

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Victims of Crime Bill 1994

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84071 1994/156 (T71/94)

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THE LEGISLATIVE ASSEMBLY
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(As presented)

(Attorney-General)

Victims of Crime Bill 1994

A BILL

FOR

An Act relating to victims of crime

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Victims of Crime Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

5 “administration of justice” includes the provision of police services;

“Coordinator” means the Victims of Crime Coordinator appointed under subsection 14 (2);

“harm” includes—

- 10 (a) physical injury;
- (b) mental injury or emotional suffering (including grief);
- (c) pregnancy;
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law;

“offence” means an offence against a law in force in the Territory;

15 “victim” means—

- (a) a person (in this definition called the “primary victim”) who suffers harm—
 - 20 (i) in the course of, or as the result of, the commission of an offence; or
 - (ii) in the course of assisting a police officer in the exercise of the officer’s power to arrest a person or to take action to prevent the commission of an offence;
- 25 (b) where a primary victim dies as a result of the commission of an offence—any person who was financially or psychologically dependent on the primary victim immediately before his or her death; or
- 30 (c) a person who witnesses the commission of an offence in circumstances in which it is probable that he or she would suffer harm.

(2) A reference in this Act to the performance of a function shall, unless the contrary intention appears, be read as including a reference to the performance of a duty and the exercise of a power.

PART II—TREATMENT OF VICTIMS OF CRIME

Governing principles

4. In the administration of justice, the following principles shall, as far as practicable and appropriate, govern the treatment of victims:

- 5 (a) a victim should be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to his or her personal situation, rights and dignity;
- 10 (b) a victim should be informed at reasonable intervals (generally not exceeding 1 month) of the progress of police investigations concerning the relevant offence, except where such disclosure might jeopardise the investigation, and, in that case, the victim should be informed accordingly;
- 15 (c) a victim should be informed of the charges laid against the accused and of any modification of the charges;
- 20 (d) a victim should be informed of any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;
- (e) a victim should be informed of any decision not to proceed with a charge against the accused;
- 25 (f) where any property of a victim is held by the Crown for the purposes of investigation or evidence—inconvenience to the victim should be minimised and the property returned promptly;
- (g) a victim should be informed about the trial process and of the rights and responsibilities of witnesses;
- 30 (h) a victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
- (i) a victim's residential address should be withheld unless the court directs otherwise;
- (j) a victim should be relieved from appearing at preliminary hearings or committal proceedings unless the court directs otherwise;
- 35 (k) a victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;
- (l) a victim who is known to have expressed concern about the need for protection from an offender should be informed of the offender's impending release from custody.

Observance of principles

5. A person who performs a function in the administration of justice shall, in addition to any other matter that is relevant, have regard to the governing principles referred to in section 4.

5 Disclosures to Coordinator—legal immunity

6. (1) Where a person to whom this section applies—

(a) discloses information to the Coordinator which the person believes on reasonable grounds is required by the Coordinator for the purposes of this Act; and

10 (b) the disclosure is made in good faith;

no action, suit or proceeding lies against the person in respect of the disclosure.

(2) Subsection (1) does not affect any liability that the Territory would have, but for that subsection, in respect of the disclosure.

15 (3) This section applies to a person who performs, or has performed, a function in the administration of justice.

PART III—VICTIMS OF CRIME COORDINATOR***Division 1—Functions and powers*****Functions**

20 7. The Coordinator has the following functions in connection with the administration of justice:

(a) to promote the governing principles referred to in section 4;

(b) to encourage the provision of efficient and effective services for victims;

25 (c) to promote reforms to meet the needs of victims;

(d) to develop educational and other programs to promote awareness of the needs of victims;

(e) to disseminate information concerning the operation of this Act and the functions of the Coordinator;

30 (f) to maintain a register of services available to victims;

(g) to ensure, as far as practicable, that victims receive the information and assistance they need in connection with their involvement in the administration of justice;

(h) to advise the Minister on matters relating to victims;

- (i) any other function assigned to the Coordinator by or under any other law of the Territory.

Attendance at criminal proceedings

- 5 8. The Coordinator is entitled to be present at the hearing of a proceeding in a court in respect of an offence, including any part of the proceeding held in private, unless the court directs otherwise.

Investigations

- 10 9. (1) The Coordinator may investigate conduct in the administration of justice which the Coordinator believes on reasonable grounds involves a breach of the governing principles referred to in section 4.

(2) A person who performs, or has performed, a function in the administration of justice shall assist the Coordinator, as far as practicable, in relation to the giving of information requested by the Coordinator for the purposes of an investigation.

- 15 (3) The Coordinator shall report the results of an investigation to the Minister.

Powers

- 20 10. The Coordinator has power to do all things necessary or convenient to be done in connection with the performance of the Coordinator's functions.

Secrecy

11. (1) Subject to subsection (2), a person to whom this section applies shall not—

- 25 (a) make a record of protected information; or
(b) directly or indirectly, divulge or communicate to a person protected information concerning another person;

unless the record is made or the information divulged or communicated in relation to the performance of a function, as a person to whom this section applies, under or in relation to this Act or another law.

- 30 Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) Subsection (1) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of that other person.

(3) A person to whom this section applies is not required—

- 35 (a) to divulge or communicate protected information to a court; or

(b) to produce a document containing protected information to a court; except where it is necessary to do so for the purposes of this Act or another law.

(4) In this section—

5 “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is, or has been—

10 (a) the Coordinator; or

(b) a person acting under the direction or authority of the Coordinator;

“produce” includes permit access to;

“protected information” means information that—

15 (a) concerns the affairs of a person; and

(b) is disclosed to, or obtained by, a person to whom this section applies because of the performance of a function under or in relation to this Act or another law.

Disclosure of information concerning investigations

20 **12. (1)** Subsection 11 (1) does not prevent the Coordinator from disclosing information to a person or to members of the public about a matter the subject of an investigation under section 9 if the Coordinator is satisfied that the disclosure is necessary and reasonable in the performance of a function under or in relation to this Act or another law.

25 **(2)** In a disclosure referred to in subsection (1), the Coordinator shall not—

(a) express an opinion that is (expressly or impliedly) critical of a person unless the Coordinator has given the person an opportunity to answer the criticism; or

30 (b) identify a person (directly or indirectly) unless it is necessary and reasonable to do so.

Legal immunity

13. (1) No action, suit or proceeding lies against a person who is or has been—

35 (a) the Coordinator; or

(b) a person acting under the direction or authority of the Coordinator; in relation to an act done or omitted to be done in good faith in the performance, or purported performance, of a function of the Coordinator under or in relation to this Act or another law.

- 5 (2) Subsection (1) does not affect any liability that the Territory would have, but for that subsection, in respect of the act or omission.

Division 2—Office of Coordinator

Appointment

14. (1) There shall be a Victims of Crime Coordinator.
- 10 (2) The Coordinator shall be appointed by the Minister in writing.

Terms of office

15. The Coordinator holds office, subject to this Division—
- (a) for the period (not exceeding 3 years) specified in the instrument of appointment, but is eligible for reappointment; and
- 15 (b) on such terms and conditions (if any) in relation to matters not provided for by this Act as are specified in the instrument of appointment.

Resignation

- 20 16. The Coordinator may resign by giving a signed notice of resignation to the Minister.

Termination of appointment

17. The Minister may terminate the appointment of the Coordinator—
- (a) for misbehaviour or physical or mental incapacity; or
- (b) in accordance with the instrument of appointment.

25 Acting Coordinator

18. (1) The Minister may, in writing, appoint a person to act as the Coordinator—
- (a) during a vacancy in the office of the Coordinator, whether or not an appointment has previously been made to the office; or
- 30 (b) during any period, or during all periods, when the Coordinator is for any reason unable to perform the functions of the office.
- (2) A person appointed to act as the Coordinator during a vacancy in the office of Coordinator shall not so act continuously for more than 12 months.

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- 5 (a) the appointment was ineffective or had ceased to have effect; or
(b) the occasion to act had not arisen or had ceased.

PART IV—MISCELLANEOUS

Regulations

19. The Executive may make regulations for the purposes of this Act.