be awarded for loss of

earnings is \$20 000. It also allows, in exceptional circumstances, the Tribunal to award other expenses which will assist in the victim's recovery.

Division 2—Secondary Victims

- Clause 9 defines a secondary victim as a person who is present at the scene of an act of violence and is injured as a result of witnessing the act. It also includes a person who is a parent or guardian who is injured as a result of subsequently becoming aware of an act of violence where the primary victim is a child.
- Clause 10 sets out the maximum amount of assistance which may be awarded to a secondary victim as \$50 000. This includes counselling and medical expenses, and in exceptional circumstances, loss of earnings. The maximum amount which can be awarded for loss of earnings is \$20 000.

Division 3—Related Victims

- Clause 11 defines a related victim as a person who was at the time of the occurrence of the act of violence a close family member or dependant of a primary victim who died as a result of an act of violence. It also includes a person who had an intimate personal relationship with the deceased primary victim.
- Clause 12 provides that the total maximum amount that can be awarded in respect of any one primary victim is \$100 000 less any amount awarded to a person for funeral expenses of the primary victim in accordance with Division 4.
- Clause 13 provides that no single related victim can receive more than \$50 000. This includes expenses which the related victim incurred as a result of the primary victim's death including funeral expenses arising from the primary victim's death and medical and counselling expenses for services provided to the related victim. The clause also includes payments for distress experienced or reasonably likely to be experienced by the related victim as a result of the death of the primary victim, loss of money which the related victim would have received from the primary victim and other expenses incurred by the related victim resulting from the death of the primary victim.
- Clause 14 prevents any person from applying for assistance as a related victim if an award to a related victim of the primary victim has been made.

Division 4—Assistance for Funeral

Clause 15 provides assistance for a person who pays the funeral expenses of a deceased primary victim but is not eligible to apply for assistance as a related victim under this Act.

Division 5—Limits on Assistance

Clause 16 directs the Tribunal, when determining whether or not to make an award of assistance, to take into account damages or compensation received or payments made to the applicant for loss, expenses or other matter from another source (for example, from TAC, Workcover or common-law damages) for which assistance is sought from the Tribunal. It also gives the Tribunal a discretion to take into account damages or compensation received or payments which the applicant would be likely to receive from another source.

Clause 17 provides that the Tribunal may award assistance to primary and secondary victims for the loss of earnings incurred as a direct result of total or partial incapacity for work for a period of up to two years after the occurrence of the act of violence.

Clause 18 prevents a person from applying for or receiving assistance under the Act in more than one capacity in respect of a single act of violence.

PART 3—VICTIMS OF CRIME ASSISTANCE TRIBUNAL

Division 1—The Tribunal

Clause 19 establishes the Victims of Crime Assistance Tribunal. It consists of the Chief Magistrate and magistrates holding office pursuant to sections 7 and 9 of the **Magistrates' Court Act 1989**.

Clause 20 defines the Tribunal's functions, powers and duties conferred on it by the Act.

Clause 21 provides that the Tribunal shall be constituted by a single magistrate. The Tribunal can operate concurrently in more than one division. The Chief Magistrate is responsible for and can give directions for the arrangement of the Tribunal's business.

Clause 22 provides that a decision of the Tribunal is not invalid only because of a defect or irregularity in relation to the assignment of a magistrate or acting magistrate to constitute the Tribunal for the purpose of any particular business.

- Clause 23 provides for the appointment of registrars and staff to the Tribunal.
- Clause 24 gives the Chief Magistrate powers of delegation under the Act or any other Act other than the power of delegation itself or the power to hear or determine an application.

Division 2—Applications

- Clause 25 sets out that persons who may apply to the Tribunal for assistance.
- Clause 26 sets out the form of the application for assistance to the Tribunal.
- Clause 27 sets out the information which must be contained in the application and what documents should be attached to it. It also gives the Tribunal the power to request any document which it requires to assist it in its determination of an application for assistance.
- Clause 28 requires the application for assistance to be lodged with the registrar of the Tribunal.
- Clause 29 requires the application for assistance to be lodged within two years after the act of violence or in the case of a related victim or a person who incurred funeral expenses, two years after the death of the primary victim. The clause also allows the Tribunal to accept a late application and sets out the factors which it must consider before doing so.
- Clause 30 provides that a related victim who makes an application to the Tribunal must notify the Tribunal within 21 days of other people whom they believe to be a related victim or believe may allege that they are a related victim or have paid the funeral expenses of the primary victim. The clause creates an offence. If convicted the court may in addition to any penalty imposed, direct the offender to repay the whole or any part of assistance awarded to that person, or forfeit any entitlement to any such assistance.

Division 3—Procedure and Powers of Tribunal

- Clause 31 provides that any question of fact is to be decided by the Tribunal on the balance of probabilities.
- Clause 32 requires the Tribunal to act fairly and expeditiously according to the merits of the case.
- Clause 33 entitles the Tribunal to determine a matter without a hearing with the consent of the applicant. If it does so, it must notify the applicant of the amount, if any,

of assistance awarded, any conditions attached to that award and of any other orders made by the Tribunal.

- Clause 34 requires the Tribunal to notify the applicant of the time and place of the hearing and allows the Tribunal to give such notice to any other person whom the Tribunal considers has a legitimate interest in the matter. It also requires the Tribunal to give an applicant an opportunity to be heard, where the Tribunal intends to notify the alleged offender.
- Clause 35 sets out persons who are entitled to appear at a hearing including the applicant or any other person who, in the Tribunal's opinion, has a substantial interest in a matter. It entitles the State to appear and be heard if the State considers that it has a legitimate interest in a matter.
- Clause 36 allows the party to appear before the Tribunal either personally, by a legal practitioner or, with the leave of the Tribunal, by any other representative. Where a party is a body corporate or firm, it may be represented by either an authorised officer or a partner or employee as the case may be.
- Clause 37 gives the Tribunal powers conferred by sections 14, 15, 16, 20 and 20A of the **Evidence Act 1958**. The Tribunal may also direct that alternative arrangements be made for the giving of evidence by a witness, including the use of closed-circuit television, the use of screens and permitting a support person to be beside the witness.
- Clause 38 provides that the Tribunal is not bound by the rules of evidence but may inform itself in any manner it thins fit. It must give parties a reasonable opportunity to call evidence, cross-examine and re-examine witnesses and make submissions. After the hearing and determination of an application the Tribunal must notify the applicant of its decision including the amount of assistance, if any, awarded and any conditions attached to such order.
- Clause 39 gives the Tribunal power to authorise a person to make further enquiries or carry out an investigation to furnish the Tribunal with further information that it requires. (Persons who can be authorised under this section include Tribunal staff, legal practitioners engaged by the Tribunal or the State.) The Tribunal can direct that a medical or counselling report be prepared or order the applicant to lodge further material with the Tribunal to enable the Tribunal to determine an application. If an applicant refuses or fails without reasonable excuse to comply with an above order, the Tribunal may adjourn the application until the order is complied with or refuse the application.

- Clause 40 enables the registrar to inspect any court register or requires a person to provide any information or produce any document relevant to the application by notice in writing. Such a person to whom notice can be given includes persons engaged by Government departments and the Chief Commissioner of Police. Failure to comply with such notice is an offence which attracts 10 penalty units.
- Clause 41 allows the Tribunal on its own initiative, or on the application of the parties, to adjourn the consideration of an application as it considers necessary or just, in the circumstances. This includes an adjournment pending the determination of civil or criminal proceedings arising out of the commission of an act of violence which is the subject of the application which have commenced, or are about to be commenced, or could be commenced by the applicant.
- Clause 42 makes all Tribunal hearings open to the public unless otherwise directed. However if an application is made by an applicant who is a primary victim in relation to a sexual offence under the **Crimes Act 1958**, or who is a child, or who is mentally impaired, the Tribunal must close the hearing. If an application is made by any victim and the Tribunal is satisfied that the applicant may suffer emotional trauma or be intimidated or stressed, the Tribunal must close the hearing.
- Clause 43 allows the Tribunal to restrict the publication of the whole or any specified part of evidence given at a hearing, or the contents of any documents produced to the Tribunal or information likely to lead to the identification of a party or a witness who has appeared at a hearing, if it is satisfied that it is in the public interest to do so. Contravention of this section attracts a penalty of 500 penalty units in relation to a body corporate, or 100 penalty units or two years imprisonment in any other case.
- Clause 44 allows the Tribunal to make procedural directions in connection with the hearing of a matter.
- Clause 45 allows the Chief Magistrate to issue guidelines as to the procedures to be followed in relation to the hearing of matters.
- Clause 46 allows the Governor in Council, by Order published in the Government Gazette, to prescribe a scale of costs applicable to applications made for assistance to the Tribunal.
- Section 47 allows the Tribunal to control the amounts paid for treatment or other services for which the Tribunal orders payment other than for services provided by a legal practitioner or where a legal practitioner has paid for services or

treatment on behalf of a client and wishes to recover the amount paid from the client.

- Clause 48 allows the Tribunal to determine by whom and to whom and to what extent costs are to be paid. This is subject to section 46(1). It also prohibits legal practitioners from claiming costs from their client in excess of those which have been awarded by the Tribunal. Persons who appear before the Tribunal including legal practitioners cannot charge their client for the making of an application or for appearing on behalf of an applicant except as allowed by the Tribunal.
- Clause 49 allows the Tribunal to make a complaint about costs charged by a legal practitioner in connection with an application if it considers the amount charged to be grossly excessive. It also allows the Tribunal to make a complaint about costs charged by a medical practitioner for the provision of any service, if the Tribunal considers the amount charged to be grossly excessive.

Division 4—Awards

- Clause 50 sets out when the Tribunal may award assistance to an applicant where it is satisfied that an act of violence has occurred and the applicant is a primary, secondary or related victim and the applicant is eligible for assistance. It also includes persons who have incurred funeral expenses as a result of the death of a primary victim. The clause allows the Tribunal to impose conditions on the making of an award including holding the assistance on trust for another person. It also allows the Tribunal to make an award even though no person has been charged with or found guilty or convicted of an offence arising out of the commission of the act of violence.
- Clause 51 enables a person to whom or for whose benefit an award of assistance is made under the Act, to assign to the State their rights to recover from any other person by civil proceedings damages or compensation in relation to the injury or death. Where moneys are recovered the clause sets out the State's and the person's entitlements.
- Clause 52 directs the Tribunal to refuse an application for assistance in certain circumstances. These include where the act of violence was not reported to the police within a reasonable time or where the applicant failed to provide reasonable assistance to an investigative body or person unless the Tribunal considers that there were special circumstances. The Tribunal must also refuse an application where the application is made in collusion with the person

alleged to have committed the act or an earlier application for assistance arising from the same injury or injury causing death has been determined.

Clause 53 sets out some of the matters to which the Tribunal may have regard when determining if an act of violence was reported to the police within a reasonable time. These include the age and intellectual capacity of the victim together with the circumstances surrounding the offence and the nature of the relationship between the perpetrator and victim.

Clause 54 sets out the matters which the Tribunal must take into account when considering an application. These include:

- the character and behaviour, including past criminal activity and attitude, of the applicant at any time;
- In the case of an application by a related victim, the Tribunal must take into account—
 - the character and behaviour including the criminal activity of the related victim as well as of the deceased primary victim;
 - any obligations owed to the applicant and any other related victim applicants by the deceased primary victim;
 - the financial resources including earning capacity and financial need of the applicant; and
 - if the related victim is a close family member of the deceased primary victim, or had an intimate personal relationship with the deceased primary victim, the nature of the relationship between them;
- whether the applicant provoked the commission of the act of violence;
- any condition or disposition which directly or indirectly contributed to the death or injury;
- whether the alleged offender will benefit in any way from the award of assistance; and
- any other circumstances the Tribunal considers relevant.

Clause 55 enables the Tribunal to award assistance by way of lump sums or instalments or a combination of both as the Tribunal sees fit. It also provides that instalments not paid to the victim within 6 years after making of the award cease to be payable to the victim.

Clause 56 allows the Tribunal to make an interim award to an applicant pending the final determination of an application for assistance.

Division 5—Rules and Practice Notes

Clause 57 allows the Chief Magistrate together with two or more Deputy Chief Magistrates, to make rules with respect to forms, procedures to be followed in making an application to the Tribunal, services of notices, applications, orders and other documents for the purposes of the Act and generally which relate to the practice and procedure of the Tribunal. This power is subject to rules being disallowed by a House of Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**.

Clause 58 allows the Chief Magistrate to issue practice directions for the Tribunal relating to proceedings. Such practice directions may not be inconsistent with any provisions made under the Act or with the rules.

PART 4—REVIEW, VARIATION, REFUNDS

Division 1—AAT Review

Clause 59 allows a party to apply to the Administration Appeals Tribunal for review of a final decision of the Crimes Compensation Tribunal for:

- refusing to make an award of assistance on an application;
- determining the amount of assistance on an application;
- refusing to vary an award under clause 60;
- determining the amount of assistance on an application for variation under clause 60.
- determining that a person is required to make a refund or the amount of the refund.

Division 2—Variation of Award

Clause 60 allows the Tribunal to vary an award of assistance by increasing, decreasing or varying the conditions upon which the award was made, on the application of a person to whom or for whose benefit an award of assistance was made. The period in which a variation may be made is up to 6 years after the making of the original award unless the person to whom or for whose benefit the award

was made is still under 18 at the end of the 6 year period. In this case, an application can be made at any time until the child turns 18.

Division 3—Refunds

- Clause 61 provides that the making an award of assistance under this Act does not affect the right of a person to recover by way of civil proceedings or any other way damages, compensation, assistance or payments of any kind.
- Clause 62 allows the Tribunal to direct a person who has received assistance under the Act to refund all or any amount of that assistance if, subsequent to receiving the award of assistance, they have received similar payments which could have been taken into account under clause 16 at the time of making the award. This includes awards of damages, compensation, assistance or payments of any kind received subsequent to the award being made by the Tribunal. Such orders for refund may be recovered as a debt due to the State.

PART 5—MISCELLANEOUS

- Clause 63 gives immunity to a Tribunal member in performing their duties as if they were a Supreme Court judge. Legal practitioners or other persons appearing before the Tribunal on behalf of a party and witnesses have the same protection as that afforded to that of legal practitioners, representatives and witnesses in the Supreme Court.
- Clause 64 creates an offence of contempt.
- Clause 65 provides that evidence given during a hearing or documents prepared solely for the purpose of an application to the Tribunal are not admissible in any civil or criminal proceedings within the meaning of the **Evidence Act 1958**. However there are exceptions to this rule including proceedings before the Tribunal or arising out of proceedings before the Tribunal, for an offence against the Act, for fraud offences, contempt or with the consent of the person to whom the document or words principally refers. Also, a Tribunal, Court or a person acting judicially within the meaning of the **Evidence Act 1958** may rule as admissible any document prepared solely for the purpose of an application to the Tribunal if it is satisfied that it is in the interest of justice to do so.
- Clause 66 creates an offence under this Act for persons who fraudulently obtain or attempt to obtain assistance under the Act or who knowingly assist another person to obtain or attempt to obtain fraudulently, any assistance under this

Act. The offence attracts a penalty of 120 penalty units or 12 months imprisonment or both.

Clause 67 prohibits persons from giving, on an application for assistance, information that is false or misleading in a material particular. The penalty for this offence is 120 penalty units or 12 months imprisonment or both. It also provides a defence to this offence if the person at the time of giving the information believes that it was true or believes that the information was not misleading.

Clause 68 requires the Tribunal to submit an annual report to the Minister on the performance of the Tribunal of its functions, powers and duties during the year ending on the previous 30 June. The Minister is required to table the report before each House of Parliament within 7 sitting days of its receipt.

Clause 69 provides for the following expenses to be paid out of the Consolidated Fund:

- costs and expenses of establishing, maintaining and administering the Tribunal;
- amounts of assistance ordered by the Tribunal or the Administrative Appeals Tribunal to be paid under the Act;
- witness expenses; and
- costs awarded to applicants.

It also requires the Tribunal or the Administrative Appeals Tribunal, in making an award of assistance under the Act, to make the order in writing and be given to the person to whom the award is made. Money is only payable out of the Consolidated Fund on presentation of the written order of the Tribunal. It also requires that money refunded under the Act or otherwise recovered by the State shall be paid into the Consolidated Fund.

Clause 70 gives the Tribunal the power to invest money which it is holding on trust for a person under the Act. Moneys can be invested with a bank, within the meaning of the Banking Act 1959 (Commonwealth) or a bank constituted by a law of the State or of the Commonwealth or in accordance with the **Trustee Act 1958**.

Clause 71 states that sections 47, 48 and 63 of the Act are intended to amend section 85 of the **Constitution Act 1975** by limiting the jurisdiction of the Supreme Court.

- Clause 72 authorises the Governor in Council to make regulations for or with respect to prescribing any matter or thing required or permitted by the Act or necessary to be prescribed to give effect to the Act.
- Clause 73 repeals the **Criminal Injuries Compensation Act 1983**.
- Clause 74 amends the **Sentencing Act 1991** to allow a Court to make an order against a convicted person to pay compensation to a person for pain and suffering.
- Clause 75 inserts a new provision in the **Sentencing Act 1991** so that where the Tribunal has made an award and a person is found guilty or is convicted by a court of an offence which gave rise to the award the State may apply to that court for an order that the offender reimburse the State for the whole or any part of an award of assistance made by the Tribunal.
- Clause 76 gives effect to the transitional provisions in Schedule 1 and states that Schedule 1 does not affect or take away from the **Interpretation of Legislation Act 1984**.