

I certify that this is a copy of the authorised version of this Act as at 27 November 2023, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 27 November 2023.

K Woodward
Chief Parliamentary Counsel
Dated 8 December 2023



TASMANIA

VICTIMS OF CRIME ASSISTANCE ACT 1976

No. 32 of 1976

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VICTIMS OF CRIME ASSISTANCE ACT 1976

No. 32 of 1976

An Act to provide for the payment in certain cases of compensation to persons suffering as a result of the criminal conduct of others

[Royal Assent 21 June 1976]

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

PART 1 – PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the *Victims of Crime Assistance Act 1976*.
- (2) This Act shall commence on a date to be fixed by proclamation.

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2. Interpretation

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

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award means an award of compensation under this Act;

Commissioner means –

- (a) a person appointed as a Criminal Injuries Compensation Commissioner under section 2A(1); or
- (b) a person referred to in section 2A(3);

criminal conduct means –

- (a) an act referred to in section 4(1)(a); or
- (b) any act of a person referred to in section 4(1)(b) as a result of which an award may be made;

dependant, in relation to a victim dying as the result of criminal conduct, means any person who at the time of the death was wholly or mainly dependent upon the victim or would have been so dependent but for the total or partial incapacity suffered by the victim since the injury from which the death resulted, and includes any child of the victim born after his death;

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Deputy Registrar means Deputy Registrar of the Supreme Court;

Fund means the Criminal Injuries Compensation Fund continued under section 11;

injury has the meaning assigned to that expression by subsection (2);

offence means an offence that involves violence by one person against another and includes a crime under section 127, 127A, 185, 186, 191A or 192 of the *Criminal Code*;

offender means a person whose act constitutes criminal conduct;

primary victim means a person against whom an offence is committed;

Registrar means Registrar of the Supreme Court;

related victim means a person who is –

- (a) the spouse or a child, stepchild, brother, sister, stepbrother or stepsister of a primary victim; or
- (b) a parent or step-parent of a primary victim who was over 18 years of age at the time of the offence; or

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- (c) in a personal relationship, within the meaning of the *Relationships Act 2003*, with a primary victim;

secondary victim means –

- (a) a person who suffers injury as a result of witnessing an offence; or
 - (b) a parent, step-parent or guardian of a primary victim who was under 18 years of age at the time of the offence.
- (2) For the purposes of this Act, references to an injury shall be construed as including references to any impairment of bodily or mental health, and also to becoming pregnant.
 - (3) In this Act references to an award made to any person shall be construed as references to any award for the payment of a sum (whether to himself or any other person) for his benefit or to meet the cost of his maintenance or of any services rendered to him.

2A. Appointment of Commissioners

- (1) The Minister may appoint one or more people who are Australian lawyers of at least 5 years' standing as Australian legal practitioners to be Criminal Injuries Compensation Commissioners.
- (2) An appointment under subsection (1) is subject to any terms and conditions the Minister determines.

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- (3) For the purpose of this Act, each Associate Judge, the Registrar and the Deputy Registrar are Commissioners.

3. Provision of *Supreme Court Act 1959* not apply

Section 5K of the *Supreme Court Act 1959* does not apply to any functions exercisable by the Registrar under this Act.

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Part 2 – Awards of Compensation

PART 2 – AWARDS OF COMPENSATION

4. Basis of awards of compensation

- (1) Subject to section 6, compensation may be awarded under this Act where a person is killed or suffers injury –
- (a) as a result of the act of another person that constitutes an offence or would have constituted an offence, but for the fact that that other person had not attained a specified age, or was insane, or had other grounds of excuse or justification at law for his or her act; or
 - (b) in assisting a police officer in the exercise of the power to arrest a person or to take action to prevent the commission of a crime by a person.
- (1A) Subject to subsection (1B), in respect of the death of a primary victim as a result of criminal conduct, compensation may be awarded under this Act to a person for funeral expenses actually and reasonably incurred, or reasonably likely to be incurred, by the person in relation to the death of the primary victim.
- (1B) Compensation may only be awarded to a person under subsection (1A) where the criminal conduct, which resulted in the death of the primary victim, occurred on or after the day on which that subsection commenced.

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- (2) In respect of the injury of a primary victim, compensation awarded under this Act may be awarded to the primary victim in respect of any one or more of the following matters:
- (a) expenses actually and reasonably incurred by the primary victim as a result of the injury;
 - (b) the cost of medical, dental, psychological or counselling services which the Commissioner is satisfied the primary victim will require in the future;
 - (c) loss of wages or salary by the primary victim as a result of his or her total or partial incapacity for work arising from the injury;
 - (d) the pain and suffering of the primary victim arising from the injury;
 - (e) expenses reasonably incurred by the primary victim in claiming compensation.
- (3) In respect of the death or injury of a person, compensation awarded under this Act may be awarded to a secondary victim in respect of any one or more of the following matters:
- (a) expenses actually and reasonably incurred by the secondary victim as a result of his or her own injury;
 - (b) if the secondary victim is a parent, step-parent or guardian of the primary victim,

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- expenses (other than funeral expenses) actually and reasonably incurred by the secondary victim as a result of the death or injury of the primary victim;
- (c) the cost of medical, psychological or counselling services which the Commissioner is satisfied the secondary victim will require in the future;
- (d) loss of wages or salary by the secondary victim as a result of –
- (i) his or her total or partial incapacity for work arising from his or her own injury; or
 - (ii) his or her total or partial inability to work while providing care to the primary victim;
- (e) the pain and suffering of the secondary victim arising from his or her own injury;
- (f) expenses reasonably incurred by the secondary victim in claiming compensation.
- (4) In respect of the death or injury of a person, compensation awarded under this Act may be awarded to a related victim in respect of any one or more of the following matters:
- (a) expenses actually and reasonably incurred by the related victim as a result of his or her own injury;

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- (b) expenses (other than funeral expenses) actually and reasonably incurred by the related victim as a result of the death or injury of the primary victim;
 - (c) the cost of medical, psychological or counselling services which the Commissioner is satisfied the related victim will require in the future;
 - (d) loss of wages or salary by the related victim as a result of –
 - (i) his or her total or partial incapacity for work arising from his or her own injury; or
 - (ii) his or her total or partial inability to work while providing care to the primary victim;
 - (e) the pain and suffering of the related victim arising from his or her own injury;
 - (f) if the primary victim dies, financial loss if the related victim was dependent on the primary victim;
 - (g) expenses reasonably incurred by the related victim in claiming compensation.

5. Jurisdiction of Commissioner to make awards

- (1) Awards of compensation are within the discretion of the Commissioner and in exercising his discretion in any particular case he may have

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regard to any circumstances that he considers relevant.

- (2) The Commissioner shall not make an award in respect of a death or injury unless he is satisfied, on a balance of probabilities, that the death or injury was the result of criminal conduct.
- (3) In determining whether or not to make an award and, if so, the amount of the award, the Commissioner shall have regard to any behaviour, condition, attitude, or disposition of the victim that appears to him to have directly or indirectly contributed to the injury or death in relation to which the award is sought.
- (3A) The Commissioner shall not make an award to a person if that person has failed to do any act or thing which, in the opinion of the Commissioner, that person should reasonably have done to assist in the identification, apprehension, or prosecution of any person alleged to have committed the criminal conduct or alleged criminal conduct for which compensation is claimed.
- (4) The Commissioner may refuse to make an award to any person in respect of any criminal conduct if he is satisfied that that person has, or had, an adequate remedy in civil proceedings in respect of that conduct, and in determining the amount of any such award he shall take into account any amount recovered by or for the benefit of that person, by way of damages or compensation arising from the criminal conduct, or would, in the opinion of the Commissioner, be likely to be

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so recovered, if proper action was taken by that person or on his behalf.

- (5) Where the Commissioner in making, or refusing to make, an award to any person in respect of any criminal conduct exercises the powers conferred by subsection (4), he may give leave for the making of a further application by or on behalf of that person for an award or a further award in respect of the same criminal conduct, and the Commissioner may make such an award if, having regard to circumstances that have arisen or the information that has been obtained since his previous decision, he considers it just to do so.
- (6) Where the Commissioner is satisfied that an award should be made to any person but has not sufficient information to enable him to determine finally the amount of the award, he may, if he considers it proper to do so, make an interim award to that person, and the making of an interim award to any person shall not be taken as preventing the making of a further interim award to the same person.
- (7) An award may be made on and subject to such conditions as the Commissioner determines as to—
 - (a) the payment, disposal, allotment, or apportionment of any sum paid under the award;

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- (b) the holding of any sum paid under the award on trust for a person entitled to the benefit thereof.
- (8)
- (9) Where the Commissioner makes a determination in relation to an application for an award of compensation, this Act, as in force at the time the claim was lodged, applies.
- (10) Despite subsection (9), the total amount that may be awarded to a person in respect of an application for an award of compensation is the greater of the following:
 - (a) the relevant prescribed maximum under section 6A, that applied to the person in respect of the application, at the time the application was lodged;
 - (b) the relevant prescribed maximum under section 6A, that applied to the person in respect of the application, at the time the application was determined by the Commissioner.

6. When compensation not to be awarded

- (1) Compensation must not be awarded under this Act –
 - (a) in respect of a death or injury caused by or arising out of the use of a motor vehicle within the meaning of the *Vehicle and Traffic Act 1999*; or

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- (b) by way of exemplary or vindictive damages or by way of aggravated damages; or
 - (c) for loss of, or damage to, property; or
 - (d) in relation to any matter referred to in section 4(2), (3) or (4) for which compensation has been paid, or is payable, under a compensation law; or
 - (e) for expenses claimable –
 - (i) under Part II of the *Health Insurance Act 1973* of the Commonwealth; or
 - (ii) from a health benefits organisation registered under the *National Health Act 1953* of the Commonwealth.
- (2) In subsection (1)(d), **compensation law** means any other law of the State or any law of another State, a Territory of the Commonwealth or the Commonwealth that relates to the payment of compensation by an employer in respect of the death or injury of persons employed by the employer.

6A. Limits on amount of awards

- (1) Subject to subsection (4), the total amount (not including any amount that may be payable under section 4(1A)) awarded to a primary victim, a secondary victim or a related victim in respect of

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any particular criminal conduct must not exceed the prescribed maximum.

- (1A) Subject to subsection (1B), the total amount awarded under section 4(1A) to a person for funeral expenses actually and reasonably incurred, or reasonably likely to be incurred, by the person in relation to the death of a primary victim as a result of any particular criminal conduct must not exceed the prescribed maximum.
- (1B) If more than one person is eligible for an award of compensation, the total amount under section 4(1A) that may be awarded to all such persons taken together must not exceed the maximum prescribed for the purpose of subsection (1A).
- (2) A reference in subsection (1) or (1A) to particular criminal conduct is to be construed as a reference to –
- (a) a single offence; or
 - (b) a series of offences committed by the same offender; or
 - (c) a series of offences committed simultaneously or consecutively by offenders acting in concert.
- (3) A different maximum amount may be prescribed for a primary victim in respect of a series of offences than that prescribed in respect of a single offence.

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- (4) Any amount awarded under section 4(2)(b), section 4(3)(c) or section 4(4)(c) may be paid in addition to the prescribed maximum if the Commissioner so determines.

6B. Deductions from awards

- (1) The Commissioner may deduct from an award to a person any one or more of the following amounts:
- (a) any pecuniary penalty imposed on the person and owing to the Crown;
 - (b) any compensation levy payable by the person under the *Victims of Crime Compensation Act 1994*;
 - (c) any unpaid compensation order made against the person under section 68 of the *Sentencing Act 1997*;
 - (d) any compensation order made against the person under section 7A of this Act.
- (2) If an amount is deducted –
- (a) under subsection (1)(a), the penalty is to be treated as paid to the extent of that deduction; or
 - (b) under subsection (1)(b), the levy is to be treated as paid to the extent of that deduction; or

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

7. Procedure for determining applications for awards

- (1) An application for an award shall be made to the Commissioner, and regulations under this Act may prescribe the manner in which the application is to be made, and the particulars to be furnished therewith, and may require the application to be accompanied by such statutory declaration as may be prescribed.
- (1A) Subject to subsections (1B), (1C) and (1D), an application for an award is to be made within 3 years after the date of the relevant offence.
- (1B) If a primary victim, secondary victim or related victim is less than 18 years old at the time of the relevant offence, his or her application for an award must be made no later than 3 years after he or she turns 18.
- (1C) The Commissioner may extend the 3-year period referred to in subsection (1A) or (1B) if satisfied that there are special circumstances which justify the extension.
- (1D) Subsections (1A) and (1B) do not apply in respect of an application for an award that involves an allegation of child sexual abuse.

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- (2) In the consideration of an application for an award, the Commissioner is entitled to inform himself as he sees fit.
 - (3) Proof of conviction of any person for an offence shall, in relation to any application for an award, be taken to be conclusive of the fact that the offence has been committed, unless an appeal against the conviction is pending or a new trial has been directed.
 - (4) A person applying for an award under this Act, whether for himself or on behalf of some other person, is entitled to appear before and be heard by the Commissioner either personally or by some person approved by the Commissioner.
 - (5) In his consideration of an application for an award to any person the Commissioner may give directions requiring that person to appear before him in person and he may refuse to make the award if, without reasonable excuse, there is a failure or refusal to comply with the directions.
 - (6) If he thinks it convenient to do so the Commissioner may, at any time, adjourn his consideration of an application for an award, and, in particular, may adjourn his consideration of such an application while legal proceedings are contemplated or being taken in relation to the criminal conduct to which the application relates.
 - (7) Without prejudice to the provisions of subsection (6), the Attorney-General may, at any time, apply to the Commissioner for the adjournment

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of the consideration by the Commissioner of an application for an award on the ground that a prosecution for an offence arising out of the conduct to which the application relates has been, or is about to be, brought; and on such an application, the Commissioner may adjourn the hearing for such period or in such manner as he thinks proper.

- (8) An application for an award is to be determined within 3 years of the date of the application.
- (9) The Commissioner may extend the 3-year period referred to in subsection (8) if satisfied that there are special circumstances which justify the extension.
- (10) Where the Commissioner makes an award in terms consented to by the applicant, the applicant is nevertheless entitled to be heard by the Commissioner in respect of a matter other than the amount of the award.
- (11) The provisions of this section, as amended by section 45 of the *Justice Miscellaneous (Royal Commission Amendments) Act 2023*, apply in relation to an application for an award –
 - (a) whether or not the cause of action accrued before the amendment day; and
 - (b) whether or not a period of limitation under this section as in force before the amendment day, had, before the amendment day, expired in respect of the relevant offence.

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(12) In this section –

amendment day means the day on which the
Justice Miscellaneous (Royal
Commission Amendments) Act 2023
commenced.

7A. Recovery from offender

- (1) In this section, a reference to an award includes a reference to an interim award under section 5(6).
- (2) Where—
 - (a) an award is made under this Act; and
 - (b) an offender is convicted of an offence in respect of the criminal conduct which led to an application for the award being made—

the Commissioner is to make a provisional order directing the offender to pay to the Crown the whole of the compensation awarded.

- (3) The Commissioner must serve notice of a provisional order on the offender.
- (4) An offender may, within 28 days after being served with notice of a provisional order, object to the order by sending a notice of objection to the address provided.
- (4A) If the offender does not send a notice of objection, the provisional order is to be confirmed by the Commissioner.

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- (4B) Notice of a provisional order is to –
- (a) set out the terms of the order; and
 - (b) specify the date on which the award of compensation was made and the facts on which the award was based; and
 - (c) specify the crime to which the order relates; and
 - (d) state that the offender has 28 days in which to object to the order; and
 - (e) state that, if the offender does not object within the time stated, the order will be confirmed by the Commissioner and will become a fine payable under the *Monetary Penalties Enforcement Act 2005*; and
 - (f) state that, if the offender sends a notice of objection to the address provided within 28 days, the Commissioner will hear the offender as to why the order should not be confirmed; and
 - (g) contain any other particulars that may be prescribed by regulation.
- (4C) A notice of objection must be in writing and must include a statement of the grounds of objection on which the defendant intends to rely.
- (4D) The Commissioner may confirm a provisional order without hearing the offender if satisfied that the offender has not sent a notice of

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objection within 28 days after notice of the provisional order was duly served on the defendant.

- (4E) If the offender files a notice of objection, the Commissioner must hear the offender before deciding whether the provisional order should be confirmed, varied or revoked.
- (4F) The Commissioner may confirm or vary a provisional order if satisfied that the offender has been convicted of an offence in respect of the criminal conduct which led to an application for the award of compensation being made.
- (4G) If the Commissioner confirms or varies a provisional order under this section, the order becomes a fine payable under the *Monetary Penalties Enforcement Act 2005*.
- (4H) The Commissioner may, when varying a provisional order, reduce the amount to be paid under the order having regard to –
 - (a) the financial means of the offender; and
 - (b) any other matters that the Commissioner considers to be relevant.
- (4I) The Commissioner must revoke a provisional order if he or she is not satisfied that the offender has been convicted of an offence in respect of the criminal conduct which led to an application for the award of compensation being made.
- (4J) The Commissioner is to provide a sealed copy of a confirmed or varied order by electronic means

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to the Director, Monetary Penalties Enforcement Service.

(4K) A sealed copy of a confirmed or varied order provided under subsection (4J) is to include the following:

- (a) the offender's full name and date of birth;
- (b) the offender's residential or postal address;
- (c) the amount of the order;
- (d) the date the order takes effect.

(5) Any amount recovered under this section is to be paid into the Fund.

(6) Where –

- (a) an offender charged with an offence pleads guilty to, or is found guilty of, that offence; or
- (b) a finding is made in respect of the offence that the charge has been proved –

that offender is deemed, for the purposes of this section, to have been convicted of that offence, notwithstanding that the court hearing the matter does not proceed, or does not proceed immediately, to conviction.

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8. Restriction on publicity of proceedings

- (1) Proceedings before the Commissioner under this Act shall be conducted in private.
- (2) No person shall—
 - (a) in any newspaper or periodical, or in any book publicly exposed or offered for sale; or
 - (ab) in any electronic form; or
 - (b) in any television or radio broadcast—

publish or cause or allow to be published a report of any proceedings before the Commissioner on an application under this Act.

Penalty: Fine not exceeding 5 penalty units.

- (3) Nothing in this section prohibits the publication of any matter by or under the authority of the Attorney-General, or by a person who, by virtue of his office, is authorised or required to make the publication.

9. Effect on other rights and remedies

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

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consequence of that conduct, any sum is recovered by or for the benefit of that person by way of damages or compensation otherwise than under this Act, that sum shall be deemed to be held in trust for the Treasurer until the amount of the award has been repaid to him.

- (2A) Where, in respect of any criminal conduct –
- (a) an award is made to a person under this Act;
 - (b) judgment is entered for the Crown in accordance with section 7A with respect to the award;
 - (c) a sum is recovered by or for the benefit of the person by way of damages or compensation as a consequence of the criminal conduct and is deemed to be held in trust for the Treasurer pursuant to subsection (2); and
 - (d) the Treasurer is paid an amount pursuant to subsection (2) out of the sum referred to in paragraph (c) –

the amount of the judgment debt shall be reduced by the sum paid to the Treasurer pursuant to subsection (2).

- (2B) The Treasurer is to pay any amount paid to the Treasurer pursuant to subsection (2) into the Fund.
- (3) If, in the circumstances of any particular case, the Attorney-General considers it just so to do

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the Treasurer shall relinquish, in whole or in part, the rights accrued or accruing to him under subsection (2).

10. Finality of decision of Commissioner

A decision of the Commissioner under this Act is final and no appeal lies therefrom.

11. Criminal Injuries Compensation Fund

- (1) There is to be established in the Public Account an account to be called the Criminal Injuries Compensation Fund.
- (2) There is to be paid into the Fund –
 - (a) any amount recovered pursuant to a judgment entered in accordance with section 7A(3); and
 - (b) any amount paid to the Treasurer pursuant to section 9(2); and
 - (c) any money provided by Parliament for the purposes of this Act; and
 - (d) in accordance with section 79 (7) of the *Crime (Confiscation of Profits) Act 1993*, such money as may from time to time be standing to the credit of the Crime (Confiscation of Profits) Account established under section 79 (2) of that Act; and

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

12. Exclusion of past criminal conduct

No award shall be made in respect of criminal conduct occurring before the commencement of this Act.

PART 3 – ORDERS OVER PROPERTY

Division 1 – Interpretation of Part

13. Interpretation of Part

In this Part, unless the contrary intention appears

—

contravene includes fail to comply;

Director means the Director of Public Prosecutions or an Australian legal practitioner acting on behalf of the Director of Public Prosecutions;

forfeiture order means an order of a judge under section 27;

production order means an order of a magistrate under section 34;

property means real or personal property of every description, wherever situated and whether tangible or intangible, and includes an interest in such property;

property-tracking document means a document relevant to identifying, locating or quantifying property in respect of which a restraining order or forfeiture order has been made;

restraining order means an order of a judge under section 18;

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serious offence means an offence against section 158, 170, 172 or 185 of the *Criminal Code* or an attempt to commit such an offence;

State means the Crown in right of Tasmania;

victims fund means the account established under section 38.

14. Meaning of “convicted”

For the purposes of this Part, a person is taken to have been convicted of a serious offence if the person has been charged with and convicted of the offence.

Division 2 – Restraining orders

15. Interpretation of Division

In this Division, *defendant* means a person who has been convicted of a serious offence or offences.

16. What is a restraining order?

A restraining order is an order of a judge directing –

- (a) that the property of a defendant is not to be disposed of, or otherwise dealt with, by any person except in such manner and in such circumstances, if any, as are specified in the order; and

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- (b) if the judge is satisfied that circumstances require it – that the Public Trustee or another person specified in the order is to take control of that property.

17. Application for restraining order

- (1) The Director may apply to a judge for a restraining order in respect of a defendant's property.
- (2) The Director is to give written notice of the application to the defendant and to such other persons as the Director reasonably believes may have an interest in the defendant's property.

18. Making of restraining order

- (1) The judge may make the restraining order after receiving the application if satisfied that –
 - (a) applications have been, or are likely to be, made under this Act for awards of compensation in respect of the relevant serious offence or offences; and
 - (b) the total amount of the awards is likely to exceed \$100 000; and
 - (c) the defendant is likely, in relation to the relevant serious offence or offences, to be the subject of proceedings for –
 - (i) statutory or common law damages; or

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- (ii) the recovery of compensation or other payments made under a contract of insurance or statutory or lawful obligation.
- (2) The restraining order may be made regardless of whether there is a risk that the defendant or any other person may dispose of, or otherwise deal with, the subject property in a manner that might defeat the operation of this Division.
- (3) If by the order the judge directs the Public Trustee or another person to take control of property, the order is sufficient authority for the Public Trustee or that other person to take control of the property.
- (4) The restraining order may be made subject to such conditions as the judge thinks fit for the purposes of providing, out of the defendant's property, for –
 - (a) the reasonable living expenses of the defendant and any dependants of the defendant; and
 - (b) the payment of expenses necessary for the maintenance of assets of the defendant; and
 - (c) the defendant's reasonable expenses in defending a criminal charge.

19. Registration of a restraining order

- (1) If the restraining order applies to property of a particular kind and a law of Tasmania provides for the registration of title to, or of charges over, property of that kind, the authority responsible for administering that law is, on the application of the Director, to record on the register kept under that law particulars of –
 - (a) the restraining order; and
 - (b) any extension or variation of the restraining order; and
 - (c) any order under section 21(3) made in relation to the restraining order.
- (2) If the restraining order applies to land under the *Land Titles Act 1980*, the order does not take effect until a priority notice has been lodged under that Act in relation to the order.

20. Penalty for contravening restraining order

A person must not knowingly contravene a restraining order by disposing of, or otherwise dealing with, property that is subject to that order.

Penalty: In the case of –

- (a) a body corporate – a fine not exceeding 500 penalty units; and

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- (b) an individual – a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

21. Setting aside dealing, &c., which contravenes restraining order

- (1) The Director may apply to a judge to have a disposition of, or other dealing with, property set aside if –
 - (a) the property was subject to a restraining order at the time of the disposal or other dealing; and
 - (b) the property was disposed of, or otherwise dealt with –
 - (i) in contravention of the order; or
 - (ii) not for sufficient consideration; or
 - (iii) not in favour of a person acting in good faith.
- (2) If the Director makes an application under this section in relation to a disposition of, or other dealing with, property –
 - (a) the Director is to give written notice of the application to each person who the Director reasonably believes may have acquired an interest in the property on or after the day on which the disposition or dealing took place; and

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- (b) a person so notified, and any person who claims to have acquired an interest in the property on or after the day on which the disposition or dealing took place, may appear and adduce evidence at the hearing of the application; and
 - (c) the judge may, at any time before the final determination of the application, direct the Director to give or publish notice of the application to a specified person or class of persons in such manner and within such time as the judge considers appropriate.
- (3) If the Director makes an application under this section in relation to a disposition of, or other dealing with, property, the judge may make an order –
- (a) setting the disposition or dealing aside as from the day on which it took place; or
 - (b) setting the disposition or dealing aside as and from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

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22. Obstruction of Public Trustee, &c.

- (1) In this section, *Public Trustee* includes the Deputy Public Trustee and the officers, servants and agents of the Public Trustee.
- (2) A person must not, without reasonable excuse, obstruct, hinder, threaten or intimidate the Public Trustee, or any other person, who is executing a restraining order.

Penalty: In the case of –

- (a) a body corporate – a fine not exceeding 100 penalty units; and
- (b) an individual – a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 2 years, or both.

23. Duration of restraining order

- (1) A restraining order remains in force for the period of 12 months immediately following the day on which it is made or for such greater period as is specified in the order.
- (2) A judge may, on the application of the Director made at any time before a restraining order would otherwise expire, extend the period during which the order is in force.
- (3) The Director is to give written notice of the application to the defendant.

24. Variation of restraining order

- (1) A judge may, by order made at any time before a restraining order would otherwise expire, vary the restraining order.
- (2) An order under subsection (1) may be made on the application of –
 - (a) the Director; or
 - (b) the defendant; or
 - (c) if the order directs a person to take control of property – the person who is subject to that direction; or
 - (d) with the leave of the judge – any other person.
- (3) A person who applies to have a restraining order varied is to give written notice of the application to each other person who is entitled by virtue of subsection (2) to make an application in relation to the order.

Division 3 – Forfeiture orders

25. Application for forfeiture order

- (1) If a person is convicted of a serious offence or offences after 3 October 1996, the Director may apply to a judge for a forfeiture order in respect of the person's property.

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- (2) The application is to be made before the end of the relevant application period in relation to the person's conviction.
- (3) The relevant application period is the period of 6 months immediately following the day on which the person was convicted of the serious offence or offences.
- (4) The Director is to give written notice of the application to the convicted person.

26. What is a forfeiture order?

A forfeiture order is an order of a judge directing that the property of the convicted person in respect of whom it is made, or such part of the convicted person's property as is specified in the order, is forfeited to the State.

27. Making of forfeiture order

- (1) The judge may make the forfeiture order as soon as practicable after receiving the application if satisfied that –
 - (a) applications have been, or are likely to be, made under this Act for awards of compensation in respect of the relevant serious offence or offences; and
 - (b) the total amount of the awards is likely to exceed \$100 000; and

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- (c) the defendant is likely, in relation to the relevant serious offence or offences, to be the subject of proceedings for –
 - (i) statutory or common law damages; or
 - (ii) the recovery of compensation or other payments made under a contract of insurance or statutory or lawful obligation.
- (2) To consider the application, the judge may have regard to the transcript of any relevant proceedings against the convicted person.
- (3) The forfeiture order may be made subject to such conditions as the judge considers necessary or appropriate for providing, out of the defendant's property, for –
 - (a) the defendant's reasonable expenses in defending the criminal charges that led to the defendant being convicted of the relevant serious offence or offences; and
 - (b) the defendant's family; and
 - (c) any persons, other than family members, who depend on the defendant; and
 - (d) any business partners or associates of the defendant.

28. Effect of forfeiture order

If the judge makes the forfeiture order –

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- (a) the property to which the order applies vests in the State –
 - (i) forthwith if it is property other than land; or
 - (ii) when it is registered under section 29 if it is land; and
- (b) the property vests subject to every charge or encumbrance to which the property was subject immediately before the forfeiture order was made and, in the case of land, subject to every mortgage, lease or other interest to which the land was subject prior to the registration of the order under section 29; and
- (c) if the property is not already in the possession of the State – the State may take possession of the property; and
- (d) if the property is money – the State is entitled to pay the money into the victims fund.

29. Registration of State as owner of forfeited property

If the forfeiture order applies to property of a particular kind and a law of Tasmania provides for the registration of title to, or of charges over, property of that kind –

- (a) the State is, subject to section 28(b), entitled to be registered as owner of the property; and

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- (b) the Attorney-General has power, on behalf of the State, to do or authorise the doing of anything necessary to obtain the registration of the State as owner of the property; and
- (c) on the written application of the Attorney-General accompanied by a sealed copy of the order, the authority responsible for administering that law is, subject to section 28(b), authorised and required to register the State as owner of the property.

30. Control of property subject to forfeiture order

- (1) Except with the leave of a judge, the State is not to dispose of or otherwise deal with property that has vested in the State under a forfeiture order, or authorise any person to dispose of or otherwise deal with that property, before the end of the appeal period.
- (2) If a forfeiture order remains undischarged at the end of the appeal period, the property to which the order applies may –
 - (a) in the case of money – be paid into the victims fund if it has not previously been paid into that fund; or
 - (b) in the case of property other than money – be disposed of, or otherwise dealt with, in accordance with directions of the Attorney-General, or of a person

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authorised by the Attorney-General, and any proceeds paid into the victims fund.

- (3) For the purposes of subsections (1) and (2), the appeal period ends when an appeal may no longer be lodged against the conviction in reliance on which the order was made or, if such an appeal is lodged, when the appeal is finally determined.

31. Discharge of forfeiture order

- (1) A forfeiture order is discharged if the conviction in reliance on which the order was made is subsequently quashed.
- (2) If the court that quashes the conviction also orders a new trial and the property that was subject to the discharged forfeiture order is still subject to a restraining order, the court may extend the period during which that restraining order is in force.
- (3) On the discharge of a forfeiture order, the person whose property was subject to the order may apply in writing to the Attorney-General for its return if it is not subject to a restraining order.
- (4) On receiving the application, the Attorney-General is to –
 - (a) cause the property to be returned to the applicant if it is still in the possession of the State; or

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- (b) pay the applicant the amount realised on disposal of the property in any other case.
- (5) The Attorney-General is to give notice of the discharge of a forfeiture order to each authority that registered the order pursuant to section 29.

Division 4 – Production orders

32. Interpretation of Division

In this Division, *defendant* means a person whose property is subject to a restraining order or forfeiture order.

33. Application for production order

The Director may apply to a magistrate for a production order against a person if –

- (a) a forfeiture order or restraining order is in force against property of a defendant; and
- (b) the Director suspects on reasonable grounds that the person against whom the order is sought has possession or control of a property-tracking document in relation to the defendant's property.

34. Making of production order

- (1) Subject to this section, a magistrate to whom an application under section 33 is made may make a

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production order against the person to whom the application relates, being an order that the person

–

- (a) produce to the Director any property-tracking document relating to the property of the defendant that is in the person's possession or under the person's control; or
 - (b) make available to the Director for inspection any property-tracking document relating to the property of the defendant that is in the person's possession or under the person's control.
- (2) The magistrate is not to make the production order unless –
- (a) the Director has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the order is sought; and
 - (b) the magistrate is satisfied that there are reasonable grounds for making the order.
- (3) A production order may require that accounting records used in the ordinary course of banking, including ledgers, daybooks, cashbooks and account books, are to be made available for inspection but is not to require the production of any such records.
- (4) A production order that requires a person to produce a document to the Director is to specify

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the time and place at which the document is to be produced.

- (5) A production order that requires a person to make a document available for inspection by the Director is to specify the time or times at which the document is to be made available for that purpose.

35. Dealing with documents under production order

- (1) If a document is produced to the Director pursuant to a production order, the Director may do any one or more of the following:
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document;
 - (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Part.
- (2) If a document is made available to the Director for inspection pursuant to a production order, the Director may do any one or more of the following:
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document.

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- (3) If the Director retains a document under this section, the Director, at the request of the person against whom the relevant production order was made, is to –
- (a) give the person a copy of the document that has been certified by the Director as a true copy; or
 - (b) where the person has not been given a copy of the document under paragraph (a) – permit the person to do any one or more of the following:
 - (i) inspect the document;
 - (ii) take extracts from the document;
 - (iii) make copies of the document.

36. Certain matters do not excuse contravention of order

- (1) A person is not excused from a requirement to produce a document or make a document available under a production order on the ground that producing the document or making it available –
- (a) may tend to incriminate the person or render the person liable to a penalty; or
 - (b) would be in breach of a statutory or other obligation of the person not to disclose the existence or contents of the document.

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- (2) If a person produces a document or makes it available under a production order, the production or making available of the document, or of any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings other than proceedings under section 37.
- (3) For the purposes of subsection (2), proceedings on an application for a restraining order or forfeiture order are not criminal proceedings.

37. Contravention of production order

A person who is required by a production order to produce a document to the Director or make a document available for inspection by the Director must not –

- (a) contravene the order without reasonable excuse; or
- (b) in purported compliance with the order –
 - produce or make available a document known to the person to be false or misleading in a material particular without –
 - (i) indicating to the Director that the document is false or misleading in that material particular and in what respect it is false or misleading; and

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- (iii) providing the correct information to the Director if the person is in possession of, or can reasonably acquire, the correct information.

Penalty: In the case of –

- (a) a body corporate – a fine not exceeding 500 penalty units; and
- (b) an individual – a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

Division 5 – Victims fund

38. The fund

- (1) An account is established in the Public Account
- (2) There is to be paid into the account –
 - (a) all property in the form of money that is forfeited to the State under this Part; and
 - (b) all the proceeds from the sale of property, other than money, that is forfeited to the State under this Part.
- (3) The money and proceeds paid into the account under this Part in respect of a person convicted of a serious offence or offences are to be used for the benefit of the victim or victims of that offence or those offences in such manner as the Attorney-General directs.

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- (4)
- (5) A payment from the account is to be made by the Treasurer on the advice of the Attorney-General.

PART 4 – MISCELLANEOUS

39. Form of applications under Part 3

No special form is required for an application under Part 3.

40. Dealing with special money under Part 3

For the purposes of Part 3, money may be regarded and dealt with by a judge and other persons in the same manner as property other than money if that money –

- (a) is in the form of coins or banknotes that, even if legal tender, have historical, numismatic or other special significance; or
- (b) is in the form of foreign currency; or
- (c) is in such other form as may be prescribed.

40A. Protection from liability

A Commissioner is not liable, and an action does not lie against him or her, on account of anything done under the authority of this Act, or done in good faith purportedly under the authority of this Act, or on account of any omission made in good faith in the administration of this Act.

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40B. Effect of *Victims of Crime Assistance Amendment Act 2023*

- (1) The amendments to this Act made by the *Victims of Crime Assistance Amendment Act 2023* apply to the determination of an application under this Act, whether or not the application was made before or after the day on which the amendments took effect.
- (2) Any determination made by the Commissioner in relation to an application for an award of compensation under this Act is not invalid solely on the basis that the total amount awarded to a person under the application exceeded the relevant prescribed maximum under section 6A, that applied to the person at the time at which the application was lodged, if –
 - (a) the determination was made by the Commissioner on or after 15 December 2021; and
 - (b) the total amount awarded by the Commissioner in relation to the person did not exceed the relevant prescribed maximum under section 6A, that applied to the person in respect of the application, that was in force at the time at which the application was determined by the Commissioner.

41. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may provide for any matter that is necessary or expedient in relation to applications for, and the granting, administration and execution of, restraining orders, forfeiture orders and production orders under Part 3.

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NOTES

The foregoing text of the *Victims of Crime Assistance Act 1976* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 27 November 2023 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Criminal Injuries Compensation Act 1976</i>	No. 32 of 1976	4.8.1976
<i>Criminal Injuries Compensation Amendment Act 1984</i>	No. 94 of 1984	14.12.1984
<i>Criminal Injuries Compensation Amendment Act 1988</i>	No. 28 of 1988	29.9.1988
<i>Criminal Injuries Compensation Amendment Act 1991</i>	No. 24 of 1991	15.10.1991
<i>Penalty Units and Other Penalties Amendment Act 1991</i>	No. 43 of 1991	18.12.1991
<i>Criminal Injuries Compensation Amendment Act 1993</i>	No. 15 of 1993	1.10.1993
<i>Victims of Crime Compensation Act 1994</i>	No. 89 of 1994	1.3.1995
<i>Criminal Injuries Compensation Amendment Act 1996</i>	No. 47 of 1996	28.11.1996
<i>Criminal Injuries Compensation Amendment Act 2000</i>	No. 11 of 2000	28.4.2000
<i>Vehicle and Traffic (Transitional and Consequential) Act 1999</i>	No. 90 of 1999	14.8.2000
<i>Criminal Injuries Compensation Amendment Act 2001</i>	No. 10 of 2001	24.10.2001
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Criminal Injuries Compensation Amendment Act 2005</i>	No. 23 of 2005	24.6.2005
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008

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Act	Number and year	Date of commencement
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2015</i>	No. 38 of 2015	13.10.2015
<i>Victims of Crime Assistance Amendment (Funeral Expenses) Act 2015</i>	No. 27 of 2015	1.11.2015
<i>Statutory Appointments (Miscellaneous Amendments) Act 2017</i>	No. 36 of 2017	19.9.2017
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice Miscellaneous (Royal Commission Amendments) Act 2023</i>	No. 2 of 2023	20.4.2023
<i>Victims of Crime Assistance Amendment Act 2023</i>	No. 32 of 2023	27.11.2023

TABLE OF AMENDMENTS

Provision affected	How affected
Part 1	Heading inserted by No. 47 of 1996, s. 4
Section 1	Amended by No. 23 of 2005, s. 4
Section 2	Amended by No. 15 of 1993, s. 4, No. 10 of 2001, s. 4, No. 23 of 2005, s. 5, No. 4 of 2017, Sched. 1 and No. 36 of 2017, s. 21
Section 2A	Inserted by No. 10 of 2001, s. 5 Amended by No. 66 of 2007, Sched. 1 and No. 36 of 2017, s. 22
Section 3	Substituted by No. 10 of 2001, s. 6
Part 2	Heading inserted by No. 47 of 1996, s. 5
Section 4	Subsection (7) substituted by No. 24 of 1991, s. 4 Subsection (8) inserted by No. 24 of 1991, s. 4 Subsection (9) inserted by No. 24 of 1991, s. 4 Amended by No. 90 of 1999, Sched. 1 Substituted by No. 23 of 2005, s. 6 Amended by No. 27 of 2015, s. 4
Section 5	Amended by No. 28 of 1988, s. 4, No. 24 of 1991, s. 5, No. 10 of 2001, Sched. 1, No. 23 of 2005, s. 7 and No. 32 of 2023, s. 4
Section 6	Substituted by No. 23 of 2005, s. 8
Section 6A	Inserted by No. 23 of 2005, s. 8 Amended by No. 27 of 2015, s. 5
Section 6B	Inserted by No. 23 of 2005, s. 8

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Provision affected	How affected
Section 7	Amended by No. 10 of 2001, Sched. 1, No. 23 of 2005, s. 9 and No. 2 of 2023, s. 45
Section 7A	Inserted by No. 94 of 1984, s. 3 Amended by No. 15 of 1993, s. 5, No. 10 of 2001, Sched. 1, No. 23 of 2005, s. 10 and No. 13 of 2012, s. 63
Section 8	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 10 of 2001, Sched. 1 and No. 38 of 2015, s. 57
Section 9	Amended by No. 94 of 1984, s. 4 and No. 15 of 1993, s. 6
Section 10	Amended by No. 10 of 2001, Sched. 1
Section 11	Substituted by No. 15 of 1993, s. 7 Amended by No. 89 of 1994, s. 10 and No. 4 of 2017, Sched. 1
Part 3	Inserted by No. 47 of 1996, s. 6
Section 13	Amended by No. 76 of 2003, Sched. 1, No. 66 of 2007, Sched. 1 and No. 4 of 2017, Sched. 1
Section 38	Amended by No. 11 of 2000, s. 4 and No. 4 of 2017, Sched. 1
Part 4	Inserted by No. 47 of 1996, s. 6
Section 40A	Inserted by No. 43 of 2006, s. 68
Section 40B	Inserted by No. 32 of 2023, s. 5
Section 13	Repealed by No. 47 of 1996, s. 7
