

Version No. 035
Victims of Crime Assistance Act 1996
Act No. 81/1996

Version incorporating amendments as at 12 December 2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose and objectives of Act	1
2. Commencement	2
3. Definitions	2
4. Related criminal acts	8
5. Effect of death	9
6. <i>Repealed</i>	9
PART 2—ELIGIBILITY FOR ASSISTANCE	10
Division 1—Primary Victims	10
7. Who is a primary victim?	10
8. Assistance available to primary victims	10
8A. Special financial assistance to primary victims for significant adverse effects	11
Division 2—Secondary Victims	14
9. Who is a secondary victim?	14
10. Assistance available to secondary victims	14
10A. Additional assistance available to certain secondary victims	15
Division 3—Related Victim	17
11. Who is a related victim?	17
12. Related victim pool	17
13. Assistance available to any one related victim	18
14. <i>Repealed</i>	19
Division 4—Assistance for Funeral Expenses	19
15. Assistance available to person incurring funeral expenses for primary victim	19

<i>Section</i>	<i>Page</i>
Division 5—Limits on Assistance	19
16. Other entitlements to be taken into account	19
17. Loss of earnings	21
18. Applicant can only apply in one capacity	21
PART 3—VICTIMS OF CRIME ASSISTANCE TRIBUNAL	22
Division 1—The Tribunal	22
19. Establishment	22
20. Functions, powers and duties of Tribunal	22
21. Composition of Tribunal	22
22. Validity of proceedings	22
23. Tribunal staff	23
24. Delegation	23
Division 2—Applications	24
25. Who may apply to the Tribunal?	24
26. Form of application	24
27. What application must set out	25
27A. Information to be given by related victim applicants	26
28. Where application is to be sent	27
29. Time for making application	27
29A. Right to withdraw an application	28
30. <i>Repealed</i>	29
Division 3—Procedure and Powers of Tribunal	29
31. Standard of proof	29
32. Duty to act fairly and expeditiously	29
33. Determination without hearing	30
34. Fixing time and place for hearing	31
35. Who is entitled to appear at hearing?	31
36. How may a party appear?	32
37. Evidence	32
38. Procedure of Tribunal	34
39. Investigative powers of Tribunal	35
40. Power of registrar to obtain information	36
41. Power to adjourn	37
42. Hearings open to public unless Tribunal directs otherwise	38
42A. Inspection of documents	39
43. Tribunal may restrict publication of material	39
44. Procedural directions	40
45. Guidelines	41
46. Scale of costs	41
47. Payment of expenses to person entitled	42
48. Costs	44
49. Complaints about service providers	45

<i>Section</i>	<i>Page</i>
Division 4—Awards	45
50. Making of awards	45
51. Assignment of rights to the State	46
52. Mandatory refusal of application	47
53. Reasonable time for reporting act of violence	48
54. Matters to which Tribunal must have regard	49
55. Form of payment	50
56. Interim awards	51
Division 5—Rules and Practice Notes	52
57. Rules	52
58. Practice directions	53
PART 4—REVIEW, VARIATION AND REFUNDS	54
Division 1—Review	54
59. Review of Tribunal decisions	54
Division 2—Variation of Award	55
60. Variation of award	55
Division 3—Refunds	56
61. Pursuing other remedies	56
62. Refund of award	56
PART 5—MISCELLANEOUS	58
63. Protection of members, advocates and witnesses	58
64. Contempt of Tribunal	58
65. Inadmissibility of evidence in other proceedings	59
66. Fraud	60
67. False or misleading information	60
68. Annual report	61
69. Payments to and from Consolidated Fund	61
70. Investment of trust money	62
70A. Money held by Tribunal for person under disability	62
71. Supreme Court—limitation of jurisdiction	63
72. Regulations	63
73–75. <i>Repealed</i>	63
76. Transitional provisions	64
77. Transitional provisions (2000 and 2003 Amending Acts)	64
78. Transitional provisions (2003 Amending Act)	70
SCHEDULE 1—Transitional Provisions	71

<i>Section</i>	<i>Page</i>
ENDNOTES	78
1. General Information	78
2. Table of Amendments	79
3. Explanatory Details	81

Version No. 035
Victims of Crime Assistance Act 1996
Act No. 81/1996

Version incorporating amendments as at 12 December 2005

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose and objectives of Act

S. 1
substituted by
No. 54/2000
s. 4.

- (1) The purpose of this Act is to provide assistance to victims of crime.
- (2) The objectives of this Act are—
 - (a) to assist victims of crime to recover from the crime by paying them financial assistance for expenses incurred, or reasonably likely to be incurred, by them as a direct result of the crime; and
 - (b) to pay certain victims of crime financial assistance (including special financial assistance) as a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime; and
 - (c) to allow victims of crime to have recourse to financial assistance under this Act where compensation for the injury cannot be obtained from the offender or other sources.
- (3) Awards of financial assistance (including special financial assistance) to victims of crime are not intended to reflect the level of compensation to

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 2

which victims of crime may be entitled at common law or otherwise.

- (4) The scheme provided by this Act is intended to complement other services provided by government to victims of crime.

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 July 1997, it comes into operation on that day.

3. Definitions

- (1) In this Act—

"act of violence" means a criminal act or a series of related criminal acts, whether committed by one or more persons, that has—

- (a) occurred in Victoria; and
- (b) directly resulted in injury or death to one or more persons, irrespective of where the injury or death occurs;

"close family member", in relation to a deceased primary victim of an act of violence, means a person who had a genuine personal relationship with the victim at the time of the victim's death and who is—

- (a) the spouse of the victim; or
- (b) a parent, guardian or step-parent of the victim; or

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 3

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- (c) a child or step-child of the victim or some other child of whom the victim is the guardian; or
 - (d) a brother, sister, step-brother or step-sister of the victim;

"criminal act" means an act or omission constituting a relevant offence or that would constitute a relevant offence if the person had not been incapable of being criminally responsible for it on account of—

- (a) age, mental impairment or other legal incapacity preventing him or her from having a required fault element; or
- (b) the existence of any other lawful defence;

"dependant", in relation to a deceased primary victim of an act of violence, means—

- (a) an individual who was wholly or substantially dependent on the victim's income at the time of the victim's death or who would have been but for the incapacity of the victim due to the injury from which he or she died; or
- (b) a child of the victim born after the victim's death who would have been a dependant of the victim under paragraph (a) if he or she had been born before the victim's death;

"domestic partner" of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living

S. 3(1) def. of "domestic partner" inserted by No. 27/2001 s. 7(Sch. 5 item 2.1).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 3

under the same roof, but does not include a person who provides domestic support and personal care to the person—

- (a) for fee or reward; or
- (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

S. 3(1) def. of "guardian" amended by No. 52/1998 s. 311(Sch. 1 item 101.1).

"guardian", in relation to a victim or applicant, (except in section 25(3) and (4)) does not include the Secretary within the meaning of the **Children and Young Persons Act 1989**, a guardian appointed or taking over office as guardian under the **Guardianship and Administration Act 1986** or any other government agency;

S. 3(1) def. of "injury" amended by No. 54/2000 s. 5(1)(a).

"injury" means—

- (a) actual physical bodily harm; or
- (b) mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or
- (c) pregnancy; or
- (d) any combination of matters referred to in paragraphs (a), (b) and (c) arising from an act of violence—

but does not include injury arising from loss of or damage to property;

S. 3(1) def. of "legal practitioner" inserted by No. 18/2005 s. 18(Sch. 1 item 113.1).

"legal practitioner" means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 3

"medical expenses" includes dental, optometry, physiotherapy, psychology treatment, hospital and ambulance expenses;

"medical report" means a written statement made by a medical expert on medical matters and includes any document which the medical expert intends should be read with the statement;

"member", in relation to the Tribunal, means the magistrate or acting magistrate constituting the Tribunal;

"parent" of a child, means—

- (a) a biological parent of the child;
- (b) a step-parent of the child;
- (c) an adoptive parent of the child;
- (d) a foster parent of the child;
- (e) a guardian of the child;
- (f) a person who has responsibility for the care, welfare and development of the child;

S. 3(1) def. of "parent" inserted by No. 27/2001 s. 7(Sch. 5 item 2.1).

"person under disability" means—

- (a) a minor; or
- (b) a person who is incapable by reason of injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to the proceeding;

S. 3(1) def. of "person under disability" inserted by No. 30/2004 s. 7.

"practice directions" means practice directions, statements or notes issued under section 58(1);

"registrar", in relation to the Tribunal, includes the principal registrar of the Tribunal;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 3

"relevant offence" means—

- (a) an offence, punishable on conviction by imprisonment, that involves an assault on, or injury or a threat of injury to, a person; or
- (b) an offence against Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the **Crimes Act 1958** or any corresponding previous enactment (sexual offences) or an offence at common law of rape or assault with intent to rape; or
- (c) an offence against section 21A(1) of the **Crimes Act 1958** (stalking), section 63 of that Act (child stealing) or section 63A of that Act (kidnapping) or any corresponding previous enactment; or
- (d) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraph (a), (b) or (c);

S. 3(1) def. of "significant adverse effect" inserted by No. 54/2000 s. 5(1)(b).

"significant adverse effect", in relation to a victim of an act of violence, includes any grief, distress, trauma or injury experienced or suffered by the victim as a direct result of the act of violence but does not include any loss of, or damage to, property;

S. 3(1) def. of "spouse" inserted by No. 27/2001 s. 7(Sch. 5 item 2.1).

"spouse" of a person means a person to whom the person is married;

"the rules" means rules of the Tribunal jointly made by the Chief Magistrate together with 2 or more Deputy Chief Magistrates;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 3

"Tribunal" means Victims of Crime Assistance Tribunal established by Part 3;

"victim" means primary victim, secondary victim or related victim of an act of violence, as the case requires.

(2) Notwithstanding the definition of "injury" in subsection (1), if, in respect of an application under this Act by a primary victim or a secondary victim, the Tribunal is satisfied on medical or psychological evidence that treatment or counselling is required as a result of trauma associated with an act of violence, the person concerned is deemed for the purposes of this Act to be suffering an injury.

S. 3(2)
amended by
No. 47/2003
s. 4.

(3) For the purposes of section 8A—

- (a) references in this Act to a primary victim must be construed as including a reference to a person who is a primary victim by virtue of section 8A(1); and
- (b) references in this Act (including the definition of "significant adverse effect" in sub-section (1)) to an act of violence must be construed as if a person who is a primary victim by virtue of section 8A(1) had suffered an injury; and
- (c) references in this Act to an injury must be construed in relation to a person who is a primary victim by virtue of section 8A(1) as if the significant adverse effect experienced or suffered by that person were an injury suffered by that person.

S. 3(3)
inserted by
No. 54/2000
s. 5(2).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 4

S. 3(4)
inserted by
No. 27/2001
s. 7(Sch. 5
item 2.2).

- (4) For the purposes of the definition of "domestic partner" in sub-section (1)—
- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;
 - (b) a person is not a domestic partner of another person only because they are co-tenants.

4. Related criminal acts

- (1) Subject to this section, a criminal act is related to another criminal act for the purposes of this Act if—
- (a) they were committed against the same person and they—
 - (i) occurred at approximately the same time; or
 - (ii) occurred over a period of time and were committed by the same person or group of persons; or
 - (iii) share some other common factor—
unless the Tribunal considers that, having regard to the particular circumstances of those acts, they ought not to be treated as related criminal acts; or
 - (b) they contribute to the injury or death on which the application to the Tribunal is based unless the Tribunal considers that, having regard to the particular circumstances of those acts, they ought not to be treated as related criminal acts; or

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 1—Preliminary

s. 5

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- (c) the Tribunal considers that they ought to be treated as related criminal acts.
- (2) For the purposes of this Act, a criminal act in respect of which an award of assistance has been made under this Act is not related to another criminal act occurring after the award was made.
- (3) A criminal act may be related to another criminal act even though charges for offences arising out of those criminal acts are tried or heard separately.
- (4) For the purposes of this Act, a series of related criminal acts, whether committed by one or more persons, constitutes a single act of violence.

5. Effect of death

Despite any provision of any Act or rule of law to the contrary, on the death of a primary victim of an act of violence, any right of that victim to receive assistance of any kind under this Act does not survive for the benefit of his or her estate.

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S. 6
repealed by
No. 54/2000
s. 19(1).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 7

PART 2—ELIGIBILITY FOR ASSISTANCE

Division 1—Primary Victims

7. Who is a primary victim?

- (1) A primary victim of an act of violence is a person who is injured or dies as a direct result of an act of violence committed against him or her.
- (2) A person is also a primary victim of an act of violence if he or she is injured or dies as a direct result of—
 - (a) trying to arrest someone whom he or she believes on reasonable grounds has committed an act of violence; or
 - (b) trying to prevent the commission of an act of violence; or
 - (c) trying to aid or rescue someone whom he or she believes on reasonable grounds is a victim of an act of violence—

whether or not an act of violence is actually committed.

8. Assistance available to primary victims

- (1) A primary victim may be awarded by the Tribunal assistance of up to \$60 000 plus any special financial assistance awarded in accordance with section 8A.
- (2) The amount awarded to a primary victim may be made up of amounts—
 - (a) for expenses actually incurred, or reasonably likely to be incurred, by the primary victim for reasonable counselling services;

S. 8(1)
amended by
No. 54/2000
s. 6.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 8A

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- (b) for medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the primary victim as a direct result of the act of violence;
 - (c) of up to \$20 000 for loss of earnings suffered, or reasonably likely to be suffered, by the primary victim as a direct result of the act of violence;
 - (d) for expenses incurred by the primary victim through loss of or damage to clothing worn at the time of the commission of the act of violence.
- (3) In exceptional circumstances, there may also be included in the amount awarded to a primary victim within the limit set by sub-section (1) an amount for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the primary victim to assist his or her recovery from the act of violence.
- (4) Except as provided by sub-section (2)(d) in the case of clothing, assistance may not be awarded to a primary victim for expense incurred through loss of or damage to property.

8A. Special financial assistance to primary victims for significant adverse effects

S. 8A
inserted by
No. 54/2000
s. 7.

- (1) Without limiting persons who are primary victims by virtue of section 7, for the purposes of this section a person is also a primary victim of an act of violence if he or she experiences or suffers any significant adverse effect as a direct result of an act of violence committed against him or her.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 8A

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- (2) A person may be awarded special financial assistance by the Tribunal in accordance with this section if the Tribunal is satisfied that—
- (a) an act of violence was committed against the person; and
 - (b) the person has experienced or suffered a significant adverse effect as a direct result of that act of violence; and
 - (c) that act of violence is a category A, B, C or D act of violence for the purposes of this section.
- (3) The amount of special financial assistance that may be awarded by the Tribunal in accordance with this section is an amount up to the level set out in sub-section (4).
- (4) For the purposes of sub-section (3) the level is—
- (a) the minimum amount set out in the Table in sub-section (5) in relation to the relevant category of act of violence if the Tribunal is satisfied that the applicant has experienced or suffered any significant adverse effect as a direct result of the act of violence; and
 - (b) an increased amount up to the maximum amount set out in that Table in relation to the relevant category of act of violence if the Tribunal is satisfied that the applicant has suffered any injury as defined in section 3(1) as a direct result of the act of violence.
- (5) The following Table sets out the minimum and maximum amounts of special financial assistance that may be awarded in accordance with this section depending on the category of the act of violence involved:
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Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 8A

<i>Category of act of violence</i>	<i>Minimum amount</i>	<i>Maximum amount</i>
A	\$3500 or the higher prescribed amount applicable in prescribed circumstances	\$7500 or the higher prescribed amount applicable in prescribed circumstances
B	\$1000 or the higher prescribed amount applicable in prescribed circumstances	\$2500 or the higher prescribed amount applicable in prescribed circumstances
C	\$500 or the higher prescribed amount applicable in prescribed circumstances	\$1000 or the higher prescribed amount applicable in prescribed circumstances
D	\$100 or the higher prescribed amount applicable in prescribed circumstances	\$500 or the higher prescribed amount applicable in prescribed circumstances

- (6) For the purposes of this section the regulations may—
- (a) specify an act of violence or a class of act of violence as a category A, B, C or D act of violence; and
 - (b) prescribe a higher minimum or maximum amount in relation to a specified category of act of violence; and
 - (c) prescribe circumstances in which the prescribed higher minimum or maximum amount is applicable.
- (7) The Tribunal may be satisfied on the balance of probabilities that an act of violence of a particular category was involved even though—

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 9

- (a) no person has been charged with, or found guilty or convicted of, an act of violence of that category in relation to the injury; or
- (b) a person has been charged with, or found guilty or convicted of, an act of violence of a different category in relation to the injury.

Division 2—Secondary Victims

9. Who is a secondary victim?

- (1) A secondary victim of an act of violence is a person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act.
- (2) A person is also a secondary victim of an act of violence if he or she is injured as a direct result of subsequently becoming aware of an act of violence and—
 - (a) he or she is the parent or guardian of the primary victim of the act of violence; and
 - (b) the primary victim of the act of violence was under the age of 18 years at the time of the commission of that act.
- (3) A person is not a secondary victim of an act of violence by virtue of sub-section (2) if he or she committed, and is criminally responsible for, that act of violence.

10. Assistance available to secondary victims

- (1) A secondary victim may be awarded by the Tribunal assistance of up to \$50 000.
- (2) The amount awarded to a secondary victim may be made up of amounts—
 - (a) for expenses actually incurred, or reasonably likely to be incurred, by the secondary victim for reasonable counselling services;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 10A

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- (b) for medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the secondary victim as a direct result of witnessing, or becoming aware of, the act of violence.
 - (3) In exceptional circumstances, there may also be included in the amount awarded to a secondary victim within the limit set by sub-section (1) an amount of up to \$20 000 for loss of earnings suffered, or reasonably likely to be suffered, by the secondary victim as a direct result of witnessing, or becoming aware of, the act of violence.

10A. Additional assistance available to certain secondary victims

S. 10A
inserted by
No. 54/2000
s. 8.

- (1) In exceptional circumstances and within the limit set by section 10(1), there may also be included in the amount awarded to a person—
 - (a) who is a secondary victim by virtue of section 9(1); and
 - (b) of whom the primary victim of the act of violence is a family member; and
 - (c) who was under the age of 18 years at the time of the commission of the act of violence—

an amount for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the secondary victim to assist his or her recovery from witnessing the act of violence.

- (2) In exceptional circumstances and within the limit set by section 10(1), there may also be included in the amount awarded to a person who is a secondary victim by virtue of section 9(2) an amount for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 10A

the secondary victim to assist his or her recovery from becoming aware of the act of violence.

(3) In this section "**family member**", in relation to a person, means—

S. 10A(3)(a)
amended by
No. 27/2001
s. 7(Sch. 5
item 2.3(a)).

(a) the spouse, former spouse, domestic partner or former domestic partner of that person; or

(b) a person who is or has been a relative of that person; or

(c) a child who normally or regularly resides with that person; or

(d) another person who is or has been ordinarily a member of the household of that person.

(4) For the purposes of the definition of "family member" in sub-section (3)—

S. 10A(4)(a)
repealed by
No. 27/2001
s. 7(Sch. 5
item 2.3(b)(i)).

* * * * *

S. 10A(4)(b)
amended by
No. 27/2001
s. 7(Sch. 5
item 2.3(b)(ii)).

(b) a relative, in relation to a person, means—

(i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of that person; or

(ii) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of that person; or

(iii) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law of that person; or

(iv) an uncle, aunt, uncle-in-law or aunt-in-law of that person; or

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 11

(v) a nephew or niece of that person; or

(vi) a cousin of that person—

and includes, in the case of domestic partners, a person who would be such a relative if the domestic partners were married to each other.

Division 3—Related Victim

11. Who is a related victim?

- (1) A related victim of an act of violence is a person who, at the time of the occurrence of the act of violence—
 - (a) was a close family member of; or
 - (b) was a dependant of; or
 - (c) had an intimate personal relationship with—
a primary victim of that act who died as a direct result of that act.
- (2) A person is not a related victim of an act of violence if he or she committed, and is criminally responsible for, that act of violence.

12. Related victim pool

- (1) The total maximum cumulative amount that may be awarded to all the related victims of any one primary victim is \$100 000 less any amount awarded for the funeral expenses of the primary victim in accordance with Division 4.
- (2) Despite anything to the contrary in this Act, in exceptional circumstances a related victim may be awarded assistance by the Tribunal despite that award of assistance causing the limit set by subsection (1) to be exceeded.

S. 12
amended by
No. 54/2000
s. 9(1) (LA
s. 39B(1)).

S. 12(2)
inserted by
No. 54/2000
s. 9(1).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 13

13. Assistance available to any one related victim

- (1) Within the limit set by section 12, a related victim may be awarded by the Tribunal assistance of up to \$50 000.
- (2) The amount awarded to a related victim may be made up of amounts—
 - (a) for expenses actually incurred, or reasonably likely to be incurred, by the related victim for reasonable counselling services;
 - (b) for medical expenses or funeral expenses actually and reasonably incurred, or reasonably likely to be incurred, by the related victim as a direct result of the death of the primary victim;
 - (c) for distress experienced, or reasonably likely to be experienced, by the related victim as a direct result of the death of the primary victim;
 - (d) for loss of money that, but for the death of the primary victim, the related victim would have been reasonably likely to receive from the primary victim during a period of up to 2 years after that death;
 - (e) for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the related victim as a direct result of that death.
- (3) Assistance may not be awarded to a related victim for expense incurred through loss of or damage to property.
- (4) In exceptional circumstances, there may also be included in the amount awarded to a related victim within the limit set by sub-section (1) an amount for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by

S. 13(4)
inserted by
No. 54/2000
s. 9(2).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 15

the related victim to assist his or her recovery from the death of the primary victim of the act of violence.

* * * * *

S. 14
repealed by
No. 54/2000
s. 9(3).

Division 4—Assistance for Funeral Expenses

15. Assistance available to person incurring funeral expenses for primary victim

A person who has incurred funeral expenses as a direct result of the death of a primary victim of an act of violence and who is not a related victim of that act may be awarded by the Tribunal assistance for the funeral expenses actually and reasonably incurred by that person.

Division 5—Limits on Assistance

16. Other entitlements to be taken into account

In determining the amount (if any) to be awarded to an applicant, the Tribunal—

(a) subject to paragraph (ab), must take into account and reduce the amount by the total amount of—

- (i) any damages that the applicant has recovered at common law; and
- (ii) any compensation, assistance or payments of any other kind that the applicant has received—

for the loss, expense or other matter for which assistance is sought from the Tribunal; and

S. 16
amended by
No. 54/2000
s. 10(a).

S. 16(a)
amended by
No. 54/2000
s. 10(b).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 16

S. 16(ab)
inserted by
No. 54/2000
s. 10(c).

(ab) in the case of special financial assistance under section 8A or an amount under section 13(2)(c), must not take into account any payments under any insurance policy (including life and health insurance) or superannuation scheme that the applicant has received or has not received but is entitled to receive, or would be entitled to receive if he or she applied for them, for the loss, expense or other matter for which assistance is sought from the Tribunal; and

S. 16(b)
amended by
No. 54/2000
s. 10(d).

(b) in all cases but subject to paragraph (ab), may take into account and reduce the amount by the total amount of—

(i) any compensation, assistance or payments of any kind under any scheme, whether statutory or non-statutory, including that managed by the Transport Accident Commission and the Victorian WorkCover Authority and that established by the **Police Assistance Compensation Act 1968** and any predecessor of any such schemes; and

(ii) any payments under any insurance policy (including life and health insurance) or superannuation scheme—

that the applicant has not received but is entitled to receive, or would be entitled to receive if he or she applied for it or them, for the loss, expense or other matter for which assistance is sought from the Tribunal.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 2—Eligibility for Assistance

s. 17

17. Loss of earnings

Assistance for loss of earnings awarded by the Tribunal is for earnings lost by the primary or secondary victim as a direct result of total or partial incapacity for work during a period of up to 2 years after the occurrence of the act of violence.

18. Applicant can only apply in one capacity

A person is only eligible to apply for, or receive, assistance in respect of a single act of violence in one capacity only.

PART 3—VICTIMS OF CRIME ASSISTANCE TRIBUNAL

Division 1—The Tribunal

19. Establishment

- (1) The Victims of Crime Assistance Tribunal is established.
- (2) The Tribunal consists of the Chief Magistrate and all other persons who hold the office of magistrate under section 7 of the **Magistrates' Court Act 1989** or acting magistrate under section 9 of that Act.

20. Functions, powers and duties of Tribunal

The Tribunal has the functions, powers and duties conferred on it by this Act.

21. Composition of Tribunal

- (1) The Tribunal is to be constituted by a single member for the purpose of the exercise of its functions, powers and duties with respect to any matter.
- (2) The Tribunal may operate concurrently in more than one division.
- (3) The Chief Magistrate is responsible for the arrangement of the business of the Tribunal and may give directions for the arrangement of that business and the constitution of the Tribunal for the purpose of any particular business.

22. Validity of proceedings

A decision of the Tribunal is not invalid only because of a defect or irregularity in, or in connection with, the assignment of a magistrate or acting magistrate to constitute the Tribunal for the purpose of any particular business.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 23

23. Tribunal staff

There may be employed under Part 3 of the **Public Administration Act 2004**—

- (a) a principal registrar of the Tribunal; and
- (b) registrars of the Tribunal; and
- (c) deputy registrars of the Tribunal; and
- (d) as many other staff as are necessary for the effective operation of the Tribunal.

S. 23
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 215).

24. Delegation

- (1) The Chief Magistrate may, for and on behalf of the Tribunal, by instrument, delegate to the principal registrar or a registrar or deputy registrar of the Tribunal any power conferred on the Tribunal by or under this or any other Act, other than—

- (a) subject to sub-section (1A), the power to hear or determine an application for assistance; and

S. 24
amended by
No. 52/1997
s. 4(2) (ILA
s. 39B(1)).

- (b) this power of delegation.

- (1A) The power to hear an application for assistance to the extent necessary to enable the making of a decision to make, or not to make, an interim award of assistance (not exceeding the prescribed amount) may be delegated under sub-section (1).

S. 24(1)(a)
amended by
Nos 52/1997
s. 4(1),
47/2003
s. 5(1).

S. 24(1A)
inserted by
No. 47/2003
s. 5(2).

- (2) Nothing in sub-section (1) prevents the delegation of the power to hear or determine an application under section 29A.

S. 24(2)
inserted by
No. 52/1997
s. 4(2).

Division 2—Applications

25. Who may apply to the Tribunal?

- (1) An application may be made to the Tribunal by a primary victim, a secondary victim or a related victim of an act of violence.
- (2) An application may also be made to the Tribunal in accordance with Division 4 of Part 2 by a person who has incurred funeral expenses.
- (3) If the person entitled to make an application is a child, the application may be made on the child's behalf by a parent or guardian¹ of the child or another person whom the Tribunal considers to be appropriate.
- (4) If the person entitled to make an application is a represented person within the meaning of the **Guardianship and Administration Act 1986**, the application may be made on the represented person's behalf by the guardian² or administrator appointed under that Act.
- (5) If in any other case the Tribunal considers that the person entitled to make an application needs assistance in doing so, the application may be made on the person's behalf by any person whom the Tribunal considers to be appropriate.
- (6) For the purposes of this Act, a person is still the applicant where an application is made on his or her behalf by another person in accordance with this section.

S. 25(4)
amended by
No. 52/1998
s. 311(Sch. 1
item 101.1).

26. Form of application

An application—

- (a) must be in writing in or to the effect of the form prescribed by the rules or, if no form is so prescribed, required by any practice directions; and

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- (b) must be accompanied by any documentary evidence (such as medical certificates or statements of earnings) indicated in the form as being required to accompany the application; and
 - (c) must contain an authorisation for the Tribunal to obtain any other evidence or any document that the Tribunal considers that it requires in order to enable it to determine the application; and
 - (d) must state whether the applicant wishes the Tribunal to conduct a hearing or determine the application without conducting a hearing; and
 - (e) must be verified by the applicant, or the person making the application on behalf of the applicant, by a statutory declaration.

27. What application must set out

- (1) An application must set out—
 - (a) the circumstances in which the injury or death occurred, including the date, time and place of the alleged criminal act;
 - (b) whether the applicant is claiming as a primary, secondary or related victim or as a person who has incurred funeral expenses;
 - (c) the nature of the injury or the cause of death;
 - (d) whether the applicant has made a report to the police;
 - (e) whether criminal proceedings arising out of the alleged criminal act have been commenced;
 - (f) the amount and type of assistance sought;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 27A

- (g) whether the applicant has made any other application for assistance under this Act in respect of the same act of violence;
 - (h) whether the applicant has applied for damages, compensation, assistance or payments of any kind under any other schemes whether statutory or non-statutory, including that managed by the Transport Accident Commission and the Victorian WorkCover Authority and that established by the **Police Assistance Compensation Act 1968** and any predecessor of any such schemes;
 - (i) details of any relevant insurance cover (including life and health insurance) or superannuation benefit entitlements held by the applicant and, in the case of an applicant who is a related victim, by the deceased primary victim;
 - (j) any other matter required by the rules, or any practice directions, to be set out in the application.
- (2) If an applicant has applied for damages, compensation, assistance or payments of any kind under another scheme (whether statutory or non-statutory), the applicant must provide the Tribunal with any authorisation necessary for the Tribunal to be provided by the body managing that scheme with information about the application and decisions made in respect of it.

S. 27A
inserted by
No. 54/2000
s. 11.

27A. Information to be given by related victim applicants

- (1) An applicant who is a related victim must set out in the application details of—
 - (a) every other person whom the applicant believes may be a related victim of the act of violence; and

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 28

- (b) every other person whom the applicant believes may allege that he or she is a related victim of the act of violence; and
 - (c) any person whom the applicant believes may apply in accordance with Division 4 of Part 2.
- (2) It is sufficient compliance with sub-section (1) if, in circumstances in which the applicant knows of the existence of a person or class of persons of whom he or she would be required to give details under that sub-section but does not know their name or address, the applicant sets out in the application all matters within his or her knowledge that may enable the Tribunal to ascertain their name and address.

28. Where application is to be sent

An application must be lodged with, or posted to, a registrar of the Tribunal.

29. Time for making application

- (1) An application must be made within 2 years after the occurrence of the act of violence or, in the case of an application by a related victim or a person who has incurred funeral expenses, within 2 years after the death of the primary victim.
- (2) The Tribunal must strike out an application made out of time unless it considers that, in the particular circumstances, the application ought not to be struck out.
- (3) In determining whether to further hear and determine an application made out of time, the Tribunal must have regard to—
 - (a) the age of the applicant at the time of the occurrence of the act of violence;

S. 29(2)
amended by
No. 52/1997
s. 6(1)(a)(b).

S. 29(3)
amended by
No. 52/1997
s. 6(2).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 29A

- (b) whether the applicant is intellectually disabled within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or mentally ill within the meaning of the **Mental Health Act 1986**;
- (c) whether the person who committed, or is alleged by the applicant to have committed, the act of violence was in a position of power, influence or trust in relation to the applicant;
- (d) the physical or psychological effect of the act of violence on the applicant;
- (e) whether the delay in making the application threatens the capacity of the Tribunal to make a fair decision;
- (f) whether the applicant was a child at the time of the occurrence of the act of violence and the application was made within a reasonable time after he or she reached the age of 18;
- (g) all other circumstances that it considers relevant.

- (4) The Tribunal must not decide to further hear and determine an application made out of time only because the applicant was unaware of this Act or of the **Criminal Injuries Compensation Act 1983** or the **Criminal Injuries Compensation Act 1972** or of the time within which applications must be made under any such Act.

S. 29(4)
amended by
No. 52/1997
s. 6(3).

S. 29A
inserted by
No. 52/1997
s. 5.

29A. Right to withdraw an application

- (1) An applicant for assistance under this Act may, at any time prior to the hearing or determination of the application, apply in writing to the Tribunal to withdraw the application for assistance.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 31

- (2) If an applicant makes an application for withdrawal in accordance with sub-section (1), the Tribunal must make an order striking out the application for assistance.

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S. 30
repealed by
No. 54/2000
s. 19(2).

Division 3—Procedure and Powers of Tribunal

31. Standard of proof

Any question of fact to be decided by the Tribunal on, or in relation to, an application under this Act is to be decided on the balance of probabilities.

32. Duty to act fairly and expeditiously

S. 32
amended by
No. 54/2000
s. 12 (ILA
s. 39B(1)).

- (1) In all matters before it the Tribunal must act—
- (a) fairly; and
 - (b) according to the substantial merits of the case; and
 - (c) with as much expedition as the requirements of this Act and a proper determination of the matter permit.
- (2) The Tribunal must endeavour to hear and determine together all applications made by related victims of any one act of violence.
- (3) The Tribunal is not prevented from hearing and determining an application only because there is a civil proceeding, or a proceeding under Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**, pending in a court relevant to the matter.

S. 32(2)
inserted by
No. 54/2000
s. 12.

S. 32(3)
inserted by
No. 54/2000
s. 12.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 33

S. 32(4)
inserted by
No. 54/2000
s. 12.

- (4) Nothing in sub-section (3) limits the power of the Tribunal under section 41(1) to order an adjournment of the consideration of an application.

33. Determination without hearing

S. 33(1)
substituted by
No. 47/2003
s. 6.

- (1) The Tribunal may determine an application, or make a decision in relation to an application, without conducting a hearing if—
- (a) the applicant has stated in the application a wish for the Tribunal to do so; or
 - (b) the applicant consents in writing to the Tribunal doing so at any time after the application is lodged with, or posted to, a registrar of the Tribunal; or
 - (c) the application is for, or the decision is in relation to, the making of an interim award of assistance unless the Tribunal considers that, in the particular circumstances, a hearing is necessary or desirable.
- (2) If it does so, it must notify the applicant of its decision including details of—
- (a) the amount, if any, of assistance awarded; and
 - (b) the purpose or purposes for which the assistance is awarded; and
 - (c) any conditions to which the award is subject; and
 - (d) the person or persons to whom assistance is payable; and
 - (e) any other order made by the Tribunal.

34. Fixing time and place for hearing

- (1) If the Tribunal decides to conduct a hearing of an application, it must fix a time and place for the hearing and give the applicant reasonable notice of it.
- (2) The Tribunal may give notice of the time and place for the hearing to any other person whom the Tribunal considers to have a legitimate interest in the matter.
- (3) The Tribunal must not under sub-section (2) give notice of the time and place for the hearing to the person who committed, or is alleged to have committed, the act of violence without first giving the applicant an opportunity to be heard on the issue of whether or not that notice should be given.

35. Who is entitled to appear at hearing?

- (1) The applicant and any other person or body that, in the Tribunal's opinion, has a substantial interest in a matter is entitled to appear and be heard by the Tribunal on the hearing of the matter.
- (2) An officer of the Tribunal assisting the Tribunal with respect to a matter or a legal practitioner engaged by the Tribunal to assist it with respect to a matter is entitled to appear and be heard by the Tribunal on the hearing of the matter.
- (3) The State is entitled to appear and be heard by the Tribunal on the hearing of a matter if the State considers that it has a legitimate interest in the matter.
- (4) A person or body that is entitled to appear and be heard by the Tribunal on the hearing of a matter is a party to the matter.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 36

36. How may a party appear?

- (1) A party may appear personally or by a legal practitioner or, with the leave of the Tribunal, by any other representative.
- (2) Without limiting sub-section (1)—
 - (a) a party that is a body corporate may appear by an officer of the body authorised in writing by the body corporate to appear on its behalf;
 - (b) a party that is a firm may appear by a partner of the firm or by an employee of the firm authorised in writing by the firm to appear on its behalf;
 - (c) a party that is the State may appear by a person employed under Part 3 of the **Public Administration Act 2004** authorised in writing by the State to appear on its behalf.

S. 36(2)(c)
amended by
Nos 46/1998
s. 7(Sch. 1),
12/1999
s. 4(Sch. 2
item 21.1),
108/2004
s. 117(1)
(Sch. 3
item 215).

37. Evidence

- (1) The Tribunal has the powers conferred by sections 14, 15, 16, 20 and 20A of the **Evidence Act 1958** on a board appointed by the Governor in Council.
- (1A) The Tribunal may issue a warrant to arrest against a witness who has been served with a summons to attend the Tribunal and who has failed to attend as required by the summons.
- (1B) The provisions of Division 3 of Part 4 of the **Magistrates' Court Act 1989** relating to warrants to arrest extend and apply to warrants issued under sub-section (1A), with any necessary modifications.

S. 37(1A)
inserted by
No. 52/1997
s. 7.

S. 37(1B)
inserted by
No. 52/1997
s. 7.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 37

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- (2) The Tribunal may, on its own initiative or on the application of a party to a proceeding, direct that alternative arrangements be made for the giving of evidence by a witness.
 - (3) Without limiting sub-section (2), any of the following alternative arrangements may be directed to be made:
 - (a) permitting the evidence to be given from a place other than the room in which the Tribunal is sitting by means of closed-circuit television or other facilities that enable communication between that place and the room in which the Tribunal is sitting;
 - (b) using screens to remove the person by whom the act of violence was committed or alleged to have been committed from the witness' direct line of vision;
 - (c) permitting a person to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her;
 - (d) requiring counsel to be seated while examining or cross-examining the witness.
 - (4) Any place outside the room in which the Tribunal is sitting where a witness is permitted to give evidence under this section is to be taken to be part of the room in which the Tribunal is sitting while the witness is there for the purpose of giving evidence.
 - (5) The Tribunal may, at any time in the course of the proceeding, vary or revoke a direction made under sub-section (2) on its own initiative or on the application of a party to the proceeding.
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38. Procedure of Tribunal

- (1) On the hearing of a matter, the Tribunal—
 - (a) is not required to conduct itself in a formal manner;
 - (b) is not bound by rules or practice as to evidence but may inform itself in relation to the matter in any manner that it thinks fit;
 - (c) must give a party to the matter a reasonable opportunity to—
 - (i) call or give evidence;
 - (ii) examine, cross-examine or re-examine witnesses;
 - (iii) make submissions to the Tribunal.
- (2) After hearing and determining an application (including an application for variation under section 60), the Tribunal must notify the applicant of its decision including details of—
 - (a) the amount, if any, of assistance awarded; and
 - (ab) where relevant, the category of act of violence that it was satisfied under section 8A was involved; and
 - (b) the purpose or purposes for which the assistance is awarded; and
 - (c) any conditions to which the award is subject; and
 - (d) the person or persons to whom assistance is payable; and
 - (e) any other order made by the Tribunal.

S. 38(2)(ab)
inserted by
No. 54/2000
s. 13.

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- (3) Subject to this Act and the rules and to any guidelines issued under section 45(1) or practice directions, the procedure of the Tribunal is in its discretion.

39. Investigative powers of Tribunal

- (1) The Tribunal may, if it determines that it requires further information to enable it to determine an application—
- (a) authorise a person to make any enquiry or carry out any investigation on behalf of the Tribunal necessary to furnish the Tribunal with the further information that it requires; or
 - (b) order the preparation and submission to the Tribunal of a medical report or counselling report; or
 - (c) order the applicant to lodge with the Tribunal, within the period specified in the order, an additional statement containing particulars of matters specified in the order or any documents specified in the order.
- (2) A person authorised under sub-section (1)(a) may be—
- (a) a member of staff referred to in section 23; or
 - (b) a legal practitioner engaged by the Tribunal to assist it with respect to an application; or
 - (c) if the State has appeared on the hearing of a matter, a person authorised to appear before the Tribunal on behalf of the State.
- (3) Without limiting sub-section (1), the Tribunal may authorise a person under sub-section (1)(a) to exercise any power conferred on a registrar by section 40.
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Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 40

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- (4) If, in connection with the preparation of a medical report or counselling report ordered to be prepared under sub-section (1)(b), an applicant refuses or fails without reasonable excuse to comply with a request to submit to an examination by a medical expert or to receive counselling services, the Tribunal may under section 41 adjourn consideration of the application until the examination or counselling takes place or refuse the application.
 - (5) The Tribunal must bear the costs of, and incidental to, an examination or provision of counselling services referred to in sub-section (4).
 - (6) The Tribunal may exercise its power under sub-section (1)(b) whether or not a medical or counselling report has been submitted to it by the applicant or any other party.
 - (7) If an applicant refuses or fails without reasonable excuse to comply with an order under sub-section (1)(c), the Tribunal may under section 41 adjourn consideration of the application until the order is complied with or refuse the application.

40. Power of registrar to obtain information

- (1) A registrar may, in relation to an application for assistance—
 - (a) inspect any court register; or
 - (b) by notice in writing require a person, within a specified period of time, to provide to the registrar any information or produce to the registrar any documents relevant to the application.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 41

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- (2) A person to whom a notice is given under sub-section (1)(b) may be—
- (a) a person employed or engaged to provide services to—
 - (i) a government department; or
 - (ii) a body providing health services; or
 - (iii) any other body of any kind whatsoever; or
 - (b) the Chief Commissioner of Police; or
 - (c) any other person whatsoever.
- (3) The registrar may extend or further extend the period specified in the notice under sub-section (1)(b) for compliance with the requirement.
- (4) A person to whom a notice is given under sub-section (1)(b) must comply with the notice.

Penalty: 10 penalty units.

41. Power to adjourn

- (1) The Tribunal may order an adjournment of the consideration of an application—
- (a) to such times and places; and
 - (b) for such purposes; and
 - (c) on such terms as to costs or otherwise—
- as it considers necessary or just in the circumstances.
- (2) Without limiting sub-section (1), purposes for which the Tribunal may adjourn consideration of an application include pending the determination of civil or criminal proceedings arising out of the commission of the act of violence that have been commenced or are about to be commenced by the applicant and which are reasonably likely to be determined within the next 6 months.

S. 41(2)
amended by
No. 54/2000
s. 14(a)(b).

- (3) An order under this section may be made on the application of a party or on the Tribunal's own initiative.

42. Hearings open to public unless Tribunal directs otherwise

- (1) A hearing conducted by the Tribunal in relation to a matter is to be open to the public unless the Tribunal directs—
- (a) that the whole or any part of the hearing is to be closed to members of the public; or
 - (b) that only persons or classes of persons specified by it may be present during the whole or any part of the hearing.
- (2) A direction under this section may be given on the application of a party or on the Tribunal's own initiative.
- (3) The Tribunal must give a direction under this section if an application for the giving of the direction is made by—
- (a) an applicant who is a primary victim of an act of violence and who the Tribunal is satisfied is a person—
 - (i) whose injury resulted from an offence referred to in paragraph (b) of the definition of "relevant offence" in section 3; or
 - (ii) who is a child; or
 - (iii) with impaired mental functioning; or
 - (b) an applicant who the Tribunal is satisfied is likely—
 - (i) to suffer distress; or
 - (ii) to feel intimidated or be stressed—if the direction is not given.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 42A

42A. Inspection of documents

S. 42A
inserted by
No. 54/2000
s. 15.

- (1) When the office of the Tribunal is open, the applicant in the proceeding and, on payment of the prescribed fee (if any) any other person, may inspect and obtain a copy of any document filed in a proceeding in the Tribunal.
- (2) Despite sub-section (1)—
 - (a) a person may not inspect or obtain a copy of a document which the Tribunal has ordered remain confidential;
 - (b) a person, not being the applicant in the proceeding, may not, without the leave of the Tribunal, inspect or obtain a copy of a document which in the opinion of a registrar of the Tribunal ought to remain confidential.
- (3) The Tribunal may, if satisfied that it is in the public interest to do so, order that—
 - (a) a document filed in a proceeding in the Tribunal remain confidential; or
 - (b) a person have leave to inspect or obtain a copy of a document filed in a proceeding in the Tribunal.
- (4) An order under this section may be made on the application of a party or on the Tribunal's own initiative.

43. Tribunal may restrict publication of material

- (1) The Tribunal may, if satisfied that it is in the public interest to do so, order—
 - (a) that the whole or any specified part of the evidence given at a hearing; or
 - (b) that the content of all or any specified documents produced to the Tribunal; or

S. 43(1)
amended by
No. 54/2000
s. 16(1).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 44

(c) that any information likely to lead to the identification of a party or another person who has appeared at a hearing—

be published in the manner and to the persons specified in the order.

(2) An order under this section may be made on the application of a party or on the Tribunal's own initiative.

(3) Except in accordance with an order under this section, a person must not publish or cause to be published any material referred to in subsection (1).

Penalty: 500 penalty units in the case of a body corporate;

100 penalty units or imprisonment for 2 years in any other case.

S. 43(3)
substituted by
No. 54/2000
s. 16(2).

44. Procedural directions

(1) The Tribunal may give directions as to the procedure to be followed at, or in connection with, the hearing of a matter.

(2) The Tribunal may at any time vary or revoke a direction given under this section.

(3) A direction under this section may be given, varied or revoked on the application of a party or on the Tribunal's own initiative.

(4) A direction under this section must not be inconsistent with any provision made by this Act or the rules or with any guidelines issued under section 45(1) or any practice directions.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 45

45. Guidelines

(1) The Chief Magistrate may issue guidelines for the Tribunal as to the procedure to be followed at, or in connection with, the hearing of matters generally or any specified class or classes of matters.

- (1A) The Chief Magistrate may issue guidelines that the Tribunal may take into account as to—
- (a) the matters that may be considered in determining whether expenses of a specified kind are reasonable; and
 - (b) any other matter related to the determination of an application—

S. 45(1A)
inserted by
No. 47/2003
s. 7(1).

being guidelines that apply generally or to a specified class or classes of matter.

- (1B) Guidelines issued under sub-section (1A) may be expressed as applying in relation to an application—
- (a) made after the issuing of the guidelines; or
 - (b) being determined after the issuing of the guidelines irrespective of when made.

S. 45(1B)
inserted by
No. 47/2003
s. 7(1).

(2) Guidelines issued under sub-section (1) or (1A) must not be inconsistent with any provision made by this Act or the rules or with any practice directions.

S. 45(2)
amended by
No. 47/2003
s. 7(2).

46. Scale of costs

(1) The Governor in Council may, by Order published in the Government Gazette, prescribe a scale of costs applicable with respect to applications to the Tribunal for assistance under this Act.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 47

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- (2) A scale of costs under sub-section (1) may prescribe—
- (a) costs payable to a legal practitioner acting for an applicant for assistance under this Act;
 - (b) allowances and expenses payable to witnesses in proceedings in the Tribunal or persons required to produce documents to the Tribunal;
 - (c) amounts payable in respect of the provision by a medical expert or counselling service provider in connection with an application to the Tribunal of any service including the conduct of an examination and the preparation of a report;
 - (d) amounts payable in respect of funeral expenses.

47. Payment of expenses to person entitled

- (1) In this section—

"creditor" means a person entitled to take proceedings for the recovery of expenses and includes a legal practitioner who has paid expenses on behalf of a client;

"expenses" means expenses for a treatment or other service provided in respect of which assistance is payable under this Act but does not include costs referred to in section 48;

"reasonable", in relation to expenses, means reasonable having regard to the treatment or other service provided.

- (2) The Tribunal may order that assistance in respect of expenses be paid to the creditor.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 47

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- (3) If the Tribunal believes that the amount of expenses is reasonable and orders payment to the creditor under sub-section (2), the creditor may recover from the debtor the difference between the amount ordered and the amount of the expenses.
 - (4) If the Tribunal believes that the amount of expenses is not reasonable, it may make an order determining the amount it considers reasonable.
 - (5) If the Tribunal makes an order under sub-section (4) in respect of expenses—
 - (a) assistance payable in respect of the expenses must not exceed 80% of the amount determined by the Tribunal;
 - (b) if the expenses have not been paid—
 - (i) unless the creditor is a legal practitioner who has paid the full amount of the expenses on behalf of a client, the creditor is not entitled to recover more than the amount determined by the Tribunal;
 - (ii) if the creditor is a legal practitioner who has paid the full amount of the expenses on behalf of a client, the difference between the amount determined by the Tribunal and the amount paid may be recovered by the legal practitioner on behalf of the client as a civil debt recoverable summarily from the person to whom payment was made;
 - (iii) the creditor is not prevented by this Act from recovering the balance of the amount determined by the Tribunal remaining after a payment ordered by the Tribunal;
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Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 48

- (c) if the expenses have been paid, the amount of payment in excess of the amount determined by the Tribunal is recoverable as a civil debt recoverable summarily from the person to whom payment was made.

48. Costs

- (1) The costs of, and incidental to, all proceedings in the Tribunal are in the discretion of the Tribunal and it has full power to determine by whom, to whom and to what extent the costs are to be paid.
- (2) Sub-section (1) is subject to this section and to—
 - (a) any scale of costs under section 46(1); and
 - (b) the rules; and
 - (c) any practice directions.

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S. 48(3)
repealed by
No. 54/2000
s. 17.

- (4) A legal practitioner acting for an applicant for assistance under this Act is not entitled—
 - (a) to recover from the applicant any costs in respect of proceedings before the Tribunal; or
 - (b) to claim a lien in respect of any such costs on any sum payable as assistance under this Act; or
 - (c) to deduct any such costs from any such sum—

except to the extent to which the costs have been allowed as between the legal practitioner and the client by the Tribunal on the application of the legal practitioner or of the client.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 49

- (5) Except as allowed by the Tribunal, a person must not charge for the making of an application to the Tribunal or for appearing on behalf of an applicant.
- (6) Sub-sections (4) and (5) have effect despite anything to the contrary in the **Legal Profession Act 2004**.

S. 48(6)
amended by
No. 18/2005
s. 18(Sch. 1
item 113.2).

49. Complaints about service providers

- (1) The Tribunal may cause a complaint about the costs charged by a legal practitioner in connection with an application to the Tribunal to be made in accordance with Chapter 4 of the **Legal Profession Act 2004** if it considers the amount charged to be grossly excessive.
- (2) The Tribunal may cause a complaint to be made to the Health Services Commissioner or a relevant regulatory body about the amount charged by a medical expert or counselling service provider for the provision in connection with an application to the Tribunal of any service if it considers the amount charged to be grossly excessive.

S. 49(1)
amended by
No. 18/2005
s. 18(Sch. 1
item 113.3).

Division 4—Awards

50. Making of awards

- (1) The Tribunal may award assistance to an applicant if satisfied—
 - (a) that an act of violence has occurred; and
 - (b) that the applicant is a primary victim, secondary victim or related victim of that act of violence or a person who has incurred funeral expenses as a direct result of the death of such a primary victim; and
 - (c) that the applicant is eligible to receive the assistance.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 51

- (2) An award of assistance may be made subject to any conditions specified by the Tribunal in the order making the award.
- (3) Without limiting sub-section (2), the Tribunal may specify the following as conditions—
- (a) that the person to whom, or for whose benefit, the award is made repay the whole or any part of the amount of the award in specified circumstances;
 - (b) in the case of an award that is payable to a person for the benefit of another person (other than a person under disability), conditions—
 - (i) as to the payment of the assistance to or for the benefit of that other person; or
 - (ii) as to the holding of the whole or any part of the assistance on trust for that other person.

S. 50(3)(b)
amended by
No. 30/2004
s. 8(1).

Note: In relation to a person under disability, see section 70A.

Note to
s. 50(3)
inserted by
No. 30/2004
s. 8(2).

- (4) The Tribunal may award assistance in respect of an act of violence even though no person has been charged with, or found guilty or convicted of, an offence arising out of the commission of that act of violence.

51. Assignment of rights to the State

- (1) The person to whom, or for whose benefit, an award of assistance is made under this Act may, on or after the making of the award, assign to the State their right to recover from any other person, by civil proceedings, damages or compensation in respect of the injury or death to which the award relates.

S. 51(1)
amended by
No. 47/2003
s. 8.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 52

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- (2) Money recovered by the State in the exercise of a right assigned to it in accordance with sub-section (1) must be dealt with as follows:
- (a) an amount equal to the expended amount, or the total money recovered if it is less than the expended amount, must be paid into the Consolidated Fund; and
 - (b) the balance, if any, must be paid to the assignor.
- (3) In sub-section (2) "**the expended amount**" is the total of—
- (a) the amount of assistance awarded to the assignor under this Act; and
 - (b) all costs and expenses incurred by the Tribunal in connection with the determination of the application for assistance and the making of the award; and
 - (c) all costs and expenses incurred by the Victorian Civil and Administrative Tribunal on a review of a decision made by the Tribunal in connection with the application for assistance; and
 - (d) all costs incurred by the State in connection with the exercise of the assigned right.

S. 51(3)(c)
amended by
No. 52/1998
s. 311(Sch. 1
item 101.2).

52. Mandatory refusal of application

The Tribunal must refuse to make an award of assistance if—

- (a) it is satisfied that—
 - (i) the act of violence was not reported to the police within a reasonable time; or
 - (ii) the applicant failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 53

prosecution of any person by whom the act of violence was committed or alleged to have been committed—

unless the Tribunal considers that special circumstances brought about that result; or

- (b) the application is made in collusion with the person who committed or is alleged to have committed the act of violence; or
- (c) an earlier application for assistance by the applicant in any capacity arising from the same act of violence has been made, whether or not the earlier application has been determined; or

S. 52(d)
repealed by
No. 54/2000
s. 9(4).

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53. Reasonable time for reporting act of violence

In considering whether the act of violence was reported to the police within a reasonable time, the Tribunal may have regard to any matters that it considers relevant including—

- (a) the age of the victim at the time of the occurrence of the act of violence;
- (b) whether the victim is intellectually disabled within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or mentally ill within the meaning of the **Mental Health Act 1986**;
- (c) whether the person who committed, or is alleged to have committed, the act of violence was in a position of power, influence or trust in relation to the victim;

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- (d) whether the victim was threatened or intimidated by the person who committed, or is alleged to have committed, the act of violence or any other person;
 - (e) the nature of the injury alleged to have been suffered by the victim.

54. Matters to which Tribunal must have regard

In determining whether or not to make an award of assistance or the amount of assistance to award, the Tribunal must have regard to the following:

- (a) the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence;
- (b) in the case of an application by a related victim—
 - (i) the character or behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) of the deceased primary victim of the act of violence;
 - (ii) any obligations owed to the applicant and any other related victim applicants by the deceased primary victim of the act of violence;
 - (iii) the financial resources (including earning capacity) and financial needs of the applicant and any other related victim applicants;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 55

- (iv) if the related victim is a close family member of, or had an intimate personal relationship with, the deceased primary victim of the act of violence, the nature of the relationship between them;
- (c) whether the applicant provoked the commission of the act of violence and, if so, the extent to which the act of violence was in proportion to that provocation;
- (d) any condition or disposition of the applicant which directly or indirectly contributed to his or her injury or death;
- (e) whether the person by whom the act of violence was committed or alleged to have been committed will benefit directly or indirectly from the award;
- (f) any other circumstances that it considers relevant.

55. Form of payment

- (1) Subject to this section, an award of assistance—
 - (a) may be made payable in whole or in part—
 - (i) to the applicant; or
 - (ii) to any other person for the benefit of the applicant;
 - (b) may be paid—
 - (i) wholly as a lump sum; or
 - (ii) partly as a lump sum and partly by instalments; or
 - (iii) wholly by instalments.

Note to
s. 55(1)
inserted by
No. 30/2004
s. 8(3).

Note: In relation to an award of assistance made for the benefit of a person under disability, see section 70A.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 56

- (2) Amounts awarded to a victim for expenses not yet incurred are only payable on the submission of an invoice or receipt relating to the particular expense.
- (3) The Tribunal may specify terms and conditions to be complied with before any instalment is paid.
- (4) The Tribunal may order that the whole or any part of an award of assistance not be paid until after the expiry of the period for applying under section 59 for review of the Tribunal's decision and, if an application for review is made, until after the decision of the Victorian Civil and Administrative Tribunal on the application for review comes into operation.
- (5) Any assistance not paid to, or for the benefit of, a person within 6 years after the awarding of that assistance ceases to be payable unless it is then being held by the Tribunal on trust for that person.

S. 55(4)
amended by
No. 52/1998
s. 311(Sch. 1
item 101.3(a)
(b)).

56. Interim awards

- (1) Pending the final determination of an application for assistance, the Tribunal may make an interim award of assistance in any circumstances that it considers appropriate.

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S. 56(2)
amended by
No. 52/1997
s. 8(1),
repealed by
No. 47/2003
s. 5(3).

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S. 56(2A)
inserted by
No. 52/1997
s. 8(2),
repealed by
No. 47/2003
s. 5(3).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 3—Victims of Crime Assistance Tribunal

s. 57

S. 56(3)
amended by
No. 47/2003
s. 5(4).

- (3) If an interim award is made but the application for assistance is subsequently dismissed, on dismissing the application the Tribunal may order that the amount of the interim award is a debt due to the State by the applicant.
- (4) If, on finally determining the application, the Tribunal decides to award assistance to the applicant, it must deduct the amount of any interim award from the amount of assistance that it would otherwise have awarded.
- (5) Sections 50(2) and (3) and 55 apply to an interim award in the same way that they apply to a final award.

Division 5—Rules and Practice Notes

57. Rules

- (1) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules for or with respect to—
 - (a) forms;
 - (b) the procedure to be followed in making applications to the Tribunal and in respect of proceedings under this Act;
 - (c) the service of notices, applications, orders and other documents for the purposes of this Act;
 - (d) generally, any matter relating to the practice and procedure of the Tribunal.
- (2) The power of the Chief Magistrate together with 2 or more Deputy Chief Magistrates to jointly make rules is subject to the rules being disallowed by a House of the Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**.

58. Practice directions

- (1) The Chief Magistrate may from time to time issue practice directions, statements or notes for the Tribunal relating to proceedings generally or any specified class or classes of proceedings, including the exercise by the Tribunal of its discretion in relation to the costs of, and incidental to, any such proceedings.
 - (2) Practice directions, statements or notes issued under sub-section (1) must not be inconsistent with any provision made by this Act or the rules.
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Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 4—Review, Variation and Refunds

s. 59

PART 4—REVIEW, VARIATION AND REFUNDS

Division 1—Review

Pt 4 Div. 1
(Heading)
amended by
No. 52/1998
s. 311(Sch. 1
item 101.4).

59. Review of Tribunal decisions

S. 59
amended by
No. 52/1998
s. 311(Sch. 1
items 101.5,
101.6) (ILA
s. 39B(1)).

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a final decision of the Tribunal—
 - (a) refusing to make an award of assistance on an application under Division 2 of Part 3;
 - (b) determining the amount of assistance on an application under Division 2 of Part 3;
 - (c) refusing to vary an award under section 60;
 - (d) determining the amount of assistance on an application for variation under section 60;
 - (e) determining under section 62(2) that a person is required to make a refund, or determining the amount of that refund.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the final decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the final decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 59(2)
inserted by
No. 52/1998
s. 311(Sch. 1
item 101.6).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 4—Review, Variation and Refunds

s. 60

Division 2—Variation of Award

60. Variation of award

- (1) The Tribunal may, on the application of the person to whom, or for whose benefit, an award of assistance was made (including an award of special financial assistance made in accordance with section 8A), vary the award (including an award that has been previously varied) in any manner that the Tribunal thinks fit, whether as to the terms of the award or by increasing or decreasing the amount of assistance awarded or in some other way. **S. 60(1) amended by No. 54/2000 s. 18(1).**
- (2) The Tribunal must not make an order for variation of an award if the application for variation is made more than 6 years after the making of the original award unless the person to whom, or for whose benefit, the award was made was under 18 years of age when the original award was made in which case an application may be made at any time up until he or she turns 24. **S. 60(2) amended by No. 54/2000 s. 18(2).**
- (3) In considering an application for variation the Tribunal must have regard to—
- (a) any fresh evidence that has become available since the award was made or last varied;
 - (b) any change of circumstances that has occurred since the award was made or last varied or that is likely to occur;
 - (c) any payments received by or payable to the person to whom, or for whose benefit, an award of assistance was made in respect of the injury or death since the award was made or last varied;
 - (d) anything else that the Tribunal thinks is relevant.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 4—Review, Variation and Refunds

s. 61

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- (4) In exercising its power under this section, the Tribunal must do so in accordance with the other provisions of this Act relating to the payment of, or the amount of, assistance.

Division 3—Refunds

61. Pursuing other remedies

Except as otherwise provided by this Act, the making of an award of assistance does not affect the right of a person to recover from any other person, by civil proceedings or otherwise, any damages, compensation, assistance or payments of any kind.

62. Refund of award

- (1) If a person to whom, or for whose benefit, an award is made receives after the making of the award any damages, compensation, assistance or payments of any kind not taken into account by the Tribunal under section 16 on making the award but which the Tribunal would have been required by that section to take account of if received before then, the person must refund—
- (a) the amount of the assistance paid to him or her under this Act, if it is equal to or less than the amount of the damages, compensation, assistance or other payments subsequently received; or
 - (b) the amount of the damages, compensation, assistance or other payments subsequently received, if the amount of the assistance paid to him or her under this Act is greater.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 4—Review, Variation and Refunds

s. 62

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- (2) Despite sub-section (1), if the damages, compensation, assistance or other payments subsequently received were received from a person other than the person by whom the act of violence was committed or alleged to have been committed or another person on that person's behalf, a requirement to refund only arises if the Tribunal requires the person to whom, or for whose benefit, the award was made, to do so.
 - (3) If an award is varied under section 60 or on a review under section 59 by decreasing the amount of assistance, the person to whom, or for whose benefit, the award was made must refund the amount by which the assistance paid to him or her under this Act is decreased.
 - (4) Any money that is not refunded as required by this section may be recovered as a debt due to the State.
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PART 5—MISCELLANEOUS

63. Protection of members, advocates and witnesses

- (1) A member of the Tribunal has, in the exercise of powers or performance of duties as a member, the same protection and immunity as a judge of the Supreme Court.
- (1A) The principal registrar of the Tribunal, a registrar and a deputy registrar of the Tribunal have, in the exercise of powers or performance of duties as such, the same protection and immunity as a member of the Tribunal has under sub-section (1).
- (2) A legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by the **Evidence Act 1958** as applied to the Tribunal by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

S. 63(1A)
inserted by
No. 52/1997
s. 9.

64. Contempt of Tribunal

- (1) A person must not—
 - (a) hinder or obstruct a member of the Tribunal in the exercise of the powers or the performance of the functions of the member under this Act;
 - (b) interrupt any proceedings of the Tribunal;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 65

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- (c) use insulting language towards a member of the Tribunal when the member is exercising powers or performing functions under this Act;
 - (d) create a disturbance or take part in creating a disturbance in or near a place where the Tribunal is sitting;
 - (e) do any other thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 50 penalty units.

- (2) Nothing in sub-section (1) limits or takes away any power conferred on the Tribunal by, or exercisable in relation to the Tribunal by virtue of, section 37(1).

65. Inadmissibility of evidence in other proceedings

- (1) Evidence of anything said on the hearing of, or of any document prepared solely for the purpose of, an application is not admissible in any civil or criminal proceeding in a court or tribunal or in any other legal proceeding within the meaning of the **Evidence Act 1958** except—
 - (a) a proceeding before the Tribunal or arising out of a proceeding before the Tribunal; or
 - (b) a proceeding for an offence against this Act; or
 - (c) a proceeding for an offence against section 81, 82, 83 or 83A of the **Crimes Act 1958** (fraud) or for an offence of conspiracy to commit, incitement to commit or attempting to commit any such offence; or

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 66

- (d) a proceeding for an offence against section 314(1) of the **Crimes Act 1958** (perjury) or for any other offence that involves an interference with the due administration of justice; or
 - (e) with the consent of the person to whom the words or document principally refers or relates.
- (2) A court, tribunal or person acting judicially within the meaning of the **Evidence Act 1958** may rule as admissible in a proceeding before them any matter inadmissible because of sub-section (1) if satisfied, on the application of a party to the proceeding, that it is in the interests of justice to do so.

66. Fraud

A person must not—

- (a) obtain or attempt to obtain fraudulently any assistance under this Act, whether for himself or herself or any other person, and whether or not in collusion with any other person; or
- (b) knowingly assist any other person to obtain fraudulently any assistance under this Act.

Penalty: 120 penalty units or imprisonment for 12 months or both.

67. False or misleading information

- (1) A person must not in, or in relation to, an application for assistance give information that is false or misleading in a material particular.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 68

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- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—
- (a) in the case of false information—that the information was true; or
 - (b) in the case of misleading information—that the information was not misleading.

68. Annual report

- (1) Before 30 September in each year the Tribunal must submit a report to the Minister on the performance by the Tribunal of its functions, powers and duties during the year ending on the previous 30 June.
- (2) The Minister must cause each report under subsection (1) to be laid before each House of the Parliament within 7 sitting days of that House after it is received by the Minister.

69. Payments to and from Consolidated Fund

- (1) The costs and expenses of establishing, maintaining and administering the Tribunal together with the amounts of assistance ordered by the Tribunal or, on a review under section 59, by the Victorian Civil and Administrative Tribunal to be paid under this Act and costs and expenses awarded to applicants shall be paid out of the Consolidated Fund which is, by this sub-section, accordingly appropriated to the necessary extent.
- (2) If the Tribunal makes an award of assistance under this Act, it must cause an order in writing to be drawn up and given to the person to whom the award is made.

S. 69(1)
amended by
No. 10/2005
s. 3(Sch. 1
item 24).

S. 69(2)
amended by
No. 52/1998
s. 311(Sch. 1
item 101.7(a)).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 70

S. 69(3)
amended by
No. 52/1998
s. 311(Sch. 1
item 101.7(b)).

- (3) Money is only payable out of the Consolidated Fund in satisfaction of an award of assistance on presentation of a written order of the Tribunal or the Victorian Civil and Administrative Tribunal, as the case requires.
- (4) All money refunded under this Act or, subject to section 51, otherwise paid to or recovered by the State in accordance with this Act must be paid into the Consolidated Fund.

70. Investment of trust money

- (1) The whole or any part of any money held by the Tribunal on trust for a person may, except where otherwise provided by this or any other Act, whether already in a state of investment or not, be invested—

S. 70(1)(a)
substituted by
No. 11/2001
s. 3(Sch.
item 85).

- (a) on deposit with an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth; or

- (b) in the manner in which trust money may be invested by a trustee under the **Trustee Act 1958**.

- (2) All income derived from the investment of money under sub-section (1) must be paid to the person beneficially entitled to the invested money.

S. 70A
inserted by
No. 30/2004
s. 9.

70A. Money held by Tribunal for person under disability

- (1) Unless the Tribunal orders otherwise, money held by the Tribunal on trust for a person under disability immediately before the commencement of section 9 of the **Courts Legislation (Funds in Court) Act 2004** must be paid into the Supreme Court by payment to the Senior Master of the Supreme Court to be held in that Court on behalf of the person under disability.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 71

- (2) Unless the Tribunal orders otherwise, in any proceeding in the Tribunal in which an award of assistance is made for the benefit of a person under disability, that award must be made payable to the Senior Master of the Supreme Court and paid to the Senior Master and held in that Court on behalf of the person under disability.
- (3) Money paid to the Senior Master under subsection (1) or (2) is to be held by the Senior Master as if an order had been made in a proceeding in the Supreme Court that the money be paid into court to be held on behalf of the person under disability and as if that money had been paid into court in accordance with that order.
- (4) Nothing in this section affects the operation of section 70 of this Act or section 66 of the **Guardianship and Administration Act 1986**.

71. Supreme Court—limitation of jurisdiction

- (1) It is the intention of sections 47, 48 and 63 to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 63(1A) to alter or vary section 85 of the **Constitution Act 1975**.

S. 71
amended by
No. 52/1997
s. 10 (ILA
s. 39B(1)).

S. 71(2)
inserted by
No. 52/1997
s. 10.

72. Regulations

The Governor in Council may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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Ss 73–75
repealed by
No. 54/2000
s. 19(3).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 76

76. Transitional provisions

- (1) Schedule 1 contains transitional provisions.
- (2) Schedule 1 does not affect or take away from the **Interpretation of Legislation Act 1984**.

77. Transitional provisions (2000 and 2003 Amending Acts)

- (1) Subject to this section, the amendments of this Act made by Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** (except sections 15, 16 and 18(2) of that Act) apply only with respect to acts of violence occurring on or after 1 July 2000 and applications and awards made in respect of such acts of violence.
- (2) The amendments of this Act made by sections 15, 16 and 18(2) of the **Victims of Crime Assistance (Amendment) Act 2000** apply to applications and awards made under this Act in respect of acts of violence, whether occurring before or on or after 1 July 2000.
- (3) The amendments of this Act made by Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** apply with respect to acts of violence occurring before 1 July 2000 and applications and awards made in respect of such acts of violence where—
 - (a) the act of violence involved the commission of an offence referred to in paragraph (b) of the definition of "relevant offence" in section 3(1) of this Act; and
 - (b) a primary victim of the act of violence was under the age of 18 years at the time of the commission of that act; and
 - (c) the application to the Tribunal is made by or on behalf of a primary victim of a kind referred to in paragraph (b); and

S. 77
(Heading)
inserted by
No. 47/2003
s. 9(1)

S. 77
inserted by
No. 54/2000
s. 20.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 77

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- (d) the act of violence occurred—
- (i) on or after 1 July 1997; or
 - (ii) at any time before 1 July 2000 if a person has been (on or after 1 July 1997) committed, or directly presented, for trial on a charge for a relevant offence of a kind referred to in paragraph (a) committed against the applicant, irrespective of the outcome of that process; or
 - (iii) at any time before 1 July 2000 if a person has been (on or after 1 July 1997) charged with a relevant offence of a kind referred to in paragraph (a) committed against the applicant and—
 - (A) the charge is heard and determined summarily, irrespective of the outcome of the proceeding; or
 - (B) the person charged dies without the charge having been determined; and
- (e) the applicant had not made an application under the former Act within the meaning of Schedule 1 or any corresponding previous enactment in respect of the injury before the commencement day within the meaning of that Schedule; and
- (f) the application is made in accordance with sub-section (4) or (4A).
- S. 77(3)(d)(ii) amended by No. 47/2003 s. 9(2).**
- S. 77(3)(d)(iii) inserted by No. 47/2003 s. 9(2).**
- S. 77(3)(f) amended by No. 47/2003 s. 9(3).**

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 77

- (4) For the purposes of sub-section (3) an application—
- (a) may be made in any case at any time before 1 July 2002 or, where sub-section (3)(d)(ii) applies, at any time within 2 years after the person is committed or presented for trial (if that period ends on or after 1 July 2002) and, despite anything to the contrary in section 29, such an application is not out of time within the meaning of that section despite it not being made within 2 years after the occurrence of the act of violence;
 - (b) subject to section 29, may be made in any case at any time after 1 July 2002.

S. 77(4A)
inserted by
No. 47/2003
s. 9(4).

- (4A) For the purposes of sub-section (3), where sub-section (3)(d)(iii) applies, an application may be made at any time within 2 years after—
- (a) the commencement of section 9 of the **Victims of Crime Assistance (Miscellaneous Amendments) Act 2003**; or
 - (b) the date on which the charge is heard and determined summarily or the date of death of the person charged (as the case requires)—
- whichever is the later.

S. 77(4B)
inserted by
No. 47/2003
s. 9(4).

- (4B) Despite anything to the contrary in section 29, an application made in accordance with sub-section (4A) is not made out of time within the meaning of that section despite it not being made within 2 years after the occurrence of the act of violence.

S. 77(5)
amended by
No. 47/2003
s. 9(5).

- (5) For the purposes of sub-sections (3), (4) and (4A)—
- (a) if an act of violence occurs between two dates, one before and one on or after 1 July 1997, the act of violence occurs on or after 1 July 1997;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 77

(b) if an offence involved in the act of violence is alleged to have been committed between two dates, and the primary victim of the act of violence was under the age of 18 years at any time during the period between those dates, the primary victim must be taken to have been under the age of 18 years at the time of the commission of that act.

(6) If—

(a) an application is made under this Act before the commencement of Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** in respect of an act of violence to which the amendments of this Act made by that Part apply by virtue of sub-section (3); and

(b) the application had been finally determined before that commencement—

the award of assistance made must, on an application under section 60 made in accordance with sub-section (7), be varied to make it consistent with the award that would have been made in accordance with this Act as amended by that Part if the application had not been finally determined before that commencement.

(6A) If—

(a) an application is made under this Act before the commencement of section 9 of the **Victims of Crime Assistance (Miscellaneous Amendments) Act 2003** (the 2003 Act); and

(b) the application is in respect of an act of violence to which the amendments of this Act made by Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** apply

S. 77(6A)
inserted by
No. 47/2003
s. 9(6).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 77

by virtue of sub-section (3) as amended by the 2003 Act; and

- (c) the application had been finally determined before the commencement referred to in paragraph (a)—

the award of assistance must, on an application under section 60 made in accordance with sub-section (7), be varied to make it consistent with the award that would have been made in accordance with this Act as amended by that Part if the application had not been finally determined before that commencement.

S. 77(7)
amended by
No. 47/2003
s. 9(7)(a)(b).

- (7) Despite anything to the contrary in section 60, for the purposes of sub-sections (6) and (6A) an application for variation may be made at any time when an application could be made in respect of the act of violence by virtue of sub-sections (3) (as amended by the **Victims of Crime Assistance (Miscellaneous Amendments) Act 2003**), (4) and (4A) (disregarding paragraph (e) of sub-section (3) for this purpose).

- (8) If—

- (a) Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** does not come into operation until after 1 July 2000; and
- (b) an application is made under this Act before the commencement of that Part in respect of an act of violence that occurred on or after 1 July 2000; and
- (c) the application had not been finally determined as at that commencement—

the application must be dealt with and determined after that commencement in accordance with this Act as amended by that Part.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 77

(9) If—

- (a) Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** does not come into operation until after 1 July 2000; and
- (b) an application is made under this Act before the commencement of that Part in respect of an act of violence that occurred on or after 1 July 2000; and
- (c) the application had been finally determined before that commencement—

the award of assistance made must, on an application under section 60, be varied to make it consistent with the award that would have been made as provided by sub-section (8) if the application had not been finally determined before that commencement.

- (9A) Despite anything to the contrary in section 52(c), the Tribunal is not required to refuse to make an award of special financial assistance in accordance with section 8A on an application (the later application) because of an earlier application for assistance made before the commencement of section 9 of the **Victims of Crime Assistance (Miscellaneous Amendments) Act 2003** if the later application is made in accordance with sub-section (4A) of this section.

S. 77(9A)
inserted by
No. 47/2003
s. 9(8).

(9B) If—

- (a) an application is made under this Act before the commencement of section 9 of the **Victims of Crime Assistance (Miscellaneous Amendments) Act 2003** (the 2003 Act); and
- (b) the application is in respect of an act of violence to which the amendments of this Act made by Part 2 of the **Victims of Crime Assistance (Amendment) Act 2000** apply

S. 77(9B)
inserted by
No. 47/2003
s. 9(8).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Part 5—Miscellaneous

s. 78

by virtue of sub-section (3) as amended by the 2003 Act; and

- (c) the application had not been finally determined before the commencement referred to in paragraph (a)—

the application may, in accordance with the rules, be amended to include a claim for special financial assistance in accordance with section 8A and the amended application must be dealt with and determined in accordance with this Act as amended by those Acts.

- (10) For the purposes of this section, if an act of violence occurs between two dates, one before and one on or after 1 July 2000, the act of violence occurs on or after 1 July 2000.

78. Transitional provisions (2003 Amending Act)

Subject to section 77, an amendment of this Act made by a provision of the **Victims of Crime Assistance (Miscellaneous Amendments) Act 2003** applies to proceedings in the Tribunal occurring on or after the commencement of that provision (irrespective of whether the application was made to the Tribunal before or after that commencement).

S. 78
inserted by
No. 47/2003
s. 10.

SCHEDULE 1

TRANSITIONAL PROVISIONS

Section 76.

1. Definitions

In this Schedule—

"commencement day" means the day on which section 19 comes into operation;

"former Act" means the **Criminal Injuries Compensation Act 1983** as in force immediately before its repeal;

"former Tribunal" means a Crimes Compensation Tribunal appointed under the former Act;

"new Tribunal" means the Victims of Crime Assistance Tribunal established by Part 3 of this Act.

2. Abolition of former Tribunals

On the commencement day—

- (a) each former Tribunal is abolished and the person appointed to be the Tribunal goes out of office as the Tribunal;
- (b) all rights, property and assets that, immediately before that day, were vested in a former Tribunal are, by force of this clause, vested in the new Tribunal;
- (c) all debts, liabilities and obligations of a former Tribunal existing immediately before that day become, by force of this clause, debts, liabilities and obligations of the new Tribunal;
- (d) the new Tribunal is, by force of this clause, substituted as a party to any proceeding pending in any court or tribunal to which a former Tribunal was a party immediately before that day;
- (e) the new Tribunal is, by force of this clause, substituted as a party to any contract or arrangement entered into by or on behalf of a former Tribunal as a party and in force immediately before that day;

Victims of Crime Assistance Act 1996
Act No. 81/1996

Sch. 1

- (f) subject to this Act, any reference to a former Tribunal in any Act (other than this Act) or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** must, on and from that day, be construed as a reference to the new Tribunal, unless the context otherwise requires.

Sch. 1 cl. 3
amended by
No. 46/1998
s. 7(Sch. 1).

3. Staff of former Tribunal

A person who, immediately before the commencement day, was a registrar or deputy registrar of a former Tribunal or of the former Tribunals becomes, on and from that day but subject to the **Public Sector Management and Employment Act 1998**, a registrar or deputy registrar of the new Tribunal, as the case requires.

4. Pending applications or matters

- (1) An application that had been made under section 7, 25, 27 or 29 of the former Act, or a matter that was before a former Tribunal under section 28, 31 or 32 of that Act, but had not been finally determined as at the commencement day must continue to be dealt with in accordance with the former Act as if that Act had not been repealed.
- (2) Subject to sub-clause (3), an application or matter referred to in sub-clause (1) is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose—
- (a) the new Tribunal has all the powers, functions and duties of the former Tribunal under the former Act; and
 - (b) anything done in relation to the application or matter by the former Tribunal before the commencement day is deemed to have been done by the new Tribunal; and
 - (c) the new Tribunal may have regard to any record of the former Tribunal relating to the application or matter.
- (3) If a former Tribunal had decided to conduct a hearing of an application or matter and before the commencement day evidence on any question of fact material to the application or matter had been given to the former Tribunal at a hearing, the former Tribunal must continue to deal with that application or matter in accordance with the former Act until it is finally determined.
- (4) For the purpose of sub-section (3) and despite anything to the contrary in this Act, a former Tribunal continues to exist until all applications or matters referred to in sub-clause (3) have been finally determined.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Sch. 1

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- (5) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of a former Tribunal or the new Tribunal made under this clause after the commencement day in respect of an application or matter referred to in sub-clause (1).
 - (6) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (5).
 - (7) If any difficulty arises in relation to an application or matter because of the operation of this clause, the Chief Magistrate may make any order that he or she considers appropriate to resolve the difficulty.
 - (8) The Chief Magistrate may make an order under sub-clause (7) on the application of a party to the proceeding or matter or on his or her own initiative.

5. Applications in respect of acts before the commencement day

- (1) Subject to this Act, an application may be made by a person under this Act in respect of an act of violence that occurred before the commencement day provided that no application by that person in the same capacity had been made under section 7 of the former Act or any corresponding previous enactment in respect of that act of violence before that day.
 - (2) Subject to sub-clause (3), an application cannot be made under this Act in respect of an act of violence that occurred before the commencement day by a person—
 - (a) who would not have been entitled to make an application under section 7 of the former Act or any corresponding previous enactment in respect of that act of violence had this Act not been enacted; or
 - (b) who would not have been entitled to make an application under this Act in respect of that act of violence had it occurred on or after that day.
 - (3) Sub-clause (2) does not exclude an application in respect of an injury that is an injury as defined in this Act but was not an injury as defined in the former Act or any corresponding previous enactment.
 - (4) Without limiting sub-clause (1) and despite sub-clause (2), an application may be made under this Act in respect of an injury (as defined in the former Act) that occurred within 1 year before the commencement day by a person who—
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Victims of Crime Assistance Act 1996
Act No. 81/1996

Sch. 1

- (a) would have been entitled to make an application under section 7 of the former Act in respect of that injury had this Act not been enacted but who would not have been entitled to make an application under this Act in respect of that injury had the act of violence occurred on or after that day; and
- (b) had not made an application under the former Act in respect of that injury before that day.

6. Applications under former Act by persons who would be secondary victims under this Act

- (1) Despite its repeal, an application may be made under section 7 of the former Act on or after the commencement day in respect of an injury (as defined in that Act) that occurred within 1 year before that day by a person who—
 - (a) would have been entitled to make an application under this Act as a secondary victim of an act of violence that resulted in that injury and in the death of the primary victim of that act had that act occurred on or after that day; and
 - (b) had not made an application under the former Act in respect of that injury before that day.
- (2) An application referred to in sub-clause (1) is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose it has all the powers, functions and duties of the former Tribunal under the former Act.
- (3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal made under this clause after the commencement day in respect of an application referred to in sub-clause (1).
- (4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

7. Variation of old awards

- (1) Despite its repeal, section 25 of the former Act continues to apply with respect to orders for compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.
- (2) An application under section 25 of the former Act made on or after the commencement day is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose the new Tribunal has all the powers, functions and duties of a former Tribunal under the former Act.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Sch. 1

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- (3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 25 of the former Act refusing to vary an award or determining the amount of compensation on an application for variation of an award.
 - (4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

8. Recovery from offender

- (1) Despite its repeal, section 27 of the former Act continues to apply with respect to orders for the payment of compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.
- (2) An application under section 27 of the former Act made on or after the commencement day is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose the new Tribunal has all the powers, functions and duties of a former Tribunal under the former Act.
- (3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 27 of the former Act to make an order under section 27.
- (4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

9. Refund of old awards

- (1) Despite its repeal, section 28 of the former Act continues to apply with respect to awards of compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.
 - (2) The new Tribunal, for the purpose of determining under section 28(3) of the former Act that a person is required to make a refund or the amount of that refund, has all the powers, functions and duties of a former Tribunal under the former Act.
 - (3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 28 of the former Act determining that a person is required to make a refund or determining the amount of such a refund.
 - (4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).
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Victims of Crime Assistance Act 1996
Act No. 81/1996

Sch. 1

10. Recovery of old awards between dependants

- (1) Despite its repeal, section 29 of the former Act continues to apply with respect to awards of compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.
- (2) An application under section 29 of the former Act made on or after the commencement day is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose the new Tribunal has all the powers, functions and duties of a former Tribunal under the former Act.
- (3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 29 of the former Act refusing to vary an award or determining the amount of compensation on an application for variation of an award.
- (4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

11. Enforcement of old costs orders

Despite its repeal, section 32(2) of the former Act continues to apply with respect to orders made under section 32(1) of the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.

12. Money held by former Tribunal

Any money held by a former Tribunal immediately before the commencement day on trust for any person under the former Act must, on and from that day, be held by the new Tribunal on trust for the same purpose and on the same terms.

13. Final annual report of former Tribunal

- (1) Before 30 September 1997 the new Tribunal must submit a report to the Minister on the performance by the former Tribunals of their functions, powers and duties during the year ending on 30 June 1997.
- (2) The Minister must cause the report under sub-clause (1) to be laid before each House of the Parliament within 7 sitting days of that House after it is received by the Minister.

Victims of Crime Assistance Act 1996
Act No. 81/1996

Sch. 1

14. Application of former Act and regulations

If a provision of the former Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision:

- (a) any other provision of the former Act necessary to give effect to that continued provision; and
- (b) any regulation made under the former Act for the purposes of that continued provision.

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Victims of Crime Assistance Act 1996
Act No. 81/1996

Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 October 1996

Legislative Council: 4 December 1996

The long title for the Bill for this Act was "to provide assistance to victims of crime, to repeal the **Criminal Injuries Compensation Act 1983**, to amend the **Sentencing Act 1991** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 31 October 1996

Legislative Council: 4 December 1996

Absolute majorities:

Legislative Assembly: 21 November 1996

Legislative Council: 4 December 1996

The **Victims of Crime Assistance Act 1996** was assented to on 17 December 1996 and came into operation as follows:

Sections 1–6 on 17 December 1996: section 2(1); rest of Act on 1 July 1997: section 2(3).

Victims of Crime Assistance Act 1996
Act No. 81/1996

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Victims of Crime Assistance Act 1996** by Acts and subordinate instruments.

Victims of Crime Assistance (Amendment) Act 1997, No. 52/1997

Assent Date: 11.6.97
Commencement Date: 11.6.97: s. 2
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 items 101.1–101.7) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999

Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 21) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Victims of Crime Assistance (Amendment) Act 2000, No. 54/2000

Assent Date: 12.9.00
Commencement Date: Ss 4–20 on 1.1.01: s. 2(2)
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 85) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 7(Sch. 5 item 2) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Victims of Crime Assistance Act 1996
Act No. 81/1996

Endnotes

Victims of Crime Assistance (Miscellaneous Amendments) Act 2003, No. 47/2003

Assent Date: 11.6.03
Commencement Date: Ss 4, 5(3)(4), 6–10 on 12.6.03: s. 2(1); s. 5(1)(2) on 1.1.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Victims of Crime Assistance Act 1996**

Courts Legislation (Funds in Court) Act 2004, No. 30/2004

Assent Date: 1.6.04
Commencement Date: Ss 7–9 on 1.7.04: s. 2
Current State: This information relates only to the provision/s relating to the **Victims of Crime Assistance Act 1996**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 215) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Victims of Crime Assistance Act 1996**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 24) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Victims of Crime Assistance Act 1996**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 113) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Victims of Crime Assistance Act 1996**

Victims of Crime Assistance Act 1996
Act No. 81/1996

Endnotes

3. Explanatory Details

¹ S. 25(3): "guardian" does not have the limited meaning given by section 3.

² S. 25(4): See note 1.