

TASMANIA

**VICTIMS OF CRIME ASSISTANCE AMENDMENT
BILL 2007**

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**VICTIMS OF CRIME ASSISTANCE AMENDMENT
BILL 2007**

*(Brought in by the Minister for Justice and Workplace
Relations, the Honourable Steven Kons)*

A BILL FOR

**An Act to amend the *Victims of Crime Assistance Act 1976*,
the *Civil Liability Act 2002*, the *Crime (Confiscation of
Profits) Act 1993*, the *Land Titles Act 1980* and the
*Registration of Deeds Act 1935***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Victims of Crime
Assistance Amendment Act 2007*.

2. Commencement

This Act commences on a day to be proclaimed.

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Part 2 – Victims of Crime Assistance Act 1976 Amended

**PART 2 – VICTIMS OF CRIME ASSISTANCE ACT
1976 AMENDED**

3. Principal Act

In this Part, the *Victims of Crime Assistance Act 1976** is referred to as the Principal Act.

4. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

- (a) by omitting “compensation” from the definition of “award” in subsection (1) and substituting “assistance”;
- (b) by omitting the definition of “Commissioner” from subsection (1);
- (c) by omitting the definitions of “dependant”, “Deputy Registrar” and “Fund” from subsection (1) and substituting the following definition:

“Fund” means the Fund continued under section 12B as the Victims of Crime Assistance Fund;
- (d) by omitting the definition of “Master” from subsection (1);

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- (e) by omitting the definitions of “primary victim”, “Registrar”, “related victim” and “secondary victim” from subsection (1) and substituting the following definitions:

“related person” means a person who is –

- (a) the spouse of a victim; or
- (b) a parent, step-parent or guardian of a victim who was under 18 years of age at the time of the offence; or
- (c) in a personal relationship, within the meaning of the *Relationships Act 2003*, with a victim;

“Secretary” means Secretary of the Department;

“sexual offence” means an offence under section 124(1), 125A(2), 127(1), 127A(1), 133(1) or (2) or 185(1) of the *Criminal Code* or an attempt to commit such an offence;

“victim” means a person who is injured or killed as specified in section 4(1).

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(f) by inserting the following subsection after subsection (3):

(4) In this Act a reference to finding a person guilty of an offence includes –

(a) a reference to the person pleading guilty to the offence; and

(b) a reference to a court finding the person guilty of the offence, whether or not a conviction is recorded; and

(c) a reference to a court finding the charge for the offence proved.

5. Sections 2A and 3 repealed

Sections 2A and 3 of the Principal Act are repealed.

6. Part 2 substituted

Part 2 of the Principal Act is repealed and the following Part is substituted:

PART 2 – AWARDS OF ASSISTANCE

4. Basis of awards of assistance

- (1) Subject to sections 5 and 6, assistance may be awarded under this Act where a person is killed or suffers injury –
 - (a) as a result of the act of another person that constitutes an offence or would have constituted an offence, but for the fact that that other person had not attained a specified age, or was insane, or had other grounds of excuse or justification at law for his or her act; or
 - (b) in assisting a police officer in the exercise of the power to arrest a person or to take action to prevent the commission of a crime by a person.
- (2) In respect of the injury of a victim, assistance awarded under this Act may be awarded to the victim, subject to sections 5 and 6, in respect of any one or more of the following matters:
 - (a) the costs of medical, dental, psychological and counselling services reasonably incurred by the victim as a result of the injury;

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- (b) the reasonable costs of medical, dental, psychological and counselling services which the Secretary is satisfied the victim will require in the future as a result of the injury;
 - (c) the pain and suffering of the victim arising from the injury if the injury is sustained as a result of a sexual offence.
- (3) In respect of the death or injury of a victim, assistance awarded under this Act may be awarded to a related person, subject to sections 5 and 6, in respect of the following matters:
 - (a) the costs of medical, dental, psychological and counselling services provided to the victim as a result of the injury which have been reasonably incurred by the related person;
 - (b) the reasonable costs of medical, psychological and counselling services which the Secretary is satisfied the victim will require in the future as a result of the injury.
- (4) Assistance awarded to a victim under subsection (2)(c) may not exceed \$2 000 or such other amount as may be prescribed for the purposes of this subsection.

5. Secretary may award assistance

- (1) Subject to this section, the Secretary, at his or her discretion, may award assistance to, or in relation to, a victim.
- (2) In exercising his or her discretion in any particular case as to whether or not to award assistance and the amount of assistance to be awarded, the Secretary –
 - (a) is to have regard to any behaviour, condition, attitude or disposition of the victim that appears to him or her to have directly or indirectly contributed to the injury or death in relation to which the assistance is sought; and
 - (b) is to have regard to whether the victim or related person seeking assistance incurred expenses in obtaining services for the victim, and the amount of those expenses, in circumstances where the victim or related person reasonably could have avoided incurring those expenses by obtaining services of that type under a scheme conducted by a government body or a charitable organisation free of charge or for substantially less than the expenses incurred; and

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- (c) may have regard to any other matters and circumstances that he or she considers relevant.
- (3) The Secretary may not award assistance to, or in relation to, a victim in respect of a death or injury unless he or she is satisfied, on a balance of probabilities, that the death or injury was the result of criminal conduct.
- (4) The Secretary may not award assistance to, or in relation to, a victim if the victim has failed to do any act or thing which, in the opinion of the Secretary, the victim should reasonably have done to assist in the identification, apprehension or prosecution of any person alleged to have committed the criminal conduct or alleged criminal conduct that resulted in the death or injury for which assistance is sought.
- (5) If the Secretary is satisfied a victim or related person has, or had, an adequate remedy in civil proceedings in respect of the criminal conduct that resulted in the death or injury for which assistance is sought, the Secretary –
 - (a) may refuse to award assistance to, or in relation to, the victim; or
 - (b) may award assistance taking into account any amount –

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- (i) recovered by or for the benefit of the victim by way of damages or compensation arising from the criminal conduct; or
 - (ii) that would, in the opinion of the Secretary, be likely to be so recovered if proper action was taken by the victim or on his or her behalf.
 - (6) On refusing to award assistance, or on awarding assistance, as specified in subsection (5)(a) or (b) to, or in relation to, a victim in respect of death or injury resulting from criminal conduct, the Secretary may give leave for the making of a further application, by or on behalf of the victim or related person, for assistance or further assistance in respect of the same criminal conduct.
 - (7) On receipt of an application made with leave given under subsection (6), the Secretary may award assistance or further assistance if he or she considers it just to do so having regard to circumstances that have arisen, or information that has been obtained, since his or her previous determination.
 - (8) If the Secretary is satisfied that assistance should be awarded to, or in relation to, a

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victim but does not have sufficient information to enable the final determination of the amount of the assistance, the Secretary may, if he or she considers it proper to do so, make an interim award of assistance.

- (9) The making of an interim award of assistance does not prevent the making of a further interim award of assistance.
- (10) An award of assistance may be made on and subject to such conditions as the Secretary determines as to –
 - (a) the payment, disposal, allotment or apportionment of any sum paid under the award; and
 - (b) the holding of any sum paid under the award on trust for the victim.

6. When assistance not to be awarded

- (1) The Secretary may not award assistance to, or in relation to, a victim –
 - (a) in respect of a death or injury caused by or arising out of the use of a motor vehicle within the meaning of the *Vehicle and Traffic Act 1999*; or

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- (b) by way of exemplary or vindictive damages or by way of aggravated damages; or
 - (c) for loss of, or damage to, property; or
 - (d) for pain and suffering except in relation to a victim of a sexual offence; or
 - (e) in relation to a matter referred to in section 4(2) or (3) for which compensation has been paid, or is payable, under a compensation law; or
 - (f) for expenses claimable –
 - (i) under Part II of the *Health Insurance Act 1973* of the Commonwealth; or
 - (ii) from a registered health benefits organization under the *National Health Act 1953* of the Commonwealth; or
 - (g) if the victim is found guilty of an offence arising from the incident in which the injury occurred; or
 - (h) in circumstances referred to in section 5(3) or (4).
- (2) In subsection (1)(e) –

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“compensation law” means any other law of the State or any law of another State, a Territory or the Commonwealth that relates to the payment of compensation by an employer in respect of the death or injury of persons employed by the employer.

7. Limits on amount of assistance

- (1) The amount of assistance awarded in relation to the death or injury of a victim in respect of a particular criminal conduct must not exceed the prescribed maximum.
- (2) In subsection (1), a reference to particular criminal conduct is to be construed as a reference to –
 - (a) a single offence; or
 - (b) a series of offences committed by the same offender; or
 - (c) a series of offences committed simultaneously or consecutively by offenders acting in concert.
- (3) A different maximum amount may be prescribed in respect of a series of offences than that prescribed in respect of a single offence.

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- (4) Despite subsection (1), an amount of assistance awarded under section 4(2)(c) may be paid in addition to the prescribed maximum if the Secretary so determines.

8. Deductions from awards

- (1) The Secretary may deduct from assistance awarded to, or in relation to, a victim any one or more of the following amounts:
- (a) any pecuniary penalty imposed on the person awarded assistance and owing to the Crown;
 - (b) any compensation levy payable by the person awarded assistance under the *Victims of Crime Compensation Act 1994*;
 - (c) any unpaid compensation order made against the person awarded assistance under section 68 of the *Sentencing Act 1997*;
 - (d) any assistance order made against the person awarded assistance under section 10 of this Act.
- (2) If an amount is deducted –
- (a) under subsection (1)(a), the penalty is to be treated as paid to the extent of that deduction; or

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- (b) under subsection (1)(b), the levy is to be treated as paid to the extent of that deduction; or
- (c) under subsection (1)(c), the order is to be treated as discharged to the extent of that deduction; or
- (d) under subsection (1)(d), the order is to be treated as discharged to the extent of that deduction.

9. Procedure for determining applications for awards

(1) In this section –

“relevant date” means the day on which the criminal conduct, in respect of which an application for an award is made, occurred.

- (2) An application for an award is to be made to the Secretary.
- (3) An application by a victim or related person for an award is to be made –
 - (a) within 3 years after the relevant date; or
 - (b) if the victim is less than 18 years old on the relevant date, not later than 3 years after he or she turns 18.

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- (4) The Secretary may extend the 3-year period referred to in subsection (3)(a) or (b), once or more than once, if satisfied that there are special circumstances which justify the extension.
 - (5) In considering an application for an award, the Secretary is entitled to inform himself or herself as he or she sees fit.
 - (6) Proof of the finding that a person is guilty of an offence is to be taken, in relation to any application for an award, to be conclusive evidence of the fact that the offence has been committed unless an appeal against that finding is pending or a new trial has been directed.
 - (7) In considering an application for an award to any person, the Secretary –
 - (a) may give directions requiring the person to appear before him or her in person; and
 - (b) may refuse to make the award if, without reasonable excuse, the person fails or refuses to comply with the directions.

10. Recovery from offender

- (1) In this section, a reference to an award includes a reference to an interim award under section 5(8).

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(2) If –

- (a) an award is made under this Act;
and
- (b) an offender is found guilty of an offence in respect of the criminal conduct which led to an application for the award being made –

the Secretary must make an order directing the offender to pay to the Crown the whole of the assistance awarded, whether or not the court finding the offender guilty proceeds, or proceeds immediately, to conviction.

(3) Within 6 months after the Secretary makes an order under subsection (2), the Attorney-General may cause a memorandum in a summary form of the relevant parts of the order to be –

- (a) made on paper; and
- (b) sealed with the seal of the Supreme Court; and
- (c) entered and enforced under the *Supreme Court Civil Procedure Act 1932* as if it were a judgment of the Supreme Court under that Act.

(4) Any amount recovered pursuant to an order entered in accordance with

subsection (3) as if it were a judgment must be paid into the Fund.

11. Restriction on publishing proceedings

(1) In this section –

“prohibited report” means a report of any proceedings before the Secretary on an application under this Act if the report identifies, or enables the identification of, the applicant or the person for whom assistance is sought.

(2) A person must not publish or cause or allow to be published a prohibited report –

- (a) in any newspaper, periodical or similar publication; or
- (b) in any book publicly exposed or offered for sale; or
- (c) in any television or radio broadcast; or
- (d) on the internet.

Penalty: Fine not exceeding 50 penalty units.

(3) Nothing in this section prohibits the publication of any matter by or under the authority of the Attorney-General, or by

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a person who, by virtue of his or her office, is authorised or required to make the publication.

12. Effect on other rights and remedies

(1) Subject to this section, the making in respect of any criminal conduct of an award to a person does not affect the enforcement of any right or remedy that the person may have as a consequence of the criminal conduct.

(2) If –

(a) an award is made to a person in respect of criminal conduct and the assistance awarded has been paid to the person; and

(b) as a consequence of that criminal conduct, a sum is recovered by or for the benefit of that person by way of damages or compensation otherwise than under this Act –

that sum is taken to be held in trust for the Treasurer until the amount of the assistance awarded has been repaid to the Treasurer.

(3) If, in respect of criminal conduct –

(a) an award is made to a person; and

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- (b) judgment is entered for the Crown in accordance with section 10 with respect to the award; and
 - (c) a sum recovered by or for the benefit of the person by way of damages or compensation as a consequence of the criminal conduct is taken to be held in trust for the Treasurer pursuant to subsection (2); and
 - (d) the Treasurer is paid an amount pursuant to subsection (2) out of the sum referred to in paragraph (c) –

the amount of the judgment debt is reduced by the sum paid to the Treasurer.

- (4) The Treasurer is to pay any amount paid to the him or her pursuant to subsection (2) into the Fund.
- (5) If, in the circumstances of any particular case, the Attorney-General considers it just, the Treasurer is to relinquish, in whole or in part, the rights accrued or accruing to him or her under subsection (2).

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Part 2 – Victims of Crime Assistance Act 1976 Amended

12A. Review of decision of Secretary

A person aggrieved by a decision of the Secretary under this Part may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.

12B. Victims of Crime Assistance Fund

- (1) The account established in the Special Deposits and Trust Fund as the Criminal Injuries Compensation Fund is continued under the name “Victims of Crime Assistance Fund”.
- (2) The following amounts are to be paid into the Fund:
 - (a) an amount recovered pursuant to a judgment entered in accordance with section 10(3);
 - (b) an amount paid to the Treasurer pursuant to section 12(2);
 - (c) money provided by Parliament for the purposes of this Act;
 - (d) in accordance with section 79(7) of the *Crime (Confiscation of Profits) Act 1993*, such money as may from time to time be standing to the credit of the Crime (Confiscation of Profits)

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Account established under section 79(2) of that Act;

- (e) the amount of any compensation levy paid pursuant to section 5 of the *Victims of Crime Compensation Act 1994*;
 - (f) such other amounts from such other sources as the Minister, with the approval of the Treasurer, may from time to time advance for the purposes of the Fund.
- (3) An amount of assistance required to be paid to a person under an award is to be paid by the Treasurer from the Fund –
- (a) to the person; or
 - (b) subject to the terms of the award, if the person has died, to the person's legal representative.
- (4) If there is insufficient money in the Fund to meet a payment of assistance awarded, there is to be paid into the Fund from the Consolidated Fund, without further appropriation than this section, such amount as will enable the award to be paid.

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Part 2 – Victims of Crime Assistance Act 1976 Amended

12C. Exclusion of past criminal conduct

An award may not be made in respect of criminal conduct occurring before the commencement of this Act.

7. Section 18 amended (Making of restraining order)

Section 18(1)(a) of the Principal Act is amended by omitting “compensation” and substituting “assistance”.

8. Section 27 amended (Making of forfeiture order)

Section 27(1)(a) of the Principal Act is amended by omitting “compensation” and substituting “assistance”.

9. Section 40A amended (Protection from liability)

Section 40A of the Principal Act is amended by omitting “A Commissioner” and substituting “The Secretary”.

10. Section 41 amended (Regulations)

Section 41 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) Without limiting the generality of subsection (1), the regulations may –

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- (a) prescribe the manner in which an application for an award is to be made, the information to be included in the application and the documents that are to accompany the application; and
- (b) require that an application for an award be accompanied by a statutory declaration as specified in the regulations; and
- (c) provide for any matter that is necessary or expedient in relation to applications for, and the granting, administration and execution of, restraining orders, forfeiture orders and production orders under Part 3.

11. Section 42 inserted

After section 41 of the Principal Act, the following section is inserted in Part 4:

42. Savings and transitional provision consequent on *Victims of Crime Assistance Amendment Act 2007*

- (1) In this section –

“**commencement day**” means the day on which the *Victims of Crime Assistance Amendment Act 2007* commenced;

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“Commissioner” means a person who was a Commissioner under the former Act;

“former Act” means this Act as in force immediately before the commencement day.

- (2) If an application for an award of assistance has been made, but not finally determined, under the former Act before the commencement day –
- (a) the application is taken to have been made to the Secretary; and
 - (b) anything done by or in relation to a Commissioner in respect of the application is taken to have been done by or in relation to the Secretary; and
 - (c) in making a determination in respect of the application, the former Act applies in relation to the determination and any amount of assistance awarded.

PART 3 – CIVIL LIABILITY ACT 2002 AMENDED

12. Principal Act

In this Part, the *Civil Liability Act 2002** is referred to as the Principal Act.

13. Section 3B amended (Civil liability excluded from Act)

Section 3B(4) of the Principal Act is amended as follows:

- (a) by inserting “or assistance” after “compensation”;
- (b) by omitting “*Criminal Injuries Compensation Act 1976*” and substituting “*Victims of Crime Assistance Act 1976*”.

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Part 4 – Crime (Confiscation of Profits) Act 1993 Amended

**PART 4 – CRIME (CONFISCATION OF PROFITS) ACT
1993 AMENDED**

14. Principal Act

In this Part, the *Crime (Confiscation of Profits) Act 1993** is referred to as the Principal Act.

15. Section 79 amended (Crime (Confiscation of Profits) Account)

Section 79(7) of the Principal Act is amended by omitting “Criminal Injuries Compensation Fund established under the *Criminal Injuries Compensation Act 1976.*” and substituting “Victims of Crime Assistance Fund continued under the *Victims of Crime Assistance Act 1976.*”.

*No. 20 of 1993

PART 5 – LAND TITLES ACT 1980 AMENDED

16. Principal Act

In this Part, the *Land Titles Act 1980** is referred to as the Principal Act.

17. Section 28A amended (Restraining orders not affected when land brought under Act)

Section 28A of the Principal Act is amended by omitting “*Criminal Injuries Compensation Act 1976*,” and substituting “*Victims of Crime Assistance Act 1976*,”.

18. Section 52 amended (Priority notices)

Section 52 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(f) “section 18 of the *Criminal Injuries Compensation Act 1976*.” and substituting “section 18 of the *Victims of Crime Assistance Act 1976*.”;
- (b) by omitting from subsection (5A)(b)(i) “section 23 of the *Criminal Injuries Compensation Act 1976*” and substituting “section 23 of the *Victims of Crime Assistance Act 1976*”.

*No. 19 of 1980

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Part 5 – Land Titles Act 1980 Amended

19. Section 52A amended (Attorney-General to give notice of forfeiture orders)

Section 52A of the Principal Act is amended by omitting “section 29 of the *Criminal Injuries Compensation Act 1976*,” and substituting “section 29 of the *Victims of Crime Assistance Act 1976*,”.

**PART 6 – REGISTRATION OF DEEDS ACT 1935
AMENDED**

20. Principal Act

In this Part, the *Registration of Deeds Act 1935** is referred to as the Principal Act.

21. Section 15 amended (Attorney-General to give notice of forfeiture orders)

Section 15 of the Principal Act is amended by omitting “section 29 of the *Criminal Injuries Compensation Act 1976*,” and substituting “section 29 of the *Victims of Crime Assistance Act 1976*,”.

*No. 24 of 1935