

AB v The Northern Territory of Australia [2010] NTSC 08

PARTIES: AB

v

THE NORTHERN TERRITORY OF
AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO: 16 of 2009 (20939565)

DELIVERED: 18 March 2010

HEARING DATES: 12 February 2010

JUDGMENT OF: KELLY J

APPEAL FROM: Local Court (Claim number 20902266)
under s 48(1)(b) of the *Victims of Crime
Assistance Act*

CATCHWORDS:

VICTIMS OF CRIME ASSISTANCE ACT – s 51 QUESTIONS OF LAW
REFERRED FOR DECISION OF SUPREME COURT

Principles to apply in determining award of assistance – assessor to apply common law principles of assessment of damages – maximum award in schedule 3 part 1 not reserved for worst possible act or injury – s 5(3) interpretation of “series of related criminal acts” – meaning of criminal acts that “occur over a period of time” – criminal acts must be continuing in the sense that they form part of a single episode of offending

Victims of Crime Assistance Act (2006)
Crimes (Victims Assistance) Act (1983)
Criminal Injuries (Compensation) Act (1975)

LMP v Collins & the Northern Territory of Australia (1993) 112 FLR 289;
Rigby v Solicitor for the Northern Territory (1991) 105 FLR 48; *R v Forsythe* [1972] 2 NSWLR 951; *S v Turner* (1979) 1 NTR 17, applied

Moore v Victims Compensation Fund Corporation [2009] NSWSC 1300, discussed

Director-General of the Attorney General's Department v District Court of New South Wales & Stark (1993) 32 NSWLR 409, discussed

Martin v Crimes Compensation Tribunal (1997) 91 A Crim R 301; *Bentley v Furlan* [1999] 3 VR 63, referred to

REPRESENTATION:

Counsel:

Appellant:	S Porter
Respondent:	J Stirk

Solicitors:

Appellant:	Central Australian Aboriginal Family Legal Unit
Respondent:	Povey Stirk

Judgment category classification:	A
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

AB v The Northern Territory of Australia [2010] NTSC 08
No. 16 of 2009 (20939565)

BETWEEN:

AB
Appellant

AND:

**THE NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 18 March 2010)

- [1] In June and July 2007 the appellant, AB, was living in a domestic relationship with Rodney Barnes.
- [2] On 13 June 2007 Rodney Barnes assaulted her with a curtain rod. As a result she sustained severe lacerations to her head, arms and body resulting in substantial blood loss, several broken teeth, swelling and bruising to her face and head and severe bruising to her lower back.¹ Rodney Barnes was arrested and charged with aggravated assault.

¹ These descriptions are taken from the chronology handed up by the appellant with the consent of the respondent.

- [3] On 25 July 2007 AB was again assaulted by Rodney Barnes. This time he fractured her left clavicle as a result of which she had to wear a sling for six weeks.
- [4] On 7 October 2007 Rodney Barnes was drunk. During the day, he followed AB. That night he entered the house where she was staying, dragged her outside, bashed her severely with fists and a stick over an extended period of time, verbally abused her and raped her twice. She suffered extensive physical injuries including multiple abrasions and lacerations to her scalp and face, a fractured jaw and multiple bruises and abrasions over her body.
- [5] On 17 June 2008, after a trial before a jury, Rodney Barnes was found guilty of unlawfully causing serious harm to AB, and two counts of sexual intercourse with her without her consent. In his sentencing remarks, His Honour Justice Southwood said, “It is apparent that [AB] suffered significant emotional trauma, a loss of self esteem, and that from time to time she suffers from depression.”
- [6] AB made application for assistance pursuant to the *Victims of Crime Assistance Act* (“the Act”) on the form provided by the Crime Victims Services Unit (“CVSU”) for that purpose.
- [7] The assessor appointed under the Act made a determination in AB’s favour and awarded her \$35,000.00 as an award for a compensable violent act and \$20.00 for financial loss of personal items. AB appealed against the determination to the Local Court pursuant to s 48(1)(b) of the Act on the

ground that the award was inadequate. The matter comes before this Court as a result of a reservation of a question of law for the decision of the Supreme Court pursuant to s 51 of the Act by the magistrate hearing the appeal.

- [8] Before setting out the determination, the grounds of appeal against that determination, and the questions of law reserved for determination by this Court, it is necessary to explain the scheme established by the Act.

The Victims Financial Assistance Scheme

- [9] The Act establishes the Victims Financial Assistance Scheme [s 23] and makes provision for the appointment of assessors (who must be legal practitioners) for the financial assistance scheme [s 24]. The scheme of assistance to victims of crime provided under the Act is complicated. The primary victim of “a violent act” is eligible to apply for assistance. [s 10]². That assistance can be in the form of counselling [s 10(1)], financial assistance for the primary victim’s financial loss [s 10 (2) and (3)] or “an award” [s 10(4)]. The “award” is essentially a payment by way of compensation for either the “violent act” itself (in the case of certain sexual

² “Primary victim” is defined in ss 3 and 9. The Act makes provision for awards to other categories of victims (namely secondary victims, family victims and related victims). The following analysis refers to the scheme for a primary victim. Similar, but not identical, provisions apply in relation to other categories of victim. See also s 30 which provides that “an eligible victim of a violent act may apply to the Director for an award of financial assistance”. An “eligible victim” is defined by s 4 to include primary victims, secondary victims and family victims but not related victims.

offences) [s 10(4)(a)(i)] or one or more “compensable injuries” suffered as a direct result of the “violent act” [s 10(4)(a)(ii) and 10(4)(b)].

[10] If the victim is applying for assistance in relation to certain sexual offences (listed in Schedule 1 to the Regulations and defined as “**compensable violent acts**”) the victim has a choice. He or she can apply for compensation for the mere commission of the **compensable violent act**, without the necessity of proving any particular injury [s 10(4)(a)(i)] or he or she may elect to apply for an award for one or more **compensable injuries** suffered as a direct result of that offence. [s 10(4)(a)(ii)]. For all other offences, the primary victim may apply for assistance for one or more **compensable injuries** suffered as a direct result of the offence only. [s 10(4)(b)]. This result is achieved by means of a complicated interaction between the Act, Regulations, and Schedules.

Awards for compensable violent acts

[11] To find the meaning of “**a compensable violent act**” one goes first to s 4 of the Act. That section refers one to s 7(1) of the Act. Section 7(1) provides that:

“A compensable violent act is a violent act under section 5(1)(a).”

[12] Section 5(1)(a) provides that:

“A violent act is a criminal act prescribed by regulation, or a series of such related criminal acts, whether committed by one or more persons, that occurs in the Territory.”

[13] Regulation 4, headed “Violent Acts – Sexual Offences” provides:

“For section 5(1)(a) of the Act, a criminal act that constitutes ... an offence mentioned in Schedule 1, Part 1, 2 or 3, is a violent act.”

[14] Schedule 1 to the Regulations is headed “**Violent Acts and categories of compensable violent acts**”. It is divided into Parts 1, 2 and 3. Each part lists a number of offences, all of which are sexual offences of one kind or another.

[15] Regulation 14 provides:

“(1) A violent act mentioned in Schedule 1, Part 1, is a category 1 **compensable violent act**.

(2) A violent act mentioned in Schedule 1, Part 2, is a category 2 **compensable violent act**.

(3) A violent act mentioned in Schedule 1, Part 3, is a category 3 **compensable violent act**.”

[16] Part 1 of Schedule 1 lists “Category 1 offences” (which are the least serious), Part 2 lists “Category 2 offences” (more serious), and Part 3 lists “Category 3 offences” (which are the most serious).

[17] Regulation 14(4) provides:

“The standard amount for a **compensable violent act** is specified in Schedule 3, Part 1.”

[18] Schedule 3 Part 1 sets out the “standard amounts” payable in relation to category 1, 2 and 3 compensable acts and provides a range for each category.

Compensable injuries

[19] Section 10(4)(a)(ii) provides that, in the alternative to compensation for the **compensable violent act** per se pursuant to s 10(4)(a)(i), a primary victim of a **compensable violent act** (ie those sexual offences listed in Schedule 1) may apply for an award for one or more **compensable injuries** suffered as a direct result of the violent act. Section 10(4)(b) provides that a primary victim of a violent act other than a **compensable violent act** may apply for an award for one or more **compensable injuries** suffered as a direct result of the violent act.

[20] One then needs to return to the definition of “violent act”.

[21] Section 4 provides that “violent act” has the meaning in s 5.

[22] Section 5 defines a “violent act” as (essentially) a criminal act (or series of criminal acts) occurring in the Territory which is prescribed as such by regulation, or which results in injury to or the death of a person. (As mentioned above, Regulation 4 prescribes the sexual offences listed in Schedule 1 to be violent acts for the purposes of the Act. There are no other violent acts prescribed as such by regulation.)

[23] To find the meaning of “**compensable injury**” one again starts at section 4 of the Act which provides: “**compensable injury**, see s 7(2)”.

[24] Section 7(2) provides that, “a **compensable injury** is an injury prescribed by regulation.”

[25] Section 4 provides that “injury” has the meaning in s 6.

[26] Section 6 provides:

- “(1) An injury is any of the following:
 - (a) a physical illness or injury;
 - (b) a recognisable psychological or psychiatric disorder;
 - (c) pregnancy;
 - (d) a combination of any injuries mentioned in paragraphs (a) to (c).
- (2) Subsection (1) does not include an injury resulting from the loss of or damage to property.”

[27] Regulation 3 provides: “**compensable injury**, see regulation 16(1) and (2)”.

[28] Regulation 16(1) provides that an injury described in Schedule 3 Part 2 is a **compensable injury**³.

[29] Regulation 16(3) provides that the “standard amount” for a **compensable injury** described in Schedule 3, Part 2 is the amount, or an amount within the range, specified opposite the injury.⁴

³ Regulation 16(2) makes provision for similar injuries which cause symptoms or a disability lasting for at least 6 weeks.

⁴ For injuries not listed, the “standard amount” is the amount that may be awarded for the most similar compensable injury. [Regulation 16(3)(a)]

[30] Schedule 3 part 2 sets out a list of **compensable injuries** and standard amounts of financial assistance payable therefor.

Summary

[31] The effect of all that is that a primary victim of one of the sexual offences listed in Schedule 1 of the Regulations, has a choice whether to apply for compensation for the “**compensable violent act**” per se, or to apply for compensation for one or more of the “**compensable injuries**” suffered as a direct result of that act, and for all other criminal acts which cause death or injury to a primary victim, the primary victim may apply for an award for one or more **compensable injuries** suffered as a direct result of the offence.

[32] In each case the amounts which are to be awarded are set out in Schedule 3 Part 1 or 2 as the case may be.

Alternative provisions in the case of domestic violence

[33] The regulations define “domestic violence” [Reg 5] and “pattern of abuse” [Reg 6], and Schedule 3 Part 2 includes an item called “Domestic Violence injuries” for which the range of awards is \$7,500 to \$10,000. Regulation 22 provides that a victim of domestic violence may opt, instead, to apply for an award for each **compensable injury** suffered as a direct result of the violent act.

Psychological and psychiatric injuries

[34] The Act also provides separately for psychiatric and psychological injuries.

[35] Regulation 15(1) defines a category 1 psychological or psychiatric disorder as a recognisable psychological or psychiatric disorder that is moderately disabling and chronic and is suffered as a direct result of an offence specified in Schedule 2.⁵ Regulation 15(2) defines a category 2 psychological or psychiatric disorder as a recognisable psychological or psychiatric disorder that is severely disabling and chronic.

[36] Part 2 of Schedule 3 provides a standard amount for a category 1 psychological or psychiatric disorder of \$7,500 to \$15,000, and for a category 2 psychological or psychiatric disorder of \$25,000 to \$40,000.

Amounts payable and limits on awards

[37] As explained above, Schedule 3 Part 1 sets out standard amounts for **compensable violent acts** (i.e. those sexual offences listed in Schedule 1). The standard amount for a category 1 **compensable violent act** is an amount between \$7,500.00 and \$10,000.00. The standard amount for a category 2 **compensable violent act** is an amount between \$10,000.00 and \$25,000.00 and the standard amount for a category 3 **compensable violent act** is an amount between \$25,000.00 and \$40,000.00. Standard amounts for **compensable injuries** are set out in Schedule 3 Part 2.⁶

⁵ The offences listed in Schedule 2 are certain sexual offences, murder, robbery with violence, kidnapping, abduction and deprivation of liberty after unlawful entry of a building.

⁶ There are provisions for reducing awards in certain not presently relevant circumstances. [See ss 41 and 42].

- [38] There is a threshold of seriousness before a victim is eligible for an award: an assessor may award primary victim financial assistance for one or more **compensable injuries** only if the total of the standard amount for the injury or injuries is at least \$7,500.00 [s 38(3)]⁷.
- [39] If a victim has suffered more than one **compensable injury** as the result of the same violent act, then an award is payable only in respect of the three most serious injuries. The amount payable is the standard amount [in Schedule 3 Part 2] for the most serious injury, 30% of the standard amount for the second most serious injury and 15% of the standard amount for the third most serious injury. [Regulation 18]
- [40] The Act provides that the maximum financial assistance that may be awarded to a primary victim of a violent act is \$40,000.00, even if the victim's financial loss and the standard amount of the **compensable violent act** or the victim's **compensable injuries** exceed \$40,000.00. [s 38(1)]
- [41] In the case of **compensable violent acts**, if the victim does not give the assessor evidence of an actual injury, the assessor may award the victim only the minimum standard amount for the category of **compensable violent act** – ie \$7,500.00 for a category 1 **compensable violent act**, \$10,000.00 for a category 2 **compensable violent act**, and \$25,000.00 for a category 3 **compensable violent act**. [Regulation 17]

⁷ There is a separate maximum of \$10,000 for assistance for financial loss. [s 38(2)]

[42] These limits apply to **a compensable violent act** or one or more **compensable injuries** suffered as a direct result of **a violent act**. There is nothing to preclude a person being a victim of (and hence claiming assistance in respect of) more than one violent act.

[43] However, the Act provides that a **series of related criminal acts**, whether committed by one or more persons, constitutes a **single violent act**. [s 5(4)]

[44] The Act defines what is meant by a **series of related criminal acts** [s 5(3)]. This is set out below at paragraph [63].

The Determination

[45] The assessor assessing AB's application for assistance under the Act made the following relevant findings of fact.

- “1. The applicant was in a domestic relationship with the offender, Rodney Eric John Barnes Junior during 2007 and for some time during 2005;
2. The applicant was the victim of various domestic violence acts by the offender between 13 June 2007 and 7 October 2007;
3. The applicant sustained injuries as a result of the violent acts referred to in paragraph 2 above, namely:

13 June 2007

- Severe contusions and abrasions to her body
- Deep laceration to right scalp area – 5cm in length
- Deep laceration to right buttock – 3cm in length
- Broken tooth

25 June 2007

- Fractured left clavicle

7 October 2007

- Fractured mandible
- Fractured nasal bone
- Defensive wounds (bruising and cuts) to her arms
- Bruising and cuts to both legs and abdomen

4. The applicant was the victim of a compensable violent act on 7 October 2007, namely sexual intercourse without consent where a factor of aggravation applies to the offence. The said factor of aggravation being the use and threat of an offensive weapon during the offence.”

[46] The operative part of the decision is as follows:

“DECISION

Based on the material findings and applying the Act, I have concluded that;

1. The applicant is an eligible primary victim and pursuant to Section 10(4) of the *Victims of Crime Assistance Act*;
2. The applicant is entitled to claim the injuries referred to in the material findings at paragraph 3, for the single violent act(s) in accordance with Schedule 3 Part 2 of the Regulations;
3. Alternatively, the applicant may claim domestic violence injuries. The applicant was in a domestic relationship with the offender pursuant to Section 9 of the *Domestic and Family Violence Act*. The applicant satisfies the criteria for domestic violence injuries in accordance with Regulation 5 and Regulation 6 – pattern of abuse. The standard amount for the compensable injury of domestic violence is a range between \$7,500.00 - \$10,000.00;
4. Alternatively, the applicant may claim a compensable violent act. I have determined the applicant was the victim of a compensable violent act on 7 October 2007 under Schedule 1,

Part 3 – Category 3. This was an offence against Section 192(3) of the Criminal Code of sexual intercourse without consent where a factor of aggravation applies to the offence;

5. The standard amount for a Category 3 compensable violent act is an amount between \$25,000.00 and \$40,000.00;
6. The applicant’s entitlement under Schedule 3, Part 1, Clause (c) for a compensable violent act is greater than an award for the compensable injury of domestic violence. The applicant cannot claim both for the reason that the criminal acts constitute a ‘series of related criminal acts’, and therefore a single violent act, for the purposes of Section 5(3) of the *Victims of Crime Assistance Act*; and
7. As the circumstances of the violent act were sufficiently severe, I have determined the applicant is entitled to an award for the compensable violent act in the amount of \$35,000.00; and
8. The applicant is entitled to an amount of \$20.00 for financial loss, being personal items.

AWARD

The applicant is entitled to an award of financial assistance in the amount of \$35,020.00.”

Appeal to the Local Court

[47] AB has appealed to the Local Court against this determination on the following grounds:

- “(1) That in relation to the applicant’s entitlement under schedule 3, Part 1, clause (c) the amount awarded was inadequate given the injuries suffered by the Applicant on 7 October 2007.
- (2) That pursuant to section 5(3) of the Victims of Crimes Assistance Act the Respondent has erred as a matter of fact in

deciding that the incidents of 13 June, 25 July and 7 October 2007 constituted a single violent act.

- (3) That in the event that it is found that the Respondent did not err as a matter of fact in deciding that pursuant to Section 5(3) of the Victims of Crimes Assistance Act the criminal acts of 13 June, 25 July and 7 October 2007 constitute a single violent act, the Respondent erred in fact in failing to take into account the injuries sustained on 13 June and 25 July 2007 in determining the award quantum in relation to the Applicant's entitlement under Schedule 3, Part 1(c).
- (4) That the Respondent erred as a matter of fact in failing to assess the Applicant for psychological injuries."

Reservation of questions of law

[48] Section 53 of the Act provides that there is no appeal to the Supreme Court against an order or determination of the Local Court hearing an appeal under the Act. Section 51 of the Act provides that the Local Court may reserve for the decision of the Supreme Court a question of law arising out of an appeal.

[49] The Magistrate hearing the appeal has reserved the following questions of law for the decision of the Supreme Court:

“Question 1: In determining an award within a range in Schedule 3 of the regulations does the assessor apply common law principles in determining an award without regard to the maximum award within Schedule 3?

Question 2: If the answer to [1] is no, does the assessor reserve the maximum for worst possible act or injury?

Question 3: If the answer to [2] is yes, what principles does the assessor apply for determining an award within the range for an act or injury other than the worst possible act or injury?

Question 4: If the answer to [2] is no, what principles does the assessor apply to determine an award within the range for any act or injury?

Question 5: Are the criminal acts committed against the appellant on 13 June, 25 July and 7 October 2007 a single violent act for the purposes of s.5?

Question 6: If the answer is yes, and one of those violent acts is a compensable violent act, should the other violent acts or injuries in the series and their effects be taken into account in determining whether in the range in Schedule 3 the award should be made?

Question 7: Does s.25 prevent the appellant from obtaining an assessment for psychological or psychiatric disorder as part of the award?

Question 8: If no, is the assessor required to obtain a written medical report as to the disorder under s. 35, or is the applicant required to provide such a written report?"

Question 1: In determining an award within a range in Schedule 3 of the regulations, does the assessor apply common law principles in determining an award without regard to the maximum award within Schedule 3?

[50] As both counsel were agreed, the answer to question 1 is, "Yes."

[51] In *S v Turner*⁸ (1979) (a case on the old *Criminal Injuries (Compensation) Act 1975*), Muirhead J approved the following proposition from *R v*

*Forsythe*⁹:

⁸ (1979) 1 NTR 17 at 22-23

⁹ [1972] 2 NSWLR 951 at 955

“In courts, the jurisdiction of which is limited in amount, if the amount proved exceeds the jurisdictional limit, the full amount of the limit is recoverable. No question of proportion arises.”

Muirhead J went on (at 23):

“R v Forsythe(supra) is authority for the well established proposition that the sum of \$4,000 [as the statutory limit then was] represents a jurisdictional limit, not the top of the scale, not the appropriate sum for the worst injuries ...”¹⁰

[52] Angel J considered the principles applicable to an assessment under the former *Crimes (Victims Assistance) Act* in *Rigby v Solicitor for the Northern Territory*¹¹. He said:

*“The principles of assessment of compensation for the purposes of the Act are well-known. It is for the court to assess what would be payable according to the principles applicable to an award of damages in a civil suit. The court is to assess the compensation as if it were an award of damages in the ordinary way. If the sum is less than the maximum award under s 13 - \$15,000 – the court should award that sum, and if it exceeds \$15,000 [as the limit was then] it should award \$15,000: see generally *Davey v Haidukewicz* (1980) 4 NTR 40 at 41, the cases cited therein and *R V Forsythe* [1972] 2 NSWLR 951, *R v McDonald* [1979] 1 NSWLR 451.”*

[53] This approach was followed in *LMP v Collins & the Northern Territory of Australia*¹² and subsequent cases.

[54] It is true that the Act refers to eligibility to “apply for an award for”
“the mere commission of [a **compensable violent act**]” or for “one or more

¹⁰ See also discussion by Kearney J in *LMP v Collins* (1993) 112 FLR 289 at 301-302

¹¹ (1991) 105 FLR 48, at 51

¹² (1993) 112 FLR 289 at 301-302: see discussion by Kearney J at 301-302.

injuries suffered as a direct result of [a] violent act". Despite the terms "compensable violent act" and "compensable injuries", there is no reference in the act to the concept of "compensation". The money "awarded" to victims is referred to as "financial assistance", which, it might be thought, does not point to a legislative intention that the award should be assessed as though it were compensation or common law damages.

[55] However, although the *Criminal Injuries (Compensation) Act* (considered in *S v Turner*) used the term "compensation", the *Crimes (Victims Assistance) Act* (considered in *Rigby* and *LMP v Collins*), like the present Act, was based on the concept of "assistance" rather than "compensation".

Therefore, I do not think that one can discern in the mere use of the term "assistance", a legislative intention to change the well established principles upon which amounts of "compensation"¹³ or "assistance"¹⁴ were assessed for the purposes of both of the earlier Acts, and which are applied in similar legislation elsewhere in Australia.¹⁵

[56] There is nothing in the Second Reading Speech by Dr Toyne on 25 March 2006 to indicate an intention to change the principle of assessment of awards under the Act. Indeed, there is some support for an intention to retain the same principles in his reference to "financial assistance for

¹³ *Criminal Injuries (Compensation) Act* s 3

¹⁴ *Crimes (Victims) Assistance Act* ss 5 and 9

¹⁵ See *Martin v Crimes Compensation Tribunal* (1997) 91 A Crim R 301 at 304 and *Bentley v Furlan* [1999] 3 VR 63 at 69 and 80

compensable injuries similar to the awards for pain and suffering made at common law.”

[57] Finally, if the legislature had intended such a radical change to the principles which are applied in assessing compensation, it presumably would have said so clearly and explicitly. As Ms Porter pointed out in her written submissions on behalf of the appellant, s 98A of the Victorian *Accident Compensation Act*, clearly states:

“(3) The maximum amount of compensation under this section is payable only in a most extreme case and the amount payable in any other case shall be reasonably proportionate to that maximum amount having regard to the degree and duration of pain and suffering and the severity of the injury or injuries.”

The Territory Act hereunder consideration contains no such provision.

Question 2: If the answer to [1] is no, does the assessor reserve the maximum for worst possible act or injury?

[58] Not applicable

Question 3: If the answer to [2] is yes, what principles does the assessor apply for determining an award within the range for an act or injury other than the worst possible act or injury?

[59] Not applicable

Question 4: If the answer to [2] is no, what principles does the assessor apply to determine an award within the range for any act or injury?

[60] Not applicable. See the answer to question 1. Common law principles of assessment of damages apply.

Question 5: Are the criminal acts committed against the appellant on 13 June, 25 July and 7 October 2007 a single violent act for the purposes of s.5?

[61] The answer to this question depends upon the construction of s 5(3) of the Act.

[62] The Act provides that a **series of related criminal acts**, whether committed by one or more persons, constitutes a **single violent act**. [s 5(4)]

[63] The Act defines what is meant by a **series of related criminal acts** in s 5(3) which provides:

“(3) A series of related criminal acts occurs if:

- (a) 2 or more criminal acts are committed against the same person; and
- (b) 2 or more of those acts:
 - (i) occur at approximately the same time; or
 - (ii) occur over a period of time and are committed by the same person or group of persons; or
 - (iii) share another common factor.”

[64] The respondent here contends that (as found by the assessor) the June assault, the July assault and the October assaults occurred over a period of time and were committed by the same person, and so were a **series of**

related criminal acts and hence a **single violent act** for the purposes of s 5(4).

[65] The appellant concedes that the assaults that occurred on 7 October (ie the prolonged violence and two rapes) were a series of related acts within the meaning of s 5(3), essentially forming part of the one incident, and so must be treated as a single violent act. She says, however, that the June and July assaults cannot be so considered, either in relation to the October assault or in relation to each other.

[66] It is not disputed that all three criminal acts (or series of acts) were committed against the same person (namely AB) so that s 5(3)(a) is satisfied. Nor is it disputed that all three criminal acts were committed by the same person – namely Rodney Barnes. The question is, therefore, whether the June, July and October assaults occurred “over a period of time” within the meaning of s 5(3)(b)(ii). (It is not contended that they all occurred “at approximately the same time” within the meaning of s 5(3)(b)(i). Nor was it contended by either counsel that they share some other common factor¹⁶ so as to bring s 5(3)(b)(iii) into play.)

[67] The answer to question 6 therefore depends upon the meaning to be given to the phrase “occur over a period of time” in s 5(3)(b)(ii). The phrase must mean more than simply that the acts in question did not occur simultaneously (or nearly so) or the phrase would have no work to do in s

¹⁶ ie some common factor other than commonality of victim and offender referred to in s 5(3)(b)(ii)

5(3)(b)(ii) – one could delete the phrase and the paragraph would have the same meaning.

[68] In my view, the only sensible meaning that can be given to the phrase is that the criminal acts must be continuing, in the sense that they form part of a single episode of offending. If the offending unambiguously ceases, and is followed by a period of time in which no offending occurs, then the criminal acts do not occur “over a period of time”. In that case, there would be three relevant periods of time – “a period of time” during which the first criminal act occurs, followed by a period of time during which no criminal acts occur, followed by “a period of time” during which a second criminal act occurs.

[69] Where, as here, there was a criminal act committed in June 2007, separated by about a month from the second criminal act committed in July 2007, separated by about three months from the third series of criminal acts on 7 October 2007, the three sets of criminal acts were not committed “over a period of time” within the meaning of s 5(3)(b)(ii); rather there were three separate periods of time during which the criminal acts were committed and three separate “violent acts” for the purposes of the Act. The answer to question 5, therefore, is “no”.

[70] Counsel for the respondent, Mr Stirk, has drawn to my attention a decision of the New South Wales Supreme Court in *Moore v Victims Compensation Fund* [2009] NSWSC 1300 which considered a similar provision in the New

South Wales legislation. The New South Wales Act provides that an award of compensation may be made for “an act of violence”. An “act of violence” is defined as “an act or series of related acts” that have certain characteristics. The definition section provides further:

“An act is related to another act if:

- (a) both of the acts were committed against the same person, and
- (b) in the opinion of the Tribunal both of the acts were committed at approximately the same time or were, for any other reason, related to each other.”

[71] In *Moore*, the Tribunal was concerned with the meaning of the underlined words which is a different question from the one I have been asked to determine – namely the meaning to be given to the phrase “occur over a period of time” in s 5(3) of the Act. However, had it been contended in this case that the June, July and October assaults were a single violent act within the meaning of s 5(3)(b)(iii) because they “share another common factor”, the principles enunciated by the Tribunal in *Moore* would be of relevance, although the phrases used in the two acts are not identical.

[72] In *Moore* (at paragraph [21]), the Tribunal quoted the following passage from the judgment of Sheller JA in *Director-General of the Attorney General’s Department v District Court of New South Wales & Stark* (1993) 32 NSWLR 409:

“A person the victim of two assaults within the same day or within two weeks or within two months does not seem to me to be the victim

of related acts for reason that there were common features of the acts themselves, for example, that in each case the assailant and the nature of the offence were the same. Usually such matters are no more than circumstances to be taken into account when considering whether there are other reasons which the tribunal may consider make the acts related. Further the fact that separate acts by their nature fit a description, such as ‘indecent assault’, is a surrounding circumstance but not a reason for saying the acts are related. In his Second Reading Speech the Attorney-General spoke of the relationship between acts occurring during the incident giving rise to the injury. Street CJ in *R v Newman* (at 229) spoke of ‘a global incident’. Mahoney JA in his judgment refers to a single transaction or occasion. These expressions, in my respectful opinion, all throw light on what is intended by the legislature. However I do not think that the concept so explained is necessarily comprehensively explained. Acts committed during the course of a single incident, such as an armed robbery, may be related. But so too may acts which occur during the course of a prolonged period of association or contact between victim and offender whether involuntary or otherwise. Thus I would not rule out the possibility that in a particular case, as was submitted to Hunt J in *R v C*, separate acts may be related by reason of the relationship of the parties. In none of these situations is it necessarily significant that the acts are physically different and involved the commission of different offences.” (*Stark*, supra, at 421-422, per Sheller JA.)”.

The Tribunal also quoted the following from the judgment of Mahoney J in

Stark:

“The Act accepts that there may be a ‘reason’, other than a chronological reason, why, under the legislation, a series of acts are to be treated as ‘related’. The fact alone that the acts were committed against the same person would, I think, ordinarily not be a reason sufficient for this purpose: cf s 3(3)(a). But, to take an example, the purpose with which the acts were done may be sufficient to warrant that they be treated as ‘related acts’ within s 3. Thus, if three injections were given at two hourly intervals for the purpose of together producing a particular state or condition in the person injected, it could not be said that in principle it would not be open to the court to find that a sufficient reason for holding them ‘related to each other’ If the several acts were, in the relevant sense, part of a single transaction or occasion, it might, in appropriate circumstances, be possible to hold that in fact they were relevantly related. I do not mean by the examples I have taken to limit the

reasons which, within s 3(3)(b), may constitute ‘any other reason’ for holding acts to be related to each other.”

The Tribunal went on to say (at paragraphs [29] and [30]):

“The definition of “act of violence” defines an act of violence to mean an act or series of related acts of a particular description. As has been pointed out by the Court of Appeal, that description includes a requirement that the Act or series of related acts has resulted in injury or death to one or more of the victims. But the series of related acts does not require that each of the related acts be, itself, an act of violence. Thus, one could have a series of related acts, only one of which (or the cumulative effect of which) resulted in injury or death and that series would constitute an act of violence within the meaning of s 5(1) of the Act.

The converse, it seems, is also true. If an act, which occurred in the course of a commission of an offence and involved violent conduct, results in an injury, it would usually be a different act from one that results in a different injury. To take the example arising from domestic violence, if a person punched her or his child, causing injury to the mouth and teeth, and one day later hit the child over the head and caused brain damage, notwithstanding the continuing relationship, it would seem the Act would require that each act of violence be treated separately. On the other hand, if the same person punched the child in the face and the head at or about the same time, causing both injuries, the injuries would be caused by one act of violence.”

[73] It seems to me that similar considerations will be relevant in determining whether two or more violent acts “share another common feature” (ie a common feature other than occurring at approximately the same time or occurring over a period of time and being committed by the same person or group of persons) for the purposes of the Territory legislation.

[74] However, that is not directly relevant to the present case. It was with good reason that the respondent in this case did not contend that the June, July

and October assaults were a single violent act by reason that they shared another common feature. It seems to me that they share no common feature other than being committed by the same person, against the same person. There is no suggestion that the assaults were part of a single transaction, or were directed to a common purpose. They were committed months apart and each resulted in separate injuries.

Question 6: If the answer is yes, and one of those violent acts is a compensable violent act, should the other violent acts or injuries in the series and their effects be taken into account in determining whether in the range in Schedule 3 the award should be made?

[75] Not applicable. However, in circumstances where s 5(3) did apply – as for instance, the series of related criminal acts committed against AB by Rodney Barnes over a period of time on 7 October 2007 - clearly all of the injuries sustained as a result of all of the acts in that series, and all of the effects on the victim, including any psychiatric or psychological disorders, must be taken into account in assessing the award that should be made.

Question 7: Does s.25 prevent the appellant from obtaining an assessment for psychological or psychiatric disorder as part of the award?

[76] Section 25 of the Act provides:

“25. Applications for financial assistance generally

- (1) An eligible victim may apply for financial assistance in only one of the categories of primary victim, secondary victim or family victim of a violent act unless the applicant is a secondary victim to whom section 12(5) applies.

- (2) An eligible victim must not apply for more than one award for the same violent act.
- (3) An eligible victim may apply for more than one immediate payment for the same violent act if the total of the immediate payment does not exceed the maximum amount mentioned in section 27(5).
- (4) An eligible victim may apply for an award and an immediate payment for the same violent act.
- (5) An application for financial assistance (including by an increased award) may be made for an eligible victim by a person who has a genuine interest in the welfare of the eligible victim, including the parent or guardian of an eligible victim who is a child.”

[77] There is nothing in that section which might prevent the appellant from obtaining an award to compensate her for any psychological or psychiatric disorder she may suffer from as a result of the violent acts of which she has been the victim.

[78] In relation to both the June assault and the July assaults, these are not **compensable violent acts** within the meaning of the Act. Therefore, in relation to each of those, AB is entitled to claim an award for the **compensable injuries** she has suffered as a direct result of those violent acts. [s 10(4)(b)] She may obtain an award for each of the three most serious injuries she suffered as a result of each of those assaults on the sliding scale set out in Regulation 18, subject to the limits prescribed in s 38.

- [79] As the offences committed against her in June and July were not offences appearing in Schedule 2 to the Regulations, she can only include a psychological or psychiatric disorder as one of the three **compensable injuries** if, as a direct result of that particular assault, she is suffering from a recognisable psychological or psychiatric disorder which is severely disabling. [Reg 15(2)]
- [80] In relation to the October assault, that is a **compensable violent act**. Therefore, in relation to that assault, the Act provides AB with a choice: to apply for an award for the assault per se [s 10(4)(a)(i)] or to apply for an award in respect of the **compensable injuries** she has suffered as a direct result of that violent act.
- [81] It appears from the form that she elected to apply for an award for the **compensable violent act** in relation to the October assaults. In that case, the assessor was obliged to take into account all of the injuries and other effects of that **compensable violent act** in assessing the award, including any psychological or psychiatric disorders that may have resulted from the attack. In relation to the October assaults, she is not entitled to the amounts set out in Schedule 3 Part 2 beside “psychological or psychiatric disorder”; nor was the assessor limited to considering only the kinds of psychological or psychiatric disorders referred to in Regulation 15. Rather, any psychological or psychiatric disorder she has suffered should be taken into account as part of the common law assessment of damages and, if that assessment exceeds the maximum of the range set out in Schedule 3 Part 1

for a category 3 **compensable violent act**, then she is entitled to that maximum amount – namely \$40,000 - for the October assaults (in addition to any awards for the June and July assaults).

[82] If AB did not provide evidence of any actual injury (whether physical or psychological or psychiatric), then , in respect of the October assaults, the assessor (or at this point the Local Court) may award her only the minimum standard amount for a category 3 violent act – namely \$25,000.¹⁷

Question 8: If the answer to question 7 is no, is the assessor required to obtain a written medical report as to the disorder under s. 35, or is the applicant required to provide such a written report?

[83] This question, phrased as it is in the alternative, does not admit of a simple answer.

[84] S 32 of the Act sets out what must be included in an application for an award, or accompany such an application. These requirements include:

¹⁷ It is difficult to isolate from the application form what injuries (if any) are claimed to have been suffered as a result of the October assaults because the application form does not adequately enable an applicant to distinguish between injuries suffered as a result of different violent acts and, in case of an application in respect of a **compensable violent act**, actually (wrongly) instructs an applicant not to include details of injuries suffered. However, it seems that the assessor was satisfied that, the form notwithstanding, AB did provide evidence of injury, as he awarded her \$35,000 for a **compensable violent act**. It will be a matter for the magistrate hearing the appeal to determine whether that award should stand in light of the answers to the questions referred to this Court. If the magistrate does not have sufficient material before him to properly form an assessment in relation to the October assaults (including any reports he may consider necessary), he may admit further evidence if he considers that the misleading nature of the application form provided by the CVSU constitutes “special reasons that prevented the presentation of [that material] to the assessor” – or if he considers there are other special reasons that prevented its presentation: s 49(3).

- if the applicant is a primary victim who is applying for financial assistance for a compensable injury ... - a description of the injury resulting from the violent act; [s 32(1)(e)]
- any other information required by regulation; [s 32(1)(m)] and
- all documents in the applicant's possession supporting the application, such as medical reports and invoices for expenses incurred. [s 32(3)(b)]

[85] That is to say, if the applicant has obtained a medical report, and has it in his or her possession, it must accompany the application, but there is no requirement on the applicant to obtain any medical reports (including psychological or psychiatric reports.)

[86] If the applicant is a primary victim of a **compensable violent act** who is not applying for financial assistance for a **compensable injury** [ie if the application is made under s 10(4)(a)(i)], the application may (but need not) include a description of injuries resulting from the violent act [s 32(2)].¹⁸

[87] Regulations 8, 9 and 10 set out additional requirements for information and documentation which must be included in application for various kinds of awards. If the application is for financial assistance for a **compensable injury** [ie an application under ss 10(4)(a)(ii) or 10(4)(b)] for a category 1 or 2 psychological or psychiatric disorder, the application must be accompanied by a written report about the applicant's condition.

¹⁸ If no such description is included, the applicant can receive only the minimum standard amount for the applicable category of compensable violent act. [Reg 17]

[Regulation 10(2)(b)] This requirement does not apply where the application is for an award for a **compensable violent act** [made under s 10(4)(a)(i)], where the applicant wishes a psychological or psychiatric injury to be taken into account for the purpose of assessing what amount should be awarded to the applicant within the range of standard amounts for the applicable category of **compensable violent act**.

[88] That is the case with this particular application. In respect of the October assaults, AB's evident intention was to apply for an award for a **compensable violent act** (namely the rapes) and for all of the injuries she suffered in that incident (including presumably any psychological or psychiatric injuries), to be taken into account for the purposes of assessing the amount to be awarded to her. In those circumstances, neither the Act nor the Regulations imposed any obligation on her to provide a psychological or psychiatric report with her application.

[89] The Act and Regulations confer a number of powers on the assessor to obtain information and supporting documentation to assist him or her in making an assessment of an award.

- The assessor may obtain information and make the enquiries he or she considers necessary to make a proper decision. [s 36(1)]
- The assessor may, by written notice, require the applicant to provide further information or documents relevant to the application [s 36(2)] and may decide not to award financial

assistance to the applicant if he or she unreasonably refuses to give the assessor the information or documents requested. [s 36(3)]

- The assessor may by written notice, require any other person to provide further information or documents. [s 36(4)]
- Where an application is made under ss 10(4)(a)(ii) or 10(4)(b) – ie for an award for **compensable injuries**, whether or not arising out of a **compensable violent act**, the assessor may require the applicant to undergo a medical, psychological or psychiatric examination [s 35(1)] which will result in the production of a written report [s 35(1)(2)] and may defer a decision until (inter alia) he or she has obtained further information or reports considered necessary to make a proper decision. [s 34(3)(a)] The cost of any examination and report obtained under s 35 is to be paid by the Territory. [s 35(3)]

[90] If an application for an award is made under s 10(4)(a)(i) – ie for an award for a **compensable violent act** per se – then the assessor does not have power to require the applicant to undergo a medical, psychological or psychiatric examination. [s 35(5)] I take this to be so even if the applicant wants physical, psychological or psychiatric injuries she has suffered to be taken into account in assessing the award.

[91] This accords with the purpose of the amended legislation expressed in the second reading speech:

“A significant aspect of the table is that it is proposed that sexual assault victims will no longer need to prove a specific injury. They will only need to establish that the relevant assault or assaults have taken place. This will reduce the stress of such victims, as they will no longer have to go through the indignity of proving the assault and their injury, the impact of the injury, and that they have actually suffered from the assault.”

[92] In such circumstances, the assessor would be limited to asking the applicant for further information, or documents (including any existing reports in the applicant’s possession) or requesting any other person (for example a medical practitioner who had examined or treated the applicant) for information or documents (including any existing reports) about the applicant’s psychological or psychiatric condition.

[93] That is to say, in the present case, the assessor had no power to “obtain a written medical report” about any psychological or psychiatric disorder of the applicant arising out of the October assaults, if this means requiring her to undergo a psychological or psychiatric examination.¹⁹

[94] The assessor did have the power to ask for a report from any psychologist or psychiatrist who had already examined or treated her, or to request copies of any existing reports. However, the Act imposes no duty upon him to do so.

[95] The appellant argued that, nevertheless, in the circumstances, the assessor had, as a matter of law, a duty to “obtain a report”. (I take this to mean, to

¹⁹ If AB had made application for an award for a category 2 psychological or psychiatric disorder suffered as a direct result of the June or July assaults, then the assessor would have had the power to require AB to undergo a psychological or psychiatric examination in respect of those injuries. It does not appear from the application form she submitted that she is making any such claim in relation to either the June or July assaults.

request a report from a psychologist or psychiatrist who had already examined AB or, perhaps, to request AB to undergo an examination, without being able to require her to do so)²⁰.

[96] Keeping in mind that this proceeding is simply a reference from the learned magistrate to the Supreme Court to determine a question of law, the basis of the appellant's submission that, in the circumstances of the present case, the assessor was under a legal duty to obtain a report was this: the decision of the assessor not to obtain a written medical report on the applicant's psychological or psychiatric condition (the appellant says) was so unreasonable that no reasonable assessor could have made such a decision. The following factors (so it is argued) made it unreasonable, in the relevant sense, for the assessor not to obtain such a report.

- (a) The savage and prolonged nature of the 7 October assault and the severity of the resulting physical injuries described in documents which the assessor had before him (including Southwood J's sentencing remarks) should have put the assessor on notice that the applicant may have suffered a psychological or psychiatric injury.
- (b) The comment in Southwood J's sentencing remarks to the effect that AB had "suffered significant emotional trauma, a loss of self esteem,

²⁰ I assume, without the need to decide, that the assessor would have had power under s 36(1) (ie the general power to obtain information and make enquiries) to request (but not require) the applicant to undergo a psychiatric or other examination and for the CVSU to meet the cost of such a report if she agreed, although there is no express provision for the Territory to pay the costs of any such examination as there is in the case of an examination required under s 35.

and that from time to time she suffers from depression,” should likewise have put the assessor on notice.

- (c) The application form supplied by the Crime Victims Services Unit (“CVSU”) contains indications that if the applicant does not have medical reports, these will be obtained by CVSU. For example, the following appears in the explanation on page 2 of the form:

“Copies of police reports and medical records will be required to support your application. In some cases it may also be necessary to obtain detailed medical reports. If you have these documents, you should provide them with your application. If you do not provide them, the CVSU will need your permission to get this information.”

Similarly, in Part 8 of the form, headed (rather confusingly)²¹

“Compensable Injuries” the following appears:

“If you have evidence of the injury or injuries you have suffered such as hospital records, medical reports and proof of continuing symptoms or disability, please provide them. If you do not, the CVSU will obtain these records and other information from the relevant health or medical service provider.”

- (d) In filling out the form, AB made it clear that further information was in fact required in her case. In Part 6, headed “Injuries Received”, AB added to question 37 (which requests a brief description of the applicant’s injuries) the comment: “Requires further investigation”.

²¹ This is confusing because question 44, under Part 8, is directed at a claim for an award for a **compensable violent act** which is a different concept under the Act from a claim for **compensable injuries**.

Importantly, in question 47, there is a box headed “Injuries being claimed” in which AB wrote: “Requires further investigation of police and medical records”. Also, in the document checklist in Part 9, AB indicated that she had supplied some only “hospital/ medical records detailing injuries, treatment and prognosis” and she signed an authority authorising the CVSU to obtain records and reports.

[97] It may have been desirable for the assessor to follow the matter up further, to ask AB if she had ever seen a psychologist or psychiatrist following the October assault; if so to have requested a report from that practitioner; and if not to have asked AB if she wanted to see such a practitioner for the purposes of preparing a report. However, I do not accept that the circumstances were such that it was unreasonable (in the relevant sense) for him not to have obtained such a report. That is to say, I do not accept that the circumstances were such that the assessor’s power to obtain such further information had effectively become a legal duty to do so. An assessor might, for example, have had regard to the matters set out in paragraphs [103] (a) and (b) above and included an amount in the award for pain and suffering including emotional trauma, loss of self esteem, and periodic depression without seeing the need for a detailed report.

[98] In addition, the assessor may not have been aware that AB wanted injuries suffered as a result of the October assaults (including any psychological or psychiatric injuries) taken into account in assessing the award for the October assaults, because of the confusing nature of the form supplied by

the CVSU. [S 8(1) requires an application under the Act to be made “in the approved form”. Section 66 provides that the Director may approve forms for use under the Act. Both counsel agreed that I was entitled to assume, from the appearance of the Northern Territory Government Logo on the form and the heading “Department of Justice Crime Victims Assistance Unit Application for Financial Assistance by a Primary Victim” that the application form completed by AB was in fact on the form approved by the Director for the purpose.]

[99] First, the form is not well adapted for use where (as in this case) an application is being made in respect of more than one violent act. There is no provision for separating the consequences of one violent act from the consequences of another and the form does not advise applicants that in those circumstances, a separate application should be completed for each separate violent act.

[100] Secondly, the application form consists, essentially, of a whole list of questions, interspersed with explanatory material. However, the questions do not cover all of the matters required by s 32 to be included in an application for an award. For example, s 32(1)(f) requires the application to include the standard amount sought if the applicant is applying for financial assistance for one or more compensable injuries, and there is no provision on the approved form for this information to be provided. Nor is there provision in the form for the information required by s 32(i)(1).

[101] More importantly, the approved form is intrinsically misleading to applicants who wish to claim an award for a **compensable violent act** under s 10(4)(a)(i). A victim of a sexual assault who chooses to apply for an award under s 10(4)(a)(i) for “the mere commission of the violent act” is entitled to receive an award within a stated range. (In AB’s case, as the victim of a category 3 **compensable violent act**, the range is \$25,000 to \$40,000.) The Act provides that in such circumstances the victim may include a description of injuries resulting from the violent act. [s 32(2)] If evidence of actual injury is not provided, the assessor may only award the victim the minimum standard amount (ie for a category 3 **compensable violent act** - \$25,000).

[102] The approved form not only contains no provision for including a description of injuries resulting from the **compensable violent act**, it specifically instructs applicants not to include any such description.

Question 44, in Part 8 of the approved form, states:

“If you have experienced and are claiming as a result of sexual assault, you can use one of two options:

- separately claim each injury you suffered as a direct result of the sexual assault, including a psychological or psychiatric disorder; or
- claim sexual assault as a violent act, without showing that you have suffered any additional injuries.

Are you claiming sexual assault as a violent act?

No

Yes

Please write 'sexual assault' in the table at question 47.

If you answered 'yes' you do not need to answer any more questions in this section – GO TO PART 9.”

[103] Question 47 (also in Part 8) contains a (very small) table in which the applicant can write a description of his or her injuries. Beside that table is the following explanation:

“Write a short, general description of the injuries (for example, broken left arm, scarring on leg) in the table below. The CVSU will use this description and your medical records to complete the table. The CVSU will select the three most serious injuries, as set out in your records or relevant medical reports.

Remember, if you are only claiming sexual assault as a violent act, write 'sexual assault' in the table. If you are only claiming the single amount of \$7500 to \$10000 for domestic violence, write 'domestic violence injuries' in the table.

Please nominate your injury(s) in the table. You may nominate more than three injuries, however only the three most serious injuries will be used for the purpose of calculating any amount to which you are entitled.”

[104] Nowhere on the approved form is the applicant told that s 32(2) provides that he or she MAY include a description of injuries resulting from the sexual assault. Nor is the applicant told that if he or she does not provide such a description, Regulation 17 provides that he or she will receive only the minimum standard amount.

[105] I understand that the operation of the Act is about to be reviewed pursuant to s 70, which provides that there is to be a review of the first 3 years of the

operation of the Act. It may be desirable for such a review to include a review of the approved forms and the information provided to applicants for the purpose of completing their applications.

[106] The answer to question 8, is that the Act places no obligation on either the applicant or the assessor to obtain a psychological or psychiatric report (either in general where there may be psychological or psychiatric injuries, or specifically in the present circumstances).

[107] **Summary**

“Question 1: In determining an award within a range in Schedule 3 of the regulations does the assessor apply common law principles in determining an award without regard to the maximum award within Schedule 3?

Answer: Yes

Question 2: If the answer to [1] is no, does the assessor reserve the maximum for worst possible act or injury?

Answer: Not applicable

Question 3: If the answer to [2] is yes, what principles does the assessor apply for determining an award within the range for an act or injury other than the worst possible act or injury?

Answer: Not applicable

Question 4: If the answer to [2] is no, what principles does the assessor apply to determine an award within the range for any act or injury?

Answer: Not applicable

Question 5: Are the criminal acts committed against the appellant on 13 June, 25 July and 7 October 2007 a single violent act for the purposes of s.5?

Answer: No

Question 6: If the answer is yes, and one of those violent acts is a compensable violent act, should the other violent acts or injuries in the series and their effects be taken into account in determining whether in the range in Schedule 3 the award should be made?

Answer: Not applicable.

Question 7: Does s.25 prevent the appellant from obtaining an assessment for psychological or psychiatric disorder as part of the award?

Answer: No

Question 8: If no, is the assessor required to obtain a written medical report as to the disorder under s. 35, or is the applicant required to provide such a written report?"

Answer: Neither the assessor nor the applicant has an obligation to obtain such a report.