

Queensland



CRIMINAL OFFENCE VICTIMS ACT 1995

Act No. 54 of 1995

Queensland



**CRIMINAL OFFENCE VICTIMS ACT
1995**

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Queensland



Criminal Offence Victims Act 1995

Act No. 54 of 1995

An Act to establish principles of justice for victims of criminal offences, and to make provision for the payment of compensation to them

[Assented to 22 November 1995]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Offence Victims Act 1995*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Definitions—the dictionary

3. The dictionary in schedule 3 defines particular words used in this Act.¹

PART 2—FUNDAMENTAL PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME

Division 1—Explanatory provisions

Reasons for declaration and its effect

4.(1) The need for the declaration set out in this part arises out of national and international concern about the position of the victims of crime in the justice system.

(2) The purpose of the declaration is to advance the interests of victims of crime by stating some fundamental principles of justice that should be observed in dealings with victims of crime.

¹ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

(3) The declaration is a way of informing victims of crime, in an easily understood way, of the principles they can expect will underlie the treatment given to them by public officials.

(4) It is immaterial to the declaration whether an offender has been identified, arrested, prosecuted or convicted.

(5) The declaration and guidelines made under the declaration—

- (a) are not enforceable by criminal or civil redress; and
- (b) do not affect the validity, or provide grounds for review, of anything done or not done, or a decision made or not made, in contravention of them; and
- (c) do not override the *Criminal Practice Rules 1900* or the rules of evidence in a criminal proceeding.

(6) However, Parliament encourages victims of crime to assert the principles in ways that do not involve legal process or proceedings.

(7) Also, public officials and entities are authorised to have regard to the declaration and guidelines and are urged to do so to the extent that it is—

- (a) within or relevant to their functions; and
- (b) practicable for them to do so.

(8) Subsection (5) does not prevent disciplinary action² being taken against a public official who contravenes a requirement imposed on the official under—

- (a) a direction given to the official by someone authorised to give directions to the official; or
- (b) a standard, rule, or other statutory instrument, including any of the guidelines, binding on the official.

(9) Subsection (7) does not affect a confidentiality obligation of a public official.

² For an example of disciplinary action, see the *Police Service Administration Act 1990*, section 7.4 (Disciplinary action).

Who is a victim under the declaration

5. A “**victim**” is a person who has suffered harm from a violation of the State’s criminal laws—

- (a) because a crime is committed that involves violence committed against the person in a direct way; or
- (b) because the person is a member of the immediate family of, or is a dependant of, a victim mentioned in paragraph (a); or
- (c) because the person has directly suffered the harm in intervening to help a victim mentioned in paragraph (a).

Division 2—Declaration of fundamental principles**Fair and dignified treatment**

6. A victim should be treated—

- (a) with courtesy, compassion and respect for personal dignity; and
- (b) in a way that is responsive to age, gender, ethnic, cultural and linguistic differences or disability or other special need.

Access to justice

7. A victim should be given access to the State’s system of justice.

Guidelines to help response to victims

8.(1) The responsiveness of public officials dealing with victims should be helped by providing appropriate guidelines for putting these principles into effect.

(2) The guidelines should be provided by the public official or entity ordinarily responsible for guiding the conduct of the public officials.

Information to be provided to victim about crime prevention methods

9. A victim should be given, on request, information about ways to prevent crime.

Example—

The department in which the *Local Government Act 1993* is administered conducts a home secure program that advises home owners about ways to secure their homes.

Privacy of victim to be protected and property returned

10.(1) A victim's privacy should be protected.

(2) A victim's property that is held for an investigation or as evidence should be returned to the victim as soon as reasonably possible.

(3) Inconvenience to a victim should be minimised.

(4) A law enforcement officer should inform a victim of the following provisions, if it would help a victim to have the benefit of the principles mentioned in subsections (1) to (3)—

- (a) *Criminal Practice Rules 1900*, order 9, rule 9;³
- (b) *Justices Act 1886*, section 39;⁴
- (c) *Bail Act 1980*, section 16.⁵

Victim's version of events to be reported as soon as reasonably possible after crime

11. A law enforcement officer investigating a crime should make a report of a victim's version of the circumstances as soon as reasonably possible after the crime happens.

Protection from violence and intimidation from accused person

12.(1) A victim should be afforded all necessary protection from violence and intimidation by a person accused of a crime against the victim.

(2) A law enforcement officer should inform a victim of the following

³ *Criminal Practice Rules 1900*, order 9, rule 9 (Directions as to custody of exhibits)

⁴ *Justices Act 1986*, section 39 (Power of court to order delivery of certain property)

⁵ *Bail Act 1980*, section 16 (Refusal of bail)

provisions, if it would help the victim to have the benefit of the principles mentioned in subsection (1)—

- (a) *Bail Act 1980*, section 16;⁶
- (b) *Criminal Code*, section 695A;⁷
- (c) *Criminal Law (Sexual Offences) Act 1978*, sections 5 and 6;⁸
- (d) *Evidence Act 1977*, section 21A.⁹

Welfare of victim to be considered

13. The welfare of the victim should be considered at all appropriate stages of the investigation and prosecution of a crime, without prejudice to anyone who is being investigated for the crime or who has been charged with the crime.

Information during sentencing of impact of crime on victim

14.(1) At the sentencing of an offender for a crime, the prosecutor should inform the sentencing court of appropriate details of the harm caused to a victim by the crime.

(2) In deciding what details are not appropriate, the prosecutor may have regard to the victim's wishes.

(3) A prosecutor should ensure the sentencing court has regard to the following provisions, if it would help the victim to have the benefit of the principle mentioned in subsection (1)—

⁶ *Bail Act 1980*, section 16 (Refusal of bail)

⁷ *Criminal Code*, section 695A (Power to protect victim of violence by prohibiting publication of information about proceedings)

⁸ *Criminal Law (Sexual offences) Act 1978*, sections 5 (Exclusion of public) and 8 (Publication at large of complainant's identity prohibited)

⁹ *Evidence Act 1977*, section 21A (Evidence of special witnesses)

- (a) *Penalties and Sentences Act 1992*, section 9(2)(c);¹⁰
- (b) *Juvenile Justice Act 1992*, section 109(1)(g).¹¹

Information about investigation and prosecution of offender

15.(1) A victim of a crime should, on request, be advised by a law enforcement officer of the following—

- (a) the progress of investigations being conducted about the crime, unless disclosure is likely to jeopardise the investigation;
- (b) the charges laid for the crime and details of the place and date of hearing of the proceeding for the charge;
- (c) the name of the person charged;
- (d) the reasons for anyone's decision not to proceed with the charge or to amend the charge or to accept a plea to a lesser charge;
- (e) if the charged person is released on bail or otherwise before the proceeding on the charge is finished—the arrangements made for the release, including any condition and any application for variation of the condition that may affect the victim's safety or welfare;
- (f) the outcome of any proceeding, including appeals.

(2) A victim of a crime involving personal violence, or any person in relation to whom a sexual crime has been committed, should also, on request, be advised by a law enforcement officer of the following—

- (a) the fact that the alleged offender has absconded before trial;
- (b) the date of the start and length of sentence imposed on the offender;
- (c) further cumulative sentences imposed on the offender while in custody for the offence;
- (d) the fact that the offender has escaped from custody while under sentence;

¹⁰ *Penalties and Sentences Act 1992*, section 9 (Sentencing principles)

¹¹ *Juvenile Justice Act 1992*, section 109 (Sentencing principles)

- (e) eligibility dates for the offender to have staged release into the community, parole and final discharge for the sentence for the offence;
- (f) the fact that the offender has been transferred interstate or overseas under a scheme for the transfer of persons imprisoned or detained under sentence.

(3) Subsection (1)(c) does not apply if the offender or alleged offender is a child under the *Juvenile Justice Act 1992*.

(4) A law enforcement officer should inform a victim of the following provisions, if it would help the victim to have the benefit of the principles mentioned in subsection (1)—

- (a) *Corrective Services Act 1988*, sections 165¹² and 166;
- (b) *Penalties and Sentences Act 1992*, section 157;¹³
- (c) *Juvenile Justice Act 1992*, section 188.¹⁴

Victim to be advised on role as witness

16. A victim of a crime who is a witness in the trial for the crime should be informed by the prosecution about the trial process and the victim's role as a prosecution witness.

Information about services

17.(1) A victim should have access to information about available welfare, health, counselling, medical and legal help responsive to their needs.

(2) A victim should have access to information about victim-offender conferencing services.

¹² *Corrective Services Act 1988*, sections 165 (Release on parole) and 166 (Eligibility for parole)

¹³ *Penalties and Sentences Act 1992*, section 157 (Eligibility for parole)

¹⁴ *Juvenile Justice Act 1992*, section 188 (Release of child after service of period of detention)

Example of subsection (2)—

The department's division of alternative dispute resolution conducts a victims of crime mediation and support system that included victim-offender conferencing services. Victims should have access to information about this service.

Information about compensation or restitution

(1) A victim of a crime should have access to information about how the victim may obtain compensation or restitution for injury, loss or damage caused to the victim by the crime.

(2) A victim of crime is entitled, on request, to have relevant information provided by the victim placed before the court by the prosecutor in an application for an order for compensation or restitution for injury or for loss of, or damage to, property caused by the crime.

(3) A prosecutor should inform a victim of the following provisions, if it would help the victim to have the benefit of the principles mentioned in subsection (1)—

- (a) part 3;¹⁵
- (b) *Penalties and Sentences Act 1992*, sections 9(2)(e) and 35;¹⁶
- (c) *Juvenile Justice Act 1992*, section 192.¹⁷

(4) If compensation for injury caused to a victim by a crime against the victim's person cannot be obtained from the offender or other sources, the victim should have recourse to a criminal injuries compensation scheme provided by the State.

¹⁵ Part 3 (Compensation for personal injury from indictable offences)

¹⁶ *Penalties and Sentences Act 1992*, sections 9 (Sentencing principles) and 35 (Order for restitution or compensation)

¹⁷ *Juvenile Justice Act 1992*, section 192 (Restitution, compensation)

PART 3—COMPENSATION FOR PERSONAL INJURY FROM INDICTABLE OFFENCES

Division 1—Explanation

Scheme for compensation for injury, death and expenses from indictable offence

19.(1) This part establishes a scheme for the payment of compensation to a person (the “**applicant**”)—

- (a) for injury suffered by the applicant caused by a personal offence committed against the applicant; or
- (b) for the death of someone on whom the applicant was dependent, caused in circumstances constituting murder or manslaughter; or
- (c) for funeral or other expenses from the death of a member of the applicant’s family, caused in circumstances constituting murder or manslaughter; or
- (d) for injury suffered when helping a police officer to make an arrest or prevent an offence.

(2) The part does not allow anyone to apply to a court or to the State for the payment of an amount for—

- (a) injury caused to the applicant by an offence to which the applicant was a party; or
- (b) an unlawful killing to which the applicant was a party.

Meaning of “injury”

20. “Injury” is bodily injury, mental or nervous shock, pregnancy or any injury specified in the compensation table or prescribed under a regulation.

Meaning of “personal offence”

21. A “personal offence” is an indictable offence committed against the person of someone.

Relationship of compensation under this part to rights under common law or otherwise

22.(1) A right, entitlement or remedy under this part is in addition to, does not limit, and is not in substitution for, any right, entitlement or remedy under common law or otherwise.

(2) Subsection (1) is subject to section 38.¹⁸

(3) Compensation provided to an applicant under this part is intended to help the applicant and is not intended to reflect the compensation to which the applicant may be entitled under common law or otherwise.

(4) The maximum amount of compensation provided under this part is reserved for the most serious cases and the amounts provided in other cases are intended to be scaled according to their seriousness.

Payments by State are ex gratia

23. Payments made by the State under this part are made even though the State has no obligation to make the payments.

*Division 2—Application to a court***Court may make an order compensating someone injured by personal offence**

24.(1) This section applies if someone (the “convicted person”)—

- (a) is convicted on indictment of a personal offence; or
- (b) is convicted on indictment and a personal offence is taken into

¹⁸ Section 38 (State’s subrogation rights)

account on sentence.

(2) The person against whom the personal offence is committed may apply to the court before which the person is convicted for an order that the convicted person pay compensation to the applicant for the injury suffered by the applicant because of the offence.

(3) The court may make an order (a **“compensation order”**) for an amount to be paid by the convicted person to the applicant because of the injury.

What amount may be required to be paid under a compensation order

25.(1) In making a compensation order, a court is limited to ordering the payment of an amount decided under this section.

(2) A compensation order may only order the payment to the applicant of a total amount of not more than the prescribed amount (the **“scheme maximum”**).

(3) If more than 1 amount is payable under subsections (4) to (6), the amounts must be added together, and, if the total is more than the scheme maximum, only the scheme maximum may be ordered to be paid.

(4) In deciding the amount that should be ordered to be paid for an injury specified in the compensation table, the court is limited to making an order for—

- (a) if there is only 1 percentage listed opposite the injury—an amount up to the amount that is the listed percentage of the scheme maximum; or
- (b) if there is a range of percentages listed opposite the injury—an amount that is within the listed range of percentages of the scheme maximum.

(5) In deciding the amount that should be ordered to be paid for an injury specified under a regulation, the court is limited to making an order for the prescribed amount.

(6) In deciding the amount that should be ordered to be paid for an injury to which subsections (4) and (5) do not apply, the court must decide the amount by—

- (a) comparing the injury with injuries to which subsections (4) and (5) apply; and
- (b) having regard to the amounts that may be ordered to be paid for those injuries.

(7) In deciding whether an amount, or what amount, should be ordered to be paid for an injury, the court must have regard to everything relevant, including, for example, any behaviour of the applicant that directly or indirectly contributed to the injury.

(8) A decision on the amount that should be ordered to be paid under a compensation order—

- (a) does not involve applying principles used to decide common law damages for personal injuries; and
- (b) is to be decided by applying the principles mentioned in section 22(3) and (4).¹⁹

When single or multiple compensation orders may be made

26.(1) The purpose of this section is to ensure that, for applications, harm that substantially should be treated as a single state of injury is treated as a single injury, even though it may consist of more than 1 injury or be caused by more than 1 incident.

(2) The objective is to ensure that the way in which incidents of personal offences happen or personal offences are prosecuted does not cause—

- (a) inequity of treatment between applicants; or
- (b) an unjustifiable multiplicity of applications to the State under division 3 about substantially the same harm.

(3) Subject to subsections (7) and (8), only 1 compensation order may be made in favour of an applicant because of—

- (a) injury suffered from a substantially single incident, whether consisting of 1 or more than 1 personal offence; or
- (b) a substantially single state of injury suffered from a series of

¹⁹ Section 22 (Relationship of compensation under this part to rights under common law or otherwise)

incidents of personal offences.

(4) In deciding whether an applicant has suffered a substantially single state of injury, the court may have regard to the following—

- (a) the applicant's injuries;
- (b) the time over which the injuries were caused;
- (c) the similarity of, or connection between, the injuries;
- (d) the similarity of, or connection between, the events that caused the injury;
- (e) anything else that is relevant.

(5) A single compensation order may be made against more than 1 convicted person.

(6) If a single compensation order is made against more than 1 convicted person, the order may provide for—

- (a) separate liability of a convicted person scaled according to the person's direct and material contribution to the injury; or
- (b) joint liability of more than 1 convicted person for an amount payable under the order; or
- (c) both the separate liability mentioned in paragraph (a) for an amount and joint liability for the amount.

(7) Without limiting subsection (5), if each of more than 1 convicted person directly and materially contributed to injury mentioned in subsection (3)(a) and (b), a court may make a compensation order against each of more than 1 of the convicted persons.

(8) If compensation orders are made against more than 1 convicted person under subsection (7)—

- (a) the total amount payable under all the orders must not be more than the scheme maximum; and
- (b) the orders—
 - (i) must provide for separate liability for each of the convicted persons for an amount scaled according to the convicted person's contribution to the injury; and
 - (ii) may also provide for joint liability of more than 1 convicted

person for an amount for which a convicted person is separately liable.

(9) To remove doubt, section 25²⁰ is declared to apply to compensation orders mentioned in subsections (5) and (7), subject to subsection (8)(a).

Order for repayment of amounts paid by State under division 3

27. (1) This section applies if—

- (a) the State decides to pay anyone an amount under section 35²¹ about someone's murder or manslaughter; and
- (b) anyone is convicted of the murder or manslaughter.

(2) On the State's application, the court before which the person is convicted may make an order (a "**repayment order**") requiring the convicted person to pay to the State an amount up to the amount paid or to be paid by the State under section 35.

Provisions about the convicted person

28.(1) Before an application to a court for a compensation or repayment order against a convicted person is decided, the convicted person must be notified of the application.

(2) If money belonging to the convicted person has come into the possession of a police officer or the court during the investigation or proceedings for the relevant offence, the court may order it to be applied towards the payment of an amount owing under the compensation or repayment order.

(3) A compensation or repayment order made against the convicted person may be enforced as a judgement of the court in its civil jurisdiction.

²⁰ Section 25 (What amount may be required to be paid under a compensation order)

²¹ Section 35 (Application to State for payments about someone's murder or manslaughter)

Compensation or repayment orders are not part of a sentence of a convicted person

29. A compensation or repayment order made by a court against a convicted person—

- (a) is in addition to any other sentence or order the court may make against the person; and
- (b) is not, for any purpose, to be taken to be part of a sentence passed against the person.

Application proceeding is civil and strict evidence rules need not apply

30.(1) A proceeding on an application to a court for a compensation or repayment order is a civil proceeding.

(2) Without limiting subsection (1), issues of fact on the application must be decided on the balance of probabilities.

(3) On an application, the court may receive information in any form the court considers appropriate.

Example—

The court may decide to receive information about an applicant's medical condition in the form of a medical report produced and tendered by the applicant, the prosecutor for the convicted person's trial (if the application is made at the time of the trial), or the applicant's lawyer.

No cost orders on application

31. A court is unable to make an order for the payment of costs of an application for a compensation or repayment order.

Division 3—Application to the government**Application for payment by State of amount of unsatisfied compensation order**

32.(1) A person entitled to be paid an amount under a compensation order may make an application for the State to pay all or part of the amount

to the applicant.

(2) The State may pay to the applicant all or part of the amount requested.

Application for payment by State of compensation for injury from personal offence

33.(1) This section applies to anyone who has suffered injury because of any of the following acts committed against the person—

- (a) an act for which someone has been tried on indictment for a personal offence, but found not guilty because the charged person was of unsound mind when doing the act;
- (b) an act for which someone would have been tried on indictment for a personal offence, but for the fact that the person—
 - (i) has been found to have been suffering from unsoundness of mind when doing the act, or not fit for trial, under the *Mental Health Act 1974*, part 4;²² or
 - (ii) is not criminally responsible for the act because the person was under 10 years when doing the act;
- (c) a personal offence for which someone would have been tried on indictment, but for the fact that the person cannot be identified or found after appropriate inquiry and search.

(2) The person may make an application for payment of an amount by the State for the injury.

(3) An applicant relying on an offence mentioned in subsection (1)(c), if the person who did the act was never charged because the person was never identified or found, must show that the act was reported, as soon as possible having regard to all the circumstances, to—

- (a) a police officer; or
- (b) for a sexual offence—a police officer, doctor or an appropriate agency.

²² *Mental Health Act 1974*, part 4 (Patients concerned in criminal and like proceedings)

Example of an appropriate agency—

A report by a rape victim to a community centre that generally gives help to victims of rape.

(4) The State may pay all or part of the amount requested up to the amount that could have been ordered to be paid to the applicant under a compensation order if the person who committed the act or offence were convicted on indictment of the act or offence.

Application to State for payment for injury suffered when helping a police officer

34.(1) This section applies if anyone suffers an injury when helping a police officer to make, or attempt to make, an arrest, or to prevent, or attempt to prevent, an offence or suspected offence.

(2) The person may make an application for payment of an amount by the State for the injury.

(3) The State may pay all or part of the amount requested up to the amount that could have been ordered to be paid to the applicant under a compensation order if someone were convicted on indictment of a personal offence causing the injury.

Application to State for payments about someone's murder or manslaughter

35.(1) A person may make an application for payment from the State of an amount mentioned in subsection (2) or (3) if someone dies in circumstances constituting murder or manslaughter.

(2) A dependant of the deceased person may apply for payment of—

- (a) an amount up to the prescribed amount; and
- (b) an amount up to the prescribed amount for expenses for the deceased person's funeral; and
- (c) an amount up to the prescribed amount for other expenses for damage caused in the course of the relevant crime's commission.

(3) A member of the deceased person's family who was not a dependant of the deceased may apply for a payment of—

- (a) an amount up to the prescribed amount for expenses for the deceased's funeral; and
- (b) an amount up to the prescribed amount for other expenses for damage caused in the course of the relevant crime's commission.

(4) The State may pay all or part of the amount asked for up to the relevant prescribed amount.

(5) Payment may be made for someone's death under only 1 of either subsection (2) or (3), with payment under subsection (2) to have priority over payment under subsection (3).

(6) The total of all amounts paid for someone's death under each provision authorising payment of an amount up to a prescribed amount must not be more than that prescribed amount.

How applications are processed

36.(1) An application under this division must be made to the Minister in the approved form.

(2) The application is to be decided by the Governor in Council.

(3) The Governor in Council may approve the payment of an amount only if satisfied that payment is justified in all the circumstances.

(4) For all applications, the Governor in Council may have regard to the following—

- (a) particulars of the application;
- (b) the circumstances in which the injury, manslaughter or murder happened;
- (c) anything prescribed under a regulation;
- (d) anything else the Governor in Council considers appropriate.

(5) For applications for injury suffered by the applicant, the Governor in Council may have regard to the following—

- (a) the terms of any compensation order that may have been made;
- (b) particulars of the injury;
- (c) particulars of any medical examination of the applicant carried out

about the time of the relevant criminal violence;

- (d) particulars of any medical examination of the applicant that may have been requested by the Minister;
- (e) any amounts that the applicant has received, or the Governor in Council considers the applicant would have received, if the applicant had exhausted all relevant rights of action and other legal remedies available to the applicant because of the injury.

(6) The Governor in Council may defer a decision on the application until any information mentioned in subsections (4) and (5) is ascertained.

(7) A decision of the Governor in Council to approve a payment by the State—

- (a) must specify the amount; and
- (b) may state the way the amount is to be paid; and
- (c) may impose conditions.

Payment from consolidated fund

37.(1) An amount paid by the State under this division is to be paid by the Treasurer from the consolidated fund.

(2) The amount is declared to be appropriated from the consolidated fund.

State's subrogation rights

38.(1) The State is subrogated, to the extent of any payment made by it, to all the rights and remedies the injured person has for the injury against anyone responsible for the injury.

(2) Subsections (3) and (4) apply if—

- (a) the State decides to pay an amount to an injured person; and
- (b) the person becomes entitled, whether by a court order or by a compromise of action, to receive an amount for the injury from the person responsible for the injury.

(3) The State has a first charge over the amount to the extent of the

amount paid to the injured person by the Treasurer.

(4) An entitlement the injured person may have to receive further amounts as part of the payment from the State stops unless the Governor in Council otherwise directs.

(5) If anyone is convicted on indictment before a court for a personal offence causing the injury, the court may make any order necessary to give effect to the State's rights under this section, on the State's application.

(6) Subsections (2) to (5) do not limit subsection (1).

Governor in Council may delegate

39. The Governor in Council may delegate its power under this division to the Minister.

Division 4—Time within which applications must be made

Time within which applications for compensation must be made

40.(1) An application to a court for a compensation order against a convicted person must be made—

- (a) within 3 years after the end of the convicted person's trial; or
- (b) if the applicant is a child at the time of the trial—before the end of 3 years after the child becomes an adult; or
- (c) with the court's order under section 41²³—at any other time.

Example 1—

G is convicted on indictment of unlawful grievous bodily harm of V. V is a witness at the trial and medical evidence about the harm is presented at the trial.

The prosecutor, or V's lawyer, at the end of G's sentence, makes an application for a compensation order. The trial court decides the application then.

Example 2—

R is convicted on indictment for the rape of V, a young child.

The prosecutor at the trial, or another lawyer acting on V's behalf, makes an

²³ Section 41 (Order for extension of time)

application for a compensation order and asks that the application be adjourned to a day to be fixed.

The presiding judge makes the order on the basis that, having regard to the age of the child and other relevant circumstances, it is appropriate that the application be decided when the applicant is older.

Example 3—

R is convicted before a District Court on indictment for the rape of V, a young child.

When V is 19, V applies to a District Court for a compensation order.

V has not previously made an application.

The District Court accepts and decides the application.

(2) An application to the State under section 33, 34 or 35²⁴ must be made—

- (a) within 3 years of the time when the relevant event happens; or
- (b) if the applicant is a child when the relevant event happens—before the end of 3 years after the child becomes an adult; or
- (c) with the Minister’s order under section 41²⁵—at any other time.

(3) In this section—

“**relevant event**” means the act, offence, helping of a police officer, murder or manslaughter to which an application relates.

Order for extension of time

41.(1) The *Limitation of Actions Act 1974*, sections 30 and 31²⁶ apply to applications mentioned in section 40(1) and (2)²⁷ with the intention that, on application—

²⁴ Section 33 (Application for payment by State of compensation for injury from personal offence), section 34 (Application to State for payment for injury suffered when helping a police officer) or section 35 (Application for payments by State about someone’s murder or manslaughter)

²⁵ Section 41 (Order for extension of time)

²⁶ *Limitations of Actions Act 1974*, sections 30 (Interpretation) and 31 (Ordinary actions)

²⁷ Section 40 (Time within which applications for compensation must be made)

-
- (a) a court may order that the period of limitation under section 40(1)²⁸ for an application to which the subsection applies be extended under the *Limitation of Actions Act 1974*, section 31(2);²⁹ and
 - (b) the Minister may order that the period of limitation under section 40(2) for an application to which the subsection applies be extended under the *Limitation of Actions Act 1974*, section 31(2).³⁰
- (2) The *Limitation of Actions Act 1974*, sections 30 and 31³¹ apply—
- (a) as if the applications mentioned in section 40(1) and (2) were actions for damages for trespass; and
 - (b) with changes under subsection (1) and all other necessary changes.

PART 4—MISCELLANEOUS

Applications

42.(1) The Director of Public Prosecutions may make an application under section 24³² for a compensation order for an injured person.

(2) The Director of Public Prosecutions may make any application that may be made by the State under this Act.

²⁸ Section 40 (Time within which applications for compensation must be made)

²⁹ *Limitations of Actions Act 1974*, section 31 (Ordinary actions)

³⁰ *Limitation of Actions Act 1974*, section 31 (Ordinary actions)

³¹ *Limitation of Actions Act 1974*, sections 30 (Interpretation) and 31 (Ordinary actions)

³² Section 24 (Court may make an order compensating someone injured by personal offence)

Approval of forms

43. The chief executive may approve forms for use under this Act.

Regulation making power

44.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide a process for considering or dealing with an application to the State under part 3, division 3.³³

Acts amended in sch 2

45. Schedule 2 amends the Acts mentioned in it.

PART 5—TRANSITIONAL**Application of Act to previous acts and to subsequent acts and events**

46.(1) Part 3³⁴ does not apply to injury suffered by anyone because of an act done before the commencement.

(2) If the Criminal Code, chapter 65A³⁵ would have applied to an injury mentioned in subsection (1) if the chapter had not been omitted, the chapter applies to the injury as if the chapter had not been omitted.

(3) Part 3 applies only—

- (a) for applications under section 24³⁶—to injury suffered because of a personal offence mentioned in section 24(1) that happens after the commencement; and

³³ Part 3 (Compensation for personal injuries from indictable offences), division 3 (Application to the government)

³⁴ Part 3 (Compensation for personal injury from indictable offences)

³⁵ Criminal Code, chapter 65A (Compensation for injury)

³⁶ Section 24 (Court may make an order compensating someone injured by personal offence)

- (b) for applications under section 33³⁷—to injury suffered because of an act or personal offence mentioned in section 33(1) that happens after the commencement; and
- (c) for applications under section 34³⁸—to injury suffered when helping a police officer after the commencement; and
- (d) for applications under section 35³⁹—to an offence of murder or manslaughter that happens after the commencement.

(3) In this section—

“commencement” means the commencement of part 3.

“Criminal Code” means the Criminal Code that is set out in the *Criminal Code Act 1899*, schedule 1.

³⁷ Section 33 (Application for payment by State of compensation for injury from personal offence)

³⁸ Section 34 (Application to State for payment for injury suffered when helping a police officer)

³⁹ Section 35 (Application to State for payments about murder or manslaughter)

SCHEDULE 1

COMPENSATION TABLE

sections 20 and 25(4)

Injury	percentage of scheme maximum
1. Bruising/laceration etc. (minor/moderate)	1%–3%
2. Bruising/laceration etc. (severe)	3%–5%
3. Fractured nose (no displacement)	5%–8%
4. Fractured nose (displacement/surgery)	8%–20%
5. Loss or damage of teeth	1%–12%
6. Facial fracture (minor)	8%–14%
7. Facial fracture (moderate)	14%–20%
8. Facial fracture (severe)	20%–30%
9. Fractured skull/head injury (no brain damage)	5%–15%
10. Fractured skull (brain damage—minor/moderate)	10%–25%
11. Fractured skull (brain damage—severe)	25%–100%
12. Fractured collarbone	7%–15%
13. Fracture/loss of use of shoulder	8%–23%
14. Fracture/loss of use of hip	8%–23%
15. Fracture/loss of use of arm/wrist (minor)	4%–10%
16. Fracture/loss of use of arm/wrist (displaced and immobilised)	8%–30%
17. Fracture/loss of use of finger	2%–8%
18. Fracture/loss of use of toe/foot (minor/moderate)	2%–5%
19. Fracture/loss of use of leg/ankle (minor/moderate)	4%–10%
20. Fracture/loss of use of leg/ankle (severe)	8%–25%
21. Neck/back/chest injury (minor)	2%–7%
22. Neck/back/chest injury (moderate)	5%–10%
23. Neck/back/chest injury (severe)	8%–40%
24. Gun shot/stab wounds (minor)	6%–10%

SCHEDULE 1 (continued)

25. Gun shot/stab wounds (moderate)	8%–16%
26. Gun shot/stab wound (severe)	15%–40%
27. Facial disfigurement or bodily scarring (minor/moderate)	2%–10%
28. Facial disfigurement or bodily scarring (severe)	10%–30%
29. Loss of vision (one eye)	70%
30. Loss of vision (both eyes)	100%
31. Mental or nervous shock (minor)	2%–10%
32. Mental or nervous shock (moderate)	10%–20%
33. Mental or nervous shock (severe)	20%–34%
34. Paraplegia/quadriplegia	100%
35. Loss of hearing (1 ear)	2%–20%
36. Loss of hearing (both ears)	4%–50%

SCHEDULE 2

AMENDMENTS

section 45

CRIMINAL CODE (1899)

1. Chapter 65A—

omit.

2. Before section 696, in chapter 71—

insert—

‘Power to protect victim of violence by prohibiting publication of information about proceedings

‘695A.(1) This section applies to—

- (a) a judge of a court—
 - (i) to which someone has been committed for trial or sentence for an indictable offence involving personal violence; or
 - (ii) before which an indictment has been presented for an offence involving personal violence; and
- (b) a magistrate summarily hearing and deciding a proceeding for an indictable offence involving personal violence, including a committal proceeding.

‘(2) The judge or magistrate may make an order prohibiting, indefinitely or for a specified time, the publication of information about the address of a person against whom the violence is alleged to have been committed.

‘(3) The order may be made on application by the person, or by the prosecution acting in the person’s interests.

‘(4) The order may be made only if the information is not relevant to the guilt or innocence of the charged person.

SCHEDULE 2 (continued)

‘(5) An application for an order under this division may be made—

- (a) in chambers; and
- (b) only in the presence of persons the judge or magistrate allows.

‘(6) On the hearing of the application the judge or magistrate may receive and act on information the judge or magistrate considers appropriate.

‘(7) In this section—

“**address**”, of a person, means the address of the person’s residence, school, place of employment or other address.

“**proceeding for an offence involving personal violence**” includes a proceeding for an application under the *Criminal Offence Victims Act 1995*, part 3.’.

CRIMINAL CODE (1995)**1. Section 416—**

omit, insert—

‘General provisions

‘**416.(1)** This division authorises a judge or magistrate to prohibit publication of certain information about proceedings for crimes.

‘(2) This division applies to—

- (a) a judge of the court to which a person has been committed for trial or sentence or before which an indictment has been presented; and
- (b) a magistrate summarily hearing and deciding a proceeding for a crime, including a committal proceeding.

‘(3) An application for an order under this division may be made—

- (a) in chambers; and

SCHEDULE 2 (continued)

(b) only in the presence of persons the judge or magistrate allows.

‘(4) On the hearing of the application the judge or magistrate may receive and act on information the judge or magistrate considers appropriate.

‘Power to prohibit publication of proceedings about drugs misuse offences

‘**416A.(1)** This section applies to a proceeding for a drugs misuse offence.

‘(2) The judge or magistrate may make an order prohibiting, indefinitely or for a specified time, the publication of—

- (a) all or part of the proceeding for the offence; and
- (b) the name and address of a witness.

‘(3) The order may be made on application by the State.

‘(4) When considering the application regard must be had to—

- (a) the safety of anyone; and
- (b) the extent to which the detection of similar offences may be affected; and
- (c) the need to guarantee the confidentiality of information given by an informer.

‘Power to protect victim of violence by prohibiting publication of information about proceedings

‘**416B.(1)** This section applies to a proceeding for an offence involving personal violence.

‘(2) The judge or magistrate may make an order prohibiting, indefinitely or for a specified time, the publication of information about the address of a person against whom the violence is alleged to have been committed.

‘(3) The order may be made on application by the person, or by the prosecution acting in the person’s interests.

SCHEDULE 2 (continued)

‘(4) The order may be made only if the information is not relevant to the guilt or innocence of the charged person.

‘(5) In this section—

“**address**”, of a person, means the address of the person’s residence, school, place of employment or another address.

“**proceeding for an offence involving personal violence**” includes a proceeding for an application under the *Criminal Offence Victims Act 1995*, part 3.

‘Saving of other relevant provisions

‘**416C.** This division is in addition to, and not in substitution for, the *Children’s Services Act 1965*, section 138⁴⁰ and the *Juvenile Justice Act 1992*, section 62.⁴¹’.

2. Schedule 2, part 2—

insert—

‘CRIMINAL OFFENCE VICTIMS ACT 1995**‘Section 12(2)(b) to (d)—**

omit, insert—

⁴⁰ *Children’s Services Act 1965*, section 138 (Restrictions on reporting proceeding concerning child)

⁴¹ *Juvenile Justice Act 1992*, section 62 (Publication prohibited)

SCHEDULE 2 (continued)

- (b) Criminal Code, section 416B;⁴²
- (c) *Evidence Act 1977*, sections 21A, 129P and 129Q;⁴³.

BAIL ACT 1980**1. Section 16(1)(a)(ii)—**

omit, insert—

‘(ii) would while released on bail—

- (A) commit an offence; or
- (B) endanger the safety or welfare of a person who is claimed to be a victim of the offence with which the defendant is charged or anyone else’s safety or welfare;
or
- (C) interfere with witnesses or otherwise obstruct the course of justice, whether for the defendant or anyone else; or’.

⁴² Criminal Code, section 416B (Power to protect victim of violence by prohibiting publication of proceedings)

⁴³ *Evidence Act 1974*, sections 21A (Evidence of special witnesses), 129P (Exclusion of public) and 129Q (Publication at large of complainant’s identity prohibited)

SCHEDULE 2 (continued)

JUVENILE JUSTICE ACT 1992**1. Part 5, div 10—**

omit, insert—

‘Division 10—Application of Criminal Offence Victims Act 1995

‘Civil compensation orders

‘195. To remove doubt, it is declared the *Criminal Offence Victims Act 1995*, applies to an offence committed by a child, unless the contrary intention appears.’.

PENALTIES AND SENTENCES ACT 1992**1. Section 5(1)—**

omit, insert—

‘5.(1) The value of a penalty unit is—

- (a) for the *Justices Act 1886*, part 4A,⁴⁴ or an infringement notice penalty under the part—\$60; or
- (b) in any other case, for this or another Act—\$75.’.

⁴⁴ *Justices Act 1886*, part 4A (Infringement notices)

SCHEDULE 3

section 3

DICTIONARY

“act” includes omission.

“appeals” includes applications for leave to appeal.

“approved form” see section 43.⁴⁵

“civil or criminal redress” means a proceeding for the enforcement of a right or obligation, whether the right or obligation is substantive or procedural, direct or indirect.

“compensation order” see section 24(3).

“compensation table” see schedule 1.

“confidentiality obligation” means an obligation to maintain confidentiality about particular information under an Act, oath, or rule of law or practice.

“convicted” means found guilty, or having a plea of guilty accepted, by a court.

“convicted person” for part 3, see section 24(1).

“court” for an application to a court before which a person has been convicted, includes a court of the same court level as that court.

“court of the same court level”—

- (a) as the Supreme Court—means the Supreme Court at any sittings anywhere; or
- (b) as a District Court—means any District Court at any sittings anywhere.

“crime” means any indictable offence and, for part 2, includes domestic violence.

⁴⁵ Section 43 (Approval of forms)

SCHEDULE 3 (continued)

“declaration” means the declaration of the principles of justice for victims of crime stated in part 2.⁴⁶

“dependant”, of someone, is a person who is completely or partly financially dependent on the income of the other person.

“doing” an act includes making an omission.

“domestic violence” see the *Domestic Violence (Family Protection) Act 1989*, section 11(1).⁴⁷

“grounds for review”, of an act or decision, means grounds—

- (a) allowing the act or decision to be challenged, appealed against, reviewed, quashed or called into question in or by any court or tribunal; or
- (b) for any injunctive, declaratory or other relief, remedy or order to be asked for or granted whether by way of application under the *Judicial Review Act 1991*, prerogative writ or otherwise.

“guidelines” means the guidelines made under the declaration under section 8.⁴⁸

“harm” means physical, mental or emotional harm.

“injury” for part 3, see section 20.

“injury specified in the compensation table” includes any injury substantially similar to an injury specified in the compensation table.

“injury specified under a regulation” includes an injury substantially similar to an injury specified under a regulation.

“law enforcement agency” includes the following—

- (a) the police service;
- (b) the office of the director of public prosecutions;

⁴⁶ Part 2 (Fundamental principles of justice for victims of crime)

⁴⁷ *Domestic Violence (Family Protection) Act 1989*, section 11 (What is domestic violence)

⁴⁸ Section 8 (Guidelines to help victims of crime)

SCHEDULE 3 (continued)

- (c) any other department, office or agency of the State, or a statutory body (other than a court or judicial tribunal), that has a function to investigate or take action about violations of the State's criminal laws.

“law enforcement officer” means—

- (a) a police officer; or
(b) a prosecutor in a criminal trial; or
(c) an officer of a law enforcement agency;

and includes, for section 15(2),⁴⁹ an officer of the corrective services commission.

“personal offence”, for part 3,⁵⁰ see section 21.

“prescribed amount” means an amount prescribed under a regulation.

“public entity” means any of the following—

- (a) a law enforcement agency;
(b) a department;
(c) the administrative office of a court or tribunal;
(d) an entity prescribed under a regulation;

but does not include any of the following—

- (e) a GOC;
(f) the following entities under, or within the meaning of, the *Education (General Provisions) Act 1989*—
(i) a parents and citizens association;
(ii) a school that is not a State school;

⁴⁹ Section 15 (Information about investigation and prosecution of offender)

⁵⁰ Part 3 (Compensation for personal injury from indictable offences)

SCHEDULE 3 (continued)

(iii) an advisory committee;⁵¹

(iv) an international educational institution;⁵²

(g) an entity prescribed under a regulation;

“public official” means any of the following—

(a) a law enforcement officer;

(b) an officer or employee of a public entity;

(c) a constituent member of a public entity, whether holding office by election or selection;

(d) anyone prescribed under a regulation;

but does not include any of the following—

(e) a judicial officer;

(f) anyone prescribed by regulation.

“repayment order”, for part 3,⁵³ see section 27(2).

“scheme maximum” see section 25(2).

“sentencing court”, for part 2,⁵⁴ means a court before which an offender is sentenced.

“trial” includes a proceeding in which a person is sentenced.

“victim”, see section 5.

“violation of the State’s criminal laws” includes domestic violence.

⁵¹ See *Education (General Provisions) Act 1989*, section 9.

⁵² See *Education (General Provisions) Act 1989*, section 75.

⁵³ Part 3 (Compensation for personal injury from indictable offences).

⁵⁴ Part 2 (Fundamental principles of justice for victims of crime).

