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**THE LEGISLATIVE ASSEMBLY OF
THE AUSTRALIAN CAPITAL TERRITORY**

VICTIMS OF CRIME (FINANCIAL ASSISTANCE) (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

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Minister for Justice and Community Safety
Gary Humphries MLA**

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Explanatory Memorandum

OUTLINE

This Bill implements a new approach to assisting victims of crime in the Territory to provide a more comprehensive response by the Territory, on behalf of the wider community, to persons injured by crime. The reforms were developed in close consultation with victims' groups through the Victim Support Working Party which was established in 1997 to consider options for reforming the existing criminal injuries compensation scheme. In its May 1998 Report, the Working Party pointed to the current scheme under which more than \$4.5 million was awarded in one year to just over 300 victims and commented:

"It is surely a fundamental question of access and equity that such a huge proportion of the community's resource to crime victims is devolved to such a small proportion of total potential clients . . . the current allocation of Government and community resources to crime victims is seriously distorted and overly focused on individualised financial packages with little or no regard to whether the emotional trauma of criminal victimisation is actually alleviated".

The primary purpose of these amendments is to ensure that the assistance provided by the Territory produces better outcomes for a greater number of victims than occurs under the current arrangements. To this end, the Bill contains significant amendments to the *Criminal Injuries Compensation Act 1983* and the *Victims of Crime Act 1994*. The Bill also amends the *Crimes Act 1900* and makes consequential amendments to the *Magistrates Court Act 1930*, the *Evidence (Closed-Circuit Television) Act 1991* and the *Supreme Court Act 1933*.

Amendments to the *Criminal Injuries Compensation Act 1983*

The *Criminal Injuries Compensation Act 1983* will be renamed the *Victims of Crime (Financial Assistance) Act 1983*. The amended Act will, as its new name suggests, deal with the provision of financial assistance to victims of crime. The content of many of the existing provisions is retained but significant changes are made to the matters for which financial assistance can be awarded and the persons eligible for financial assistance. Non-financial assistance will be available to most victims under the new victims services scheme to be established under amendments contained in this Bill to the *Victims of Crime Act 1994*.

The amendments will make financial assistance available in relation to three categories of victims, known as primary victims, related victims and eligible property owners. Part II of the amended *Victims of Crime (Financial Assistance) Act 1983* explains which persons are primary victims, related victims or eligible property owners and sets out the entitlements to awards of financial assistance for each of these categories.

Primary victims are persons injured as a direct result of a violent crime committed against them. Persons who are injured while helping the police in certain circumstances are also covered by the definition of "primary victim". Financial assistance will be continue to be available in respect of primary victims who suffer a mental or "psychological" criminal injury as well as to primary victims whose criminal injuries are physical in nature. An award of financial assistance in relation to a primary victim may include components which reimburse the victim, or a person responsible for the maintenance of a primary victim, for reasonable expenses and pecuniary loss associated with the criminal injury.

Awards to primary victims may also include a component for special assistance if the primary victim suffers an "extremely serious injury" - this term is defined in the amendments and, in brief, refers to certain injuries which are both extremely serious and permanent. The loss of a foetus is included in the definition of extremely serious injury.

Related victims are certain types of persons who had a close relationship with a primary victim who has died from his or her injuries. Awards to related victims may include components for reasonable expenses and pecuniary loss. In addition, related victims are entitled to the special assistance component, without having to establish that they personally were injured as a result of the injury to the primary victim. The court will explain how an award of financial assistance to related victims is to be shared between all the related victims covered by the application for assistance. Only one final award of financial assistance can be made to the related victims of a deceased primary victim.

Eligible property owners are persons whose property is damaged while they are assisting the police in certain circumstances. An eligible property owner is entitled to be awarded financial assistance for expenses associated with the damage to his or her property.

The component for special assistance is set at a flat rate of \$30,000 but may be subject to the set-offs contained in Part III of the Act, as amended by this Bill. The maximum total award of financial assistance that may be ordered is \$50,000 which is the same maximum total that applies currently.

Part III of the Act as amended by this Bill explains how applications for financial assistance are to be made and decided. The processes have been simplified to enhance access by persons who choose not to use legal representation. To this end, Part III confers on the Magistrates Court exclusive original jurisdiction to decide financial assistance applications.

Part III also sets out the procedures to be followed by the court and the factors, known as set-offs, which it must consider when determining applications. Set-offs are factors which may reduce the amount of assistance that would otherwise be awarded to the applicant. They include payments in relation to the injury or property damage, such as awards of damages or compensation, medicare and other insurance payments and social security pensions. The set-offs also include certain behaviours of the applicant which contributed to the degree of injury or damage that

was sustained. Most of the set-offs in new Part III already apply under the current legislation.

Part IV of the Act as amended by this Bill contains new procedures for recovering financial assistance. Financial assistance can be recovered from the persons to whom it was awarded if they later receive assistance from another source in relation to the same criminal injury or eligible property damage for which the financial assistance was awarded. Amounts of financial assistance can also be recovered from offenders convicted of the crimes which caused the relevant criminal injury or eligible property damage. The amendments will enable the Territory to apply to the Registrar of the Magistrates Court for a provisional order of restitution which will be served on the offender. The offender will be given an opportunity to object to the provisional order. The Territory can apply to the court to confirm the order for restitution and can make arrangements with the offender for payment.

Part IV also provides that if the person who was awarded financial assistance has repaid some or all of the assistance because he or she subsequently received an amount from another source in relation to the injury or damage, the Territory cannot recover that amount from the offender. This prohibition on recovery from both the assisted person and the offender reflects the policy behind section 29B of the current Act.

Transitional Provisions

Part VI of the Bill contains transitional provisions which set out the way in which applications that were made under the current *Criminal Injuries Compensation Act 1993* and which have not been finalised when the amendments commence are to proceed after the amendments commence. These applications are known as undetermined applications; this term includes applications which are subject to appeal.

Applications which were made before 23 June 1998 are to continue as though the amendments had not been made.

The existing legislation will also apply to undetermined applications made after 23 June 1998 except that no component of compensation for pain and suffering can be included or increased in relation to those applications either at first instance, on appeal or following an application to vary an award of compensation.

However, applicants who cannot be awarded compensation for pain and suffering because of the transitional provisions will be given an additional 12 months in which to apply for an award of special assistance. These applicants will need to satisfy all the eligibility criteria for awards of special assistance which are set out in the Act as amended by this Bill.

The significance of 23 June 1998 is that it is the date on which the Government announced that assistance to victims would no longer include a component for pain and suffering.

Amendments to the *Victims of Crime Act 1994*

Part III of the Bill contains amendments to the *Victims of Crime Act 1994* which provide for the establishment of the new victims services scheme. The need for a new approach to victims' services was highlighted by the Working Party which commented at page 27 of its Report that there was a need for "a stable, professional, comprehensive and generic victim support service providing practical support as well as crisis and on-going counselling".

The Bill inserts new Part IV into the *Victims of Crime Act 1994*. This Part enables regulations to be made to establish a new victims assistance service and to deal with matters relevant to the operation of that scheme, such as the selection of the agency that will operate it, funding, eligibility and entitlements of different types of victim, the role of the Victims of Crime Coordinator and the establishment of a Victims Assistance Board. There are also provisions dealing with annual reports on the operation of the new scheme and ensuring that the services provided to victims will be subject to the confidentiality provisions in the *Health Records (Privacy and Access) Act 1997*.

Amendments to the *Crimes Act 1900*

The Bill makes an amendment to section 437 of the *Crimes Act 1900* which deals with the powers of the court to make reparation orders against convicted offenders at the time of sentencing. The amendment clarifies that a victim who has suffered loss or damage is entitled to apply to the court for a reparation order against the offender before sentencing takes place. The changes will ensure that victims have a cost-effective and accessible alternative to civil litigation as means of obtaining direct reparation from the responsible offender.

Consequential amendments

The Schedules to the Bill make minor consequential changes to the *Victims of Crime (Financial Assistance) Act 1983*, the *Magistrates Court Act 1930*, the *Evidence (Closed-Circuit Television) Act 1991*, the *Supreme Court Act 1933* and the *Criminal Injuries Compensation Regulations*.

Financial impact

After a transitional period during which outstanding claims made before the amendments commence are determined, it is expected that there will be a decrease in payments for financial assistance in the order of \$2 -3 million per annum. Offset against these savings will be the costs of the new victims services scheme which, depending on usage rates, may result in net savings to the Territory in the order of \$1 – 1.5 million per annum.

NOTES ON CLAUSES

In this Explanatory Memorandum, the headings of sections, Divisions and Parts which are inserted by this Bill into existing Acts will be indented and italicised to avoid confusion with the headings for clauses and Parts of the Bill itself. Where the Explanatory Memorandum refers to particular sections that are to be repealed by the Bill, those sections are referred to as "former" sections.

PART I - PRELIMINARY

Clause 1 Short title

This clause provides that the proposed law, once passed, is to be referred to as the *Victims of Crime (Financial Assistance) (Amendment) Act 1998*.

Clause 2 Commencement .

Clause 2 explains when particular provisions of the proposed law will commence. The formal provisions dealing with citation and commencement will come into effect when the Act is notified in the Gazette. The remainder of the provisions will commence on the date specified by the Minister by notice published in the Gazette, or after 6 months if the Minister has not specified a commencement date in the Gazette.

PART II - CRIMINAL INJURIES COMPENSATION ACT 1983

Clause 3 Principal Act

This clause makes it clear that the Act being amended by Part II is the *Criminal Injuries Compensation Act 1983*.

Clause 4 Long title

This clause amends the long title of the Principal Act to reflect the change in emphasis from "compensation" to providing financial assistance to victims of crime. The assistance provided under the Principal Act is financial in nature whereas assistance in the form of rehabilitative services will be available to victims under amendments to the *Victims of Crime Act 1994* contained in Part III of this Bill.

Clause 5 Substitution

This clause repeals Parts I and II of the Principal Act, and inserts new Parts I to IV, which consists of new sections 1 to 62. The remaining Parts and sections of the Principal Act will be renumbered by clause 6 of the Bill. When the amendments take effect, the Principal Act will have 5 parts and 70 sections.

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PART I PRELIMINARY

New section 1 Short title

This section has the effect of changing the name of the Principal Act to the *Victims of Crime (Financial Assistance) Act 1983*. The new title more accurately reflects the contents of the legislation and its purpose in providing for financial assistance from the Territory to victims of crime.

New section 2 Interpretation

This section contains definitions of key terms used in the Principal Act.

The terms defined by this section are: another law, application, close family member, court, criminal conduct, criminal injury, damage, damages, dependant, eligible property owner, extremely serious injury, file, final award, financial assistance, guardian, injury, interim award, minor crime, offence, primary victim, Registrar, related victim, secondary victim, serious crime, sexual crime, victim, victims services scheme and violent crime.

New section 3 What is a violent crime?

This section explains which offences are "violent crimes". The concept of a violent crime is linked to the concepts of "criminal injury", which is dealt with in new section 4, and "primary victim" which is dealt with in new section 9.

The table in section 3 sets out the offences under the *Crimes Act 1900* which are violent crimes. Among others, these offences include murder and manslaughter, the various types of assaults, stalking and sex offences. Further offences can be included by regulation.

New section 4 What is a criminal injury?

A criminal injury is an injury caused to a person in circumstances which make that person a primary victim. Those circumstances are explained in section 9. In brief, the combined effect of sections 4 and 9 is that a criminal injury is an injury sustained by person either as the direct result of a violent crime committed against that person, or while the person was assisting the police in certain ways. The term "injury" is defined in section 2 and includes mental and "psychological" injuries such as nervous shock as well as physical injuries.

If the primary victim sustains more than one criminal injury whether at the same time, as the result of two offenders acting together or arising from the same circumstances, those injuries are regarded as a single criminal injury.

New section 5 *References to applications and awards made on behalf of other persons.*

This section makes it clear that unless indicated otherwise, where an application is made on behalf of another person, that person is to be regarded as the applicant for the purposes of the Principal Act and the application is regarded as having been made by that person. Similarly, where the court awards financial assistance on behalf of a person, the award is to be regarded as having been made to that person.

New section 6 *References to convictions - finding of proof without proceeding to conviction*

This section is based on former subsection 2(2) of the Principal Act. It explains that a person is to be regarded as having been convicted of an offence if he or she has been charged with that offence and a court has found the offence to be proved but did not record a conviction. Similarly, where the Principal Act refers to a conviction, that reference includes a finding by a court that an offence has been proved even though no conviction has been recorded.

New section 7 *Evidence of criminal conduct*

This section is based on former section 3 of the Principal Act. It explains that where there has been a conviction for an offence and the conviction has not been appealed or has been appealed unsuccessfully, the conviction is conclusive proof that the offender committed that offence. This means, for example, that a victim of a crime who applies for financial assistance can rely on a conviction in relation to that crime as conclusive proof that the crime occurred.

New section 8 *Legal incapacity - criminal intent*

This section is based on former section 4 of the Principal Act. It makes it clear that a person who could not legally form the relevant criminal intention to commit a crime, for example because he or she was too young, suffered a mental disability or was severely intoxicated, is nonetheless to be regarded as having had the relevant criminal intent.

The purpose of the section is to ensure that persons who are injured by acts committed by certain persons who cannot legally be held criminally liable for those acts are nevertheless able to access financial assistance. However, the section does not relieve applicants of the need to establish that theirs is a "criminal injury". Applicants would still need to establish that, but for the legal incapacity, there would have been the requisite criminal intent. Additionally, the section does not mean that involuntary acts can be regarded as criminal conduct.

PART II – ELIGIBILITY FOR ASSISTANCE

Division 1 Assistance for primary victims

New section 9 Who is a primary victim?

New section 9 defines the term "primary victim". The term covers persons who are injured or who die as a result of a violent crime having been committed against them. It also covers persons (but not other police officers) who are injured while assisting a police officer who is attempting to:

- arrest a person the officer suspects on reasonable grounds of having committed a crime;
- prevent the commission of what the officer reasonably believes to be a crime; or
- help someone the officer believes on reasonable grounds to be a victim of a crime.

New section 10 Financial assistance for primary victims

This section explains the financial assistance entitlements in relation to a primary victim who sustains a criminal injury.

Under subsection 10(1), the court can award a primary victim who suffers a criminal injury financial assistance for:

- expenses which have reasonably been incurred as a consequence of the injury - this could include, for example, medical expenses not covered by medicare and travelling expenses to and from medical appointments. Another example could be relocation expenses where the injury is by way of nervous shock and it is necessary for the victim to relocate to recover from the trauma he or she has suffered;
- pecuniary loss as a result of the victim's total or partial incapacity to work - for example, where the victim is self-employed and cannot work while he or she recovers from the injury. However, it should be noted that new section 34 ensures that if the victim receives paid leave for that time off work, his or her entitlements will be reduced to take account of the paid leave;
- expenses, other than legal fees, involved in making the claim for assistance - for example, this could include the costs of obtaining reports from doctors; and
- special assistance - subject to certain conditions, the court can award an amount by way of special assistance to, or on behalf of, primary victims who sustain an extremely serious injury. The amount of special assistance which can be awarded to eligible primary victims is a flat payment of \$30,000.

The eligibility conditions for awards of special assistance are set out in subsection 10(2).

The first condition is that the primary victim must have sustained an "extremely serious injury". This term is defined in new section 11, which sets out the characteristics which a criminal injury must have in order to be considered extremely serious. The purpose of this condition is to ensure that the bulk of resources for financial assistance are targeted at those victims who are not able to be rehabilitated to any significant degree.

The second condition is that the primary victim must first have used any services under the new victims services scheme which are reasonably available to him or her, unless the victim is unable to benefit from the scheme. The purpose of this condition is to ensure that appropriate rehabilitation action is undertaken before the court is required to consider the seriousness and permanence of the injury sustained by the primary victim. The exception recognises that primary victims who have, for example, suffered extreme brain damage are unlikely to benefit significantly from the scheme and it would be unreasonable to delay access to special assistance in those circumstances.

Subsections 10(3) to (5) deal with applications for financial assistance made by persons responsible for the maintenance of primary victims. The purpose of these provisions is to enable these persons to recover expenses which they have incurred because of the criminal injury to the primary victim, and any pecuniary loss they have suffered from not being able to work because of the primary victim's injury. By way of example, the provisions would enable the parents of a child primary victim to receive financial assistance for costs associated with treating their child's injury and for unpaid leave from work while they look after their injured child.

Subsections 10(4) and (5) clarify that where both the primary victim and persons responsible for his or her maintenance apply for financial assistance in relation to the criminal injury, the court must hear the applications together. If a final award of financial assistance has already been made in relation to the criminal injury, no further application for assistance can be heard by the court. In practice, both types of application would usually be made at the same time so that the person responsible for the maintenance of the primary victim would know whether or not an application had been made by or on behalf of the primary victim. The court when making its final award would be expected to ensure that the award takes account of both applications.

New section 11 What is an extremely serious injury?

This section defines the term "extremely serious injury". The concept includes both objective elements (based on the seriousness and permanence of the injury) and subjective elements (based on the actual impact of that injury on the primary victim). The purpose of the definition is to ensure that special assistance is awarded only in those extreme cases where the victims have been severely and irremediably damaged by their victimisation.

An injury is categorised as extremely serious if it results in any of certain consequences, which are set out in subsection 11(1). These are:

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- permanent impairment of a bodily function that is extremely serious and will remain so permanently;
- permanent loss of a bodily function that is extremely serious and will remain so permanently;
- permanent disfigurement that is extremely serious and will remain so permanently;
- permanent mental or behavioural disturbance or disorder that is extremely serious and will remain so permanently; or
- the loss of a foetus.

Except in cases where the injury is the loss of a foetus (which is intrinsically permanent) both the symptoms themselves (that is, the impairment, loss, disfigurement, disturbance or disorder) and their extreme seriousness must be permanent.

Subsection 11(2) explains that in order to be regarded as extremely serious, the impairment, loss, disfigurement, disturbance or disorder must result in a great and permanent reduction in the primary victim's quality of life and must, of itself, be extremely serious. This requirement will involve the court in considering the whole of the impact of the injury on the victim's life rather than just the medical effects of the injury on the victim's mind and body.

The impairment, loss, disfigurement, disturbance or disorder will not be regarded as extremely serious if appropriate medical or other treatment would help to rehabilitate the victim. Subsection 11(3) makes it clear that the injury's effects will not be regarded as extremely serious if appropriate treatment would alleviate the reduction in the victim's quality of life, or stop the symptoms being extremely serious. This provision reflects the intention that special assistance under new paragraph 10(1)(d) be limited to those persons whose injuries are substantial and irremediable.

New section 12 No financial assistance for primary victims or responsible persons

This section sets out the circumstances in which financial assistance is not available in relation to a primary victim. Several of these circumstances applied under the pre-amendment legislation and have been retained.

In brief, financial assistance is not available to either a primary victim or a person responsible for the maintenance of the primary victim:

- for injuries caused by motor vehicles. This limitation was contained in former paragraph 9(1)(a) of the Principal Act and reflects the fact that financial assistance would be available under motor traffic insurance schemes;
- for claims of less than \$100. This limitation was contained in former subsection 9(2) of the Principal Act;

- unless a report of the crime has been made to a police officer. Reporting is not necessary in cases where the primary victim was assisting a police officer when the injury occurred, since the police will already be aware of the incident concerned. The purpose of the provision is to encourage the reporting of violent crimes to assist law enforcement authorities in their efforts to apprehend violent offenders. There is no time limit for reporting to police so long as this has occurred before the court determines the application.

Additionally, financial assistance cannot be awarded to a primary victim where the injury to the primary victim occurs while he or she is involved in the commission of a "serious crime". The term "serious crime" is defined in section 2 and covers crimes involving harm to other persons and offences involving drugs or dishonesty. The purpose is to ensure that persons whose own illegal actions expose them to harm should not receive financial assistance from the Territory.

New section 13 Maximum award - primary victims and responsible persons

New section 13 has substantially the same effect as former section 7 of the Principal Act. It provides that the total amount payable under new section 10 in relation to a criminal injury is \$50,000. The \$50,000 maximum is to include any component of special assistance and any awards to a person responsible for the maintenance of a primary victim.

New section 14 Victims services scheme - primary victims

This section provides that primary victims are eligible for assistance under the new victims services scheme to be set up under the *Victims of Crime Act 1994*. The level of entitlements of primary victims to use the new scheme will be set out in that Act and in regulations made under that Act.

Division 2 Financial Assistance for related victims

New Division 2 sets out the entitlements to assistance of related victims. It explains which persons are related victims, the types of assistance for which they may be eligible, the circumstances in which assistance is not available, the maximum award that may be made to related victims and the eligibility of related victims to use the victims services scheme.

New section 15 Who is a related victim?

This section lists the persons who are "related victims" of a primary victim who has died. Related victims are persons who, when the primary victim died, were:

- close family members (that term is defined in new section 2 and means the primary victim's husband or wife, parents, step-parents, guardian, children, stepchildren, siblings, half-siblings and step-siblings);

- the dependants of the primary victim (the term "dependant" is defined in new section 2 and essentially means a person who was wholly or substantially dependant on the primary victim when the victim died. It includes persons who would have been dependant on the victim but for the victim's incapacity as a result of the criminal injury and any posthumous children of the victim); and
- persons who had an intimate personal relationship with the primary victim. This category could include de facto spouses and same-sex partners of the victim.

It is quite likely that a related victim may fit into more than one of these categories

New section 16 Assistance for related victims

This section provides that where a primary victim dies from his or her criminal injury, the related victims can apply for financial assistance for:

- reasonable expenses - for example, this could include reasonable funeral expenses and travelling costs to and from the funeral;
- pecuniary loss - for example, where the related victim is a dependent, financial assistance could be awarded for the loss of the primary victim's income;
- expenses associated with making applications, other than by way of legal fees;
- special assistance. Unlike the existing Act, the amendments in the Bill will not require related victims to establish that they personally have suffered an injury.

The court cannot hear an application for financial assistance by a related victim if it has already made a final award of financial assistance in relation to the death of the primary victim. This means that there can only be one final award in relation to the death of a primary victim. The section does not, however, mean that assistance to related victims is on a "first in, best dressed" basis; there is nothing to prevent the court in making its final award from having regard to all the applications by related victims which have been made in relation to the primary victim's death. Regardless of the number of applications made, however, new section 18 (discussed below) makes it clear the maximum total amount of financial assistance that can be awarded in relation to the death of a primary victim is \$50,000.

New section 17 No financial assistance for related victims

New subsection 17(1) prevents the court from making awards of financial assistance to any related victims in certain circumstances. These circumstances are the same as those in new section 12, discussed above, which would have prevented the primary victim (had he or she survived), from receiving an award of financial assistance.

New subsection 17(2) prevents an award of financial assistance being made to a particular related victim if that person was involved in criminal activity which contributed substantially to the primary victim's death. The policy behind this

provision is consistent with other laws, such as those dealing with inheritance, which prevent persons from benefiting financially from their crimes.

New section 18 Maximum award - related victims

This provision sets a maximum aggregate amount of \$50,000 for the financial assistance (including special assistance) that can be awarded in relation to the death of a primary victim. New subsection 18(2) explains that the court can make such orders as it thinks fit about the way that the special assistance component is to be shared when there is more than one related victim covered by the award. If there is only one related victim, he or she would be eligible for all of the \$30,000 component of special assistance.

New section 19 Victims services scheme - related victims

New section 19 confers on related victims eligibility to use the new victims services scheme to be set up under the *Victims of Crime Act 1994*. Their level of entitlements to use the scheme will be set out in that Act and regulations made under that Act.

Division 3 Assistance for eligible property owners

This Division explains the term "eligible property owner" and sets out the types of assistance for which such owners are eligible. The provisions in this Division are based on provisions in the Principal Act dealing with prescribed property damage which are repealed by this Bill.

New section 20 Who is an eligible property owner?

The term "eligible property owner" refers to a person who suffers damage to his or her property in the course of assisting a police officer who is attempting to:

- arrest a person the officer suspects on reasonable grounds of having committed a crime;
- prevent the commission of what the officer reasonably believes to be a crime; or
- help someone the officer believes on reasonable grounds to be a victim of a crime.

New section 2, which deals with definitions of key terms, explains that the damage to an eligible property owner's property is called "eligible property damage".

New section 21 Assistance for eligible property owners

This provision explains that the court can award an amount for the costs reasonably incurred by the eligible property owner as a result of the eligible property damage.

New section 22 Maximum award - eligible property owners

The maximum amount of financial assistance that the court can award to eligible property owners is \$50,000.

New section 23 No financial assistance for eligible property owners

Financial assistance cannot be awarded where the eligible property damage occurred while the owner was involved in the commission of a serious crime.

New section 24 Victims services scheme - eligible property owners

Eligible property owners may use the new victims services scheme. Their level of entitlements to use the new scheme will be set out in the *Victims of Crime Act 1994* and regulations made under that Act.

PART III AWARD OF FINANCIAL ASSISTANCE

New Part III deals with the way in which applications for financial assistance are to be made to, and decided by, the court.

Division 1 Procedure

New section 25 Jurisdiction of Magistrates Court

This section confers exclusive original jurisdiction to decide financial assistance applications on the Magistrates Court. Previously, that jurisdiction was shared between the Magistrates Court and the Supreme Court. The purpose of the change is to simplify the process so that all applications for financial assistance can be dealt with in the same way. It should be noted that victims will not need to make an application to the Magistrates Court in order to use the new victims services scheme.

New section 26 Application for assistance

This section reflects the content of former section 10 of the Principal Act. New section 26 sets out the process for making an application for assistance including the form of the application and the material which must accompany it. The existing requirement that applications must be supported by an affidavit has been replaced by a requirement to support the application with a statutory declaration. The purpose of this change is to make the process more simple and thus more accessible to persons who choose not to obtain legal representation.

Subsection 26(1) also makes it clear that where a primary victim applies for an award of special assistance, the application must include a certified statement from the operator of the new victims services scheme outlining the assistance provided to that victim. If the primary victim has not used the new scheme because he or she is physically incapable of benefiting from the scheme, the application must include a statement explaining why the victim would not be able to benefit. This provision is linked to the requirement in new section 10 that in order to be eligible for special

assistance, a primary victim must have first used the new victims services scheme unless he or she is physically incapable of benefiting from the scheme.

The application and accompanying documents are to be filed with the office of the Registrar of the Magistrates Court. The content of the provisions in former section 10 dealing with time frames for lodging applications and extensions is reproduced in subsections 26 (2) and (3).

Subsection 26(4) requires the Registrar to forward copies of applications and relevant documents to the Government Solicitor within 14 days after lodgement. The Registrar will ensure that the applicant and the Government Solicitor are advised of the arrangements for determining the application.

New Section 27 Procedure for determination of applications

Subsection 27(1) basically reproduces the content of former section 12 of the Principal Act. It deals with the way in which the Magistrates Court conducts proceedings in relation to applications and makes it clear that the *Magistrates Court (Civil Jurisdiction) Act 1992* applies to these applications. Subsections 27(2) and (3) make it clear that the Territory has a right of appearance in relation to applications for assistance and that where the Territory enters an appearance, it becomes a party to the application.

New section 28 Civil standard of proof

Section 28 is based on former section 8 of the Principal Act and explains that the standard of proof that applies to matters which must be determined in financial assistance applications is the balance of probabilities test. This test normally applies in civil proceedings. The section also makes it explicit that the civil standard applies to determining whether a crime has been committed, if there is no conviction for that crime.

New section 29 Medical examination

This section provides for primary victims in respect of whom an application for financial assistance has been made to undergo an examination by a health practitioner of the Territory's choice, if the Territory so requires. The Territory must pay for the cost of the examination. If the primary victim refuses to be examined, the court cannot make an award of financial assistance.

Division 2 General considerations relevant to the award of assistance

This Division sets out various matters which the court must consider when determining applications for assistance. Some of these factors may result in no award being made while others may reduce the amount of the award. Former section 15 of the Principal Act listed various factors relating to the victim's own conduct at the time the criminal injury or eligible property damage occurred which could be taken into account and could preclude or reduce awards of compensation. These factors have been substantially replicated in provisions in this Division and

also in Divisions 3 and 4. In addition, there are new factors which ensure that financial assistance under this Act does not duplicate assistance available elsewhere and make it explicit that any voluntary intoxication of the primary victim which contributed to the injury or property damage must be taken into account, except where the violent crime is a sexual offence.

New section 30 Relevant considerations

This section requires the court to take account of certain matters, termed "relevant considerations" when determining both whether to award financial assistance and if so, the amount of the award

Under subsection 30(2), the court must take account of the behaviour, condition, attitude and disposition of certain persons when the criminal injury (or eligible property damage, in the case of applications by eligible property owners) occurred. In relation to applications by the primary victim and persons responsible for the maintenance of a primary victim, these persons are the relevant persons. For applications by related victims, it is the behaviour, condition, attitude and disposition of those persons which is relevant. For applications by eligible property owners, it is their behaviour, condition, attitude and disposition which is relevant.

Under subsection 30(3), the court may also consider any other matters which it considers to be relevant to its determinations.

New section 31 Expenses - victims services scheme

This section relates to applications for financial assistance for expenses which are claimed to have been "reasonably incurred". The court must consider, when deciding whether an expense for a service was reasonably incurred, the availability to the victim of such services under the new victims services scheme. The purpose of this provision is to encourage victims to use the services available under that scheme in so far as those services are able to address the particular victim's needs. There may be services or other items which the new scheme cannot provide but which may be necessary as a result of the criminal injury, or it may be that in the circumstances it was reasonable for the victim not to use the new scheme. New section 31 is not intended to preclude reimbursement of expenses in such cases.

New section 32 Dismissal of application - set-offs exceeding entitlements under this Act

This section makes it clear that the court may dismiss an application if the set-offs that would apply under new Division 3 or 4 would be equal to or greater than the amount that the court would award but for those set-offs. This provision means that the court does not need to make awards of zero amounts or negative amounts.

Division 3 Set-offs: primary victims, responsible persons and eligible property owners

This Division sets out the types of set-offs which can reduce awards that would otherwise be payable for applications in relation to primary victims and eligible

property owners. The set-offs in relation to applications by related victims are set out in Division 4.

New section 33 Application of Division - primary victims, responsible persons and eligible property owners

This section explains that Division 3 applies to applications made in relation to a primary victim who has sustained a criminal injury and also applies to applications by an eligible property owner in relation to eligible property damage.

New section 34 Set-offs: other entitlements (primary victims, responsible persons and eligible property owners)

The purpose of this section is to ensure that where financial assistance in relation to a criminal injury or eligible property damage is available from another source, the court must reduce the amount of assistance that it would otherwise have awarded so that the applicant does not receive duplicate assistance (which is sometimes referred to as "double-dipping").

Section 34 applies only to amounts of financial assistance from other sources that are intended to cover the applicant's expenses or pecuniary loss. These amounts cannot be deducted from any special assistance component of the award. The rationale for this limitation is that assistance from other sources should be set-off against those components of the award under the Principal Act that are intended to address the same purpose as the assistance from the other source. Section 35 deals with the types of assistance from other sources which must be set-off against any award of special assistance.

The types of assistance from other sources which must be set-off against the non-special assistance component of an award are:

- damages payments for expenses and pecuniary loss (the term "damages" is defined in section 2 and covers damages awarded by a court as well as payments made out of court to settle a claim for damages);
- reparation payments made to the applicant under section 437 of the *Crimes Act 1900* (these are payments which the court can order, as part of the sentencing process, an offender who is convicted of a crime to pay to the victim);
- medicare payments and other benefits payable by insurance companies in relation to the criminal injury or eligible property damage; and
- any social security payments to which a primary victim or a person responsible for his or her maintenance is entitled as a result of the criminal injury.

New section 35 Set-offs: special assistance (primary victims)

This section requires the court to reduce the special assistance payment in relation to primary victims by the amount of any damages or compensation from other sources which does not relate to expenses and pecuniary loss. This means, for

example, that the court must set-off against the special assistance component that it would have otherwise awarded any payments of damages or compensation for matters such as pain and suffering, aggravated damages or punitive damages.

New section 36 Set-offs: intoxication (primary victims)

Subsection 36(1) requires the court to reduce awards of financial assistance if the primary victim was intoxicated as the result of the voluntary use of alcohol or illegal drugs when the criminal injury occurred. This set-off does not apply to persons who became primary victims because they were assisting the police. The amount by which the court must reduce the award must correspond to the degree to which the court considers the intoxication contributed to the injury. The purpose of the provision is to limit awards in relation to persons whose own conduct contributed to the injury.

Subsection 36(2) makes it clear that the court cannot reduce awards of assistance because of intoxication where a primary victim's prescribed injuries result from a sexual crime. This subsection recognises that the perpetrators of sexual crimes may deliberately take advantage of the victim's state of intoxication to reduce that victim's ability to repel or resist sexual acts. The subsection is consistent with the policy behind section 92P of the *Crimes Act 1900* which makes it clear that consent to a sexual act is negated where it is caused by intoxication.

New section 37 Set-offs: minor crimes (primary victims and eligible property owners)

This section requires the court to take account of the extent to which the involvement of the primary victim or eligible property owner in the commission of a minor crime contributed to the criminal injury or eligible property damage. The term "minor crime" is defined in section 2. It includes offences of a regulatory nature, such as traffic offences or littering. The purpose of this section is to ensure that persons involved in minor crimes take some responsibility for their own misconduct if it contributes to the relevant injury or property damage. The section will not affect an award to a person if that person's involvement in a minor crime did not contribute to the relevant injury or property damage.

Division 4 Set-offs: related victims

This Division lists the set-offs which affect awards of financial assistance to related victims. The provisions in this Division are essentially parallel to new sections 33 to 35 and like those provisions they are intended to prevent "double dipping". However, there are no set-offs to reflect the deceased primary victim's self-intoxication or involvement in the commission of a minor crime.

New section 38 Application of Division - related victims

This provision makes it clear that Division 4 applies to awards of financial assistance to related victims

New section 39 Set-offs: other entitlements (related victims)

This section requires the court to reduce any awards of financial assistance to the related victims, other than the component for special assistance, to take account of assistance provided to those related victims by other sources for expenses and pecuniary loss arising from the criminal injury to, and subsequent death of, the primary victim.

New section 40 Set-offs: special assistance (related victims)

This section requires the court to reduce the special assistance component by the amount of any damages or compensation payable to any of the related victims covered by the application which does not relate to expenses or pecuniary loss. For example, the court would be required to reduce the amount of special assistance that would otherwise be awarded if one of the related victims covered by the application receives damages from the offender for the grief he or she experiences as a consequence of the primary victim's wrongful death.

Division 5 Miscellaneous

New section 41 Adjournment of proceedings pending ascertainment of set-off amounts

This section obliges the court to postpone making a final decision on an application until the applicant has taken appropriate action to recover any financial assistance that may be available from other sources and which must be set-off under new Divisions 3 and 4.

In recognition of the delays and uncertainties sometimes associated with actions for damages, however, there is no requirement to adjourn the proceedings while an action for damages is pursued. This exemption to the adjournment rule does not mean that the applicant is permitted to "double dip" in these circumstances - new section 51 makes it clear that if the applicant receives damages after the court has awarded financial assistance under this Act, he or she will be required to repay to the Territory the amount by which that financial assistance would have been reduced if the damages had been received before the application for assistance was determined.

New section 42 Interim awards

Section 42 is based on former section 16 of the Principal Act. It enables the court to make an interim award in certain circumstances if it would be just to do so. These circumstances are that the court is satisfied that it should award financial assistance but the final quantum of the award cannot be gauged at that stage.

When a final award is made, any interim awards in relation to the applicant no longer have effect. The court is required to take account of amounts of assistance awarded under interim awards when determining the amount of a final award, to avoid awarding assistance twice for the same matters.

New section 43 Conditions of awards of financial assistance

This section reproduces the content of former section 13 of the Principal Act. It deals with the making of awards subject to conditions.

The court can impose conditions on awards of assistance. These conditions can include directions about the apportionment and disposal of amounts awarded as well as conditions about holding awards on trust.

Where the court stipulates that an award is to be held on trust, it must explain how the award is to be apportioned as between components for expenses, pecuniary loss and special assistance. Amounts of special assistance must be paid towards the maintenance, education or benefit of the beneficiary. The purpose of this provision is to clarify for the trustee the purposes for which particular amounts have been awarded so that he or she can ensure the trust money is paid out accordingly.

New section 44 Restriction on publication

This section is based on former section 17 of the Principal Act. It enables the court, in the public interest, to ban the publication of any reports or accounts of particular proceedings. Where there is no ban on publication, the Court may restrict the publication of certain matters which could identify the primary victim, the applicant and the person(s) allegedly involved in the relevant criminal conduct. Such restrictions can only be made in the interests of justice and if the persons who would be identified has not been convicted of offences relevant to the proceedings. Further, the Court must consider the public interest in enabling public access to the principles it applies in deciding applications. Breaching an order restricting or prohibiting publication is an offence.

New section 45 Variation of final awards of financial assistance

This section is based on former section 18 of the Principal Act which provided for the variation of awards. It enables the Court to vary a final award at the request of either the Government Solicitor or the person in whose favour the award was made. The criteria which must guide the court when deciding whether to vary an award are:

- the availability of fresh evidence about the circumstances in which the relevant criminal injury or eligible property damage, or the relevant criminal conduct, occurred;
- changes to the applicant's economic circumstances arising after the award is made;
- other relevant matters.

For example, if a primary victim was awarded a component for special assistance and it later became evident that the relevant injury was not an "extremely serious injury", the court could vary the award to remove the special assistance component.

New section 46 Territory liable to pay financial Assistance

This section makes it clear that the liability to pay an amount of financial assistance rests with the Territory. It is based on former section 27 of the Principal Act.

New section 47 Copies of awards and arrangements for payment

This section requires the Registrar to give copies of any orders awarding financial assistance to the Government Solicitor, the applicant, persons in whose favour an award is made and, where the award is made on trust, the trustees. When the copy of the order is received by the Government Solicitor, arrangements must be made to pay the assistance awarded in the order. This section has substantially the same effect as former section 30.

New section 48 Prohibition on assistance being applied to other purposes by operation of law or in the course of civil proceedings

This section essentially reproduces former section 31 of the Principal Act and is intended to ensure that applicants actually receive the benefit of awards of assistance. In brief, the section prevents awards from being used to discharge other debts or liabilities of the applicant and also prevents the applicant from transferring his or her right to the payment of assistance to other persons.

New section 49 Other rights not affected

This section, based on former section 32, makes it clear that any other rights a person may have in relation to the criminal injury or eligible property damage, or in relation to the violent criminal conduct which caused that injury or damage, are not affected by an award of assistance under the Principal Act.

PART IV RECOVERY OF ASSISTANCE

New Part IV deals with the recovery of financial assistance provided by the Territory. It builds on former provisions in the Principal Act for recovering awards paid to a successful applicant if the applicant later receives financial assistance in relation to the criminal injury or eligible property damage from another source. Part IV also contains provisions dealing with the recovery of assistance provided by the Territory from the offender responsible for causing the criminal injury or eligible property damage, where the offender has been convicted of the relevant violent crime.

Division 1 Preliminary

New section 50 Interpretation

Section 50 contains definitions of key terms used in new Part IV of the Principal Act. The definitions of these terms are included at this point in the legislation rather than in section 2, which also contains definitions, to make it clear that the definitions in section 50 only apply in relation to the recovery provisions of Part IV.

The terms which are defined are: assisted person, defendant, notice of objection, order for restitution, provisional order for restitution, recovery proceedings and related crime.

It should be noted that when the amendments use the term "order for restitution", it refers only to orders for restitution which have been confirmed by the Court. The term does not cover provisional orders for restitution which have not been confirmed by the Court – the amendments refer to an order of that type as a "provisional order for restitution".

Division 2 Recovery from assisted person

New section 51 Repayment of financial assistance where civil damages recovered

This section is based on former section 29 of the Principal Act. Subsection 51(1) explains that the section applies where a person who has received assistance from the Territory later receives damages or compensation from another source in relation to the same injury or damage in respect of which the court awarded assistance under the Principal Act.

Subsection 51(2) requires such a person to repay to the Territory some or all of the assistance paid by the Territory under the Principal Act. If the compensation or damages from the other source is greater than the amount of assistance provided by the Territory, the person must repay all of the assistance paid by the Territory. If the amount of compensation or damages from the other source is less than the assistance paid by the Territory, the person must repay the Territory an amount equivalent to the amount of the compensation or damages from the other source.

Subsection 51(3) makes it clear that the person is obliged to tell the Territory about the compensation or damages from the other source, and the person is liable to be fined or imprisoned if he or she fails to do so.

Subsection 51(4) makes it clear that the Territory must file a notice with the court both when it is told by the person about a payment of compensation or damages and also when it receives a repayment from that person.

Division 3 Recovery from offenders

This Division sets out the procedures to be followed for recovering awards of financial assistance from the offender who was responsible for causing the relevant criminal injury or eligible property damage for which the award of financial assistance was made. Recovery from offenders was dealt with in former section 29A of the Principal Act.

Division 3 applies to an offender who is convicted of a "related crime", which basically means an offender who is either:

- convicted of the offence which caused the relevant injury or damage for which assistance was awarded, or

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- convicted of another offence, but the offence causing the relevant injury or damage was taken into account at the time the offender was sentenced for that other offence.

The purpose of the definition of "related crime" is to reflect section 448 of the *Crimes Act 1900* whereby an offender's involvement in another offence can be taken into account when sentencing the offender in relation to the offender's conviction for that other offence.

New section 52 Provisional order for restitution

This section allows the Territory to apply to the Registrar for a provisional order of restitution. An order of this type can be made against an offender (referred to in Part IV as the "defendant") who is convicted of a "related crime" within 2 years after the relevant final award of assistance was made.

New subsection 52(3) explains that the Registrar must ensure that a copy of the provisional order is served on the defendant. The purpose of this requirement is to give him or her an opportunity to object to the provisional order before it is confirmed by the court. The notice must explain the terms of the order, including the offence and conviction to which it relates and must set out details of the defendant's right to object and the process for making an objection.

New section 53 Notice of objection by defendant

This section sets out the process for making an objection to a provisional order of restitution. The notice of objection must be made within 28 days after the defendant was served with the provisional order. It must set out the grounds for the objection and it must also be made in accordance with the regulations dealing with such notices.

New section 54 Confirmation of provisional order - no recovery proceedings

This section explains that the Territory can apply to the court for the confirmation of a provisional recovery order. If the defendant does not file an objection within the permitted 28 day objection period, the court can confirm the provisional order without holding a hearing.

Subsection 54(2) explains that in some circumstances the court cannot confirm a provisional order even though there has been no objection by the defendant. The circumstances are where the person who was awarded the assistance has repaid some or all of the award of assistance to the Territory under Division 2 of Part IV because he or she received damages or compensation from another source. The purpose of subsection 54(2) is to prevent the Territory recovering the assistance it has paid from both the person who was assisted and the offender responsible for causing the relevant injury or damage. The subsection achieves the same result as former section 29B of the Principal Act.

If the person who was awarded assistance repays the whole amount of the assistance, the court is required to discharge any provisional order made against the defendant. If the person who was awarded assistance repays some of the amount of assistance, when the court confirms the provisional order it must also vary it by reducing it so that the defendant is only obliged to pay the Territory an amount equal the amount of assistance that was not repaid under new Division 2 of Part IV.

New section 55 Confirmation of provisional order - recovery proceedings in Court

This section sets out the procedures to be followed when a defendant objects to a provisional order for restitution. Under subsection 55(1), the court must hold a hearing about whether the provisional order should be confirmed (the proceedings in relation to this hearing are called "recovery proceedings").

Under subsection 55(2) the court can confirm the provisional order for restitution if it is satisfied that the defendant was convicted of the related crime.

Subsection 55(3) explains that the court has the power to vary a provisional order which it confirms. Subsection 55(4) reflects the terms of subsection 54(3), discussed above. It requires the court, when deciding in recovery proceedings whether or not to confirm a provisional order, to take account of amounts repaid to the Territory under Division 2 of Part IV. Where the whole of the assistance has been repaid by the person to whom it was awarded, the provisional order against the defendant must be discharged. Where only part of the assistance has been repaid, the court must vary the provisional order by reducing the amount of the order so that it only applies to the amount of assistance which has not been repaid.

New section 56 Arrangement for payment pursuant to order for restitution

This section recognises that a defendant may experience some financial difficulties in paying an order for restitution, for example where he or she is still serving a sentence of imprisonment. The section allows the Registrar and the defendant to make arrangements for payment. The court may adjourn recovery proceedings so that such an arrangement may be made. If, however, the defendant does not abide by the terms of an arrangement in relation to a provisional order, the Territory can pursue the recovery proceedings to confirm the provisional order. Once the order is confirmed, it is enforceable in the same way as other court orders.

New section 57 Confirmed order for restitution

This section deals with the confirmation of orders for restitution. Subsection 57(1) explains that when it confirms a provisional order for restitution, the court can reduce the amount to be paid to take account of the defendant's financial position or other relevant matters.

Subsection 57(2) makes it explicit that the order, once it has been confirmed, cannot be for an amount greater than the financial assistance which was awarded by the court.

Subsection 57(3) provides that where there is more than one defendant convicted of the related crime, each defendant is jointly and severally liable under the order for restitution. This means that the Territory can enforce the order against any or all of the defendants until the whole amount of the order has been recovered. However, under new subsection 57(4), where the amount payable under the order has been reduced in relation to one of the defendants under subsection 57(1), the Territory can only enforce the confirmed order against that particular defendant by the amount specified in the order. The liability of the other defendants is not affected.

New section 58 Effect of appeals against award of financial assistance, and variations of awards

This section deals with the effect of orders for restitution in relation to final awards of financial assistance which are still susceptible to appeal. The purpose of the section is to ensure that orders for restitution are not enforced against the offender responsible for the violent crime in relation to which the award of assistance was made until the amount of the award of the financial assistance is certain.

New subsection 58(1) makes it clear that an order for restitution does not have legal effect until either:

- the time for appealing the award of financial assistance has expired and there is no appeal; or
- if there is an appeal, it has been finalised.

If the result of the appeal is that the award of financial assistance is set aside, the order for restitution no longer has legal effect. This is because the order reflected the terms of the award, which no longer exists.

If the appeal in relation to the award of financial assistance results in the award being varied, the Territory or the defendant can apply to the court to amend the order for restitution to reflect the variation to the award of financial assistance. Similarly, if the award of financial assistance is varied under section 45, the Territory or the defendant can apply to the court to amend the order for restitution to reflect the variation to the award of financial assistance.

New section 59 Supreme Court appeals

An appeal against an order for restitution can be made to the Supreme Court by the Territory or the defendant. Appeals can be made as of right which means that the leave of the Supreme Court is not needed in order to institute an appeal.

New section 60 Effect of order for restitution on civil proceedings

This section makes it clear that an order for restitution has no effect on any civil proceedings for damages brought by a person who received a final award of assistance covered by the restitution order. If the court awards damages, the order for restitution cannot be taken into account in calculating the damages payable.

New section 61 Access to information about defendant's whereabouts

This section allows the Registrar to obtain information from government authorities including the police and the Registrar of Motor Vehicles to help locate the defendant so that notice of a provisional order can be served on that defendant.

Division 4 Reimbursement of offenders

The purpose of this Division is to ensure that the Territory does not recover an award of assistance both from the person to whom it was awarded (under Division 2) and from the offender (under Division 3). Division 4 is necessary because it is possible (given the long time frames that can be associated with compensation claims and actions for damages) that a person who receives an award of assistance will not become liable to repay that assistance to the Territory until after the Territory has obtained restitution in relation to that award from the offender.

New section 62 Reimbursement of offender where amounts paid under Division 2 and Division 3

This section explains that where the defendant has complied with an order for restitution under Division 3 and afterwards the Territory is repaid under Division 2 by the person who received the final award of assistance in relation to which the order for restitution was made, the Territory must reimburse the defendant. The amount to reimbursed is whichever is the lesser of:

- the amount paid under Division 3 by the defendant; or
- the amount paid under Division 2 by the person who received the final award of assistance.

The defendant can ask the Territory to pay some or all of the amount of the reimbursement to another person.

Clause 6 Renumbering - Criminal Injuries Compensation Act 1983

This clause contains a table explaining how the Principal Act is to be renumbered to take account of the amendments made by the Bill.

The provisions affected by the renumbering chart in subclause 6(1) are sections 34A to 36 which will be renumbered from section 63 to 70.

Subclauses 6(2) and (3) are technical provisions which explain how references to section numbers in the Principal Act, which are found in other parts of the Bill or in other legislation, are to be interpreted. The purpose of these subclauses is to avoid doubt as to whether a particular reference is to a provision in the Principal Act as in force before the amendments commence, or to a provision in the Principal Act as amended by the Bill.

PART III**VICTIMS OF CRIME ACT 1994**

The amendments in Part III of the Bill affect the *Victims of Crime Act 1994* and relate to the establishment of the new victims services scheme. The new scheme forms a major component of the reforms made by the Bill.

Clause 7**Principal Act**

This clause makes it clear that in this Part of the Bill, the term "Principal Act" refers to the *Victims of Crime Act 1994*. Similarly, in this Part of the Explanatory Memorandum the term "Principal Act" refers to that Act.

Clause 8**Interpretation**

This clause amends existing definitions and inserts new definitions into section 3, which deals with the interpretation of terms used in the Principal Act. The purpose of the amendments is to reflect amendments made to the *Criminal Injuries Compensation Act 1983* by Part II of the Bill.

Clause 9**Insertion**

This clause inserts new Part IV into the Principal Act. Existing Part IV will be renumbered as Part V.

PART IV**VICTIMS SERVICES SCHEME****New section 19 Victims services scheme - establishment**

This section provides for the establishment, by regulations, of the new victims services scheme. The regulations that may be made to establish the new scheme can cover:

- the organisation or body that will run the scheme;
- the establishment of Victims Assistance Board (with specific functions in relation to managing and funding the new scheme);
- eligibility of victims to use the new scheme;
- the levels of service to be provided to victims;
- the functions of the Victims of Crime Coordinator in relation to the new scheme (so long as those functions are not inconsistent with the Coordinator's other statutory functions);
- the person or body responsible for preparing the annual report for the scheme; and
- any other matters relevant to the new scheme.

New section 20 *Victims services scheme - eligibility*

This section makes it clear that any victim (as that term is defined in section 3 of the Principal Act) is eligible to use the new scheme, except where the victim does not comply with any eligibility criteria set out in the regulations.

New section 21 *Victims services scheme - annual report*

This section ensures that the annual reporting requirements which apply to other government agencies will apply in relation to the new victims services scheme. This section will enable proper scrutiny and accountability for the new scheme, which is appropriate as the scheme will be funded by the Territory.

New section 22 *Victims services scheme - access to information and protection of privacy*

This section makes it clear that the *Health Records (Privacy and Access) Act 1997* applies to any health records held by the victims services scheme. The purpose of the section is ensure that personal information about victims is treated in the same way as other information given to health care professionals.

Clause 10 Renumbering

This clause explains how the Principal Act is to be renumbered. Existing Part IV of that Act will become new Part V, and existing section 19 will become new section 23.

PART IV CRIMES ACT 1900

Clause 11 Reparation orders

This clause amends section 437 of the *Crimes Act 1900* which allows a court to make reparation orders against an offender when the offender is sentenced. New subsection 437(1A) is inserted to make it clear that a person who suffers loss or incurs expense as a direct result of the offence for which the offender is being sentenced can apply to the court in the prescribed form for a reparation order in that person's favour. The purpose of the amendment is to ensure that the person seeking the order has available to him or her an accessible and inexpensive mechanism for direct recovery from the offender as an alternative to civil litigation to recover the loss or expenses incurred.

PART V CONSEQUENTIAL AMENDMENTS

Clause 12 Consequential amendments

This clause explains that the three Schedules contain consequential amendments. Schedule 1 contains amendments to the *Criminal Injuries Compensation Act 1983*.

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which are consequential to the amendments made in Part II of the Bill. Schedule 2 contains amendments to the *Evidence (Closed-Circuit Television) Act 1991*, the *Magistrates Court Act 1930* and the *Supreme Court Act 1993*, which are also consequential to the amendments to the *Criminal Injuries Compensation Act 1983*. Schedule 3 makes consequential amendments to the *Criminal Injuries Compensation Regulations*.

PART VI **TRANSITIONAL**

This Part of the Bill deals with the transitional arrangements which will apply to applications under the *Criminal Injuries Compensation Act 1983* before the amendments made by this Bill come into effect. The Government announced as part of the 1998/1999 Budget that the changes to entitlements for compensation for pain and suffering that are made by the Bill would apply to all claims made after 23 June 1998 which have not been determined by the time the amendments commence. The transitional provisions implement this part of the Government's Budget announcement.

Clause 13 **Interpretation**

This clause explains key terms used in the transitional provisions. These terms are: amended Act, award, commencement day, Compensation Act, compensation for pain and suffering, final award, interim award and undetermined application for compensation.

The term "amended Act" is defined to mean the *Criminal Injuries Compensation Act 1993* as amended by the Bill. The term "Compensation Act" means the *Criminal Injuries Compensation Act 1993* as it currently exists, that is, before the amendments to be made to that Act by the Bill come into effect.

The term "undetermined application for compensation" means those applications for compensation that were made under the Compensation Act in relation to which, when the amendments commence, either:

- no award of compensation has been made;
- no final award of compensation has been made but an interim award has been made; or
- a final award has been made, but it is still under appeal or the period for making appeals has not expired.

Clause 14 **Proceedings instituted on or before 23 June 1998**

This clause makes it clear that the amendments do not affect applications for compensation under the Compensation Act that were made on or before 23 June 1998. The Compensation Act will continue to apply to these applications and to any awards made in relation to them.

Clause 15**Undetermined applications - proceedings instituted after 23 June 1998**

This clause explains that the Compensation Act continues to apply to undetermined applications that were made after 23 June 1998, subject to the restrictions set out in subclause 15(2). These restrictions basically limit the power to make an award of compensation in relation to those applications that includes a component for pain and suffering.

Sub-subclause 15(2)(a) explains that if neither an interim award nor a final award has been made, when such an order is made in relation to the application it cannot include a component for pain and suffering.

Sub-subclause 15(2)(b) deals with applications where an interim award, but no final award, has been made. It provides that when the final award is made, there can be no increase in any component for pain and suffering included in the interim award. Additionally, the final award cannot include a component for pain and suffering if the interim award did not include such a component.

Sub-subclause 15(2)(c) deals with applications where final awards have been made but are still open to appeal or are being appealed. The court hearing an appeal in relation to these applications cannot award a component for pain and suffering if no such component had previously been awarded, nor may it increase a component for pain and suffering if such a component had been awarded at first instance.

Subclause 15(3) makes it clear that courts can decrease the component for pain and suffering contained in interim or final awards that were made before the amendments commence in relation to post-23 June 1998 applications.

Clause 16**Variation of final awards – proceedings instituted after 23 June 1998**

The Compensation Act will continue to cover variations of final awards made in relation to applications lodged after 23 June 1998, with the restrictions set out in subclause 16(2). That subclause makes it clear that final awards for applications made after 23 June 1998 cannot be varied if the variation would increase any amount of compensation awarded for pain and suffering. Similarly, if the final award did not contain a component for pain and suffering, the variation cannot include a component for pain and suffering. Subclause 16(3) makes it clear the restrictions on variations do not prevent variations which reduce the amount of compensation for pain and suffering that had previously been awarded.

Clause 17**Claims for special assistance where compensation for pain and suffering not available**

This clause applies to undetermined applications made under the Compensation Act after 23 June 1998 where the applicant is unable to be awarded any compensation for pain and suffering in relation to a prescribed injury solely because of the transitional provisions in this Bill. It does not apply to applications where there has been an award that included a component for pain and suffering.

Subclause 17(1) allows the applicant in these circumstances to make a fresh application under the amended Act for financial assistance in the nature of special assistance. Such an application must be made within 12 months of the commencement of the amendments, however, this time may be extended under subclause 17(3) if the court considers that it would be just to do so.

Subclause 17(4) provides that the amended Act applies to such applications. This subclause has the effect that in order to be awarded special assistance, the applicant must satisfy all the criteria for special assistance set out in new Divisions 1 and 2 of Part II of the amended Act. This means, among other matters, that the applicant will need to establish that he or she is either a primary victim whose criminal injury is an extremely serious injury, or a related victim, within the meaning of the amended Act.

SCHEDULE 1 CRIMINAL INJURIES COMPENSATION ACT

Schedule 1 contains minor amendments to the *Criminal Injuries Compensation Act 1983* which are consequential on the amendments made by Part II of the Bill. These amendments include:

- changes to reflect the exclusive original jurisdiction of the Magistrates Court to determine assistance applications
- changes to reflect the renumbering of the legislation
- changes to reflect the new name of the legislation, which is the *Victims of Crime (Assistance) Act 1983*

Schedule 1 of the Bill also makes consequential changes to the Schedule to the *Criminal Injuries Compensation Act 1983* (which will become the *Victims of Crime (Financial Assistance) Act 1983*). These amendments ensure that the forms for making applications for assistance are updated to reflect the amendments made to that Act by the Bill.

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS - OTHER ACTS

This Schedule amends the *Evidence (Closed-Circuit Television) Act 1991*, the *Magistrates Court Act 1930* and the *Supreme Court Act 1933*. The amendments to the *Evidence (Closed-Circuit Television) Act 1991* and the *Magistrates Court Act 1930* ensure that those acts refer to the *Victims of Crime (Assistance) Act 1983* instead of the *Criminal Injuries Compensation Act 1983*. The amendment to the *Supreme Court Act 1933* removes a reference to the *Criminal Injuries Compensation Act 1983* which is no longer necessary as a result of amendments removing the Supreme Court's original jurisdiction to determine assistance applications.

SCHEDULE 3

**CRIMINAL INJURIES COMPENSATION
REGULATIONS**

This Schedule makes minor amendments to the Criminal Injuries Compensation Regulations to reflect the change in the title of the *Criminal Injuries Compensation Act 1983* to the *Victims of Crime (Assistance) Act 1983* and to update references to sections affected by the renumbering of that Act.